

CHAPTER 89

PROFESSIONS AND OCCUPATIONS

SENATE BILL 94-024

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

AN ACT**CONCERNING THE REGULATION OF PERSONS LICENSED UNDER THE "MONEY ORDER ACT".**

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

SECTION 1. 11-2-103 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

11-2-103. Powers of banking board. (1) The banking board is the policy-making and rule-making authority for the division of banking and has the power to:

(a) Make, modify, reverse, and vacate rules and regulations for the proper enforcement and administration of this code and the "Public Deposit Protection Act", article 10.5 of this title; ~~and~~

(b) ~~Regulate its own procedure and practice.~~ MAKE, PROMULGATE, ALTER, AMEND, OR REVISE REASONABLE RULES AND REGULATIONS AS MAY BE NECESSARY FOR THE ENFORCEMENT AND EXECUTION OF THE PROVISIONS OF THE "MONEY ORDER ACT", ARTICLE 52 OF TITLE 12, C.R.S.; AND

(c) REGULATE PROCEDURE AND PRACTICE OF THE BANKING BOARD.

SECTION 2. 12-52-103 (5), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-52-103, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-52-103. Definitions. As used in this article, unless the context otherwise requires:

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

(4.3) "MONEY TRANSMISSION" MEANS THE SALE OR ISSUANCE OF EXCHANGE OR ENGAGING IN THE BUSINESS OF RECEIVING MONEY FOR TRANSMISSION OR TRANSMITTING MONEY WITHIN THE UNITED STATES OR TO LOCATIONS ABROAD BY ANY AND ALL MEANS INCLUDING BUT NOT LIMITED TO PAYMENT INSTRUMENT, WIRE, FACSIMILE, OR ELECTRONIC TRANSFER.

(5) "Person" means any natural person, firm, association, partnership, syndicate, joint stock company, unincorporated company or association, LIMITED LIABILITY COMPANY, common law trust, or any corporation organized under the laws of the United States or of any state or territory of the United States or of any foreign country.

SECTION 3. 12-52-104, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-52-104. License required. A person shall not engage in the business of selling or issuing exchange OR IN THE BUSINESS OF MONEY TRANSMISSION without first procuring a license from the banking board; except that no license under this article shall be required of any agent, subagent, or representative of a licensee or employee of such agent, subagent, or representative who acts on behalf of such licensee in the sale of exchange issued by the licensee.

SECTION 4. 12-52-106 (1) (b), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-52-106. Application for license. (1) Application for a license shall be made in writing, under oath, to the banking board on such form as it may prescribe. The application shall:

(b) ~~Contain evidence of the good moral character and business experience of~~ THAT the applicant ~~if the applicant is an individual, or of the partners, if the applicant is a partnership or a syndicate~~ POSSESSES QUALIFICATIONS AND EXPERIENCE AS REQUIRED BY THE BANKING BOARD PURSUANT TO RULE. If the applicant is a joint stock association, common law trust, unincorporated company or association, LIMITED LIABILITY COMPANY, or corporation, the secretary or any assistant secretary thereof shall certify the name and address of each of the officers, directors, trustees, or other managing officials together with a designation of the office or offices held by each and evidence ~~of the good moral character and business~~ THAT EACH SUCH INDIVIDUAL POSSESSES THE QUALIFICATIONS AND experience ~~of each~~ REQUIRED BY THE BANKING BOARD PURSUANT TO RULE and shall submit such certificate to the banking board with the application.

SECTION 5. 12-52-107, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-52-107. Bond - condition - amount. (5) PERMISSIBLE INVESTMENTS, EVEN IF COMMINGLED WITH OTHER ASSETS OF THE LICENSEE, SHALL BE DEEMED BY OPERATION OF LAW TO BE HELD IN TRUST FOR THE BENEFIT OF THE PURCHASERS AND HOLDERS OF THE LICENSEE'S OUTSTANDING PAYMENT INSTRUMENTS IN THE EVENT OF THE BANKRUPTCY OF THE LICENSEE.

SECTION 6. 12-52-110, Colorado Revised Statutes, 1991 Repl. Vol., as amended, is amended to read:

12-52-110. Examination - fee - financial statements and reports to commissioner. (1) (a) The commissioner shall examine the books and records of every licensee as often as deemed advisable and to the extent required by the banking board; shall make and file in ~~his~~ THE office OF THE COMMISSIONER a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the licensee examined. If the licensee's records are located outside this state, the licensee shall, at ~~his~~ THE option OF SUCH LICENSEE, either make them available to the commissioner at a convenient location within this state or pay the reasonable and necessary expenses for the commissioner or ~~his~~ THE COMMISSIONER'S representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on ~~his~~ behalf OF THE COMMISSIONER. For such examination, the commissioner shall charge a fee in an amount set by the banking board pursuant to section 11-2-103 (11), C.R.S. If any licensee refuses to permit the commissioner to make an examination, such licensee shall be subject to such penalty as the commissioner may assess, not in excess of one hundred dollars for each day any such refusal shall continue.

(b) In lieu of any examination required by this section to be made by the commissioner, the commissioner may accept the audit of an independent certified public accountant or an independent registered accountant, but the cost of such audit shall be borne by the licensee.

(2) (a) Every licensee shall file an annual financial statement with the commissioner, audited by an independent certified public accountant or an independent registered accountant, within one hundred twenty days following the close of the licensee's fiscal year. Such financial statements shall include a balance sheet, a profit and loss statement, and a statement of retained earnings of the licensee and ~~his~~ THE LICENSEE'S agents and subagents relating to their selling or issuing exchange under this article.

(b) Every licensee shall make and file with the commissioner not less than three reports during each calendar year according to the form which may be prescribed by the commissioner. Each such report shall exhibit in detail, as may be required by the commissioner, the resources and liabilities of the licensee at the close of business on the day past to be specified by said commissioner in writing.

(c) IF ANY LICENSEE FAILS TO SUBMIT ANY STATEMENT OR REPORT TO THE COMMISSIONER AS REQUIRED BY THIS SUBSECTION (2), SUCH LICENSEE SHALL PAY TO THE COMMISSIONER A PENALTY ASSESSMENT IN AN AMOUNT NOT TO EXCEED TWENTY-FIVE DOLLARS FOR EACH ADDITIONAL DAY OF DELINQUENCY AS SET BY THE BANKING BOARD PURSUANT TO SECTION 11-2-103 (11), C.R.S.; EXCEPT THAT, IF IN THE OPINION OF THE BANKING BOARD THE DELAY IS EXCUSABLE FOR GOOD CAUSE SHOWN, NO ASSESSMENT SHALL BE PAID.

SECTION 7. 12-52-111, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-52-111. Multiple locations. Each licensee may conduct ~~his~~ business at such locations within this state as ~~he~~ SUCH LICENSEE may desire and through such agents and subagents as ~~he~~ SUCH LICENSEE may from time to time appoint. Each licensee shall notify the banking board within ten days, by certified mail, of any increase in the number of locations at which it conducts its business and shall provide proof that the bond or securities required have been increased accordingly.

SECTION 8. 12-52-115, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-52-115. Penalty for violations. Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ~~one~~ TEN thousand dollars. Each such violation shall constitute a separate offense.

SECTION 9. 12-52-116, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-52-116. Notice to banking board. (1) The licensee or ~~his~~ SUCH LICENSEE'S agents or subagents shall give notice to the banking board, by certified mail, of any legal action which shall be brought against ~~him~~ THE LICENSEE and of any judgment which shall be entered against ~~him~~ SUCH LICENSEE, by any creditor or claimant, relating to ~~his~~ selling or issuing exchange OR TRANSMITTING MONEY under this article, together with details sufficient to identify the action or judgment, within ten days after the commencement of any such action or notice to the licensee of entry of any such judgment. Within ten days after it pays any claim of judgment to any such creditor or such claimant, the corporate surety shall give notice to the banking board, by certified mail, of such payment, together with details sufficient to identify the claimant or creditor and the claim or judgment so paid.

(2) The licensee or ~~his~~ SUCH LICENSEE'S affiliates, agents, or subagents shall immediately give notice to the banking board, by certified mail, of any information in their possession with regard to money orders issued by them that have been returned to purchasers unpaid.

SECTION 10. 12-52-117, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-52-117. Repeal of article - review of functions. (1) This article is repealed, effective ~~July 1, 1994~~ JULY 1, 2004.

(2) Prior to such repeal, the licensing functions of the commissioner and the banking board shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 11. 24-34-104 (23.1) (c), 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. (23.1) The following boards and the functions of the specified agencies shall terminate on July 1, 1994:

(c) ~~The licensing of persons to sell or issue money orders or other exchange through the state bank commissioner in accordance with article 52 of title 12, C.R.S.;~~

SECTION 12. 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 FUNCTION OF THE SPECIFIED AGENCY SHALL TERMINATE ON JULY 1, 2004: THE LICENSING OF PERSONS TO SELL OR ISSUE MONEY ORDERS OR OTHER EXCHANGE OR TO TRANSMIT MONEY THROUGH THE BANKING BOARD AND THE STATE BANK COMMISSIONER IN ACCORDANCE WITH ARTICLE 52 OF TITLE 12, C.R.S.

SECTION 13. Effective date. This act shall take effect July 1, 1994.

SECTION 14. 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 7, 1994