

1                                   **REGULATION OF CREDIT UNION SERVICE**

2   **ORGANIZATIONS**

3   2003 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Lyle W. Hillyard**

6   **This act modifies the Financial Institution Title to address the regulation of credit union**  
7   **service organizations by the Department of Financial Institutions. The act addresses the**  
8   **jurisdiction of the department as it applies to credit union service organizations. The act**  
9   **addresses participation arrangements originated by a credit union service organization.**  
10 **The act addresses the authority of the department to regulate the formation and activities**  
11 **of a credit union service organization and to conduct examinations of credit union service**  
12 **organizations. The act grants rulemaking authority to the department. The act provides**  
13 **for limited grandfathering. This act contains a coordination clause.**

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

15 AMENDS:

16           **7-1-501**, as last amended by Chapter 260, Laws of Utah 2000

17           **7-9-3**, as last amended by Chapter 329, Laws of Utah 1999

18           **7-9-5**, as last amended by Chapter 116, Laws of Utah 2001

19 ENACTS:

20           **7-9-55**, Utah Code Annotated 1953

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

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

23           **7-1-501. Institutions and persons subject to jurisdiction of department.**

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

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

27           (b) supervision and examination by the department [as provided in this title and the



28 ~~rules of the department:]~~.

29 (2) Subsection (1) applies to:

30 [~~1~~] (a) all depository institutions chartered under the laws of this state, including any  
31 out-of-state branches;

32 [~~2~~] (b) all Utah depository institutions chartered by the federal government, but only  
33 to the extent the application of this title is authorized by:

34 [~~a~~] (i) federal law; or

35 [~~b~~] (ii) the appropriate federal regulatory agency;

36 [~~3~~] (c) all Utah branches of out-of-state depository institutions chartered under the  
37 laws of another state;

38 [~~4~~] (d) all Utah branches of out-of-state depository institutions chartered by the  
39 federal government, but only to the extent the application of this title is authorized by:

40 [~~a~~] (i) federal law; or

41 [~~b~~] (ii) the appropriate federal regulatory agency;

42 [~~5~~] (e) all service corporations and service organizations, including credit union  
43 service organizations as defined in Section 7-9-3;

44 [~~6~~] (f) all trust companies;

45 [~~7~~] (g) all escrow companies;

46 [~~8~~] (h) all persons or institutions engaged in this state in the business of:

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

49 [~~b~~] (ii) operating a loan production office for;

50 (A) a Utah depository institution[;];

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

52 (C) a foreign depository institution;

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

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

56 [~~9~~] (i) all corporations or other business entities owning or controlling an institution  
57 subject to the jurisdiction of the department;

58 [~~10~~] (j) all subsidiaries and affiliates of an institution subject to the jurisdiction of the

59 department; and

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

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

65 **7-9-3. Definitions.**

66 As used in this chapter:

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

68 (a) has a similar:

69 (i) interest;

70 (ii) profession;

71 (iii) occupation; or

72 (iv) formal association with an identifiable purpose; or

73 (b) is employed by a common employer.

74 (2) "Capital and surplus" means:

75 (a) shares;

76 (b) deposits;

77 (c) reserves; and

78 (d) undivided earnings.

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

81 (4) "Credit union service organization" means a service organization that provides any  
82 of the services listed in Subsection 7-9-55(2).

83 [~~(4)~~] (5) "Deposits" means that portion of the capital paid into the credit union by  
84 members on which a specified rate of interest will be paid.

85 [~~(5)~~] (6) "Immediate family" means parents, spouse, surviving spouse, children, and  
86 siblings of the member.

87 [~~(6)~~] (7) "Limited field of membership" means persons designated as eligible for credit  
88 union membership in accordance with Section 7-9-51 or 7-9-53.

89 [~~(7)~~] (8) (a) "Member-business loan" means any loan, line of credit, or letter of credit,

90 the proceeds of which will be used for:

91 (i) a commercial purpose;

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

93 (iii) an agricultural purpose.

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

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

97 (ii) that is fully secured by:

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

99 (B) deposits in other financial institutions;

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

102 (A) the federal government;

103 (B) a state; or

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

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

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

108 (9) "Share drafts," "deposit drafts," and "transaction accounts" mean accounts from  
109 which owners are permitted to make withdrawals by negotiable or transferable instruments or  
110 other orders for the purpose of making transfers to other persons or to the owner.

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

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

114 **7-9-5. Powers of credit unions.**

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

117 (1) make contracts;

118 (2) sue and be sued;

119 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and  
120 equipment as the directors consider necessary or incidental to the operation and business of the

121 credit union, but the value of the real property may not exceed 7% of credit union assets, unless  
122 approved by the commissioner;

123 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in  
124 whole or in part, necessary or incidental to its operation;

125 (5) incur and pay necessary and incidental operating expenses;

126 (6) require an entrance or membership fee;

127 (7) receive the funds of its members in payment for:

128 (a) shares;

129 (b) share certificates;

130 (c) deposits;

131 (d) deposit certificates;

132 (e) share drafts;

133 (f) NOW accounts; and

134 (g) other instruments;

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

140 (9) charge fees for its services;

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

143 (11) extend credit secured by real estate;

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

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

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

152 inconsistent with this chapter;

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

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

158 (17) discount and sell notes and obligations;

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

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

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

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

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

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

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

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

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

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

181 (27) provide reasonable protection through insurance or other means to protect board  
182 members, committee members, and employees from liability arising out of consumer

183 legislation such as, but not limited to, truth-in-lending and equal credit laws and as provided in  
184 its bylaws;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

209 **7-9-55. Credit union service organizations.**

210 (1) This section applies to a credit union service organization in which a credit union  
211 organized under this chapter has an ownership interest.

212 (2) (a) A credit union service organization may provide a service only if the service is:

213 (i) (A) listed in Subsection (2)(b); or

214 (B) approved by the commissioner in accordance with Subsection (4)(b); and  
215 (ii) (A) except for the extension of credit by the service organization, limited primarily  
216 to:  
217 (I) credit unions that hold an ownership interest in the service organization;  
218 (II) members of credit unions that hold an ownership interest in the service  
219 organization; or  
220 (III) members of credit unions that contract with the service organization; or  
221 (B) for purposes of the extension of credit by the service organization, limited to  
222 members of a credit union that holds an ownership interest in the service organization.  
223 (b) Subsection (2)(a) applies to:  
224 (i) the following checking and currency services:  
225 (A) check cashing;  
226 (B) coin and currency services; and  
227 (C) services related to:  
228 (I) a money order;  
229 (II) a savings bond;  
230 (III) a travelers check; or  
231 (IV) the purchase and sale of United States Mint commemorative coins;  
232 (ii) the following clerical, professional, and management services:  
233 (A) accounting services;  
234 (B) courier services;  
235 (C) credit analysis;  
236 (D) facsimile transmission and copying services;  
237 (E) services related to conducting an internal audit for a credit union;  
238 (F) locator services;  
239 (G) services related to management and personnel training and support;  
240 (H) marketing services;  
241 (I) research services; or  
242 (J) services related to a supervisory committee audit;  
243 (iii) consumer mortgage loan origination;  
244 (iv) the following electronic transaction services:

- 245           (A) automated teller machine services;  
246           (B) credit card services;  
247           (C) debit card services;  
248           (D) data processing services;  
249           (E) electronic fund transfer services;  
250           (F) services related to electronic income tax filings;  
251           (G) payment item processing;  
252           (H) wire transfer services; or  
253           (I) cyber financial services;  
254           (v) the following financial counseling services:  
255           (A) developing and administering personnel benefit plans including:  
256           (I) individual retirement accounts;  
257           (II) Keogh plans; or  
258           (III) deferred compensation plans;  
259           (B) estate planning;  
260           (C) financial planning and counseling;  
261           (D) income tax preparation;  
262           (E) investment counseling; or  
263           (F) retirement counseling;  
264           (vi) fixed asset services related to the:  
265           (A) management, development, sale, or lease of fixed assets; or  
266           (B) sale, lease, or servicing of computer hardware or software;  
267           (vii) the following insurance brokerage or agency services:  
268           (A) operating as an agency for sale of insurance;  
269           (B) providing vehicle warranty programs; or  
270           (C) providing group purchasing programs;  
271           (viii) the following leasing services:  
272           (A) leasing of personal property; or  
273           (B) real estate leasing of excess credit union service organization property;  
274           (ix) the following loan support services:  
275           (A) debt collection services;

- 276 (B) loan processing, servicing, and sales; or  
277 (C) sale of repossessed collateral;  
278 (x) the extension of credit including member business loans;  
279 (xi) the following record retention, security, and disaster recovery services:  
280 (A) alarm-monitoring and other security services;  
281 (B) disaster recovery services;  
282 (C) services related to:  
283 (I) microfilm;  
284 (II) microfiche;  
285 (III) optical and electronic imaging; or  
286 (IV) CD-ROM data storage retrieval;  
287 (D) providing forms and supplies; or  
288 (E) services related to record retention and storage;  
289 (xii) securities brokerage services;  
290 (xiii) operation of shared credit union branch services;  
291 (xiv) student loan origination;  
292 (xv) travel agency services;  
293 (xvi) the following trust and trust-related services:  
294 (A) acting as an administrator for a prepaid legal service plan;  
295 (B) acting in a fiduciary capacity including as:  
296 (I) trustee;  
297 (II) guardian;  
298 (III) conservator; or  
299 (IV) estate administrator; or  
300 (C) trust services; or  
301 (xvii) making credit union service organization investments in noncredit union service  
302 organization service providers.
- 303 (3) (a) One or more credit unions organized under this chapter may form a credit union  
304 service organization on or after the day on which each credit union forming the credit union  
305 service organization obtains in accordance with this section the approval by the commissioner  
306 for the formation of the credit union service organization.

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

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

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

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

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

316 (i) the credit union service organization as formed:

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

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

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

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

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

332 (i) the credit union service organization files a written request for approval with the  
333 commissioner; and

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

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

338 (i) a supervisory reason;

339 (ii) a legal reason; or

340 (iii) a safety and soundness reason.

341 (5) The commissioner may conduct examinations of a credit union service organization

342 in accordance with Section 7-1-314.

343 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
344 commissioner may make rules specifying:

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

347 (b) in accordance with Subsection (3), the requirements for forming a credit union  
348 service organization;

349 (c) the procedure for obtaining approval to provide a service under Subsection (4)(a);  
350 and

351 (d) the conditions under which a credit union service organization may provide a  
352 service described in Subsection (2).

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

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

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

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

362 **Section 5. Coordination clause.**

363 If this bill and H.B. 162, Amendments Related to Financial Institutions, both pass, it is  
364 the intent of the Legislature that the Office of Legislative Research and General Counsel, in  
365 preparing the Utah code database for publication, make the following changes:

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

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

369 amendments to Subsection 7-9-5(12) in this bill.

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**Legislative Review Note**  
as of 2-4-03 5:43 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0157**

**Regulation of Credit Union Service Organizations**

*10-Feb-03*

*9:01 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

This bill clarifies that Credit Union Service Organizations are under the regulatory supervision of the Department of Financial Institutions. There is no cost to apply or fees in addition to those already assessed credit unions for examinations. If CUSOs offered trust services there would be a separate examination fee.

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**Office of the Legislative Fiscal Analyst**