

Representative Wayne A. Harper proposes the following substitute bill:

**AMENDMENTS RELATED TO FINANCIAL
INSTITUTIONS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Jeff Alexander

This act modifies the Financial Institutions title to address provisions related to credit unions and mutual associations and to make technical changes. This act addresses voting requirements for mutual associations. This act modifies definitions. The act addresses loan limitations. The act addresses credit union service organizations. This act addresses mergers. The act addresses operations of out-of-state credit unions. The act repeals certain provisions related to fields of membership and grandfathering and modifies other provisions related to fields of membership. This act provides for credit unions becoming nonexempt credit unions. This act modifies corporate franchise and nonexempt income tax provisions to address the taxation of credit unions.

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

AMENDS:

7-7-10, as last amended by Chapter 244, Laws of Utah 1985

7-9-3, as last amended by Chapter 329, Laws of Utah 1999

7-9-5, as last amended by Chapter 116, Laws of Utah 2001

7-9-6, as last amended by Chapter 329, Laws of Utah 1999

7-9-11, as last amended by Chapter 329, Laws of Utah 1999

7-9-12, as last amended by Chapter 329, Laws of Utah 1999

7-9-16, as last amended by Chapter 329, Laws of Utah 1999

7-9-20, as last amended by Chapter 329, Laws of Utah 1999

7-9-26, as last amended by Chapter 182, Laws of Utah 1996



- 26 7-9-34, as last amended by Chapter 178, Laws of Utah 1994
- 27 7-9-37, as last amended by Chapter 329, Laws of Utah 1999
- 28 7-9-39, as last amended by Chapter 329, Laws of Utah 1999
- 29 7-9-46, as last amended by Chapter 49, Laws of Utah 1995
- 30 7-9-51, as enacted by Chapter 329, Laws of Utah 1999
- 31 7-9-52, as enacted by Chapter 329, Laws of Utah 1999
- 32 59-7-101, as last amended by Chapter 76, Laws of Utah 2002
- 33 59-7-102, as last amended by Chapters 76 and 286, Laws of Utah 2002

34 ENACTS:

- 35 7-9-55, Utah Code Annotated 1953

36 REPEALS:

- 37 7-9-39.5, as enacted by Chapter 329, Laws of Utah 1999
- 38 7-9-53, as enacted by Chapter 329, Laws of Utah 1999
- 39 7-9-54, as enacted by Chapter 329, Laws of Utah 1999

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

41 Section 1. Section 7-7-10 is amended to read:

42 **7-7-10. Meetings of mutual association members -- Voting -- Notice.**

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

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

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

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

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

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

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

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

60 (A) in person; or

61 (B) by proxy~~[-but no]~~.

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

65 (b) Every proxy shall:

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

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

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

70 (A) when filed with the secretary;

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

72 (C) until;

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

74 (II) superseded by subsequent proxies.

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

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

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

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

81 (i) state:

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

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

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

85 (ii) (A) be published;

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

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

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

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

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

96 **7-9-3. Definitions.**

97 As used in this chapter:

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

99 [~~(a) has a similar:~~

100 [~~(i) interest;~~

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

102 (A) an identifiable interest;

103 (B) an identifiable purpose;

104 [~~(ii) (C) a specific profession; or~~

105 [~~(iii) (D) a specific occupation; or~~

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

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

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

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

110 and:

111 (A) a consumer;

112 (B) a customer; or

113 (C) a client; or

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

115 (2) "Capital and surplus" means:

116 (a) shares;

117 (b) deposits;

118 (c) reserves; and

119 (d) undivided earnings.

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

122 (4) "Credit union service organization" means a service organization that provides
123 services that are:

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

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

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

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

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

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

134 [~~4~~] (5) "Deposits" means that portion of the capital paid into the credit union by
135 members on which a specified rate of interest will be paid.

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

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

139 (b) the bylaws of the credit union.

140 [~~5~~] (7) "Immediate family" means parents, spouse, surviving spouse, children, and
141 siblings of the member.

142 [~~7~~] (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,
143 the proceeds of which will be used for:

144 (i) a commercial purpose;

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

146 (iii) an agricultural purpose.

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

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

150 (ii) that is fully secured by:
151 (A) shares or deposits in the credit union making the extension of credit; or
152 (B) deposits in other financial institutions;
153 (iii) the repayment of which is fully insured or fully guaranteed by, or where there is an
154 advance commitment to purchase in full by, an agency of:
155 (A) the federal government;
156 (B) a state; or
157 (C) a political subdivision of a state; or
158 (iv) that is granted by a corporate credit union to another credit union.
159 [~~(8)~~ "Service center" means a single location at which multiple credit unions can
160 provide products or services directly to their members.]
161 (9) "Nonexempt credit union" means a credit union that is a nonexempt credit union
162 under Section 7-9-55.
163 [~~(9)~~ (10) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts
164 from which owners are permitted to make withdrawals by negotiable or transferable
165 instruments or other orders for the purpose of making transfers to other persons or to the
166 owner.
167 [~~(10)~~ (11) "Shares" means that portion of the capital paid into the credit union by
168 members on which dividends may be paid.
169 Section 3. Section **7-9-5** is amended to read:
170 **7-9-5. Powers of credit unions.**
171 In addition to the powers specified elsewhere in this chapter and subject to any
172 limitations specified elsewhere in this chapter, a credit union may:
173 (1) make contracts;
174 (2) sue and be sued;
175 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and
176 equipment as the directors consider necessary or incidental to the operation and business of the
177 credit union, but the value of the real property may not exceed 7% of credit union assets, unless
178 approved by the commissioner;
179 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in
180 whole or in part, necessary or incidental to its operation;

- 181 (5) incur and pay necessary and incidental operating expenses;
- 182 (6) require an entrance or membership fee;
- 183 (7) receive the funds of its members in payment for:
- 184 (a) shares;
- 185 (b) share certificates;
- 186 (c) deposits;
- 187 (d) deposit certificates;
- 188 (e) share drafts;
- 189 (f) NOW accounts; and
- 190 (g) other instruments;
- 191 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third
- 192 party with prior authorization in writing, including, but not limited to, drafts drawn on the
- 193 credit union for payment to the member or any third party, in accordance with the procedures
- 194 established by the board of directors, including, but not limited to, drafts, third-party
- 195 instruments, and other transaction instruments, as provided in the bylaws;
- 196 (9) charge fees for its services;
- 197 (10) extend credit to its members, at rates established in accordance with the bylaws or
- 198 by the board of directors;
- 199 (11) extend credit secured by real estate;
- 200 (12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan
- 201 participation arrangements [~~with other credit unions, credit union organizations, or financial~~
- 202 ~~organizations~~], in accordance with written policies of the board of directors[~~,if~~] with one or
- 203 more:
- 204 (i) other credit unions;
- 205 (ii) credit union service organizations; or
- 206 (iii) other financial organizations; and
- 207 (b) make co-lending arrangements, including loan participation arrangements, in
- 208 accordance with Subsection (12)(a) subject to the following:
- 209 (i) the credit union or credit union service organization that originates a loan for which
- 210 [participation] co-lending arrangements are made [retains] shall retain an interest of at least
- 211 10% of the loan;

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

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

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

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

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

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

231 (17) discount and sell notes and obligations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

281 Section 4. Section 7-9-6 is amended to read:

282 **7-9-6. Formation of corporation to conduct credit union -- Approval of**
283 **commissioner.**

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

287 (i) this chapter;

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

289 (iii) Chapter 1, General Provisions.

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

292 (i) the formation of the corporation; and

293 (ii) the duties and obligations of:

294 (A) the corporation;

295 (B) the corporation's officers; and

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

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

299 (a) the proposed [limited] field of membership is favorable to the success of the credit
300 union;

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

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

304 (d) formation of the credit union would not result in a substantial adverse financial

305 impact on an existing credit union having the same or substantially the same [limited] field of
306 membership.

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

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

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

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

315 Section 5. Section 7-9-11 is amended to read:

316 **7-9-11. Bylaws and amendments to be approved.**

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

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

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

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

328 ~~[(c)]~~ (b) If the bylaws or an amendment to the bylaws of a credit union adds an
329 association to the [limited] field of membership of the credit union, the commissioner may
330 require that the credit union provide written confirmation from the association that the
331 association has agreed to be served by the credit union.

332 Section 6. Section 7-9-12 is amended to read:

333 **7-9-12. Contents of bylaws.**

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

335 (1) the name of the credit union;

- 336 (2) the purpose for which [it] the credit union was formed;
- 337 (3) a [~~limited~~] field of membership of the credit union that complies with Section
- 338 7-9-51 [~~or 7-9-53~~];
- 339 (4) the number of directors and procedures for their election;
- 340 (5) the term of directors;
- 341 (6) whether a credit manager, credit committee, or combination of both shall be
- 342 responsible for credit functions of the credit union;
- 343 (7) the duties of the officers;
- 344 (8) the time of year of the annual meeting of members;
- 345 (9) the manner in which members shall be notified of meetings;
- 346 (10) the number of members which shall constitute a quorum at meetings;
- 347 (11) the manner of amending;
- 348 (12) the manner in which officers may act as surety; and
- 349 (13) such other matters, rules, and regulations as the board of directors consider
- 350 necessary.

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

352 **7-9-16. Members -- Eligibility -- Liability -- Grounds for closing account -- Denial**
353 **of membership.**

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

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

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

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

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

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

368 Section 8. Section **7-9-20** is amended to read:

369 **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

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

372 (2) The bylaws may provide balloting by:

373 (a) mail;

374 (b) ballot box; or

375 (c) both mail and ballot box.

376 (3) Voting may not be by proxy.

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

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

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

382 (a) act upon applications for membership;

383 (b) act upon expulsion of members;

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

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

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

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

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

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

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

393 (j) declare dividends and their amount;

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

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

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

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

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

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

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

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

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

409 (I) \$1,000; or

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

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

412 (I) \$25,000;

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

414 (III) 25% of the regular reserve.

415 (ii) Beginning March 24, 1999, a credit union may not extend a member-business loan
416 to a person:

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

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

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

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

426 (II) [~~\$250,000~~] \$500,000.

427 (c) (i) Beginning March 24, 1999, a credit union may not extend a member-business
428 loan if as a result of that member-business loan the credit union's aggregate member-business

429 loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum
430 of:

431 (A) the actual undivided earnings; and

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

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

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

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

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

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

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

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

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

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

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

456 (B) by:

457 (I) a credit union service organization; or

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

459 ~~[(d)]~~ (8) (a) A credit union may extend credit that is not a member-business loan in an

460 amount that exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is
461 fully secured by share or deposit savings in the credit union.

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

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

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

470 (I) the federal government;

471 (II) a state; or

472 (III) a political subdivision of the state.

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

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

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

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

482 ~~[(8)]~~ (9) As provided in this chapter or in the credit union bylaws, the board of
483 directors:

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

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

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

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

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

490 (d) shall have an executive committee;

- 491 (e) may appoint an investment officer;
- 492 (f) shall elect a secretary;
- 493 (g) may appoint other officers and committees that it considers necessary;
- 494 (h) shall establish written credit policies, loan security requirements, loan investment,
- 495 personnel, and collection policies; and
- 496 (i) on or before January 31 of each year, shall provide for:
- 497 (i) share insurance for the shares and deposits of the credit union from the National
- 498 Credit Union Administration or successor federal agency; or
- 499 (ii) security expressly pledged for the payment of the shares and deposits in accordance
- 500 with Section 7-9-45.

501 [~~(9)~~] (10) A person may not be a member of more than one committee except as

502 otherwise provided in this chapter or in the credit union bylaws.

503 [~~(10)~~] (11) The president and secretary may not be the same person.

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

505 **7-9-26. Loans to members -- Investment officers -- Investments.**

506 (1) [~~The~~] Subject to Subsections 7-9-20(7) and (8), capital and surplus of the credit

507 union shall be loaned to the members for the purposes and upon the endorsements or security

508 and the terms as the bylaws provide.

509 (2) Within 30 days after the annual meeting of the members the board of directors may

510 appoint one or more investment officers who shall have responsibilities for the credit union

511 investment portfolio based upon policy established by the board of directors and as provided in

512 this chapter or in the bylaws.

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

514 (a) in securities, obligations, or other instruments of, or issued by, or fully guaranteed

515 as to principal and interest by, the United States of America or any of its agencies, or in any

516 trusts established by investing directly or collectively in these instruments;

517 (b) in obligations of any state of the United States, the District of Columbia, the

518 Commonwealth of Puerto Rico, and the territories organized by Congress, or any of their

519 political subdivisions;

520 (c) in certificates of deposit or accounts issued by a federally insured state or national

521 depository institution;

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

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

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

530 Section 10. Section **7-9-34** is amended to read:

531 **7-9-34. Tax exemption of credit unions.**

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

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

537 [~~(3) For purposes of the corporate tax, credit unions shall be governed by Section~~
538 ~~59-7-102.]~~

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

541 (2) In accordance with Section 59-7-102, a nonexempt credit union is subject to Title
542 59, Chapter 7, Corporate Franchise and Income Taxes:

543 (a) beginning on the first day of the month immediately following the day on which the
544 credit union becomes a nonexempt credit union under Section 7-9-55; and

545 (b) ending the last day of the month in which the commissioner determines in
546 accordance with Section 7-9-55 that the nonexempt credit union is no longer a nonexempt
547 credit union.

548 Section 11. Section **7-9-37** is amended to read:

549 **7-9-37. Transfer of members of dissolved, merged, consolidated, transferred, or**
550 **acquired credit union.**

551 Members of a dissolved, merged, consolidated, transferred, or acquired credit union
552 may become members of another existing credit union with a related [~~limited~~] field of

553 membership as approved by the commissioner.

554 Section 12. Section **7-9-39** is amended to read:

555 **7-9-39. Voluntary merger.**

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

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

560 (b) the commissioner approves the merger plan;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

595 ~~[(b) may service any member-business loan of the merging credit union until the~~
596 ~~member-business loan is paid in full.]~~

597 ~~[(5)(a)]~~ (4) This section shall be interpreted, whenever possible, to permit a credit
598 union chartered under this chapter to merge with a credit union chartered under any other law if
599 the preservation of membership interest is concerned.

600 ~~[(b) The commissioner may under Subsection (1)(b) approve a merger plan that~~
601 ~~includes the addition of the residents of a county in the limited field of membership of the~~
602 ~~merging credit union to the limited field of membership of the surviving credit union if the~~
603 ~~commissioner finds that:]~~

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

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

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

611 ~~[(a) The domicile-county of the surviving credit union is:]~~

612 ~~[(i) if the credit union does not have a limited field of membership under Subsection~~
613 ~~7-9-53(2)(c) or (2)(d), the county in which the credit union has located the greatest number of~~
614 ~~branches as of the date the merger is effective; or]~~

615 ~~[(ii) if the credit union has a limited field of membership under Subsection~~
616 ~~7-9-53(2)(c) or (2)(d), the county that is the domicile-county of the surviving credit union~~
617 ~~under Section 7-9-53;]~~

618 ~~[(b) Within the surviving credit union's domicile-county, the surviving credit union~~
619 ~~may establish, relocate, or otherwise change the physical location of the credit union's:]~~

620 ~~[(i) main office; or]~~

621 ~~[(ii) branch.]~~

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

624 ~~[(i) establish a main office or branch if the main office or branch was not located in the~~
625 ~~county as of the date that the merger is effective;]~~

626 ~~[(ii) participate in a service center in which it does not participate as of the date that the~~
627 ~~merger is effective; or]~~

628 ~~[(iii) relocate the surviving credit union's main office or a branch located in the county~~
629 ~~as of the date that the merger is effective unless the commissioner finds that the main office or~~
630 ~~branch is being relocated within a three-mile radius of the original location of the main office~~
631 ~~or branch.]~~

632 ~~[(d) After the merger, the surviving credit union may admit as a member:]~~

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

635 ~~[(ii) a person belonging to an association that:]~~

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

637 ~~[(B) resides in the domicile-county of the surviving credit union, as defined in Section~~
638 ~~7-9-53;]~~

639 ~~[(e) In addition to any requirement under this Subsection (6), a surviving credit union~~
640 ~~shall comply with any requirement under this title for the establishment, relocation, or change~~
641 ~~in the physical location of a main office or branch of a credit union.]~~

642 Section 13. Section **7-9-46** is amended to read:

643 **7-9-46. Out-of-state credit unions -- Authorization to do business in state --**
644 **Supervision -- Examination.**

645 (1) As used in this section "out-of-state credit union" means any credit union whose

646 home state is not Utah.

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

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

650 (b) the branch has been authorized by:

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

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

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

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

661 Section 14. Section **7-9-51** is amended to read:

662 **7-9-51. Field of membership.**

663 (1) ~~[Except as provided in Subsection (3), the limited]~~ The field of membership of a
664 credit union may include only the following:

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

666 (b) the employees of the credit union;

667 (c) residents of ~~[a single county]~~ one or more counties; ~~[and]~~

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

669 (e) if approved by the commissioner in accordance with Subsection 7-9-52(5),

670 residents of:

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

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

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

675 ~~[(3) A credit union may have a limited field of membership that is less restrictive than~~
676 ~~the limited field of membership described in Subsection (1) if the limited field of membership~~

677 of the credit union:]

678 [~~(a) is determined under Subsection 7-9-53(2)(c) or (2)(d);]~~

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

680 [~~(c) is permitted by the commissioner after a merger in accordance with Section~~

681 ~~7-9-39.5.]~~

682 [~~(4) If a credit union includes the residents of one county in its limited field of~~
683 ~~membership, the credit union may not change its limited field of membership to include a~~
684 ~~different county than the county that is first included in the limited field of membership of the~~
685 ~~credit union:]~~

686 Section 15. Section **7-9-52** is amended to read:

687 **7-9-52. Expansion of a field of membership.**

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

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

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

693 (c) subject to the requirements of Subsection (5), residents of:

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

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

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

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

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

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

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

705 and

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

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

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

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

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

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

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

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

719 (b) received the written findings and recommendations of the supervisor under
720 Subsection (2)(b); and

721 (c) finds that:

722 (i) the credit union is adequately capitalized;

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

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

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

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

732 ~~[(5) This section may not be interpreted to permit a credit union to:]~~

733 ~~[(a) expand its limited field of membership to include residents of more than one~~
734 ~~county; or]~~

735 ~~[(b) change the county included in the limited field of membership of a credit union, if~~
736 ~~any;]~~

737 (5) If the commissioner receives a request to approve an amendment to the bylaws of a
738 credit union that expands the credit union's field of membership to include residents of a city or

739 town described in Subsection (1)(c), before approving the expanded field of membership, in
740 addition to the requirements of Subsection (2), the commissioner shall:

741 (a) require that a supervisor examine and submit written findings and recommendations
742 to the commissioner as to:

743 (i) whether more than one depository institution is located within a reasonable distance
744 from the city or town described in Subsection (1)(c); and

745 (ii) whether in light of the demographics of the city or town described in Subsection
746 (1)(c) there would be a probable beneficial effect on the availability, efficiency, and
747 profitability of financial services in the city or town described in Subsection (1)(c); and

748 (b) find that:

749 (i) there exists no more than one depository institution within a reasonable distance
750 from the city or town described in Subsection (1)(c); and

751 (ii) in light of the demographics of the city or town described in Subsection (1)(c) there
752 would be a probable beneficial effect on the availability, efficiency, and profitability of
753 financial services in the city or town described in Subsection (1)(c).

754 Section 16. Section **7-9-55** is enacted to read:

755 **7-9-55. Nonexempt credit unions.**

756 (1) For purposes of this section, "related credit unions" means two or more credit
757 unions:

758 (a) that:

759 (i) each have a main office in this state; and

760 (ii) are established in whole or in part with assets from a credit union that as of May 5,
761 2003, has a field of membership that includes all residents of two or more counties; and

762 (b) if:

763 (i) the names of the two or more credit unions include one or more similar words,
764 except for "credit union"; or

765 (ii) the two or more credit unions hold an ownership interest in an association or
766 organization described in Subsection 7-9-5(21) except for:

767 (A) a corporate credit union;

768 (B) a trade association; or

769 (C) an association representing credit unions generally.

770 (2) (a) A credit union organized under this chapter is a nonexempt credit union under
771 this section on the day on which:

772 (i) if the credit union is not a related credit union:

773 (A) the credit union files a quarterly report in accordance with Section 7-1-317 on or
774 after the date described in Subsection (2)(c), if the quarterly report is the second consecutive
775 quarterly report that shows that the assets of the credit union equal or exceed \$100,000,000;
776 and

777 (B) on or after May 5, 2003, the credit union has a field of membership that includes
778 all residents of two or more counties; or

779 (ii) the related credit union files a quarterly report in accordance with Section 7-1-317
780 on or after the date described in Subsection (2)(c), if the quarterly report is the second
781 consecutive quarterly report that shows assets that if aggregated with the assets of all related
782 credit unions equal or exceed \$100,000,000.

783 (b) For purposes of Subsection (1)(a)(ii) or (2)(a)(i)(B) only:

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

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

791 (c) (i) In determining whether two consecutive quarterly reports meeting the
792 requirements of Subsection (2)(a) have been filed, a credit union shall include quarterly reports
793 filed by the credit union in accordance with Section 7-1-317 on or after January 1, 2003.

794 (ii) If by including in accordance with this Subsection (2)(c) quarterly reports filed on
795 or after January 1, 2003 the credit union would become a nonexempt credit union under
796 Subsection (2)(a) on a day before May 5, 2003, that credit union becomes a nonexempt credit
797 union on May 5, 2003.

798 (d) (i) Except as provided in Subsection (2)(d)(ii) and beginning with calendar year
799 2005, for each calendar year the amount of assets required under Subsection (2)(a) for a credit
800 union to become a nonexempt credit union shall increase or decrease by a percentage equal to

801 the percentage difference between:

802 (A) the consumer price index for the preceding calendar year; and

803 (B) the consumer price index for calendar year 2003.

804 (ii) Notwithstanding Subsection (2)(d)(i), the amount of assets required under

805 Subsection (2)(a) may not decrease below \$100,000,000.

806 (iii) For purposes of this Subsection (2)(d), the consumer price index shall be

807 calculated as provided in Sections (1)(f)(4) and (1)(f)(5), Internal Revenue Code.

808 (iv) On or before January 31 of each year beginning with calendar year 2005, the

809 commissioner shall notify credit unions organized under this chapter of the amount of assets

810 required under Subsection (2)(a) as adjusted by the consumer price index in accordance with

811 this Subsection (2)(d).

812 (v) In determining whether a quarterly report shows that a credit union has assets that

813 equal or exceed the amount required by Subsection (2)(a), the amount required under

814 Subsection (2)(a) shall be the amount adjusted by the consumer price index in accordance with

815 this Subsection (2)(d) for the calendar year in which the quarter occurred.

816 (3) (a) If a credit union becomes a nonexempt credit union under this section, the

817 nonexempt credit union is a nonexempt credit union until the sooner of:

818 (i) the day on which the nonexempt credit union is no longer a credit union organized

819 under this chapter; or

820 (ii) the day on which the commissioner in accordance with Subsection (3)(b) issues an

821 order finding that the nonexempt credit union is no longer a nonexempt credit union.

822 (b) The commissioner shall issue an order finding that a nonexempt credit union is no

823 longer nonexempt if:

824 (i) the nonexempt credit union files a request with the commissioner requesting that the

825 commissioner find that the credit union is no longer a nonexempt credit union; and

826 (ii) (A) the nonexempt credit union shows that for one fiscal year the assets of the

827 credit union as shown on the quarterly reports filed in accordance with Section 7-1-317 are at

828 least 30% below the amount of assets required under Subsection (2)(a); or

829 (B) the nonexempt credit union is subject to supervisory action under:

830 (I) Chapter 2, Possession of Depository Institution by Commissioner; or

831 (II) Chapter 19, Acquisition of Failing Depository Institutions and Holding Companies.

832 (c) A credit union that is no longer exempt under this Subsection (3) may become a
833 nonexempt credit union beginning on the day on which after the order described in Subsection
834 (3)(b) is issued:

835 (i) if the commissioner issued the order on the basis of Subsection (3)(b)(i), the credit
836 union meets the requirements of Subsection (2); or

837 (ii) if the commissioner issued the order on the basis of Subsection (3)(b)(ii), the
838 commissioner notifies the credit union in writing that the credit union is no longer subject to
839 the supervisory action described in Subsection (3)(b)(ii)(B).

840 Section 17. Section **59-7-101** is amended to read:

841 **59-7-101. Definitions.**

842 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

876 (8) "Corporation" includes:

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

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

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

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

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

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

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

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

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

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

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

897 (I) farmers; or

898 (II) fruit growers; or

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

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

902 (A) (I) market the products of members of the cooperative or the products of other
903 producers; and

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

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

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

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

914 (A) the terms:

915 (I) "member"; and

916 (II) "producer"; and

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

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

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

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

924 (i) is incorporated in the United States; and

925 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
926 conducted outside the United States.

927 (b) "Foreign operating company" does not include a corporation that qualifies for the
928 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

929 (15) "Foreign sales corporation" means a corporation as defined in Section 922,
930 Internal Revenue Code.

931 (16) "Income" includes losses.

932 (17) "Internal Revenue Code" means Title 26 of the United States Code as effective
933 during the year in which Utah taxable income is determined.

934 (18) "Nonbusiness income" means income as defined in Section 59-7-302.

935 (19) "Nonresident shareholder" means any shareholder of an S corporation who on the
936 last day of the taxable year of the S corporation, is:

937 (a) an individual not domiciled in Utah; or

938 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

939 (20) "Related expenses" means:

940 (a) expenses directly attributable to nonbusiness income; and

941 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
942 and business income which bears the same ratio to the aggregate amount of such interest or
943 other expense, determined without regard to this Subsection (20), as the average amount of the
944 asset producing the nonbusiness income bears to the average amount of all assets of the
945 taxpayer within the taxable year.

946 (21) "Resident shareholder" means any shareholder of an S corporation who is not a
947 nonresident shareholder.

948 (22) "S corporation" means a small business corporation as defined in Section 1361,
949 Internal Revenue Code.

950 (23) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
951 Section 168, Internal Revenue Code.

952 (24) "State of the United States" includes any of the 50 states or the District of
953 Columbia and "United States" includes the 50 states and the District of Columbia.

954 (25) (a) "Taxable year" means the calendar year or the fiscal year ending during such
955 calendar year upon the basis of which the adjusted income is computed.

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

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

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

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

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

968 (i) are related through common ownership; and

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

972 (A) centralized management;

973 (B) functional integration;

974 (C) economies of scale.

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

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

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

981 (32) (a) "Utah taxable income" means Utah taxable income before net loss deduction
982 less Utah net loss deduction.

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

986 (33) "Utah taxable income before net loss deduction" means apportioned income plus

987 nonbusiness income allocable to Utah net of related expenses.

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

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

991 (A) corporations organized or incorporated in the United States, including those
992 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
993 936, Internal Revenue Code, in accordance with Subsection (34)(b); and

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

996 (ii) an affiliated group electing to file a water's edge combined report under Subsection
997 59-7-402(2).

998 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
999 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a
1000 unitary group.

1001 (35) "Worldwide combined report" means the combination of the income and activities
1002 of all members of a unitary group irrespective of the country in which the corporations are
1003 incorporated or conduct business activity.

1004 Section 18. Section **59-7-102** is amended to read:

1005 **59-7-102. Exemptions.**

1006 (1) Except as provided in this section, the following are exempt from this chapter:

1007 (a) an organization exempt under Section 501, Internal Revenue Code;

1008 (b) an organization exempt under Section 528, Internal Revenue Code;

1009 (c) an insurance company that is otherwise taxed on the insurance company's premiums
1010 under Chapter 9, Taxation of Admitted Insurers;

1011 (d) a building authority as defined in Section 17A-3-902;

1012 (e) a farmers' cooperative; or

1013 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
1014 ownership interest in:

1015 (i) a project, as defined in Section 11-13-103; or

1016 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

1017 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts

1018 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
1019 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to
1020 the tax imposed by Sections 59-7-104, 59-7-201, 59-7-701, and 59-8-104, because of:

1021 (a) that person's ownership of tangible personal property located at the premises of a
1022 printer's facility in this state with which the person has contracted for printing; or

1023 (b) the activities of the person's employees or agents who are:

1024 (i) located solely at the premises of a printer's facility; and

1025 (ii) performing services:

1026 (A) related to:

1027 (I) quality control;

1028 (II) distribution; or

1029 (III) printing services; and

1030 (B) performed by the printer's facility in this state with which the person has contracted
1031 for printing.

1032 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
1033 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
1034 8, Unrelated Business Income, to the extent provided in Part 8.

1035 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
1036 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
1037 Revenue Code, the organization's income is also taxable under this chapter.

1038 (5) (a) Notwithstanding Subsection (1)(a), a nonexempt credit union, as defined in
1039 Section 7-9-3, is not exempt from this chapter:

1040 (i) beginning on the first day of the month immediately following the day on which the
1041 nonexempt credit union becomes a nonexempt credit union under Section 7-9-55; and

1042 (ii) ending the last day of the month in which the commissioner determines in
1043 accordance with Section 7-9-55 that the nonexempt credit union is no longer a nonexempt
1044 credit union.

1045 (b) Notwithstanding Section 59-7-101, the unadjusted income of a nonexempt credit
1046 union that is subject to this chapter in accordance with Subsection (5)(a) is an amount equal to
1047 the federal taxable income the nonexempt credit union would have if the nonexempt credit
1048 union were subject to a federal income tax in the same manner as a state-chartered bank:

1049 (i) determined on a separate return basis before intercompany eliminations as
1050 determined by the Internal Revenue Code; and

1051 (ii) before:

1052 (A) the net operating loss deduction; and

1053 (B) special deductions for dividends received.

1054 **Section 19. Repealer.**

1055 This act repeals:

1056 **Section 7-9-39.5, Supervisory merger.**

1057 **Section 7-9-53, Grandfathering.**

1058 **Section 7-9-54, Electing to terminate grandfathering.**