

CHAPTER 128

FINANCIAL INSTITUTIONS

HOUSE BILL 98-1235

BY REPRESENTATIVES Bacon and Gordon;
also SENATOR Chlouber.

AN ACT

CONCERNING THE REGULATION OF INDUSTRIAL BANKS, AND, IN CONNECTION THEREWITH, REPEALING REFERENCES TO THE INDUSTRIAL BANK GUARANTEE FUND AND PROVIDING FOR PARITY BETWEEN STATE AND INDUSTRIAL BANKS.

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

SECTION 1. Repeal. Parts 2, 3, 4, and 5 of article 22 of title 11, 11-22-702, 11-22-703, 11-22-704, 11-22-705, and 11-22-706, Colorado Revised Statutes, are repealed.

SECTION 2. 11-22-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-22-106. Powers - general corporate - loans and investments - rules and regulations of banking board. (7) (a) IT IS UNLAWFUL FOR AN INDUSTRIAL BANK, OR AN OFFICER, DIRECTOR, EMPLOYEE, OR AFFILIATE OF AN INDUSTRIAL BANK TO:

(I) ENGAGE IN THE BUSINESS OF ISSUING, FLOATING, UNDERWRITING, DISTRIBUTING, OR PROMOTING THE SALE OF STOCKS, BONDS, OR OTHER SECURITIES;
OR

(II) BE AN OFFICER, TRUSTEE, DIRECTOR, EMPLOYEE, STOCKHOLDER, OR PARTNER OF ANY PERSON ENGAGED PRINCIPALLY IN SUCH BUSINESS.

(b) NOTHING IN PARAGRAPH (a) OF THIS SUBSECTION (7) SHALL INCLUDE SECURITIES ISSUED OR GUARANTEED AS TO PRINCIPAL AND INTEREST BY:

(I) THE UNITED STATES OR ANY AGENCY OF THE UNITED STATES;

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

(II) A STATE OR TERRITORY OF THE UNITED STATES; OR

(III) A SUBDIVISION, INSTRUMENTALITY, OR PUBLIC AUTHORITY ORGANIZED UNDER THE LAWS OF SUCH STATE OR TERRITORY PURSUANT TO AN INTERSTATE COMPACT BETWEEN TWO OR MORE STATES.

SECTION 3. 11-22-108 (1) (a), Colorado Revised Statutes, is amended to read:

11-22-108. Forbidden powers. (1) No industrial bank has power to do any of the following:

(a) ~~To carry demand bank accounts~~ ACCEPT DEMAND DEPOSITS THAT THE DEPOSITOR MAY WITHDRAW BY CHECK OR SIMILAR MEANS FOR PAYMENT TO THIRD PARTIES;

SECTION 4. Part 1 of article 22 of title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

11-22-107.5. Trust, fiduciary, and agency powers - when. IN ADDITION TO ITS OTHER POWERS, AN INDUSTRIAL BANK THAT IS AUTHORIZED BY ITS CHARTER TO EXERCISE TRUST POWERS, UPON PROPER QUALIFICATION UNDER THIS ARTICLE, HAS THE POWER TO ACT AS A FIDUCIARY IN ANY CAPACITY. IT MAY ALSO ACT AS REGISTRAR, TRANSFER AGENT, FISCAL AGENT, OR ATTORNEY-IN-FACT AND HAVE THE POWER TO RECEIVE, MANAGE, AND APPLY SINKING FUNDS. EVERY INDUSTRIAL BANK THAT IS AUTHORIZED BY ITS CHARTER TO EXERCISE TRUST POWERS PURSUANT TO THIS SECTION SHALL MAKE AND FILE WITH THE COMMISSIONER AN ANNUAL REPORT OF TRUST ASSETS AND SUCH OTHER REPORTS, AS THE BANKING BOARD MAY REQUIRE BY RULE AND REGULATION, ON SUCH FORMS AS MAY BE PRESCRIBED BY THE BANKING BOARD. NO REPORT FILED PURSUANT TO THIS SECTION SHALL BE REQUIRED TO BE PUBLISHED.

SECTION 5. Repeal. 11-22-108 (1) (c), Colorado Revised Statutes, is repealed as follows:

11-22-108. Forbidden powers. (1) No industrial bank has power to do any of the following:

(c) ~~To accept trusts or act as guardian, administrator, or judicial trustee in any form, but the foregoing shall not prohibit an industrial bank from acting in the capacity of escrow agent;~~

SECTION 6. 11-22-109 (11), Colorado Revised Statutes, is amended to read:

11-22-109. Subject to corporation laws - powers of banking board - examinations by commissioner - reports by industrial banks. (11) Industrial banks in all their public advertisements shall use ~~their full corporate name, and the corporate name therein displayed shall be in letters of the same size and prominence; but the foregoing~~ THE WORDS "INDUSTRIAL BANK" IN THEIR TITLES; EXCEPT THAT SUCH WORDS MAY APPEAR AFTER OR BELOW THE NAME OF THE INDUSTRIAL BANK IN A SMALLER FONT SIZE THAN THE NAME OF THE INDUSTRIAL BANK. THE REQUIREMENT TO USE THE WORDS "INDUSTRIAL BANK" shall not be applicable to signs erected in,

about, or upon the premises from which the operations of the industrial bank are carried on. No industrial bank shall advertise, display, distribute, or broadcast, or cause or permit to be advertised, displayed, distributed, or broadcasted, in any manner whatsoever, false, misleading, or deceptive statements or representations with regard to the charges for, or terms of, loans, or with reference to its savings deposits guaranty corporation coverage, or certificates of deposit. The banking board has the power to require that all advertisements of any industrial bank be stated fully and clearly and in such manner as the banking board may deem necessary to prevent misunderstanding thereof by prospective borrowers, depositors, or purchasers of certificates of deposit.

SECTION 7. 11-22-115 (1) (l), Colorado Revised Statutes, is amended to read:

11-22-115. Unsound business practices. (1) For the purposes of this article, an unsound business practice includes, but is not limited to, the following:

(l) The extension of credit to any officer, director, or principal shareholder of a bank, or any related interest of that person, unless the extension of credit:

(I) (A) Is made on substantially the same terms including interest rates, maturity, and collateral as those prevailing at the time for comparable transactions by a bank with other persons; ~~and~~ OR

(B) IS MADE PURSUANT TO A BENEFIT OR COMPENSATION PROGRAM THAT IS WIDELY AVAILABLE TO EMPLOYEES OF THE BANK AND DOES NOT GIVE PREFERENCE TO ANY INSIDER; AND

(II) Does not involve more than the normal risk of repayment or present other unfavorable features. ~~or~~

(III) Repealed.

SECTION 8. The introductory portion to 11-22-107 (1) (e), Colorado Revised Statutes, is amended to read:

11-22-107. Special powers. (1) Every industrial bank, in addition to the powers granted by this article or the rules and regulations promulgated by the banking board, has all of the following powers:

(e) The right to issue, with the prior approval of the banking board based upon the facts and circumstances of each case, capital notes, debentures, or evidences of indebtedness which will not be covered by ~~the~~ A guaranty of the "~~Industrial Bank Savings Guaranty Act~~", ~~parts 2 to 5 and 7 of this article~~, and may be included as a part of the capital and surplus and which:

SECTION 9. 11-22-602 (2) (a), Colorado Revised Statutes, is amended to read:

11-22-602. Involuntary liquidation by banking board - reorganization. (2) (a) The banking board shall take possession of a bank by posting upon the premises a notice reciting that it is assuming possession pursuant to this article and the time, not earlier than the posting of the notice, when such possession shall be

deemed to commence. A copy of the notice shall be filed in the district court of the county in which the bank is located. The banking board shall notify the federal reserve bank of the district of its taking possession of any bank which is a member of the federal reserve system and shall notify the federal deposit insurance corporation of its taking possession of any bank which is a member of the federal deposit insurance corporation. ~~and shall notify the guaranty corporation of his taking possession of any bank which is a member of such guaranty corporation or which has an outstanding balance on a capital assistance loan under section 11-22-702.~~

SECTION 10. 11-22-616 (5), Colorado Revised Statutes, is amended to read:

11-22-616. Distribution of guaranty corporation assets. (5) If all claims for savings obligations up to the amounts guaranteed under section 11-22-305 and all other liabilities of the guaranty corporation have been satisfied, the remaining assets of the guaranty corporation, including any distribution from liquidations, if any, shall be distributed by the bank receiver. ~~in accordance with section 11-22-705.~~

SECTION 11. 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 20, 1998