

CHAPTER 171

FINANCIAL INSTITUTIONS

HOUSE BILL 93-1261

BY REPRESENTATIVES Snyder, Fleming, and Schauer;
also SENATORS Meiklejohn and Peterson.

AN ACT

CONCERNING INSURANCE COVERAGE FOR ACTS OF DIRECTORS AND OFFICERS OF STATE-CHARTERED FINANCIAL INSTITUTIONS THROUGH DIRECTORS' AND OFFICERS' INSURANCE OR DEPOSITORY INSTITUTION BONDS.

WHEREAS, The general assembly desires to promote the public policy favoring a safe and sound Colorado banking and financial institution system; and

WHEREAS, The general assembly desires to secure in Colorado's banks and other financial institutions a continued ability to attract well-qualified individuals to serve as directors and officers, thus further promoting a safe and sound Colorado banking and financial institution system; and

WHEREAS, The general assembly desires to provide and promote a stable and open market from which Colorado banks and other financial institutions may purchase, at reasonable market rates, insurance which provides coverage for their directors and officers, thus enhancing their continued ability to attract well-qualified individuals to serve as directors and officers and thereby further promoting a safe and sound Colorado banking and financial institution system; and

WHEREAS, The general assembly desires to provide and promote a stable and open market from which Colorado's banks and other financial institutions may purchase, at reasonable market rates, fidelity-type bonds, thus promoting a safe and sound Colorado banking and financial institution system; and

WHEREAS, On December 14, 1992, in the case of Federal Deposit Insurance Corporation v. American Casualty Company of Reading, Pennsylvania, Case No. 91 SC592, the Colorado supreme court held, in a four-three decision, that a so-called "regulatory exclusion" in a directors' and officers' insurance policy issued to a Colorado state-chartered bank is invalid and unenforceable in Colorado; and

WHEREAS, The "regulatory exclusion" is and has been widely used in insurance policies which provide coverage to directors and officers of state and national banks and to other state and national financial institutions in Colorado and in all other states; and

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

WHEREAS, Use of a "regulatory exclusion" allows insurers to write coverage for directors and officers of banks and other financial institutions; and

WHEREAS, A comprehensive study commissioned by the United States congress showed that refusing to permit the use of "regulatory exclusions" would result in a market with few or no providers and little or no affordable coverage; and

WHEREAS, The recent Colorado supreme court decision may apply to Colorado state-chartered banks but not to nationally chartered banks in Colorado, thus creating an undesirable imbalance in Colorado's dual banking system; and

WHEREAS, The general assembly desires to maintain a competitive balance and parity between nationally chartered and state-chartered banks and savings and loan associations in Colorado; and

WHEREAS, The general assembly desires to validate and confirm "regulatory exclusion" provisions contained in policies which provide coverage to directors and officers of banks and other financial institutions; and

WHEREAS, The general assembly desires to make clear that as to any insurance policy, bond form, contract, endorsement, or certificate in effect or issued on or after the effective date of this act, "regulatory exclusions" and bond termination provisions are enforceable and are in conformity with the public policy of this state; now, therefore,

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

SECTION 1. 11-3-120, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-3-120. Director and officer insurance and fidelity bonds - legislative declaration. (4) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE FOLLOWING IS ENFORCEABLE AND IN CONFORMITY WITH THE PUBLIC POLICY OF THIS STATE, AS EXPRESSED IN THIS CODE, INCLUDING THE PROVISIONS OF SECTION 11-1-101.5:

(I) ANY INSURANCE POLICY, FORM, CONTRACT, ENDORSEMENT, OR CERTIFICATE IN EFFECT OR ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4) WHICH PROVIDES INSURANCE COVERAGE TO DIRECTORS OR OFFICERS, OR BOTH, OF A BANK BUT WHICH DOES NOT GRANT COVERAGE OR WHICH EXCLUDES COVERAGE FOR CLAIMS MADE BY ANY DEPOSITORY INSURANCE ORGANIZATION OR ANY OTHER STATE OR FEDERAL CORPORATION, ORGANIZATION, OR ENTITY ACTING AS RECEIVER, CONSERVATOR, OR LIQUIDATOR OF SUCH BANK, WHETHER IN ITS OWN NAME OR IN BEHALF OF ANY OTHER PERSON OR ENTITY; OR

(II) ANY FIDELITY BOND, FINANCIAL INSTITUTION BOND, OR DEPOSITORY INSTITUTION BOND IN EFFECT OR ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4) THAT PROVIDES FOR TERMINATION OF SUCH BOND UPON THE TAKING OVER OF THE BANK BY A RECEIVER OR OTHER LIQUIDATOR OR BY STATE OR FEDERAL OFFICIALS.

(b) NO PROVISION OF ARTICLE 5 OF THIS TITLE SHALL BE CONSTRUED TO CONTRAVENE OR MODIFY THE EXPRESSED PUBLIC POLICY SET FORTH IN THIS SUBSECTION (4).

SECTION 2. 11-22-116, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-22-116. Director and officer insurance and fidelity bonds - legislative declaration. (5) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE FOLLOWING IS ENFORCEABLE AND IN CONFORMITY WITH THE PUBLIC POLICY OF THIS STATE, AS EXPRESSED IN THIS ARTICLE, INCLUDING THE PROVISIONS OF SECTION 11-1-101.5:

(I) ANY INSURANCE POLICY, FORM, CONTRACT, ENDORSEMENT, OR CERTIFICATE WHICH PROVIDES INSURANCE COVERAGE TO DIRECTORS OR OFFICERS, OR BOTH, OF AN INDUSTRIAL BANK BUT WHICH DOES NOT GRANT COVERAGE OR WHICH EXCLUDES COVERAGE FOR CLAIMS MADE BY ANY DEPOSITORY INSURANCE ORGANIZATION OR ANY OTHER STATE OR FEDERAL CORPORATION, ORGANIZATION, OR ENTITY ACTING AS RECEIVER, CONSERVATOR, OR LIQUIDATOR OF SUCH INDUSTRIAL BANK, WHETHER IN ITS OWN NAME OR IN BEHALF OF ANY OTHER PERSON OR ENTITY; OR

(II) ANY FIDELITY BOND, FINANCIAL INSTITUTION BOND, OR DEPOSITORY INSTITUTION BOND THAT PROVIDES FOR TERMINATION OF SUCH BOND UPON THE TAKING OVER OF THE INDUSTRIAL BANK BY A RECEIVER OR OTHER LIQUIDATOR OR BY STATE OR FEDERAL OFFICIALS.

(b) NO PROVISION OF PART 6 OF THIS TITLE SHALL BE CONSTRUED TO CONTRAVENE OR MODIFY THE EXPRESSED PUBLIC POLICY SET FORTH IN THIS SUBSECTION (5).

SECTION 3. Article 23 of title 11, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

11-23-117.5 Director and officer insurance and fidelity bonds - legislative declaration. (1) (a) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE FOLLOWING IS ENFORCEABLE AND IN CONFORMITY WITH THE PUBLIC POLICY OF THIS STATE, AS EXPRESSED IN THIS ARTICLE, INCLUDING THE PROVISIONS OF SECTION 11-1-101.5:

(I) ANY INSURANCE POLICY, FORM, CONTRACT, ENDORSEMENT, OR CERTIFICATE IN EFFECT OR ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION WHICH PROVIDES INSURANCE COVERAGE TO DIRECTORS OR OFFICERS, OR BOTH, OF A TRUST COMPANY BUT WHICH DOES NOT GRANT COVERAGE OR WHICH EXCLUDES COVERAGE FOR CLAIMS MADE BY ANY DEPOSITORY INSURANCE ORGANIZATION OR OTHER STATE OR FEDERAL CORPORATION, ORGANIZATION, ENTITY, OR AGENCY ACTING AS RECEIVER, CONSERVATOR, OR LIQUIDATOR OF SUCH TRUST COMPANY, WHETHER IN ITS OWN NAME OR IN BEHALF OF ANY OTHER PERSON OR ENTITY; OR

(II) ANY FIDELITY BOND, FINANCIAL INSTITUTION BOND, OR DEPOSITORY INSTITUTION BOND IN EFFECT OR ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION THAT PROVIDES FOR TERMINATION OF SUCH BOND UPON THE TAKING OVER OF ANY TRUST COMPANY BY A RECEIVER OR OTHER LIQUIDATOR OR BY STATE OR FEDERAL OFFICIALS.

(b) NO PROVISION OF THIS ARTICLE SHALL BE CONSTRUED TO CONTRAVENE OR MODIFY THE EXPRESSED PUBLIC POLICY SET FORTH IN THIS SECTION.

SECTION 4. 11-41-134, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

11-41-134. Indemnification and personal liability of directors, officers, employees, and agents - legislative declaration. (1) The savings and loan association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in section 7-3-101.5, C.R.S. Savings and loan association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in section 7-3-101.5, C.R.S. Savings and loan association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section 7-5-119, C.R.S., for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

(2) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE FOLLOWING IS ENFORCEABLE AND IN CONFORMITY WITH THE PUBLIC POLICY OF THIS STATE, AS EXPRESSED IN ARTICLES 40 TO 46 OF THIS TITLE:

(I) ANY INSURANCE POLICY, FORM, CONTRACT, ENDORSEMENT, OR CERTIFICATE IN EFFECT OR ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2) WHICH PROVIDES INSURANCE COVERAGE TO DIRECTORS OR OFFICERS, OR BOTH, OF A SAVINGS AND LOAN ASSOCIATION BUT WHICH DOES NOT GRANT COVERAGE OR WHICH EXCLUDES COVERAGE FOR CLAIMS MADE BY ANY DEPOSITORY INSURANCE ORGANIZATION OR ANY OTHER STATE OR FEDERAL CORPORATION, ORGANIZATION, OR ENTITY ACTING AS RECEIVER, CONSERVATOR, OR LIQUIDATOR OF SUCH SAVINGS AND LOAN ASSOCIATION, WHETHER IN ITS OWN NAME OR IN BEHALF OF ANY OTHER PERSON OR ENTITY; OR

(II) ANY FIDELITY BOND, FINANCIAL INSTITUTION BOND, OR DEPOSITORY INSTITUTION BOND IN EFFECT OR ISSUED ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2) THAT PROVIDES FOR TERMINATION OF SUCH BOND UPON THE TAKING OVER OF THE SAVINGS AND LOAN ASSOCIATION BY A RECEIVER OR OTHER LIQUIDATOR OR BY STATE OR FEDERAL OFFICIALS.

(b) NO PROVISION OF ARTICLES 40 TO 46 OF THIS TITLE SHALL BE CONSTRUED TO CONTRAVENE OR MODIFY THE EXPRESSED PUBLIC POLICY SET FORTH IN THIS SUBSECTION (2).

SECTION 5. 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 30, 1993