

Senator Dan R. Eastman proposes the following substitute bill:

**AMENDMENTS RELATED TO FINANCIAL
INSTITUTIONS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Jeff Alexander

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6 **This act modifies the Financial Institutions title to address provisions related to credit**
7 **unions and mutual associations and to make technical changes. The act addresses**
8 **nonexempt credit unions establishing branches. This act addresses voting requirements**
9 **for mutual associations. This act modifies definitions. The act addresses loan limitations.**
10 **The act addresses credit union service organizations. The act addresses mergers**
11 **involving credit unions. The act addresses operations of out-of-state credit unions. The**
12 **act addresses provisions related to fields of membership and grandfathering. This act**
13 **provides for credit unions becoming nonexempt credit unions. This act provides for a**
14 **competitive equity assessment and penalties for failure to pay the competitive equity**
15 **assessment. This act modifies provisions related to state corporate franchise and income**
16 **taxes to address the taxation of nonexempt credit unions. This act establishes a two-year**
17 **legislative task force to study issues related to credit unions and other financial**
18 **institutions. The act establishes task force membership, duties, and salaries and**
19 **designates staff for the task force. The act requires the task force to prepare a report.**
20 **The act makes a one-time appropriation of \$44,500 from the General Fund for fiscal year**
21 **2002-2003 to pay for task force expenses. The act makes a one-time appropriation of**
22 **\$44,500 from the General Fund for fiscal year 2003-04 to pay for task force expenses.**
23 **This act provides intent language. This act provides different effective dates for different**
24 **provisions of the act. The act provides a repeal date for the task force.**
25 **This act affects sections of Utah Code Annotated 1953 as follows:**



26 AMENDS:

- 27 **7-1-708**, as last amended by Chapter 49, Laws of Utah 1995
- 28 **7-7-10**, as last amended by Chapter 244, Laws of Utah 1985
- 29 **7-9-3**, as last amended by Chapter 329, Laws of Utah 1999
- 30 **7-9-5**, as last amended by Chapter 116, Laws of Utah 2001
- 31 **7-9-6**, as last amended by Chapter 329, Laws of Utah 1999
- 32 **7-9-11**, as last amended by Chapter 329, Laws of Utah 1999
- 33 **7-9-12**, as last amended by Chapter 329, Laws of Utah 1999
- 34 **7-9-16**, as last amended by Chapter 329, Laws of Utah 1999
- 35 **7-9-20**, as last amended by Chapter 329, Laws of Utah 1999
- 36 **7-9-26**, as last amended by Chapter 182, Laws of Utah 1996
- 37 **7-9-34**, as last amended by Chapter 178, Laws of Utah 1994
- 38 **7-9-37**, as last amended by Chapter 329, Laws of Utah 1999
- 39 **7-9-39**, as last amended by Chapter 329, Laws of Utah 1999
- 40 **7-9-39.5**, as enacted by Chapter 329, Laws of Utah 1999
- 41 **7-9-46**, as last amended by Chapter 49, Laws of Utah 1995
- 42 **7-9-51**, as enacted by Chapter 329, Laws of Utah 1999
- 43 **7-9-52**, as enacted by Chapter 329, Laws of Utah 1999
- 44 **7-9-53**, as enacted by Chapter 329, Laws of Utah 1999
- 45 **59-1-403**, as last amended by Chapters 52 and 175, Laws of Utah 2002
- 46 **59-7-101**, as last amended by Chapter 76, Laws of Utah 2002
- 47 **59-7-102**, as last amended by Chapters 76 and 286, Laws of Utah 2002

48 ENACTS:

- 49 **7-9-55**, Utah Code Annotated 1953
- 50 **7-9-56**, Utah Code Annotated 1953
- 51 **7-9-57**, Utah Code Annotated 1953
- 52 **7-9-58**, Utah Code Annotated 1953

53 REPEALS:

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

55 This act enacts uncodified material.

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

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

58 **7-1-708. Establishing branches and relocating offices -- Application and**
59 **procedure for approval -- Nonexempt credit unions.**

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

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

66 (a) filing an application with the department in a form the commissioner prescribes;
67 and

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

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

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

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

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

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

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

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

86 (b) disapprove an application.

87 (7) (a) The commissioner's approval of any application under this section is considered

88 revoked, unless the office is opened and operating within one year of the date approved by the
89 commissioner for commencement of operations.

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

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

94 (ii) for good cause shown.

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

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

101 (i) notwithstanding Section 7-1-103, a loan production office; or

102 (ii) any other office or facility that:

103 (A) is owned or operated by:

104 (I) the nonexempt credit union; or

105 (II) a credit union service organization in which the nonexempt credit union holds an
106 ownership interest;

107 (B) is open to the public; and

108 (C) provides any product or service of the nonexempt credit union to a member of the
109 nonexempt credit union.

110 (b) This section may not be interpreted as authorizing a loan production office to
111 engage in any activity that a loan production office is not authorized to engage in under Section
112 7-1-715.

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

114 **7-7-10. Meetings of mutual association members -- Voting -- Notice.**

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

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

118 (2) (a) The members entitled to vote at any meeting of the members shall be those who

119 are members of record at the end of the calendar month next preceding the date of the meeting
120 of members, except those who have ceased to be members.

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

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

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

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

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

132 (A) in person; or

133 (B) by proxy[-but no].

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

137 (b) Every proxy shall:

138 (i) be in writing [and];

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

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

142 (A) when filed with the secretary;

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

144 (C) until;

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

146 (II) superseded by subsequent proxies.

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

149 (b) A majority of all votes cast at any meeting of members shall determine any

150 question unless this chapter specifically provides otherwise.

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

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

153 (i) state:

154 (A) the purpose for which the meeting is called~~[-];~~

155 (B) the place of the meeting~~[-];~~ and

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

157 (ii) (A) be published:

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

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

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

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

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

168 **7-9-3. Definitions.**

169 As used in this chapter:

170 (1) (a) "Association" means a group of persons that:

171 ~~[(a) has a similar:]~~

172 ~~[(i) interest;]~~

173 (i) constitute the members of a formal association organized for:

174 (A) an identifiable interest;

175 (B) an identifiable purpose;

176 ~~[(ii)]~~ (C) a specific profession; or

177 ~~[(iii)]~~ (D) a specific occupation; or

178 ~~[(iv) formal association with an identifiable purpose; or]~~

179 ~~[(b) is]~~ (ii) are employed by a common employer.

180 (b) "Association" does not include a group of persons that is:

181 (i) identified or created primarily on the basis of a relationship between any person

182 and:

183 (A) a consumer;

184 (B) a customer; or

185 (C) a client; or

186 (ii) created primarily for the purpose of expanding the membership in a credit union.

187 (2) "Capital and surplus" means:

188 (a) shares;

189 (b) deposits;

190 (c) reserves; and

191 (d) undivided earnings.

192 (3) "Corporate credit union" means any credit union organized pursuant to any state or
193 federal act for the purpose of serving other credit unions.

194 (4) "Credit union service organization" means a service organization that provides
195 services that are:

196 (a) subject to Subsection (4)(b), permitted by rule made by the commissioner in
197 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

198 (b) (i) except for the extension of credit by the service organization, limited primarily
199 to:

200 (A) credit unions that hold an ownership interest in the service organization;

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

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

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

206 [~~4~~] (5) "Deposits" means that portion of the capital paid into the credit union by
207 members on which a specified rate of interest will be paid.

208 (6) "[~~limited field~~] Field of membership" means persons designated as eligible for
209 credit union membership in accordance with:

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

211 (b) the bylaws of the credit union.

212 ~~[(5)]~~ (7) "Immediate family" means parents, spouse, surviving spouse, children, and
213 siblings of the member.

214 ~~[(7)]~~ (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,
215 the proceeds of which will be used for:

216 (i) a commercial purpose;

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

218 (iii) an agricultural purpose.

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

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

222 (ii) that is fully secured by:

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

224 (B) deposits in other financial institutions;

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

227 (A) the federal government;

228 (B) a state; or

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

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

231 (9) "Nonexempt credit union" means a credit union that is a nonexempt credit union
232 under Section 7-9-55.

233 ~~[(8)]~~ (10) "Service center" means a single location at which multiple credit unions can
234 provide products or services directly to their members.

235 ~~[(9)]~~ (11) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts
236 from which owners are permitted to make withdrawals by negotiable or transferable
237 instruments or other orders for the purpose of making transfers to other persons or to the
238 owner.

239 ~~[(10)]~~ (12) "Shares" means that portion of the capital paid into the credit union by
240 members on which dividends may be paid.

241 Section 4. Section **7-9-5** is amended to read:

242 **7-9-5. Powers of credit unions.**

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

- 245 (1) make contracts;
- 246 (2) sue and be sued;
- 247 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and
248 equipment as the directors consider necessary or incidental to the operation and business of the
249 credit union, but the value of the real property may not exceed 7% of credit union assets, unless
250 approved by the commissioner;
- 251 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in
252 whole or in part, necessary or incidental to its operation;
- 253 (5) incur and pay necessary and incidental operating expenses;
- 254 (6) require an entrance or membership fee;
- 255 (7) receive the funds of its members in payment for:
 - 256 (a) shares;
 - 257 (b) share certificates;
 - 258 (c) deposits;
 - 259 (d) deposit certificates;
 - 260 (e) share drafts;
 - 261 (f) NOW accounts; and
 - 262 (g) other instruments;
- 263 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third
264 party with prior authorization in writing, including, but not limited to, drafts drawn on the
265 credit union for payment to the member or any third party, in accordance with the procedures
266 established by the board of directors, including, but not limited to, drafts, third-party
267 instruments, and other transaction instruments, as provided in the bylaws;
- 268 (9) charge fees for its services;
- 269 (10) extend credit to its members, at rates established in accordance with the bylaws or
270 by the board of directors;
- 271 (11) extend credit secured by real estate;
- 272 (12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan
273 participation arrangements [~~with other credit unions, credit union organizations, or financial~~

274 ~~organizations~~], in accordance with written policies of the board of directors~~[, if]~~ with one or
275 more:

276 (i) other credit unions;

277 (ii) credit union service organizations; or

278 (iii) other financial organizations; and

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

281 (i) the credit union or credit union service organization that originates a loan for which
282 [participation] co-lending arrangements are made [retains] shall retain an interest of at least
283 10% of the loan;

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

288 (iii) on or after May 5, 2003, the originating credit union or credit union service
289 organization may sell to a credit union service organization an interest in a co-lending
290 arrangement that involves a member-business loan only if the person receiving the
291 member-business loan is a member of a credit union that holds an interest in the credit union
292 service organization to which the interest is sold; and

293 (iv) a nonexempt credit union may not originate, participate in, or obtain any interest in
294 a co-lending arrangement, including a loan participation arrangement, in violation of Section
295 7-9-58.

296 (13) sell and pledge eligible obligations in accordance with written policies of the
297 board of directors;

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

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

304 (16) borrow money and issue evidence of indebtedness for a loan or loans for

305 temporary purposes in the usual course of its operations;

306 (17) discount and sell notes and obligations;

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

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

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

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

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

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

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

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

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

326 (26) purchase reasonable accident and health insurance, including accidental death
327 benefits, for directors and committee members through insurance companies licensed in this
328 state as provided in its bylaws;

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

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

335 (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of

336 credit unions or credit union members by automated or electronic means and hold membership
337 in entities established to promote and effectuate these systems, if:

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

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

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

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

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

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

347 (34) engage in other activities, exercise other powers, and enjoy other rights,

348 privileges, benefits, and immunities authorized by rules of the commissioner;

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

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

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

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

356 Section 5. Section 7-9-6 is amended to read:

357 **7-9-6. Formation of corporation to conduct credit union -- Approval of**
358 **commissioner.**

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

362 (i) this chapter;

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

364 (iii) Chapter 1, General Provisions.

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

- 367 (i) the formation of the corporation; and
368 (ii) the duties and obligations of:
369 (A) the corporation;
370 (B) the corporation's officers; and
371 (C) the corporation's shareholders or members.
- 372 (2) The commissioner may grant the approval referenced in Subsection (1) if the
373 commissioner finds that:
374 (a) the proposed [limited] field of membership is favorable to the success of the credit
375 union;
376 (b) the standing of the proposed membership will give assurance that its affairs will be
377 administered in accordance with this chapter;
378 (c) the proposed credit union has a reasonable promise of financial viability; and
379 (d) formation of the credit union would not result in a substantial adverse financial
380 impact on an existing credit union having the same or substantially the same [limited] field of
381 membership.
- 382 (3) (a) Except as provided in Subsection (3)(b) and in addition to the requirements of
383 Subsections (1) and (2), Section 7-1-704 governs the formation of a credit union.
384 (b) Notwithstanding Subsection (3)(a):
385 (i) if the proposed credit union has a [limited] field of membership that does not base
386 eligibility on residence in a county, the persons seeking formation of the proposed credit union
387 are not required to provide the notice required under Subsection 7-1-704(3); and
388 (ii) a credit union may not be required to obtain federal insurance if the credit union
389 complies with Subsection 7-9-45(2).
- 390 Section 6. Section **7-9-11** is amended to read:
391 **7-9-11. Bylaws and amendments to be approved.**
392 (1) A credit union may not receive payments on shares, deposits, or certificates, or
393 make any loans or other transactions, until its bylaws have been approved in writing by the
394 commissioner.
395 (2) An amendment to a credit union's bylaws does not become operative until the
396 amendment to the bylaws is approved by the commissioner.
397 (3) (a) If the amendment to the bylaws of a credit union expands the [limited] field of

398 membership of a credit union as described in Subsection 7-9-52(1), the commissioner's
399 approval of the amendment is subject to Section 7-9-52.

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

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

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

408 **7-9-12. Contents of bylaws.**

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

- 410 (1) the name of the credit union;
- 411 (2) the purpose for which [it] the credit union was formed;
- 412 (3) a [limited] field of membership of the credit union that complies with Section
413 7-9-51 or 7-9-53;
- 414 (4) the number of directors and procedures for their election;
- 415 (5) the term of directors;
- 416 (6) whether a credit manager, credit committee, or combination of both shall be
417 responsible for credit functions of the credit union;
- 418 (7) the duties of the officers;
- 419 (8) the time of year of the annual meeting of members;
- 420 (9) the manner in which members shall be notified of meetings;
- 421 (10) the number of members which shall constitute a quorum at meetings;
- 422 (11) the manner of amending;
- 423 (12) the manner in which officers may act as surety; and
- 424 (13) such other matters, rules, and regulations as the board of directors consider
425 necessary.

426 Section 8. Section **7-9-16** is amended to read:

427 **7-9-16. Members -- Eligibility -- Liability -- Grounds for closing account -- Denial**
428 **of membership.**

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

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

434 (2) A member who is eligible for membership in a credit union at the time the member
435 is admitted as a member but who is no longer in the [limited] field of membership of the credit
436 union may retain membership in the credit union unless otherwise provided in the bylaws of
437 the credit union.

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

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

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

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

444 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

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

447 (2) The bylaws may provide balloting by:

- 448 (a) mail;
- 449 (b) ballot box; or
- 450 (c) both mail and ballot box.

451 (3) Voting may not be by proxy.

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

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

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

- 457 (a) act upon applications for membership;
- 458 (b) act upon expulsion of members;
- 459 (c) fix the amount of surety bond required of each officer or employee having custody

- 460 of funds;
- 461 (d) determine the rate of interest or dividend allowed on shares and deposits;
- 462 (e) determine the terms and conditions of credit granted to members;
- 463 (f) lend money, borrow money, and pledge security for any borrowing;
- 464 (g) fill vacancies in the board of directors or in the credit committee, if applicable, or in
- 465 the supervisory committee until the election and qualification of officers to fill those vacancies;
- 466 (h) appoint up to two alternate directors as provided in the bylaws;
- 467 (i) fix the amount of the entrance fee;
- 468 (j) declare dividends and their amount;
- 469 (k) make recommendations to meetings of the members relative to amendments to the
- 470 articles of incorporation, and transact any other business of the credit union; and
- 471 (l) fix the maximum amount of credit, secured and unsecured, that may be extended to
- 472 any one member, up to the limitations described in ~~[Subsection]~~ Subsections (7) and (8).
- 473 (7) (a) The credit that may be outstanding or available by a credit union at any one time
- 474 is subject to the limitations described in ~~[Subsections]~~ this Subsection (7)~~[(b) and (c)]~~:
- 475 (i) except as provided in Subsection ~~[(7)(d) through (7)(f)]~~ (8); and
- 476 (ii) except that the board of directors may:
- 477 (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(B); or
- 478 (B) require that a person described in Subsection (7)(b)(ii)(A) be a member of the
- 479 credit union for more than six months before the date a member-business loan is extended.
- 480 (b) (i) A credit union may not extend credit that is not a member-business loan to a
- 481 member if as a result of that extension of credit the total credit that is not a member-business
- 482 loan that the credit union has issued to that member exceeds at any one time:
- 483 (A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:
- 484 (I) \$1,000; or
- 485 (II) 15% of capital and surplus up to a total of \$25,000; or
- 486 (B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:
- 487 (I) \$25,000;
- 488 (II) 1% of capital and surplus; or
- 489 (III) 25% of the regular reserve.
- 490 (ii) Beginning March 24, 1999, a credit union may not extend a member-business loan

491 to a person:

492 (A) (I) if the person is a business entity, unless at least one individual having a
493 controlling interest in that business entity has been a member of the credit union for at least six
494 months prior to the date of the extension of the member-business loan; or

495 (II) if the person is an individual, unless the individual is a member of the credit union
496 for at least six months prior to the date of the extension of the member-business loan; or

497 (B) if as a result of the extension of the member-business loan, the total amount
498 outstanding for all member-business loans that the credit union has extended to that person at
499 any one time exceeds the lesser of:

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

501 (II) \$250,000.

502 (c) (i) Beginning March 24, 1999, a credit union may not extend a member-business
503 loan if as a result of that member-business loan the credit union's aggregate member-business
504 loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum
505 of:

506 (A) the actual undivided earnings; and

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

508 (ii) For purposes of Subsection (7)(c)(i), the aggregate member-business loan amount
509 of a credit union equals:

510 (A) the sum of the total amount financed under all member-business loans outstanding
511 at the credit union; minus

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

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

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

517 (d) (i) A credit union service organization may extend credit to a member of a credit
518 union holding an ownership interest in the credit union service organization only if the credit
519 union in which the person is a member is not prohibited from extending that credit to that
520 member under:

521 (A) this Subsection (7) and Subsection (8); or

522 (B) Section 7-9-57.

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

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

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

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

533 (B) by:

534 (I) a credit union service organization; or

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

536 (e) Notwithstanding the other provisions of this section, a nonexempt credit union may
537 not extend credit that the nonexempt credit union is prohibited from extending under Section
538 7-9-58.

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

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

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

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

550 (I) the federal government;

551 (II) a state; or

552 (III) a political subdivision of the state.

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

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

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

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

562 [~~(8)~~] (9) As provided in this chapter or in the credit union bylaws, the board of
563 directors:

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

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

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

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

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

570 (d) shall have an executive committee;

571 (e) may appoint an investment officer;

572 (f) shall elect a secretary;

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

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

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

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

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

581 [~~(9)~~] (10) A person may not be a member of more than one committee except as
582 otherwise provided in this chapter or in the credit union bylaws.

583 [~~(10)~~] (11) The president and secretary may not be the same person.

584 Section 10. Section **7-9-26** is amended to read:

585 **7-9-26. Loans to members -- Investment officers -- Investments.**

586 (1) ~~[The]~~ Subject to Subsections 7-9-20(7) and (8) and Section 7-9-58, capital and
587 surplus of the credit union shall be loaned to the members for the purposes and upon the
588 endorsements or security and the terms as the bylaws provide.

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

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

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

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

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

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

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

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

610 Section 11. Section **7-9-34** is amended to read:

611 **7-9-34. Tax exemption of credit unions.**

612 (1) Except as otherwise provided in this section, a credit [unions] union organized
613 under this chapter ~~[or prior law are]~~ is exempt from taxation.

614 (2) Any real property or any tangible personal property owned by the credit union shall

615 be subject to taxation to the same extent as other similar property is taxed.

616 (3) ~~(a) [For purposes of the corporate tax, credit unions shall be governed by]~~ Except as
617 otherwise provided in Subsection (3)(b), a credit union organized under this chapter is exempt
618 from Title 59, Chapter 7, Corporate Franchise and Income Taxes, as provided in Section
619 59-7-102.

620 (b) In accordance with Section 59-7-102, a nonexempt credit union is subject to Title
621 59, Chapter 7, Corporate Franchise and Income Taxes, beginning on the date specified by the
622 Legislature in the 2005 General Session if the Legislature affirmatively states that a nonexempt
623 credit union is subject to Title 59, Chapter 7, Corporate Franchise and Income Taxes.

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

626 Section 12. Section **7-9-37** is amended to read:

627 **7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or**
628 **acquired credit union.**

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

632 Section 13. Section **7-9-39** is amended to read:

633 **7-9-39. Voluntary merger.**

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

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

638 (b) the commissioner approves the merger plan;

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

644 (d) (i) the National Credit Union Administration or its successor federal deposit
645 insurance agency approves the merger plan and commits to insure deposits of the surviving

646 credit union; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

675 (5) (a) This section shall be interpreted, whenever possible, to permit a credit union
676 chartered under this chapter to merge with a credit union chartered under any other law if the

677 preservation of membership interest is concerned.

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

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

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

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

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

691 (i) if the credit union does not have a [limited] field of membership under Subsection
692 7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of
693 branches as of the date the merger is effective; or

694 (ii) if the credit union has a [limited] field of membership under Subsection
695 7-9-53(2)(c) or (2)(d), the county that is the domicile-county of the surviving credit union
696 under Section 7-9-53;

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

699 (i) main office; or

700 (ii) branch.

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

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

705 (ii) participate in a service center in which it does not participate as of the date that the
706 merger is effective; or

707 (iii) relocate the surviving credit union's main office or a branch located in the county

708 as of the date that the merger is effective unless the commissioner finds that the main office or
709 branch is being relocated within a three-mile radius of the original location of the main office
710 or branch.

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

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

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

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

716 (B) resides in the domicile-county of the surviving credit union, as defined in Section
717 7-9-53.

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

721 Section 14. Section **7-9-39.5** is amended to read:

722 **7-9-39.5. Supervisory merger.**

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

727 Section 15. Section **7-9-46** is amended to read:

728 **7-9-46. Out-of-state credit unions -- Authorization to do business in state --**
729 **Supervision -- Examination.**

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

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

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

735 (b) the branch has been authorized by:

736 (i) the department and the chartering authority of the credit union's home state in the
737 case of a state chartered credit union; or

738 (ii) the National Credit Union Administration or successor agency in the case of a

739 federally chartered credit union[-]; and

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

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

746 Section 16. Section **7-9-51** is amended to read:

747 **7-9-51. Field of membership.**

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

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

751 (b) the employees of the credit union;

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

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

754 (e) residents of a city of the third class or a town as classified in Section 10-2-301 if:

755 (i) the city or town is located in a county of the fourth through sixth class a classified in
756 Section 17-50-501;

757 (ii) at the time the residents of the city or town are included in the field of membership
758 of a credit union, the credit union has not become a nonexempt credit union under Section
759 7-9-55; and

760 (iii) approved by the commissioner in accordance with Subsection 7-9-52(6).

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

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

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

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

768 (c) is permitted by the commissioner after a merger in accordance with Section
769 7-9-39.5.

770 (4) If a credit union includes the residents of one county in its [~~limited~~] field of
771 membership, the credit union may not change its [~~limited~~] field of membership to include a
772 different county than the county that is first included in the [~~limited~~] field of membership of the
773 credit union.

774 (5) Notwithstanding the other provisions of this section or any restrictions of Section
775 7-9-53, a credit union may have a field of membership that is less restrictive than the field of
776 membership described in Subsection (1), under the following conditions:

777 (a) the field of membership of the credit union may include no more than all the
778 residents of two counties in addition to any association included in the field of membership of
779 the credit union; and

780 (b) both counties described in Subsection (5)(a) must be a county of the third through
781 sixth class, as classified in Section 17-50-501.

782 Section 17. Section **7-9-52** is amended to read:

783 **7-9-52. Expansion of a field of membership.**

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

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

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

789 (c) subject to the requirements of Subsection (6), residents of a city of the third class or
790 a town described in Subsection 7-9-51(1)(e).

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

836 (i) 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 (ii) 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 (b) A nonexempt credit union may not apply under this Subsection (6) to include a city
845 or town described in Subsection (1)(c) in the nonexempt credit union's field of membership.

846 Section 18. Section **7-9-53** is amended to read:

847 **7-9-53. Grandfathering.**

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

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

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

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

- 853 (i) in the [~~limited~~] field of membership of the credit union as of January 1, 1999; and
854 (ii) in which the credit union has located the greatest number of branches as of January
855 1, 1999.

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

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

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

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

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

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

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

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

872 (B) the employees of the credit union;

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

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

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

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

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

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

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

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

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

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

- 894 (A) the [limited] field of membership stated in the bylaws of the credit union as of
895 January 1, 1999, includes the residents of more than one county; and
- 896 (B) as of January 1, 1999, the credit union has a main office or branch in more than one
897 county;
- 898 (ii) as of May 3, 1999, the [limited] field of membership of a credit union described in
899 Subsection (2)(d)(i) is:
- 900 (A) the immediate family of a member of the credit union;
- 901 (B) the employees of the credit union;
- 902 (C) residents of the credit union's domicile-county;
- 903 (D) the residents of any county other than the domicile-county:
- 904 (I) if, as of January 1, 1999, the county is in the [limited] field of membership of the
905 credit union; and
- 906 (II) in which, as of January 1, 1994, the credit union had located its main office or a
907 branch; and
- 908 (E) any association that as of January 1, 1999, is in the [limited] field of membership
909 of the credit union.
- 910 (3) If a credit union's [limited] field of membership is as described in Subsection
911 (2)(d), beginning May 3, 1999, the credit union:
- 912 (a) within the credit union's domicile-county, may establish, relocate, or otherwise
913 change the physical location of the credit union's:
- 914 (i) main office; or
- 915 (ii) branch;
- 916 (b) within a county other than a domicile-county that is in the credit union's
917 grandfathered [limited] field of membership, may not:
- 918 (i) establish a main office or branch that:
- 919 (A) was not located in the county as of January 1, 1999; or
- 920 (B) for which the credit union has not received by January 1, 1999, approval or
921 conditional approval of a site plan for the main office or branch from the planning commission
922 of the municipality where the main office or branch will be located;
- 923 (ii) participate in a service center in which it does not participate as of January 1, 1999;
- 924 [or]

925 (iii) relocate the credit union's main office or a branch located in the county as of
926 January 1, 1999, unless the commissioner finds that the main office or branch is relocated
927 within a three-mile radius of where it was originally located; ~~and~~ or
928 (iv) after a voluntary merger under Section 7-9-39, operate a branch in the county if:
929 (A) the effective date of the merger is on or after May 5, 2003;
930 (B) the credit union with the field of membership described in Subsection (2)(d) is the
931 surviving credit union after the merger; and
932 (C) the credit union did not own and operate the branch before the effective date of the
933 merger; and

934 (c) may only admit as a member:

935 (i) a person in the credit union's grandfathered ~~limited~~ field of membership; or
936 (ii) a person belonging to an association that:

937 (A) is added to the ~~limited~~ field of membership of the credit union; and
938 (B) resides in the domicile-county of the credit union.

939 (4) (a) If a credit union's ~~limited~~ field of membership is as described in Subsection
940 (2)(b), as of May 3, 1999, the credit union may operate as a credit union having a ~~limited~~
941 field of membership under Section 7-9-51.

942 (b) If a credit union's ~~limited~~ field of membership is as described in Subsection (2)(c),
943 as of May 3, 1999, the credit union:

944 (i) within the credit union's domicile-county, may establish, relocate, or otherwise
945 change the physical location of the credit union's:

946 (A) main office; or
947 (B) branch;

948 (ii) within a county other than its domicile-county that is in the credit union's ~~limited~~
949 field of membership under Subsection (2)(c), may not:

950 (A) establish a main office or branch that was not located in the county as of January 1,
951 1999;

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

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

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

957 (iii) may only admit as a member:

958 (A) a person in the credit union's [limited] field of membership under Subsection
959 (2)(c); or

960 (B) a person belonging to an association that is added to the [limited] field of
961 membership of the credit union, regardless of whether the association resides in the
962 domicile-county of the credit union.

963 (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union
964 described in Subsection (2)(c) or (2)(d) may:

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

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

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

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

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

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

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

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

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

984 Section 19. Section **7-9-55** is enacted to read:

985 **7-9-55. Nonexempt credit unions.**

986 (1) (a) A credit union organized under this chapter is a nonexempt credit union under

987 this section on the day on which:

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

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

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

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

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

1000 (2) If a credit union becomes a nonexempt credit union under this section, the
1001 nonexempt credit union is a nonexempt credit union:

1002 (a) for as long as the nonexempt credit union is organized under this chapter; and

1003 (b) notwithstanding whether after the day on which the nonexempt credit union
1004 becomes a nonexempt credit union the nonexempt credit union meets the requirements of
1005 Subsection (1)(a).

1006 (3) Regardless of whether or not a credit union has located branches in two or more
1007 counties in this state, a credit union organized under this chapter does not become a nonexempt
1008 credit union if the field of membership of the credit union as evidenced by the bylaws of the
1009 credit union does not meet the requirements of Subsection (1).

1010 Section 20. Section **7-9-56** is enacted to read:

1011 **7-9-56. Competitive equity assessment.**

1012 (1) For purposes of this section, "competitive equity assessment" means an equitable
1013 amount calculated for each fiscal year in accordance with a formula adopted by the Legislature
1014 during the 2005 General Session after consideration of the formula recommended by the
1015 Financial Institutions Task Force created in this act.

1016 (2) (a) A credit union may elect to pay a competitive equity assessment by filing a
1017 notice of election to pay a competitive equity assessment with:

- 1018 (i) the commissioner; and
1019 (ii) the State Tax Commission.
- 1020 (b) A notice of election to pay a competitive equity assessment is not considered filed
1021 until the later of the day on which the notice of election to pay a competitive equity assessment
1022 is filed with:
- 1023 (i) the commissioner; or
1024 (ii) the State Tax Commission.
- 1025 (c) If a credit union files a notice of election to pay a competitive equity assessment,
1026 the credit union shall pay the competitive equity assessment in accordance with Subsection (5).
- 1027 (d) A credit union may not file a notice of election to pay a competitive equity
1028 assessment before May 2, 2005.
- 1029 (3) A credit union may not revoke an election to pay a competitive equity assessment
1030 after the day on which the credit union files a notice of election to pay a competitive equity
1031 assessment in accordance with Subsection (2).
- 1032 (4) (a) In accordance with this Subsection (4), for a credit union that files a notice of
1033 election to pay a competitive equity assessment under this title, notwithstanding the other
1034 provisions of this section, the commissioner may issue an order waiving the requirement that
1035 the credit union pay the competitive equity assessment if:
- 1036 (i) the credit union files a request for waiver; and
1037 (ii) the credit union is subject to supervisory action under:
- 1038 (A) Chapter 2, Possession of Depository Institution by Commissioner; or
1039 (B) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- 1040 (b) (i) The commissioner may waive payment of the competitive equity assessment for
1041 the period:
- 1042 (A) beginning on the first day of the calendar quarter immediately following the day on
1043 which the request for waiver is filed in accordance with Subsection (4)(a); and
- 1044 (B) ending the last day of the next calendar quarter following the calendar quarter
1045 described in Subsection (4)(b)(i)(A).
- 1046 (ii) The commissioner may waive payment of the competitive equity assessment for the
1047 two calendar quarters immediately following the period described in Subsection (4)(b)(i) if for
1048 those calendar quarters the conditions of Subsection (4)(a) are met.

- 1049 (c) The commissioner shall notify the State Tax Commission of the waiver in writing:
1050 (i) by no later than the last day of the calendar quarter described in Subsection
1051 (4)(b)(i)(A); and
1052 (ii) specifying the two calendar quarters for which payment of the competitive equity
1053 assessment is waived.
- 1054 (d) (i) The following are confidential under Section 7-1-802:
1055 (A) a request for waiver filed in accordance with Subsection (4)(a);
1056 (B) an order of the commissioner issued under this section waiving the payment of the
1057 competitive equity assessment; and
1058 (C) the notice described in Subsection (4)(c), except that the notice may be provided
1059 the State Tax Commission in accordance with Subsection (4)(c).
- 1060 (ii) (A) A person listed in Subsection 59-1-403(1) may not divulge or make known in
1061 any manner any information gained by that person from the notice described in Subsection
1062 (4)(c).
- 1063 (B) A person who violates this Subsection (4)(d)(ii) is subject to the penalties
1064 described in Subsection 59-1-403(5).
- 1065 (5) (a) A credit union required to pay the competitive equity assessment under
1066 Subsection (2) shall pay the competitive equity assessment for each fiscal year:
1067 (i) to the State Tax Commission; and
1068 (ii) beginning on the first day of the month immediately following the day on which the
1069 credit union files the notice of election to pay the competitive equity assessment.
- 1070 (b) This Subsection (5) shall be administered by the State Tax Commission in
1071 accordance with the procedures of Title 59, Chapter 7, Part 5, Procedures and Administration.
- 1072 (6) (a) In addition to any penalties imposed by the State Tax Commission in
1073 accordance with Subsection (5), the commissioner may take supervisory action under Chapter
1074 2, Possession of Depository Institution by Commissioner, against a credit union that is subject
1075 to a penalty imposed by the State Tax Commission for failure to:
1076 (i) file an annual return for the competitive equity assessment that is required to be
1077 filed in accordance with Section 59-7-505; or
1078 (ii) pay the competitive equity assessment owed for a fiscal year.
1079 (b) The State Tax Commission shall notify the commissioner of any credit union that

1080 has filed a notice of election to pay a competitive equity assessment that has failed to take an
1081 action described in Subsection (6)(a).

1082 Section 21. Section **7-9-57** is enacted to read:

1083 **7-9-57. Waiver of limitations on member-business loans.**

1084 (1) If a credit union, including a nonexempt credit union, files a notice of election to
1085 pay a competitive equity assessment in accordance with Section 7-9-56, the credit union is not
1086 subject to the following for a member-business loan extended by the credit union on or after
1087 the day on which the credit union files the notice of election to pay the competitive equity
1088 assessment:

1089 (a) Subsection 7-9-5(12)(b);

1090 (b) Subsection 7-9-20(7)(b)(ii), except that the credit union may extend a
1091 member-business loan to:

1092 (i) a person that is a business entity, only if at least one individual having a controlling
1093 interest in that business entity is a member of the credit union at the time the member-business
1094 loan is extended; or

1095 (ii) a person who is an individual, only if the individual is a member of the credit union
1096 at the time the member-business loan is extended;

1097 (c) Subsection 7-9-20(7)(c); and

1098 (d) Subsection 7-9-20(8)(b)(ii).

1099 (2) (a) Notwithstanding Subsection (1), a credit union is subject to the more restrictive
1100 of the following in extending a member- business loan:

1101 (i) any requirement or limitation imposed on the extension of credit by a bank
1102 chartered under Chapter 3, Banks, including:

1103 (A) Section 7-3-19; and

1104 (B) any rule made by the commissioner in accordance with Section 7-3-19; or

1105 (ii) any requirement or limitation imposed by the National Credit Union
1106 Administration or successor federal deposit insurance agency on a state-chartered credit union
1107 insured by the National Credit Union Administration or successor federal deposit insurance
1108 agency.

1109 (b) The commissioner shall make rules in accordance with Title 63, Chapter 46a, Utah
1110 Administrative Rulemaking Act, that apply the requirements or limitations described in

1111 Subsection (2)(a) to a member-business loan extended by a credit union that files a notice of
1112 election to pay a competitive equity assessment.

1113 (3) This section does not modify any requirement or limitation under this chapter on
1114 the extension by a credit union of credit that is not a member-business loan.

1115 Section 22. Section **7-9-58** is enacted to read:

1116 **7-9-58. Limitations on credit extended by nonexempt credit unions.**

1117 (1) Notwithstanding the other provisions of this chapter, beginning on May 5, 2003, a
1118 nonexempt credit union may not:

1119 (a) (i) extend a member-business loan;

1120 (ii) renew a member-business loan that is extended before May 5, 2003; or

1121 (iii) extend the maturity date or increase the amount of a member-business loan that is
1122 extended before May 5, 2003;

1123 (b) originate, participate in, or obtain any interest in a co-lending arrangement,
1124 including a loan participation arrangement; or

1125 (c) subject to Subsection (2), extend credit that is not a member-business loan if as a
1126 result of the extension of credit the total credit that is not a member-business loan that the
1127 nonexempt credit union has issued to that member exceeds at any one time \$250,000.

1128 (2) Notwithstanding Subsection (1)(c), a nonexempt credit union may extend credit in
1129 an amount that exceeds the limits provided in Subsection (1)(c) to a member if:

1130 (a) the excess portion of the credit described in Subsection (1)(c) is fully secured by the
1131 member's share or deposit savings in the nonexempt credit union; or

1132 (b) the credit is extended to a member of the nonexempt credit union:

1133 (i) for the purpose of:

1134 (A) paying amounts owed by the member to purchase a one- to four-family dwelling
1135 that is the primary residence of that member; or

1136 (B) refinancing the balance of amounts owed by the member for the purchase of a one-
1137 to four-family dwelling that is the primary residence of that member; and

1138 (ii) the credit extended under this Subsection (2)(b) is less than or equals \$1,000,000.

1139 (3) In accordance with Subsection 7-9-20(7)(d), a credit union service organization
1140 may not extend credit to a member of a nonexempt credit union holding an ownership interest
1141 in the credit union service organization if it would be a violation of this section for the

1142 nonexempt credit union to extend the credit to the member.

1143 (4) This section may not prevent a nonexempt credit union from servicing a loan
1144 extended before May 5, 2003.

1145 Section 23. Section **59-1-403** is amended to read:

1146 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

1147 (1) (a) Except as provided in this section, any of the following may not divulge or make
1148 known in any manner any information gained by that person from any return filed with the
1149 commission:

1150 (i) a tax commissioner;

1151 (ii) an agent, clerk, or other officer or employee of the commission; or

1152 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
1153 town.

1154 (b) Except as provided in Subsection (1)(c), an official charged with the custody of a
1155 return filed with the commission is not required to produce the return or evidence of anything
1156 contained in the return in any action or proceeding in any court, except:

1157 (i) in accordance with judicial order;

1158 (ii) on behalf of the commission in any action or proceeding under:

1159 (A) this title; or

1160 (B) other law under which persons are required to file returns with the commission;

1161 (iii) on behalf of the commission in any action or proceeding to which the commission
1162 is a party; or

1163 (iv) on behalf of any party to any action or proceeding under this title if the report or
1164 facts shown by the return are directly involved in the action or proceeding.

1165 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
1166 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
1167 pertinent to the action or proceeding.

1168 (2) This section does not prohibit:

1169 (a) a person or that person's duly authorized representative from receiving a copy of
1170 any return or report filed in connection with that person's own tax;

1171 (b) the publication of statistics as long as the statistics are classified to prevent the
1172 identification of particular reports or returns; and

1173 (c) the inspection by the attorney general or other legal representative of the state of the
1174 report or return of any taxpayer:

1175 (i) who brings action to set aside or review a tax based on the report or return;

1176 (ii) against whom an action or proceeding is contemplated or has been instituted under
1177 this title; or

1178 (iii) against whom the state has an unsatisfied money judgment.

1179 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the
1180 commission may by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
1181 Rulemaking Act, provide for a reciprocal exchange of information with:

1182 (i) the United States Internal Revenue Service; or

1183 (ii) the revenue service of any other state.

1184 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and
1185 corporate franchise tax, the commission may by rule, made in accordance with Title 63,
1186 Chapter 46a, Utah Administrative Rulemaking Act, share information gathered from returns
1187 and other written statements with the federal government, any other state, any of the political
1188 subdivisions of another state, or any political subdivision of this state, except as limited by
1189 Sections 59-12-209 and 59-12-210, if these political subdivisions or the federal government
1190 grant substantially similar privileges to this state.

1191 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and
1192 corporate franchise tax, the commission may by rule, in accordance with Title 63, Chapter 46a,
1193 Utah Administrative Rulemaking Act, provide for the issuance of information concerning the
1194 identity and other information of taxpayers who have failed to file tax returns or to pay any tax
1195 due.

1196 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and
1197 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as
1198 requested by the executive secretary, any records, returns, or other information filed with the
1199 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5
1200 regarding the environmental assurance program participation fee.

1201 (e) Notwithstanding Subsection (1), at the request of any person the commission shall
1202 provide that person sales and purchase volume data reported to the commission on a report,
1203 return, or other information filed with the commission under:

- 1204 (i) Chapter 13, Part 2, Motor Fuel; or
1205 (ii) Chapter 13, Part 4, Aviation Fuel.
- 1206 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
1207 as defined in Section 59-22-202, the commission shall report to the manufacturer:
- 1208 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
1209 manufacturer and reported to the commission for the previous calendar year under Section
1210 59-14-407; and
- 1211 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
1212 manufacturer for which a tax refund was granted during the previous calendar year under
1213 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).
- 1214 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
1215 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
1216 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).
- 1217 (h) Notwithstanding Subsection (1), the commission may:
- 1218 (i) provide to the Division of Consumer Protection within the Department of
1219 Commerce and the attorney general data:
- 1220 (A) reported to the commission under Section 59-14-212; or
1221 (B) related to a violation under Section 59-14-211; and
- 1222 (ii) upon request provide to any person data reported to the commission under
1223 Subsections 59-14-212(1)(a) through(c) and Subsection 59-14-212(1)(g).
- 1224 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
1225 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning
1226 and Budget, provide to the committee or office the total amount of revenues collected by the
1227 commission under Chapter 24, Radioactive Waste Tax Act, for the time period specified by the
1228 committee or office.
- 1229 (j) Notwithstanding Subsection (1), the commission shall at the request of the
1230 Legislature provide to the Legislature the total amount of sales or uses exempt under
1231 Subsection 59-12-104(52) reported to the commission in accordance with Section 59-12-105.
- 1232 (k) Notwithstanding Subsection (1), the commission shall make the list required by
1233 Subsection 59-14-408(3) available for public inspection.
- 1234 (l) Notwithstanding Subsection (1), the commission shall provide the notice to the

1235 commissioner of the Department of Financial Institutions required by Subsection 7-9-56(6).

1236 (4) (a) Reports and returns shall be preserved for at least three years.

1237 (b) After the three-year period provided in Subsection (4)(a) the commission may
1238 destroy a report or return.

1239 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.

1240 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
1241 the person shall be dismissed from office and be disqualified from holding public office in this
1242 state for a period of five years thereafter.

1243 (6) This part does not apply to the property tax.

1244 Section 24. Section **59-7-101** is amended to read:

1245 **59-7-101. Definitions.**

1246 As used in this chapter:

1247 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105
1248 and 59-7-106.

1249 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
1250 through stock ownership with a common parent corporation that meet the following
1251 requirements:

1252 (i) at least 80% of the stock of each of the corporations in the group, excluding the
1253 common parent corporation, is owned by one or more of the other corporations in the group;
1254 and

1255 (ii) the common parent directly owns at least 80% of the stock of at least one of the
1256 corporations in the group.

1257 (b) "Affiliated group" does not include corporations that are qualified to do business
1258 but are not otherwise doing business in this state.

1259 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which
1260 is limited and preferred as to dividends.

1261 (3) "Apportionable income" means adjusted income less nonbusiness income net of
1262 related expenses, to the extent included in adjusted income.

1263 (4) "Apportioned income" means apportionable income multiplied by the
1264 apportionment fraction as determined in Section 59-7-311.

1265 (5) "Business income" means income as defined in Section 59-7-302.

- 1266 (6) "Corporate return" or "return" includes a combined report.
- 1267 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
1268 than 50% of the outstanding voting stock of:
- 1269 (i) a parent-subsiary controlled group as defined in Section 1563, Internal Revenue
1270 Code, except that 50% shall be substituted for 80%;
- 1271 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
1272 Code, except that 50% shall be substituted for 80%; or
- 1273 (iii) three or more corporations each of which is a member of a group of corporations
1274 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:
- 1275 (A) a common parent corporation included in a group of corporations described in
1276 Subsection (2)(a)(i); and
- 1277 (B) included in a group of corporations described in Subsection (2)(a)(ii).
- 1278 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
1279 Internal Revenue Code.
- 1280 (8) "Corporation" includes:
- 1281 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
1282 Code; and
- 1283 (b) other organizations that are taxed as corporations for federal income tax purposes
1284 under the Internal Revenue Code.
- 1285 (9) "Dividend" means any distribution, including money or other type of property,
1286 made by a corporation to its shareholders out of its earnings or profits accumulated after
1287 December 31, 1930.
- 1288 (10) (a) "Doing business" includes any transaction in the course of its business by a
1289 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
1290 this state.
- 1291 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:
- 1292 (i) the right to do business through incorporation or qualification;
- 1293 (ii) the owning, renting, or leasing of real or personal property within this state; and
- 1294 (iii) the participation in joint ventures, working and operating agreements, the
1295 performance of which takes place in this state.
- 1296 (11) "Domestic corporation" means a corporation that is incorporated or organized

1297 under the laws of this state.

1298 (12) (a) "Farmers' cooperative" means an association, corporation, or other
1299 organization that is:

1300 (i) (A) an association, corporation, or other organization of:

1301 (I) farmers; or

1302 (II) fruit growers; or

1303 (B) an association, corporation, or other organization that is similar to an association,
1304 corporation, or organization described in Subsection (12)(a)(i)(A); and

1305 (ii) organized and operated on a cooperative basis to:

1306 (A) (I) market the products of members of the cooperative or the products of other
1307 producers; and

1308 (II) return to the members of the cooperative or other producers the proceeds of sales
1309 less necessary marketing expenses on the basis of the quantity of the products of a member or
1310 producer or the value of the products of a member or producer; or

1311 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
1312 other persons; and

1313 (II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at
1314 actual costs plus necessary expenses to the members of the cooperative or other persons.

1315 (b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the
1316 commission by rule, made in accordance with Title 63, Chapter 46a, Utah Administrative
1317 Rulemaking Act, shall define:

1318 (A) the terms:

1319 (I) "member"; and

1320 (II) "producer"; and

1321 (B) what constitutes an association, corporation, or other organization that is similar to
1322 an association, corporation, or organization described in Subsection (12)(a)(i)(A).

1323 (ii) The rules made under this Subsection (12)(b) shall be consistent with the filing
1324 requirements under federal law for a farmers' cooperative.

1325 (13) "Foreign corporation" means a corporation that is not incorporated or organized
1326 under the laws of this state.

1327 (14) (a) "Foreign operating company" means a corporation that:

- 1328 (i) is incorporated in the United States; and
- 1329 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
- 1330 conducted outside the United States.
- 1331 (b) "Foreign operating company" does not include a corporation that qualifies for the
- 1332 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.
- 1333 (15) "Foreign sales corporation" means a corporation as defined in Section 922,
- 1334 Internal Revenue Code.
- 1335 (16) "Income" includes losses.
- 1336 (17) "Internal Revenue Code" means Title 26 of the United States Code as effective
- 1337 during the year in which Utah taxable income is determined.
- 1338 (18) "Nonbusiness income" means income as defined in Section 59-7-302.
- 1339 (19) "Nonresident shareholder" means any shareholder of an S corporation who on the
- 1340 last day of the taxable year of the S corporation, is:
- 1341 (a) an individual not domiciled in Utah; or
- 1342 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.
- 1343 (20) "Related expenses" means:
- 1344 (a) expenses directly attributable to nonbusiness income; and
- 1345 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
- 1346 and business income which bears the same ratio to the aggregate amount of such interest or
- 1347 other expense, determined without regard to this Subsection (20), as the average amount of the
- 1348 asset producing the nonbusiness income bears to the average amount of all assets of the
- 1349 taxpayer within the taxable year.
- 1350 (21) "Resident shareholder" means any shareholder of an S corporation who is not a
- 1351 nonresident shareholder.
- 1352 (22) "S corporation" means a small business corporation as defined in Section 1361,
- 1353 Internal Revenue Code.
- 1354 (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
- 1355 Section 168, Internal Revenue Code.
- 1356 (24) "State of the United States" includes any of the 50 states or the District of
- 1357 Columbia and "United States" includes the 50 states and the District of Columbia.
- 1358 (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such

1359 calendar year upon the basis of which the adjusted income is computed.

1360 (b) In the case of a return made for a fractional part of a year under this chapter or
1361 under rules prescribed by the commission, "taxable year" includes the period for which such
1362 return is made.

1363 (26) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

1364 (27) "Threshold level of business activity" means business activity in the United States
1365 equal to or greater than 20% of the corporation's total business activity as determined under
1366 Section 59-7-401.

1367 (28) Except as provided in Section 59-7-102, "unadjusted income" means federal
1368 taxable income as determined on a separate return basis before intercompany eliminations as
1369 determined by the Internal Revenue Code, before the net operating loss deduction and special
1370 deductions for dividends received.

1371 (29) (a) "Unitary group" means a group of corporations that:

1372 (i) are related through common ownership; and

1373 (ii) by a preponderance of the evidence as determined by a court of competent
1374 jurisdiction or the commission, are economically interdependent with one another as
1375 demonstrated by the following factors:

1376 (A) centralized management;

1377 (B) functional integration;

1378 (C) economies of scale.

1379 (b) "Unitary group" does not include S corporations.

1380 (30) "Utah net loss" means the current year Utah taxable income before Utah net loss
1381 deduction, if determined to be less than zero.

1382 (31) "Utah net loss deduction" means the amount of Utah net losses from other taxable
1383 years that may be carried back or carried forward to the current taxable year in accordance with
1384 Section 59-7-110.

1385 (32) (a) "Utah taxable income" means Utah taxable income before net loss deduction
1386 less Utah net loss deduction.

1387 (b) "Utah taxable income" includes income from tangible or intangible property located
1388 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
1389 commerce.

1390 (33) "Utah taxable income before net loss deduction" means apportioned income plus
1391 nonbusiness income allocable to Utah net of related expenses.

1392 (34) (a) "Water's edge combined report" means a report combining the income and
1393 activities of:

1394 (i) all members of a unitary group that are:

1395 (A) corporations organized or incorporated in the United States, including those
1396 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
1397 936, Internal Revenue Code, in accordance with Subsection (34)(b); and

1398 (B) corporations organized or incorporated outside of the United States meeting the
1399 threshold level of business activity; and

1400 (ii) an affiliated group electing to file a water's edge combined report under Subsection
1401 59-7-402(2).

1402 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
1403 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a
1404 unitary group.

1405 (35) "Worldwide combined report" means the combination of the income and activities
1406 of all members of a unitary group irrespective of the country in which the corporations are
1407 incorporated or conduct business activity.

1408 Section 25. Section **59-7-102** is amended to read:

1409 **59-7-102. Exemptions.**

1410 (1) Except as provided in this section, the following are exempt from this chapter:

1411 (a) an organization exempt under Section 501, Internal Revenue Code;

1412 (b) an organization exempt under Section 528, Internal Revenue Code;

1413 (c) an insurance company that is otherwise taxed on the insurance company's premiums
1414 under Chapter 9, Taxation of Admitted Insurers;

1415 (d) a building authority as defined in Section 17A-3-902;

1416 (e) a farmers' cooperative; or

1417 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
1418 ownership interest in:

1419 (i) a project, as defined in Section 11-13-103; or

1420 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

1421 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts
1422 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
1423 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to
1424 the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, because of:

1425 (a) that person's ownership of tangible personal property located at the premises of a
1426 printer's facility in this state with which the person has contracted for printing; or

1427 (b) the activities of the person's employees or agents who are:

1428 (i) located solely at the premises of a printer's facility; and

1429 (ii) performing services:

1430 (A) related to:

1431 (I) quality control;

1432 (II) distribution; or

1433 (III) printing services; and

1434 (B) performed by the printer's facility in this state with which the person has contracted
1435 for printing.

1436 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
1437 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
1438 8, Unrelated Business Income, to the extent provided in Part 8.

1439 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
1440 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
1441 Revenue Code, the organization's income is also taxable under this chapter.

1442 (5) (a) Notwithstanding Subsection (1)(a), a nonexempt credit union, as defined in
1443 Section 7-9-3, is not exempt from this chapter beginning on the date specified by the
1444 Legislature in the 2005 General Session if the Legislature affirmatively states that a nonexempt
1445 credit union is subject to Title 59, Chapter 7, Corporate Franchise and Income Taxes.

1446 (b) Notwithstanding Section 59-7-101, the unadjusted income of a nonexempt credit
1447 union that is subject to this chapter in accordance with Subsection (5)(a) is an amount equal to
1448 the federal taxable income the nonexempt credit union would have if the nonexempt credit
1449 union were subject to a federal income tax:

1450 (i) determined on a separate return basis before intercompany eliminations as
1451 determined by the Internal Revenue Code; and

- 1452 (ii) before:
- 1453 (A) the net operating loss deduction; and
- 1454 (B) special deductions for dividends received.
- 1455 **Section 26. Repealer.**
- 1456 This act repeals:
- 1457 **Section 7-9-54, Electing to terminate grandfathering.**
- 1458 **Section 27. Financial Institutions Task Force.**
- 1459 (1) There is created the Financial Institutions Task Force consisting of the following 12
- 1460 members:
- 1461 (a) five members of the Senate appointed by the president of the Senate, no more than
- 1462 four of whom may be from the same political party; and
- 1463 (b) seven members of the House of Representatives appointed by the speaker of the
- 1464 House of Representatives, no more than five of whom may be from the same political party.
- 1465 (2) (a) The president of the Senate shall designate a member of the Senate appointed
- 1466 under Subsection (1)(a) as a cochair of the task force.
- 1467 (b) The speaker of the House of Representatives shall designate a member of the House
- 1468 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.
- 1469 (3) In conducting its business, the task force shall comply with the rules of legislative
- 1470 interim committees.
- 1471 (4) Salaries and expenses of the members of the task force shall be paid in accordance
- 1472 with Section 36-2-2 and Legislative Joint Rule 15.03.
- 1473 (5) The Office of Legislative Research and General Counsel shall provide staff support
- 1474 to the task force.
- 1475 (6) The task force shall study:
- 1476 (a) the structural differences between credit unions and other financial institutions;
- 1477 (b) whether to clarify the language defining the appropriate purposes and operations of
- 1478 credit unions chartered in this state including what are the appropriate eligibility standards for
- 1479 members of a credit union that should be imposed by statute;
- 1480 (c) what should be the appropriate field of membership requirements for a credit union;
- 1481 (d) the policies that should govern all questions applicable to taxing or not taxing
- 1482 nonexempt credit unions;

- 1483 (e) the policies underlying whether or not to tax or assess other fees on banks and
1484 nonexempt credit unions;
- 1485 (f) (i) whether or not any credit union should be allowed to pay a competitive equity
1486 assessment;
- 1487 (ii) if a credit union is allowed to pay a competitive equity assessment, which credit
1488 unions should be allowed to pay a competitive equity assessment; and
- 1489 (iii) how any competitive equity assessment to be paid by a credit union should be
1490 calculated including whether required reserves should be subtracted from any of a credit
1491 union's annual cash retained earnings of a credit union that may be subject to a competitive
1492 equity assessment;
- 1493 (g) if a competitive equity assessment is allowed to be paid by a credit union or if state
1494 corporate franchise and income taxes are imposed on nonexempt credit unions, the benefits or
1495 restrictions that should be conditioned on the payment of the competitive equity assessment or
1496 state corporate franchise and income taxes including:
- 1497 (i) whether or not, to the extent that a bank could extend the credit or to the extent that
1498 the extension of credit is not inconsistent with the requirements of National Credit Union
1499 Administration, a credit union that pays a competitive equity assessment should be exempted
1500 from certain restrictions on extending member-business loans such as the restrictions under:
- 1501 (A) Subsection 7-9-5(12)(b);
1502 (B) Subsection 7-9-20(7)(b)(ii), except that certain membership requirements may
1503 always need to be required for member-business loans;
- 1504 (C) Subsection 7-9-20(7)(c); and
1505 (D) Subsection 7-9-20(8)(b)(ii);
- 1506 (ii) whether or not without payment of a competitive equity assessment a nonexempt
1507 credit union should be able to establish a branch that is to be located outside of the county in
1508 which the nonexempt credit union has the greatest number of branches;
- 1509 (iii) whether or not, except in supervisory actions, a nonexempt credit union could
1510 merge with another credit union without payment of the competitive equity assessment; and
- 1511 (iv) whether or not limitations related to the grandfathering under Section 7-9-53
1512 should be modified or removed;
- 1513 (h) whether the judicial review process of decisions of the Commissioner of Financial

1514 Institutions should be modified:

1515 (i) (i) the powers and duties of the Commissioner of Financial Institutions to regulate
1516 the activities of credit unions and banks; and

1517 (ii) whether additional powers or duties should be given to the Commissioner of
1518 Financial Institutions;

1519 (j) the effect of a credit union chartered in this state converting to a federal credit union
1520 charter including any:

1521 (i) loss of sales and uses taxes;

1522 (ii) loss of fees paid to the Department of Financial Institutions; and

1523 (iii) loss of taxes and fees paid to political subdivisions of the state;

1524 (k) the methods by which financial institutions in this state may obtain capital;

1525 (l) the appropriate lending practices of credit unions including:

1526 (i) extension of member-business loans;

1527 (ii) extension of credit that does not constitute a member-business loan; and

1528 (iii) participation in co-lending arrangements including loan participation

1529 arrangements; and

1530 (m) any other issues related to financial institutions and credit unions that the task
1531 force determines to be appropriate.

1532 (7) The task force shall:

1533 (a) make an interim report to the Business and Labor Interim Committee by no later
1534 than November 30, 2003; and

1535 (b) make a final report to the Business and Labor Interim Committee, including any
1536 proposed legislation, by no later than November 30, 2004.

1537 **Section 28. Intent language.**

1538 In passing this legislation, it is the intent of the Legislature that:

1539 (1) the restrictions in Section 7-1-708 and Title 7, Chapter 9, Utah Credit Union Act, in
1540 effect on May 5, 2003, including restrictions on fields of membership, branching, mergers, and

1541 other restrictions on activities of credit unions and credit union service organizations, should

1542 remain in effect until such time as the Legislature is able to study whether or not to impose

1543 state corporate franchise and income taxes, a competitive equity assessment, or any similar

1544 charge on credit unions the size and activities of which require that measures be taken to ensure

1545 competitive equity within Utah's financial market; and
1546 (2) regardless of whether the Legislature adopts a formula for the competitive equity
1547 assessment or imposes state corporate franchise and income taxes on a nonexempt credit union
1548 in the 2005 General Session as provided in this act, this act may not be interpreted to constitute
1549 an action by the Legislature to facilitate credit unions expanding membership or engaging in
1550 activities that are not permitted by Section 7-1-708 or Title 7, Chapter 9, Utah Credit Union
1551 Act, in effect on May 5, 2003.

1552 Section 29. **Appropriation.**

1553 (1) There is appropriated from the General Fund for fiscal year 2002-03, a one-time
1554 appropriation of:

1555 (a) \$6,000 to the Senate to pay for the compensation and expenses of senators on the
1556 task force;

1557 (b) \$8,500 to the House of Representatives to pay for the compensation and expenses
1558 of representatives on the task force; and

1559 (c) \$30,000 to the Office of Legislative Research and General Counsel to pay for
1560 staffing the task force.

1561 (2) There is appropriated from the General Fund for fiscal year 2003-04, a one-time
1562 appropriation of:

1563 (a) \$6,000 to the Senate to pay for compensation and expenses of senators on the task
1564 force;

1565 (b) \$8,500 to the House of Representatives to pay for the compensation and expenses
1566 of representatives on the task force; and

1567 (c) \$30,000 to the Office of Legislative Research and General Counsel to pay for
1568 staffing the task force.

1569 Section 30. **Contingent effective and repeal dates.**

1570 This act takes effect May 5, 2003 except that:

1571 (1) (a) (i) Section 7-9-56 does not take effect on May 5, 2003;

1572 (ii) Section 7-9-57 does not take effect on May 5, 2003;

1573 (iii) the amendments in this act to Section 59-1-403 do not take effect on May 5, 2003;

1574 and

1575 (b) if the Legislature adopts a formula to calculate the competitive equity assessment in

1576 the 2005 General Session as provided in Section 7-9-56, then on May 2, 2005 the following
1577 changes take effect:

1578 (i) delete Subsection 7-1-708(9) and insert:

1579 "(9)(a) Notwithstanding the other provisions of this section, an application of a
1580 nonexempt credit union to establish a branch that is to be located outside of the county in
1581 which the nonexempt credit union has the greatest number of branches may not be approved
1582 unless prior to the approval of the application the nonexempt credit union files a notice of
1583 election to pay a competitive equity assessment as provided in Section 7-9-56.

1584 (b) For purposes of this Subsection (9), a nonexempt credit union is considered to be
1585 establishing a branch if the nonexempt credit union establishes:

1586 (i) notwithstanding Section 7-1-103, a loan production office; or

1587 (ii) any other office or facility that:

1588 (A) is owned or operated by:

1589 (I) the nonexempt credit union; or

1590 (II) a credit union service organization in which the nonexempt credit union holds an
1591 ownership interest;

1592 (B) is open to the public; and

1593 (C) provides any product or service of the nonexempt credit union to a member of the
1594 nonexempt credit union.

1595 (c) This section may not be interpreted as authorizing a loan production office to
1596 engage in any activity that a loan production office is not authorized to engage in under Section
1597 7-1-715."

1598 (ii) (A) in Subsection 7-9-3(6) bracket "or 7-9-53"; and

1599 (B) bracket Subsection 7-9-3(10) defining "Service center" and renumber the
1600 remaining subsections of Section 7-9-3 accordingly;

1601 (iii) in Subsection 7-9-5(12)(b) after "(b)" insert "except as provided in Section
1602 7-9-57,";

1603 (iv) in Subsection 7-9-12(3) bracket "or 7-9-53";

1604 (v) amend Subsection 7-9-20(7)(a)(i) to read: "(i) except as provided in: (A)
1605 Subsection (8); or (B) Section 7-9-57; and";

1606 (vi) (A) bracket:

1607 (I) all of Subsection 7-9-39(4);
1608 (II) all of Subsection 7-9-39(5)(b); and
1609 (III) all of Subsection 7-9-39(6);
1610 (B) renumber Subsection 7-9-39(5)(a) as Subsection 7-9-39(4); and
1611 (C) insert the following: "(5) Except as provided in Section 7-9-39.5, the commissioner
1612 may not approve a merger plan under which a nonexempt credit union merges with another
1613 credit union before the day on which the nonexempt credit union files a notice of election to
1614 pay the competitive equity assessment as provided in Section 7-9-56."
1615 (vii) in Section 7-9-39.5, bracket "If a credit union is merged" and insert
1616 "Notwithstanding Subsection 7-9-39(5), a nonexempt credit union may merge" and after "19"
1617 delete the remainder of the section except for the ".";
1618 (viii) (A) in Subsection 7-9-51(1) bracket "Except as provided in Subsection (3) or (5),
1619 the" and insert "The";
1620 (B) in Subsection 7-9-51(1)(c) bracket "a single county" and insert "one or more
1621 counties"; and
1622 (C) bracket Subsections 7-9-51(3), (4), and (5);
1623 (ix) (A) bracket Subsection 7-9-52(5);
1624 (B) renumber remaining subsections accordingly; and
1625 (C) change all cross references to Subsection 7-9-52(6) in this bill to Subsection
1626 7-9-52(5);
1627 (x) Section 7-9-53 is repealed;
1628 (xi) Section 7-9-56 as enacted by this act takes effect;
1629 (xii) Section 7-9-57 as enacted by this act takes effect; and
1630 (xiii) the amendments in this act to Section 59-1-403 take effect.
1631 (2) (a) The amendments in this act to the following do not take effect on May 5, 2003:
1632 (i) Section 7-9-34;
1633 (ii) Section 59-7-101; and
1634 (iii) Section 59-7-102; and
1635 (b) if the Legislature affirmatively states in the 2005 General Session that state
1636 corporate franchise and income taxes are to be imposed on nonexempt credit unions, the
1637 amendments in this act to the following take effect on May 2, 2005:

1638 (i) Section 7-9-34;
1639 (ii) Section 59-7-101; and
1640 (iii) Section 59-7-102.
1641 (3) If the Legislature affirmatively repeals Section 7-9-58 in the 2005 General Session,
1642 Section 7-9-58 is repealed effective May 2, 2005.
1643 **Section 31. Repeal date for task force.**
1644 The uncodified material that creates the Financial Institutions Task Force is repealed
1645 November 30, 2004.