

Senator Lyle W. Hillyard proposes the following substitute bill:

FINANCIAL INSTITUTIONS AS LIMITED

LIABILITY COMPANIES

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

- ▶ addresses how limited liability companies are treated under the Financial Institutions Act or for purposes of transferring a member's interest; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



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

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

28 **7-1-810. Limited liability companies.**

29 (1) Notwithstanding any other provision of this title, if the conditions of this section are
30 met, the following may be organized as or convert to a limited liability company under Title
31 48, Chapter 2c, Utah Revised Limited Liability Company Act:

32 (a) an industrial bank chartered under Chapter 8, Industrial Banks;

33 (b) an industrial loan company as defined in Section 7-8-21; or

34 (c) any of the following if the institution is an S Corporation, as defined in Section
35 1361, Internal Revenue Code, immediately before becoming a limited liability company:

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

37 (ii) a savings and loan association chartered under Chapter 7, Savings and Loan
38 Associations Act; or

39 (iii) a depository institution holding company.

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

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

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

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

50 (A) approve the request;

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

53 (C) disapprove the request.

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

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

57 (i) will operate in a safe and sound manner;

58 (ii) has the following characteristics:

59 (A) the institution is not subject to automatic termination, dissolution, or suspension
60 upon the happening of some event other than the passage of time;

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

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

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

65 (III) possesses adequate independence and authority to supervise the operation of the
66 institution; and

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

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

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

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

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

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

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

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

87 ~~[(i) in accordance with Title 48, Chapter 2c, Part 12, Dissolution; and]~~

88 ~~[(ii) with the prior written approval of the commissioner.]~~

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

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

94 (3)(a):

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

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

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

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

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

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

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

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

103 (ii) as otherwise provided in this title.

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

105 (3)(a):

106 (i) for purposes of transferring a member's interests in the institution, a member's
107 interest in the institution shall be treated like a share of stock in a corporation; and

108 (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to
109 another person, the person who receives the member's interest shall obtain the member's entire
110 rights associated with the member's interest in the institution including:

111 (A) all economic rights; and

112 (B) all voting rights.

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

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

117 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,
118 includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability

119 Company Act;

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

122 (c) "board of directors" includes [~~any of the following of a limited liability company:~~
123 ~~(i) all managers; (ii) all directors; or (iii)] one or more persons who have, with respect to an
124 institution described in Subsection (1), authority substantially similar to that of a board of
125 directors of a corporation;~~

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

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

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

131 (i) a manger;

132 (ii) a director; or

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

135 (g) "dividend" includes distributions made by a limited liability company under Title
136 48, Chapter 2c, Part 10, Distributions;

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

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

140 (i) an officer; or

141 (ii) other person who has with respect to the institution described in Subsection (1)
142 authority substantially similar to that of an officer of a corporation;

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

144 (i) a membership interest in a limited liability company as provided in Title 48,
145 Chapter 2c, Part 7, Members; and

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

148 (k) "stockholder" or "shareholder" includes an owner of an interest in an institution
149 described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7,

150 Members.

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

Fiscal Note
Bill Number SB0215s01

Financial Institutions as Limited Liability Companies

16-Feb-05

12:34 PM

State Impact

No fiscal impact.

Individual and Business Impact

No estimate is given for business impacts.

Office of the Legislative Fiscal Analyst