

## CHAPTER 12

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**FINANCIAL INSTITUTIONS**

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**HOUSE BILL 06-1042**

BY REPRESENTATIVE(S) Kerr, Berens, McGihon, and Welker;  
also SENATOR(S) Jones.

**AN ACT**

CONCERNING THE REPEAL OF CERTAIN PROVISIONS OF THE "BANK ELECTRONIC FUNDS ACT".

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

**SECTION 1. Repeal.** 11-105-201, Colorado Revised Statutes, is repealed as follows:

**11-105-201. Short title.** ~~This part 2 shall be known and may be cited as the "Bank Electronic Funds Act".~~

**SECTION 2. Repeal.** 11-105-202, Colorado Revised Statutes, is repealed as follows:

**11-105-202. Legislative declaration.** ~~The purposes of this part 2 are to authorize Colorado banks, notwithstanding the limitations imposed by section 11-105-101, to engage in certain banking transactions with their account holders through communications facilities and to own, establish, control, and use such facilities under specified conditions and limitations and to authorize and regulate these activities through the police powers of this state for regulating the banking business and communications transmission facilities. This part 2 does not authorize a bank that has its principal place of business outside this state to conduct banking business in this state.~~

**SECTION 3. Repeal.** 11-105-203, Colorado Revised Statutes, is repealed as follows:

**11-105-203. Conditions of authority.** ~~(1) A Colorado bank may engage in banking transactions with its account holders through a communications facility and~~

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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.*

may own, establish, control, or use a communications facility under the authority of this part 2 only if all of the following conditions are met:

~~(a) The communications facility is available to any Colorado bank for the use of its account holders.~~

~~(b) Any Colorado bank whose account holders use the communications facility shall first have agreed with the person having control of the communications facility to meet necessary and reasonable technical standards and to pay charges for the use thereof, except that such standards and charges shall be fair, equitable, and nondiscriminatory among Colorado banks and such charges shall not exceed an equitable proportion of both the costs of establishing the communication facility, including provision for amortization of development costs and capital expenditures over a reasonable period of time, and the costs of operation and maintenance of the communications facility, plus a reasonable return on such costs, and shall be related to the services provided to the bank or its account holders.~~

~~(c) The communications facility and its operation meet all reasonable standards of privacy, communications integrity, and financial safety as may be imposed by rule or order of the banking board, except that no rule or order of the banking board shall be imposed on any communications facility owned or leased by a retailer to the extent that such facility is used for nonbanking transactions.~~

~~(d) The use of the communications facility has not been halted, prevented, or terminated by order of the banking board.~~

~~(2) The provisions of paragraphs (a) and (b) of subsection (1) of this section shall not apply to a communications facility located on the premises of a Colorado bank. A Colorado bank having control of such a facility may, but is not required to, make the use thereof available to account holders of other Colorado banks.~~

**SECTION 4. Repeal.** 11-105-204, Colorado Revised Statutes, is repealed as follows:

**11-105-204. Conditions for retailers.** ~~(1) Notwithstanding the provisions of section 11-105-203, any agreement between a person owning or establishing a communications facility or utilizing a communications facility owned by another and the retailer at whose retail location the facility is operated shall be upon such commercially reasonable terms and conditions as the parties may agree. The parties to such agreement shall not discriminate in price with the intent to destroy or prevent competition in the offering of banking transactions through communications facilities, after making allowance for the differences, if any, in costs. A retailer at whose retail location one or more communications facilities are operated may limit by contract the types of banking transactions performed at each such facility, but, subject to the exceptions in this subsection (1), all such banking transactions, including those involving account overlines, that are performed at each such communications facility shall be made available upon request to all Colorado banks. Banking transactions, other than account overline transactions, that involve a seller or lender credit card or similar arrangement as defined in section 5-1-301 (24) and (43), C.R.S., are excepted from the availability requirement of this subsection (1).~~

~~(2) Notwithstanding the provisions of section 11-105-205, a communications facility owned or leased by a retailer and operated at a retail location may be examined with respect to any banking transaction provided through that facility only to the same extent as if such transaction were being performed by a Colorado bank itself on its own premises. Facts and information obtained from such examination shall be disclosed only to the retailer at whose retail location the facility is operated and to the examinee Colorado bank, or as otherwise provided by law.~~

~~(3) A retailer at whose retail location a communications facility is established and maintained may also utilize such facility to perform internal business functions of such retailer.~~

~~(4) A retailer may limit the number of communications facilities located at a retail location.~~

**SECTION 5. Repeal.** 11-105-205, Colorado Revised Statutes, is repealed as follows:

**11-105-205. Powers of the banking board.** ~~(1) The banking board shall have the authority to make rules and to issue orders, including cease and desist orders, and issue subpoenas, necessary or incident to the provisions and intent of this part 2, to examine periodically communications facilities and the use thereof by Colorado banks, to require periodic reports from Colorado banks pertaining to the communications facilities used by their account holders, and to prescribe the form of notices and reports. The banking board shall also hear and decide disputes that may arise with respect to access, technical standards, and charges for the use of communications facilities. If the banking board determines that any communications facility or the operation or use thereof is not in compliance with this part 2 and rules issued by the banking board under this part 2 and if such deficiency is not corrected pursuant to order of the banking board, the banking board shall order that a Colorado bank's operation or use of the communications facility be prevented, halted, or terminated. The banking board shall also hear and decide complaints by a Colorado bank that allege that it is precluded from effective use of any communications facility by reason of imposition of technical standards or charges in the process of transmitting and routing electronic messages between the communications facility and the Colorado bank or its data processing agent, which standards and charges are alleged to be discriminatory, unfair, or inequitable among Colorado banks. If the banking board so finds, it shall order use of the communications facility by Colorado banks prevented, halted, or terminated.~~

~~(2) Nothing contained in this section shall authorize the banking board to impose any rule or order on a retailer who establishes and operates a communications facility or to regulate the conduct of business functions of such retailer.~~

**SECTION 6. Repeal.** 11-105-206, Colorado Revised Statutes, is repealed as follows:

**11-105-206. Jurisdiction of the district court.** ~~The district court in and for the county in which one or more communications facilities are located shall hear and decide complaints and disputes and shall issue such orders as the banking board is authorized to do in any case where the banking board does not have jurisdiction~~

~~over a party. Such district court shall also review orders of the banking board on petition by an aggrieved person in the manner prescribed in section 11-102-204.~~

**SECTION 7. Repeal.** 11-105-207, Colorado Revised Statutes, is repealed as follows:

~~**11-105-207. Fees.** The banking board shall annually establish fees and assessments for the administration of this part 2 pursuant to section 11-102-104 (11).~~

**SECTION 8. Repeal.** 11-105-209, Colorado Revised Statutes, is repealed as follows:

~~**11-105-209. Permissive sharing among dissimilar institutions.** A Colorado bank having control of a communications facility may, but is not required to, make the use thereof available to savings and loan associations, credit unions, and industrial banks located in this state. Any such use shall be on a fair and reasonable contractual basis. Any savings and loan association, credit union, or industrial bank, having been denied use of a communications facility on arbitrary and capricious grounds, may seek review of such denied use by the banking board. Nothing in this part 2 shall authorize any person to engage in any type of banking transactions not otherwise permitted by applicable law.~~

**SECTION 9. Repeal.** 11-105-210, Colorado Revised Statutes, is repealed as follows:

~~**11-105-210. No operation by bank employees.** No communications facility located separate and apart from a Colorado bank shall be operated by an employee or agent of any Colorado bank, and no agent or employee of the retailer where a facility is located who operates it shall be deemed to be the agent or employee of any financial institution using the facility or with which transactions are accomplished by means of the facility. No employee or agent of any Colorado bank shall be stationed at any communications facility located separate and apart from a Colorado bank except on a temporary basis for the purpose of instructing customers in the use of facilities or for servicing or observing the operation of such facilities.~~

**SECTION 10. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 9, 2006, if adjournment sine die is on May 10, 2006); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 13, 2006