

## CHAPTER 19

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**FINANCIAL INSTITUTIONS**

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**HOUSE BILL 94-1007**

BY REPRESENTATIVES Agler, George, Knox, and Hagedorn;  
also SENATORS Schroeder and Lacy.

**AN ACT****CONCERNING THE REGULATORY AUTHORITY OF THE DIVISION OF BANKING.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 24-34-104 (23) (a) (I), Colorado Revised Statutes, 1988 Repl. Vol., is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (23) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1994:

(I) ~~The division of banking, created by article 2 of title 11, C.R.S.;~~

**SECTION 2.** 24-34-104, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (34) THE FOLLOWING DIVISION IN THE DEPARTMENT OF REGULATORY AGENCIES SHALL TERMINATE ON JULY 1, 2004: THE DIVISION OF BANKING, CREATED BY ARTICLE 2 OF TITLE 11, C.R.S.

**SECTION 3.** 11-2-101 (10), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-2-101. Division of banking - creation - subject to termination - repeal of article.** (10) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of banking created by this section.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(b) This article is repealed, effective ~~July 1, 1994~~ JULY 1, 2004.

**SECTION 4.** 11-2-102 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-2-102. Banking board.** (2) (a) There shall be four members who during their tenure are, and shall remain, executive officers of state banks and shall have not less than five years' practical experience as an active executive officer of a bank.

(a.1) There shall be one member who during his OR HER tenure is, and shall remain, the executive officer of an industrial bank.

(a.2) There shall be one member who during his OR HER tenure is, and shall remain, the executive officer of a trust company.

(b) There shall also be two members to serve as public members of the banking board who shall have expertise in finance through their current experience in business, industry, agriculture, or education.

(c) ~~Not more than one banker member of the banking board appointed pursuant to paragraph (a) of this subsection (2) shall be from any one congressional district, and of the four state bank members and the one industrial bank member and one trust company member of the banking board, not more than three shall be of the same major political party. The two nonbanker members of the banking board appointed pursuant to paragraph (b) of this subsection (2) shall not be appointed from the same congressional district, and not more than one of such members shall be of the same major political party.~~ No member of the banking board shall have any interest, direct or indirect, in a bank in which another member of the banking board ~~shall have~~ HAS any such interest. Not more than one of the members shall be an executive officer or employee of any one bank holding company or affiliate thereof.

(d) Of the eight members appointed under this subsection (2), at least one AND NOT MORE THAN TWO shall be appointed from each congressional district of the state, AND NOT MORE THAN FOUR SHALL BE OF THE SAME MAJOR POLITICAL PARTY. AT ALL TIMES, AT LEAST ONE MEMBER SHALL RESIDE WEST OF THE CONTINENTAL DIVIDE.

**SECTION 5.** 11-2-110, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-2-110. Commissioner's annual report - publications.** ~~(1) The commissioner shall prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor and the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the division.~~

~~(2) The commissioner shall compile annually the text of all rules and regulations of general application of the banking board and commissioner as adopted or altered since the last compilation.~~

~~(3) The commissioner shall prepare an annual analysis of the state banks which~~

shall include:

~~(a) A statement of the status and remaining assets and liabilities of each state bank in the possession of the banking board;~~

~~(b) A summary of all the changes occurring since his last previous report by reason of opening or closing state banks, mergers and conversions, increases and decreases in capital, and the like;~~

~~(c) A tabular statement of condition of each state bank as of the date of the most recent report of condition rendered to the commissioner;~~

~~(d) The names of the officers and directors of all state banks during the preceding year.~~

~~(4) Publications of the commissioner circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S. FOR EACH CALENDAR YEAR, THE COMMISSIONER SHALL COMPILE AND PUBLISH AN ANNUAL REPORT IN SUCH FORM AND CONTAINING SUCH INFORMATION AS THE COMMISSIONER MAY DETERMINE NECESSARY TO REASONABLY SUMMARIZE THE OPERATIONS OF THE DIVISION DURING SUCH YEAR.~~

**SECTION 6.** 11-2-111 (3), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-2-111. Records.** (3) ~~A copy of any document on file with the division which is certified by the official custodian for the banking board as being a true copy may be introduced in evidence as if it were the original. The banking board shall establish a schedule of fees for copies of documents.~~ UPON REQUEST AND UPON PAYMENT OF SUCH REASONABLE CHARGES AS THE COMMISSIONER SHALL PRESCRIBE, THE COMMISSIONER SHALL FURNISH TO ANY PERSON A CERTIFIED COPY OF ANY DOCUMENT ON FILE WITH THE DIVISION WHICH IS A PUBLIC RECORD. SUCH CERTIFIED COPY SHALL BE ADMISSIBLE IN EVIDENCE IN LIEU OF THE ORIGINAL AND SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF THE CONTENTS OF THE ORIGINAL.

**SECTION 7.** 11-2-117 (1) (a) (I), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-2-117. Assessment of civil money penalties by banking board.** (1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease and desist order issued by the banking board pursuant to section 11-2-103 (7); and

(B) Any state bank which, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who, violates or knowingly permits any person to violate any of the provisions of this code or any rule or regulation promulgated pursuant to this code, OR ENGAGES OR PARTICIPATES IN

ANY UNSAFE OR UNSOUND PRACTICE IN CONNECTION WITH A BANK. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under section 11-2-114; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement which contains materially false or misleading information.

**SECTION 8.** 11-3-110 (1) (c), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-3-110. Procedure for granting or denying charter.** (1) Within sixty days following the filing of the completed application for charter, the commissioner shall make or cause to be made a careful investigation to determine that the following requirements have been met:

(c) That the persons who will serve as directors or officers, insofar as such persons are known, ~~are qualified by character~~ POSSESS THE QUALIFICATIONS and experience REQUIRED UNDER RULES PROMULGATED BY THE BANKING BOARD and that the qualifications and financial status of the incorporators, directors, officers, and persons in control of the bank, as defined in section 11-2-109 (4), are consistent with their responsibilities and duties;

**SECTION 9.** 11-3-114 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-3-114. Directors and officers.** (1) The affairs of a state bank shall be managed by a board of directors which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than three nor more than twenty-five, shall be as fixed by the bylaws, and the number so fixed shall be the board, regardless of vacancies. At least three-fourths of the directors shall be citizens of the United States, two-thirds shall be residents of this state, and a majority shall reside within one hundred miles of the place of business of the bank, PROVIDED THAT IF THE BANK IS ORGANIZED SOLELY TO DO BUSINESS WITH OTHER FINANCIAL INSTITUTIONS, IS OWNED PRIMARILY BY THE FINANCIAL INSTITUTIONS WITH WHICH IT DOES BUSINESS, AND DOES NOT DO BUSINESS WITH THE GENERAL PUBLIC, AT LEAST THREE-FOURTHS OF THE DIRECTORS SHALL BE CITIZENS OF THE UNITED STATES AND A MAJORITY SHALL BE RESIDENTS OF THIS STATE. A director need not own shares. No director may serve who has been convicted of fraud involving any financial institution or of a felony, but the banking board may waive this provision regarding a felony if it determines that the particular felony does not jeopardize the person's ability to act as a director. A director who is disqualified may be removed by the board of directors or by the banking board. No action taken by a director prior to his resignation or removal shall be subject to attack on the ground of his disqualification.

**SECTION 10.** 11-6.4-103 (7), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-6.4-103. Acquisition of control of bank holding companies and banks by bank holding companies in different states.** (7) An out-of-state bank holding

company may not acquire control of a Colorado bank holding company or Colorado bank if UNLESS immediately before such acquisition such out-of-state bank holding company has in the aggregate a ratio of total capital to total assets of less than six percent. For the purpose of this subsection (7), if the federal bank holding company act or the regulations, interpretations, and guidelines of the federal reserve board thereunder specify from time to time a minimum ratio of total capital to total assets of greater than six percent, then such greater percentage shall control. If the federal reserve board reduces the ratio below six percent or eliminates the ratio altogether, the ratio governing this subsection (7) shall remain at six percent and the general assembly shall review the ratio and definitions in this subsection (7) no later than the next regular session of the general assembly. For the purpose of this subsection (7), "total capital" means "total capital" as defined under the federal bank holding company act and regulations, interpretations, and guidelines issued by the federal reserve board thereunder, including Appendix A to 12 C.F.R. section 225, in effect on January 1, 1988, or as modified thereafter, or as modified by a substituted term. For the purpose of this subsection (7), total capital and total assets shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency SUCH CAPITAL AS THE BANKING BOARD MAY REQUIRE BY RULE AND REGULATION.

**SECTION 11.** 11-22-115.1 (1) (a) (I), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-22-115.1. Assessment of civil money penalties by banking board.**

(1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease and desist order issued by the banking board pursuant to section 11-22-109 (5) (d); and

(B) Any industrial bank which, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such industrial bank who, violates or knowingly permits any person to violate any of the provisions of this article or any rule or regulation promulgated pursuant to this article, OR ENGAGES OR PARTICIPATES IN ANY UNSAFE OR UNSOUND PRACTICE IN CONNECTION WITH AN INDUSTRIAL BANK. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but need not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under this section; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement which contains materially false or misleading information.

**SECTION 12.** 11-23-119.1 (1) (a) (I), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-23-119.1. Assessment of civil money penalties by banking board.**

(1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken

similar action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease and desist order issued by the banking board pursuant to section 11-23-117 (1) (d); and

(B) Any trust company which, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such trust company who, violates or knowingly permits any person to violate any of the provisions of this article or any rule or regulation promulgated pursuant to this article, OR ENGAGES OR PARTICIPATES IN ANY UNSAFE OR UNSOUND PRACTICE IN CONNECTION WITH A TRUST COMPANY. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under this section; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement which contains materially false or misleading information.

**SECTION 13.** 11-23-119.3 (1) (b) (I), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-23-119.3. Removal of director, officer, or other person.** (1) The banking board may serve any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a trust company with a written notice of its intention to remove him from office whenever the banking board determines:

(b) (I) That the trust company has suffered or probably will suffer substantial financial loss or other damage or that the interest of its ~~depositors~~ CUSTOMERS could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or offense; or

**SECTION 14.** 11-23-122 (2) (d), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**11-23-122. Involuntary liquidation.** (2) (d) If, in the opinion of the banking board, an emergency exists which may result in serious losses to the ~~depositors~~ CUSTOMERS, it may take possession of a trust company without a prior hearing. Within ten days after the board has taken possession, any interested person may file an application with the banking board for an order vacating such possession. The banking board shall grant the application if it finds its action was unauthorized.

**SECTION 15. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 15, 1994