

1 **FINANCIAL INSTITUTIONS AS LIMITED**

2 **LIABILITY COMPANIES**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Lyle W. Hillyard**

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**LONG TITLE**

7 **General Description:**

8 This bill modifies the Financial Institutions Act to address limited liability companies.

9 **Highlighted Provisions:**

10 This bill:

11 ▶ exempts a financial institution formed as a limited liability company from specified  
12 provisions of the Utah Revised Limited Liability Company Act under certain  
13 circumstances; and

14 ▶ makes technical changes.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **7-1-810**, as enacted by Chapter 92, Laws of Utah 2004

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

23 Section 1. Section **7-1-810** is amended to read:

24 **7-1-810. Limited liability companies.**

25 (1) Notwithstanding any other provision of this title, if the conditions of this section are



28 met, the following may be organized as or convert to a limited liability company under Title  
29 48, Chapter 2c, Utah Revised Limited Liability Company Act:

- 30 (a) an industrial bank chartered under Chapter 8, Industrial Banks;
- 31 (b) an industrial loan company as defined in Section 7-8-21; or
- 32 (c) any of the following if the institution is an S Corporation, as defined in Section  
33 1361, Internal Revenue Code, immediately before becoming a limited liability company:

- 34 (i) a bank chartered under Chapter 3, Banks;
- 35 (ii) a savings and loan association chartered under Chapter 7, Savings and Loan  
36 Associations Act; or
- 37 (iii) a depository institution holding company.

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

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

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

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

- 48 (A) approve the request;
- 49 (B) approve the request subject to terms and conditions the commissioner considers  
50 necessary; or
- 51 (C) disapprove the request.

52 (3) To approve a request for approval, the commissioner shall find:

53 (a) for an institution described in Subsection (1) that is required to be insured by a  
54 federal deposit insurance agency, that the institution:

- 55 (i) will operate in a safe and sound manner;
- 56 (ii) has the following characteristics:
  - 57 (A) the institution is not subject to automatic termination, dissolution, or suspension  
58 upon the happening of some event other than the passage of time;

59 (B) the exclusive authority to manage the institution is vested in a board of managers  
60 or directors that:

61 (I) is elected or appointed by the owners;

62 (II) is not required to have owners of the institution included on the board;

63 (III) possesses adequate independence and authority to supervise the operation of the  
64 institution; and

65 (IV) operates with substantially the same rights, powers, privileges, duties, and  
66 responsibilities as the board of directors of a corporation;

67 (C) neither state law, nor the institution's operating agreement, bylaws, or other  
68 organizational documents provide that an owner of the institution is liable for the debts,  
69 liabilities, and obligations of the institution in excess of the amount of the owner's investment;  
70 and

71 (D) (I) neither state law, nor the institution's operating agreement, bylaws, or other  
72 organizational documents require the consent of any other owner of the institution in order for  
73 any owner to transfer an ownership interest in the institution, including voting rights; and

74 (II) the institution is able to obtain new investment funding if needed to maintain  
75 adequate capital; and

76 (iii) is able to comply with all legal and regulatory requirements for an insured  
77 depository institution under applicable federal and state law; and

78 (b) for an institution described in Subsection (1) that is not required to be insured by a  
79 federal deposit insurance agency, that the institution will operate in a safe and sound manner.

80 (4) (a) An institution [~~listed~~] described in Subsection (3)(a) that is organized as a  
81 limited liability company shall maintain the characteristics listed in Subsection (3)(a)(ii) during  
82 such time as it is authorized to conduct business under this title as a limited liability company.

83 (b) Notwithstanding Subsection (3)(a)(ii)(A), an institution [~~listed~~] described in  
84 Subsection (3)(a) that is a limited liability company may be voluntarily dissolved by its  
85 members:

86 (i) in accordance with [~~Title 48, Chapter 2c, Part 12, Dissolution, and~~] Subsection  
87 48-2c-1201(2), (3), or (4);

88 (ii) with the prior written approval of the commissioner[-]; and

89 (iii) with the prior written approval of the federal deposit insurance agency that insures

90 the institution.

91 (5) (a) All rights, privileges, powers, duties, and obligations of an institution described  
92 in Subsection (1) that is organized as a limited liability company and its members and  
93 managers shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company  
94 Act, except:

95 (i) the following sections do not apply to an institution that is described in Subsection

96 (3)(a):

97 (A) Subsection 48-2c-402(2)(a)(ii);

98 (B) Section 48-2c-604;

99 (C) Section 48-2c-703;

100 (D) Section 48-2c-708;

101 (E) Subsection 48-2c-801(2);

102 (F) Section 48-2c-1102;

103 (G) Section 48-2c-1104; and

104 (H) Subsections 48-2c-1201(2) through (5); and

105 (ii) as otherwise provided in this title.

106 (b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection

107 (3)(a):

108 (i) a member's interest in the institution shall be treated like a share of stock in a  
109 corporation:

110 (A) for purposes of any of the following affecting the member:

111 (I) death;

112 (II) disability;

113 (III) bankruptcy; or

114 (IV) other event affecting the member's interest similar to an event listed in

115 Subsections (5)(b)(i)(A)(I) through (III); and

116 (B) for purposes of admitting additional members;

117 (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to  
118 another person, the person who receives the member's interest shall obtain the member's entire  
119 rights associated with the member's interest in the institution; and

120 (iii) the institution may dissolve under Subsection 48-2c-1201(2), (3), or (4) if the

121 institution complies with Subsection (4)(b).

122 (c) An institution described in Subsection (3)(a) may not by agreement or otherwise  
123 change the application of Subsection (5)(a) to the institution.

124 (6) Unless the context requires otherwise, for the purpose of applying this title to an  
125 institution described in Subsection (1) that is organized as a limited liability company:

126 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,  
127 includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability  
128 Company Act;

129 (b) "articles of incorporation" includes a limited liability company's articles of  
130 organization as that term is used in Section 48-2c-403;

131 (c) "board of directors" includes any of the following of a limited liability company:

132 (i) all managers;

133 (ii) all directors; or

134 (iii) one or more persons who have, with respect to an institution described in  
135 Subsection (1), authority substantially similar to that of a board of directors of a corporation;

136 (d) "bylaws" includes a limited liability company's operating agreement as that term is  
137 defined in Section 48-2c-102;

138 (e) "corporation" includes a limited liability company organized under Title 48,  
139 Chapter 2c, Utah Revised Limited Liability Company Act;

140 (f) "director" includes any of the following of a limited liability company:

141 (i) a manger;

142 (ii) a director; or

143 (iii) other person who has with respect to the institution described in Subsection (1),  
144 authority substantially similar to that of a director of a corporation;

145 (g) "dividend" includes distributions made by a limited liability company under Title  
146 48, Chapter 2c, Part 10, Distributions;

147 (h) "incorporator" includes the organizers of a limited liability company as provided in  
148 Title 48, Chapter 2c, Part 4, Formation;

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

150 (i) an officer; or

151 (ii) other person who has with respect to the institution described in Subsection (1)

152 authority substantially similar to that of an officer of a corporation;  
153 (j) "security," "shares," or "stock" of a corporation includes:  
154 (i) a membership interest in a limited liability company as provided in Title 48,  
155 Chapter 2c, Part 7, Members; and  
156 (ii) any certificate or other evidence of an ownership interest in a limited liability  
157 company; and  
158 (k) "stockholder" or "shareholder" includes an owner of an interest in an institution  
159 described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7,  
160 Members.  
161 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
162 commissioner shall make rules governing the form of a request for approval filed under this  
163 section.

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**Legislative Review Note**  
**as of 2-3-05 10:44 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0215**

**Financial Institutions as Limited Liability Companies**

*08-Feb-05*

*1:09 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No estimate is given for business impacts.

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**Office of the Legislative Fiscal Analyst**