

Senator Dan R. Eastman proposes the following substitute bill:

**AMENDMENTS RELATED TO FINANCIAL
INSTITUTIONS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Jeff Alexander

This act modifies the Financial Institutions title to address provisions related to credit unions and mutual associations and to make technical changes. The act addresses nonexempt credit unions establishing branches. This act addresses voting requirements for mutual associations. This act modifies definitions. The act addresses loan limitations. The act addresses credit union service organizations. The act addresses mergers involving credit unions. The act addresses operations of out-of-state credit unions. The act repeals certain provisions related to fields of membership and grandfathering and modifies other provisions related to fields of membership. This act provides for credit unions becoming nonexempt credit unions. This act provides for a competitive equity assessment and penalties for failure to pay the competitive equity assessment. This act modifies corporate franchise and income tax provisions to address the taxation of nonexempt credit unions. This act establishes a legislative task force to study issues related to credit unions and banks. The act establishes task force membership, duties, and salaries and designates staff for the task force. The act requires the task force to prepare a report. The act makes a one-time appropriation of \$39,500 from the General Fund for fiscal year 2002-2003 to pay for task force expenses. This act provides intent language. The act provides repeal dates. This act provides effective dates.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-1-708, as last amended by Chapter 49, Laws of Utah 1995



- 26 **7-7-10**, as last amended by Chapter 244, Laws of Utah 1985
- 27 **7-9-2**, as enacted by Chapter 16, Laws of Utah 1981
- 28 **7-9-3**, as last amended by Chapter 329, Laws of Utah 1999
- 29 **7-9-5**, as last amended by Chapter 116, Laws of Utah 2001
- 30 **7-9-6**, as last amended by Chapter 329, Laws of Utah 1999
- 31 **7-9-11**, as last amended by Chapter 329, Laws of Utah 1999
- 32 **7-9-12**, as last amended by Chapter 329, Laws of Utah 1999
- 33 **7-9-16**, as last amended by Chapter 329, Laws of Utah 1999
- 34 **7-9-20**, as last amended by Chapter 329, Laws of Utah 1999
- 35 **7-9-26**, as last amended by Chapter 182, Laws of Utah 1996
- 36 **7-9-34**, as last amended by Chapter 178, Laws of Utah 1994
- 37 **7-9-37**, as last amended by Chapter 329, Laws of Utah 1999
- 38 **7-9-39**, as last amended by Chapter 329, Laws of Utah 1999
- 39 **7-9-39.5**, as enacted by Chapter 329, Laws of Utah 1999
- 40 **7-9-46**, as last amended by Chapter 49, Laws of Utah 1995
- 41 **7-9-51**, as enacted by Chapter 329, Laws of Utah 1999
- 42 **7-9-52**, as enacted by Chapter 329, Laws of Utah 1999
- 43 **7-9-53**, as enacted by Chapter 329, Laws of Utah 1999
- 44 **59-1-403**, as last amended by Chapters 52 and 175, Laws of Utah 2002
- 45 **59-7-101**, as last amended by Chapter 76, Laws of Utah 2002
- 46 **59-7-102**, as last amended by Chapters 76 and 286, Laws of Utah 2002

47 ENACTS:

- 48 **7-9-55**, Utah Code Annotated 1953
- 49 **7-9-56**, Utah Code Annotated 1953
- 50 **7-9-57**, Utah Code Annotated 1953

51 REPEALS:

- 52 **7-9-54**, as enacted by Chapter 329, Laws of Utah 1999

53 This act enacts uncodified material.

54 *Be it enacted by the Legislature of the state of Utah:*

55 Section 1. Section **7-1-708** is amended to read:

56 **7-1-708. Establishing branches and relocating offices -- Application and**

57 **procedure for approval -- Limitations on nonexempt credit unions.**

58 (1) A Utah depository institution or an out-of-state depository institution with a Utah
59 branch or seeking to acquire a branch in this state may establish one or more branches, or
60 relocate a branch office or its main office in this state, subject to the prior approval of the
61 commissioner.

62 (2) ~~[Approval]~~ The approval of the commissioner required by Subsection (1) may be
63 obtained by:

64 (a) filing an application with the department in a form the commissioner prescribes;

65 and

66 (b) supplementing the application with information the commissioner considers
67 material to determining whether to approve the application.

68 (3) (a) The commissioner shall approve or disapprove ~~[the]~~ an application within 30
69 days after accepting ~~[it]~~ the application as complete.

70 (b) If the commissioner does not approve or disapprove an application within ~~[this]~~ the
71 time~~[, it]~~ stated in Subsection (3)(a), the application is considered approved.

72 (4) (a) The commissioner shall cause a supervisor to make an investigation of the facts
73 relevant or material to ~~[the]~~ an application.

74 (b) The supervisor that conducts the investigation required by Subsection (4)(a) shall
75 submit written findings and recommendations to the commissioner.

76 (5) ~~[The]~~ An application, any supplemental information furnished by the applicant, and
77 the findings and recommendations of the supervisor may be inspected by any person at the
78 department's office, except those portions of the application the commissioner declares to be
79 confidential to prevent a clearly unwarranted invasion of privacy, pursuant to the applicant's
80 request.

81 (6) To protect the safety and soundness of the applicant, the commissioner may:

82 (a) approve an application subject to the terms and conditions the commissioner
83 considers necessary; or

84 (b) disapprove an application.

85 (7) (a) The commissioner's approval of any application under this section is considered
86 revoked, unless the office is opened and operating within one year of the date approved by the
87 commissioner for commencement of operations.

88 (b) The commissioner may~~[- upon written application made before the expiration of~~
89 ~~that period and for good cause shown;]~~ extend the date for activation for up to two additional
90 periods of not more than six months each[-];

91 (i) upon written application made before the expiration of a period; and

92 (ii) for good cause shown.

93 (8) An out-of-state depository institution with a branch in Utah is not subject to the
94 requirements of this section if the office or branch to be established or relocated is located
95 outside of Utah.

96 (9) For purposes of determining whether a nonexempt credit union may establish a
97 branch, a nonexempt credit union is considered to be establishing a branch if the nonexempt
98 credit union establishes:

99 (a) a loan production office; or

100 (b) any other office or facility that:

101 (i) is owned or operated by:

102 (A) the nonexempt credit union; or

103 (B) a credit union service organization in which the nonexempt credit union holds an
104 ownership interest;

105 (ii) is open to the public; and

106 (iii) provides any product or service of the nonexempt credit union to a member of the
107 nonexempt credit union.

108 Section 2. Section **7-7-10** is amended to read:

109 **7-7-10. Meetings of mutual association members -- Voting -- Notice.**

110 (1) (a) An annual meeting of the members of each mutual association shall be held at
111 the time and place fixed in the bylaws of the association.

112 (b) Special meetings may be called as provided in the bylaws.

113 (2) (a) The members entitled to vote at any meeting of the members shall be those who
114 are members of record at the end of the calendar month next preceding the date of the meeting
115 of members, except those who have ceased to be members.

116 (b) The number of votes ~~[which members shall be]~~ that a member is entitled to cast
117 shall be determined in accordance with the books on the date determinative of entitlement to
118 vote.

119 (3) In the determination of all questions requiring action by the members, each member
120 shall be entitled to cast:

121 (a) one vote~~[, plus an additional vote for each \$100 or fraction thereof of the~~
122 ~~withdrawal value of savings accounts, if any, held by the member. No member, however, may~~
123 ~~cast more than 50 votes.]; and~~

124 (b) any additional vote that the member may cast under the bylaws of the association.

125 (4) ~~[At]~~ (a) (i) Subject to Subsection (4)(a)(ii), at any meeting of the members, voting
126 may be:

127 (A) in person; or

128 (B) by proxy~~[, but no].~~

129 (ii) Notwithstanding Subsection (4)(a)(i), a proxy ~~[shall be]~~ is not eligible to be voted
130 at any meeting unless the proxy has been filed with the secretary of the association, for
131 verification, at least five days before the date of the meeting.

132 (b) Every proxy shall:

133 (i) be in writing ~~[and];~~

134 (ii) be signed by the member or ~~[his]~~ the member's duly authorized attorney in fact
135 ~~[and, when filed with the secretary, shall, if so specified in the proxy,]; and~~

136 (iii) continue in force from year to year:

137 (A) when filed with the secretary;

138 (B) if so specified in the proxy; and

139 (C) until:

140 (I) revoked by a writing duly delivered to the secretary; or ~~[until]~~

141 (II) superseded by subsequent proxies.

142 (5) (a) At an annual meeting or at any special meeting of the members, any number of
143 members present in person or by proxy eligible to be voted constitutes a quorum.

144 (b) A majority of all votes cast at any meeting of members shall determine any
145 question unless this chapter specifically provides otherwise.

146 (6) (a) No notice of annual meetings of members need be given to members. ~~[Notice]~~

147 (b) Subject to Subsection (6)(c), notice of each special meeting of members shall:

148 (i) state:

149 (A) the purpose for which the meeting is called~~[,];~~

150 (B) the place of the meeting[;]; and

151 (C) the time when [it] the meeting shall convene[;]; and [~~shall~~]

152 (ii) (A) be published;

153 (I) once a week for two consecutive calendar weeks (in each instance, on any day of the
154 week) before the date on which the special meeting shall convene[;]; and

155 (II) in a newspaper of general circulation in the county in which the home office of the
156 association is located[. ~~In addition to publication of the notice, a copy of the notice shall~~]; and

157 (B) be posted in a conspicuous place in all offices of the association during the 30 days
158 immediately preceding the date on which the special meeting convenes[; ~~provided, however,~~
159 ~~that~~].

160 (c) No notice need be given of a meeting if all the members entitled to vote, vote in
161 favor of an action at [any] the meeting of the members[. ~~no notice need be given~~].

162 Section 3. Section **7-9-2** is amended to read:

163 **7-9-2. Description of credit unions.**

164 (1) A credit union is a cooperative, non-profit association, incorporated under this
165 chapter to:

166 (a) encourage thrift among [its] the credit union's members[. ~~to~~];

167 (b) create sources of credit at fair and reasonable rates of interest[;]; and [to]

168 (c) provide an opportunity for [its] the credit union's members to use and control their
169 resources on a democratic basis in order to improve their economic and social condition.

170 (2) (a) A credit union shall maintain those qualifying characteristics of a cooperative,
171 nonprofit association described in Subsection (1).

172 (b) A characteristic of a cooperative, nonprofit association described in Subsection (1)
173 includes providing meaningful control to the members over the annual net income of the credit
174 union so that the members have a choice as to whether to:

175 (i) return excess annual net income to the members as cash dividends; or

176 (ii) use net income to further capital improvements and expansion of the credit union's
177 operations.

178 Section 4. Section **7-9-3** is amended to read:

179 **7-9-3. Definitions.**

180 As used in this chapter:

181 (1) (a) "Association" means a group of persons that:
182 [~~(a) has a similar:~~
183 [~~(i) interest;~~
184 (i) constitute the members of a formal association organized for:
185 (A) an identifiable interest that is consistent with the chapter;
186 (B) an identifiable purpose that is consistent with the chapter;
187 [~~(ii) (C) a specific profession; or~~
188 [~~(iii) (D) a specific occupation; or~~
189 [~~(iv) formal association with an identifiable purpose; or]~~
190 [~~(b) is~~] (ii) are employed by a common employer.
191 (b) "Association" does not include a group of persons that is:
192 (i) identified or created primarily on the basis of a relationship between any person
193 and:
194 (A) a consumer;
195 (B) a customer; or
196 (C) a client; or
197 (ii) created primarily for the purpose of expanding the membership in a credit union.
198 (2) "Capital and surplus" means:
199 (a) shares;
200 (b) deposits;
201 (c) reserves; and
202 (d) undivided earnings.
203 (3) "Corporate credit union" means any credit union organized pursuant to any state or
204 federal act for the purpose of serving other credit unions.
205 (4) "Credit union service organization" means a service organization that provides
206 services that are:
207 (a) subject to Subsection (4)(b)(i), permitted by rule made by the commissioner in
208 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and
209 (b) (i) except for the extension of credit by the service organization, limited primarily
210 to:
211 (A) credit unions that hold an ownership interest in the service organization;

212 (B) members of credit unions that hold an ownership interest in the service
213 organization; or

214 (C) members of credit unions that contract with the service organization; and

215 (ii) for purposes of the extension of credit by the service organization, limited to
216 members of a credit union that holds an ownership interest in the service organization.

217 [~~4~~] (5) "Deposits" means that portion of the capital paid into the credit union by
218 members on which a specified rate of interest will be paid.

219 (6) "~~limited field~~ Field of membership" means persons designated as eligible for
220 credit union membership in accordance with:

221 (a) Section 7-9-51 or 7-9-53[-]; and

222 (b) the bylaws of the credit union.

223 [~~5~~] (7) "Immediate family" means parents, spouse, surviving spouse, children, and
224 siblings of the member.

225 [~~7~~] (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,
226 the proceeds of which will be used for:

227 (i) a commercial purpose;

228 (ii) other business investment property or venture purpose; or

229 (iii) an agricultural purpose.

230 (b) "Member-business loan" does not include an extension of credit:

231 (i) that is fully secured by a lien on a one- to four- family dwelling that is the primary
232 residence of a member;

233 (ii) that is fully secured by:

234 (A) shares or deposits in the credit union making the extension of credit; or

235 (B) deposits in other financial institutions;

236 (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an
237 advance commitment to purchase in full by, an agency of:

238 (A) the federal government;

239 (B) a state; or

240 (C) a political subdivision of a state; or

241 (iv) that is granted by a corporate credit union to another credit union.

242 (9) "Nonexempt credit union" means a credit union that is a nonexempt credit union

243 under Section 7-9-55.

244 [~~8~~] (10) "Service center" means a single location at which multiple credit unions can
245 provide products or services directly to their members.

246 [~~9~~] (11) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts
247 from which owners are permitted to make withdrawals by negotiable or transferable
248 instruments or other orders for the purpose of making transfers to other persons or to the
249 owner.

250 [~~10~~] (12) "Shares" means that portion of the capital paid into the credit union by
251 members on which dividends may be paid.

252 Section 5. Section **7-9-5** is amended to read:

253 **7-9-5. Powers of credit unions.**

254 In addition to the powers specified elsewhere in this chapter and subject to any
255 limitations specified elsewhere in this chapter, a credit union may:

- 256 (1) make contracts;
- 257 (2) sue and be sued;
- 258 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and
259 equipment as the directors consider necessary or incidental to the operation and business of the
260 credit union, but the value of the real property may not exceed 7% of credit union assets, unless
261 approved by the commissioner;
- 262 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in
263 whole or in part, necessary or incidental to its operation;
- 264 (5) incur and pay necessary and incidental operating expenses;
- 265 (6) require an entrance or membership fee;
- 266 (7) receive the funds of its members in payment for:
 - 267 (a) shares;
 - 268 (b) share certificates;
 - 269 (c) deposits;
 - 270 (d) deposit certificates;
 - 271 (e) share drafts;
 - 272 (f) NOW accounts; and
 - 273 (g) other instruments;

274 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third
275 party with prior authorization in writing, including, but not limited to, drafts drawn on the
276 credit union for payment to the member or any third party, in accordance with the procedures
277 established by the board of directors, including, but not limited to, drafts, third-party
278 instruments, and other transaction instruments, as provided in the bylaws;

279 (9) charge fees for its services;

280 (10) extend credit to its members, at rates established in accordance with the bylaws or
281 by the board of directors;

282 (11) extend credit secured by real estate;

283 (12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan
284 participation arrangements [with other credit unions, credit union organizations, or financial
285 organizations], in accordance with written policies of the board of directors[-if] with one or
286 more:

287 (i) other credit unions;

288 (ii) credit union service organizations; or

289 (iii) other financial organizations; and

290 (b) make co-lending arrangements, including loan participation arrangements, in
291 accordance with Subsection (12)(a) subject to the following:

292 (i) the credit union or credit union service organization that originates a loan for which
293 [participation] co-lending arrangements are made [retains] shall retain an interest of at least
294 10% of the loan;

295 (ii) on or after May 5, 2003, the originating credit union or credit union service
296 organization may sell to a credit union an interest in a co-lending arrangement that involves a
297 member-business loan only if the person receiving the member-business loan is a member of
298 the credit union to which the interest is sold; and

299 (iii) on or after May 5, 2003, the originating credit union or credit union service
300 organization may sell to a credit union service organization an interest in a co-lending
301 arrangement that involves a member-business loan only if the person receiving the
302 member-business loan is a member of a credit union that holds an interest in the credit union
303 service organization to which the interest is sold;

304 (13) sell and pledge eligible obligations in accordance with written policies of the

305 board of directors;

306 (14) engage in activities and programs of the federal government or this state or any
307 agency or political subdivision of the state, when approved by the board of directors and not
308 inconsistent with this chapter;

309 (15) act as fiscal agent for and receive payments on shares and deposits from the
310 federal government, this state, or its agencies or political subdivisions not inconsistent with the
311 laws of this state;

312 (16) borrow money and issue evidence of indebtedness for a loan or loans for
313 temporary purposes in the usual course of its operations;

314 (17) discount and sell notes and obligations;

315 (18) sell all or any portion of its assets to another credit union or purchase all or any
316 portion of the assets of another credit union;

317 (19) invest funds as provided in this title and in its bylaws;

318 (20) maintain deposits in insured depository institutions as provided in this title and in
319 its bylaws;

320 (21) (a) hold membership in corporate credit unions organized under this chapter or
321 under other state or federal statutes; and

322 (b) hold membership or equity interest in associations and organizations of credit
323 unions, including credit union service organizations;

324 (22) declare and pay dividends on shares, contract for and pay interest on deposits, and
325 pay refunds of interest on loans as provided in this title and in its bylaws;

326 (23) collect, receive, and disburse funds in connection with the sale of negotiable or
327 nonnegotiable instruments and for other purposes that provide benefits or convenience to its
328 members, as provided in this title and in its bylaws;

329 (24) make donations for the members' welfare or for civic, charitable, scientific, or
330 educational purposes as authorized by the board of directors or provided in its bylaws;

331 (25) act as trustee of funds permitted by federal law to be deposited in a credit union as
332 a deferred compensation or tax deferred device, including, but not limited to, individual
333 retirement accounts as defined by Section 408, Internal Revenue Code;

334 (26) purchase reasonable accident and health insurance, including accidental death
335 benefits, for directors and committee members through insurance companies licensed in this

336 state as provided in its bylaws;

337 (27) provide reasonable protection through insurance or other means to protect board
338 members, committee members, and employees from liability arising out of consumer
339 legislation such as, but not limited to, truth-in-lending and equal credit laws and as provided in
340 its bylaws;

341 (28) reimburse directors and committee members for reasonable and necessary
342 expenses incurred in the performance of their duties;

343 (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of
344 credit unions or credit union members by automated or electronic means and hold membership
345 in entities established to promote and effectuate these systems, if:

346 (a) the participation is not inconsistent with the law and rules of the department; and

347 (b) any credit union participating in any system notifies the department as provided by
348 law;

349 (30) issue credit cards and debit cards to allow members to obtain access to their
350 shares, deposits, and extensions of credit;

351 (31) provide any act necessary to obtain and maintain membership in the credit union;

352 (32) exercise incidental powers necessary to carry out the purpose for which a credit
353 union is organized;

354 (33) undertake other activities relating to its purpose as its bylaws may provide;

355 (34) engage in other activities, exercise other powers, and enjoy other rights,
356 privileges, benefits, and immunities authorized by rules of the commissioner;

357 (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement
358 accounts, credit union employee pension plans, and other employee benefit programs; and

359 (36) advertise to the general public the products and services offered by the credit
360 union if the advertisement prominently discloses that to use the products or services of the
361 credit union a person is required to:

362 (a) be eligible for membership in the credit union; and

363 (b) become a member of the credit union.

364 Section 6. Section 7-9-6 is amended to read:

365 **7-9-6. Formation of corporation to conduct credit union -- Approval of**
366 **commissioner.**

367 (1) (a) Ten or more incorporators belonging to the same group of 200 persons or more
368 having a [~~limited~~] field of membership may, with the approval of the commissioner, form a
369 corporation to conduct a credit union under:

370 (i) this chapter;

371 (ii) Title 16, Chapter 10a, Utah Revised Business Corporation Act; and

372 (iii) Chapter 1, General Provisions.

373 (b) This chapter takes precedence over conflicting provisions of other state law
374 governing:

375 (i) the formation of the corporation; and

376 (ii) the duties and obligations of:

377 (A) the corporation;

378 (B) the corporation's officers; and

379 (C) the corporation's shareholders or members.

380 (2) The commissioner may grant the approval referenced in Subsection (1) if the
381 commissioner finds that:

382 (a) the proposed [~~limited~~] field of membership is favorable to the success of the credit
383 union;

384 (b) the standing of the proposed membership will give assurance that its affairs will be
385 administered in accordance with this chapter;

386 (c) the proposed credit union has a reasonable promise of financial viability; and

387 (d) formation of the credit union would not result in a substantial adverse financial
388 impact on an existing credit union having the same or substantially the same [~~limited~~] field of
389 membership.

390 (3) (a) Except as provided in Subsection (3)(b) and in addition to the requirements of
391 Subsections (1) and (2), Section 7-1-704 governs the formation of a credit union.

392 (b) Notwithstanding Subsection (3)(a):

393 (i) if the proposed credit union has a [~~limited~~] field of membership that does not base
394 eligibility on residence in a county, the persons seeking formation of the proposed credit union
395 are not required to provide the notice required under Subsection 7-1-704(3); and

396 (ii) a credit union may not be required to obtain federal insurance if the credit union
397 complies with Subsection 7-9-45(2).

398 Section 7. Section **7-9-11** is amended to read:

399 **7-9-11. Bylaws and amendments to be approved.**

400 (1) A credit union may not receive payments on shares, deposits, or certificates, or
401 make any loans or other transactions, until its bylaws have been approved in writing by the
402 commissioner.

403 (2) An amendment to a credit union's bylaws does not become operative until the
404 amendment to the bylaws is approved by the commissioner.

405 (3) (a) If the amendment to the bylaws of a credit union expands the [~~limited~~] field of
406 membership of a credit union as described in Subsection 7-9-52(1), the commissioner's
407 approval of the amendment is subject to Section 7-9-52.

408 [~~(b) If the amendment to the bylaws of a credit union terminates the grandfathering of a~~
409 ~~limited field of membership under Section 7-9-54, the commissioner's approval of the~~
410 ~~amendment is subject to Section 7-9-54.]~~

411 [(~~e~~)] (b) If the bylaws or an amendment to the bylaws of a credit union adds an
412 association to the [~~limited~~] field of membership of the credit union, the commissioner may
413 require that the credit union provide written confirmation from the association that the
414 association has agreed to be served by the credit union.

415 Section 8. Section **7-9-12** is amended to read:

416 **7-9-12. Contents of bylaws.**

417 The bylaws of a credit union shall specify at least the following:

418 (1) the name of the credit union;

419 (2) the purpose for which [~~it~~] the credit union was formed;

420 (3) a [~~limited~~] field of membership of the credit union that complies with Section
421 7-9-51 or 7-9-53;

422 (4) the number of directors and procedures for their election;

423 (5) the term of directors;

424 (6) whether a credit manager, credit committee, or combination of both shall be
425 responsible for credit functions of the credit union;

426 (7) the duties of the officers;

427 (8) the time of year of the annual meeting of members;

428 (9) the manner in which members shall be notified of meetings;

- 429 (10) the number of members which shall constitute a quorum at meetings;
- 430 (11) the manner of amending;
- 431 (12) the manner in which officers may act as surety; and
- 432 (13) such other matters, rules, and regulations as the board of directors consider
- 433 necessary.

434 Section 9. Section **7-9-16** is amended to read:

435 **7-9-16. Members -- Eligibility -- Liability -- Grounds for closing account -- Denial**
436 **of membership.**

437 (1) A person within the [~~limited~~] field of membership of a credit union may be admitted
438 to membership, upon:

- 439 (a) payment of any required entrance or membership fee;
- 440 (b) payment for one or more shares; and
- 441 (c) compliance with this chapter and the bylaws of the credit union.

442 (2) A member who is eligible for membership in a credit union at the time the member
443 is admitted as a member but who is no longer in the [~~limited~~] field of membership of the credit
444 union may retain membership in the credit union unless otherwise provided in the bylaws of
445 the credit union.

446 (3) A member of the credit union may not be held personally or individually liable for
447 payment of the credit union's debts.

448 (4) The credit union may close the account of any member whose actions have resulted
449 in any financial loss to the credit union.

450 (5) Denial of membership is not considered a denial of credit.

451 Section 10. Section **7-9-20** is amended to read:

452 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

453 (1) At annual meetings the members shall elect from their number a board of directors
454 consisting of an odd number of not less than five members.

455 (2) The bylaws may provide balloting by:

- 456 (a) mail;
 - 457 (b) ballot box; or
 - 458 (c) both mail and ballot box.
- 459 (3) Voting may not be by proxy.

460 (4) Members of the board of directors shall hold office for the terms prescribed in the
461 bylaws.

462 (5) The board of directors shall meet at least monthly.

463 (6) The board of directors shall have the general management of the affairs, funds, and
464 records of the credit union. In particular, the board of directors shall:

465 (a) act upon applications for membership;

466 (b) act upon expulsion of members;

467 (c) fix the amount of surety bond required of each officer or employee having custody
468 of funds;

469 (d) determine the rate of interest or dividend allowed on shares and deposits;

470 (e) determine the terms and conditions of credit granted to members;

471 (f) lend money, borrow money, and pledge security for any borrowing;

472 (g) fill vacancies in the board of directors or in the credit committee, if applicable, or in
473 the supervisory committee until the election and qualification of officers to fill those vacancies;

474 (h) appoint up to two alternate directors as provided in the bylaws;

475 (i) fix the amount of the entrance fee;

476 (j) declare dividends and their amount;

477 (k) make recommendations to meetings of the members relative to amendments to the
478 articles of incorporation, and transact any other business of the credit union; and

479 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to
480 any one member, up to the limitations described in ~~[Subsection]~~ Subsections (7) and (8).

481 (7) (a) The credit that may be outstanding or available by a credit union at any one time
482 is subject to the limitations described in ~~[Subsections]~~ this Subsection (7)~~[(b) and (c)]~~:

483 (i) except as provided in Subsection ~~[(7)(d) through (7)(f)]~~ (8); and

484 (ii) except that the board of directors may:

485 (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(B); or

486 (B) require that a person described in Subsection (7)(b)(ii)(A) be a member of the
487 credit union for more than six months before the date a member-business loan is extended.

488 (b) (i) A credit union may not extend credit that is not a member-business loan to a
489 member if as a result of that extension of credit the total credit that is not a member-business
490 loan that the credit union has issued to that member exceeds at any one time:

491 (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:

492 (I) \$1,000; or

493 (II) 15% of capital and surplus up to a total of \$25,000; or

494 (B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:

495 (I) \$25,000;

496 (II) 1% of capital and surplus; or

497 (III) 25% of the regular reserve.

498 (ii) Beginning March 24, 1999, a credit union may not extend a member-business loan

499 to a person:

500 (A) (I) if the person is a business entity, unless at least one individual having a

501 controlling interest in that business entity has been a member of the credit union for at least six

502 months prior to the date of the extension of the member-business loan; or

503 (II) if the person is an individual, unless the individual is a member of the credit union

504 for at least six months prior to the date of the extension of the member-business loan; or

505 (B) if as a result of the extension of the member-business loan, the total amount

506 outstanding for all member-business loans that the credit union has extended to that person at

507 any one time exceeds the lesser of:

508 (I) 10% of the credit union's capital and surplus; or

509 (II) \$250,000.

510 (c) (i) Beginning March 24, 1999, a credit union may not extend a member-business

511 loan if as a result of that member-business loan the credit union's aggregate member-business

512 loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum

513 of:

514 (A) the actual undivided earnings; and

515 (B) the actual reserves other than the regular reserves.

516 (ii) For purposes of Subsection (7)(c)(i), the aggregate member-business loan amount

517 of a credit union equals:

518 (A) the sum of the total amount financed under all member-business loans outstanding

519 at the credit union; minus

520 (B) the amount of the member-business loans described in Subsection (7)(c)(ii)(A):

521 (I) that is secured by share or deposit savings in the credit union; or

522 (II) for which the repayment is insured or guaranteed by, or there is an advance
523 commitment to purchase by an agency of the federal government, a state, or a political
524 subdivision of the state.

525 (d) (i) A credit union service organization may extend credit to a member of a credit
526 union holding an ownership interest in the credit union service organization only if the credit
527 union in which the person is a member is not prohibited from extending that credit to that
528 member under this Subsection (7) and Subsection (8).

529 (ii) For purposes of determining whether under this Subsection (7) and Subsection (8) a
530 credit union may extend credit, the total amount outstanding of credit extended by a credit
531 union service organization to a person shall be treated as if the credit was extended by the
532 credit union in which the person is a member.

533 (iii) If a person seeking an extension of credit from a credit union service organization
534 is a member of more than one credit union holding an ownership interest in the credit union
535 service organization, the person shall specify the credit union to which the extension of credit
536 is attributed under Subsection (7)(d)(ii).

537 (iv) This Subsection (7)(d) effects only an extension of credit:

538 (A) that is extended on or after May 5, 2003; and

539 (B) by:

540 (I) a credit union service organization; or

541 (II) a credit union organized under this chapter.

542 ~~[(d)]~~ (8) (a) A credit union may extend credit that is not a member-business loan in an
543 amount that exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is
544 fully secured by share or deposit savings in the credit union.

545 ~~[(e)]~~ (b) (i) Except as provided in Subsection ~~[(7)(e)]~~ (8)(b)(ii), a credit union may
546 extend a member-business loan in an amount that exceeds the limits described in Subsection
547 (7)(b)(ii)(B) only if:

548 (A) that portion that is in excess of the limits described in Subsection (7)(b)(ii)(B) is
549 secured by share or deposit savings in the credit union; or

550 (B) the repayment of that portion that is in excess of the limits described in Subsection
551 (7)(b)(ii)(B) is insured or guaranteed by, or there is an advance commitment to purchase that
552 excess portion by, an agency of:

- 553 (I) the federal government;
- 554 (II) a state; or
- 555 (III) a political subdivision of the state.

556 (ii) Notwithstanding Subsection [~~(7)(e)~~] (8)(b)(i), a credit union may not extend a
557 member-business loan if the total amount financed by the credit union exceeds \$1,000,000.

558 [~~(f)~~] (c) For a member-business loan that is extended through a loan participation
559 arrangement in accordance with Subsection 7-9-5(12):

560 (i) in applying the limitation of Subsection [~~(7)(e)~~] (8)(b), each credit union
561 participating in the member-business loan may extend up to \$1,000,000 of the amount
562 financed; and

563 (ii) the requirement of Subsection (7)(b)(ii)(A) applies to membership in any credit
564 union that participates in the loan participation arrangement for the member-business loan.

565 [~~(8)~~] (9) As provided in this chapter or in the credit union bylaws, the board of
566 directors:

567 (a) within 30 days following the annual meeting of the members, shall appoint a
568 supervisory committee consisting of not less than three members;

569 (b) within 30 days after the annual meeting of the members, shall appoint:

570 (i) a credit committee consisting of not less than three members; or

571 (ii) a credit manager in lieu of a credit committee;

572 (c) shall appoint a president to serve as general manager;

573 (d) shall have an executive committee;

574 (e) may appoint an investment officer;

575 (f) shall elect a secretary;

576 (g) may appoint other officers and committees that it considers necessary;

577 (h) shall establish written credit policies, loan security requirements, loan investment,
578 personnel, and collection policies; and

579 (i) on or before January 31 of each year, shall provide for:

580 (i) share insurance for the shares and deposits of the credit union from the National
581 Credit Union Administration or successor federal agency; or

582 (ii) security expressly pledged for the payment of the shares and deposits in accordance
583 with Section 7-9-45.

584 [~~9~~] (10) A person may not be a member of more than one committee except as
585 otherwise provided in this chapter or in the credit union bylaws.

586 [~~10~~] (11) The president and secretary may not be the same person.

587 Section 11. Section **7-9-26** is amended to read:

588 **7-9-26. Loans to members -- Investment officers -- Investments.**

589 (1) [~~The~~] Subject to Subsections 7-9-20(7) and (8), capital and surplus of the credit
590 union shall be loaned to the members for the purposes and upon the endorsements or security
591 and the terms as the bylaws provide.

592 (2) Within 30 days after the annual meeting of the members the board of directors may
593 appoint one or more investment officers who shall have responsibilities for the credit union
594 investment portfolio based upon policy established by the board of directors and as provided in
595 this chapter or in the bylaws.

596 (3) The credit union by action of its board of directors may invest its funds as follows:

597 (a) in securities, obligations, or other instruments of, or issued by, or fully guaranteed
598 as to principal and interest by, the United States of America or any of its agencies, or in any
599 trusts established by investing directly or collectively in these instruments;

600 (b) in obligations of any state of the United States, the District of Columbia, the
601 Commonwealth of Puerto Rico, and the territories organized by Congress, or any of their
602 political subdivisions;

603 (c) in certificates of deposit or accounts issued by a federally insured state or national
604 depository institution;

605 (d) in loans to, or in shares or deposits of, other federally insured credit unions, central
606 credit unions, corporate credit unions, or a central liquidity facility established under state or
607 federal law;

608 (e) in shares, stocks, loans, or other obligations of any organization, corporation, or
609 association, if the membership or ownership of the organization, corporation, or association is
610 primarily confined or restricted to credit unions, and if the purpose for which it is organized is
611 to strengthen or advance the development of credit unions or credit union organizations; and

612 (f) in other investments that are reasonable and prudent.

613 Section 12. Section **7-9-34** is amended to read:

614 **7-9-34. Tax exemption of credit unions.**

615 (1) Except as [~~otherwise~~] provided in [~~this section~~] Subsection (2), a credit [unions]
616 union organized under this chapter [or prior law are] is exempt from [taxation] Title 59,
617 Chapter 7, Corporate Franchise and Income Taxes.

618 [~~(2) Any real property or any tangible personal property owned by the credit union~~
619 ~~shall be subject to taxation to the same extent as other similar property is taxed.]~~

620 [~~(3) For purposes of the corporate tax, credit unions shall be governed by Section~~
621 ~~59-7-102.]~~

622 [~~(4) This section does not exempt credit unions from sales or use taxes, or fees owed to~~
623 ~~the department in accordance with this title and rules of the department.]~~

624 (2) In accordance with Section 59-7-102, a nonexempt credit union is subject to Title
625 59, Chapter 7, Corporate Franchise and Income Taxes, beginning on the first day of the month
626 immediately following the day on which the credit union becomes a nonexempt credit union
627 under Section 7-9-55.

628 Section 13. Section **7-9-37** is amended to read:

629 **7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or**
630 **acquired credit union.**

631 Members of a dissolved, merged, consolidated, transferred, or acquired credit union
632 may become members of another existing credit union with a related [~~limited~~] field of
633 membership as approved by the commissioner.

634 Section 14. Section **7-9-39** is amended to read:

635 **7-9-39. Voluntary merger.**

636 (1) Any credit union may merge with another credit union under the existing charter of
637 the other credit union when all of the following have occurred:

638 (a) the majority of the directors of each merging credit union votes in favor of the
639 merger plan;

640 (b) the commissioner approves the merger plan;

641 (c) the majority of the members of each merging credit union present at a meeting
642 called for the purpose of considering the merger plan votes to approve the merger plan, but a
643 vote of the membership of the surviving credit union is not required if its board of directors
644 determines that the merger will not have any significant effect on the organization,
645 membership, or financial condition of the credit union; and

646 (d) (i) the National Credit Union Administration or its successor federal deposit
647 insurance agency approves the merger plan and commits to insure deposits of the surviving
648 credit union; or

649 (ii) the commissioner approves the surviving credit union to operate without federal
650 deposit insurance in accordance with Section 7-9-45.

651 (2) Upon merger, the chair of the board and secretary of each credit union shall
652 execute, and file with the department, a certificate of merger setting forth:

653 (a) the time and place of the meeting of the board of directors at which the plan was
654 approved;

655 (b) the vote by which the directors approved the plan;

656 (c) a copy of the resolution or other action by which the plan was approved;

657 (d) the time and place of the meeting of the members at which the plan was approved;

658 (e) the vote by which the members approved the plan; and

659 (f) the effective date of the merger, which shall be:

660 (i) the date on which the last approval or vote required under Subsection (1) was
661 obtained; or

662 (ii) a later date specified in the merger plan.

663 (3) On the effective date of any merger:

664 (a) all property, property rights, and interests of the merged credit union shall vest in
665 the surviving credit union without deed, endorsement, or other instrument of transfer; and

666 (b) all debts, obligations, and liabilities of the merged credit union are considered to
667 have been assumed by the surviving credit union.

668 (4) Except as provided in Subsection (5)(b), if the surviving credit union is chartered
669 under this chapter, the residents of a county in the [limited] field of membership of the merging
670 credit union may not be added to the [limited] field of membership of the surviving credit
671 union, except that the surviving credit union:

672 (a) may admit as a member any member of the merging credit union that is not in the
673 [limited] field of membership of the surviving credit union if the member of the merging credit
674 union was a member of that credit union at the time of merger; and

675 (b) may service any member-business loan of the merging credit union until the
676 member-business loan is paid in full.

677 (5) (a) This section shall be interpreted, whenever possible, to permit a credit union
678 chartered under this chapter to merge with a credit union chartered under any other law if the
679 preservation of membership interest is concerned.

680 (b) The commissioner may under Subsection (1)(b) approve a merger plan that
681 includes the addition of the residents of a county in the [limited] field of membership of the
682 merging credit union to the [limited] field of membership of the surviving credit union if the
683 commissioner finds that:

684 (i) the expansion of the [limited] field of membership of the surviving credit union is
685 necessary for that credit union's safety and soundness; and

686 (ii) the expanded [limited] field of membership of the surviving credit union meets the
687 criteria stated in Subsection 7-9-52(3)(c).

688 (6) If the commissioner approves a merger plan under Subsection (5)(b) under which
689 the surviving credit union's [limited] field of membership after the merger will include
690 residents of more than one county, Subsections (6)(a) through (e) apply to the surviving credit
691 union.

692 (a) The domicile-county of the surviving credit union is:

693 (i) if the credit union does not have a [limited] field of membership under Subsection
694 7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of
695 branches as of the date the merger is effective; or

696 (ii) if the credit union has a [limited] field of membership under Subsection
697 7-9-53(2)(c) or (2)(d), the county that is the domicile-county of the surviving credit union
698 under Section 7-9-53;

699 (b) Within the surviving credit union's domicile-county, the surviving credit union may
700 establish, relocate, or otherwise change the physical location of the credit union's:

701 (i) main office; or

702 (ii) branch.

703 (c) Within a county other than the domicile-county that is in the [limited] field of
704 membership of the surviving credit union after the merger, the surviving credit union may not:

705 (i) establish a main office or branch if the main office or branch was not located in the
706 county as of the date that the merger is effective;

707 (ii) participate in a service center in which it does not participate as of the date that the

708 merger is effective; or

709 (iii) relocate the surviving credit union's main office or a branch located in the county
710 as of the date that the merger is effective unless the commissioner finds that the main office or
711 branch is being relocated within a three-mile radius of the original location of the main office
712 or branch.

713 (d) After the merger, the surviving credit union may admit as a member:

714 (i) a person in the surviving credit union's [limited] field of membership after the date
715 that the merger is effective; or

716 (ii) a person belonging to an association that:

717 (A) is added to the [limited] field of membership of the credit union; and

718 (B) resides in the domicile-county of the surviving credit union, as defined in Section
719 7-9-53.

720 (e) In addition to any requirement under this Subsection (6), a surviving credit union
721 shall comply with any requirement under this title for the establishment, relocation, or change
722 in the physical location of a main office or branch of a credit union.

723 Section 15. Section **7-9-39.5** is amended to read:

724 **7-9-39.5. Supervisory merger.**

725 If a credit union is merged with another credit union as a result of a supervisory action
726 under Chapter 2 or 19, the commissioner may permit the surviving credit union to have a
727 [limited] field of membership that is larger than a [limited] field of membership permitted
728 under Section 7-9-51.

729 Section 16. Section **7-9-46** is amended to read:

730 **7-9-46. Out-of-state credit unions -- Authorization to do business in state --**
731 **Supervision -- Examination.**

732 (1) As used in this section "out-of-state credit union" means any credit union whose
733 home state is not Utah.

734 (2) An out-of-state credit union may maintain a branch in this state only if:

735 (a) maintaining the Utah branch is permissible under applicable law, including
736 Sections 7-1-702 and 7-1-708 in the case of a state chartered credit union; [and]

737 (b) the branch has been authorized by:

738 (i) the department and the chartering authority of the credit union's home state in the

739 case of a state chartered credit union; or

740 (ii) the National Credit Union Administration or successor agency in the case of a
741 federally chartered credit union[-]; and

742 (c) the branch will not serve a member of the out-of-state credit union who is a
743 member of the credit union based solely on the member residing in a geographic area located in
744 whole or in part in Utah.

745 (3) The commissioner may examine and supervise all out-of-state credit unions with a
746 branch in the state, except federal credit unions, in the same manner as the commissioner
747 examines and supervises credit unions in this state.

748 Section 17. Section **7-9-51** is amended to read:

749 **7-9-51. Field of membership.**

750 (1) Except as provided in Subsection (3) or (5), the [~~limited~~] field of membership of a
751 credit union may include only the following:

752 (a) the immediate family of a member of the credit union;

753 (b) the employees of the credit union;

754 (c) residents of a single county; [~~and~~]

755 (d) one or more associations[-]; and

756 (e) if approved by the commissioner in accordance with Subsection 7-9-52(6),

757 residents of:

758 (i) a city of the third class as classified in Section 10-2-301; or

759 (ii) a town as classified in Section 10-2-301.

760 (2) A credit union may have a [~~limited~~] field of membership that is more restrictive
761 than the [~~limited~~] field of membership described in Subsection (1).

762 (3) A credit union may have a [~~limited~~] field of membership that is less restrictive than
763 the [~~limited~~] field of membership described in Subsection (1) if the [~~limited~~] field of
764 membership of the credit union:

765 (a) is determined under Subsection 7-9-53(2)(c) or (2)(d);

766 (b) is approved by the commissioner after a merger under Subsection 7-9-39(5); or

767 (c) is permitted by the commissioner after a merger in accordance with Section
768 7-9-39.5.

769 (4) If a credit union includes the residents of one county in its [~~limited~~] field of

770 membership, the credit union may not change its [~~limited~~] field of membership to include a
771 different county than the county that is first included in the [~~limited~~] field of membership of the
772 credit union.

773 (5) Notwithstanding Section 7-9-53, a credit union may have a field of membership
774 that is less restrictive than the field of membership described in Subsection (1), under the
775 following conditions:

776 (a) if the field of membership of a credit union includes all residents of any county, the
777 field of membership of the credit union includes no more than all the residents of two counties;
778 and

779 (b) any county described in Subsection (5)(a) is a county of the third through sixth
780 class, as classified in Section 17-50-501.

781 Section 18. Section **7-9-52** is amended to read:

782 **7-9-52. Expansion of a field of membership.**

783 (1) The commissioner shall comply with Subsection (2) if the commissioner receives a
784 request to approve an amendment to the bylaws of a credit union that expands the credit union's
785 [~~limited~~] field of membership to include:

786 (a) residents of [~~one~~] a county; [~~or~~]

787 (b) an association consisting of 50 or more persons[~~;~~]; or

788 (c) subject to the requirements of Subsection (6), residents of:

789 (i) a city of the third class as classified in Section 10-2-301; or

790 (ii) a town as classified in Section 10-2-301.

791 (2) If the conditions of Subsection (1) are met, the commissioner shall:

792 (a) give notice of the request in the manner and to the extent the commissioner
793 considers appropriate to institutions subject to the jurisdiction of the department that:

794 (i) are located in the county, if the [~~limited~~] field of membership is being expanded to
795 include residents of a county; [~~or~~]

796 (ii) serve or may serve the association described in Subsection (1)(b), if that association
797 is being added to the [~~limited~~] field of membership; [~~and~~] or

798 (iii) are located in the county in which a city or town described in Subsection (1)(c) is
799 located, if the field of membership is being expanded to include residents of the city or town;

800 and

801 (b) cause a supervisor to examine and submit written findings and recommendations to
802 the commissioner as to:

803 (i) whether the credit union is adequately capitalized;

804 (ii) whether the credit union has the financial capacity to serve the financial needs of
805 the expanded [~~limited~~] field of membership in a safe and sound manner;

806 (iii) whether the credit union has the managerial expertise to serve the financial needs
807 of the expanded [~~limited~~] field of membership in a safe and sound manner;

808 (iv) any potential harm the expansion of the [~~limited~~] field of membership may have on
809 the institutions described in Subsection (2)(a); and

810 (v) the probable beneficial effect of the expansion.

811 (3) The commissioner may approve the amendment to the bylaws described in
812 Subsection (1) if the commissioner:

813 (a) has given the notice required under Subsection (2)(a);

814 (b) received the written findings and recommendations of the supervisor under
815 Subsection (2)(b); and

816 (c) finds that:

817 (i) the credit union is adequately capitalized;

818 (ii) the credit union has the financial capacity to serve the financial needs of the
819 expanded [~~limited~~] field of membership in a safe and sound manner;

820 (iii) the credit union has the managerial expertise to serve the financial needs of the
821 expanded [~~limited~~] field of membership in a safe and sound manner; and

822 (iv) any potential harm the expansion of the [~~limited~~] field of membership may have on
823 other institutions subject to the jurisdiction of the department does not clearly outweigh the
824 probable beneficial effect of the expansion.

825 (4) In accordance with Section 7-1-309, the commissioner may hold a hearing on the
826 expansion of a credit union's [~~limited~~] field of membership.

827 (5) This section may not be interpreted to permit a credit union to:

828 (a) expand its [~~limited~~] field of membership to include residents of more than one
829 county except to the extent permitted by Subsection 7-9-51(5); or

830 (b) change the county included in the [~~limited~~] field of membership of a credit union, if
831 any.

832 (6) If the commissioner receives a request to approve an amendment to the bylaws of a
833 credit union that expands the credit union's field of membership to include residents of a city or
834 town described in Subsection (1)(c), before approving the expanded field of membership, in
835 addition to the requirements of Subsection (2), the commissioner shall:

836 (a) require that a supervisor examine and submit written findings and recommendations
837 to the commissioner as to whether but for the residents described in Subsection (1)(c) being
838 included in the field of membership of the credit union, no depository institutions would likely
839 be located within a reasonable distance from the city or town described in Subsection (1)(c);
840 and

841 (b) find that but for the residents described in Subsection (1)(c) being included in the
842 field of membership of the credit union, no depository institutions would likely be located
843 within a reasonable distance from the city or town described in Subsection (1)(c).

844 Section 19. Section **7-9-53** is amended to read:

845 **7-9-53. Grandfathering.**

846 (1) As used in this section [~~and Section 7-9-54~~]:

847 (a) "Association that resides in a domicile-county" means an association that:

- 848 (i) operates a place of business or other physical location in the domicile-county; or
849 (ii) has at least 100 members that are residents of the domicile-county.

850 (b) "Domicile-county" means the county:

- 851 (i) in the [~~limited~~] field of membership of the credit union as of January 1, 1999; and
852 (ii) in which the credit union has located the greatest number of branches as of January
853 1, 1999.

854 (c) "Grandfathered [~~limited~~] field of membership" means the [~~limited~~] field of
855 membership as of May 3, 1999, of a credit union described in Subsection (2)(d).

856 (2) For each credit union formed before January 1, 1999, its [~~limited~~] field of
857 membership as of May 3, 1999, is determined as follows:

858 (a) if the [~~limited~~] field of membership stated in the bylaws of the credit union as of
859 January 1, 1999, complies with Section 7-9-51, the credit union's [~~limited~~] field of membership
860 is the [~~limited~~] field of membership indicated in its bylaws;

861 (b) (i) the [~~limited~~] field of membership of a credit union as of May 3, 1999, is as
862 provided in Subsection (2)(b)(ii) if:

863 (A) the [limited] field of membership stated in the bylaws of the credit union as of
864 January 1, 1999, includes the residents of more than one county; and

865 (B) as of January 1, 1999, the credit union's main office and any of its branches are
866 located in only one county in its [limited] field of membership;

867 (ii) as of May 3, 1999, the [limited] field of membership of a credit union described in
868 Subsection (2)(b)(i) is:

869 (A) the immediate family of a member of the credit union;

870 (B) the employees of the credit union;

871 (C) residents of the one county in which the credit union has its main office or
872 branches as of January 1, 1999, and

873 (D) any association that as of January 1, 1999, is in the [limited] field of membership
874 of the credit union;

875 (c) (i) the [limited] field of membership of a credit union as of May 3, 1999, is as
876 provided in Subsection (2)(c)(ii) if:

877 (A) the [limited] field of membership of a credit union stated in the bylaws of the
878 credit union as of January 1, 1999, includes residents of more than one county;

879 (B) as of January 1, 1999, the credit union has a main office or branch in more than one
880 county; and

881 (C) as a result of a merger pursuant to a supervisory action under Chapter 2 or 19 that
882 is effective on or after January 1, 1983, but before January 1, 1994, the credit union acquired a
883 branch in a county in the [limited] field of membership of the credit union and the credit union
884 did not have a branch in the county before the merger;

885 (ii) as of May 3, 1999, the [limited] field of membership of a credit union described in
886 Subsection (2)(c)(i) is the same [limited] field of membership that the credit union would have
887 had under Subsection (2)(d) except that the credit union:

888 (A) is not subject to Subsection (3); and

889 (B) is subject to Subsection (4)(b); and

890 (d) (i) the [limited] field of membership of a credit union as of May 3, 1999, is as
891 provided in Subsection (2)(d)(ii) if:

892 (A) the [limited] field of membership stated in the bylaws of the credit union as of
893 January 1, 1999, includes the residents of more than one county; and

894 (B) as of January 1, 1999, the credit union has a main office or branch in more than one
895 county;

896 (ii) as of May 3, 1999, the [limited] field of membership of a credit union described in
897 Subsection (2)(d)(i) is:

898 (A) the immediate family of a member of the credit union;

899 (B) the employees of the credit union;

900 (C) residents of the credit union's domicile-county;

901 (D) the residents of any county other than the domicile-county:

902 (I) if, as of January 1, 1999, the county is in the [limited] field of membership of the
903 credit union; and

904 (II) in which, as of January 1, 1994, the credit union had located its main office or a
905 branch; and

906 (E) any association that as of January 1, 1999, is in the [limited] field of membership
907 of the credit union.

908 (3) If a credit union's [limited] field of membership is as described in Subsection
909 (2)(d), beginning May 3, 1999, the credit union:

910 (a) within the credit union's domicile-county, may establish, relocate, or otherwise
911 change the physical location of the credit union's:

912 (i) main office; or

913 (ii) branch;

914 (b) within a county other than a domicile-county that is in the credit union's
915 grandfathered [limited] field of membership, may not:

916 (i) establish a main office or branch that:

917 (A) was not located in the county as of January 1, 1999; or

918 (B) for which the credit union has not received by January 1, 1999, approval or
919 conditional approval of a site plan for the main office or branch from the planning commission
920 of the municipality where the main office or branch will be located;

921 (ii) participate in a service center in which it does not participate as of January 1, 1999;
922 or

923 (iii) relocate the credit union's main office or a branch located in the county as of
924 January 1, 1999, unless the commissioner finds that the main office or branch is relocated

925 within a three-mile radius of where it was originally located; and

926 (c) may only admit as a member:

927 (i) a person in the credit union's grandfathered [limited] field of membership; or

928 (ii) a person belonging to an association that:

929 (A) is added to the [limited] field of membership of the credit union; and

930 (B) resides in the domicile-county of the credit union.

931 (4) (a) If a credit union's [limited] field of membership is as described in Subsection

932 (2)(b), as of May 3, 1999, the credit union may operate as a credit union having a [limited]

933 field of membership under Section 7-9-51.

934 (b) If a credit union's [limited] field of membership is as described in Subsection (2)(c),

935 as of May 3, 1999, the credit union:

936 (i) within the credit union's domicile-county, may establish, relocate, or otherwise

937 change the physical location of the credit union's:

938 (A) main office; or

939 (B) branch;

940 (ii) within a county other than its domicile-county that is in the credit union's [limited]

941 field of membership under Subsection (2)(c), may not:

942 (A) establish a main office or branch that was not located in the county as of January 1,

943 1999;

944 (B) participate in a service center in which it does not participate as of January 1, 1999;

945 or

946 (C) relocate the credit union's main office or a branch located in the county as of

947 January 1, 1999, unless the commissioner finds that the main office or branch is relocated

948 within a three-mile radius of where it was originally located; and

949 (iii) may only admit as a member:

950 (A) a person in the credit union's [limited] field of membership under Subsection

951 (2)(c); or

952 (B) a person belonging to an association that is added to the [limited] field of

953 membership of the credit union, regardless of whether the association resides in the

954 domicile-county of the credit union.

955 (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union

956 described in Subsection (2)(c) or (2)(d) may:

957 (i) operate an office or branch that is operated by the credit union on May 3, 1999, but
958 that is not located in a county that is in the credit union's [limited] field of membership as of
959 May 3, 1999; and

960 (ii) serve a member who is not in a credit union's [limited] field of membership as of
961 May 3, 1999, if the member is a member of the credit union as of March 15, 1999.

962 (b) Subsection (5)(a) does not authorize a credit union to:

963 (i) establish a branch in a county that is not in the credit union's [limited] field of
964 membership as of May 3, 1999, unless the branch meets the requirements under this title for
965 establishing a branch; or

966 (ii) for a credit union described in Subsection (2)(d), include in its [limited] field of
967 membership an association that:

968 (A) as of January 1, 1999, is not included in the credit union's [limited] field of
969 membership; and

970 (B) does not reside within the credit union's domicile-county.

971 (6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no later
972 than August 3, 1999, to comply with this section.

973 (7) In addition to any requirement under this section, a credit union shall comply with
974 any requirement under this title for the establishment, relocation, or change in the physical
975 location of a main office or branch of a credit union.

976 Section 20. Section 7-9-55 is enacted to read:

977 **7-9-55. Nonexempt credit unions.**

978 (1) (a) A credit union organized under this chapter is a nonexempt credit union under
979 this section on the day on which:

980 (i) on or after May 5, 2003 the credit union has a field of membership as evidenced by
981 the bylaws of the credit union that includes all residents of two or more counties; and

982 (ii) at least two of the counties described in Subsection (1)(a)(i) are counties of the first
983 or second class as classified by Section 17-50-501.

984 (b) For purposes of Subsection (1)(a) only:

985 (i) residents of a county that are added to the field of membership of a credit union as a
986 result of a supervisory action under Chapter 2 or 19 are not considered to be within the field of

987 membership of that credit union; and

988 (ii) residents of a city of the third class or town that are added to the field of
989 membership of a credit union in accordance with Section 7-9-52 are not considered to be
990 within the field of membership of that credit union unless all residents of the county in which
991 that city or town are located are included in the field of membership of the credit union.

992 (2) If a credit union becomes a nonexempt credit union under this section, the
993 nonexempt credit union is a nonexempt credit union:

994 (a) for as long as the nonexempt credit union is organized under this chapter; and

995 (b) notwithstanding whether after the day on which the nonexempt credit union
996 becomes a nonexempt credit union the nonexempt credit union meets the requirements of
997 Subsection (1)(a).

998 (3) Regardless of whether or not a credit union has located branches in two or more
999 counties in this state, a credit union organized under this chapter does not become a nonexempt
1000 credit union if the field of membership of the credit union does not meet the requirements of
1001 Subsection (1).

1002 Section 21. Section **7-9-56** is enacted to read:

1003 **7-9-56. Competitive equity assessment.**

1004 (1) For purposes of this section, "competitive equity assessment" means an equitable
1005 amount calculated for each fiscal year in accordance with a formula adopted by the Legislature
1006 during the 2004 Annual General Session after consideration of the formula recommended by
1007 the Financial Institutions Task Force created in this act.

1008 (2) (a) A credit union may elect to pay a competitive equity assessment by filing a
1009 notice of election to pay a competitive equity assessment with:

1010 (i) the commissioner; and

1011 (ii) the State Tax Commission.

1012 (b) A notice of election to pay a competitive equity assessment is not considered filed
1013 until the later of the day on which the notice of election to pay a competitive equity assessment
1014 is filed with:

1015 (i) the commissioner; or

1016 (ii) the State Tax Commission.

1017 (c) If a credit union files a notice of election to pay a competitive equity assessment,

1018 the credit union shall pay the competitive equity assessment in accordance with Subsection (5).

1019 (d) A credit union may not file a notice of election to pay a competitive equity
1020 assessment with the commissioner before May 3, 2004.

1021 (3) A credit union may not revoke an election to pay a competitive equity assessment
1022 after the day on which the credit union files a notice of election to pay a competitive equity
1023 assessment with the commissioner.

1024 (4) (a) In accordance with this Subsection (4), for a credit union that files a notice of
1025 election to pay a competitive equity assessment under this title, notwithstanding the other
1026 provisions of this section, the commissioner may issue an order waiving the requirement that
1027 the credit union pay the competitive equity assessment if:

1028 (i) the credit union files a request for waiver; and

1029 (ii) the credit union is subject to supervisory action under:

1030 (A) Chapter 2, Possession of Depository Institution by Commissioner; or

1031 (B) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

1032 (b) (i) The commissioner may waive payment of the competitive equity assessment for
1033 the period:

1034 (A) beginning on the first day of the calendar quarter immediately following the day on
1035 which the request for waiver is filed in accordance with Subsection (4)(a); and

1036 (B) ending the last day of the next calendar quarter following the calendar quarter
1037 described in Subsection (4)(b)(i)(A).

1038 (ii) The commissioner may waive payment of the competitive equity assessment for the
1039 two calendar quarters immediately following the period described in Subsection (4)(b)(i) if for
1040 those calendar quarters the conditions of Subsection (4)(a) are met.

1041 (c) The commissioner shall notify the State Tax Commission of the waiver in writing:

1042 (i) by no later than the last day of the calendar quarter described in Subsection
1043 (4)(b)(i)(A); and

1044 (ii) specifying the two calendar quarters for which payment of the competitive equity
1045 assessment is waived.

1046 (d) (i) The following are confidential under Section 7-1-802:

1047 (A) a request for waiver filed in accordance with Subsection (4)(a);

1048 (B) an order of the commissioner issued under this section waiving the payment of the

1049 competitive equity assessment; and

1050 (C) the notice described in Subsection (4)(c), except that the notice may be provided
1051 the State Tax Commission in accordance with Subsection (4)(c).

1052 (ii) (A) A person listed in Subsection 59-1-403(1) may not divulge or make known in
1053 any manner any information gained by that person from the notice described in Subsection
1054 (4)(c).

1055 (B) A person who violates this Subsection (4)(d)(ii) is subject to the penalties
1056 described in Subsection 59-1-403(5).

1057 (5) (a) A credit union required to pay the competitive equity assessment under
1058 Subsection (2) shall pay the competitive equity assessment for each fiscal year:

1059 (i) to the State Tax Commission; and

1060 (ii) beginning on the first day of the month immediately following the day on which the
1061 credit union files the notice of election to pay the competitive equity assessment.

1062 (b) This Subsection (5) shall be administered by the State Tax Commission in
1063 accordance with the procedures of Title 59, Chapter 7, Part 5, Procedures and Administration.

1064 (6) (a) In addition to any penalties imposed by the State Tax Commission in
1065 accordance with Subsection (5), the commissioner may take supervisory action under Chapter
1066 2, Possession of Depository Institution by Commissioner, against a credit union that is subject
1067 to a penalty imposed by the State Tax Commission for failure to:

1068 (i) file an annual return for the competitive equity assessment that is required to be
1069 filed in accordance with Section 59-7-505; or

1070 (ii) pay the competitive equity assessment owed for a fiscal year.

1071 (b) The State Tax Commission shall notify the commissioner of any credit union that
1072 has filed a notice of election to pay a competitive equity assessment that has failed to take an
1073 action described in Subsection (6)(a).

1074 Section 22. Section **7-9-57** is enacted to read:

1075 **7-9-57. Waiver of limitations on member-business loans.**

1076 (1) If a credit union, including a nonexempt credit union, files a notice of election to
1077 pay a competitive equity assessment in accordance with Section 7-9-56, the credit union is not
1078 subject to the following for a member-business loan extended by the credit union on or after
1079 the day on which the credit union files the notice of election to pay the competitive equity

1080 assessment:

1081 (a) Subsection 7-9-5(12)(b);

1082 (b) Subsection 7-9-20(7)(b)(ii), except that the credit union may extend a

1083 member-business loan to:

1084 (i) a person that is a business entity, only if at least one individual having a controlling

1085 interest in that business entity is a member of the credit union at the time the member-business

1086 loan is extended; or

1087 (ii) a person who is an individual, only if the individual is a member of the credit union

1088 at the time the member-business loan is extended;

1089 (c) Subsection 7-9-20(7)(c); and

1090 (d) Subsection 7-9-20(8)(b)(ii).

1091 (2) (a) Notwithstanding Subsection (1), a credit union is subject to the more restrictive

1092 of the following in extending a member- business loan:

1093 (i) any requirement or limitation imposed on the extension of credit by a bank

1094 chartered under Chapter 3, Banks, including:

1095 (A) Section 7-3-19; and

1096 (B) any rule made by the commissioner in accordance with Section 7-3-19; or

1097 (ii) any requirement or limitation imposed by the National Credit Union

1098 Administration or successor federal deposit insurance agency on a state-chartered credit union

1099 insured by the National Credit Union Administration or successor federal deposit insurance

1100 agency.

1101 (b) The commissioner shall make rules in accordance with Title 63, Chapter 46a, Utah

1102 Administrative Rulemaking Act, that apply the requirements or limitations described in

1103 Subsection (2)(a) to a member-business loan extended by a credit union that files a notice of

1104 election to pay a competitive equity assessment.

1105 (3) This section does not modify any requirement or limitation under this chapter on

1106 the extension by a credit union of credit that is not a member-business loan.

1107 Section 23. Section **59-1-403** is amended to read:

1108 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

1109 (1) (a) Except as provided in this section, any of the following may not divulge or make

1110 known in any manner any information gained by that person from any return filed with the

1111 commission:

1112 (i) a tax commissioner;

1113 (ii) an agent, clerk, or other officer or employee of the commission; or

1114 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or

1115 town.

1116 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
1117 return filed with the commission is not required to produce the return or evidence of anything
1118 contained in the return in any action or proceeding in any court, except:

1119 (i) in accordance with judicial order;

1120 (ii) on behalf of the commission in any action or proceeding under:

1121 (A) this title; or

1122 (B) other law under which persons are required to file returns with the commission;

1123 (iii) on behalf of the commission in any action or proceeding to which the commission
1124 is a party; or

1125 (iv) on behalf of any party to any action or proceeding under this title if the report or
1126 facts shown by the return are directly involved in the action or proceeding.

1127 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
1128 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
1129 pertinent to the action or proceeding.

1130 (2) This section does not prohibit:

1131 (a) a person or that person's duly authorized representative from receiving a copy of
1132 any return or report filed in connection with that person's own tax;

1133 (b) the publication of statistics as long as the statistics are classified to prevent the
1134 identification of particular reports or returns; and

1135 (c) the inspection by the attorney general or other legal representative of the state of the
1136 report or return of any taxpayer:

1137 (i) who brings action to set aside or review a tax based on the report or return;

1138 (ii) against whom an action or proceeding is contemplated or has been instituted under
1139 this title; or

1140 (iii) against whom the state has an unsatisfied money judgment.

1141 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the

1142 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
1143 Rulemaking Act, provide for a reciprocal exchange of information with:

1144 (i) the United States Internal Revenue Service; or

1145 (ii) the revenue service of any other state.

1146 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
1147 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
1148 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
1149 and other written statements with the federal government, any other state, any of the political
1150 subdivisions of another state, or any political subdivision of this state, except as limited by
1151 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
1152 grant substantially similar privileges to this state.

1153 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
1154 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
1155 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
1156 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
1157 due.

1158 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
1159 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
1160 requested by the executive secretary, any records, returns, or other information filed with the
1161 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
1162 regarding the environmental assurance program participation fee.

1163 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
1164 provide that person sales and purchase volume data reported to the commission on a report,
1165 return, or other information filed with the commission under:

1166 (i) Chapter 13, Part 2, Motor Fuel; or

1167 (ii) Chapter 13, Part 4, Aviation Fuel.

1168 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
1169 as defined in Section 59-22-202, the commission shall report to the manufacturer:

1170 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
1171 manufacturer and reported to the commission for the previous calendar year under Section
1172 59-14-407; and

1173 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
1174 manufacturer for which a tax refund was granted during the previous calendar year under
1175 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

1176 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
1177 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
1178 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

1179 (h) Notwithstanding Subsection (1), the commission may:

1180 (i) provide to the Division of Consumer Protection within the Department of
1181 Commerce and the attorney general data:

1182 (A) reported to the commission under Section 59-14-212; or

1183 (B) related to a violation under Section 59-14-211; and

1184 (ii) upon request provide to any person data reported to the commission under
1185 Subsections 59-14-212(1)(a) through(c) and Subsection 59-14-212(1)(g).

1186 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
1187 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
1188 and Budget, provide to the committee or office the total amount of revenues collected by the
1189 commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the
1190 committee or office.

1191 (j) Notwithstanding Subsection (1), the commission shall at the request of the
1192 Legislature provide to the Legislature the total amount of sales or uses exempt under
1193 Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.

1194 (k) Notwithstanding Subsection (1), the commission shall make the list required by
1195 Subsection 59-14-408(3) available for public inspection.

1196 (l) Notwithstanding Subsection (1), the commission shall provide the notice to the
1197 commissioner of the Department of Financial Institutions required by Subsection 7-9-56(6).

1198 (4) (a) Reports and returns shall be preserved for at least three years.

1199 (b) After the three-year period provided in Subsection (4)(a) the commission may
1200 destroy a report or return.

1201 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

1202 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
1203 the person shall be dismissed from office and be disqualified from holding public office in this

1204 state for a period of five years thereafter.

1205 (6) This part does not apply to the property tax.

1206 Section 24. Section **59-7-101** is amended to read:

1207 **59-7-101. Definitions.**

1208 As used in this chapter:

1209 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105
1210 and 59-7-106.

1211 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
1212 through stock ownership with a common parent corporation that meet the following
1213 requirements:

1214 (i) at least 80% of the stock of each of the corporations in the group, excluding the
1215 common parent corporation, is owned by one or more of the other corporations in the group;
1216 and

1217 (ii) the common parent directly owns at least 80% of the stock of at least one of the
1218 corporations in the group.

1219 (b) "Affiliated group" does not include corporations that are qualified to do business
1220 but are not otherwise doing business in this state.

1221 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which
1222 is limited and preferred as to dividends.

1223 (3) "Apportionable income" means adjusted income less nonbusiness income net of
1224 related expenses, to the extent included in adjusted income.

1225 (4) "Apportioned income" means apportionable income multiplied by the
1226 apportionment fraction as determined in Section 59-7-311.

1227 (5) "Business income" means income as defined in Section 59-7-302.

1228 (6) "Corporate return" or "return" includes a combined report.

1229 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
1230 than 50% of the outstanding voting stock of:

1231 (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue
1232 Code, except that 50% shall be substituted for 80%;

1233 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
1234 Code, except that 50% shall be substituted for 80%; or

1235 (iii) three or more corporations each of which is a member of a group of corporations
1236 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

1237 (A) a common parent corporation included in a group of corporations described in
1238 Subsection (2)(a)(i); and

1239 (B) included in a group of corporations described in Subsection (2)(a)(ii).

1240 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
1241 Internal Revenue Code.

1242 (8) "Corporation" includes:

1243 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
1244 Code; and

1245 (b) other organizations that are taxed as corporations for federal income tax purposes
1246 under the Internal Revenue Code.

1247 (9) "Dividend" means any distribution, including money or other type of property,
1248 made by a corporation to its shareholders out of its earnings or profits accumulated after
1249 December 31, 1930.

1250 (10) (a) "Doing business" includes any transaction in the course of its business by a
1251 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
1252 this state.

1253 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

1254 (i) the right to do business through incorporation or qualification;

1255 (ii) the owning, renting, or leasing of real or personal property within this state; and

1256 (iii) the participation in joint ventures, working and operating agreements, the
1257 performance of which takes place in this state.

1258 (11) "Domestic corporation" means a corporation that is incorporated or organized
1259 under the laws of this state.

1260 (12) (a) "Farmers' cooperative" means an association, corporation, or other
1261 organization that is:

1262 (i) (A) an association, corporation, or other organization of:

1263 (I) farmers; or

1264 (II) fruit growers; or

1265 (B) an association, corporation, or other organization that is similar to an association,

1266 corporation, or organization described in Subsection (12)(a)(i)(A); and
1267 (ii) organized and operated on a cooperative basis to:
1268 (A) (I) market the products of members of the cooperative or the products of other
1269 producers; and
1270 (II) return to the members of the cooperative or other producers the proceeds of sales
1271 less necessary marketing expenses on the basis of the quantity of the products of a member or
1272 producer or the value of the products of a member or producer; or
1273 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
1274 other persons; and
1275 (II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at
1276 actual costs plus necessary expenses to the members of the cooperative or other persons.
1277 (b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the
1278 commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
1279 Rulemaking Act, shall define:
1280 (A) the terms:
1281 (I) "member"; and
1282 (II) "producer"; and
1283 (B) what constitutes an association, corporation, or other organization that is similar to
1284 an association, corporation, or organization described in Subsection (12)(a)(i)(A).
1285 (ii) The rules made under this Subsection (12)(b) shall be consistent with the filing
1286 requirements under federal law for a farmers' cooperative.
1287 (13) "Foreign corporation" means a corporation that is not incorporated or organized
1288 under the laws of this state.
1289 (14) (a) "Foreign operating company" means a corporation that:
1290 (i) is incorporated in the United States; and
1291 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
1292 conducted outside the United States.
1293 (b) "Foreign operating company" does not include a corporation that qualifies for the
1294 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.
1295 (15) "Foreign sales corporation" means a corporation as defined in Section 922,
1296 Internal Revenue Code.

- 1297 (16) "Income" includes losses.
- 1298 (17) "Internal Revenue Code" means Title 26 of the United States Code as effective
1299 during the year in which Utah taxable income is determined.
- 1300 (18) "Nonbusiness income" means income as defined in Section 59-7-302.
- 1301 (19) "Nonresident shareholder" means any shareholder of an S corporation who on the
1302 last day of the taxable year of the S corporation, is:
- 1303 (a) an individual not domiciled in Utah; or
- 1304 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.
- 1305 (20) "Related expenses" means:
- 1306 (a) expenses directly attributable to nonbusiness income; and
- 1307 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
1308 and business income which bears the same ratio to the aggregate amount of such interest or
1309 other expense, determined without regard to this Subsection (20), as the average amount of the
1310 asset producing the nonbusiness income bears to the average amount of all assets of the
1311 taxpayer within the taxable year.
- 1312 (21) "Resident shareholder" means any shareholder of an S corporation who is not a
1313 nonresident shareholder.
- 1314 (22) "S corporation" means a small business corporation as defined in Section 1361,
1315 Internal Revenue Code.
- 1316 (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
1317 Section 168, Internal Revenue Code.
- 1318 (24) "State of the United States" includes any of the 50 states or the District of
1319 Columbia and "United States" includes the 50 states and the District of Columbia.
- 1320 (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such
1321 calendar year upon the basis of which the adjusted income is computed.
- 1322 (b) In the case of a return made for a fractional part of a year under this chapter or
1323 under rules prescribed by the commission, "taxable year" includes the period for which such
1324 return is made.
- 1325 (26) "Taxpayer" means any corporation subject to the tax imposed by this chapter.
- 1326 (27) "Threshold level of business activity" means business activity in the United States
1327 equal to or greater than 20% of the corporation's total business activity as determined under

1328 Section 59-7-401.

1329 (28) Except as provided in Section 59-7-102, "unadjusted income" means federal
1330 taxable income as determined on a separate return basis before intercompany eliminations as
1331 determined by the Internal Revenue Code, before the net operating loss deduction and special
1332 deductions for dividends received.

1333 (29) (a) "Unitary group" means a group of corporations that:

1334 (i) are related through common ownership; and

1335 (ii) by a preponderance of the evidence as determined by a court of competent
1336 jurisdiction or the commission, are economically interdependent with one another as
1337 demonstrated by the following factors:

1338 (A) centralized management;

1339 (B) functional integration;

1340 (C) economies of scale.

1341 (b) "Unitary group" does not include S corporations.

1342 (30) "Utah net loss" means the current year Utah taxable income before Utah net loss
1343 deduction, if determined to be less than zero.

1344 (31) "Utah net loss deduction" means the amount of Utah net losses from other taxable
1345 years that may be carried back or carried forward to the current taxable year in accordance with
1346 Section 59-7-110.

1347 (32) (a) "Utah taxable income" means Utah taxable income before net loss deduction
1348 less Utah net loss deduction.

1349 (b) "Utah taxable income" includes income from tangible or intangible property located
1350 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
1351 commerce.

1352 (33) "Utah taxable income before net loss deduction" means apportioned income plus
1353 nonbusiness income allocable to Utah net of related expenses.

1354 (34) (a) "Water's edge combined report" means a report combining the income and
1355 activities of:

1356 (i) all members of a unitary group that are:

1357 (A) corporations organized or incorporated in the United States, including those
1358 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section

1359 936, Internal Revenue Code, in accordance with Subsection (34)(b); and

1360 (B) corporations organized or incorporated outside of the United States meeting the
1361 threshold level of business activity; and

1362 (ii) an affiliated group electing to file a water's edge combined report under Subsection
1363 59-7-402(2).

1364 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
1365 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a
1366 unitary group.

1367 (35) "Worldwide combined report" means the combination of the income and activities
1368 of all members of a unitary group irrespective of the country in which the corporations are
1369 incorporated or conduct business activity.

1370 Section 25. Section **59-7-102** is amended to read:

1371 **59-7-102. Exemptions.**

1372 (1) Except as provided in this section, the following are exempt from this chapter:

1373 (a) an organization exempt under Section 501, Internal Revenue Code;

1374 (b) an organization exempt under Section 528, Internal Revenue Code;

1375 (c) an insurance company that is otherwise taxed on the insurance company's premiums
1376 under Chapter 9, Taxation of Admitted Insurers;

1377 (d) a building authority as defined in Section 17A-3-902;

1378 (e) a farmers' cooperative; or

1379 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
1380 ownership interest in:

1381 (i) a project, as defined in Section 11-13-103; or

1382 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

1383 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts
1384 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
1385 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to
1386 the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, because of:

1387 (a) that person's ownership of tangible personal property located at the premises of a
1388 printer's facility in this state with which the person has contracted for printing; or

1389 (b) the activities of the person's employees or agents who are:

1390 (i) located solely at the premises of a printer's facility; and
1391 (ii) performing services:
1392 (A) related to:
1393 (I) quality control;
1394 (II) distribution; or
1395 (III) printing services; and
1396 (B) performed by the printer's facility in this state with which the person has contracted
1397 for printing.

1398 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
1399 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
1400 8, Unrelated Business Income, to the extent provided in Part 8.

1401 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
1402 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
1403 Revenue Code, the organization's income is also taxable under this chapter.

1404 (5) (a) Notwithstanding Subsection (1)(a), a nonexempt credit union, as defined in
1405 Section 7-9-3, is not exempt from this chapter beginning on the first day of the month
1406 immediately following the day on which the nonexempt credit union becomes a nonexempt
1407 credit union under Section 7-9-55.

1408 (b) Notwithstanding Section 59-7-101, the unadjusted income of a nonexempt credit
1409 union that is subject to this chapter in accordance with Subsection (5)(a) is an amount equal to
1410 the federal taxable income the nonexempt credit union would have if the nonexempt credit
1411 union were subject to a federal income tax in the same manner as a state-chartered bank:

1412 (i) determined on a separate return basis before intercompany eliminations as
1413 determined by the Internal Revenue Code; and

1414 (ii) before:

1415 (A) the net operating loss deduction; and

1416 (B) special deductions for dividends received.

1417 **Section 26. Repealer.**

1418 This act repeals:

1419 **Section 7-9-54, Electing to terminate grandfathering.**

1420 **Section 27. Financial Institutions Task Force.**

1421 (1) There is created the Financial Institutions Task Force consisting of the following
1422 eight members:

1423 (a) three members of the Senate appointed by the president of the Senate, no more than
1424 two of whom may be from the same political party; and

1425 (b) five members of the House of Representatives appointed by the speaker of the
1426 House of Representatives, no more than three of whom may be from the same political party.

1427 (2) (a) The president of the Senate shall designate a member of the Senate appointed
1428 under Subsection (1)(a) as a cochair of the task force.

1429 (b) The speaker of the House of Representatives shall designate a member of the House
1430 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

1431 (3) In conducting its business, the task force shall comply with the rules of legislative
1432 interim committees.

1433 (4) Salaries and expenses of the members of the task force shall be paid in accordance
1434 with Section 36-2-2 and Legislative Joint Rule 15.03.

1435 (5) The Office of Legislative Research and General Counsel shall provide staff support
1436 to the task force.

1437 (6) The task force shall study:

1438 (a) the structural differences between credit unions and other financial institutions;

1439 (b) clarifying the language defining the appropriate purposes and operations of credit
1440 unions chartered in this state including:

1441 (i) what constitutes a meaningful affinity and bond among members of a credit union;
1442 and

1443 (ii) the cooperative and nonprofit structure of credit unions which requires that
1444 members have meaningful control over the resources of a credit union;

1445 (c) the policies that should govern all questions applicable to taxing or not taxing credit
1446 unions;

1447 (d) whether credit unions should be required to:

1448 (i) provide members greater control over whether earnings should be returned to
1449 members or used to further expand the operations of a credit union; or

1450 (ii) return a minimum percentage of a credit union's annual cash retained earnings to
1451 the members of the credit union in the form of cash dividends which would fundamentally

1452 reflect that credit unions are member controlled nonprofit cooperatives;

1453 (e) whether the judicial review process of decisions of the Commissioner of Financial
1454 Institutions should be modified;

1455 (f) (i) the powers and duties of the Commissioner of Financial Institutions to regulate
1456 the activities of credit unions and banks; and

1457 (ii) whether additional powers or duties should be given to the Commissioner of
1458 Financial Institutions;

1459 (g) what should be the appropriate field of membership requirements for a credit union;

1460 (h) (i) whether or not any credit union should be required to pay a competitive equity
1461 assessment;

1462 (ii) if any credit union should be required to pay a competitive equity assessment,
1463 which credit unions should be required to pay a competitive equity assessment; and

1464 (iii) how any competitive equity assessment to be paid by a credit union should be
1465 calculated including whether required reserves should be subtracted from any of a credit
1466 union's annual cash retained earnings of a credit union that may be subject to a competitive
1467 equity assessment;

1468 (i) the effect of a credit union chartered in this state converting to a federal credit union
1469 charter;

1470 (j) the methods by which financial institutions in this state may obtain capital;

1471 (k) the policies underlying whether or not to tax or assess other fees on banks and
1472 credit unions; and

1473 (l) any other issues related to banks and credit unions that the task force determines to
1474 be appropriate.

1475 (7) The task force shall make a report to the Business and Labor Interim Committee,
1476 including any proposed legislation, by no later than November 30, 2003.

1477 Section 28. **Intent language.**

1478 In passing this legislation, it is the intent of the Legislature that:

1479 (1) the restrictions in Title 7, Chapter 9, Utah Credit Union Act, in effect on May 5,
1480 2003, including restrictions on fields of membership, branching, mergers, and other restrictions
1481 on activities of credit unions and related credit union service organizations, should remain in
1482 effect until such time as the Legislature adopts a competitive equity assessment or similar

1483 charge on credit unions the size and activities of which require that measures be taken to ensure
1484 competitive equity within Utah's financial market; and

1485 (2) if the Legislature does not adopt a formula for the competitive equity assessment in
1486 the 2004 General Session as provided in this act, this act may not be interpreted to constitute an
1487 action by the Legislature to facilitate credit unions expanding membership or engaging in
1488 activities that are not permitted by Title 7, Chapter 9, Utah Credit Union Act, in effect on May
1489 5, 2003.

1490 **Section 29. Appropriation.**

1491 There is appropriated from the General Fund for fiscal year 2002-03, a one-time
1492 appropriation of:

1493 (1) \$3,500 to the Senate to pay for the compensation and expenses of senators on the
1494 task force;

1495 (2) \$6,000 to the House of Representatives to pay for the compensation and expenses
1496 of representatives on the task force; and

1497 (3) \$30,000 to the Office of Legislative Research and General Counsel to pay for
1498 staffing the task force.

1499 **Section 30. Contingent effective and repeal dates.**

1500 This act takes effect May 5, 2003 except that if the Legislature adopts a formula to
1501 calculate the competitive equity assessment in the 2004 Annual General Session as provided in
1502 Section 7-9-56, which is contingently effective on the Legislature adopting the formula, then
1503 the following changes take effect on May 3, 2004:

1504 (1) delete Subsection 7-1-708(9) and insert "(9)(a) Notwithstanding the other
1505 provisions of this section, an application of a nonexempt credit union to establish a branch that
1506 is to be located outside of the county in which the nonexempt credit union has the greatest
1507 number of branches may not be approved unless prior to the approval of the application the
1508 nonexempt credit union files a notice of election to pay a competitive equity assessment as
1509 provided in Section 7-9-56.

1510 (b) For purposes of this Subsection (9), a nonexempt credit union is considered to be
1511 establishing a branch if the nonexempt credit union establishes:

1512 (i) a loan production office; or

1513 (ii) any other office or facility that:

1514 (A) is owned or operated by:
1515 (I) the nonexempt credit union; or
1516 (II) a credit union service organization in which the nonexempt credit union holds an
1517 ownership interest;
1518 (B) is open to the public; and
1519 (C) provides any product or service of the nonexempt credit union to a member of the
1520 nonexempt credit union.
1521 (2) (a) in Subsection 7-9-3(6) bracket "or 7-9-53"; and
1522 (b) bracket Subsection 7-9-3(10) and renumber the remaining subsections of Section
1523 7-9-3 accordingly;
1524 (3) in Subsection 7-9-5(12)(b) after "(b)" insert "except as provided in Section
1525 7-9-57,";
1526 (4) in Subsection 7-9-12(3) bracket "or 7-9-53";
1527 (5) amend Subsection 7-9-20(7)(a)(i) to read: "(i) except as provided in: (A)
1528 Subsection (8); or (B) Section 7-9-57; and";
1529 (6) (a) bracket:
1530 (i) all of Subsection 7-9-39(4);
1531 (ii) Subsection 7-9-39(5)(b); and
1532 (iii) all of Subsection 7-9-39(6);
1533 (b) renumber Subsection 7-9-39(5)(a) as Subsection 7-9-39(4); and
1534 (c) insert the following: "(5) Except as provided in Section 7-9-39.5, the commissioner
1535 may not approve a merger plan under which a nonexempt credit union merges with another
1536 credit union before the day on which the nonexempt credit union files a notice of election to
1537 pay the competitive equity assessment as provided in Section 7-9-56."
1538 (7) in Section 7-9-39.5, bracket "If a credit union is merged" and insert
1539 "Notwithstanding Subsection 7-9-39(5), a nonexempt credit union may merge" and after "19"
1540 delete the remainder of the section except for the " .";
1541 (8) (a) in Subsection 7-9-51(1) bracket "Except as provided in Subsection (3) or (5),
1542 the" and insert "The";
1543 (b) in Subsection 7-9-51(1)(c) bracket "a single county" and insert "one or more
1544 counties"; and

1545 (c) bracket Subsections 7-9-51(3), (4), and (5);
1546 (9) (a) bracket Subsection 7-9-52(5);
1547 (b) renumber remaining subsections accordingly; and
1548 (c) change all cross references to Subsection 7-9-52(6) in this bill to Subsection
1549 7-9-52(5);
1550 (10) Section 7-9-53 is repealed;
1551 (11) Section 7-9-56 as enacted by this act takes effect;
1552 (12) Section 7-9-57 as enacted by this act takes effect; and
1553 (13) the amendments in this act to Section 59-1-403 take effect.
1554 Section 31. **Repeal date for task force.**
1555 The uncodified material that creates the Financial Institutions Task Force is repealed
1556 November 30, 2003.