

**REGULATION OF CREDIT UNION SERVICE ORGANIZATIONS
AND OTHER CREDIT UNION RELATED ENTITIES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act modifies the Financial Institution Title to address the regulation of credit union service organizations by the Department of Financial Institutions. The act addresses the jurisdiction of the department as it applies to credit union service organizations. This act defines terms and addresses use of the terms. The act addresses participation arrangements originated by a credit union service organization. The act addresses the authority of the department to regulate the formation and activities of a credit union service organization and to conduct examinations of credit union service organizations. The act grants rulemaking authority to the department. The act restricts use of entities other than credit union service organizations or loan production offices to provide services to members of credit unions. The act provides for limited grandfathering. The act makes technical changes. The act contains a coordination clause.

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

AMENDS:

7-1-501, as last amended by Chapter 260, Laws of Utah 2000

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

ENACTS:

7-9-55, Utah Code Annotated 1953

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

Section 1. Section **7-1-501** is amended to read:

7-1-501. Institutions and persons subject to jurisdiction of department.

(1) ~~[The following]~~ As provided in this title and the rules of the department, the persons and institutions described in Subsection (2) are subject to:

(a) the jurisdiction of the department ~~[and are subject to]; and~~

~~(b)~~ supervision and examination by the department [as provided in this title and the rules of the department].

(2) Subsection (1) applies to:

~~(1)~~ (a) all depository institutions chartered under the laws of this state, including any out-of-state branches;

~~(2)~~ (b) all Utah depository institutions chartered by the federal government, but only to the extent the application of this title is authorized by:

~~(a)~~ (i) federal law; or

~~(b)~~ (ii) the appropriate federal regulatory agency;

~~(3)~~ (c) all Utah branches of out-of-state depository institutions chartered under the laws of another state;

~~(4)~~ (d) all Utah branches of out-of-state depository institutions chartered by the federal government, but only to the extent the application of this title is authorized by:

~~(a)~~ (i) federal law; or

~~(b)~~ (ii) the appropriate federal regulatory agency;

~~(5)~~ (e) all service corporations and service organizations, including credit union service organizations as defined in Section 7-9-3;

~~(6)~~ (f) all trust companies;

~~(7)~~ (g) all escrow companies;

~~(8)~~ (h) all persons or institutions engaged in this state in the business of:

~~(a)~~ (i) guaranteeing or insuring deposits, savings accounts, share accounts, or other accounts in depository institutions;

~~(b)~~ (ii) operating a loan production office for:

(A) a Utah depository institution[;];

(B) an out-of-state depository institution[;]; or

(C) a foreign depository institution;

~~(c)~~ (iii) allowing persons to effect third party payments from loan, charge, or other accounts by checks, drafts, or other instruments or by electronic means; or

~~[(d)]~~ (iv) a check casher, as defined in Section 7-23-102;

~~[(9)]~~ (i) all corporations or other business entities owning or controlling an institution subject to the jurisdiction of the department;

~~[(10)]~~ (j) all subsidiaries and affiliates of an institution subject to the jurisdiction of the department; and

~~[(H)]~~ (k) any person or institution that, with or without authority to do so, transacts business as, or holds itself out as being, a depository institution, trust company, or any other person or institution described in this section as being subject to the jurisdiction of the department.

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

7-9-3. Definitions.

As used in this chapter:

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

(a) has a similar:

(i) interest;

(ii) profession;

(iii) occupation; or

(iv) formal association with an identifiable purpose; or

(b) is employed by a common employer.

(2) "Capital and surplus" means:

(a) shares;

(b) deposits;

(c) reserves; and

(d) undivided earnings.

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

(4) "Credit union service organization" means an entity:

(a) that provides any of the services listed in Subsection 7-9-55(2); and

(b) in which a credit union organized under this chapter holds an ownership interest.

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

~~[(5)]~~ (6) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the member.

~~[(6)]~~ (7) "Limited field of membership" means persons designated as eligible for credit union membership in accordance with Section 7-9-51 or 7-9-53.

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

- (i) a commercial purpose;
- (ii) other business investment property or venture purpose; or
- (iii) an agricultural purpose.

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

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

(ii) that is fully secured by:

- (A) shares or deposits in the credit union making the extension of credit; or
- (B) deposits in other financial institutions;

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

- (A) the federal government;
- (B) a state; or
- (C) a political subdivision of a state; or

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

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

(9) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from which owners are permitted to make withdrawals by negotiable or transferable instruments or

other orders for the purpose of making transfers to other persons or to the owner.

(10) "Shares" means that portion of the capital paid into the credit union by members on which dividends may be paid.

Section 3. Section **7-9-5** is amended to read:

7-9-5. Powers of credit unions.

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

- (1) make contracts;
- (2) sue and be sued;
- (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;
- (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;
- (5) incur and pay necessary and incidental operating expenses;
- (6) require an entrance or membership fee;
- (7) receive the funds of its members in payment for:
 - (a) shares;
 - (b) share certificates;
 - (c) deposits;
 - (d) deposit certificates;
 - (e) share drafts;
 - (f) NOW accounts; and
 - (g) other instruments;
- (8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including, but not limited to, drafts drawn on the credit union for payment to the member or any third party, in accordance with the procedures

established by the board of directors, including, but not limited to, drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;

(9) charge fees for its services;

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

(11) extend credit secured by real estate;

(12) make loan participation arrangements with other credit unions, credit union service organizations, or financial organizations in accordance with written policies of the board of directors, if the credit union or credit union service organization that originates a loan for which participation arrangements are made retains an interest of at least 10% of the loan;

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

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

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

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

(17) discount and sell notes and obligations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (31) provide any act necessary to obtain and maintain membership in the credit union;
- (32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;
- (33) undertake other activities relating to its purpose as its bylaws may provide;
- (34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner;
- (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs; and
- (36) advertise to the general public the products and services offered by the credit union if the advertisement prominently discloses that to use the products or services of the credit union a person is required to:
 - (a) be eligible for membership in the credit union; and
 - (b) become a member of the credit union.

Section 4. Section **7-9-55** is enacted to read:

7-9-55. Credit union service organizations -- Limitations on providing services through other entities.

- (1) This section applies to a credit union service organization in which a credit union organized under this chapter has an ownership interest.
- (2) (a) A credit union service organization may provide a service only if the service is:
 - (i) (A) listed in Subsection (2)(b); or
 - (B) approved by the commissioner in accordance with Subsection (4)(b); and
 - (ii) (A) except for the extension of credit by the credit union service organization, limited primarily to:
 - (I) credit unions that hold an ownership interest in the credit union service organization;
 - (II) members of credit unions that hold an ownership interest in the credit union service organization;
 - (III) members of credit unions that contract with the credit union service organization; or
 - (IV) credit unions that contract with the credit union service organization but do not hold

an ownership interest in the credit union service organization; or

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

(b) Subsection (2)(a) applies to:

(i) the following checking and currency services:

(A) check cashing;

(B) coin and currency services; and

(C) services related to:

(I) a money order;

(II) a savings bond;

(III) a travelers check; or

(IV) the purchase and sale of United States Mint commemorative coins;

(ii) the following clerical, professional, and management services:

(A) accounting services;

(B) courier services;

(C) credit analysis;

(D) facsimile transmission and copying services;

(E) services related to conducting an internal audit for a credit union;

(F) locator services;

(G) services related to management and personnel training and support;

(H) marketing services;

(I) research services; or

(J) services related to a supervisory committee audit;

(iii) consumer mortgage loan origination;

(iv) the following electronic transaction services:

(A) automated teller machine services;

(B) credit card services;

- (C) debit card services;
- (D) data processing services;
- (E) electronic fund transfer services;
- (F) services related to electronic income tax filings;
- (G) payment item processing;
- (H) wire transfer services; or
- (I) cyber financial services;
- (v) the following financial counseling services:
 - (A) developing and administering personnel benefit plans including:
 - (I) individual retirement accounts;
 - (II) Keogh plans; or
 - (III) deferred compensation plans;
 - (B) estate planning;
 - (C) financial planning and counseling;
 - (D) income tax preparation;
 - (E) investment counseling; or
 - (F) retirement counseling;
- (vi) fixed asset services related to the:
 - (A) management, development, sale, or lease of fixed assets; or
 - (B) sale, lease, or servicing of computer hardware or software;
- (vii) the following insurance brokerage or agency services:
 - (A) operating as an agency for sale of insurance;
 - (B) providing vehicle warranty programs; or
 - (C) providing group purchasing programs;
- (viii) the following leasing services:
 - (A) leasing of personal property; or
 - (B) real estate leasing of excess credit union service organization property;
- (ix) the following loan support services:

- (A) debt collection services;
- (B) loan processing, servicing, and sales; or
- (C) sale of repossessed collateral;
- (x) the extension of credit including member-business loans;
- (xi) the following record retention, security, and disaster recovery services:
 - (A) alarm-monitoring and other security services;
 - (B) disaster recovery services;
 - (C) services related to:
 - (I) microfilm;
 - (II) microfiche;
 - (III) optical and electronic imaging; or
 - (IV) CD-ROM data storage retrieval;
 - (D) providing forms and supplies; or
 - (E) services related to record retention and storage;
- (xii) securities brokerage services;
- (xiii) operation of shared credit union branch services, including service centers;
- (xiv) student loan origination;
- (xv) travel agency services;
- (xvi) the following trust and trust-related services:
 - (A) acting as an administrator for a prepaid legal service plan;
 - (B) acting in a fiduciary capacity including as:
 - (I) trustee;
 - (II) guardian;
 - (III) conservator; or
 - (IV) estate administrator; or
 - (C) trust services; or
- (xvii) making credit union service organization investments in noncredit union service organization service providers.

(3) (a) One or more credit unions organized under this chapter may form a credit union service organization on or after the day on which each credit union forming the credit union service organization obtains in accordance with this section the approval by the commissioner for the formation of the credit union service organization.

(b) To obtain approval from the commissioner for the formation of a credit union service organization, each credit union that is forming a credit union service organization shall file an application with the commissioner that specifies:

(i) whether the credit union meets the capital and surplus standards established by rule by the commissioner;

(ii) the services to be provided by the credit union service organization; and

(iii) any information required by rule by the commissioner.

(c) The commissioner may by rule establish the requirements for forming of a credit union service organization to ensure that:

(i) the credit union service organization as formed:

(A) has the financial capacity to provide the services described in the application requesting the formation of the credit union service organization in a safe and sound manner; and

(B) has the managerial expertise to provide the services described in the application requesting the formation of the credit union service organization in a safe and sound manner; and

(ii) any potential harm that granting the approval may have on other institutions subject to the jurisdiction of the department does not clearly outweigh the probable beneficial effect of the credit union service organization providing the services.

(4) (a) A credit union service organization may provide a service that is described in Subsection (2)(b) but not listed in the application requesting the formation of the credit union service organization by filing written notice with the commissioner at least 30 days before the day on which the credit union service organization first provides the service.

(b) A credit union service organization may provide a service not described in Subsection (2)(b) if:

(i) the credit union service organization files a written request for approval to provide the

service with the commissioner; and

(ii) the commissioner approves the credit union service organization providing that service.

(c) The commissioner may at any time limit the services engaged in by a credit union service organization on the basis of:

(i) a supervisory reason;

(ii) a legal reason; or

(iii) a safety and soundness reason.

(5) The commissioner may conduct examinations of a credit union service organization in accordance with Section 7-1-314.

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commissioner may make rules for purposes of this section:

(a) defining what constitutes an ownership interest held by a credit union;

(b) specifying the information required to be included in an application seeking to form a credit union service organization;

(c) specifying in accordance with Subsection (3), the requirements for forming a credit union service organization;

(d) specifying the procedure for obtaining approval to provide a service under Subsection (4)(a); and

(e) specifying the conditions under which a credit union service organization may provide a service described in Subsection (2).

(7) (a) Except as provided in Subsection (7)(b), a credit union may not provide any service to a member of the credit union through:

(i) a person who is controlled by or is under common control with the credit union whether or not the control is exercised:

(A) directly; or

(B) indirectly through one or more intermediary controls; or

(ii) an entity in which the credit union holds an ownership interest.

(b) Notwithstanding Subsection (7)(a), a credit union may provide services to a member of a credit union:

(i) through a credit union service organization to the extent permitted by this section; or

(ii) through a loan production office to the extent those services are authorized by

Section 7-1-715.

(c) Notwithstanding Section 7-1-103, for purposes of this section, "control" means the power, directly, or indirectly, to:

(i) direct or exercise a controlling influence over:

(A) the management or policies of an entity; or

(B) the election of a majority of the directors or trustees of an entity;

(ii) vote 20% or more of any class of voting securities of an entity by an individual; or

(iii) vote more than 5% of any class of voting securities of an entity by a person other than an individual.

(d) Nothing within this section may be interpreted as prohibiting a credit union from entering into a contract or agreement to provide services to members of the credit union if the person with whom the credit union enters into the contract agreement is not a person described in Subsection (7)(a).

(8) (a) A credit union holding an ownership interest in a credit union service organization operating on May 5, 2003 is not required to file an application requesting to form that credit union service organization.

(b) A credit union service organization operating on May 5, 2003:

(i) shall provide the commissioner written notice of the services the credit union service organization provides by no later than July 1, 2003; and

(ii) may provide a service not described in Subsection (2)(b) on or after July 1, 2003 only if the credit union service organization has obtained approval from the commissioner in accordance with Subsection (4).

Section 5. Coordination clause.

If this bill and H.B. 162, Amendments Related to Financial Institutions, or a substitute of

H.B. 162 both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, make the following changes:

(1) the amendments in this bill to Subsection 7-9-3(4) shall supersede the amendments to Subsection 7-9-3(4) in H.B. 162; and

(2) the amendments in H.B. 162 to Subsection 7-9-5(12) shall supersede the amendments to Subsection 7-9-5(12) in this bill.