

CHAPTER 73

FINANCIAL INSTITUTIONS

HOUSE BILL 95-1035

BY REPRESENTATIVES Kaufman and George;
also SENATORS Matsunaka, Norton, Perlmutter, R. Powers, and Wells.

AN ACT**CONCERNING COMPLIANCE REVIEW BY DEPOSITORY INSTITUTIONS.**

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

SECTION 1. Title 11, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 71
Compliance Review**

11-71-101. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT COMPLIANCE REVIEW COMMITTEES ARE ESSENTIAL TO THE OPERATION AND PERFORMANCE OF FINANCIAL INSTITUTIONS AND THAT THE PUBLIC WILL BENEFIT FROM INCENTIVES TO IDENTIFY AND REMEDY COMPLIANCE ISSUES. TO THIS END, THE GENERAL ASSEMBLY DECLARES THAT COMPLIANCE REVIEW INFORMATION PREPARED FOR OR CREATED BY A COMPLIANCE REVIEW COMMITTEE SHALL BE CONFIDENTIAL AND THAT PERSONS PERFORMING SUCH FUNCTIONS SHALL BE GRANTED QUALIFIED IMMUNITY.

11-71-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMPLIANCE REVIEW COMMITTEE" MEANS:

(a) AN AUDIT COMMITTEE, LOAN REVIEW COMMITTEE, OR COMPLIANCE COMMITTEE APPOINTED BY THE BOARD OF DIRECTORS OF A DEPOSITORY INSTITUTION, AS DEFINED IN SUBSECTION (3) OF THIS SECTION; OR

(b) ANY OTHER PERSON WHO IS NOT AN EMPLOYEE OR DIRECTOR WHO ACTS IN AN INVESTIGATORY CAPACITY AT THE DIRECTION OF A COMPLIANCE REVIEW COMMITTEE.

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

(2) "COMPLIANCE REVIEW DOCUMENTS" MEANS DOCUMENTS EXCLUSIVELY PREPARED FOR OR CREATED BY A COMPLIANCE REVIEW COMMITTEE.

(3) (a) "DEPOSITORY INSTITUTION" MEANS:

(I) A PERSON ORGANIZED, CHARTERED, DOING BUSINESS, OR HOLDING AN AUTHORIZATION CHARTER UNDER THE LAWS OF THIS STATE OR THE UNITED STATES TO RECEIVE DEPOSITS, WHICH PERSON IS SUPERVISED OR EXAMINED FOR THE PROTECTION OF DEPOSITORS BY AN OFFICIAL OR AGENCY OF A STATE OR THE UNITED STATES. "DEPOSITS" INCLUDES DEPOSITS IN SAVINGS, SHARE, CERTIFICATE, OR OTHER DEPOSIT ACCOUNTS.

(II) A TRUST COMPANY OR OTHER INSTITUTION THAT IS CHARTERED PURSUANT TO ARTICLE 23 OF THIS TITLE.

(b) "DEPOSITORY INSTITUTION" DOES NOT INCLUDE AN INSURANCE COMPANY OR OTHER ORGANIZATION PRIMARILY ENGAGED IN THE BUSINESS OF INSURANCE.

(4) "LOAN REVIEW COMMITTEE" MEANS A PERSON OR GROUP OF PERSONS WHO, ON BEHALF OF A DEPOSITORY INSTITUTION, REVIEWS LOANS HELD BY SUCH INSTITUTION FOR THE PURPOSE OF ASSESSING THE CREDIT QUALITY OF THE LOANS, COMPLIANCE WITH THE INSTITUTION'S LOAN POLICIES, AND COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

(5) "PERSON" MEANS AN INDIVIDUAL, GROUP OF INDIVIDUALS, BOARD, COMMITTEE, PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER LEGAL ENTITY.

11-71-103. Applicability of article - confidentiality of compliance review committee documents. (1) THIS ARTICLE APPLIES TO A COMPLIANCE REVIEW COMMITTEE THE FUNCTIONS OF WHICH ARE TO EVALUATE AND SEEK TO IMPROVE:

(a) LOAN UNDERWRITING STANDARDS;

(b) ASSET QUALITY;

(c) COMPLIANCE WITH FEDERAL OR STATE STATUTORY OR REGULATORY REQUIREMENTS; OR

(d) FINANCIAL REPORTING TO FEDERAL OR STATE REGULATORY AGENCIES.

(2) (a) (I) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, COMPLIANCE REVIEW DOCUMENTS, INCLUDING THOSE WHICH HAVE BEEN DELIVERED TO A FEDERAL OR STATE GOVERNMENTAL AGENCY, ARE CONFIDENTIAL AND NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION ARISING OUT OF MATTERS EVALUATED BY THE COMPLIANCE REVIEW COMMITTEE.

(II) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THIS ARTICLE SHALL NOT BE CONSTRUED TO LIMIT THE DISCOVERY OR ADMISSIBILITY IN ANY CIVIL ACTION OF DOCUMENTS THAT ARE NOT COMPLIANCE REVIEW DOCUMENTS, INCLUDING, BUT NOT LIMITED TO, BOOKS, RECORDS, LOAN DOCUMENTS, APPLICATIONS, AND

APPRAISALS, AND OTHER DOCUMENTS OTHERWISE PREPARED OR MAINTAINED IN THE ORDINARY COURSE OF BUSINESS.

(b) NO PERSON SHALL TESTIFY IN A CIVIL PROCEEDING CONCERNING SUCH PERSON'S PARTICIPATION IN THE COLLECTION, EVALUATION, REPORTING, OR USE OF COMPLIANCE REVIEW DOCUMENTS OR ABOUT THE CONTENTS OF COMPLIANCE REVIEW DOCUMENTS. SUCH TESTIMONY, IF OFFERED, IS INADMISSIBLE IN EVIDENCE.

(3) SUBSECTION (2) OF THIS SECTION SHALL NOT LIMIT THE ABILITY OF A GOVERNMENTAL AGENCY TO EXAMINE, OBTAIN, OR USE COMPLIANCE REVIEW DOCUMENTS. SUCH COMPLIANCE REVIEW DOCUMENTS SHALL REMAIN CONFIDENTIAL AND NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY CIVIL ACTION BY OTHER THAN A GOVERNMENTAL AGENCY.

SECTION 2. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 3. 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: April 13, 1995