

## SB0124S01 compared with SB0124

~~text~~ shows text that was in SB0124 but was deleted in SB0124S01.

inserted text shows text that was not in SB0124 but was inserted into SB0124S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

### FINANCIAL INSTITUTION AND SERVICES AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: James A. Dunnigan

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#### LONG TITLE

##### General Description:

This bill modifies provisions related to financial institutions and financial services.

##### Highlighted Provisions:

This bill:

- ▶ modifies references to the Utah League of Credit Unions or Utah Bankers Association;
- ▶ clarifies dividend requirements;
- ▶ repeals provisions related to loans to or investment in affiliates;
- ▶ addresses stock ownership by banks;
- ▶ deletes references to the Office of Thrift Supervision;
- ▶ addresses voting requirements for voluntary mergers;
- ▶ modifies grandfathering of certain credit unions;

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- ▶ modifies exempted transactions under the Utah Consumer Credit Code;
- ▶ addresses fees under the Utah Consumer Credit Code;
- ▶ modifies exemptions under the Financial Institution Mortgage Financing Regulation Act;
- ▶ removes a probable cause requirement for the commissioner of financial institutions requiring a lender, broker, or servicer to make records available to the commissioner;
- ▶ addresses fee restrictions;
- ▶ repeals anti-tying provisions;
- ▶ repeals surplus account provisions;
- ▶ repeals provisions related to charging off losses and replenishment of surplus accounts; and
- ▶ makes technical and conforming amendments.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

7-1-701, as last amended by Laws of Utah 2013, Chapter 73

7-3-15, as last amended by Laws of Utah 1996, Chapter 182

7-3-20, as last amended by Laws of Utah 2000, Chapter 260

7-3-21, as enacted by Laws of Utah 1981, Chapter 16

7-5-7, as last amended by Laws of Utah 2010, Chapter 378

7-8-11, as last amended by Laws of Utah 2004, Chapter 92

7-9-20, as last amended by Laws of Utah 2008, Chapter 126

7-9-36, as last amended by Laws of Utah 1994, Chapter 200

7-9-39, as last amended by Laws of Utah 2003, Chapter 327

7-9-43, as last amended by Laws of Utah 2010, Chapters 286 and 324

7-9-44, as last amended by Laws of Utah 1989, Chapter 267

7-9-51, as last amended by Laws of Utah 2003, Chapter 327

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7-9-53, as last amended by Laws of Utah 2010, Chapter 324

70C-1-202, as last amended by Laws of Utah 2006, Chapter 161

70C-8-203, as last amended by Laws of Utah 2009, Chapter 72

70D-2-201, as last amended by Laws of Utah 2009, Chapter 372 and renumbered and amended by Laws of Utah 2009, Chapter 72

70D-2-203, as renumbered and amended by Laws of Utah 2009, Chapter 72

70D-2-305, as renumbered and amended by Laws of Utah 2009, Chapter 72

70D-3-102, as last amended by Laws of Utah 2010, Chapter 379

### REPEALS:

7-3-3.3, as enacted by Laws of Utah 1989, Chapter 267

7-3-16, as last amended by Laws of Utah 1983, Chapter 8

7-8-12, as last amended by Laws of Utah 2004, Chapter 92

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

Section 1. 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 a person to:

- (a) transact business as a:
  - (i) bank;
  - (ii) savings and loan association;
  - (iii) savings bank;
  - (iv) industrial bank;
  - (v) credit union;

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(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," a derivative of these words, or another 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~~ A bona fide trade association of authorized banks recognized by the commissioner 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," a derivative of these words, or another 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.

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(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 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 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 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 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~~] ~~an~~ a bona fide trade association ~~in this state that represents~~ of authorized credit unions ~~recognized by the commissioner~~, a credit union chapter, or another association affiliated with [~~the Utah League of Credit Unions~~] ~~an~~ a bona fide trade association ~~in this state that represents~~ of authorized credit unions ~~recognized by the commissioner~~ 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 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.

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(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) A person and 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 2. Section **7-3-15** is amended to read:

### **7-3-15. Dividends allowed -- Surplus requirements.**

(1) The board of directors of a bank may declare a cash or stock dividend out of the net profits of the bank after providing for all expenses, losses, interest, and taxes accrued or due from the bank, as it shall judge expedient.

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(2) Before any dividend is declared pursuant to Subsection (1), not less than 10% of the net profits of the bank for the period covered by the dividend shall be carried to a surplus fund until the surplus shall amount to 100% of its capital stock.

(3) Under this section, any amounts paid into a fund for the retirement of any debenture capital or preferred stock of the bank from its net earnings for the period covered by the dividend shall be considered an addition to its surplus fund if, upon the retirement of the debenture capital or preferred stock, the amount paid into the retirement fund for the period may be properly carried to the surplus fund of the bank. In this case the bank shall be obligated to transfer to the surplus fund the amount paid into the retirement fund.

Section 3. Section 7-3-20 is amended to read:

### **7-3-20. Bank acquiring, holding, or accepting as collateral its own stock.**

(1) ~~[(a)]~~ A bank may not accept as collateral or acquire its own stock except when the taking of the collateral or acquisition of the stock is necessary to prevent loss upon a debt previously contracted in good faith.

~~[(b)]~~ (2) If a bank acquires stock as permitted under Subsection (1)~~[(a)]~~, the bank shall sell the stock within 12 months from the date of the bank's acquisition.

~~[(c)]~~ (3) The value of all the stock held after acceptance or acquisition may not exceed 10% of the total capital of the bank.

~~[(2)(a) A bank may not:]~~

~~[(i) make any loan or any extension of credit to any of its affiliates;]~~

~~[(ii) invest any of its funds in the capital stock, bonds, debentures, or other obligations of any affiliate; or]~~

~~[(iii) accept the capital stock, bonds, debentures, or other obligations of any affiliate as collateral security for advances made to any person unless authorized by the commissioner by order.]~~

~~[(b) The exception of Subsection (2)(a)(iii) may not be inconsistent with similar exceptions applicable to national banks under federal law.]~~

Section 4. Section 7-3-21 is amended to read:

### **7-3-21. Stock ownership by banks.**

~~[Any]~~ (1) A bank may purchase, own and hold, and sell or otherwise dispose of ~~[, any of the shares of the capital stock of the Federal Deposit Insurance Corporation, the];~~

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- (a) shares of the Federal Reserve Bank of the Twelfth Federal Reserve District<sup>[-]</sup>;
  - (b) the stock of [~~any~~] a corporation [~~or corporations~~] organized under the laws of the United States for purposes similar to those of the federal reserve banks or the Federal Deposit Insurance Corporation<sup>[-]</sup>;
  - (c) shares of the Federal National Mortgage Association<sup>[-]</sup>;
  - (d) the stock of [~~any~~] a safe deposit company<sup>[-]</sup>;
  - (e) the stock of [~~any~~] a corporation owning the banking house in which any place of business of [~~such~~] the bank is located<sup>[-]</sup>;
  - (f) the stock of [~~any~~] a bank service corporation performing services for [~~such~~] the bank<sup>[-and]</sup>;
  - (g) the stock of [~~such other~~] a corporation acquired by [~~such~~] the bank in satisfaction of or on account of debts previously contracted in the course of [~~its~~] the bank's business<sup>[-and]</sup>;
  - (h) the stock of a foreign banking corporation;
  - (i) the stock of a corporation authorized under Title IX of the Housing and Urban Development Act of 1968;
  - (j) the stock of the Government National Mortgage Association authorized under 12 U.S.C. Sec. 1716 et seq.;
  - (k) the stock of a charitable foundation;
  - (l) the stock of a community development corporation;
  - (m) the stock of bankers' banks; and
  - (n) the stock of an agricultural credit corporation.
- (2) A bank may invest in a small business investment [~~companies~~] company to the same extent allowed federally chartered banks.

(3) Unless expressly authorized by this chapter, a bank may not purchase or own the stock of any other corporation except in a fiduciary capacity.

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

### **7-5-7. Management and investment of trust funds.**

(1) [~~Funds~~] Money received or held by [~~any~~] a trust company as agent or fiduciary, whether for investment or distribution, shall be invested or distributed as soon as practicable as authorized under the instrument creating the account and may not be held uninvested any longer than is reasonably necessary.

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(2) If the instrument creating an agency or fiduciary account contains provisions authorizing the trust company, its officers, or its directors to exercise their discretion in the matter of investments, [funds] money held in the trust account under that instrument may be invested only in those classes of securities which are approved by the directors of the trust company or a committee of directors appointed for that purpose. If a trust company acts in any agency or fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and account for [all] the investments according to [~~the provisions of~~] Title 75, Utah Uniform Probate Code, unless the underlying instrument provides otherwise.

(3) (a) [~~Funds~~] Money received or held as agent or fiduciary by any trust company which is also a depository institution, whether for investment or distribution, may be deposited in the commercial department or savings department of that trust company to the credit of its trust department. Whenever the [funds] money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the trust company shall deliver to the trust department or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency [~~or in Regulation 550.8 of the Office of Thrift Supervision, as amended~~]. However, if the instrument creating such a fiduciary or managing agency account expressly provides that [funds] money may be deposited to the commercial or savings department of the trust company, then the [funds] money may be so deposited without setting aside collateral securities as required under this section and the deposits in the event of insolvency of any such trust company shall be treated as other general deposits are treated. A trust company [~~which~~] that deposits trust funds in its commercial or savings department shall be liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits of like kind not made to the credit of its trust department.

(b) [~~Funds~~] Money received or held as agent or fiduciary by a trust company, whether for investment or distribution, may be deposited in an affiliated depository institution. Whenever the [funds] money so deposited in a fiduciary or managing agency account exceed the amount of federal deposit insurance applicable to that account, the depository institution shall deliver to the trust company or put under its control collateral security as outlined in Regulation 9.10 of the Comptroller of the Currency [~~or in Regulation 550.8 of the Office of Thrift Supervision as amended~~]. However, if the instrument creating the fiduciary or managing agency account expressly permits [funds] money to be deposited in the affiliated depository

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institution, the [funds] money may be so deposited without setting aside collateral securities as required under this section and deposits in the event of insolvency of the depository institution shall be treated as other general deposits are treated. A trust company [which] that deposits trust [funds] money in an affiliated depository institution is liable for interest on the deposits only at the rates, if any, paid by the depository institution on deposits of like kind.

(4) In carrying out all aspects of its trust business, a trust company shall have all the powers, privileges, and duties as set forth in Sections 75-7-813 and 75-7-814 with respect to trustees, whether or not the trust company is acting as a trustee as defined in Title 75, Utah Uniform Probate Code.

(5) Nothing in this section may alter, amend, or limit the powers of a trust company acting in a fiduciary capacity as specified in the particular instrument or order creating the fiduciary relationship.

Section 6. Section **7-8-11** is amended to read:

### **7-8-11. Dividends.**

(1) The board of directors of an industrial bank may declare a dividend out of the net profits of the industrial bank after providing for all expenses, losses, interest, and taxes accrued or due from the industrial bank in accordance with this section [~~and subject to Section 7-8-12~~].

(2) The industrial bank shall transfer to a surplus fund at least 10% of its net profits before dividends for the period covered by the dividend, until the surplus reaches 100% of its capital stock.

(3) Any amount paid from the industrial bank's net earnings into a fund for the retirement of any debenture capital or preferred stock for the period covered by the dividend is considered an addition to its surplus fund if, upon the retirement of the debenture capital or preferred stock, the amount paid into the retirement fund for the period may be properly carried to the surplus fund of the industrial bank. In this case the industrial bank shall transfer to the surplus fund the amount paid into the retirement fund.

Section 7. Section **7-9-20** is amended to read:

### **7-9-20. Board of directors -- Powers and duties -- Loan limitations.**

(1) At annual meetings the members shall elect from their number a board of directors consisting of an odd number of not less than five members.

(2) The bylaws may provide balloting by:

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- (a) mail;
  - (b) ballot box; or
  - (c) both mail and ballot box.
- (3) Voting may not be by proxy.
- (4) A member of the board of directors shall hold office for the term prescribed in the bylaws.
- (5) The board of directors shall meet at least monthly.
- (6) The board of directors shall have the general management of the affairs, funds, and records of the credit union. In particular, the board of directors shall:
- (a) act upon an application for membership;
  - (b) act upon expulsion of a member;
  - (c) fix the amount of surety bond required of each officer or employee having custody of funds;
  - (d) determine the rate of interest or dividend allowed on shares and deposits;
  - (e) determine the terms and conditions of credit granted to members;
  - (f) lend money, borrow money, and pledge security for any borrowing;
  - (g) fill a vacancy in the board of directors or in the credit committee, if applicable, or in the supervisory committee until the election and qualification of a person to fill the vacancy;
  - (h) appoint up to two alternate directors as provided in the bylaws;
  - (i) fix the amount of the entrance fee;
  - (j) declare dividends and their amount;
  - (k) make recommendations to meetings of the members relative to amendments to the articles of incorporation, and transact any other business of the credit union; and
- (l) fix the maximum amount of credit, secured and unsecured, that may be extended to any one member, up to the limitations described in Subsections (7) and (8).
- (7) (a) The credit that may be outstanding or available by a credit union at any one time is subject to the limitations described in this Subsection (7):
- (i) except as provided in Subsection (8); and
  - (ii) except that the board of directors may:
    - (A) set a lower limit than the limit in Subsection (7)(b)(i) or (7)(b)(ii)(A)(II); or
    - (B) require that a person described in Subsection (7)(b)(ii)(A)(I) be a member of the

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credit union for more than six months before the date a member-business loan is extended.

(b) (i) A credit union may not extend credit that is not a member-business loan to a member if as a result of that extension of credit the total credit that is not a member-business loan that the credit union has issued to that member exceeds at any one time:

(A) for a credit union with less than \$2,000,000 in capital and surplus, the greater of:

(I) \$1,000; or

(II) 15% of capital and surplus up to a total of \$25,000; or

(B) for a credit union with \$2,000,000 or more in capital and surplus, the greater of:

(I) \$25,000;

(II) 4% of capital and surplus; or

(III) 25% of the regular reserve.

(ii) (A) Beginning March 24, 1999, a credit union may not extend a member-business loan to a person:

(I) if the credit union is a successor to or was a credit union described in Subsection 7-9-53(2)~~(d)~~(c) as of May 3, 1999:

(Aa) if the person is a business entity, unless at least one individual having a controlling interest in that business entity has been a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or

(Bb) if the person is an individual, unless the individual is a member of the credit union for at least six months prior to the date of the extension of the member-business loan; or

(II) if as a result of the extension of the member-business loan, the total amount outstanding for all member-business loans that the credit union has extended to that person at any one time exceeds the lesser of:

(Aa) 10% of the credit union's capital and surplus; or

(Bb) \$250,000 adjusted as provided in Subsection (7)(b)(ii)(B).

(B) The adjustment described in Subsection (7)(b)(ii)(A)(II)(Bb) shall be calculated by the commissioner as follows:

(I) beginning May 5, 2008 with the adjustment for calendar year 2008 and for a calendar year beginning on or after January 1, 2009, the commissioner shall increase the dollar amount in Subsection (7)(b)(ii)(A)(II)(Bb) by a percentage equal to the percentage difference between the consumer price index for the preceding calendar year and the consumer price

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index for calendar year 2006;

(II) after the commissioner increases the dollar amount listed in Subsection (7)(b)(ii)(B)(I), the commissioner shall round the dollar amount to the nearest whole dollar;

(III) if the percentage difference under Subsection (7)(b)(ii)(B)(I) is zero or a negative percentage, the consumer price index increase for the year is zero; and

(IV) for purposes of this Subsection (7)(b)(ii)(B), the commissioner shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

(c) (i) Beginning March 24, 1999, a credit union may not extend a member-business loan if as a result of that member-business loan the credit union's aggregate member-business loan amount calculated under Subsection (7)(c)(ii) at any one time exceeds 1.25 times the sum of:

(A) the actual undivided earnings; and

(B) the actual reserves other than the regular reserves.

(ii) For purposes of Subsection (7)(c)(i), the aggregate member-business loan amount of a credit union equals:

(A) the sum of the total amount financed under all member-business loans outstanding at the credit union; minus

(B) the amount of the member-business loans described in Subsection (7)(c)(ii)(A):

(I) that is secured by share or deposit savings in the credit union; or

(II) for which the repayment is insured or guaranteed by, or there is an advance commitment to purchase by an agency of the federal government, a state, or a political subdivision of the state.

(d) (i) A credit union service organization may extend credit to a member of a credit union holding an ownership interest in the credit union service organization only if the credit union in which the person is a member is not prohibited from extending that credit to that member under:

(A) this Subsection (7) and Subsection (8); or

(B) Section 7-9-58.

(ii) For purposes of determining whether under this Subsection (7) and Subsection (8) a credit union may extend credit, the total amount outstanding of credit extended by a credit union service organization to a person shall be treated as if the credit was extended by the

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credit union in which the person is a member.

(iii) If a person seeking an extension of credit from a credit union service organization is a member of more than one credit union holding an ownership interest in the credit union service organization, the person shall specify the credit union to which the extension of credit is attributed under Subsection (7)(d)(ii).

(iv) This Subsection (7)(d) effects only an extension of credit:

(A) that is extended on or after May 5, 2003; and

(B) by:

(I) a credit union service organization; or

(II) a credit union organized under this chapter.

(e) Notwithstanding the other provisions of this section, a nonexempt credit union may not extend credit that the nonexempt credit union is prohibited from extending under Section 7-9-58.

(8) (a) A credit union may extend credit that is not a member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(i) only if the excess portion is fully secured by share or deposit savings in the credit union.

(b) (i) Except as provided in Subsection (8)(b)(ii), a credit union may extend a member-business loan in an amount that exceeds the limits described in Subsection (7)(b)(ii)(A)(II) only if:

(A) that portion that is in excess of the limits described in Subsection (7)(b)(ii)(A)(II) is secured by share or deposit savings in the credit union; or

(B) the repayment of that portion that is in excess of the limits described in Subsection (7)(b)(ii)(A)(II) is insured or guaranteed by, or there is an advance commitment to purchase that excess portion by, an agency of:

(I) the federal government;

(II) a state; or

(III) a political subdivision of the state.

(ii) Notwithstanding Subsection (8)(b)(i), a credit union may not extend a member-business loan if the total amount financed by the credit union exceeds \$1,000,000.

(c) For a member-business loan that is extended through a loan participation arrangement in accordance with Subsection 7-9-5(12):

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(i) in applying the limitation of Subsection (8)(b), each credit union participating in the member-business loan may extend up to \$1,000,000 of the amount financed; and

(ii) the requirement of Subsection (7)(b)(ii)(A)(I) applies to membership in a credit union that:

(A) participates in the loan participation arrangement for the member-business loan;

(B) is organized under this chapter; and

(C) is a successor to or was a credit union described in Subsection 7-9-53(2)~~(c)~~(c) as of May 3, 1999.

(9) As provided in this chapter or in the credit union bylaws, the board of directors:

(a) within 30 days following the annual meeting of the members, shall appoint a supervisory committee consisting of not less than three members;

(b) within 30 days after the annual meeting of the members, shall appoint:

(i) a credit committee consisting of not less than three members; or

(ii) a credit manager in lieu of a credit committee;

(c) shall appoint a president to serve as general manager;

(d) shall have an executive committee;

(e) may appoint an investment officer;

(f) shall elect a secretary;

(g) may appoint other officers and committees that it considers necessary;

(h) shall establish written credit policies, loan security requirements, loan investment, personnel, and collection policies; and

(i) on or before January 31 of each year, shall provide for:

(i) share insurance for the shares and deposits of the credit union from the National Credit Union Administration or successor federal agency; or

(ii) security expressly pledged for the payment of the shares and deposits in accordance with Section 7-9-45.

(10) A person may not be a member of more than one committee except as otherwise provided in this chapter or in the credit union bylaws.

(11) The president and secretary may not be the same person.

Section 8. Section 7-9-36 is amended to read:

**7-9-36. Dissolution.**

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(1) A credit union may be dissolved upon a majority vote of the entire membership.

(2) A copy of a notice of a special meeting to consider the matter shall be mailed to the members of the credit union at least 10 days before the date of the meeting.

(3) Any member not present at the meeting may within the following 20 days vote for or against dissolution by signing a statement approved by the commissioner. A vote cast in this manner has the same force and effect as if cast at the meeting. A member not voting within the 20-day period is considered to be in favor of the dissolution.

(4) The officers of the credit union may appoint a liquidating agent, subject to the approval of the commissioner, who has the right to exercise all the powers of the dissolved credit union to wind up its affairs. If the liquidating agent is other than [~~the Utah League of Credit Unions~~] ~~{an}~~ a bona fide trade association ~~{in this state that represents}~~ of authorized credit unions recognized by the commissioner, or the National Credit Union Administration, the liquidator shall provide a bond or other security, as required by the commissioner, for the faithful discharge of duties in connection with the liquidation, including accounting for all money collected.

(5) Upon the vote required under this section, a certificate of dissolution, signed by the chair of the board and the secretary, shall be filed with the commissioner and shall state the vote cast in favor of dissolution, the proposed date upon which the credit union will cease to do business, the names and addresses of the directors and officers of the credit union and the name and address of the liquidating agent appointed by the officers of the credit union. The commissioner shall approve the dissolution unless he finds that the procedures set forth in this section have not been properly followed.

(6) Upon approval, the credit union shall cease to do business except for the purpose of discharging its debts, collecting and distributing assets, and doing all acts required to adjust, wind up, and dissolve its business and affairs. It may sue and be sued for the purpose of enforcing debts or obligations until its affairs are fully adjusted.

(7) If the board or the liquidating agent determines that all assets from which a reasonable return could be expected have been liquidated and distributed, it shall execute a certificate of dissolution in a form approved by the commissioner and file it with the department and the Division of Corporations and Commercial Code. After the certificate has been filed, the credit union is dissolved.

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Section 9. Section 7-9-39 is amended to read:

### 7-9-39. Voluntary merger.

(1) ~~[Any]~~ A credit union may merge with another credit union under the existing charter of the other credit union when all of the following have occurred:

(a) the majority of the directors of each merging credit union votes in favor of the merger plan;

(b) the commissioner approves the merger plan;

(c) subject to Subsection (7):

~~[(e)] (i) the majority of the members of each merging credit union present at a meeting called for the purpose of considering the merger plan votes to approve the merger plan[, but a vote of the membership of the surviving credit union is not required if its board of directors determines that the merger will not have any significant effect on the organization, membership, or financial condition of the credit union; and]; or~~

(i) the majority of the members of each merging credit union votes to approve the merger plan by means of United States Postal Service mail; and

(d) (i) the National Credit Union Administration or its successor federal deposit insurance agency approves the merger plan and commits to insure deposits of the surviving credit union; or

(ii) the commissioner approves the surviving credit union to operate without federal deposit insurance in accordance with Section 7-9-45.

(2) Upon merger, the chair of the board and secretary of each credit union shall execute, and file with the department, a certificate of merger setting forth:

(a) the time and place of the meeting of the board of directors at which the plan was approved;

(b) the vote by which the directors approved the plan;

(c) a copy of the resolution or other action by which the plan was approved;

(d) the time and place of the meeting of the members at which the plan was approved;

(e) the vote by which the members approved the plan; and

(f) the effective date of the merger, which shall be:

(i) the date on which the last approval or vote required under Subsection (1) was obtained; or

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(ii) a later date specified in the merger plan.

(3) On the effective date of ~~any~~ a merger:

(a) ~~all~~ the property, property rights, and interests of the merged credit union shall vest in the surviving credit union without deed, endorsement, or other instrument of transfer; and

(b) ~~all~~ the debts, obligations, and liabilities of the merged credit union are considered to have been assumed by the surviving credit union.

(4) Except as provided in Subsection (5)(b), if the surviving credit union is chartered under this chapter, the residents of a county in the field of membership of the merging credit union may not be added to the field of membership of the surviving credit union, except that the surviving credit union:

(a) may admit as a member any member of the merging credit union that is not in the field of membership of the surviving credit union if the member of the merging credit union was a member of that credit union at the time of merger; and

(b) may service any member-business loan of the merging credit union until the member-business loan is paid in full.

(5) (a) This section shall be interpreted, whenever possible, to permit a credit union chartered under this chapter to merge with a credit union chartered under any other law if the preservation of membership interest is concerned.

(b) The commissioner may under Subsection (1)(b) approve a merger plan that includes the addition of the residents of a county in the field of membership of the merging credit union to the field of membership of the surviving credit union if the commissioner finds that:

(i) the expansion of the field of membership of the surviving credit union is necessary for that credit union's safety and soundness; and

(ii) the expanded field of membership of the surviving credit union meets the criteria stated in Subsection 7-9-52(3)(c).

(6) If the commissioner approves a merger plan under Subsection (5)(b) under which the surviving credit union's field of membership after the merger will include residents of more than one county, Subsections (6)(a) through (e) apply to the surviving credit union.

(a) The domicile-county of the surviving credit union is:

(i) if the credit union does not have a field of membership under Subsection

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7-9-53(2)(c) [~~or (2)(d)~~], the county in which the credit union has located the greatest number of branches as of the date the merger is effective; or

(ii) if the credit union has a field of membership under Subsection 7-9-53(2)(c) [~~or (2)(d)~~], the county that is the domicile-county of the surviving credit union under Section 7-9-53;

(b) Within the surviving credit union's domicile-county, the surviving credit union may establish, relocate, or otherwise change the physical location of the credit union's:

(i) main office; or

(ii) branch.

(c) Within a county other than the domicile-county that is in the field of membership of the surviving credit union after the merger, the surviving credit union may not:

(i) establish a main office or branch if the main office or branch was not located in the county as of the date that the merger is effective;

(ii) participate in a service center in which it does not participate as of the date that the merger is effective; or

(iii) relocate the surviving credit union's main office or a branch located in the county as of the date that the merger is effective unless the commissioner finds that the main office or branch is being relocated within a three-mile radius of the original location of the main office or branch.

(d) After the merger, the surviving credit union may admit as a member:

(i) a person in the surviving credit union's field of membership after the date that the merger is effective; or

(ii) a person belonging to an association that:

(A) is added to the field of membership of the credit union; and

(B) resides in the domicile-county of the surviving credit union, as defined in Section 7-9-53.

(e) In addition to any requirement under this Subsection (6), a surviving credit union shall comply with any requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.

(7) A vote of the membership of the surviving credit union is not required under Subsection (1)(c) if its board of directors determines that the merger will not have a significant

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effect on the organization, membership, or financial condition of the credit union.

Section 10. Section 7-9-43 is amended to read:

### 7-9-43. Board of Credit Union Advisors.

(1) (a) There is created a Board of Credit Union Advisors of five members to be appointed by the governor.

~~[(1)] (b)~~ Members of the advisory board shall be individuals who are familiar with and associated in the field of credit unions.

~~[(2)] (c)~~ At least three of the members of the advisory board shall be persons who have had three or more years of experience as a credit union officer and shall be selected from a list submitted to the governor by ~~[the Utah League of Credit Unions]~~ {an} a bona fide trade association {in this state that represents} of authorized credit unions recognized by the commissioner.

~~[(3)] (2)~~ The advisory board shall meet quarterly.

~~[(4)] (3)~~ A chair of the advisory board shall be chosen each year from the membership of the advisory board by a majority of the members present at the advisory board's first meeting each year.

~~[(5)] (4) (a)~~ Except as required by Subsection ~~[(5)] (4)(b)~~, as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding ~~[the requirements of]~~ Subsection ~~[(5)] (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 advisory board is appointed every two years.

~~[(6)] (5)~~ When a vacancy occurs in the membership for any reason, the ~~[replacement shall be appointed]~~ governor shall appoint a replacement for the unexpired term.

~~[(7) All members]~~ (6) A member shall serve until ~~[their successors are]~~ the member's successor is appointed and qualified.

~~[(8)] (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

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

~~[(9)]~~ (8) Meetings of the advisory board shall be held on the call of the chair. A majority of the members of the advisory board shall constitute a quorum.

~~[(10)]~~ (9) The [~~Board of Credit Union Advisors~~] advisory board has the duty to advise the governor and commissioner on problems relating to credit unions and to foster the interest and cooperation of credit unions in the improvement of their services to the people of the state.

Section 11. Section 7-9-44 is amended to read:

### **7-9-44. Corporate central credit union.**

(1) A credit union in which all credit unions, [~~the Utah League of Credit Unions~~] ~~{an}~~ a bona fide trade association ~~{in this state that represents}~~ of authorized credit unions recognized by the commissioner, and its affiliates are eligible for membership may be established in this state and shall be known as a corporate central credit union.

(2) The corporate central credit union has all the powers and rights granted credit unions established under this chapter. The maximum loan by a corporate central credit union shall be established in the corporate central credit union bylaws.

(3) Beginning January 1, 1984, and at the end of each dividend period, the corporate central credit union, in lieu of a regular reserve as provided in Section 7-9-30, shall transfer 2% of its gross earnings to its central reserve until the reserve equals 1-1/2% of total assets. If the central reserve falls below 1-1/2% of total assets, it shall be replenished by regular transfers of 2% of gross earnings or by contributions, whichever is less, in such amounts as are needed to maintain the central reserve at 1-1/2% of total assets.

(4) Charges may be made against the central reserve to the extent permitted against a regular reserve. No other charges may be made against the central reserve, except as authorized in writing by the commissioner.

(5) The purposes of the corporate central credit union are:

(a) to accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;

(b) to act as an intermediary for credit union funds between members, other corporate credit unions, other financial institutions, and government agencies;

(c) to obtain liquid funds from other credit union organizations, financial

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intermediaries, and other sources;

(d) to foster and promote, in cooperation with other state, regional, and national corporate credit unions and credit union organizations or associations, the economic security, growth, and development of member credit unions; and

(e) to perform other financial services of benefit to its members authorized by the commissioner.

(6) The corporate central credit union is exempt from supervision fees but is subject to examination fees.

Section 12. Section **7-9-51** is amended to read:

### **7-9-51. Field of membership.**

(1) Except as provided in Subsection (3) or (5), the field of membership of a credit union may include only the following:

(a) the immediate family of a member of the credit union;

(b) the employees of the credit union;

(c) residents of a single county;

(d) one or more associations; and

(e) residents of a city of the third, fourth, or fifth class or a town as classified in Section 10-2-301 if:

(i) the city or town is located in a county of the fourth through sixth class as classified in Section 17-50-501;

(ii) at the time the residents of the city or town are included in the field of membership of a credit union, the credit union has not become a nonexempt credit union under Section 7-9-55; and

(iii) approved by the commissioner in accordance with Subsection 7-9-52(6).

(2) A credit union may have a field of membership that is more restrictive than the field of membership described in Subsection (1).

(3) A credit union may have a field of membership that is less restrictive than the field of membership described in Subsection (1) if the field of membership of the credit union:

(a) is determined under Subsection 7-9-53(2)(c) [~~or (2)(d)~~];

(b) is approved by the commissioner after a merger under Subsection 7-9-39(5); or

(c) is permitted by the commissioner after a merger in accordance with Section

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7-9-39.5.

(4) If a credit union includes the residents of one county in its field of membership, the credit union may not change its field of membership to include a different county than the county that is first included in the field of membership of the credit union.

(5) Notwithstanding the other provisions of this section or any restrictions of Section 7-9-53, a credit union may have a field of membership that is less restrictive than the field of membership described in Subsection (1), under the following conditions:

(a) the field of membership of the credit union may include no more than all the residents of two counties in addition to any association included in the field of membership of the credit union; and

(b) both counties described in Subsection (5)(a) must be a county of the third through sixth class, as classified in Section 17-50-501.

Section 13. Section **7-9-53** is amended to read:

### **7-9-53. Grandfathering.**

(1) As used in this section:

(a) "Association that resides in a domicile-county" means an association that:

- (i) operates a place of business or other physical location in the domicile-county; or
- (ii) has at least 100 members that are residents of the domicile-county.

(b) "Domicile-county" means the county:

- (i) in the field of membership of the credit union as of January 1, 1999; and
- (ii) in which the credit union has located the greatest number of branches as of January 1, 1999.

(c) "Grandfathered field of membership" means the field of membership as of May 3, 1999, of a credit union described in Subsection (2)~~(c)~~(c).

(2) For each credit union formed before January 1, 1999, its field of membership as of May 3, 1999, is determined as follows:

(a) if the field of membership stated in the bylaws of the credit union as of January 1, 1999, complies with Section 7-9-51, the credit union's field of membership is the field of membership indicated in its bylaws;

(b) (i) the field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(b)(ii) if:

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(A) the field of membership stated in the bylaws of the credit union as of January 1, 1999, includes the residents of more than one county; and

(B) as of January 1, 1999, the credit union's main office and any of its branches are located in only one county in its field of membership;

(ii) as of May 3, 1999, the field of membership of a credit union described in Subsection (2)(b)(i) is:

(A) the immediate family of a member of the credit union;

(B) the employees of the credit union;

(C) residents of the one county in which the credit union has its main office or branches as of January 1, 1999; and

(D) any association that as of January 1, 1999, is in the field of membership of the credit union; and

~~[(c) (i) the field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(c)(ii) if:]~~

~~[(A) the field of membership of a credit union stated in the bylaws of the credit union as of January 1, 1999, includes residents of more than one county;]~~

~~[(B) as of January 1, 1999, the credit union has a main office or branch in more than one county; and]~~

~~[(C) as a result of a merger pursuant to a supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, that is effective on or after January 1, 1983, but before January 1, 1994, the credit union acquired a branch in a county in the field of membership of the credit union and the credit union did not have a branch in the county before the merger;]~~

~~[(ii) as of May 3, 1999, the field of membership of a credit union described in Subsection (2)(c)(i) is the same field of membership that the credit union would have had under Subsection (2)(d) except that the credit union:]~~

~~[(A) is not subject to Subsection (3); and]~~

~~[(B) is subject to Subsection (4)(b); and]~~

~~[(d)]~~ (c) (i) the field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)~~[(d)]~~(c)(ii) if:

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(A) the field of membership stated in the bylaws of the credit union as of January 1, 1999, includes the residents of more than one county; and

(B) as of January 1, 1999, the credit union has a main office or branch in more than one county;

(ii) as of May 3, 1999, the field of membership of a credit union described in Subsection (2)[~~(d)~~](c)(i) is:

(A) the immediate family of a member of the credit union;

(B) the employees of the credit union;

(C) residents of the credit union's domicile-county;

(D) the residents of any county other than the domicile-county;

(I) if, as of January 1, 1999, the county is in the field of membership of the credit union; and

(II) in which, as of January 1, 1994, the credit union had located its main office or a branch; and

(E) any association that as of January 1, 1999, is in the field of membership of the credit union.

(3) If a credit union's field of membership is as described in Subsection (2)[~~(d)~~](c), beginning May 3, 1999, the credit union:

(a) within the credit union's domicile-county, may establish, relocate, or otherwise change the physical location of the credit union's:

(i) main office; or

(ii) branch;

(b) within a county other than a domicile-county that is in the credit union's grandfathered field of membership, may not:

(i) establish a main office or branch that:

(A) was not located in the county as of January 1, 1999; or

(B) for which the credit union has not received by January 1, 1999, approval or conditional approval of a site plan for the main office or branch from the planning commission of the municipality where the main office or branch will be located;

(ii) participate in a service center in which it does not participate as of January 1, 1999;

(iii) relocate the credit union's main office or a branch located in the county as of

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January 1, 1999, unless the commissioner finds that the main office or branch is relocated within a three-mile radius of where it was originally located; or

(iv) after a voluntary merger under Section 7-9-39, operate a branch in the county if:

(A) the effective date of the merger is on or after May 5, 2003;

(B) the credit union with the field of membership described in Subsection (2)~~(d)~~(c) is the surviving credit union after the merger; and

(C) the credit union did not own and operate the branch before the effective date of the merger; and

(c) may only admit as a member:

(i) a person in the credit union's grandfathered field of membership; or

(ii) a person belonging to an association that:

(A) is added to the field of membership of the credit union; and

(B) resides in the domicile-county of the credit union.

(4) ~~(a)~~ If a credit union's field of membership is as described in Subsection (2)(b), as of May 3, 1999, the credit union may operate as a credit union having a field of membership under Section 7-9-51.

~~[(b) If a credit union's field of membership is as described in Subsection (2)(c), as of May 3, 1999, the credit union:]~~

~~[(i) within the credit union's domicile-county, may establish, relocate, or otherwise change the physical location of the credit union's:]~~

~~[(A) main office; or]~~

~~[(B) branch;]~~

~~[(ii) within a county other than its domicile-county that is in the credit union's field of membership under Subsection (2)(c), may not:]~~

~~[(A) establish a main office or branch that was not located in the county as of January 1, 1999;]~~

~~[(B) participate in a service center in which it does not participate as of January 1, 1999; or]~~

~~[(C) relocate the credit union's main office or a branch located in the county as of January 1, 1999, unless the commissioner finds that the main office or branch is relocated within a three-mile radius of where it was originally located; and]~~

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~~[(iii) may only admit as a member:]~~

~~[(A) a person in the credit union's field of membership under Subsection (2)(c); or]~~

~~[(B) a person belonging to an association that is added to the field of membership of the credit union, regardless of whether the association resides in the domicile-county of the credit union.]~~

(5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union described in Subsection (2)(c) ~~[or(d)]~~ may:

(i) operate an office or branch that is operated by the credit union on May 3, 1999, but that is not located in a county that is in the credit union's field of membership as of May 3, 1999; and

(ii) serve a member who is not in a credit union's field of membership as of May 3, 1999, if the member is a member of the credit union as of March 15, 1999.

(b) Subsection (5)(a) does not authorize a credit union to:

(i) establish a branch in a county that is not in the credit union's field of membership as of May 3, 1999, unless the branch meets the requirements under this title for establishing a branch; or

(ii) for a credit union described in Subsection (2)~~(d)~~(c), include in its field of membership an association that:

(A) as of January 1, 1999, is not included in the credit union's field of membership; and

(B) does not reside within the credit union's domicile-county.

(6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no later than August 3, 1999, to comply with this section.

(7) In addition to any requirement under this section, a credit union shall comply with any requirement under this title for the establishment, relocation, or change in the physical location of a main office or branch of a credit union.

Section 14. Section **70C-1-202** is amended to read:

### **70C-1-202. Exempted transactions.**

(1) Notwithstanding the exceptions in Subsection (2), parties to a credit transaction that is otherwise exempt from this title may explicitly agree in writing that the transaction is subject to this title. The agreement shall specifically reference Title 70C, Utah Consumer Credit Code.

(2) This title does not apply to any of the following:

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- (a) [~~any~~] an extension of credit:
  - (i) primarily for business, commercial, or agricultural purposes; or
  - (ii) to other than a natural person including government agencies or instrumentalities;
- (b) [~~any~~] a closed-end extension of credit secured by a first lien or equivalent security interest on a dwelling or building lot;
- (c) [~~any~~] a transaction in securities or commodities accounts in which credit is extended by a broker-dealer registered with the:
  - (i) Securities and Exchange Commission; or
  - (ii) Commodity Futures Trading Commission;
- (d) [~~any~~] an extension of credit:
  - (i) not secured by:
    - (A) real property; or
    - (B) personal property used or expected to be used as the principal dwelling of the consumer; and
  - (ii) (A) in which the amount financed exceeds [~~\$25,000~~] \$50,000 adjusted annually for inflation by the commissioner by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers; or
  - (B) in which there is an express written commitment to extend credit in excess of [~~\$25,000~~] the amount determined under Subsection (2)(d)(ii)(A);
- (e) [~~any~~] a transaction under public utility or common carrier tariffs if a subdivision of this state or the United States regulates:
  - (i) the charges for the services involved;
  - (ii) the charges for delayed payment; and
  - (iii) [~~any~~] a discount allowed for early payment;
- (f) [~~any~~] fa}the sale of insurance by an insurer except as otherwise provided in Chapter 6, Insurance;
- (g) [~~any~~] a transaction with a party acting as a pawnbroker and licensed by any governmental authority in this state;
- (h) (i) a loan made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965, 20 U.S.C. [~~Sections~~] Sec. 1070, et seq.; or
- (ii) a loan:

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(A) that finances tuition and other expenses:

(I) charged in connection with enrollment:

(Aa) at a public or proprietary preprimary, secondary, vocational, or postsecondary school; or

(Bb) in any tutorial, continuing education, test preparation, distance-learning, or similar program; and

(II) including:

(Aa) tuition;

(Bb) fees;

(Cc) books;

(Dd) housing; and

(Ee) other expenses;

(B) that is:

(I) made, insured, or guaranteed under a state program; or

(II) made by a federally insured depository institution; and

(C) including a loan that consolidates or refinances a loan described in this Subsection

(2)(h)(ii); and

(i) a rental purchase agreement as defined in Section 15-8-3.

Section 15. Section **70C-8-203** is amended to read:

### **70C-8-203. Fees -- Examinations.**

(1) A party required to file notification under Section 70C-8-202 shall, on or before January 31 of each year, pay to the department an annual fee [~~equal to the sum of:~~] of \$100.

~~[(a) \$25; and]~~

~~[(b) \$7 for each \$100,000 or part thereof in excess of \$100,000, of the original principal balance of all consumer credit the party extended during the preceding calendar year.]~~

(2) In addition to filing notification, a party subject to this part, and a depository institution subject to this title:

(a) may be required to make a book or record relating to a consumer credit transaction available to the department or its authorized representative for examination; and

(b) shall pay to the department a fee to be set by the department based on an hourly rate per each examiner.

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(3) No portion of a fee paid or owed to the department under this part is refundable because a party voluntarily or involuntarily ceases to extend credit to consumers:

(a) during the period covered by the fee; or

(b) before the time of an examination by the department of a book or record pertaining to a preceding consumer credit transaction.

Section 16. Section **70D-2-201** is amended to read:

### **70D-2-201. Notification of department -- Exemptions.**

(1) Except as provided in Subsection (2), a person may not engage in business as a lender, broker, or servicer in this state before the day on which the person:

(a) files written notification with the commissioner in accordance with Section 70D-2-202; and

(b) pays a fee required by Section 70D-2-203.

(2) The following persons are exempt from this part, except for a reimbursement or fee described in Subsection 70D-2-203(2):

(a) a federally insured depository institution [~~in this state~~];

(b) a wholly owned subsidiary of a depository institution described in Subsection (2)(a);  
and

(c) a person who:

(i) is required to be licensed with the Division of Real Estate pursuant to Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and

(ii) is not a servicer.

Section 17. Section **70D-2-203** is amended to read:

### **70D-2-203. Fees -- Examination.**

(1) (a) A person required to file notification under this part shall pay to the commissioner:

(i) a fee of \$200 with the person's initial notification; and

(ii) an annual fee, on or before January 31 of each year, in an amount to be set by rule of the commissioner subject to Subsection (1)(b).

(b) The commissioner:

(i) subject to Subsection (1)(b)(ii), shall set the annual renewal fee at an amount that generates sufficient revenue to cover the department's costs of administering this chapter; and

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(ii) may not set an annual renewal fee that exceeds \$100 per renewal.

(2) (a) [~~If the commissioner has probable cause to believe that a lender, broker, or servicer has violated this chapter, the~~] The commissioner may require [~~the~~] a lender, broker, or servicer to make a record of the lender, broker, or servicer relating to its activities as a lender, broker, or servicer available to the commissioner or the commissioner's authorized representative for examination.

(b) A lender, broker, or servicer described in Subsection (2)(a) shall:

(i) reimburse the department for travel and other reasonable and necessary costs incurred in the examination described in Subsection (2)(a); and

(ii) pay to the commissioner a fee set by the commissioner based on an hourly rate per each examiner, not to exceed \$55 per hour for each examiner.

(3) No portion of a fee paid or owed to the commissioner under this section is refundable because a person voluntarily or involuntarily ceases to do business as a lender, broker, or servicer:

(a) during the period covered by the fee; or

(b) before the time of an examination by the commissioner of a record pertaining to a transaction preceding the day on which the person ceases to do business as a lender, broker, or servicer.

Section 18. Section **70D-2-305** is amended to read:

### **70D-2-305. Fee restrictions.**

(1) A lender or broker may not accept a fee or deposit from an applicant for a mortgage loan unless at the time the lender or broker accepts the fee or deposit there is a written statement:

~~(1)~~ (a) signed by the applicant;

~~(2)~~ (b) stating whether or not the fee or deposit is refundable; and

~~(3)~~ (c) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the applicant.

(2) Notwithstanding Subsection (1), a lender or broker may accept a fee or deposit from an applicant for a mortgage loan if the lender or broker receives an email from the applicant acknowledging that the applicant was provided the information required by Subsections (1)(b) and (c).

## **SB0124S01 compared with SB0124**

Section 19. Section **70D-3-102** is amended to read:

### **70D-3-102. Definitions.**

As used in this chapter:

(1) "Administrative or clerical tasks" means:

(a) the receipt, collection, and distribution of information common for the process or underwriting of a loan in the mortgage industry; and

(b) a communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(2) "Affiliate" shall be defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) "Applicant" means an individual applying for a license under this chapter.

(4) "Approved examination provider" means a person approved by the nationwide database as an approved test provider.

(5) "Business as a loan originator" means for compensation or in the expectation of compensation to engage in an act that makes an individual a loan originator.

(6) "Clerical or support duties" includes after the receipt of an application for a residential mortgage loan:

(a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(b) communicating with a consumer to obtain the information necessary for the processing or underwriting of the residential mortgage loan, to the extent that the communication does not include:

(i) offering or negotiating a residential mortgage loan rate or term; or

(ii) counseling a consumer about a residential mortgage loan rate or term.

(7) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:

(a) services;

(b) personal or real property; or

(c) another thing of value.

(8) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Section 70D-3-303 to renew a

## SB0124S01 compared with SB0124

license under this chapter.

(9) "Covered subsidiary" means a subsidiary that is:

- (a) owned and controlled by a depository institution; and
- (b) regulated by a federal banking agency.

(10) "Federal banking agency" means:

- (a) the Board of Governors of the Federal Reserve System;
- (b) the Comptroller of the Currency;

~~[(c) the Director of the Office of Thrift Supervision;]~~

~~[(d)]~~ (c) the National Credit Union Administration; or

~~[(e)]~~ (d) the Federal Deposit Insurance Corporation.

(11) "Licensee" means an individual licensed under this chapter.

(12) (a) Except as provided in Subsection (12)(b), "loan originator" means an individual who for compensation or in the expectation of compensation:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates a term of a residential mortgage loan.

(b) "Loan originator" does not include:

- (i) an individual who is engaged solely as a loan processor or underwriter;
- (ii) unless compensated by a lender, broker, other loan originator, or an agent of a

lender, broker, or other loan originator, a person who:

- (A) only performs real estate brokerage activities; and
- (B) is licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- (iii) a person who is solely involved in extension of credit relating to a timeshare plan,

as defined in 11 U.S.C. Sec. 101(53D); or

(iv) an attorney licensed to practice law in this state who, in the course of the attorney's practice as an attorney, assists a person in obtaining a residential mortgage loan.

(13) "Loan processor or underwriter" means an individual who as an employee performs clerical or support duties:

(a) at the direction of and subject to the supervision and instruction of:

- (i) a licensee; or
- (ii) a registered loan originator; and

(b) as an employee of:

## **SB0124S01 compared with SB0124**

- (i) the licensee; or
- (ii) a registered loan originator.

(14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.

(15) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.

(16) "Owned and controlled by a depository institution" may be defined by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(17) "Prelicensing education" means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section 70D-3-301 for an individual to obtain a license under this chapter.

(18) "Registered loan originator" means an individual who:

(a) engages in an act as a loan originator only as an employee of:

- (i) a depository institution;
- (ii) a covered subsidiary; or
- (iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the nationwide database.

(19) (a) Subject to Subsection (19)(b), "residential mortgage loan" means:

- (i) a mortgage loan; or
- (ii) a loan that is:
  - (A) secured by a mortgage; and
  - (B) subject to Title 70C, Utah Consumer Credit Code.

(b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the mortgage securing the loan is on:

- (i) a dwelling located in the state; or
- (ii) real property located in the state, upon which is constructed or intended to be constructed a dwelling.

(20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

## **SB0124S01 compared with SB0124**

Section 20. **Repealer.**

This bill repeals:

Section 7-3-3.3, **Tying of other bank services prohibited.**

Section 7-3-16, **Losses charged to surplus -- Replenishment of fund -- Dividend restrictions.**

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

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**Legislative Review Note**

~~as of 1-13-14 5:22 PM~~

~~Office of Legislative Research and General Counsel}~~