

FINANCIAL INSTITUTIONS AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Fred R. Hunsaker

LONG TITLE

General Description:

This bill modifies the Financial Institutions Act.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ amends provisions related to certain fees;
- ▶ addresses how the authority for a limited liability company to form as a series applies to depository institutions;
- ▶ addresses the formation of banks as corporations or limited liability companies; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 7-1-103**, as last amended by Chapter 92, Laws of Utah 2004
- 7-1-401**, as last amended by Chapter 233, Laws of Utah 2006
- 7-1-701**, as last amended by Chapter 92, Laws of Utah 2004
- 7-1-810**, as last amended by Chapter 164, Laws of Utah 2005



- 28 7-3-3, as last amended by Chapter 92, Laws of Utah 2004
- 29 7-3-10, as last amended by Chapter 91, Laws of Utah 1997
- 30 7-5-14, as last amended by Chapter 89, Laws of Utah 2004



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section 7-1-103 is amended to read:

34 **7-1-103. Definitions.**

35 As used in this title:

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

38 (b) "Bank" does not include:

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

40 (ii) a savings and loan association or savings bank subject to Chapter 7, Savings and
41 Loan [Association] Associations Act;

42 (iii) an industrial bank subject to Chapter 8, Industrial Banks;

43 (iv) a federally chartered credit union; or

44 (v) a credit union subject to Chapter 9, Utah Credit Union Act.

45 (2) "Banking business" means the offering of deposit accounts to the public and the
46 conduct of such other business activities as may be authorized by this title.

47 (3) (a) "Branch" means a place of business of a financial institution, other than its main
48 office, at which deposits are received and paid.

49 (b) "Branch" does not include:

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

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

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

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

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

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

56 (i) the management or policies of a financial institution; or

57 (ii) the election of a majority of the directors or trustees of an institution;

58 (b) vote 20% or more of any class of voting securities of a financial institution by an

59 individual; or

60 (c) vote more than [~~5%~~] 10% of any class of voting securities of a financial institution
61 by a person other than an individual.

62 (6) "Credit union" means a cooperative, nonprofit association incorporated under:

63 (a) Chapter 9, Utah Credit Union Act; or

64 (b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.

65 (7) "Department" means the Department of Financial Institutions.

66 (8) "Depository institution" means a bank, savings and loan association, savings bank,
67 industrial bank, credit union, or other institution that:

68 (a) holds or receives deposits, savings, or share accounts;

69 (b) issues certificates of deposit; or

70 (c) provides to its customers other depository accounts that are subject to withdrawal
71 by checks, drafts, or other instruments or by electronic means to effect third party payments.

72 (9) (a) "Depository institution holding company" means:

73 (i) a person other than an individual that:

74 (A) has control over any depository institution; or

75 (B) becomes a holding company of a depository institution under Section 7-1-703; or

76 (ii) a person other than an individual that the commissioner finds, after considering the
77 specific circumstances, is exercising or is capable of exercising a controlling influence over a
78 depository institution by means other than those specifically described in this section.

79 (b) Except as provided in Section 7-1-703, a person is not a depository institution
80 holding company solely because it owns or controls shares acquired in securing or collecting a
81 debt previously contracted in good faith.

82 (10) "Financial institution" means any institution subject to the jurisdiction of the
83 department because of this title.

84 (11) (a) "Financial institution holding company" means a person, other than an
85 individual that has control over any financial institution or any person that becomes a financial
86 institution holding company under this chapter, including an out-of-state or foreign depository
87 institution holding company.

88 (b) Ownership of a service corporation or service organization by a depository
89 institution does not make that institution a financial institution holding company.

90 (c) A person holding [~~5%~~ 10% or less of the voting securities of a financial institution
91 is rebuttably presumed not to have control of the institution.

92 (d) A trust company is not a holding company solely because it owns or holds 20% or
93 more of the voting securities of a financial institution in a fiduciary capacity, unless the trust
94 company exercises a controlling influence over the management or policies of the financial
95 institution.

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

98 (13) "Foreign depository institution holding company" means the holding company of a
99 foreign depository institution.

100 (14) "Home state" means:

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

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

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

106 (15) "Host state" means:

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

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

112 (16) "Industrial bank" means a corporation or limited liability company conducting the
113 business of an industrial bank under Chapter 8, Industrial Banks.

114 (17) "Industrial loan company" is as defined in Section 7-8-21.

115 (18) "Insolvent" means the status of a financial institution that is unable to meet its
116 obligations as they mature.

117 (19) "Institution" means:

118 (a) a corporation;

119 (b) a limited liability company;

120 (c) a partnership;

- 121 (d) a trust;
- 122 (e) an association;
- 123 (f) a joint venture;
- 124 (g) a pool;
- 125 (h) a syndicate;
- 126 (i) an unincorporated organization; or
- 127 (j) any form of business entity.

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

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

133 (22) "Liquidator" means a person, agency, or instrumentality of this state or the United
134 States appointed to conduct a liquidation.

135 (23) (a) "Member of a savings and loan association" means:

- 136 (i) a person holding a savings account of a mutual association;
- 137 (ii) a person borrowing from, assuming, or becoming obligated upon a loan or an
138 interest in a loan held by a mutual association; or
- 139 (iii) any person or class of persons granted membership rights by the articles of
140 incorporation or the bylaws of an association.

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

143 (24) "Negotiable order of withdrawal" means a draft drawn on a NOW account.

144 (25) (a) "NOW account" means a savings account from which the owner may make
145 withdrawals by negotiable or transferable instruments for the purpose of making transfers to
146 third parties.

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

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

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

- 152 (27) "Person" means:
- 153 (a) an individual;
- 154 (b) a corporation;
- 155 (c) a limited liability company;
- 156 (d) a partnership;
- 157 (e) a trust;
- 158 (f) an association;
- 159 (g) a joint venture;
- 160 (h) a pool;
- 161 (i) a syndicate;
- 162 (j) a sole proprietorship;
- 163 (k) an unincorporated organization; or
- 164 (l) any form of business entity.
- 165 (28) "Receiver" means a person, agency, or instrumentality of this state or the United
- 166 States appointed to administer and manage an institution subject to the jurisdiction of the
- 167 department in receivership, as provided in Chapters 2 and 19.
- 168 (29) "Receivership" means the administration and management of the affairs of an
- 169 institution subject to the jurisdiction of the department to conserve, preserve, and properly
- 170 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in
- 171 Chapters 2 and 19.
- 172 (30) "Savings account" means any deposit or other account at a depository institution
- 173 that is not a transaction account.
- 174 (31) (a) "Savings and loan association" means any of the following subject to this title:
- 175 (i) a mutual or capital stock savings association;
- 176 (ii) a savings and loan association;
- 177 (iii) a mutual or capital stock savings bank; or
- 178 (iv) a building and loan association.
- 179 (b) "Savings and loan association" includes the following as defined in Section 7-7-2:
- 180 (i) all federal associations; and
- 181 (ii) all out-of-state associations.
- 182 (32) "Service corporation" or "service organization" means a corporation or other

183 business entity owned or controlled by one or more financial institutions that is engaged or
184 proposes to engage in business activities related to the business of financial institutions.

185 (33) "State" means, unless the context demands otherwise:

186 (a) a state;

187 (b) the District of Columbia; or

188 (c) the territories of the United States.

189 (34) "Subsidiary" means a business entity under the control of an institution.

190 (35) (a) "Transaction account" means a deposit, account, or other contractual
191 arrangement in which a depositor, account holder, or other customer is permitted, directly or
192 indirectly, to make withdrawals by:

193 (i) check or other negotiable or transferable instrument;

194 (ii) payment order of withdrawal;

195 (iii) telephone transfer;

196 (iv) other electronic means; or

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

199 (b) "Transaction account" includes:

200 (i) demand deposits;

201 (ii) NOW accounts;

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

203 (iv) share draft accounts.

204 (36) "Trust company" means a person authorized to conduct a trust business, as
205 provided in Chapter 5, Trust Business.

206 (37) "Utah depository institution" means a depository institution whose home state is
207 Utah.

208 (38) "Utah depository institution holding company" means a depository institution
209 holding company whose home state is Utah.

210 Section 2. Section **7-1-401** is amended to read:

211 **7-1-401. Fees payable to commissioner.**

212 (1) Except for an out-of-state depository institution with a branch in Utah, a depository
213 institution under the jurisdiction of the department shall pay an annual fee:

214 (a) computed by averaging the total assets of the depository institution shown on each
215 quarterly report of condition for the depository institution for the calendar year immediately
216 proceeding the date on which the annual fee is due under Section 7-1-402; and

217 (b) at the following rates:

218 (i) on the first \$5,000,000 of these assets, the greater of:

219 (A) 65 cents per \$1,000; or

220 (B) \$500;

221 (ii) on the next \$10,000,000 of these assets, 36 cents per \$1,000;

222 (iii) on the next \$35,000,000 of these assets, 17 cents per \$1,000;

223 (iv) on the next \$50,000,000 of these assets, 14 cents per \$1,000;

224 (v) on the next \$200,000,000 of these assets, 11 cents per \$1,000;

225 (vi) on the next \$300,000,000 of these assets, 7 cents per \$1,000; and

226 (vii) on all amounts over \$600,000,000 of these assets, 2.625 cents per \$1,000.

227 (2) A financial institution with a trust department shall pay a fee determined in
228 accordance with Subsection (7) for each examination of the trust department by a state
229 examiner.

230 (3) Notwithstanding Subsection (1), a credit union in its first year of operation shall
231 pay a basic fee of \$25 instead of the fee required under Subsection (1).

232 (4) A trust company that is not a depository institution or a subsidiary of a depository
233 institution holding company shall pay:

234 (a) an annual fee of \$500; and

235 (b) an additional fee determined in accordance with Subsection (7) for each
236 examination by a state examiner.

237 (5) Any person or institution under the jurisdiction of the department that does not pay
238 a fee under Subsections (1) through (4) shall pay:

239 (a) an annual fee of \$200; and

240 (b) an additional fee determined in accordance with Subsection (7) for each
241 examination by a state examiner.

242 (6) A person filing an application or request under Section 7-1-503, 7-1-702, 7-1-703,
243 7-1-704, 7-1-713, 7-5-3, or 7-18a-202 shall pay:

244 (a) (i) a filing fee of \$500 if on the day on which the application or request is filed the

245 person:

246 (A) is a person with authority to transact business as:

247 (I) a depository institution;

248 (II) a trust company; or

249 (III) any other person described in Section 7-1-501 as being subject to the jurisdiction
250 of the department; and

251 (B) has total assets in an amount less than \$5,000,000; or

252 [(a)] (ii) a filing fee of \$2,500 for any person not described in Subsection (6)(a)(i); and

253 (b) all reasonable expenses incurred in processing the application.

254 (7) (a) Per diem assessments for an examination shall be calculated at the rate of \$55

255 per hour:

256 (i) for each examiner; and

257 (ii) per hour worked.

258 (b) For an examination of a branch or office of a financial institution located outside of
259 this state, in addition to the per diem assessment under this Subsection (7), the institution shall
260 pay all reasonable travel, lodging, and other expenses incurred by each examiner while
261 conducting the examination.

262 (8) In addition to a fee under Subsection (5), a person registering under Section
263 7-23-103 or 7-24-201 shall pay an original registration fee of \$300.

264 Section 3. Section **7-1-701** is amended to read:

265 **7-1-701. Representation and transacting business as financial institution**
266 **restricted -- Restricted names -- Penalty.**

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

268 (a) advertising;

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

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

271 (d) using an assumed business name, sign, letterhead, business card, promotion, or
272 other indication that one is transacting business.

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

275 (a) transact business as a:

- 276 (i) bank;
- 277 (ii) savings and loan association;
- 278 (iii) savings bank;
- 279 (iv) industrial bank;
- 280 (v) credit union;
- 281 (vi) trust company; or
- 282 (vii) other financial or depository institution; or
- 283 (b) engage in any other activity subject to the jurisdiction of the department.
- 284 (3) (a) Except as provided in Subsections (3)(b) through (d), only the following may
- 285 transact business in this state under a name that includes "bank," "banker," "banking,"
- 286 "banque," "banc," "banco," "bancorp," "bancorporation," any derivative of these words, or any
- 287 other word or combination of words reasonably identifying the business of a bank:
- 288 (i) a national bank;
- 289 (ii) a bank authorized to do business under Chapter 3, Banks;
- 290 (iii) a bank holding company; or
- 291 (iv) an industrial bank.
- 292 (b) A person authorized to operate in this state as a credit card bank, as [defined]
- 293 described in Section 7-3-3:
- 294 (i) may transact business under the name "credit card bank"; and
- 295 (ii) may not transact business under the name of "bank" unless it is immediately
- 296 preceded by "credit card."
- 297 (c) A nonbank subsidiary of a bank holding company may transact business under a
- 298 name restricted in Subsection (3)(a) if the name:
- 299 (i) is also part of the name of its parent holding company; or
- 300 (ii) is used for a group of subsidiaries of the parent holding company.
- 301 (d) The Utah Bankers Association or other bona fide trade association of authorized
- 302 banks may transact its affairs in this state under a name restricted under Subsection (3)(a) if it
- 303 does not operate and does not hold itself out to the public as operating a depository or financial
- 304 institution.
- 305 (4) (a) Except as provided in Subsection (4)(b), only the following may transact
- 306 business in this state under a name that includes "savings association," "savings and loan

307 association," "building and loan association," "building association," any derivative of these
308 words, or any other word or combination of words reasonably identifying the business of a
309 savings and loan association:

310 (i) a federal savings and loan association;

311 (ii) a federal savings bank; or

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

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

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

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

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

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

321 (6) (a) Only an industrial loan company authorized to do business under Chapter 8,
322 Industrial Banks, to the extent permitted by Section 7-8-21, may transact business in this state
323 under a name that includes "industrial loan company," "ILC," or any other word, combination
324 of words, or abbreviation reasonably identifying the business of an industrial loan company.

325 (b) Only an industrial bank authorized to do business under Chapter 8, Industrial
326 Banks, may transact business in this state under a name that includes "industrial bank," "thrift,"
327 or any other word, combination of words, or abbreviation reasonably identifying the business
328 of an industrial bank.

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

333 (b) The restriction in Subsection (7)(a) does not apply to the Utah League of Credit
334 Unions, any credit union chapter, or any other association affiliated with the Utah League of
335 Credit Unions that restricts its services primarily to credit unions.

336 (8) (a) Except as provided in Subsection (8)(b), only a person granted trust powers
337 under Chapter 5, Trust Business, may transact business in this state under a name that includes

338 "trust," "trustee," "trust company," or any other word or combination of words reasonably
339 identifying the business of a trust company.

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

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

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

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

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

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

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

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

362 (11) (a) Each person and each principal and officer of a business entity violating this
363 section is guilty of a class A misdemeanor. Each day of violation constitutes a separate
364 offense.

365 (b) In addition to a criminal penalty imposed under Subsection (11)(a), the
366 commissioner may issue a cease and desist order against a person violating this section. The
367 commissioner may impose a civil penalty of up to \$500 for each day the person fails to comply
368 with the cease and desist order.

369 Section 4. Section **7-1-810** is amended to read:

370 **7-1-810. Limited liability companies.**

371 (1) Notwithstanding any other provision of this title and subject to Subsection (8), if
372 the conditions of this section are met, the following may be organized as or convert to a limited
373 liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act:

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

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

376 (c) any of the following if the institution is an S Corporation, as defined in Section

377 1361, Internal Revenue Code, immediately before becoming a limited liability company:

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

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

380 Associations Act; or

381 (iii) a depository institution holding company.

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

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

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

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

392 (A) approve the request;

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

395 (C) disapprove the request.

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

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

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

400 (ii) has the following characteristics:

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

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

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

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

407 (III) possesses adequate independence and authority to supervise the operation of the
408 institution; and

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

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

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

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

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

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

424 (4) An institution described in Subsection (3)(a) that is organized as a limited liability
425 company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it
426 is authorized to conduct business under this title as a limited liability company.

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

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

432 (3)(a):

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

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

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

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

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

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

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

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

441 (ii) as otherwise provided in this title.

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

443 (3)(a):

444 (i) for purposes of transferring a member's interests in the institution, a member's

445 interest in the institution shall be treated like a share of stock in a corporation; and

446 (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to

447 another person, the person who receives the member's interest shall obtain the member's entire

448 rights associated with the member's interest in the institution including:

449 (A) all economic rights; and

450 (B) all voting rights.

451 (c) An institution described in Subsection (3)(a) may not by agreement or otherwise

452 change the application of Subsection (5)(a) to the institution.

453 (6) Unless the context requires otherwise, for the purpose of applying this title to an

454 institution described in Subsection (1) that is organized as a limited liability company:

455 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,

456 includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability

457 Company Act;

458 (b) "articles of incorporation" includes a limited liability company's articles of

459 organization as that term is used in Section 48-2c-403;

460 (c) "board of directors" includes one or more persons who have, with respect to an

461 institution described in Subsection (1), authority substantially similar to that of a board of

462 directors of a corporation;

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

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

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

468 (i) a manager;

469 (ii) a director; or

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

472 (g) "dividend" includes distributions made by a limited liability company under Title
473 48, Chapter 2c, Part 10, Distributions;

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

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

477 (i) an officer; or

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

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

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

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

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

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

491 (8) A depository institution organized under the laws of this state may not be organized
492 as or converted to a series of members, managers, or interests in a limited liability company as

493 provided in Section 48-2c-606.

494 Section 5. Section 7-3-3 is amended to read:

495 **7-3-3. "Banking business" defined -- Credit card banks -- Insurance of deposit**
496 **accounts.**

497 (1) (a) Except as provided under Subsection (1)(b), a person is considered to be
498 conducting a banking business and is a bank subject to the provisions of this title that are
499 applicable to banks if the person is authorized:

500 (i) under the laws of this:

501 (A) state[;];

502 (B) another state[;];

503 (C) the United States[;];

504 (D) the District of Columbia[;]; or

505 (E) any territory of the United States; and

506 (ii) (A) to accept deposits from the public; and

507 (B) to conduct such other business activities as may be authorized by statute or by the
508 commissioner in accordance with Subsection 7-3-10[~~(2)~~](3).

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

511 (i) a federal savings and loan association;

512 (ii) a federal savings bank;

513 (iii) a savings and loan association subject to Chapter 7, Savings and Loan
514 Associations Act;

515 (iv) a savings bank subject to Chapter 7, Savings and Loan Associations Act;

516 (v) an industrial bank subject to Chapter 8, Industrial Banks;

517 (vi) a federally chartered credit union; or

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

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

521 (a) engages only in credit card operations;

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

- 524 (c) does not accept any savings or time deposits of less than \$100,000;
- 525 (d) maintains only one office that accepts deposits; and
- 526 (e) does not engage in the business of making commercial loans.
- 527 (3) All deposit accounts in banks or branches subject to the jurisdiction of the
- 528 department shall be insured by the Federal Deposit Insurance Corporation or any successor to
- 529 the Federal Deposit Insurance Corporation.

530 Section 6. Section 7-3-10 is amended to read:

531 **7-3-10. Organization -- Powers, rights, and privileges of banking corporation --**
 532 **Other business activities.**

533 (1) A bank chartered under this chapter shall be:

534 (a) a domestic corporation under Title 16, Chapter 10a, Utah Revised Business
 535 Corporation Act; or

536 (b) subject to Section 7-1-810, including the requirement that the bank be an S
 537 Corporation immediately before becoming a limited liability company, a limited liability
 538 company created under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

539 ~~[(1)] (2) [In addition to the powers granted under Title 16, Chapter 10a, Utah Revised~~
 540 ~~Business Corporation Act, a] A bank has all the rights, privileges, and powers necessary or~~
 541 ~~incidental to carrying on the business of banking in addition to the powers granted:~~

542 (a) if the bank is a corporation, under Title 16, Chapter 10a, Utah Revised Business
 543 Corporation Act; or

544 (b) subject to Section 7-1-810, if the bank is a limited liability company, under Title
 545 48, Chapter 2c, Utah Revised Limited Liability Company Act.

546 ~~[(2)] (3)~~ The commissioner may, by rule or order, determine that necessary or
 547 incidental rights, privileges, and powers include:

548 (a) the rights, privileges, and powers held by national banks; or

549 (b) other business activities so long as the commissioner's determination is not
 550 inconsistent with the rules, regulations, or other actions of the board of governors of the
 551 Federal Reserve System under Section 4(c)(8) of the Bank Holding Company Act of 1956, 12
 552 U.S.C. Sec. 1843(c)(8).

553 ~~[(3)] (4)~~ The commissioner shall implement this section in a manner consistent with
 554 the purposes set forth in Section 7-1-102.

555 Section 7. Section 7-5-14 is amended to read:

556 **7-5-14. Mergers, consolidations, acquisitions, transfers, or reorganizations**
 557 **involving entities engaged in trust business -- Succession of rights and duties -- Petition**
 558 **for appointment of another trust company.**

559 (1) As used in this section:

560 (a) "Eligible trust company" means any of the following that is authorized under this
 561 chapter or the laws of the United States to engage in the trust business in this state:

562 (i) a trust company;

563 (ii) a depository institution; or

564 (iii) a corporation.

565 (b) "Reorganization" includes:

566 (i) the creation by a trust company of a subsidiary corporation that is:

567 (A) wholly owned by that trust company; and

568 (B) organized solely for the purpose of conducting all or any portion of the trust
 569 business of that trust company; or

570 (ii) any merger or other combination between a trust company and:

571 (A) a wholly owned trust company subsidiary of that trust company; or

572 (B) a wholly owned trust company subsidiary of the depository institution holding
 573 company which owns or controls that trust company.

574 ~~[(1)]~~ (2) Notwithstanding any provision of law to the contrary, ~~[a]~~ an eligible trust
 575 ~~company[, depository institution, or other corporation authorized under this chapter or under~~
 576 ~~the laws of the United States to engage in the trust business in this state]~~ may, subject to ~~[the~~
 577 ~~provisions of]~~ Sections 7-1-702, 7-1-704, and 7-1-705:

578 (a) (i) merge or consolidate with[;] another eligible trust company;

579 (ii) acquire control of[;] another eligible trust company;

580 (iii) acquire all or a portion of the assets and trust business of[; or] another eligible trust
 581 company;

582 (iv) assume all or any portion of the liabilities of[; or (iii)] another eligible trust
 583 company;

584 (v) transfer control to[;] another eligible trust company;

585 (vi) transfer all or a portion of its assets and trust business to[; or] another eligible trust

586 company; or

587 (vii) transfer all or a portion of its liabilities to~~[, any other]~~ another eligible trust
588 company~~[, depository institution, or other corporation, which institution is authorized under~~
589 ~~this chapter or under the laws of the United States to engage in the trust business in this state];~~
590 or

591 (b) reorganize.

592 ~~[(2) Upon]~~ (3) (a) Subject to Subsection (3)(b), upon final approval by the
593 commissioner of any merger, consolidation, acquisition of control, acquisition of assets,
594 assumption of liabilities, or reorganization, and upon written notice of this approval to all
595 persons entitled to and then receiving trust accountings from the transferring or reorganizing
596 trust company, the resulting or acquiring trust company shall, without court proceedings or a
597 court order, succeed to all rights, privileges, duties, obligations, and undertakings under all
598 trust instruments, agency and fiduciary relationships and arrangements, and other trust business
599 transferred and acquired in the manner authorized by this section. ~~[However, except]~~

600 (b) Except as provided otherwise in the relevant trust instrument, any interested person
601 may, not more than 30 days after receipt of written notice of the merger, consolidation,
602 acquisition, transfer, or reorganization, petition any court of competent jurisdiction to appoint
603 another or succeeding trust company with respect to any agency or fiduciary relationship
604 affecting that interested person, and until another or succeeding trust company is so appointed,
605 the acquiring or resulting trust company is entitled to act as agent or fiduciary with respect to
606 the agency or fiduciary relationship.

607 ~~[(3) As used in this section, a "reorganization" includes, but is not limited to:]~~

608 ~~[(a) the creation by a trust company of a subsidiary corporation which is wholly owned~~
609 ~~by that trust company and which is organized solely for the purpose of conducting all or any~~
610 ~~portion of the trust business of that trust company; or]~~

611 ~~[(b) any merger or other combination between a trust company and:]~~

612 ~~[(i) a wholly owned trust company subsidiary of that trust company; or]~~

613 ~~[(ii) a wholly owned trust company subsidiary of the depository institution holding~~
614 ~~company which owns or controls that trust company.]~~

Legislative Review Note
as of 1-17-07 6:26 PM

Office of Legislative Research and General Counsel

S.B. 144 - Financial Institutions Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations. The bill reduces some fees, however, the fiscal impact to the State is expected to be minimal.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
Restricted Funds	\$0	\$0	\$0	\$0	(\$2,000)	(\$2,000)
Total	\$0	\$0	\$0	\$0	(\$2,000)	(\$2,000)

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, or local governments. The bill reduces some fees; however, the fiscal impact is expected to be minimal since not many applications are expected.