

CHAPTER 20

FINANCIAL INSTITUTIONS

HOUSE BILL 94-1017

BY REPRESENTATIVES Agler, George, Knox, and Jerke;
also SENATORS Schroeder, Lacy, Norton, Traylor, Wattenberg, and Wham.

AN ACT**CONCERNING THE REGULATORY AUTHORITY OF THE DIVISION OF FINANCIAL SERVICES.**

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

SECTION 1. 11-30-101 (3), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-30-101. Definitions - organization - charter - investigation. (3) (a) An application in such form as may be prescribed by the commissioner together with the articles of incorporation and the bylaws shall be filed with the commissioner in triplicate upon the payment of a filing fee, as determined from time to time by the commissioner, to cover the reasonable and necessary expense to the division attributable to such application. Within thirty days after such filing and payment of such fee, the commissioner shall determine whether the same conform to the provisions of this article and whether such a credit union would benefit the members and proposed members thereof, consistent with the purposes of this article, the general character and fitness of the incorporators, and the economic advisability of establishing the proposed credit union. Except for a community charter application, which application shall be submitted to the board for hearing pursuant to section 11-30-101.7, the commissioner may approve or deny an application without notice and hearing.

(b) THE COMMISSIONER SHALL MAKE OR CAUSE TO BE MADE AN INVESTIGATION TO DETERMINE WHETHER THE INCORPORATORS AND ORGANIZERS ARE QUALIFIED AND WHETHER THEIR QUALIFICATIONS AND FINANCIAL EXPERIENCE ARE CONSISTENT WITH THEIR RESPONSIBILITIES AND DUTIES. AN INVESTIGATION SHALL ALSO BE CONDUCTED TO DETERMINE IF AN INCORPORATOR OR ORGANIZER HAS BEEN CONVICTED OF ANY CRIMINAL ACTIVITY. THE COMMISSIONER MAY ESTABLISH BY RULE THE CONTENT OF

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

SUCH INVESTIGATIONS AND WHAT, IF ANY, INVESTIGATIONS BY OTHER AGENCIES OR AUTHORITIES MAY BE TREATED AS SUBSTANTIALLY EQUIVALENT TO AND ACCEPTED IN LIEU OF AN INVESTIGATION BY THE COMMISSIONER.

SECTION 2. 11-30-106 (1) (b), (2), (4), and (8), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended to read:

11-30-106. Examinations - reports - powers of commissioner. (1) (b) ~~For the fiscal year beginning July 1, 1992, and for each fiscal year thereafter,~~ The commissioner shall establish the division's annual assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division for each ~~such~~ fiscal year.

(2) ~~On or before February 1 of each year,~~ ANNUALLY, every credit union shall file a FINANCIAL report with the commissioner on A DATE ESTABLISHED BY THE COMMISSIONER, USING forms prescribed and supplied ~~by him~~ for the SUCH purpose. Said commissioner may require that additional reports be filed. For failure to file a report when due, unless excused for cause, a credit union shall pay to said commissioner a penalty, as prescribed by regulation, for each day of delinquency in filing.

(4) EXCEPT IN CASES WHERE THERE IS A STATUTORY RIGHT TO APPEAL TO THE BOARD, any person aggrieved and directly affected by ~~any~~ A FINAL order of the commissioner may obtain judicial review thereof by filing an action for review ~~in the district court for the judicial district in which any credit union affected thereby is located~~ WITH THE COLORADO COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S., within thirty days after the date of issuance of such order.

(8) (a) (I) The commissioner may suspend or remove ~~a~~ ANY director, officer, or employee of a credit union who in the opinion of the commissioner ~~violates~~ HAS:

(A) VIOLATED the provisions of this article or a lawful regulation or order issued thereunder; ~~who has~~

(B) Engaged or participated in any unsafe or unsound practice in the conduct of credit union business; ~~or who has~~

(C) Committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the credit union, and the credit union has suffered or will PROBABLY suffer ~~substantial~~ financial loss or other damage, or the interests of members or account holders may be seriously prejudiced thereby; ~~A suspension or removal order shall specify the grounds for the suspension or removal. A copy of the order shall be sent to the credit union concerned and to each member of its board of directors.~~ OR

(D) RECEIVED FINANCIAL GAIN BY REASON OF A VIOLATION, PRACTICE, OR BREACH OF FIDUCIARY DUTY THAT INVOLVED PERSONAL DISHONESTY OR DEMONSTRATED A WILLFUL OR CONTINUING DISREGARD FOR THE SAFETY OR SOUNDNESS OF THE CREDIT UNION.

(II) THE COMMISSIONER MAY SUSPEND OR REMOVE ANY DIRECTOR, OFFICER, OR

EMPLOYEE OF A CREDIT UNION WHO, UNDER THE LAWS OF THIS STATE, THE UNITED STATES, OR ANY OTHER STATE OR TERRITORY OF THE UNITED STATES:

(A) HAS ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO OR BEEN CONVICTED OF A CRIME INVOLVING THEFT OR FRAUD THAT IS CLASSIFIED AS A FELONY; OR

(B) IS SUBJECT TO AN ORDER REMOVING OR SUSPENDING SUCH INDIVIDUAL FROM OFFICE, OR PROHIBITING SUCH INDIVIDUAL'S PARTICIPATION IN THE CONDUCT OF THE AFFAIRS OF ANY CREDIT UNION, SAVINGS AND LOAN ASSOCIATION, BANK, OR OTHER FINANCIAL INSTITUTION.

(b) (I) A SUSPENSION OR REMOVAL ORDER SHALL SPECIFY THE GROUNDS FOR THE SUSPENSION OR REMOVAL. A COPY OF THE ORDER SHALL BE SENT TO THE CREDIT UNION CONCERNED AND TO EACH MEMBER OF ITS BOARD OF DIRECTORS. The commissioner shall send written notice by certified mail, return receipt requested, to any person affected by paragraph (a) of this subsection (8), at least ten days prior to a hearing held pursuant to section 24-4-105, C.R.S., at which the commissioner shall preside.

(II) If the commissioner determines that ~~a specific case involves~~ extraordinary circumstances ~~which~~ require immediate action, ~~he may suspend or remove~~ a person MAY BE SUSPENDED OR REMOVED under paragraph (a) of this subsection (8) without notice or a hearing, but ~~he~~ THE COMMISSIONER shall conduct a hearing under section 24-4-105, C.R.S., within thirty days after such suspension or removal.

(III) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

(IV) Any person who performs any duty or ~~who~~ exercises any power of a credit union after receipt of a suspension or removal order under paragraph (a) of this subsection (8) commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

SECTION 3. 11-30-106.5 (3), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-30-106.5. Assessment of civil money penalties. (3) In determining the amount of the civil money penalty to be assessed, the commissioner shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, the financial resources of the person assessed, and such other matters as the commissioner may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed ~~remains~~ IS DETERMINED BY THE COMMISSIONER TO BE in violation OF A CEASE AND DESIST ORDER OR AN ORDER OF SUSPENSION OR REMOVAL.

SECTION 4. The introductory portion to 11-30-109 (1) and 11-30-109 (1) (b), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

11-30-109. Directors and officers - compensation. (1) At its first meeting after the annual election, the board of directors shall elect from its own number an executive officer, who may be designated as ~~chairman~~ CHAIR of the board or president; a ~~vice-chairman~~ VICE-CHAIR of the board or one or more vice-presidents; a treasurer; and a secretary. The offices of secretary and treasurer may be combined into one office known as secretary-treasurer. The persons so elected shall be the executive officers of the corporation. ~~It is the duty of~~ The board of directors ~~to have~~ SHALL BE RESPONSIBLE FOR the general management of the affairs of the credit union, ~~particularly~~ AND MORE SPECIFICALLY to:

(b) Set policies, terms, and conditions under which loans will be available to members, ~~to~~ determine interest rates on loans and on deposits, ~~and to~~ determine whether an interest refund shall be made to members, and ~~to~~ declare the rates of any such interest refund and the classes of loans to which such refund shall apply. Any such refund shall be paid from interest income of the credit union ~~prior to any transfer to reserves~~ and shall be paid only to members who paid interest to the credit union during the period and who were members of record of the credit union at the close of such period, but no refund shall be paid to a member whose loan is delinquent more than the period of time specified by the board of directors.

SECTION 5. 11-30-117.5 (1) and (3), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

11-30-117.5. Share insurance required. (1) ~~No later than July 1, 1982,~~ Each credit union shall apply for insurance on its shares and deposits as provided by the national credit union administration board under section 201 of the "Federal Credit Union Act", 12 U.S.C. sec. 1781, or comparable insurance approved by the commissioner. Credit unions with debt and equity capital consisting primarily of funds from other credit unions shall not be subject to the requirements of this section.

(3) ~~On or after July 1, 1981,~~ No credit union shall be granted a charter by the commissioner unless such credit union has applied for insurance on its shares and deposits as provided in this section.

SECTION 6. 11-30-120 (1), Colorado Revised Statutes, 1987 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

11-30-120. Suspension - liquidation - procedures. (1) (d) IF IN THE OPINION OF THE BOARD AN EMERGENCY EXISTS WHICH MAY RESULT IN SERIOUS LOSSES TO THE MEMBERS, THE BOARD MAY REVOKE THE CHARTER OF A CREDIT UNION AND IMMEDIATELY APPOINT A LIQUIDATING AGENT WITHOUT NOTICE OR A HEARING. NOTICE OF THE BOARD'S EMERGENCY DETERMINATION SHALL BE POSTED ON THE PREMISES OF THE CREDIT UNION THAT IS THE SUBJECT OF THE DETERMINATION. WITHIN TEN DAYS AFTER AN EMERGENCY DETERMINATION BY THE BOARD, THE CREDIT UNION OR THE DIRECTORS OF THE CREDIT UNION MAY FILE AN APPLICATION WITH THE BOARD TO RESCIND SUCH DETERMINATION. THE FILING OF AN APPLICATION TO RESCIND A DETERMINATION SHALL NOT ACT AS A STAY OF THE BOARD'S ACTION PURSUANT TO THIS SUBSECTION (1). THE BOARD SHALL GRANT THE APPLICATION IF IT FINDS THAT ITS ACTION WAS UNAUTHORIZED AND UPON GRANTING AN APPLICATION SHALL RESCIND ITS ACTION AND RESTORE THE CREDIT UNION TO ITS BOARD OF DIRECTORS. IF NO APPLICATION IS FILED WITHIN TEN DAYS AFTER THE BOARD'S

EMERGENCY DETERMINATION, ALL ACTION TAKEN BY THE BOARD SHALL BE FINAL.

SECTION 7. 11-36-117, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-36-117. Repeal of article - review of functions. Unless continued by the general assembly, this article is repealed, effective ~~July 1, 1995~~ JULY 1, 1994, and those powers, duties, and functions of the commissioner specified in this article are abolished. The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the commissioner specified in this article.

SECTION 8. 11-41-115 (3), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

11-41-115. Interest rates on loans. (3) Each mortgage loan sold by an association may be sold with or without recourse and, if under a contract to service the same, shall be sold on a basis which will reimburse the association adequately for the cost of such servicing. All sale and servicing agreements shall be in writing and on file in the association. ~~No association shall commit itself to service loans not held or originated by it unless approved by the commissioner. The limitation upon the sale of loans may be adjusted in the case of any association upon application to and approval by the commissioner when such association requires cash for purposes other than for the making of loans.~~

SECTION 9. 11-44-101.5 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-44-101.5. Division subject to termination - repeal of article. (2) This article is repealed, effective ~~July 1, 1994~~ JULY 1, 2004.

SECTION 10. 11-44-101.7 (3) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-44-101.7. Powers of the financial services board. (3) The board has the power to:

(b) Authorize state credit unions and savings and loan associations to engage in any activity in which such financial institutions could engage ~~where~~ WERE they ~~are~~ operating under a federal charter or certificate of approval at the time such authority is granted, so long as such activity is not prohibited by state law and to the extent permissible under the rules and regulations of the board;

SECTION 11. 11-44-101.7 (8), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is repealed as follows:

11-44-101.7. Powers of the financial services board. (8) ~~The board shall have a seal of office containing the words "Financial Services Board of Colorado" in the form of a circle and the word "seal" within the circle.~~

SECTION 12. 11-44-101.8 (2), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-44-101.8. Review of commissioner actions by financial services board - judicial review. (2) Any credit union, savings and loan association, small business development credit corporation, or life care institution or provider, or any officer, director, employee, agent, advisor, or volunteer thereof, aggrieved or directly affected by a final order of the board may obtain judicial review thereof by filing an action for review pursuant to the provisions of section 24-4-106, C.R.S., ~~in the district court of the county where any such entity has its principal office or the district court of the city and county of Denver~~ WITH THE COLORADO COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S. The commencement of such proceeding does not, unless specifically ordered by the court, operate as a stay of the board's ruling, order, decision, or other action.

SECTION 13. 11-44-106.5 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended, and the said 11-44-106.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

11-44-106.5. Suspension or removal of directors, officers, or employees. (1) (a) The commissioner may suspend or remove ~~a~~ ANY director, officer, or employee of an association who in the opinion of the commissioner ~~violates~~ HAS:

(I) VIOLATED the savings and loan association ~~law~~ LAWS or a lawful regulation or order issued thereunder; ~~who has~~

(II) Engaged or participated in any unsafe or unsound practice in the conduct of savings and loan business; ~~who has~~

(III) Committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the association and the association has suffered or will probably suffer ~~substantial~~ financial loss or other damage or the interests of account holders may be seriously prejudiced thereby; or ~~who has~~

(IV) Received financial gain by reason of ~~such~~ A violation, or practice, or breach of fiduciary duty ~~and such violation or practice or breach of fiduciary duty is one involving~~ THAT INVOLVED personal dishonesty ~~on the part of such director, officer, or employee, or one which demonstrates~~ OR DEMONSTRATED a willful or continuing disregard for the safety or soundness of the association. ~~A suspension or removal order shall specify the grounds for the suspension or removal. A copy of the order shall be sent to the association concerned and to each member of its board of directors.~~

(b) THE COMMISSIONER MAY SUSPEND OR REMOVE ANY DIRECTOR, OFFICER, OR EMPLOYEE OF AN ASSOCIATION WHO, UNDER THE LAWS OF THIS STATE, THE UNITED STATES, OR ANY OTHER STATE OR TERRITORY OF THE UNITED STATES:

(I) HAS ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO OR BEEN CONVICTED OF A CRIME INVOLVING THEFT OR FRAUD THAT IS CLASSIFIED AS A FELONY; OR

(II) IS SUBJECT TO AN ORDER REMOVING OR SUSPENDING SUCH INDIVIDUAL FROM

OFFICE, OR PROHIBITING SUCH INDIVIDUAL'S PARTICIPATION IN THE CONDUCT OF THE AFFAIRS OF ANY CREDIT UNION, SAVINGS AND LOAN ASSOCIATION, BANK, OR OTHER FINANCIAL INSTITUTION.

(1.2) A SUSPENSION OR REMOVAL ORDER ISSUED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL INCLUDE A DESCRIPTION OF THE GROUNDS FOR THE SUSPENSION OR REMOVAL. A COPY OF THE ORDER SHALL BE SENT TO THE ASSOCIATION CONCERNED AND TO EACH MEMBER OF ITS BOARD OF DIRECTORS.

SECTION 14. 11-44-108, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is repealed as follows:

11-44-108. Seal of commissioner. ~~The commissioner shall have a seal of office containing the words "state commissioner of financial services of Colorado", in the form of a circle, and the word "seal" within the circle.~~

SECTION 15. 11-47-103 (6), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

11-47-103. Definitions. (6) "Eligible public depository" means any state-chartered savings and loan association or any federally chartered savings and loan association having ~~its principal~~ AN office in this state which is authorized by the laws of the United States to accept deposit accounts, which deposits are insured by the federal ~~savings and loan~~ DEPOSIT insurance corporation OR ITS SUCCESSOR, and which depository has been designated as an eligible public depository by the commissioner.

SECTION 16. 11-47-105, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

11-47-105. Acceptance of provisions - designation as eligible public depository. (1) Every state-chartered savings and loan association and every federally chartered savings and loan association having ~~its principal~~ AN office in this state which is otherwise eligible to be an eligible public depository and which desires to accept and hold, or to continue to accept and hold, public deposits in an amount in excess of the amount insured by the federal ~~savings and loan~~ DEPOSIT insurance corporation OR ITS SUCCESSOR shall, within ninety days after July 1, 1975, file with the commissioner, on a form provided by him for such purpose, a statement signed and sworn to by an executive officer of such association electing to accept and become subject to the provisions of this article and setting forth the amount of its capital funds and the aggregate amount and nature of all public deposits held by it as of July 1, 1975. Upon the filing of such statement and acceptance, the commissioner shall forthwith designate such savings and loan association as an eligible public depository and shall issue an appropriate certificate evidencing such designation.

(2) Any state-chartered savings and loan association or any federally chartered savings and loan association having ~~its principal~~ AN office in this state which fails to file a statement and acceptance within the period of time provided for in this section but which thereafter desires to become an eligible public depository and any such association hereafter organized to carry on a savings and loan business in this state which desires to become an eligible public depository may, at any time, file with the

commissioner a statement signed and sworn to by an executive officer of such association stating the amount of its capital funds as of the date of said statement and declaring that it has elected to accept and become subject to all the provisions of this article, and, upon the filing of said statement and acceptance, the commissioner shall forthwith designate such association as an eligible public depository and shall issue an appropriate certificate evidencing such designation.

SECTION 17. 11-47-111, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

11-47-111. Reports required - when filed - contents. ~~Within twenty days after each valuation date,~~ ON A DATE SPECIFIED BY THE COMMISSIONER, every eligible public depository shall file a report with the commissioner WHICH HAS BEEN signed and sworn to by an executive officer of such depository ~~which shall contain~~ AND CONTAINS such information as required by the commissioner. The commissioner may ~~in his discretion,~~ require more frequent reports from eligible public depositories.

SECTION 18. 24-34-104 (23) (a) (II), Colorado Revised Statutes, 1988 Repl. Vol., as amended, 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:

(II) ~~The division of financial services, created by article 44 of title 11, C.R.S.;~~

SECTION 19. 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 FINANCIAL SERVICES, CREATED BY ARTICLE 44 OF TITLE 11, C.R.S.

SECTION 20. Effective date. This act shall take effect July 1, 1994.

SECTION 21. 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