

CHAPTER 52

FINANCIAL INSTITUTIONS

HOUSE BILL 97-1165

BY REPRESENTATIVES Grossman and Tate;
also SENATORS Wattenberg and Schroeder.

AN ACT

CONCERNING THE AUTHORITY OF THE DIVISION OF BANKING TO ISSUE CAPITAL CALLS FOR TRUST COMPANIES.

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

SECTION 1. 11-23-117, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

11-23-117. Powers - banking board - commissioner. (1.1) IF THE BANKING BOARD HAS REASON TO BELIEVE THAT THE CAPITAL OF ANY TRUST COMPANY IS INADEQUATE UNDER THE RULES OF THE BANKING BOARD, THE BANKING BOARD MAY ASCERTAIN THE FACTS AND FURNISH THE TRUST COMPANY WITH A COPY OF ITS DETERMINATION. IF THE BANKING BOARD FINDS AN INADEQUACY OF CAPITAL BASED UPON SUCH DETERMINATION, THE COMMISSIONER, WITH THE APPROVAL OF THE BANKING BOARD, MAY DIRECT THE TRUST COMPANY TO LEVY AN ASSESSMENT IN A DESIGNATED AMOUNT UPON THE HOLDERS OF RECORD OF COMMON STOCK TO REMEDY THE INADEQUACY OF CAPITAL. UPON RECEIPT OF AN ORDER TO LEVY AN ASSESSMENT, THE DIRECTORS SHALL CAUSE TO BE SENT TO ALL HOLDERS OF COMMON STOCK, AT THEIR ADDRESSES, A COPY OF THE ORDER AND A COPY OF THIS SUBSECTION (1.1). IF AN ASSESSMENT IS NOT PAID WITHIN THE TIME PRESCRIBED IN THE ORDER OR SUCH SHORTER PERIOD AS THE DIRECTORS DECIDE, BUT NOT LESS THAN THIRTY DAYS, THE TRUST COMPANY MAY, WITHIN SIXTY DAYS THEREAFTER AS THE BANKING BOARD MAY PRESCRIBE IN ITS ORDER, OFFER THE SHARES OF THE DEFAULTING STOCKHOLDERS FOR SALE AT PUBLIC AUCTION OR PRIVATE SALE AT A PRICE THAT SHALL NOT BE LESS THAN THE AMOUNT OF THE ASSESSMENT AND THE COST OF THE SALE. ANY EXCESS SHALL BE PAID TO THE PRIOR OWNERS. THE METHOD OF COLLECTION PROVIDED IN THIS SUBSECTION (1.1) SHALL BE THE SOLE METHOD OF COLLECTING ASSESSMENTS. IF AN ASSESSMENT IS NOT PAID WITHIN NINETY DAYS AFTER THE DATE OF THE ORDER TO

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

LEVY OR AT SUCH OTHER DATE AS MAY BE SPECIFIED IN THE ORDER, BUT IN NO EVENT LESS THAN THIRTY DAYS, THE COMMISSIONER MAY, WITH THE APPROVAL OF THE BANKING BOARD, PROCEED PURSUANT TO SECTION 11-23-122. HOWEVER, FOR GOOD CAUSE SHOWN TO THE BANKING BOARD BY THE AFFECTED TRUST COMPANY, THE BOARD MAY EXTEND THE NINETY-DAY LIMIT.

(1.2) THE TERM "SHAREHOLDER" SHALL APPLY NOT ONLY TO SUCH PERSONS AS APPEAR ON THE BOOKS OF THE TRUST COMPANY AS SHAREHOLDERS, BUT ALSO TO EVERY OWNER OF STOCK, LEGAL OR EQUITABLE, ALTHOUGH THE STOCK MAY STAND ON SUCH BOOKS IN THE NAME OF ANOTHER PERSON, BUT NOT TO A PERSON THAT HOLDS THE STOCK AS COLLATERAL SECURITY FOR THE PAYMENT OF A DEBT.

(1.3) ANY TRUST COMPANY SHAREHOLDER THAT HAS TRANSFERRED SUCH SHAREHOLDER'S SHARES, CAUSED SUCH TRANSFER TO APPEAR ON THE BOOKS OF THE TRUST COMPANY WITHIN SIXTY DAYS BEFORE THE CAPITAL INADEQUACY OF SUCH TRUST COMPANY, OR THAT HAS MADE SUCH TRANSFER WITH KNOWLEDGE OF SUCH IMPENDING CAPITAL INADEQUACY SHALL BE LIABLE TO THE SAME EXTENT THAT THE TRANSFEREE OR SUBSEQUENT TRANSFEREE FAILS TO MEET SUCH LIABILITY. THIS SECTION SHALL NOT BE CONSTRUED TO AFFECT IN ANY WAY ANY RECOURSE THAT SUCH SHAREHOLDER MIGHT OTHERWISE HAVE AGAINST THOSE IN WHOSE NAMES SUCH SHARES APPEAR UPON THE BOOKS OF THE TRUST COMPANY AT THE TIME OF SUCH CAPITAL INADEQUACY.

(1.4) NO STOCKHOLDER OF A TRUST COMPANY SHALL SET OFF AGAINST THE STOCKHOLDER'S LIABILITY ANY CLAIM SUCH STOCKHOLDER MAY HAVE AS A DEPOSITOR IN OR CREDITOR OF ANY INSOLVENT TRUST COMPANY.

SECTION 2. Effective date - applicability. This act shall take effect upon passage and shall apply to acts occurring on or after said date.

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: March 28, 1997