FINANCIAL INSTITUTION AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Financial Institutions Act and Financial Institution Mortgage Financing Regulation Act to address powers and duties of the Department of Financial Institutions and persons under the jurisdiction of the Department of Financial Institutions.

Highlighted Provisions:

This bill:

- modifies definitions;
- repeals the supervisor of savings and loan associations;
- creates the supervisor of money services businesses;
- addresses organization of department;
- removes a reference to savings and loan from representatives on the Board of Financial Institutions;
- removes reference to savings and loans associations and related institutions from commissioner's power to establish reasonable classes of depository institutions;
- removes a reference to savings and loan association from the definition of "class of depository institution" in relationship to debt cancellation and suspension agreements;
- permits the commissioner to extend approvals related to certain security transactions;
addresses use of names by savings and loan associations or saving banks;
removes reference to savings and loan association in the section addressing forming as a limited liability company;
removes reference to savings and loan association and savings bank from entities not considered to be banks;
exempts persons licensed under Title 31A, Insurance Code, from the chapter on escrow;
defines "nationwide database";
requires entities that engage in business as check cashers, deferred deposit lenders, and certain other lenders to file with the Division of Corporations and Commercial Code;
changes the day on which registration as check casher or deferred deposit lender expires;
requires registration by deferred deposit lenders with the nationwide database;
grants rulemaking authority to the commissioner to provide for a transition of person registering with the nationwide database;
removes reference to state-chartered savings and loan associations from list addressing permissible investments for designated investors in the Utah fund of funds;
repeals chapter creating savings and loans associations; and
makes technical and conforming changes.

Money Appropriated in this Bill:
None

Other Special Clauses:
This bill provides an effective date.

Utah Code Sections Affected:
AMENDS:
7-1-103, as last amended by Laws of Utah 2007, Chapter 277
7-1-201, as last amended by Laws of Utah 2004, Chapter 92
7-1-203, as last amended by Laws of Utah 2010, Chapter 286
7-1-301, as last amended by Laws of Utah 2008, Chapters 3 and 382
ENACTS:

7-1-208.3, Utah Code Annotated 1953

REPEALS:

7-1-206, as last amended by Laws of Utah 1994, Chapter 200
7-7-1, as last amended by Laws of Utah 1993, Chapter 4
7-7-2, as last amended by Laws of Utah 2010, Chapter 378
7-7-3, as last amended by Laws of Utah 1987, Chapter 161
7-7-3.1, as last amended by Laws of Utah 1995, Chapter 49
7-7-3.2, as enacted by Laws of Utah 1994, Chapter 200
7-7-3.3, as last amended by Laws of Utah 1995, Chapter 49
7-7-4, as last amended by Laws of Utah 2010, Chapter 378
7-7-5, as last amended by Laws of Utah 1994, Chapter 200
7-7-6, as last amended by Laws of Utah 1995, Chapter 49
7-7-7, as last amended by Laws of Utah 2010, Chapter 378
7-7-8, as last amended by Laws of Utah 1984, Second Special Session, Chapter 5
7-7-9, as last amended by Laws of Utah 1984, Second Special Session, Chapter 5
7-7-10, as last amended by Laws of Utah 2009, Chapter 388
7-7-11, as last amended by Laws of Utah 1985, Chapter 244
7-7-12, as last amended by Laws of Utah 2007, Chapter 306
7-7-13, as last amended by Laws of Utah 1983, Chapter 8
7-7-14, as last amended by Laws of Utah 2010, Chapter 378
7-7-15, as last amended by Laws of Utah 2010, Chapters 324 and 378
7-7-16, as enacted by Laws of Utah 1981, Chapter 16
7-7-17, as last amended by Laws of Utah 2010, Chapter 378
7-7-18, as enacted by Laws of Utah 1981, Chapter 16
7-7-19, as last amended by Laws of Utah 2010, Chapter 378
7-7-20, as last amended by Laws of Utah 1994, Chapter 200
7-7-21, as last amended by Laws of Utah 2010, Chapter 378
7-7-22, as enacted by Laws of Utah 1981, Chapter 16
7-7-23, as last amended by Laws of Utah 1992, Chapter 285
7-7-24, as last amended by Laws of Utah 1983, Chapter 8
7-7-25, as last amended by Laws of Utah 1994, Chapter 200
7-7-26, as last amended by Laws of Utah 2010, Chapter 378
7-7-27, as enacted by Laws of Utah 1981, Chapter 16
7-7-28, as last amended by Laws of Utah 1994, Chapter 200
7-7-29, as last amended by Laws of Utah 2010, Chapter 378
7-7-30, as last amended by Laws of Utah 2010, Chapter 378
7-7-31, as last amended by Laws of Utah 1994, Chapter 200
7-7-32, as last amended by Laws of Utah 2010, Chapter 378
7-7-33, as last amended by Laws of Utah 2010, Chapter 378
7-7-34, as last amended by Laws of Utah 1994, Chapter 200
7-7-35, as enacted by Laws of Utah 1981, Chapter 16
7-7-36, as enacted by Laws of Utah 1981, Chapter 16
7-7-38, as last amended by Laws of Utah 2009, Chapter 356
7-7-40, as last amended by Laws of Utah 1995, Chapter 49
7-7-41, as last amended by Laws of Utah 1994, Chapter 200
7-7-42, as enacted by Laws of Utah 1981, Chapter 16
7-7-43, as last amended by Laws of Utah 2010, Chapter 378
7-7-44, as last amended by Laws of Utah 2008, Chapter 139
Be it enacted by the Legislature of the state of Utah:

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

7-1-103. Definitions.

As used in this title:

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

(b) "Bank" does not include:

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

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

   (iii) a federally chartered credit union; and

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

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

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

(b) "Branch" does not include:

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

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

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

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

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

   (a) direct or exercise a controlling influence over:

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

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

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

   (c) vote more than 10% of any class of voting securities of a financial institution by a person other than an individual.

(6) "Credit union" means a cooperative, nonprofit association incorporated under:
(a) Chapter 9, Utah Credit Union Act; or
(b) 12 U.S.C. Sec. 1751 et seq., Federal Credit Union Act, as amended.
(7) "Department" means the Department of Financial Institutions.
(8) "Depository institution" means a bank, savings and loan association, savings bank, industrial bank, credit union, or other institution that:
   (a) holds or receives deposits, savings, or share accounts;
   (b) issues certificates of deposit; or
   (c) provides to its customers other depository accounts that are subject to withdrawal by checks, drafts, or other instruments or by electronic means to effect third party payments.
(9) (a) "Depository institution holding company" means:
   (i) a person other than an individual that:
      (A) has control over any depository institution; or
      (B) becomes a holding company of a depository institution under Section 7-1-703; or
   (ii) a person other than an individual that the commissioner finds, after considering the specific circumstances, is exercising or is capable of exercising a controlling influence over a depository institution by means other than those specifically described in this section.
   (b) Except as provided in Section 7-1-703, a person is not a depository institution holding company solely because it owns or controls shares acquired in securing or collecting a debt previously contracted in good faith.
(10) "Financial institution" means any institution subject to the jurisdiction of the department because of this title.
(11) (a) "Financial institution holding company" means a person, other than an individual that has control over any financial institution or any person that becomes a financial institution holding company under this chapter, including an out-of-state or foreign depository institution holding company.
   (b) Ownership of a service corporation or service organization by a depository institution does not make that institution a financial institution holding company.
   (c) A person holding 10% or less of the voting securities of a financial institution is rebuttably presumed not to have control of the institution.
   (d) A trust company is not a holding company solely because it owns or holds 20% or more of the voting securities of a financial institution in a fiduciary capacity, unless the trust
company exercises a controlling influence over the management or policies of the financial
institution.

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

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

(14) "Home state" means:

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

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

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

(15) "Host state" means:

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

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

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

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

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

(19) "Institution" means:

(a) a corporation;

(b) a limited liability company;

(c) a partnership;

(d) a trust;

(e) an association;

(f) a joint venture;

(g) a pool;
(h) a syndicate;
(i) an unincorporated organization; or
(j) any form of business entity.

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

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

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

[(23) (a) "Member of a savings and loan association" means:
(i) a person holding a savings account of a mutual association;
(ii) a person borrowing from, assuming, or becoming obligated upon a loan or an interest in a loan held by a mutual association; or
(iii) any person or class of persons granted membership rights by the articles of incorporation or the bylaws of an association;]
[(b) A joint and survivorship or other multiple owner or borrower relationship constitutes a single membership;]

(23) (a) "Money services business" includes:
(i) a check cashier;
(ii) a deferred deposit lender;
(iii) an issuer or seller of traveler's checks or money orders; and
(iv) a money transmitter.
(b) "Money services business" does not include:
(i) a bank;
(ii) a person registered with, and functionally regulated or examined by the Securities Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the Securities Exchange Commission or the Commodity Futures Trading Commission; or
(iii) an individual who engages in an activity described in Subsection (23)(a) on an
infrequent basis and not for gain or profit.

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

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

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

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

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

(27) "Person" means:

(a) an individual;

(b) a corporation;

(c) a limited liability company;

(d) a partnership;

(e) a trust;

(f) an association;

(g) a joint venture;

(h) a pool;

(i) a syndicate;

(j) a sole proprietorship;

(k) an unincorporated organization; or

(l) any form of business entity.

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

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

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

(31) [(a)] "Savings and loan association" means [any of the following subject to this
title]:

[(i) a mutual or capital stock savings association;]
[(ii) a savings and loan association;]
[(iii) a mutual or capital stock savings bank; or]
[(iv) a building and loan association.]

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

[(i) a federal savings and loan association; and
[(ii) an out-of-state savings and loan association.]

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

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

(a) a state;
(b) the District of Columbia; or
(c) the territories of the United States.

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

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

(i) check or other negotiable or transferable instrument;
(ii) payment order of withdrawal;
(iii) telephone transfer;
(iv) other electronic means; or
(v) any other means or device for the purpose of making payments or transfers to third
persons.

(b) "Transaction account" includes:

(i) demand deposits;
(ii) NOW accounts;
(iii) savings deposits subject to automatic transfers; and
(iv) share draft accounts.

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

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

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

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

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

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

(2) The department organization includes:

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

(b) the Board of Financial Institutions;

(c) the chief examiner;

(d) the deputy commissioner;

(e) the supervisor of banks;

(e) the supervisor of savings and loan associations;

(f) the supervisor of industrial banks;

(g) the supervisor of credit unions;

(h) the supervisor of money services businesses; and

(i) other supervisors, examiners, and personnel as may be required to carry out the duties, powers, and responsibilities of the department.

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

7-1-203. Board of Financial Institutions.

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

(a) one representative from the commercial banking business;
(b) one representative from the savings and loan, consumer lending, mortgage brokerage, money services business, or escrow agency business;
(c) one representative from the industrial bank business;
(d) one representative from the credit union business; and
(e) one representative of the general public who, as a result of education, training, experience, or interest, is well qualified to consider economic and financial issues and data as they may affect the public interest in the soundness of the financial systems of this state.

(2) The commissioner shall act as chair.

(3) (a) All members shall be residents of this state.
(b) No more than three members of the board may be from the same political party.
(c) No more than two members of the board may be connected with the same financial institution or its holding company.
(d) A member may not participate in any matter involving an institution with which the member has a conflict of interest.

(4) (a) Except as required by Subsection (4)(b), the terms of office shall be four years each expiring on July 1.
(b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
(c) All members serve until their respective successors are appointed and qualified.
(d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.

(5) (a) The board shall meet at least quarterly on a date it sets.
(b) The commissioner or any two members of the board may call additional meetings.
(c) Four members constitute a quorum for the transaction of business.
(d) Actions of the board require a vote of a majority of those present when a quorum is present.
(e) Meetings of the board and records of its proceedings are
subject to Title 52, Chapter 4, Open and Public Meetings Act, except for discussion of
confidential information pertaining to a particular financial institution.

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

(b) The member shall:

(i) file the statement required by this Subsection (6) when first appointed to the board;

and

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

(7) A member may not receive compensation or benefits for the member's service, but
may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
63A-3-107.

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

(a) the exercise of the commissioner's duties, powers, and responsibilities under this
title; and

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

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

Section 4. Section 7-1-208.3 is enacted to read:

7-1-208.3. Supervisor of money services businesses.

(1) The commissioner shall designate an examiner as supervisor of money services
businesses who shall be sufficiently qualified by training and experience in the business of
money services businesses or other financial institutions or as an employee of a state or federal
agency supervising financial institutions to perform the duties of the office.

(2) (a) The supervisor of money services businesses is responsible, subject to the
direction and control of the commissioner, for the general supervision and examination of
money services businesses subject to the jurisdiction of the department and other institutions as
assigned.

(b) The supervisor shall:

(i) assist and advise the commissioner in the execution of the laws of this state relating
to money services businesses; and

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

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

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

Without limiting the other powers, duties, and responsibilities specified in this title, the
commissioner has [all] the functions, powers, duties, and responsibilities with respect to
[institutions, persons, or businesses] an institution, person, or business subject to the
jurisdiction of the department contained in this title, including [all of] the functions, powers,
duties, and responsibilities described in Subsections (1) through (15).

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

(2) The commissioner may supervise the conduct, operation, management,

examination, and statements and reports of examinations of financial institutions and other
persons subject to the jurisdiction of the department.

(3) (a) The commissioner may authorize a state chartered depository institution to

engage in any activity it could engage in, and to grant to that institution all additional rights,
powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws
of the United States.

(b) The commissioner may authorize a depository institution chartered by this state to

engage in any activity that a Utah branch of an out-of-state depository institution of the same
class can engage in, and to grant to the Utah institution all additional rights, powers, privileges,
benefits, or immunities it needs to engage in the activity.

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

(i) the need for competitive equality between institutions chartered by this state and

institutions operating in this state that are chartered by another state or by the federal
government; and

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

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

(5) (a) The commissioner may establish criteria consistent with this title to be applied in granting applications for approval of:
   (i) a new institution;
   (ii) a new branch;
   (iii) the relocation of an office or branch;
   (iv) a merger;
   (v) a consolidation;
   (vi) a change in control of an institution or other person subject to the jurisdiction of the department; and
   (vii) other applications specified in this title.
   (b) The criteria established under Subsection (5)(a) may not be applied to make it more difficult for a state chartered institution to obtain approval of an application than for a federally chartered institution in the same class to obtain approval from the appropriate federal regulatory agency or administrator.

(6) (a) The commissioner may protect the privacy of the records of any institution subject to the jurisdiction of the department pertaining to a particular depositor or other customer of the institution. Rules adopted under this Subsection (6) shall be consistent with federal laws and regulations applicable to the institution.
   (b) [Any] An institution that consents to produce records or that is required to produce records in compliance with a subpoena or other order of a court of competent jurisdiction or in compliance with an order obtained pursuant to Sections 7-1-1001 through 7-1-1007 shall be reimbursed for the cost of retrieval and reproduction of the records by the party seeking the information. The commissioner may by rule establish the rates and conditions under which reimbursement is made.

(7) (a) The commissioner may classify [sh] the records kept by institutions subject to the jurisdiction of the department and to prescribe the period for which each class of records is
(b) Rules adopted under this Subsection (7) for any class of financial institution shall be consistent with federal laws and regulations applicable to the class.

(c) Rules made under this Subsection (7) shall provide that:

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

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

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

(i) actions at law and administrative proceedings in which the production of the records might be necessary or desirable;

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

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

(iv) other matters the commissioner considers pertinent in formulating rules that require institutions to retain their records for as short a period as commensurate with the interest in having the records available of:

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

(B) the people of this state.

(8) (a) The commissioner may establish reasonable classes of depository and other financial institutions including separate classes for:

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

[(ii)] (i) banks and related institutions;

[(iii)] (ii) credit unions; and

[(iv)] (iii) industrial banks.

(b) If the restrictions or requirements the commissioner imposes are not more stringent than those applicable under federal law or regulation to federally chartered institutions of the same class, the commissioner may establish the following for each class in a manner consistent
with this title:

(i) eligible classes and types of investments for the deposits and other funds of those financial institutions;

(ii) minimum standards, in amounts sufficient to protect depositors and other creditors, for the amount and types of capital required to engage in the business conducted by each class or to obtain a license or to establish a branch or additional office of an institution of each class;

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

(iv) minimum liquidity requirements for financial institutions within each class in amounts sufficient to meet the demands of depositors and other creditors for liquid funds;

(v) limitations on the amount and type of borrowings by each class of financial institution in relation to the amount of its capital and the character and condition of its assets and its deposits and other liabilities;

(vi) limitations on the amount and nature of loans and extensions of credit to any person or related persons by each class of financial institution in relation to the amount of its capital; and

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

(A) the institution or other person;

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

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

(D) any an affiliate of the institution; and

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

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

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

(a) services offered by a financial institution;
(b) the charges for the services advertised under Subsection (10)(a);
(c) the interest or other compensation to be paid on deposits or any debt instrument offered for sale by the institution;
(d) the nature and extent of any:
(i) insurance on deposits;
(ii) savings accounts;
(iii) share accounts;
(iv) certificates of deposit;
(v) time deposit accounts;
(vi) NOW accounts;
(vii) share draft accounts;
(viii) transaction accounts; or
(ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by any financial institution or other person subject to the jurisdiction of the department; and
(e) the safety or financial soundness of any financial institution or other person subject to the jurisdiction of the department.

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

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

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

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

(15) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may adopt and issue rules consistent with the purposes and provisions of this title, and may revise, amend, or repeal the rules adopted.
Section 6. Section 7-1-324 is amended to read:

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

(1) As used in this section:

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

(i) banks;

(ii) credit unions;

(iii) industrial banks; or

(iv) savings and loan associations; or

(v) wholly owned subsidiaries of a depository institution listed in this Subsection (1)(a).

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

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

(2) Subject to the other provisions of this section, the commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

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

(i) a debt cancellation agreement; or

(ii) a debt suspension agreement; and

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

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

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

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

(i) the home state of the out-of-state depository institution authorizes and regulates the issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state
depository institution; and
(ii) subject to Subsection (4)(b), the out-of-state depository institution complies with
regulations from the out-of-state depository institution's home state that regulate the issuance of
a debt cancellation agreement or a debt suspension agreement.
(b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described
in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section
that regulate the issuance of a debt cancellation agreement or a debt suspension agreement in
this state by the class of depository institution to which the out-of-state depository institution
belongs if the regulations of the out-of-state depository institution's home state do not provide
at least the same level of protection with respect to a debt cancellation agreement or debt
suspension agreement as the rules adopted by the commissioner under this section with respect
to the same class of depository institution:
(i) for the safety and soundness of the depository institution; and
(ii) for consumer protections for the borrowers of the depository institution.

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

7-1-503. Regulation of sale by financial institution of its securities -- Solicitation
of deposit accounts restricted -- Violations.
(1) As used in this section, "security" has the same meaning as in Section 61-1-13,
except that "security" does not include:
(a) a certificate of deposit or similar instrument issued by:
(i) a bank;
(ii) a savings and loan association;
(iii) a credit union; or
(iv) an industrial bank;
(b) a loan participation, letter of credit, or other form of indebtedness incurred in the
ordinary course of business by:
(i) a bank;
(ii) a savings and loan association;
(iii) a credit union; or
(iv) an industrial bank; or
(c) (i) a promissory note or other evidence of indebtedness and the underlying security
(ii) a lease of personal property;
(iii) a contract to sell real or personal property; or
(iv) any other loan or investment sold by a depository institution in the secondary market.

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

[(a) (i) the prior approval of the commissioner;
[(b) (ii) payment of the fee prescribed in Section 7-1-401; and
[(c) (iii) complying with the rules of the department with respect to securities.

(b) The commissioner may extend the approval described in Subsection (2)(a)(i) for one or more additional periods not to exceed six months each:

(i) if the person described in Subsection (2)(a) makes written application before the expiration of the period of approval; and
[(ii) for good cause shown.

(3) (a) A person not otherwise subject to the jurisdiction of the department may not issue, offer to sell, offer for sale, or sell, or otherwise solicit the general public to deposit in any account or to purchase or invest in any instrument creating or evidencing a debtor-creditor relationship, if the account or instrument is represented to be an account with or an instrument issued by a financial institution subject to the jurisdiction of the department, without:

(i) the prior approval of the commissioner;
(ii) payment of the fee prescribed in Section 7-1-401; and
(iii) complying with the rules of the department with respect to securities.

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

(i) insurance companies that have been issued certificates of authority under Title 31A, Insurance Code;
(ii) brokers or dealers registered under:
(A) Title 61, Chapter 1, Utah Uniform Securities Act; or
(B) the federal Securities Exchange Act of 1934; or
(iii) nondepository institutions to the extent that the securities are not offered for sale
or sold through or by agents, representatives, officers, or employees of an affiliated Utah
depository institution; or
(iv) out-of-state depository institution with at least one branch in Utah or otherwise
offered for sale or sold on its premises.
(4) The rules of the department:
(a) shall, at a minimum, require registration with the department; and
(b) may require the use of an offering circular containing such material information as
to the nature of the security and the financial condition of the issuer as the commissioner may
require to protect the public interest.
(5) The provisions of Sections 61-1-21, 61-1-21.1, and 61-1-22 apply to violations of
this section.
Section 8. Section 7-1-701 is amended to read:
7-1-701. Representation and transacting business as financial institution
restricted -- Restricted names -- Penalty.
(1) As used in this section, "transact business" includes:
(a) advertising;
(b) representing oneself in any manner as being engaged in transacting business;
(c) registering an assumed name under which to transact business; or
(d) using an assumed business name, sign, letterhead, business card, promotion, or
other indication that one is transacting business.
(2) Unless authorized by the department or an agency of the federal government to do
so, it is unlawful for [any] a person to:
(a) transact business as a:
(i) bank;
(ii) savings and loan association;
(iii) savings bank;
(iv) industrial bank;
(v) credit union;
(vi) trust company; or
(vii) other financial or depository institution; or
(b) engage in any other activity subject to the jurisdiction of the department.

(3) (a) Except as provided in Subsections (3)(b) through (d), only the following may transact business in this state under a name that includes "bank," "banker," "banking," "banque," "banc," "banco," "bancorp," "bancorporation," any a derivative of these words, or any other word or combination of words reasonably identifying the business of a bank:

(i) a national bank;

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

(iii) a bank holding company; or

(iv) an industrial bank.

(b) A person authorized to operate in this state as a credit card bank, as described in Section 7-3-3:

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

(ii) may not transact business under the name of "bank" unless it is immediately preceded by "credit card."

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

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

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

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

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

(i) a federal savings and loan association; or

(ii) a federal savings bank;

(iii) a savings and loan association authorized to do business under Chapter 7, Savings and Loan Associations.
(b) A national bank may transact business under a name restricted in Subsection (4)(a) if the restricted words are part of the bank's corporate name.

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

(a) a depository institution listed in Subsection (3)(a);
(b) a depository institution listed in Subsection (4)(a); or
(c) a depository institution authorized under [state] the law of another state to operate in this state as a savings bank.

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

(7) (a) Except as provided in Subsection (7)(b), only a credit union authorized to do business under the laws of the United States or Chapter 9, Utah Credit Union Act, may transact business in this state under a name that includes "credit union" or [any other] another word or combination of words reasonably identifying the business of a credit union.
(b) The restriction in Subsection (7)(a) does not apply to the Utah League of Credit Unions, [any] a credit union chapter, or [any other] another association affiliated with the Utah League of Credit Unions that restricts its services primarily to credit unions.

(8) (a) Except as provided in Subsection (8)(b), only a person granted trust powers under Chapter 5, Trust Business, may transact business in this state under a name that includes "trust," "trustee," "trust company," or [any other] another word or combination of words reasonably identifying the business of a trust company.
(b) A business entity organized as a business trust, as defined in Section 7-5-1, may use "business trust" in its name if it does not hold itself out as being a trust company.

(9) The restrictions of Subsections (3) through (8) do not apply to:
(a) the name under which an out-of-state depository institution operates a loan
production office in this state, if the commissioner approves the name as not being reasonably
likely to mislead the public;
(b) the name under which a service organization of a financial institution transacts
business, if the commissioner approves the name as not being reasonably likely to mislead the
public;
(c) the name under which a subsidiary of a depository or financial institution transacts
business, if the commissioner approves the name as not being reasonably likely to mislead the
public; or
(d) a trade association or other nonprofit organization composed of members of a
particular class of financial institutions using words applicable to that class.

(10) (a) Upon written request, the commissioner may grant an exemption to this
section if the commissioner finds that the use of an otherwise restricted name or word is not
reasonably likely to cause confusion or lead the public to believe that the person requesting the
exemption is a depository or financial institution or is conducting a business subject to the
jurisdiction of the department.
(b) In granting an exemption under Subsection (10)(a), the commissioner may restrict
or condition the use of the name or word or the activities of the person or business as the
commissioner considers necessary to protect the public.

(11) (a) [Each] A person and [each] a principal and officer of a business entity
violating this section is guilty of a class A misdemeanor. Each day of violation constitutes a
separate offense.
(b) In addition to a criminal penalty imposed under Subsection (11)(a), the
commissioner may issue a cease and desist order against a person violating this section. The
commissioner may impose a civil penalty of up to $500 for each day the person fails to comply
with the cease and desist order.

Section 9. Section 7-1-810 (Superseded 07/01/13) is amended to read:

7-1-810 (Superseded 07/01/13). Limited liability companies.

(1) Notwithstanding any other provision of this title and subject to Subsection (8), if
the conditions of this section are met, the following may be organized as or convert to a limited
liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act:
(a) an industrial bank chartered under Chapter 8, Industrial Banks;
(b) an industrial loan company as defined in Section 7-8-21; or
(c) any of the following if the institution is an S Corporation, as defined in Section 1361, Internal Revenue Code, immediately before becoming a limited liability company:
   (i) a bank chartered under Chapter 3, Banks; or
   (ii) a savings and loan association chartered under Chapter 7, Savings and Loan Associations Act; or
   (iii) a depository institution holding company.

(2) (a) Before an institution described in Subsection (1) may organize as or convert to a limited liability company, the institution shall obtain approval of the commissioner.
   (b) (i) To obtain the approval under this section from the commissioner, the institution shall file a request for approval with the commissioner at least 30 days before the day on which the institution becomes a limited liability company.
   (ii) If the commissioner does not disapprove the request for approval within 30 days from the day on which the commissioner receives the request, the request is considered approved.
   (iii) When taking action on a request for approval filed under this section, the commissioner may:
      (A) approve the request;
      (B) approve the request subject to terms and conditions the commissioner considers necessary; or
      (C) disapprove the request.
(3) To approve a request for approval, the commissioner shall find:
   (a) for an institution described in Subsection (1) that is required to be insured by a federal deposit insurance agency, that the institution:
      (i) will operate in a safe and sound manner;
      (ii) has the following characteristics:
         (A) the institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;
         (B) the exclusive authority to manage the institution is vested in a board of managers or directors that:
(I) is elected or appointed by the owners;  
(II) is not required to have owners of the institution included on the board;  
(III) possesses adequate independence and authority to supervise the operation of the  
institution; and  
(IV) operates with substantially the same rights, powers, privileges, duties, and  
responsibilities as the board of directors of a corporation;  
(C) neither state law, nor the institution's operating agreement, bylaws, or other  
an organizational documents provide that an owner of the institution is liable for the debts,  
liabilities, and obligations of the institution in excess of the amount of the owner's investment;  
and  
(D) (I) neither state law, nor the institution's operating agreement, bylaws, or other  
an organizational documents require the consent of any other owner of the institution in order for  
[any] an owner to transfer an ownership interest in the institution, including voting rights; and  
(II) the institution is able to obtain new investment funding if needed to maintain  
a adequate capital; and  
(iii) is able to comply with all legal and regulatory requirements for an insured  
depository institution under applicable federal and state law; and  
(b) for an institution described in Subsection (1) that is not required to be insured by a  
federal deposit insurance agency, that the institution will operate in a safe and sound manner.  
(4) An institution described in Subsection (3)(a) that is organized as a limited liability  
company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it  
is authorized to conduct business under this title as a limited liability company.  
(5) (a) All rights, privileges, powers, duties, and obligations of an institution described  
in Subsection (1) that is organized as a limited liability company and its members and  
managers shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company  
Act, except:  
(i) the following sections do not apply to an institution that is described in Subsection  
(3)(a):  
(A) Subsection 48-2c-402(2)(a)(ii);  
(B) Section 48-2c-604;  
(C) Section 48-2c-703;
(D) Section 48-2c-708;
(E) Subsection 48-2c-801(2);
(F) Section 48-2c-1102;
(G) Section 48-2c-1104; and
(H) Subsections 48-2c-1201(2) through (5); and
(ii) as otherwise provided in this title.
(b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection (3)(a):
(i) for purposes of transferring a member's interests in the institution, a member's interest in the institution shall be treated like a share of stock in a corporation; and
(ii) if a member's interest in the institution is transferred voluntarily or involuntarily to another person, the person who receives the member's interest shall obtain the member's entire rights associated with the member's interest in the institution including:
(A) all economic rights; and
(B) all voting rights.
(c) An institution described in Subsection (3)(a) may not by agreement or otherwise change the application of Subsection (5)(a) to the institution.
(6) Unless the context requires otherwise, for the purpose of applying this title to an institution described in Subsection (1) that is organized as a limited liability company:
(a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act, includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;
(b) "articles of incorporation" includes a limited liability company's articles of organization as that term is used in Section 48-2c-403;
(c) "board of directors" includes one or more persons who have, with respect to an institution described in Subsection (1), authority substantially similar to that of a board of directors of a corporation;
(d) "bylaws" includes a limited liability company's operating agreement as that term is defined in Section 48-2c-102;
(e) "corporation" includes a limited liability company organized under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;
(f) "director" includes any of the following of a limited liability company:
   (i) a manager;
   (ii) a director; or
   (iii) other person who has with respect to the institution described in Subsection (1),
       authority substantially similar to that of a director of a corporation;
   (g) "dividend" includes distributions made by a limited liability company under Title
       48, Chapter 2c, Part 10, Distributions;
   (h) "incorporator" includes the organizers of a limited liability company as provided in
       Title 48, Chapter 2c, Part 4, Formation;
   (i) "officer" includes any of the following of an institution described in Subsection (1):
       (i) an officer; or
       (ii) other person who has with respect to the institution described in Subsection (1)
       authority substantially similar to that of an officer of a corporation;
   (j) "security," "shares," or "stock" of a corporation includes:
       (i) a membership interest in a limited liability company as provided in Title 48,
           Chapter 2c, Part 7, Members;
       (ii) any certificate or other evidence of an ownership interest in a limited liability
           company; and
   (k) "stockholder" or "shareholder" includes an owner of an interest in an institution
       described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7,
       Members.
   (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
       commissioner shall make rules governing the form of a request for approval filed under this
       section.
   (8) A depository institution organized under the laws of this state may not be organized
       as or converted to a series of members, managers, or interests in a limited liability company as
       provided in Section 48-2c-606.
   Section 10. Section 7-1-810 (Effective 07/01/13) is amended to read:
   7-1-810 (Effective 07/01/13). Limited liability companies.
   (1) Notwithstanding any other provision of this title and subject to Subsection (8), if
       the conditions of this section are met, the following may be organized as or convert to a limited
liability company under Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act:

(a) an industrial bank chartered under Chapter 8, Industrial Banks;
(b) an industrial loan company as defined in Section 7-8-21; or
(c) any of the following if the institution is an S Corporation, as defined in Section 1361, Internal Revenue Code, immediately before becoming a limited liability company:
   (i) a bank chartered under Chapter 3, Banks; or
   [(ii) a savings and loan association chartered under Chapter 7, Savings and Loan Associations Act; or]
   [(iii)] (ii) a depository institution holding company.

(2) (a) Before an institution described in Subsection (1) may organize as or convert to a limited liability company, the institution shall obtain approval of the commissioner.
   (b) (i) To obtain the approval under this section from the commissioner, the institution shall file a request for approval with the commissioner at least 30 days before the day on which the institution becomes a limited liability company.
   (ii) If the commissioner does not disapprove the request for approval within 30 days from the day on which the commissioner receives the request, the request is considered approved.
   (iii) When taking action on a request for approval filed under this section, the commissioner may:
      (A) approve the request;
      (B) approve the request subject to terms and conditions the commissioner considers necessary; or
      (C) disapprove the request.
   (3) To approve a request for approval, the commissioner shall find:
      (a) for an institution described in Subsection (1) that is required to be insured by a federal deposit insurance agency, that the institution:
         (i) will operate in a safe and sound manner;
         (ii) has the following characteristics:
            (A) the institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;
(B) the exclusive authority to manage the institution is vested in a board of managers or directors that:

(I) is elected or appointed by the owners;

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

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

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

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

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

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

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

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

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

(5) (a) All rights, privileges, powers, duties, and obligations of an institution described in Subsection (1) that is organized as a limited liability company and its members and managers shall be governed by Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act, except:

(i) the following do not apply to an institution that is described in Subsection (3)(a):

(A) Section 48-3-110;

(B) Section 48-3-112;
(C) Section 48-3-201;
(D) Section 48-3-401;
(E) Subsections 48-3-407(1) and (3)(d);
(F) Section 48-3-410;
(G) Subsection 48-3-502(1)(c);
(H) Title 48, Chapter 3, Part 6, Member's Dissociation;
(I) Section 48-3-701; and
(J) Title 48, Chapter 3, Part 8, Foreign Limited Liability Companies; and
(ii) as otherwise provided in this title.

(b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection
(3)(a):
(i) for purposes of transferring a member's interests in the institution, a member's interest in the institution shall be treated like a share of stock in a corporation; and
(ii) if a member's interest in the institution is transferred voluntarily or involuntarily to another person, the person who receives the member's interest shall obtain the member's entire rights associated with the member's interest in the institution including:
(A) all economic rights; and
(B) all voting rights.
(c) An institution described in Subsection (3)(a) may not by agreement or otherwise change the application of Subsection (5)(a) to the institution.

(6) Unless the context requires otherwise, for the purpose of applying this title to an institution described in Subsection (1) that is organized as a limited liability company:
(a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act, includes the equivalent citation to Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act;
(b) "articles of incorporation" includes a limited liability company's certificate of organization as that term is used in Section 48-3-201;
(c) "board of directors" includes one or more persons who have, with respect to an institution described in Subsection (1), authority substantially similar to that of a board of directors of a corporation;
(d) "bylaws" includes a limited liability company's operating agreement as that term is
defined in Section 48-3-102;

e) "corporation" includes a limited liability company organized under Title 48,
Chapter 3, Utah Revised Uniform Limited Liability Company Act;

(f) "director" includes any of the following of a limited liability company:
(i) a manager;
(ii) a director; or
(iii) other person who has with respect to the institution described in Subsection (1),
authority substantially similar to that of a director of a corporation;

g) "dividend" includes distributions made by a limited liability company under Title
48, Chapter 3, Part 4, Relations of Members to Each Other and to Limited Liability Company;
(h) "incorporator" includes an organizer of a limited liability company as provided in
Title 48, Chapter 3, Part 2, Formation - Certificate of Organization and Other Filings;
(i) "officer" includes any of the following of an institution described in Subsection (1):
(ii) other person who has with respect to the institution described in Subsection (1)
authority substantially similar to that of an officer of a corporation;
(j) "security," "shares," or "stock" of a corporation includes:
(i) a membership interest in a limited liability company as provided in Title 48,
Chapter 3, Part 4, Relations of Members to Each Other and to Limited Liability Company; and
(ii) a certificate or other evidence of an ownership interest in a limited liability
company; and
(k) "stockholder" or "shareholder" includes an owner of an interest in an institution
described in Subsection (1) including a member as provided in Title 48, Chapter 3, Part 4,
Relations of Members to Each Other and to Limited Liability Company.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
commissioner shall make rules governing the form of a request for approval filed under this
section.

(8) A depository institution organized under the laws of this state may not be organized
as or converted to a series of transferable interests in a limited liability company as provided in
Title 48, Chapter 3, Part 12, Series Limited Liability Companies.

Section 11. Section 7-3-3 is amended to read:
7-3-3. "Banking business" defined -- Credit card banks -- Insurance of deposit accounts.

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

(i) under the laws of this:
   (A) state;
   (B) another state;
   (C) the United States;
   (D) the District of Columbia; or
   (E) any territory of the United States; and

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

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

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

(i) a federal savings and loan association;

(ii) a federal savings bank;

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

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

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

[(vi) a federally chartered credit union; or

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

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

(a) engages only in credit card operations;

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

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

(d) maintains only one office that accepts deposits; and
(e) does not engage in the business of making commercial loans.

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

Section 12. Section 7-22-101 is amended to read:


(1) As used in this chapter:

(a) "Escrow" means any agreement, express or implied, that provides for one or more parties to deliver or entrust money, a certificate of deposit, a security, a negotiable instrument, a deed, or other property or asset to another person to be held, paid, or delivered in accordance with terms and conditions prescribed in the agreement.

(b) "Escrow agent" means any person that provides or offers to provide escrow services to the public.

(2) This chapter does not apply to:

(a) a trust company authorized to engage in the trust business in Utah in accordance with Title 7 to Chapter 5, Trust Business;

(b) a person other than an escrow agent regulated under this chapter that is exempted from the definition of trust business in Subsection 7-5-1(1);

(c) a depository institution chartered by a state or the federal government that is engaged in business as a depository institution in Utah; and

(d) the State Board of Regents, the Utah Higher Education Assistance Authority, or the State Treasurer; and

(e) a person licensed under Title 31A, Insurance Code.

Section 13. Section 7-23-102 is amended to read:

7-23-102. Definitions.

As used in this chapter:

(1) "Annual percentage rate" has the same meaning as in 15 U.S.C. Sec. 1606, as implemented by regulations issued under that section.

(2) "Business of cashing checks" means cashing a check for consideration.

(3) "Business of deferred deposit lending" means extending a deferred deposit loan.

(4) "Check" is as defined in Section 70A-3-104.
"Check casher" means a person that engages in the business of cashing checks.

"Deferred deposit lender" means a person that engages in the business of deferred deposit lending.

"Deferred deposit loan" means a transaction where:

(a) a person:
   (i) presents to a deferred deposit lender a check written on that person's account; or
   (ii) provides written or electronic authorization to a deferred deposit lender to effect a debit from that person's account using an electronic payment; and

(b) the deferred deposit lender:
   (i) provides the person described in Subsection (7)(a) an amount of money that is equal to the face value of the check or the amount of the debit less any fee or interest charged for the transaction; and
   (ii) agrees not to cash the check or process the debit until a specific date.

"Electronic payment" means an electronic method by which a person:

(i) accepts a payment from another person; or

(ii) makes a payment to another person.

"Electronic payment" includes a payment made through:

(i) an automated clearing house transaction;

(ii) an electronic check;

(iii) a stored value card; or

(iv) an Internet transfer.

"Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements for mortgage loan originators.

"Rollover" means the extension or renewal of the term of a deferred deposit loan.

Section 14. Section 7-23-201 is amended to read:

7-23-201. Registration -- Rulemaking.

(1) (a) It is unlawful for a person to engage in the business of cashing checks or the business of deferred deposit lending in Utah or with a Utah resident unless the person:

(i) registers with the department in accordance with this chapter; and

(ii) maintains a valid registration.
(b) It is unlawful for a person to operate a mobile facility in this state to engage in the business of:

(i) cashing checks; or

(ii) deferred deposit lending.

(2) (a) A registration and a renewal of a registration expires on [April 30] December 31 of each year unless on or before that date the person renews the registration.

(b) To register under this section, a person shall:

(i) pay an original registration fee established under Subsection 7-1-401(8); [and]

(ii) submit a registration statement containing the information described in Subsection (2)(d);

(iii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Partnership; and

(iv) if the person engages in the business of deferred deposit lending, submit evidence satisfactory to the commissioner that the person is registered with the nationwide database.

(c) To renew a registration under this section, a person shall:

(i) pay the annual fee established under Subsection 7-1-401(5);

(ii) submit a renewal statement containing the information described in Subsection (2)(d); [and]

(iii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Partnership;

(iv) if the person engages in the business of deferred deposit lending, submit evidence satisfactory to the commissioner that the person is registered with the nationwide database; and

[(v) if the person engages in the business of deferred deposit lending, submit an operations statement containing the information described in Subsection (2)(e).]

(d) A registration or renewal statement shall state:

(i) the name of the person;

(ii) the name in which the business will be transacted if different from that required in
Subsection (2)(d)(i);

(iii) the address of the person's principal business office, which may be outside this state;

(iv) the addresses of all offices in this state at which the person conducts the business of:

(A) cashing checks; or

(B) deferred deposit lending;

(v) if the person conducts the business of cashing checks or the business of deferred deposit lending in this state but does not maintain an office in this state, a brief description of the manner in which the business is conducted;

(vi) the name and address in this state of a designated agent upon whom service of process may be made;

(vii) disclosure of any injunction, judgment, administrative order, or conviction of a crime involving moral turpitude with respect to that person or any officer, director, manager, operator, or principal of that person; and

(viii) any other information required by the rules of the department.

(e) An operations statement required for a deferred deposit lender to renew a registration shall state for the immediately preceding calendar year:

(i) the average principal amount of the deferred deposit loans extended by the deferred deposit lender;

(ii) for deferred deposit loans paid in full, the average number of days a deferred deposit loan is outstanding for the duration of time that interest is charged;

(iii) the minimum and maximum dollar amount of interest and fees charged by the deferred deposit lender for a deferred deposit loan of $100 with a loan term of seven days;

(iv) the total number of deferred deposit loans rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

(v) of the persons to whom the deferred deposit lender extended a deferred deposit loan, the percentage that entered into an extended payment plan under Section 7-23-403;

(vi) the total dollar amount of deferred deposit loans rescinded by the deferred deposit lender at the request of the customer pursuant to Subsection 7-23-401(3)(b);

(vii) the average annual percentage rate charged on deferred deposit loans; and
(viii) the average dollar amount of extended payment plans entered into under Section 7-23-403 by the deferred deposit lender.

(f) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.

(3) Information provided by a deferred deposit lender under Subsection (2)(e) is:

(a) confidential in accordance with Section 7-1-802; and

(b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(4) (a) The commissioner may impose an administrative fine determined under Subsection (4)(b) on a person if:

(i) the person is required to be registered under this chapter;

(ii) the person fails to register or renew a registration in accordance with this chapter;

(iii) the department notifies the person that the person is in violation of this chapter for failure to be registered; and

(iv) the person fails to register within 30 days after the day on which the person receives the notice described in Subsection (4)(a)(iii).

(b) Subject to Subsection (4)(c), the administrative fine imposed under this section is:

(i) $500 if the person:

(A) has no office in this state at which the person conducts the business of:

(I) cashing checks; or

(II) deferred deposit lending; or

(B) has one office in this state at which the person conducts the business of:

(I) cashing checks; or

(II) deferred deposit lending; or

(ii) if the person has two or more offices in this state at which the person conducts the business of cashing checks or the business of deferred deposit lending, $500 for each office at which the person conducts the business of:

(A) cashing checks; or

(B) deferred deposit lending.

(c) The commissioner may reduce or waive a fine imposed under this Subsection (4) if
(5) If the information in a registration, renewal, or operations statement required under Subsection (2) becomes inaccurate after filing, a person is not required to notify the department until:

(a) that person is required to renew the registration; or

(b) the department specifically requests earlier notification.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules consistent with this section providing for:

(a) the form, content, and filing of a registration and renewal statement described in Subsection (2)(d); and

(b) the form and filing of an operations statement described in Subsection (2)(e).

(7) A deferred deposit loan that is made by a person who is required to be registered under this chapter but who is not registered is void, and the person may not collect, receive, or retain any principal or other interest or fees in connection with the deferred deposit loan.

Section 15. Section 63M-1-1223 is amended to read:

63M-1-1223. Permissible investments.

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

(1) state-chartered banks;

[(2) state-chartered savings and loan associations;]

[(3) state-chartered credit unions;

[(4) state-chartered industrial banks; and

[(5) domestic insurance companies.

Section 16. Section 70C-8-202 is amended to read:

70C-8-202. Notification.

(1) (a) A party who is subject to this part shall file notification with the department at least 30 days before commencing business in this state.

(b) After filing the notification required by Subsection (1)(a), a party shall file a notification on or before January 31 of each year.

(c) A notification required by this Subsection (1) shall [state]:

(i) state the name of the party;
(ii) state the name in which the business is transacted if different from that required in Subsection (1)(c)(i);

(iii) state the address of the party's principal office, which may be outside this state;

(iv) state the address of:

(A) each office or retail store, if any, in this state at which credit is offered or extended to a consumer; or

(B) in the case of a party taking an assignment of an obligation, each office or place of business within this state at which business is transacted;

(v) if credit is extended to a consumer other than at an office or retail store in this state, state a brief description of the manner in which the credit transaction occurs;

(vi) state the name and address in this state of a designated agent upon whom service of process may be made; and

(vii) submit evidence satisfactory to the commissioner that the person is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title 48, Partnerships; and

[(viii) provide any other information considered pertinent by the department.]

If information in a notification becomes inaccurate after filing, a party is not required to file further notification until required to renew the party's notification.

(3) (a) A party who fails to file a notification or pay a fee required by this part may not extend credit to a consumer in this state until the party fully complies with this part.

(b) A party who willfully violates this Subsection (3) is guilty of a class B misdemeanor.

Section 17. Section 76-10-1902 is amended to read:

**76-10-1902. Definitions.**

As used in this part:

(1) "Bank" means an agent, agency, or office in this state of a person doing business in any one of the following capacities:

(a) a commercial bank or trust company organized under the laws of this state or of the United States;

(b) a private bank;
(c) a savings and loan association or a building and loan association organized under the laws [of this state or] of the United States;
(d) an insured institution as defined in Section 401 of the National Housing Act;
(e) a savings bank, industrial bank, or other thrift institution;
(f) a credit union organized under the laws of this state or of the United States; or
(g) any other organization chartered under Title 7, Financial Institutions, and subject to the supervisory authority set forth in that title.

(2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(3) (a) "Currency" means the coin and paper money of the United States or of [any other] another country that is designated as legal tender, that circulates, and is customarily used and accepted as a medium of exchange in the country of issuance.

(b) "Currency" includes United States silver certificates, United States notes, Federal Reserve notes, and foreign bank notes customarily used and accepted as a medium of exchange in a foreign country.

(4) "Financial institution" means [any] an agent, agency, branch, or office within this state of [any] a person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

(a) a bank, except bank credit card systems;
(b) a broker or dealer in securities;
(c) a currency dealer or exchanger, including a person engaged in the business of check cashing;
(d) an issuer, seller, or redeemer of travelers checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of the instruments within any 30-day period;
(e) a licensed transmitter of funds or other person engaged in the business of transmitting funds;
(f) a telegraph company;
(g) a person subject to supervision by [any] a state or federal supervisory authority; or
(h) the United States Postal Service regarding the sale of money orders.

(5) "Financial transaction" means a transaction:
monetary instruments, which in any way or degree affects commerce; or
(b) involving the use of a financial institution that is engaged in, or its activities affect commerce in any way or degree.

(6) The phrase "knows that the property involved represents the proceeds of some form of unlawful activity" means that the person knows or it was represented to the person that the property involved represents proceeds from a form of activity, although the person does not necessarily know which form of activity, that constitutes a crime under state or federal law, regardless of whether or not the activity is specified in Subsection (12).

(7) "Monetary instruments" means coins or currency of the United States or of another country, travelers checks, personal checks, bank checks, money orders, and investment securities or negotiable instruments in bearer form or in other form so that title passes upon delivery.

(8) "Person" means an individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all other entities cognizable as legal personalities.

(9) "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes property of any kind.

(10) "Property" means anything of value, and includes an interest in property, including a benefit, privilege, land, or right with respect to anything of value, whether real or personal, tangible or intangible.

(11) "Prosecuting agency" means the office of the attorney general or the office of the county attorney, including an attorney on the staff whether acting in a civil or criminal capacity.

(12) "Specified unlawful activity" means an unlawful activity defined as an unlawful activity in Section 76-10-1602, except an illegal act under Title 18, Section 1961(1)(B), (C), and (D), United States Code, and includes activity committed outside this state which, if committed within this state, would be unlawful activity.

(13) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, "transaction" includes a deposit,
withdrawal, transfer between accounts, exchange of currency, loan, extension of credit,
purchase or sale of [any] a stock, bond, certificate of deposit, or other monetary instrument, or
any other payment, transfer, or delivery by, through, or to a financial institution, by whatever
means effected.

(14) "Transaction in currency" means a transaction involving the physical transfer of
currency from one person to another. A transaction that is a transfer of funds by means of bank
check, bank draft, wire transfer, or other written order that does not include the physical
transfer of currency is not a transaction in currency under this chapter.

Section 18. **Repealer.**
This bill repeals:

Section 7-1-206, Supervisor of savings and loan associations -- Responsibilities.

Section 7-7-1, Citation of chapter -- Application of Utah Revised Business
Corporation Act.

Section 7-7-2, Definitions.

Section 7-7-3, Incorporators -- Certificate of authority -- Articles of incorporation
-- Amendment -- Bylaws -- Liability for debts of association.

Section 7-7-3.1, Limitation of personal liability of directors.

Section 7-7-3.2, General limitation on liability.

Section 7-7-3.3, Deposit insurance required.

Section 7-7-4, Mutual association -- Chair of incorporators -- Surety bond or
escrow -- Capital requirements -- Expense fund -- Organization meeting.

Section 7-7-5, Capital stock association -- Chair of incorporators -- Surety bond or
escrow -- Capital requirements -- Surplus -- Acquisition of own stock -- Organization
meeting.

Section 7-7-6, Name requirements -- Establishment or changing location of offices.

Section 7-7-7, Conversion of associations.

Section 7-7-8, Reorganization, merger or consolidation of association.

Section 7-7-9, Dissolution of association.

Section 7-7-10, Meetings of mutual association members -- Voting -- Notice.

Section 7-7-11, Meetings of stock association stockholders -- Voting -- Notice.

Section 7-7-12, Inspection of books and records -- Confidentiality --
Communication between members or stockholders.

Section 7-7-13, Board of directors -- Number -- Election -- Qualifications --

Disqualification -- Terms -- Vacancies -- Removal.

Section 7-7-14, Bonding of directors, officers, employees, and collection agents.

Section 7-7-15, Fiduciary relationship of directors and officers to association --

Disclosure requirements -- Prohibitions -- Violations as misdemeanors.

Section 7-7-16, Depositories used by associations.

Section 7-7-17, Indemnification of directors, officers, and employees.

Section 7-7-18, Operating or management contract terms.

Section 7-7-19, Record and accounting requirements -- Valuation of assets.

Section 7-7-20, Reserve and net worth requirements.

Section 7-7-21, Powers of associations.

Section 7-7-22, Savings accounts -- Liabilities -- Opening -- Relationship between association and account holder -- Earnings -- Preferences -- Types of accounts.

Section 7-7-23, Savings accounts as legal investments and as deposits.

Section 7-7-24, Earnings on savings accounts.

Section 7-7-25, Withdrawal or transfer of savings accounts.

Section 7-7-26, Redemption of savings accounts.

Section 7-7-27, Liquidity prerequisite for loans and investments.

Section 7-7-28, Investments by associations.

Section 7-7-29, Investment in service organizations, business development credit corporations, and service corporations.

Section 7-7-30, Investment in property used in conduct of business -- Investment in manner not prohibited by law.

Section 7-7-31, Investment in real estate for sale or income production -- Purchase of real estate securing loan.

Section 7-7-32, Agreements committing assets to lines of credit -- Stock ownership or affiliation with credit card companies.

Section 7-7-33, Investments in loans -- Payments to protect real estate loans -- Requiring borrower to pay taxes, insurance, and other charges on real estate in advance.

Section 7-7-34, Charging borrower for expenses and services for real estate loan.
Section 7-7-35, Sale of real estate securities -- Dealing with buyer -- Liability of original borrower.

Section 7-7-36, Actions necessary to avoid loss on loans and investments.

Section 7-7-38, Reports and examinations required -- Access to records.

Section 7-7-40, Federal associations.

Section 7-7-41, Additional powers of associations belonging to federal home loan bank system.

Section 7-7-42, Members, stockholders or employees not disqualified to take acknowledgments or proofs.

Section 7-7-43, Previously incorporated associations.

Section 7-7-44, Chapter controls over inconsistent laws.

Section 19. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 14, 2013.

(2) The actions affecting Section 7-1-810 (Effective 07/01/13) take effect on July 1, 2013.

Legislative Review Note
as of 1-29-13 12:15 PM

Office of Legislative Research and General Counsel