

**FINANCIAL INSTITUTIONS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Val L. Peterson

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Financial Institutions Act.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition provisions;
- ▶ addresses persons or institutions subject to the jurisdiction of the department;
- ▶ clarifies extent of regulation of technology service providers;
- ▶ authorizes the commission to share information from certain examination reports

with a depository institution receiving services from a technology service provider;

and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**7-1-103**, as last amended by Laws of Utah 2014, Chapter 189

**7-1-501**, as last amended by Laws of Utah 2008, Chapter 96

**7-1-802**, as last amended by Laws of Utah 2014, Chapter 189



28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58

---

---

*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; or

(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

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

90 institution.

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

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

95 (14) "Home state" means:

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

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

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

101 (15) "Host state" means:

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

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

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

109 (17) "Industrial loan company" [~~is as~~] means the same as that term is defined in Section  
110 [7-8-21](#).

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

113 (19) "Institution" means:

114 (a) a corporation;

115 (b) a limited liability company;

116 (c) a partnership;

117 (d) a trust;

118 (e) an association;

119 (f) a joint venture;

120 (g) a pool;

121 (h) a syndicate;

122 (i) an unincorporated organization; or

123 (j) any form of business entity.

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

126 (21) "Liquidation" means the act or process of winding up the affairs of an institution  
127 subject to the jurisdiction of the department by realizing upon assets, paying liabilities, and  
128 appropriating profit or loss, as provided in Chapter 2, Possession of Depository Institution by  
129 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding  
130 Companies.

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

133 (23) (a) "Money services business" includes:

134 (i) a check casher;

135 (ii) a deferred deposit lender;

136 (iii) an issuer or seller of traveler's checks or money orders; and

137 (iv) a money transmitter.

138 (b) "Money services business" does not include:

139 (i) a bank;

140 (ii) a person registered with, and functionally regulated or examined by the Securities  
141 Exchange Commission or the Commodity Futures Trading Commission, or a foreign financial  
142 agency that engages in financial activities that, if conducted in the United States, would require  
143 the foreign financial agency to be registered with the Securities Exchange Commission or the  
144 Commodity Futures Trading Commission; or

145 (iii) an individual who engages in an activity described in Subsection (23)(a) on an  
146 infrequent basis and not for gain or profit.

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

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

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

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

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

156 (27) "Person" means:

157 (a) an individual;

158 (b) a corporation;

159 (c) a limited liability company;

160 (d) a partnership;

161 (e) a trust;

162 (f) an association;

163 (g) a joint venture;

164 (h) a pool;

165 (i) a syndicate;

166 (j) a sole proprietorship;

167 (k) an unincorporated organization; or

168 (l) any form of business entity.

169 (28) "Receiver" means a person, agency, or instrumentality of this state or the United  
170 States appointed to administer and manage an institution subject to the jurisdiction of the  
171 department in receivership, as provided in Chapter 2, Possession of Depository Institution by  
172 Commissioner, and Chapter 19, Acquisition of Failing Depository Institutions or Holding  
173 Companies.

174 (29) "Receivership" means the administration and management of the affairs of an  
175 institution subject to the jurisdiction of the department to conserve, preserve, and properly  
176 dispose of the assets, liabilities, and revenues of an institution in possession, as provided in  
177 Chapter 2, Possession of Depository Institution by Commissioner, and Chapter 19, Acquisition  
178 of Failing Depository Institutions or Holding Companies.

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

181 (31) "Savings and loan association" means:

182 (a) a federal savings and loan association; and

183 (b) an out-of-state savings and loan association.

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

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

188 (a) a state;

189 (b) the District of Columbia; or

190 (c) the territories of the United States.

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

192 (35) "Technology service provider" means a person that provides a data processing  
193 service or activity that supports the financial services or Internet related services of a depository  
194 institution subject to the jurisdiction of the department, including supporting:

195 (a) lending;

196 (b) money transfers;

197 (c) fiduciary activities;

198 (d) trading activities;

199 (e) deposit taking;

200 (f) web services and electronic bill payments;

201 (g) mobile applications;

202 (h) system and software development and maintenance; and

203 (i) security monitoring.

204 [~~35~~] (36) (a) "Transaction account" means a deposit, account, or other contractual  
205 arrangement in which a depositor, account holder, or other customer is permitted, directly or  
206 indirectly, to make withdrawals by:

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

208 (ii) payment order of withdrawal;

209 (iii) telephone transfer;

210 (iv) other electronic means; or

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

213 (b) "Transaction account" includes:

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

218 ~~[(36)]~~ (37) "Trust company" means a person authorized to conduct a trust business, as  
 219 provided in Chapter 5, Trust Business.

220 ~~[(37)]~~ (38) "Utah depository institution" means a depository institution whose home  
 221 state is Utah.

222 ~~[(38)]~~ (39) "Utah depository institution holding company" means a depository  
 223 institution holding company whose home state is Utah.

224 Section 2. Section 7-1-501 is amended to read:

225 **7-1-501. Institutions and persons subject to jurisdiction of department.**

226 (1) As provided in this title and the rules of the department, the persons and institutions  
 227 described in Subsection (2) are subject to:

- 228 (a) the jurisdiction of the department; and
- 229 (b) supervision and examination by the department.

230 (2) Subsection (1) applies to:

231 (a) ~~[all depository institutions]~~ a depository institution chartered under the laws of this  
 232 state, including any out-of-state ~~[branches]~~ branch of the depository institution;

233 (b) ~~[all Utah depository institutions]~~ a Utah depository institution chartered by the  
 234 federal government, but only to the extent the application of this title is authorized by:

- 235 (i) federal law; or
- 236 (ii) the appropriate federal regulatory agency;

237 (c) ~~[all Utah branches of]~~ a Utah branch of an out-of-state depository ~~[institutions]~~  
 238 institution chartered under the laws of another state;

239 (d) ~~[all Utah branches of]~~ a Utah branch of an out-of-state depository ~~[institutions]~~  
 240 institution chartered by the federal government, but only to the extent the application of this  
 241 title is authorized by:

- 242 (i) federal law; or
- 243 (ii) the appropriate federal regulatory agency;

244 (e) ~~[all service corporations and service organizations]~~ a service corporation or service



245 organization, including a credit union service [~~organizations~~] organization as defined in Section  
246 7-9-3;

247 (f) [~~all~~] a trust [~~companies~~] company;

248 (g) [~~all~~] an escrow [~~companies~~] company;

249 (h) [~~all persons or institutions~~] a person or institution engaged in this state in the  
250 business of:

251 (i) guaranteeing or insuring deposits, savings accounts, share accounts, or other  
252 accounts in depository institutions;

253 (ii) operating a loan production office for:

254 (A) a Utah depository institution;

255 (B) an out-of-state depository institution; or

256 (C) a foreign depository institution;

257 [~~(iii) allowing persons to effect third party payments from loan, charge, or other  
258 accounts by checks, drafts, or other instruments or by electronic means; or]~~

259 [~~(iv)~~] (iii) a check casher or deferred deposit lender, as defined in Section 7-23-102;

260 (iv) a title lender, as defined in Section 7-24-102; or

261 (v) money transmission, as defined in Section 7-25-102;

262 (i) [~~all corporations~~] a corporation or other business [~~entities~~] entity owning or  
263 controlling an institution subject to the jurisdiction of the department;

264 (j) subject to Subsection (3), a technology service provider that provides services to a  
265 depository institution subject to the jurisdiction of the department;

266 [~~(j) all subsidiaries and affiliates]~~

267 (k) a subsidiary or affiliate of an institution subject to the jurisdiction of the  
268 department; and

269 [~~(k)~~] (l) any person or institution that, with or without authority to do so, transacts  
270 business as, or holds itself out as being, a depository institution, trust company, or any other  
271 person or institution described in this section as being subject to the jurisdiction of the  
272 department.

273 (3) A technology service provider is subject to regulation and examination by the  
274 commissioner to the same extent as if the service or activity of the technology service provider  
275 were being performed by the depository institution itself.

276 Section 3. Section 7-1-802 is amended to read:

277 **7-1-802. Confidentiality of information received by department -- Availability of**  
278 **information.**

279 (1) The commissioner shall receive and place on file in the department's office all  
280 reports required by law and shall certify all reports required to be published.

281 (2) Except as provided in this section, the following are confidential, not public  
282 records, and not open to public inspection:

283 (a) all reports received or prepared by the department;

284 (b) all information obtained from an institution or person under the jurisdiction of the  
285 department; and

286 (c) all orders and related records of the department.

287 (3) The following records and information are public and are open to public inspection:

288 (a) reports of condition required by Section 7-1-318;

289 (b) information that is otherwise generally available to the public; and

290 (c) information contained in, and final decisions on, an application filed under Sections  
291 7-1-702, 7-1-703, 7-1-704, 7-1-705, 7-1-706, 7-1-708, 7-1-709, 7-1-712, 7-1-713, or Chapter  
292 19, Acquisition of Failing Depository Institutions or Holding Companies, excluding:

293 (i) proprietary information, business plans, and personal financial information; and

294 (ii) information for which:

295 (A) the applicant requests confidentiality; and

296 (B) the commissioner grants the request for confidentiality.

297 (4) The department may disclose records and information that are not public to the  
298 following:

299 (a) to an agency or authority:

300 (i) that regulates:

301 (A) the subject of the record; or

302 (B) an affiliate of the subject of the record, as defined by the commissioner by rule; and

303 (ii) is of:

304 (A) the federal government;

305 (B) the state; or

306 (C) another state;

307 (b) to a federal deposit insurance agency;

308 (c) to an official legally authorized to investigate criminal charges in connection with  
309 the affairs of the subject of the record, and to any tribunal conducting legal proceedings  
310 resulting from such an investigation;

311 (d) to a person preparing a proposal for merging or acquiring an institution under  
312 Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition  
313 of Failing Depository Institutions or Holding Companies, but only after the department  
314 provides notice of the disclosure to the institution;

315 (e) to any other person, if the commissioner determines, after notice to the institution  
316 or person that is the subject of the record and opportunity for hearing, that the interests favoring  
317 disclosure of the information outweigh the interests favoring confidentiality of the information;  
318 and

319 (f) to any court in a proceeding under:

320 (i) Sections 7-1-304, 7-1-320, 7-1-322; or

321 (ii) a supervisory action under Chapter 2, Possession of Depository Institution by  
322 Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding  
323 Companies.

324 (5) The commissioner may limit the use and further disclosure of any information  
325 disclosed under Subsection (4):

326 (a) to protect the business confidentiality interest of the subject of the record; and

327 (b) to protect the public interest, such as to avoid:

328 (i) a liquidity crisis in a depository institution; or

329 (ii) undue speculation in securities or currency markets.

330 (6) The department shall disclose information in the manner and to the extent directed  
331 by a court order signed by a judge from a court of competent jurisdiction if:

332 (a) the disclosure does not violate applicable federal or state law;

333 (b) the information to be disclosed deals with a matter in controversy over which the  
334 court has jurisdiction;

335 (c) the person requesting the order has provided reasonable prior written notice to the  
336 commissioner;

337 (d) the court has considered the merits of the request for disclosure and has determined

338 that the interests favoring disclosure of the information outweigh the interests favoring  
339 confidentiality of the information; and

340 (e) the court has appropriately limited the use and further disclosure of the information:

341 (i) to protect the business confidentiality interest of the subject of the record; and

342 (ii) to protect the public interest, such as to avoid:

343 (A) a liquidity crisis in a depository institution; or

344 (B) undue speculation in securities or currency markets.

345 (7) Notwithstanding the other provisions of this section, the commissioner may provide

346 information from a report of an examination performed by the commissioner of the condition

347 and affairs of a technology service provider to a depository institution serviced by the

348 technology service provider.

---

---

**Legislative Review Note**  
**Office of Legislative Research and General Counsel**