

1 **FINANCIAL INSTITUTIONS AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John L. Valentine**

5

LONG TITLE

6 **General Description:**

7 This bill modifies the Financial Institutions Act to permit certain financial institutions
8 to be organized as limited liability companies and to provide for a study.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides the conditions under which specified financial institutions can be
12 organized as or converted to a limited liability company;
13 ▶ addresses application of corporate terminology to limited liability companies;
14 ▶ changes references to industrial loan corporations to industrial loan companies;
15 ▶ addresses formation and operation of industrial loan companies;
16 ▶ provides for the study of whether specified financial institutions should be allowed
17 to be organized as or convert to a limited liability company; and
18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides an immediate effective date.

23 **Utah Code Sections Affected:**

24 **AMENDS:**

25 **7-1-103**, as last amended by Chapter 260, Laws of Utah 2000

26 **7-1-201**, as last amended by Chapter 200, Laws of Utah 1994
27



- 28 **7-1-203**, as last amended by Chapter 176, Laws of Utah 2002
- 29 **7-1-207**, as last amended by Chapter 200, Laws of Utah 1994
- 30 **7-1-301**, as last amended by Chapter 184, Laws of Utah 1999
- 31 **7-1-324**, as enacted by Chapter 75, Laws of Utah 2003
- 32 **7-1-503**, as last amended by Chapter 49, Laws of Utah 1995
- 33 **7-1-701**, as last amended by Chapter 19, Laws of Utah 1997
- 34 **7-3-3**, as last amended by Chapter 49, Laws of Utah 1995
- 35 **7-8-3**, as last amended by Chapter 91, Laws of Utah 1997
- 36 **7-8-5**, as last amended by Chapter 200, Laws of Utah 1994
- 37 **7-8-7**, as last amended by Chapter 200, Laws of Utah 1994
- 38 **7-8-11**, as last amended by Chapter 200, Laws of Utah 1994
- 39 **7-8-12**, as last amended by Chapter 200, Laws of Utah 1994
- 40 **7-8-13**, as last amended by Chapter 200, Laws of Utah 1994
- 41 **7-8-14**, as last amended by Chapter 200, Laws of Utah 1994
- 42 **7-8-15**, as last amended by Chapter 200, Laws of Utah 1994
- 43 **7-8-16**, as last amended by Chapter 200, Laws of Utah 1994
- 44 **7-8-19**, as last amended by Chapter 200, Laws of Utah 1994
- 45 **7-8-20**, as enacted by Chapter 154, Laws of Utah 1993
- 46 **9-2-1923**, as enacted by Chapter 291, Laws of Utah 2003
- 47 **25-5-4**, as last amended by Chapter 182, Laws of Utah 1996
- 48 **31A-21-109**, as enacted by Chapter 75, Laws of Utah 2003
- 49 **67-4a-102**, as last amended by Chapter 248, Laws of Utah 1998
- 50 **75-6-101**, as enacted by Chapter 150, Laws of Utah 1975

51 ENACTS:

- 52 **7-1-810**, Utah Code Annotated 1953

53 **Uncodified Material Affected:**

54 AMENDS UNCODIFIED MATERIAL:

- 55 **Uncodified Section 27, Chapter 327, Laws of Utah 2003**



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

58 Section 1. Section **7-1-103** is amended to read:

59 **7-1-103. Definitions.**

60 As used in this title:

61 (1) (a) "Bank" means a person authorized under the laws of this state, another state, or
62 the United States to accept deposits from the public.

63 (b) "Bank" does not include:

64 (i) a federal savings and loan association or federal savings bank;

65 (ii) a savings and loan association or savings bank subject to Chapter 7, Savings and
66 Loan Association Act;67 (iii) an industrial loan [~~corporation~~] company subject to Chapter 8, Industrial Loan
68 Companies;

69 (iv) a federally chartered credit union; or

70 (v) a credit union subject to Chapter 9, Utah Credit Union Act.71 (2) "Banking business" means the offering of deposit accounts to the public and the
72 conduct of such other business activities as may be authorized by this title.73 (3) (a) "Branch" means a place of business of a financial institution, other than its main
74 office, at which deposits are received and paid.

75 (b) "Branch" does not include:

76 (i) an automated teller machine, as defined in Section 7-16a-102;

77 (ii) a point-of-sale terminal, as defined in Section 7-16a-102; or

78 (iii) a loan production office under Section 7-1-715.

79 (4) "Commissioner" means the Commissioner of Financial Institutions.

80 (5) "Control" means the power, directly or indirectly, to:

81 (a) direct or exercise a controlling influence over:

82 (i) the management or policies of a financial institution[;]; or [~~over~~]83 (ii) the election of a majority of the directors or trustees of an institution;84 (b) vote 20% or more of any class of voting securities of a financial institution by an
85 individual; or86 (c) vote more than 5% of any class of voting securities of a financial institution by a
87 person other than an individual.88 (6) "Credit union" means a cooperative, nonprofit association [~~incorporated~~] formed
89 under:

- 90 (a) Chapter 9, Utah Credit Union Act; or
- 91 (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.
- 92 (7) "Department" means the Department of Financial Institutions.
- 93 (8) "Depository institution" means a bank, savings and loan association, savings bank,
- 94 industrial loan ~~[corporation]~~ company, credit union, or other institution that:
- 95 (a) holds or receives deposits, savings, or share accounts~~[-or]~~;
- 96 (b) issues certificates of deposit~~[-]~~; or
- 97 (c) provides to its customers other depository accounts that are subject to withdrawal
- 98 by checks, drafts, or other instruments or by electronic means to effect third party payments.
- 99 (9) (a) "Depository institution holding company" means:
- 100 (i) a person other than an individual that:
- 101 (A) has control over any depository institution; or ~~[that]~~
- 102 (B) becomes a holding company of a depository institution under Section 7-1-703; or
- 103 (ii) a person other than an individual that the commissioner finds, after considering the
- 104 specific circumstances, is exercising or is capable of exercising a controlling influence over a
- 105 depository institution by means other than those specifically described in this section.
- 106 (b) Except as provided in Section 7-1-703, a person is not a depository institution
- 107 holding company solely because it owns or controls shares acquired in securing or collecting a
- 108 debt previously contracted in good faith.
- 109 (10) "Financial institution" means any institution subject to the jurisdiction of the
- 110 department because of this title.
- 111 (11) (a) "Financial institution holding company" means a person, other than an
- 112 individual that has control over any financial institution or any person that becomes a financial
- 113 institution holding company under this chapter, including an out-of-state or foreign depository
- 114 institution holding company.
- 115 (b) Ownership of a service corporation or service organization by a depository
- 116 institution does not make that institution a financial institution holding company.
- 117 (c) A person holding 5% or less of the voting securities of a financial institution is
- 118 rebuttably presumed not to have control of the institution.
- 119 (d) A trust company is not a holding company solely because it owns or holds 20% or
- 120 more of the voting securities of a financial institution in a fiduciary capacity, unless the trust

121 company exercises a controlling influence over the management or policies of the financial
122 institution.

123 (12) "Foreign depository institution" means a depository institution chartered or
124 authorized to transact business by a foreign government.

125 (13) "Foreign depository institution holding company" means the holding company of a
126 foreign depository institution.

127 (14) "Home state" means:

128 (a) for a state chartered depository institution, the state that charters the institution;

129 (b) for a federally chartered depository institution, the state where the institution's main
130 office is located; and

131 (c) for a depository institution holding company, the state in which the total deposits of
132 all depository institution subsidiaries are the largest.

133 (15) "Host state" means:

134 (a) for a depository institution, a state, other than the institution's home state, where the
135 institution maintains or seeks to establish a branch; and

136 (b) for a depository institution holding company, a state, other than the depository
137 institution holding company's home state, where the depository institution holding company
138 controls or seeks to control a depository institution subsidiary.

139 (16) "Industrial loan [~~corporation~~] company" means a corporation or limited liability
140 company conducting the business of an industrial loan [~~corporation~~] company under Chapter 8,
141 Industrial Loan Companies.

142 (17) "Insolvent" means the status of a financial institution that is unable to meet its
143 obligations as they mature.

144 (18) "Institution" means:

145 (a) a corporation[;];

146 (b) a limited liability company[;];

147 (c) a partnership[;];

148 (d) a trust[;];

149 (e) an association[;];

150 (f) a joint venture[;];

151 (g) a pool[;];

152 (h) a syndicate[;];

153 (i) an unincorporated organization[;]; or

154 (j) any form of business entity.

155 (19) "Institution subject to the jurisdiction of the department" means an institution or
156 other person described in Section 7-1-501.

157 (20) "Liquidation" means the act or process of winding up the affairs of an institution
158 subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and
159 appropriating profit or loss, as provided in Chapters 2 and 19.

160 (21) "Liquidator" means a person, agency, or instrumentality of this state or the United
161 States appointed to conduct a liquidation.

162 (22) (a) "Member of a savings and loan association" means:

163 (i) a person holding a savings account of a mutual association;

164 (ii) a person borrowing from, assuming, or becoming obligated upon a loan or an
165 interest in a loan held by a mutual association; or

166 (iii) any person or class of persons granted membership rights by the articles of
167 incorporation or the bylaws of an association.

168 (b) A joint and survivorship or other multiple owner or borrower relationship
169 constitutes a single membership.

170 (23) "Negotiable order of withdrawal" means a draft drawn on a NOW account.

171 (24) (a) "NOW account" means a savings account from which the owner may make
172 withdrawals by negotiable or transferable instruments for the purpose of making transfers to
173 third parties.

174 (b) A "NOW account" is not a demand deposit.

175 (c) Neither the owner of a NOW account nor any third party holder of an instrument
176 requesting withdrawal from the account has a legal right to make withdrawal on demand.

177 (25) "Out-of-state" means, in reference to a depository institution or depository
178 institution holding company, an institution or company whose home state is not Utah.

179 (26) "Person" means:

180 (a) an individual[;];

181 (b) a corporation[;];

182 (c) a limited liability company[;];

183 (d) a partnership[;];

184 (e) a trust[;];

185 (f) an association[;];

186 (g) a joint venture[;];

187 (h) a pool[;];

188 (i) a syndicate[;];

189 (j) a sole proprietorship[;];

190 (k) an unincorporated organization[;]; or

191 (l) any form of business entity.

192 (27) "Receiver" means a person, agency, or instrumentality of this state or the United
193 States appointed to administer and manage an institution subject to the jurisdiction of the
194 department in receivership, as provided in Chapters 2 and 19.

195 (28) "Receivership" means the administration and management of the affairs of an
196 institution subject to the jurisdiction of the department to conserve, preserve, and properly
197 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in
198 Chapters 2 and 19.

199 (29) "Savings account" means any deposit or other account at a depository institution
200 that is not a transaction account.

201 (30) (a) "Savings and loan association" means any of the following subject to this title:

202 (i) a mutual or capital stock savings association[;];

203 (ii) a savings and loan association[;];

204 (iii) a mutual or capital stock savings bank[;]; or

205 (iv) a building and loan association [~~subject to this title, including~~].

206 (b) "Savings and loan association" includes the following as defined in Section 7-7-2:

207 (i) all federal associations; and

208 (ii) all out-of-state associations[~~, as defined in Section 7-7-2~~].

209 (31) "Service corporation" or "service organization" means a corporation or other
210 business entity owned or controlled by one or more financial institutions that is engaged or
211 proposes to engage in business activities related to the business of financial institutions.

212 (32) "State" means, unless the context demands otherwise[;];

213 (a) a state[;];

214 (b) the District of Columbia~~;~~; or

215 (c) the territories of the United States.

216 (33) "Subsidiary" means a business entity under the control of an institution.

217 (34) (a) "Transaction account" means a deposit, account, or other contractual
218 arrangement in which a depositor, account holder, or other customer is permitted, directly or
219 indirectly, to make withdrawals by:

220 (i) check or other negotiable or transferable instrument~~;~~~~by~~;

221 (ii) payment order of withdrawal~~;~~~~by~~;

222 (iii) telephone transfer~~;~~~~by~~;

223 (iv) other electronic means~~;~~; or ~~by~~

224 (v) any other means or device for the purpose of making payments or transfers to third
225 persons.

226 (b) "Transaction account" includes:

227 (i) demand deposits;

228 (ii) NOW accounts;

229 (iii) savings deposits subject to automatic transfers; and

230 (iv) share draft accounts.

231 (35) "Trust company" means a person authorized to conduct a trust business, as
232 provided in Chapter 5, Trust Business.

233 (36) "Utah depository institution" means a depository institution whose home state is
234 Utah.

235 (37) "Utah depository institution holding company" means a depository institution
236 holding company whose home state is Utah.

237 Section 2. Section **7-1-201** is amended to read:

238 **7-1-201. Creation of department -- Organization.**

239 (1) There is created the Department of Financial Institutions that is responsible for the
240 execution of the laws of this state relating to all financial institutions and other persons subject
241 to this title, and relating to the businesses they conduct.

242 (2) The department organization includes:

243 ~~(1)~~ (a) the commissioner of financial institutions, who shall be the chief executive
244 officer of the department;

245 [~~2~~] (b) the Board of Financial Institutions;
246 [~~3~~] (c) the chief examiner;
247 [~~4~~] (d) the supervisor of banks;
248 [~~5~~] (e) the supervisor of savings and loan associations;
249 [~~6~~] (f) the supervisor of industrial loan [~~corporations~~] companies;
250 [~~7~~] (g) the supervisor of credit unions; and
251 [~~8~~] (h) other supervisors, examiners, and personnel as may be required to carry out
252 the duties, powers, and responsibilities of the department.

253 Section 3. Section **7-1-203** is amended to read:

254 **7-1-203. Board of Financial Institutions.**

255 (1) There is created a Board of Financial Institutions consisting of the commissioner
256 and the following five members, who shall be qualified by training and experience in their
257 respective fields and shall be appointed by the governor with the consent of the Senate:

- 258 (a) one representative from the commercial banking business;
259 (b) one representative from the savings and loan, consumer lending, mortgage
260 brokerage, or escrow agency business;
261 (c) one representative from the industrial loan [~~corporation~~] company business;
262 (d) one representative from the credit union business; and
263 (e) one representative of the general public who, as a result of education, training,
264 experience, or interest, is well qualified to consider economic and financial issues and data as
265 they may affect the public interest in the soundness of the financial systems of this state.

266 (2) The commissioner shall act as chair.

267 (3) (a) All members of the board shall be residents of this state.

268 (b) No more than three members of the board may be from the same political party.

269 (c) No more than two members of the board may be connected with the same financial
270 institution or its holding company.

271 (d) A member may not participate in any matter involving any institution with which
272 the member has a conflict of interest.

273 (4) (a) Except as required by Subsection (4)(b), the terms of office shall be four years
274 each expiring on July 1.

275 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the

276 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
277 board members are staggered so that approximately half of the board is appointed every two
278 years.

279 (c) All members serve until their respective successors are appointed and qualified.

280 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
281 appointed for the unexpired term.

282 (5) (a) The board shall meet at least quarterly on a date it sets.

283 (b) The commissioner or any two members of the board may call additional meetings.

284 (c) Four members constitute a quorum for the transaction of business.

285 (d) Actions of the board require a vote of a majority of those present.

286 (e) Meetings of the board and records of its proceedings are subject to Title 52, Chapter
287 4, Open and Public Meetings, except for discussion of confidential information pertaining to a
288 particular financial institution.

289 (6) (a) Each member of the board shall, by sworn or written statement filed with the
290 commissioner, disclose any position of employment or ownership interest that the member has
291 with respect to any institution subject to the jurisdiction of the department.

292 (b) The member shall:

293 (i) file ~~[this]~~ the statement required by this Subsection (6) when first appointed to the
294 board; and ~~[shall]~~

295 (ii) subsequently file amendments to the statement if there is any material change in the
296 matters covered by the statement.

297 (7) (a) (i) Members who are not government employees shall receive no compensation
298 or benefits for their services, but may receive per diem and expenses incurred in the
299 performance of the member's official duties at the rates established by the Division of Finance
300 under Sections 63A-3-106 and 63A-3-107.

301 (ii) Members may decline to receive per diem and expenses for their service.

302 (b) (i) State government officer and employee members who do not receive salary, per
303 diem, or expenses from their agency for their service may receive per diem and expenses
304 incurred in the performance of their official duties from the board at the rates established by the
305 Division of Finance under Sections 63A-3-106 and 63A-3-107.

306 (ii) State government officer and employee members may decline to receive per diem

307 and expenses for their service.

308 (8) The board shall advise the commissioner with respect to:

309 (a) the exercise of [~~his~~] the commissioner's duties, powers, and responsibilities under
310 this title; and

311 (b) the organization and performance of the department and its employees.

312 (9) The board shall recommend annually to the governor and the Legislature a budget
313 for the requirements of the department in carrying out its duties, functions, and responsibilities
314 under this title.

315 Section 4. Section **7-1-207** is amended to read:

316 **7-1-207. Supervisor of industrial loan companies -- Responsibilities.**

317 (1) The commissioner shall designate an examiner as supervisor of industrial loan
318 [~~corporations~~] companies who shall be sufficiently qualified by training and experience in the
319 business of industrial loan [~~corporations~~] companies or other financial institutions or as an
320 employee of a state or federal agency supervising financial institutions to perform the duties of
321 the office.

322 (2) (a) The supervisor of industrial loan [~~corporations~~] companies is responsible,
323 subject to the direction and control of the commissioner, for the general supervision and
324 examination of all industrial loan [~~corporations~~] companies subject to the jurisdiction of the
325 department and other institutions as assigned.

326 (b) The supervisor shall:

327 (i) assist and advise the commissioner in the execution of the laws of this state relating
328 to these institutions[;]; and [~~staff~~]

329 (ii) perform other duties prescribed in this title or assigned by the commissioner.

330 Section 5. Section **7-1-301** is amended to read:

331 **7-1-301. Powers and duties of commissioner -- Rulemaking.**

332 Without limiting the other powers, duties, and responsibilities specified in this title, the
333 commissioner has all the functions, powers, duties, and responsibilities with respect to
334 institutions, persons, or businesses subject to the jurisdiction of the department contained in
335 this title, including all of the functions, powers, duties, and responsibilities described in
336 Subsections (1) through (15).

337 (1) The commissioner may govern the administration and operation of the department.

338 (2) The commissioner may supervise the conduct, operation, management,
339 examination, and statements and reports of examinations of financial institutions and other
340 persons subject to the jurisdiction of the department.

341 (3) (a) The commissioner may authorize a state chartered depository institution to
342 engage in any activity it could engage in, and to grant to that institution all additional rights,
343 powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws
344 of the United States.

345 (b) The commissioner may authorize a depository institution chartered by this state to
346 engage in any activity that a Utah branch of an out-of-state depository institution of the same
347 class can engage in, and to grant to the Utah institution all additional rights, powers, privileges,
348 benefits, or immunities it needs to engage in the activity.

349 (c) In granting authority under this Subsection (3), the commissioner shall consider:

350 (i) the need for competitive equality between institutions chartered by this state and
351 institutions operating in this state that are chartered by another state or by the federal
352 government; and

353 (ii) the adverse effect on shareholders, members, depositors, and other customers of
354 financial institutions chartered by this state if equal power and protection of those institutions,
355 compared with federally chartered or out-of-state institutions of the same class, are not
356 promptly available.

357 (4) The commissioner may safeguard the interest of shareholders, members, depositors,
358 and other customers of institutions and other persons subject to the jurisdiction of the
359 department.

360 (5) (a) The commissioner may establish criteria consistent with this title to be applied
361 in granting applications for approval of:

362 (i) a new institution;

363 (ii) a new branch;

364 (iii) the relocation of an office or branch;

365 (iv) a merger;

366 (v) a consolidation;

367 (vi) a change in control of an institution or other person subject to the jurisdiction of
368 the department; and

369 (vii) other applications specified in this title.

370 (b) The criteria established under Subsection (5)(a) may not be applied to make it more
371 difficult for a state chartered institution to obtain approval of an application than for a federally
372 chartered institution in the same class to obtain approval from the appropriate federal
373 regulatory agency or administrator.

374 (6) (a) The commissioner may protect the privacy of the records of any institution
375 subject to the jurisdiction of the department pertaining to a particular depositor or other
376 customer of the institution. Rules adopted under this Subsection (6) shall be consistent with
377 federal laws and regulations applicable to the institution.

378 (b) Any institution that consents to produce records or that is required to produce
379 records in compliance with a subpoena or other order of a court of competent jurisdiction or in
380 compliance with an order obtained pursuant to Sections 78-27-45 through 78-27-50.5 shall be
381 reimbursed for the cost of retrieval and reproduction of the records by the party seeking the
382 information. The commissioner may by rule establish the rates and conditions under which
383 reimbursement is made.

384 (7) (a) The commissioner may classify all records kept by institutions subject to the
385 jurisdiction of the department and to prescribe the period for which each class of records is
386 retained.

387 (b) Rules adopted under this Subsection (7) for any class of financial institution shall
388 be consistent with federal laws and regulations applicable to the class.

389 ~~(b)~~ (c) Rules made under this Subsection (7)~~(a)~~ shall provide that:

390 (i) An institution may dispose of any record after retaining it for the period prescribed
391 by the commissioner for retention of records of its class. If an institution disposes of a record
392 after the prescribed period, the institution has no duty to produce it in any action or proceeding
393 and is not liable to any person by reason of that disposition.

394 (ii) Any institution may keep records in its custody in the form of microfilm or
395 equivalent reproduction. Any such reproduction shall have the same force and effect as the
396 original and shall be admissible into evidence as if it were the original.

397 ~~(c)~~ (d) In adopting rules under this Subsection (7), the commissioner shall take into
398 consideration:

399 (i) actions at law and administrative proceedings in which the production of the records

400 might be necessary or desirable;

401 (ii) state and federal statutes of limitation applicable to the actions or proceedings;

402 (iii) the availability from other sources of information contained in these records; and

403 (iv) other matters the commissioner considers pertinent in formulating rules that

404 require institutions to retain their records for as short a period as commensurate with the

405 interest in having the records available of:

406 (A) customers, members, depositors, and shareholders of the institutions; and

407 (B) the people of this state.

408 (8) (a) The commissioner may establish reasonable classes of depository and other

409 financial institutions including separate classes for:

410 (i) savings and loan associations and related institutions[?];

411 (ii) banks and related institutions[?];

412 (iii) credit unions[?]; and

413 (iv) industrial loan [~~corporations~~] companies.

414 (b) If the restrictions or requirements the commissioner imposes are not more stringent

415 than those applicable under federal law or regulation to federally chartered institutions of the

416 same class, the commissioner may establish the following for each class in a manner consistent

417 with this title:

418 (i) eligible classes and types of investments for the deposits and other funds of those

419 financial institutions;

420 (ii) minimum standards, in amounts sufficient to protect depositors and other creditors,

421 for the amount and types of capital required to engage in the business conducted by each class

422 or to obtain a license or to establish a branch or additional office of an institution of each class;

423 (iii) eligible obligations, reserves, and other accounts to be included in the computation

424 of capital;

425 (iv) minimum liquidity requirements for financial institutions within each class in

426 amounts sufficient to meet the demands of depositors and other creditors for liquid funds;

427 (v) limitations on the amount and type of borrowings by each class of financial

428 institution in relation to the amount of its capital and the character and condition of its assets

429 and its deposits and other liabilities;

430 (vi) limitations on the amount and nature of loans and extensions of credit to any

431 person or related persons by each class of financial institution in relation to the amount of its
432 capital; and

433 (vii) limitations on the amount and nature of loans and extensions of credit by a
434 financial institution or other person within each class to an executive officer, director, or
435 principal shareholder of:

436 (A) the institution or other person;

437 (B) any company of which the institution or other person is a subsidiary;

438 (C) any subsidiary of the institution or other person;

439 (D) any affiliate of the institution; and

440 (E) a company controlled by an executive officer, director, or principal shareholder of
441 the institution.

442 (9) The commissioner may define unfair trade practices of financial institutions and
443 other persons subject to the jurisdiction of the department and to prohibit or restrict these
444 practices.

445 (10) The commissioner may establish reasonable standards to promote the fair and
446 truthful advertising of:

447 (a) services offered by a financial institution;

448 (b) the charges for the services advertised under Subsection (10)(a);

449 (c) the interest or other compensation to be paid on deposits or any debt instrument
450 offered for sale by the institution;

451 (d) the nature and extent of any:

452 (i) insurance on deposits[;];

453 (ii) savings accounts[;];

454 (iii) share accounts[;];

455 (iv) certificates of deposit[;];

456 (v) time deposit accounts[;];

457 (vi) NOW accounts[;];

458 (vii) share draft accounts[;];

459 (viii) transaction accounts[;]; or

460 (ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by any
461 financial institution or other person subject to the jurisdiction of the department; and

462 (e) the safety or financial soundness of any financial institution or other person subject
463 to the jurisdiction of the department.

464 (11) The commissioner may define what constitutes an impairment of capital for each
465 class of financial institution or other person subject to the jurisdiction of the department.

466 (12) The commissioner may designate days on which depository institutions are closed
467 in accordance with Section 7-1-808.

468 (13) The commissioner may regulate the issuance, advertising, offer for sale, and sale
469 of a security to the extent authorized by Section 7-1-503.

470 (14) The commissioner may require the officers of any institution or other person
471 subject to the commissioner's jurisdiction to open and keep a standard set of books, computer
472 records, or both for the purpose of keeping accurate and convenient records of the transactions
473 and accounts of the institution in a manner to enable the commissioner, supervisors, and
474 department examiners to readily ascertain the institution's true condition. These requirements
475 shall be consistent with generally accepted accounting principles for financial institutions.

476 (15) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
477 the commissioner may adopt and issue rules consistent with the purposes and provisions of this
478 title, and may revise, amend, or repeal the rules adopted.

479 Section 6. Section **7-1-324** is amended to read:

480 **7-1-324. Debt cancellation agreements and debt suspension agreements.**

481 (1) As used in this section:

482 (a) "Class of depository institution" means a class consisting of:

483 (i) banks;

484 (ii) credit unions;

485 (iii) industrial loan [~~corporations~~] companies;

486 (iv) savings and loan associations; or

487 (v) wholly owned subsidiaries of a depository institution listed in this Subsection

488 (1)(a).

489 (b) "Debt cancellation agreement" is as defined in Section 31A-21-109.

490 (c) "Debt suspension agreement" is as defined in Section 31A-21-109.

491 (2) Subject to the other provisions of this section, the commissioner may by rule, made
492 in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

493 (a) authorize any member of a class of depository institution that is subject to the
494 jurisdiction of the department to issue;

495 (i) a debt cancellation agreement; or

496 (ii) a debt suspension agreement; and

497 (b) regulate the issuance of a debt cancellation agreement or a debt suspension
498 agreement issued in this state by a member of a class of depository institution.

499 (3) (a) Any rule adopted by the commissioner under this section as applied to a class of
500 depository institution shall be substantially similar to any federal regulation applying to the
501 same class of depository institution.

502 (b) Any rule adopted by the commissioner applicable to a class of depository institution
503 described in this Subsection (3)(b) shall be substantially similar to any federal regulation
504 applicable to a bank if no federal regulation authorizes or regulates the issuance of a debt
505 cancellation agreement or debt suspension agreement for that class of depository institution.

506 (4) (a) An out-of-state depository institution may issue a debt cancellation agreement
507 or debt suspension agreement in this state if:

508 (i) the home state of the out-of-state depository institution authorizes and regulates the
509 issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state
510 depository institution; and

511 (ii) subject to Subsection (4)(b), the out-of-state depository institution complies with
512 regulations from the out-of-state depository institution's home state that regulate the issuance of
513 a debt cancellation agreement or a debt suspension agreement.

514 (b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described
515 in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section
516 that regulate the issuance of a debt cancellation agreement or a debt suspension agreement in
517 this state by the class of depository institution to which the out-of-state depository institution
518 belongs if the regulations of the out-of-state depository institution's home state do not provide
519 at least the same level of protection with respect to a debt cancellation agreement or debt
520 suspension agreement as the rules adopted by the commissioner under this section with respect
521 to the same class of depository institution:

522 (i) for the safety and soundness of the depository institution; and

523 (ii) for consumer protections for the borrowers of the depository institution.

524 Section 7. Section **7-1-503** is amended to read:

525 **7-1-503. Regulation of sale by financial institution of its securities -- Solicitation**
526 **of deposit accounts restricted -- Violations.**

527 (1) As used in this section, "security" has the same meaning as in Section 61-1-13,
528 except that "security" does not include:

529 (a) a certificate of deposit or similar instrument issued by:

530 (i) a bank[-];

531 (ii) a savings and loan association[-];

532 (iii) a credit union[-]; or

533 (iv) an industrial loan [~~corporation~~] company;

534 (b) a loan participation, letter of credit, or other form of indebtedness incurred in the
535 ordinary course of business by:

536 (i) a bank[-];

537 (ii) a savings and loan association[-];

538 (iii) a credit union[-]; or

539 (iv) an industrial loan [~~corporation~~] company; or

540 (c) (i) a promissory note or other evidence of indebtedness and the underlying security
541 for it[-];

542 (ii) a lease of personal property[-];

543 (iii) a contract to sell real or personal property[-]; or

544 (iv) any other loan or investment sold by a depository institution in the secondary
545 market.

546 (2) A person subject to the jurisdiction of the department may not, directly or
547 indirectly, issue, offer, offer to sell, offer for sale, or sell any security of which it is the issuer
548 without:

549 (a) the prior approval of the commissioner;

550 (b) payment of the fee prescribed in Section 7-1-401; and

551 (c) complying with the rules of the department with respect to securities.

552 (3) (a) A person not otherwise subject to the jurisdiction of the department may not
553 issue, offer to sell, offer for sale, or sell, or otherwise solicit the general public to deposit in any
554 account or to purchase or invest in any instrument creating or evidencing a debtor-creditor

555 relationship, if the account or instrument is represented to be an account with or an instrument
556 issued by a financial institution subject to the jurisdiction of the department, without:

557 (i) the prior approval of the commissioner;

558 (ii) payment of the fee prescribed in Section 7-1-401; and

559 (iii) complying with the rules of the department with respect to securities.

560 (b) Subsection (3)(a) does not apply to:

561 (i) insurance companies that have been issued certificates of authority under Title 31A,
562 Insurance Code[?];

563 (ii) brokers or dealers registered under:

564 (A) Title 61, Chapter 1, Utah Uniform Securities Act[?]; or

565 (B) the federal Securities Exchange Act of 1934[?]; or

566 (iii) nondepository institutions to the extent that the securities are not offered for sale
567 or sold through or by agents, representatives, officers, or employees of an affiliated Utah
568 depository institution[?]; or

569 (iv) out-of-state depository institution with at least one branch in Utah or otherwise
570 offered for sale or sold on its premises.

571 (4) The rules of the department:

572 (a) shall, at a minimum, require registration with the department; and

573 (b) may require the use of an offering circular containing such material information as
574 to the nature of the security and the financial condition of the issuer as the commissioner may
575 require to protect the public interest.

576 (5) The provisions of Sections 61-1-21, 61-1-21.1, and 61-1-22 apply to violations of
577 this section.

578 Section 8. Section **7-1-701** is amended to read:

579 **7-1-701. Representation and transacting business as financial institution**
580 **restricted -- Restricted names -- Penalty.**

581 (1) As used in this section, "transact business" includes:

582 (a) advertising;

583 (b) representing oneself in any manner as being engaged in transacting business;

584 (c) registering an assumed name under which to transact business; or

585 (d) using an assumed business name, sign, letterhead, business card, promotion, or

586 other indication that one is transacting business.

587 (2) Unless authorized by the department or an agency of the federal government to do
588 so, it is unlawful for any person to:

589 (a) transact business as a:

590 (i) bank;

591 (ii) savings and loan association;

592 (iii) savings bank;

593 (iv) industrial loan [~~corporation~~] company;

594 (v) credit union;

595 (vi) trust company; or

596 (vii) other financial or depository institution; or

597 (b) engage in any other activity subject to the jurisdiction of the department.

598 (3) (a) Except as provided in Subsections (3)(b) through (d), only the following may

599 transact business in this state under a name that includes "bank," "banker," "banking,"

600 "banque," "banc," "banco," "bancorp," "bancorporation," any derivative of these words, or any

601 other word or combination of words reasonably identifying the business of a bank:

602 (i) a national bank;

603 (ii) a bank authorized to do business under Chapter 3, Banks;

604 (iii) a bank holding company; or

605 (iv) an industrial loan [~~corporation~~] company authorized to:

606 (A) conduct business under Chapter 8, Industrial Loan [~~Corporations~~] Companies; and

607 (B) accept or hold deposit accounts insured by a federal deposit insurance agency.

608 (b) A person authorized to operate in this state as a credit card bank, as defined in

609 Section 7-3-3[~~7~~];

610 (i) may transact business under the name "credit card bank"; and

611 (ii) may not transact business under the name of "bank" unless it is immediately

612 preceded by "credit card."

613 (c) A nonbank subsidiary of a bank holding company may transact business under a
614 name restricted in Subsection (3)(a) if the name;

615 (i) is also part of the name of its parent holding company; or

616 (ii) is used for a group of subsidiaries of the parent holding company.

617 (d) The Utah Bankers Association or other bona fide trade association of authorized
618 banks may transact its affairs in this state under a name restricted under Subsection (3)(a) if it
619 does not operate and does not hold itself out to the public as operating a depository or financial
620 institution.

621 (4) (a) Except as provided in Subsection (4)(b), only the following may transact
622 business in this state under a name that includes "savings association," "savings and loan
623 association," "building and loan association," "building association," any derivative of these
624 words, or any other word or combination of words reasonably identifying the business of a
625 savings and loan association:

626 (i) a federal savings and loan association;

627 (ii) a federal savings bank; or

628 (iii) a savings and loan association authorized to do business under Chapter 7, Savings
629 and Loan Associations Act.

630 (b) A national bank may transact business under a name restricted in Subsection (4)(a)
631 if the restricted words are part of the bank's corporate name.

632 (5) Only the following may transact business under the name "savings bank":

633 (a) a depository institution listed in Subsection (3)(a);

634 (b) a depository institution listed in Subsection (4)(a); or

635 (c) a depository institution authorized under state law to operate in this state as a
636 savings bank.

637 (6) Only an industrial loan [~~corporation~~] company authorized to do business under
638 Chapter 8, Industrial Loan [~~Corporations~~] Companies, may transact business in this state under
639 a name that includes "industrial loan [~~corporation~~] company," "ILC," "thrift," or any other
640 word, combination of words, or abbreviation reasonably identifying the business of an
641 industrial loan [~~corporation~~] company.

642 (7) (a) Except as provided in Subsection (7)(b), only a credit union authorized to do
643 business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact
644 business in this state under a name that includes "credit union" or any other word or
645 combination of words reasonably identifying the business of a credit union.

646 (b) The restriction in Subsection (7)(a) does not apply to the Utah League of Credit
647 Unions, any credit union chapter, or any other association affiliated with the Utah League of

648 Credit Unions that restricts its services primarily to credit unions.

649 (8) (a) Except as provided in Subsection (8)(b), only a person granted trust powers
650 under Chapter 5, Trust Business, may transact business in this state under a name that includes
651 "trust," "trustee," "trust company," or any other word or combination of words reasonably
652 identifying the business of a trust company.

653 (b) A business entity organized as a business trust, as defined in Section 7-5-1, may use
654 "business trust" in its name if it does not hold itself out as being a trust company.

655 (9) The restrictions of Subsections (3) through (8) do not apply to:

656 (a) the name under which an out-of-state depository institution operates a loan
657 production office in this state, if the commissioner approves the name as not being reasonably
658 likely to mislead the public;

659 (b) the name under which a service organization of a financial institution transacts
660 business, if the commissioner approves the name as not being reasonably likely to mislead the
661 public;

662 (c) the name under which a subsidiary of a depository or financial institution transacts
663 business, if the commissioner approves the name as not being reasonably likely to mislead the
664 public; or

665 (d) a trade association or other nonprofit organization composed of members of a
666 particular class of financial institutions using words applicable to that class.

667 (10) (a) Upon written request, the commissioner may grant an exemption to this
668 section if the commissioner finds that the use of an otherwise restricted name or word is not
669 reasonably likely to cause confusion or lead the public to believe that the person requesting the
670 exemption is a depository or financial institution or is conducting a business subject to the
671 jurisdiction of the department.

672 (b) In granting an exemption under Subsection (10)(a), the commissioner may restrict
673 or condition the use of the name or word or the activities of the person or business as the
674 commissioner considers necessary to protect the public.

675 (11) (a) Each person~~[, corporation, association, or other business entity]~~ and each
676 principal and officer of a business entity violating this section is guilty of a class A
677 misdemeanor. Each day of violation constitutes a separate offense.

678 (b) In addition to a criminal penalty imposed under Subsection (11)(a), the

679 commissioner may issue a cease and desist order against a person violating this section. The
680 commissioner may impose a civil penalty of up to \$500 for each day the person fails to comply
681 with the cease and desist order.

682 Section 9. Section **7-1-810** is enacted to read:

683 **7-1-810. Limited liability companies.**

684 (1) Notwithstanding any other provision of this title, if the conditions of this section are
685 met, the following may be organized as or convert to a limited liability company under Title
686 48, Chapter 2c, Utah Revised Limited Liability Company Act:

687 (a) an industrial loan company chartered under Chapter 8, Industrial Loan companies;

688 or

689 (b) any of the following if organized as an S-Corporation immediately before becoming
690 a limited liability company:

691 (i) a bank chartered under Chapter 3, Banks;

692 (ii) a savings and loan association chartered under Chapter 7, Savings and Loan

693 Associations Act;

694 (iii) a credit union chartered under Chapter 9, Utah Credit Union Act; or

695 (iv) a depository institution holding company.

696 (2) (a) Before an entity described in Subsection (1) may organize as or convert to a
697 limited liability company, the entity shall obtain approval of the commissioner.

698 (b) (i) To obtain the approval under this section from the commissioner, the entity shall
699 file a request for approval with the commissioner at least 30 days before the day on which the
700 entity becomes a limited liability company.

701 (ii) If the commissioner does not disapprove the request for approval within 30 days
702 from the day on which the commissioner receives the request, the request is considered
703 approved.

704 (iii) When taking action on a request for approval filed under this section, the
705 commissioner may:

706 (A) approve the request;

707 (B) approve the request subject to terms and conditions the commissioner considers
708 necessary; or

709 (C) disapprove the request.

710 (3) To approve a request for approval, the commissioner shall find:
711 (a) for an entity described in Subsection (1) that is required to be insured by a federal
712 deposit insurance agency, that the entity:
713 (i) will operate in a safe and sound manner;
714 (ii) has the following characteristics:
715 (A) the entity is not subject to automatic termination, dissolution, or suspension upon
716 the happening of some event other than the passage of time;
717 (B) the exclusive authority to manage the entity is vested in a board of managers or
718 directors that:
719 (I) is elected or appointed by the owners;
720 (II) is not required to have owners of the entity included on the board;
721 (III) possesses adequate independence and authority to supervise the operation of the
722 entity; and
723 (IV) operates with substantially the same rights, powers, privileges, duties, and
724 responsibilities, as the board of directors of a corporation;
725 (C) neither state law, nor the entity's operating agreement, bylaws, or other
726 organizational documents provide that an owner of the entity is liable for the debts, liabilities,
727 and obligations of the entity in excess of the amount of the owner's investment; and
728 (D) (I) neither state law, nor the entity's operating agreement, bylaws, or other
729 organizational documents require the consent of any other owner of the entity in order for any
730 owner to transfer an ownership interest in the entity, including voting rights; and
731 (II) the entity is able to obtain new investment funding if needed to maintain adequate
732 capital; and
733 (iii) is able to comply with all legal and regulatory requirements for an insured
734 depository institution under applicable federal and state law; and
735 (b) for an entity described in Subsection (1) that is not required to be insured by a
736 federal deposit insurance agency, that the entity will operate in a safe and sound manner.
737 (4) (a) An entity listed in Subsection (3)(a) that is organized as a limited liability
738 company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it
739 is authorized to conduct business under this title as a limited liability company.
740 (b) Notwithstanding Subsection (3)(a)(ii)(A), an entity listed in Subsection (3)(a) that

741 is a limited liability company may be voluntarily dissolved by its members:
742 (i) in accordance with Title 48, Chapter 2c, Part 12, Dissolution; and
743 (ii) with the prior written approval of the commissioner.
744 (5) All rights, privileges, powers, duties, and obligations of an entity described in
745 Subsection (1) that is organized as a limited liability company and its members and managers
746 shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company Act,
747 except as otherwise provided in this title.
748 (6) Unless the context requires otherwise, for the purpose of applying this title to an
749 entity described in Subsection (1) that is organized as a limited liability company:
750 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,
751 includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability
752 Company Act;
753 (b) "articles of incorporation" includes a limited liability company's articles of
754 organization as that term is used in Section 48-2c-403;
755 (c) "board of directors" includes any of the following of a limited liability company:
756 (i) all managers;
757 (ii) all directors; or
758 (iii) one or more persons who have, with respect to an entity described in Subsection
759 (1), authority substantially similar to that of a board of directors of a corporation;
760 (d) "bylaws" includes a limited liability company's operating agreement as that term is
761 defined in Section 48-2c-102;
762 (e) "corporation" includes a limited liability company organized under Title 48,
763 Chapter 2c, Utah Revised Limited Liability Company Act;
764 (f) "director" includes any of the following of a limited liability company:
765 (i) a manger;
766 (ii) a director; or
767 (iii) other person who has with respect to the entity described in Subsection (1),
768 authority substantially similar to that of a director of a corporation;
769 (g) "dividend" includes distributions made by a limited liability company under Title
770 48, Chapter 2c, Part 10, Distributions;
771 (h) "incorporator" includes the organizers of a limited liability company as provided in

772 Title 48, Chapter 2c, Part 4, Formation;

773 (i) "officer" includes any of the following of an entity described in Subsection (1):

774 (i) an officer; or

775 (ii) other person who has with respect to the entity described in Subsection (1)

776 authority substantially similar to that of an officer of a corporation;

777 (j) "security," "shares," or "stock" of a corporation includes:

778 (i) a membership interest in a limited liability company as provided in Title 48,

779 Chapter 2c, Part 7, Members; and

780 (ii) any certificate or other evidence of an ownership interest in a limited liability
781 company; and

782 (k) "stockholder" or "shareholder" includes an owner of an interest in an entity
783 described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7,
784 Members.

785 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
786 commissioner shall make rules governing the form of a request for approval filed under this
787 section.

788 Section 10. Section 7-3-3 is amended to read:

789 **7-3-3. "Banking business" defined -- Credit card banks -- Insurance of deposit**
790 **accounts.**

791 (1) (a) Except as provided under Subsection (1)(b), a person is considered to be
792 conducting a banking business and is a bank subject to the provisions of this title that are
793 applicable to banks if the person is authorized under the laws of this state, another state, the
794 United States, the District of Columbia, or any territory of the United States to accept deposits
795 from the public and to conduct such other business activities as may be authorized by statute or
796 by the commissioner in accordance with Subsection 7-3-10(2).

797 (b) A person is not considered to be a bank subject to the provisions of this title that are
798 applicable to banks if the person is authorized to conduct the business of:

799 (i) a federal savings and loan association [or];

800 (ii) a federal savings bank[;];

801 (iii) a savings and loan association [or] subject to Chapter 7, Savings and Loan
802 Associations Act;

803 (iv) a savings bank subject to Chapter 7, Savings and Loan Associations Act;
 804 (v) an industrial loan [~~corporation~~] company subject to Chapter 8, Industrial Loan

805 Companies;

806 (vi) a federally chartered credit union[;]; or

807 (vii) a credit union subject to Chapter 9, Utah Credit Union Act.

808 (2) A person authorized to operate as a bank in this state may operate as a credit card
 809 bank if it:

810 (a) engages only in credit card operations;

811 (b) does not accept demand deposits or deposits that the depositor may withdraw by
 812 check or similar means for payment to third parties or others;

813 (c) does not accept any savings or time deposits of less than \$100,000;

814 (d) maintains only one office that accepts deposits; and

815 (e) does not engage in the business of making commercial loans.

816 (3) All deposit accounts in banks or branches subject to the jurisdiction of the
 817 department shall be insured by the Federal Deposit Insurance Corporation or any successor to
 818 [it] the Federal Deposit Insurance Corporation.

819 Section 11. Section **7-8-3** is amended to read:

820 **7-8-3. Organization -- Authorization to conduct business.**

821 (1) The commissioner may authorize an entity described in Subsection (2) to conduct
 822 business as an industrial loan company.

823 [(H)] (2) (a) Each [~~domestic corporation~~] entity organized to conduct the business of an
 824 industrial loan [~~corporation~~] company in this state shall be organized under:

825 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act[;]; or

826 (ii) in accordance with Section 7-1-810, Title 48, Chapter 2c, Utah Revised Limited
 827 Liability Company Act.

828 (b) A person may not conduct business as an industrial loan company authorized under
 829 this chapter to conduct business as an industrial loan company in any form of entity other than
 830 those provided in Subsection (2)(a).

831 (3) (a) All rights, privileges, powers, duties, and obligations of [~~the~~] a corporation
 832 authorized to conduct business as an industrial loan company and its officers, directors, and
 833 stockholders shall be governed by Title 16, Chapter 10a, Utah Revised Business Corporation

834 Act, except as otherwise provided in this title.

835 (b) All rights, privileges, powers, duties, and obligations of a limited liability company
836 authorized to conduct business as an industrial loan company and its members and managers
837 shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company Act,
838 except as otherwise provided in this title.

839 ~~[(2) The commissioner may authorize a domestic corporation to conduct business as an~~
840 ~~industrial loan corporation.]~~

841 Section 12. Section **7-8-5** is amended to read:

842 **7-8-5. Acquisition of own stock restricted -- Capital requirements -- Deposit**
843 **insurance.**

844 (1) (a) An industrial loan ~~[corporation]~~ company may not accept as collateral, or be a
845 purchaser of, shares of its own capital stock, unless taking the shares as collateral or purchasing
846 them is necessary to prevent loss upon a debt previously contracted in good faith.

847 (b) All shares of stock acquired under this Subsection (1) by the industrial loan
848 ~~[corporation]~~ company through any purchase, foreclosure, judgment, or otherwise shall be sold
849 within 12 months from the date of acquisition.

850 (c) The par value of all the shares held after acceptance or purchase may not exceed
851 10% of the capital and surplus of the industrial loan ~~[corporation]~~ company.

852 (2) (a) Each industrial loan ~~[corporation]~~ company accepting or holding deposits shall
853 maintain the minimum amount of capital required by its federal deposit insurer.

854 (b) The commissioner may require a greater amount of capital if ~~[he]~~ the commissioner
855 determines that it is necessary to protect the interests of:

856 (i) the depositors and other customers of the industrial loan ~~[corporation]~~ company;
857 and

858 (ii) the public.

859 (3) An industrial loan ~~[corporation]~~ company may accept or hold deposits only if its
860 accounts are insured by a federal deposit insurance agency.

861 Section 13. Section **7-8-7** is amended to read:

862 **7-8-7. Reports to commissioner.**

863 Each industrial loan ~~[corporation]~~ company shall file reports of its condition in
864 accordance with Section 7-1-318.

865 Section 14. Section **7-8-11** is amended to read:

866 **7-8-11. Dividends.**

867 (1) The board of directors of an industrial loan ~~[corporation]~~ company authorized to
868 accept deposits may declare a dividend out of the net profits of the ~~[corporation]~~ industrial loan
869 company after providing for all expenses, losses, interest, and taxes accrued or due from the
870 ~~[corporation]~~ industrial loan company in accordance with this section and subject to Section
871 7-8-12.

872 (2) The ~~[corporation]~~ industrial loan company shall transfer to a surplus fund at least
873 10% of its net profits before dividends for the period covered by the dividend, until the surplus
874 reaches 100% of its capital stock.

875 (3) Any amount paid from the ~~[corporation's]~~ industrial loan company's net earnings
876 into a fund for the retirement of any debenture capital or preferred stock for the period covered
877 by the dividend is considered an addition to its surplus fund if, upon the retirement of the
878 debenture capital or preferred stock, the amount paid into the retirement fund for the period
879 may be properly carried to the surplus fund of the ~~[corporation]~~ industrial loan company. In
880 this case the industrial loan ~~[corporation]~~ company shall transfer to the surplus fund the
881 amount paid into the retirement fund.

882 Section 15. Section **7-8-12** is amended to read:

883 **7-8-12. Charge off of losses sustained on receivables and operating losses --**
884 **Replenishment of surplus account.**

885 (1) (a) Losses sustained on receivables by an industrial loan ~~[corporation]~~ company
886 authorized to accept deposits shall be charged first to the ~~[corporation's]~~ industrial loan
887 company's reserve for losses and then to its current income.

888 (b) Operating losses shall be charged first to the ~~[corporation's]~~ industrial loan
889 company's current income, next to undivided profits and then, after undivided profits have been
890 exhausted, to the surplus account.

891 (2) A charge to the ~~[corporation's]~~ industrial loan company's surplus account shall be
892 replenished from net profits or capital contributions. The ~~[corporation]~~ industrial loan
893 company may declare or pay a dividend only with the written permission of the commissioner
894 until its surplus account reaches an amount prescribed by the commissioner in writing.

895 Section 16. Section **7-8-13** is amended to read:

896 **7-8-13. Real estate acquisition, holding, and conveyance.**

897 An industrial loan [~~corporation~~] company may purchase, hold, and convey real estate,
898 other than premises used in the conduct of its business, only for the purposes and in a manner
899 prescribed by rule.

900 Section 17. Section **7-8-14** is amended to read:

901 **7-8-14. Investment in property used in conduct of business.**

902 (1) An industrial loan [~~corporation~~] company may invest in premises, equipment, and
903 other property used in conducting its own business, as the board of directors may approve by
904 resolution. This property may include:

905 (a) real property and any interest in real property, furniture, fixtures, and equipment for
906 use in carrying on its own business; and

907 (b) the stock, bonds, debentures, or other obligations of any subsidiary or affiliate
908 whose exclusive activity is the ownership and management of property used in conducting the
909 industrial loan [~~corporation's~~] company's business.

910 (2) The amount of these investments may not exceed 50% of the industrial loan
911 [~~corporation's~~] company's total capital, unless the commissioner approves a higher amount in
912 writing.

913 Section 18. Section **7-8-15** is amended to read:

914 **7-8-15. Bad debts.**

915 (1) All demand and matured debts due to any industrial loan [~~corporation~~] company on
916 which interest is past due and has not been paid for a period of six months, unless they are well
917 secured and in the process of collection, are considered bad debts and shall be charged off to
918 the profit and loss account.

919 (2) The [~~corporation~~] industrial loan company shall maintain in its files documentation
920 to support its evaluation of the security and monthly reports of its collection efforts and a plan
921 of collection.

922 Section 19. Section **7-8-16** is amended to read:

923 **7-8-16. Registration of industrial loan company holding company -- Filing and**
924 **contents of statement -- Exemptions -- Rules.**

925 (1) Each industrial loan [~~corporation~~] company holding company shall register with the
926 department by filing a registration statement in a form prescribed by the commissioner. The

927 statement shall include:

928 (a) the name, address, and principal occupation of each officer and director of the
929 registrant;

930 (b) a statement of financial condition as of a date not more than six months prior to the
931 date of registration;

932 (c) a certificate of good standing in the state in which the registrant is incorporated; and

933 (d) evidence that the company is authorized to transact business in this state.

934 (2) (a) A person may not form an industrial loan [~~corporation~~] company holding
935 company, unless it:

936 (i) is authorized to do so by the commissioner; and

937 (ii) is registered with the department as provided in Subsection (1).

938 (b) An applicant for authorization to form a holding company shall file an application
939 in a form prescribed by the commissioner by rule.

940 (3) The commissioner may exempt an industrial loan [~~corporation~~] company holding
941 company in whole or in part from registration if it is:

942 (a) a bank holding company or savings and loan holding company subject to federal
943 regulation;

944 (b) a person that is a holding company only because [~~it~~] the person owns or controls
945 voting shares of an industrial loan [~~corporation~~] company or holding company acquired in
946 connection with the underwriting of securities if [~~it~~] the person holds these shares no longer
947 than 120 days, unless the commissioner approves a longer period to permit their sale on a
948 reasonable basis;

949 (c) a person exempt from the jurisdiction of the department under Section 7-1-502; or

950 (d) a person exempted in writing by the commissioner or by rule.

951 (4) The commissioner may adopt rules with respect to industrial loan [~~corporation~~]
952 company holding companies as are necessary to protect:

953 (a) depositors[;];

954 (b) other creditors[;];

955 (c) the public[;]; and

956 (d) the financial system of the state.

957 Section 20. Section **7-8-19** is amended to read:

958 **7-8-19. Meetings of the board of directors.**

959 (1) A quorum of the board of directors of each industrial loan [~~corporation~~] company
960 shall meet at least once each quarter.

961 (2) Minutes of each meeting of the board of directors shall be:

962 (a) kept by the secretary of the [~~corporation~~] industrial loan company; and

963 (b) maintained at the head office of the [~~corporation~~] industrial loan company.

964 Section 21. Section **7-8-20** is amended to read:

965 **7-8-20. Limitations on loans to one borrower -- Exceptions -- Rules.**

966 (1) Except as provided in this section, the total loans and extensions of credit by any
967 industrial loan [~~corporation~~] company to any person outstanding at any one time may not
968 exceed 15% of the industrial loan [~~corporation's~~] company's total capital.

969 (2) Subsection (1) does not apply to an extension of credit that is subject to, or
970 expressly exempted from, a federal statute or federal regulation limiting the amount of total
971 loans and credit that may be extended to any person or group of persons.

972 (3) The commissioner may by rule:

973 (a) exempt from Subsection (1) any class of loans or class of extensions of credit that
974 are adequately secured or are not otherwise a risk to the safe and sound operation of an
975 industrial loan [~~corporation~~] company;

976 (b) define terms and phrases necessary to interpret and implement this section;

977 (c) adopt standards for aggregating or segregating loans to the same or different
978 persons;

979 (d) describe records required to be maintained;

980 (e) require specific actions to be taken by an institution's board of directors or
981 executive officers; and

982 (f) prescribe other actions necessary to interpret and implement this section.

983 Section 22. Section **9-2-1923** is amended to read:

984 **9-2-1923. Permissible investments.**

985 Investments by designated investors in the Utah fund of funds are permissible
986 investments under applicable laws of the state for:

987 (1) state-chartered banks;

988 (2) state-chartered savings and loan associations;

- 989 (3) state-chartered credit unions;
 990 (4) state-chartered industrial loan [~~corporations~~] companies; and
 991 (5) domestic insurance companies.

992 Section 23. Section **25-5-4** is amended to read:

993 **25-5-4. Certain agreements void unless written and signed.**

994 (1) The following agreements are void unless the agreement, or some note or
 995 memorandum of the agreement, is in writing, signed by the party to be charged with the
 996 agreement:

997 [~~(1)~~] (a) every agreement that by its terms is not to be performed within one year from
 998 the making of the agreement;

999 [~~(2)~~] (b) every promise to answer for the debt, default, or miscarriage of another;

1000 [~~(3)~~] (c) every agreement, promise, or undertaking made upon consideration of
 1001 marriage, except mutual promises to marry;

1002 [~~(4)~~] (d) every special promise made by an executor or administrator to answer in
 1003 damages for the liabilities, or to pay the debts, of the testator or intestate out of his own estate;

1004 [~~(5)~~] (e) every agreement authorizing or employing an agent or broker to purchase or
 1005 sell real estate for compensation; and

1006 [~~(6)~~] (f) every credit agreement.

1007 (2) (a) As used in [~~Subsection (6)~~] Subsections (1)(f) and this Subsection (2):

1008 (i) (A) "Credit agreement" means an agreement by a financial institution to:

1009 (I) lend, delay, or otherwise modify an obligation to repay money, goods, or things in
 1010 action[~~;~~];

1011 (II) otherwise extend credit[~~;~~]; or [~~to~~]

1012 (III) make any other financial accommodation.

1013 (B) "Credit agreement" does not include the usual and customary agreements related to
 1014 deposit accounts or overdrafts or other terms associated with deposit accounts or overdrafts.

1015 (ii) "Creditor" means a financial institution which extends credit or extends a financial
 1016 accommodation under a credit agreement with a debtor.

1017 (iii) "Debtor" means a person who seeks or obtains credit, or seeks or receives a
 1018 financial accommodation, under a credit agreement with a financial institution.

1019 (iv) "Financial institution" means:

1020 (A) a state or federally chartered;

1021 (I) bank[;];

1022 (II) savings and loan association[;];

1023 (III) savings bank[;];

1024 (IV) industrial loan [~~corporation~~] company; or

1025 (V) credit union[;]; or

1026 (B) any other institution under the jurisdiction of the commissioner of Financial
1027 Institutions as provided in Title 7, Financial Institutions Act.

1028 (b) (i) Except as provided in Subsection [~~(6)~~] (2)(e), a debtor or a creditor may not
1029 maintain an action on a credit agreement unless the agreement:

1030 (A) is in writing[;];

1031 (B) expresses consideration[;];

1032 (C) sets forth the relevant terms and conditions[;]; and

1033 (D) is signed by the party against whom enforcement of the agreement would be
1034 sought.

1035 (ii) For purposes of this act, a signed application constitutes a signed agreement, if the
1036 creditor does not customarily obtain an additional signed agreement from the debtor when
1037 granting the application.

1038 (c) The following actions do not give rise to a claim that a credit agreement is created,
1039 unless the agreement satisfies the requirements of Subsection [~~(6)~~] (2)(b):

1040 (i) the rendering of financial advice by a creditor to a debtor;

1041 (ii) the consultation by a creditor with a debtor; or

1042 (iii) the creation for any purpose between a creditor and a debtor of fiduciary or other
1043 business relationships.

1044 (d) Each credit agreement shall contain a clearly stated typewritten or printed provision
1045 giving notice to the debtor that the written agreement is a final expression of the agreement
1046 between the creditor and debtor and the written agreement may not be contradicted by evidence
1047 of any alleged oral agreement. The provision does not have to be on the promissory note or
1048 other evidence of indebtedness that is tied to the credit agreement.

1049 (e) A credit agreement is binding and enforceable without any signature by the party to
1050 be charged if:

1051 (i) the debtor is provided with a written copy of the terms of the agreement;
1052 (ii) the agreement provides that any use of the credit offered shall constitute acceptance
1053 of those terms; and

1054 (iii) after the debtor receives the agreement, the debtor, or a person authorized by the
1055 debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.

1056 Section 24. Section **31A-21-109** is amended to read:

1057 **31A-21-109. Debt cancellation agreements and debt suspension agreements.**

1058 (1) As used in this section:

1059 (a) "Debt cancellation agreement" means a contract between a lender and a borrower
1060 where the lender, for a separately stated consideration, agrees to waive all or part of the debt in
1061 the event of a fortuitous event such as death, disability, or the destruction of the lender's
1062 collateral.

1063 (b) "Debt suspension agreement" means a contract between a lender and a borrower
1064 where the lender, for a separately stated consideration, agrees to suspend scheduled installment
1065 payments for an agreed period of time in the event of a:

1066 (i) fortuitous event such as involuntary unemployment or accident; or

1067 (ii) fortuitous condition such as sickness.

1068 (c) "Institution" means:

1069 (i) a bank as defined in Section 7-1-103;

1070 (ii) a credit union as defined in Section 7-1-103;

1071 (iii) an industrial loan [~~corporation~~] company as defined in Section 7-1-103; or

1072 (iv) a savings and loan association as defined in Section 7-1-103.

1073 (d) "Regulate the issuance" includes regulation of the following with respect to a debt
1074 cancellation agreement or a debt suspension agreement:

1075 (i) terms;

1076 (ii) conditions;

1077 (iii) rates;

1078 (iv) forms; and

1079 (v) claims.

1080 (e) "Subsidiary" is as defined in Section 7-1-103.

1081 (2) Except as provided in Subsection (6), the commissioner has sole jurisdiction over

1082 the regulation of a debt cancellation agreement or debt suspension agreement.

1083 (3) Subject to this section, the commissioner may by rule, made in accordance with
1084 Title 63, Chapter 46a, Utah Administrative Rulemaking Act:

1085 (a) authorize an insurer to issue:

1086 (i) a debt cancellation agreement; or

1087 (ii) a debt suspension agreement; and

1088 (b) regulate the issuance of:

1089 (i) a debt cancellation agreement; or

1090 (ii) a debt suspension agreement.

1091 (4) Except as provided in Subsection (6), a debt cancellation agreement or a debt
1092 suspension agreement may be issued only by an insurer authorized to issue a debt cancellation
1093 agreement or debt suspension agreement under this section.

1094 (5) (a) The rules promulgated by the commissioner under this section shall regulate the
1095 issuance of a debt cancellation agreement or debt suspension agreement according to the
1096 functional insurance equivalent of each type of debt cancellation agreement or debt suspension
1097 agreement.

1098 (b) Except as provided in Subsection (5)(c), in accordance with Title 63, Chapter 46a,
1099 Utah Administrative Rulemaking Act, the commissioner may by rule determine the functional
1100 insurance equivalent of each type of debt cancellation agreement or debt suspension agreement.

1101 (c) Notwithstanding Subsection (5)(b), the functional insurance equivalent of a debt
1102 cancellation agreement that provides for the cancellation of indebtedness at death is credit life
1103 insurance.

1104 (6) Notwithstanding the other provisions of this section, the issuance of a debt
1105 cancellation agreement or a debt suspension agreement by an institution or a subsidiary of an
1106 institution is:

1107 (a) not subject to this section; and

1108 (b) subject to the jurisdiction of the primary regulator of:

1109 (i) the institution; or

1110 (ii) the subsidiary of an institution.

1111 Section 25. Section **67-4a-102** is amended to read:

1112 **67-4a-102. Definitions.**

1113 As used in this chapter:

1114 (1) "Administrator" means the deputy state treasurer assigned by the state treasurer to
1115 administer the law governing unclaimed property in Utah.

1116 (2) "Apparent owner" means the person whose name appears on the records of the
1117 holder as the person entitled to property held, issued, or owing by the holder.

1118 (3) (a) "Bank draft" means a check, draft, or similar instrument on which a banking or
1119 financial organization is directly liable.

1120 (b) "Bank draft" includes:

1121 (i) cashier's checks; and

1122 (ii) certified checks.

1123 (c) "Bank draft" does not include:

1124 (i) traveler's checks; or

1125 (ii) money orders.

1126 (4) "Banking organization" means:

1127 (a) a bank[;];

1128 (b) an industrial loan [~~corporation;~~] company;

1129 (c) a trust company[;];

1130 (d) a savings bank[;]; or

1131 (e) any organization defined by other law as a bank or banking organization.

1132 (5) "Business association" means a nonpublic corporation, joint stock company,

1133 investment company, business trust, partnership, or association for business purposes of two or
1134 more individuals, whether or not for profit, including:

1135 (a) a banking organization[;];

1136 (b) a financial organization[;];

1137 (c) an insurance company[;]; or

1138 (d) a utility.

1139 (6) "Cashier's check" means a check drawn by a banking organization on itself, signed
1140 by an officer of the banking organization, authorizing payment of the amount shown on its face
1141 to the payee.

1142 (7) "Class action" means a legal action:

1143 (a) certified by the court as a class action; or

1144 (b) treated by the court as a class action without being formally certified as a class
1145 action.

1146 (8) (a) "Deposit in a financial institution" means a demand, savings, or matured time
1147 deposit with a banking or financial organization.

1148 (b) "Deposit in a financial institution" includes:

1149 (i) any interest or dividends on a deposit; and

1150 (ii) a deposit that is automatically renewable.

1151 (9) "Domicile" means the state of incorporation of a corporation and the state of the
1152 principal place of business of an unincorporated person.

1153 (10) "Financial organization" means:

1154 (a) a savings and loan association; or

1155 (b) a credit union.

1156 (11) "Government entity" means:

1157 (a) the state[;];

1158 (b) any administrative unit of the state[;];

1159 (c) any political subdivision of the state[;];

1160 (d) any administrative unit of a political subdivision of the state[;]; or

1161 (e) any officer or employee of ~~[those entities]~~ an entity described in Subsections (11)(a)
1162 through (d).

1163 (12) "Holder" means a person, wherever organized or domiciled, who is:

1164 (a) in possession of property belonging to another;

1165 (b) a trustee;

1166 (c) indebted to another on an obligation; or

1167 (d) charged with the duty of paying or delivering intangible property under Section
1168 67-4a-302.

1169 (13) "Insurance company" means an association, corporation, fraternal or mutual
1170 benefit organization, whether or not for profit, that is engaged in providing insurance coverage,
1171 including:

1172 (a) accident[;] insurance;

1173 (b) burial[;] insurance;

1174 (c) casualty[;] insurance;

- 1175 (d) credit life[;] insurance;
- 1176 (e) contract performance[;] insurance;
- 1177 (f) dental[;] insurance;
- 1178 (g) fidelity[;] insurance;
- 1179 (h) fire[;] insurance;
- 1180 (i) health[;] insurance;
- 1181 (j) hospitalization[;] insurance;
- 1182 (k) illness[;] insurance;
- 1183 (l) life insurance, including endowments and annuities[;];
- 1184 (m) malpractice[;] insurance;
- 1185 (n) marine[;] insurance;
- 1186 (o) mortgage[;] insurance;
- 1187 (p) surety[;] insurance; and
- 1188 (q) wage protection insurance.
- 1189 (14) (a) "Intangible property" includes:
- 1190 (i) monies, checks, drafts, deposits in a financial institution, interest, dividends, and
- 1191 income;
- 1192 (ii) credit balances, customer overpayments, gift certificates over \$25, security
- 1193 deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified
- 1194 remittances;
- 1195 (iii) stocks, mutual funds, and other intangible ownership interests in business
- 1196 associations;
- 1197 (iv) monies deposited to redeem stocks, bonds, coupons, and other securities or to
- 1198 make distributions;
- 1199 (v) bonds, notes, and any other debt obligations;
- 1200 (vi) amounts due and payable under the terms of insurance policies;
- 1201 (vii) amounts distributable from a trust or custodial fund established under a plan to
- 1202 provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit
- 1203 sharing, employee savings, supplemental unemployment insurance or similar benefits; and
- 1204 (viii) amounts distributable from a mineral interest in land.
- 1205 (b) "Intangible property" does not include patronage capital of electric, telephone, and

1206 agricultural cooperatives.

1207 (15) "Last-known address" means a description of the location of the apparent owner
1208 sufficient for the purpose of the delivery of mail.

1209 (16) "Mineral" means oil, gas, uranium, sulphur, lignite, coal, and any other substance
1210 that is ordinarily and naturally considered a mineral, regardless of the depth at which the oil,
1211 gas, uranium, sulphur, lignite, coal, or other substance is found.

1212 (17) "Mineral proceeds" includes:

1213 (a) all obligations to pay resulting from the production and sale of minerals, including:

1214 (i) net revenue interest[;];

1215 (ii) royalties[;];

1216 (iii) overriding royalties[;];

1217 (iv) production payments[;]; and

1218 (v) joint operating agreements; and

1219 (b) all obligations for the acquisition and retention of a mineral lease, including:

1220 (i) bonuses[;];

1221 (ii) delay rentals[;];

1222 (iii) shut-in royalties[;]; and

1223 (iv) minimum royalties.

1224 (18) (a) "Money order" means a negotiable draft issued by a business association for
1225 which the business association is not directly liable.

1226 (b) "Money order" does not mean a cashier's check.

1227 (19) "Net intangible property" means intangible property that is held, issued, or owing
1228 in the ordinary course of a holder's business plus any income or increment derived from it and
1229 less any lawful charges.

1230 (20) "Owner" means:

1231 (a) a depositor in the case of a deposit;

1232 (b) a beneficiary in the case of a trust other than a deposit in trust;

1233 (c) a creditor, claimant, or payee in the case of other intangible property; or

1234 (d) a person or that person's legal representative having a legal or equitable interest in
1235 property subject to this chapter.

1236 (21) (a) "Ownership purchase funds" means any funds paid toward the purchase of a

1237 share, a mutual investment certificate, or any other interest in a banking or financial
1238 organization.

1239 (b) "Ownership purchase funds" includes any interest or dividends paid on those funds.

1240 (22) "Person" means:

1241 (a) an individual[;];

1242 (b) a business association[;];

1243 (c) a government entity[;];

1244 (d) a public corporation[;];

1245 (e) a public authority[;];

1246 (f) an estate[;];

1247 (g) a trust[;];

1248 (h) two or more persons having a joint or common interest[;]; or

1249 (i) any other legal or commercial entity.

1250 (23) "State" means any state, district, commonwealth, territory, insular possession, or
1251 any other area subject to the legislative authority of the United States.

1252 (24) "Utility" means a person who owns or operates for public use any plant,
1253 equipment, property, franchise, or license for:

1254 (a) the transmission of communications, including cable television; or

1255 (b) the production, storage, transmission, sale, delivery, or furnishing of electricity,
1256 water, steam, or gas.

1257 Section 26. Section **75-6-101** is amended to read:

1258 **75-6-101. Definitions.**

1259 As used in this part:

1260 (1) "Account" means a contract of deposit of funds between a depositor and a financial
1261 institution and includes:

1262 (a) a checking account[;];

1263 (b) a savings account[;];

1264 (c) a certificate of deposit[;];

1265 (d) a share account[;]; and

1266 (e) other like arrangement.

1267 (2) "Beneficiary" means a person named in a trust account as one for whom a party to

1268 the account is named as trustee.

1269 (3) "Financial institution" means any organization authorized to do business under state
1270 or federal laws relating to financial institutions, including, without limitation[;];

1271 (a) banks [~~and~~];

1272 (b) trust companies[;];

1273 (c) industrial loan [~~corporations~~] companies with thrift certificate authorization[;];

1274 (d) savings banks[;];

1275 (e) building and loan associations[;];

1276 (f) savings and loan companies or associations[;]; and

1277 (g) credit unions.

1278 (4) "Joint account" means an account payable on request to one or more of two or more
1279 parties whether or not mention is made of any right of survivorship.

1280 (5) (a) "Multiple-party account" means any of the following types of account:

1281 [~~(a)~~] (i) a joint account;

1282 [~~(b)~~] (ii) a P.O.D. account; or

1283 [~~(c)~~] (iii) a trust account. [~~It~~]

1284 (b) "Multiple-party account" does not include:

1285 (i) accounts established for deposit of funds of a partnership, joint venture, or other
1286 association for business purposes[;]; or

1287 (ii) accounts controlled by one or more persons as the duly authorized agent or trustee
1288 for a corporation, unincorporated association, charitable or civic organization, or a regular
1289 fiduciary or trust account where the relationship is established other than by deposit agreement.

1290 (6) (a) "Net contribution" of a party to a joint account as of any given time is the sum
1291 of all deposits to it made by or for [~~him~~] the party, less all withdrawals made by or for [~~him~~]
1292 the party which have not been paid to or applied to the use of any other party, plus a pro rata
1293 share of any interest or dividends included in the current balance. [~~The term~~]

1294 (b) "Net contribution" includes, in addition, any proceeds of deposit life insurance
1295 added to the account by reason of the death of the party whose net contribution is in question.

1296 (7) (a) "Party" means a person, including a minor, who, by the terms of the account,
1297 has a present right, subject to request, to payment from a multiple-party account.

1298 (b) A P.O.D. payee or beneficiary of a trust account is a party only after the account

1299 becomes payable to him by reason of his surviving the original payee or trustee and includes a
1300 guardian, conservator, personal representative, or assignee, including an attaching creditor, of a
1301 party. [~~It also~~]

1302 (c) "Party" includes a person identified as a trustee of an account for another whether
1303 or not a beneficiary is named [~~, but it~~].

1304 (d) "Party" does not include any named beneficiary unless [~~he~~] the named beneficiary
1305 has a present right of withdrawal.

1306 (8) "Payment" of sums on deposit includes withdrawal, payment on check or other
1307 directive of a party, and any pledge of sums on deposit by a party and any setoff, reduction, or
1308 other disposition of all or part of an account pursuant to a pledge.

1309 (9) "Proof of death" includes a death certificate or record or report which is prima facie
1310 proof of death under Section 75-1-107.

1311 (10) "P.O.D. account" means an account payable on request to one person during
1312 lifetime and on [~~his~~] that person's death to:

1313 (a) one or more P.O.D. payees [~~;~~]; or [~~to~~]

1314 (b) one or more persons during their lifetimes and on the death of all of them to one or
1315 more P.O.D. payees.

1316 (11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom
1317 the account is payable on request after the death of one or more persons.

1318 (12) "Request" means a proper request for withdrawal, or a check or order for payment,
1319 which complies with all conditions of the account, including special requirements concerning
1320 necessary signatures and regulations of the financial institution; but if the financial institution
1321 conditions withdrawal or payment on advance notice, for purposes of this part the request for
1322 withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is
1323 treated as a request for withdrawal.

1324 (13) "Sums on deposit" means the balance payable on a multiple-party account,
1325 including interest, dividends, and in addition any deposit life insurance proceeds added to the
1326 account by reason of the death of a party.

1327 (14) (a) "Trust account" means an account in the name of one or more parties as trustee
1328 for one or more beneficiaries where the relationship is established by the form of the account
1329 and the deposit agreement with the financial institution and there is no subject of the trust other

1330 than the sums on deposit in the account; and it is not essential that payment to the beneficiary
1331 be mentioned in the deposit agreement.

1332 (b) A trust account does not include a regular trust account under a testamentary trust
1333 or a trust agreement which has significance apart from the account, or a fiduciary account
1334 arising from a fiduciary relation such as attorney-client.

1335 (15) "Withdrawal" includes payment to a third person pursuant to check or other
1336 directive of a party.

1337 Section 27. **Uncodified Section 27, Chapter 327, Laws of Utah 2003** is amended to
1338 read:

1339 Section 27. **Financial Institutions Task Force.**

1340 (1) There is created the Financial Institutions Task Force consisting of the following 12
1341 members:

1342 (a) five members of the Senate appointed by the president of the Senate, no more than
1343 four of whom may be from the same political party; and

1344 (b) seven members of the House of Representatives appointed by the speaker of the
1345 House of Representatives, no more than five of whom may be from the same political party.

1346 (2) (a) The president of the Senate shall designate a member of the Senate appointed
1347 under Subsection (1)(a) as a cochair of the task force.

1348 (b) The speaker of the House of Representatives shall designate a member of the House
1349 of Representatives appointed under Subsection (1)(b) as a cochair of the task force.

1350 (3) In conducting its business, the task force shall comply with the rules of legislative
1351 interim committees.

1352 (4) Salaries and expenses of the members of the task force shall be paid in accordance
1353 with Section 36-2-2 and Legislative Joint Rule 15.03.

1354 (5) The Office of Legislative Research and General Counsel shall provide staff support
1355 to the task force.

1356 (6) The task force shall study:

1357 (a) the structural differences between credit unions and other financial institutions;

1358 (b) whether to clarify the language defining the appropriate purposes and operations of
1359 credit unions chartered in this state including what are the appropriate eligibility standards for
1360 members of a credit union that should be imposed by statute;

- 1361 (c) what should be the appropriate field of membership requirements for a credit union;
- 1362 (d) the policies that should govern all questions applicable to taxing or not taxing
1363 nonexempt credit unions;
- 1364 (e) the policies underlying whether or not to tax or assess other fees on banks and
1365 nonexempt credit unions;
- 1366 (f) (i) whether or not any credit union should be allowed to pay a competitive equity
1367 assessment;
- 1368 (ii) if a credit union is allowed to pay a competitive equity assessment, which credit
1369 unions should be allowed to pay a competitive equity assessment; and
- 1370 (iii) how any competitive equity assessment to be paid by a credit union should be
1371 calculated including whether required reserves should be subtracted from any of a credit
1372 union's annual cash retained earnings of a credit union that may be subject to a competitive
1373 equity assessment;
- 1374 (g) if a competitive equity assessment is allowed to be paid by a credit union or if state
1375 corporate franchise and income taxes are imposed on nonexempt credit unions, the benefits or
1376 restrictions that should be conditioned on the payment of the competitive equity assessment or
1377 state corporate franchise and income taxes including:
- 1378 (i) whether or not, to the extent that a bank could extend the credit or to the extent that
1379 the extension of credit is not inconsistent with the requirements of National Credit Union
1380 Administration, a credit union that pays a competitive equity assessment should be exempted
1381 from certain restrictions on extending member-business loans such as the restrictions under:
- 1382 (A) Subsection 7-9-5(12)(b);
- 1383 (B) Subsection 7-9-20(7)(b)(ii), except that certain membership requirements may
1384 always need to be required for member-business loans;
- 1385 (C) Subsection 7-9-20(7)(c); and
- 1386 (D) Subsection 7-9-20(8)(b)(ii);
- 1387 (ii) whether or not without payment of a competitive equity assessment a nonexempt
1388 credit union should be able to establish a branch that is to be located outside of the county in
1389 which the nonexempt credit union has the greatest number of branches;
- 1390 (iii) whether or not, except in supervisory actions, a nonexempt credit union could
1391 merge with another credit union without payment of the competitive equity assessment; and

- 1392 (iv) whether or not limitations related to the grandfathering under Section 7-9-53
1393 should be modified or removed;
- 1394 (h) whether the judicial review process of decisions of the Commissioner of Financial
1395 Institutions should be modified;
- 1396 (i) (i) the powers and duties of the Commissioner of Financial Institutions to regulate
1397 the activities of credit unions and banks; and
- 1398 (ii) whether additional powers or duties should be given to the Commissioner of
1399 Financial Institutions;
- 1400 (j) the effect of a credit union chartered in this state converting to a federal credit union
1401 charter including any:
- 1402 (i) loss of sales and uses taxes;
- 1403 (ii) loss of fees paid to the Department of Financial Institutions; and
- 1404 (iii) loss of taxes and fees paid to political subdivisions of the state;
- 1405 (k) the methods by which financial institutions in this state may obtain capital;
- 1406 (l) the appropriate lending practices of credit unions including:
- 1407 (i) extension of member-business loans;
- 1408 (ii) extension of credit that does not constitute a member-business loan; and
- 1409 (iii) participation in co-lending arrangements including loan participation
1410 arrangements; ~~and~~
- 1411 (m) whether one or more of the following should be allowed to be organized as or
1412 convert to a limited liability company:
- 1413 (i) a bank chartered under Chapter 3, Banks;
- 1414 (ii) a savings and loan association chartered under Chapter 7, Savings and Loan
1415 Associations Act;
- 1416 (iii) a credit union chartered under Chapter 9, Utah Credit Union Act;
- 1417 (iv) a depository institution holding company; or
- 1418 (v) a subsidiary of an entity described in Subsections (6)(m)(i) through (iii); and
1419 ~~(m)~~ (n) any other issues related to financial institutions and credit unions that the task
1420 force determines to be appropriate.
- 1421 (7) The task force shall:
- 1422 (a) make an interim report to the Business and Labor Interim Committee by no later

1423 than November 30, 2003; and

1424 (b) make a final report to the Business and Labor Interim Committee, including any
1425 proposed legislation, by no later than November 30, 2004.

1426 Section 28. **Effective date.**

1427 If approved by two-thirds of all the members elected to each house, this bill takes effect
1428 upon approval by the governor, or the day following the constitutional time limit of Utah
1429 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
1430 the date of veto override.

Legislative Review Note

as of 2-6-04 11:43 AM

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

Office of Legislative Research and General Counsel

State Impact

Any fiscal impact can be handled within existing budgets.

Individual and Business Impact

Individual and business impacts will vary according to individual circumstances.

Office of the Legislative Fiscal Analyst