

CHAPTER 266

FINANCIAL INSTITUTIONS

HOUSE BILL 03-1106

BY REPRESENTATIVE(S) Harvey, May M., and Williams T.;
also SENATOR(S) Lamborn.

AN ACT**CONCERNING THE AUTHORITY OF A FINANCIAL INSTITUTION TO ORGANIZE AS A LIMITED LIABILITY COMPANY.**

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

SECTION 1. 11-2-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-2-103. Powers of banking board. (5.5) (a) THE BANKING BOARD HAS THE POWER TO ISSUE A STATE BANK CHARTER TO A LIMITED LIABILITY COMPANY, AS THAT TERM IS DEFINED IN SECTION 7-80-102, C.R.S., SO LONG AS THE LIMITED LIABILITY COMPANY MEETS THE REQUIREMENTS OF THIS CODE. IN THE EVENT OF A CONFLICT BETWEEN THE REQUIREMENTS OF THE PROVISIONS OF THIS CODE AND THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S., A STATE BANK ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL BE SUBJECT TO THE REQUIREMENTS OF THIS CODE.

(b) THE BANKING BOARD HAS THE POWER TO ISSUE AN INDUSTRIAL BANK CHARTER TO A LIMITED LIABILITY COMPANY, AS THAT TERM IS DEFINED IN SECTION 7-80-102, C.R.S., SO LONG AS THE LIMITED LIABILITY COMPANY MEETS THE REQUIREMENTS OF ARTICLE 22 OF THIS TITLE. IN THE EVENT OF A CONFLICT BETWEEN THE REQUIREMENTS OF THE PROVISIONS OF ARTICLE 22 OF THIS TITLE AND THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S., AN INDUSTRIAL BANK ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL BE SUBJECT TO THE REQUIREMENTS OF ARTICLE 22 OF THIS TITLE.

(c) THE BANKING BOARD HAS THE POWER TO ISSUE A TRUST COMPANY CHARTER TO A LIMITED LIABILITY COMPANY, AS THAT TERM IS DEFINED IN SECTION 7-80-102, C.R.S., SO LONG AS THE LIMITED LIABILITY COMPANY MEETS THE REQUIREMENTS 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.

ARTICLE 23 OF THIS TITLE. IN THE EVENT OF A CONFLICT BETWEEN THE REQUIREMENTS OF THE PROVISIONS OF ARTICLE 23 OF THIS TITLE AND THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S., AN INDUSTRIAL BANK ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL BE SUBJECT TO THE REQUIREMENTS OF ARTICLE 23 OF THIS TITLE.

(d) THE BANKING BOARD SHALL PROMULGATE RULES TO EFFECTUATE THE PROVISIONS OF THIS SUBSECTION (5.5).

SECTION 2. Article 3 of title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

11-3-101.5. State bank organized as a limited liability company.

(1) PURSUANT TO SECTION 11-2-103 (5.5) (a), A STATE BANK CHARTER MAY BE ISSUED TO A LIMITED LIABILITY COMPANY THAT OTHERWISE MEETS THE REQUIREMENTS OF THIS CODE.

(2) A STATE BANK ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL NOT BE REQUIRED TO EXIST IN PERPETUITY; EXCEPT THAT THE ARTICLES OF ORGANIZATION OF SUCH A STATE BANK SHALL PROVIDE FOR A METHOD TO EXTEND THE EXISTENCE OF THE STATE BANK IN THE EVENT THAT TERMINATION OCCURS. IN ADDITION, THE ARTICLES OF ORGANIZATION OF SUCH A STATE BANK SHALL REQUIRE THAT LIQUIDATION OF THE LIMITED LIABILITY COMPANY CONFORM WITH THE REQUIREMENTS OF THIS CODE.

(3) UPON APPROVAL OF THE BANKING BOARD, A STATE BANK ORGANIZED AS A LIMITED LIABILITY COMPANY MAY BE MERGED WITH OR CONVERTED INTO ANOTHER ENTITY REGARDLESS OF THE FORM OF THE SURVIVING ENTITY, SO LONG AS THE SURVIVING ENTITY SATISFIES THE REQUIREMENTS OF THIS CODE.

(4) UPON APPROVAL OF THE BANKING BOARD, A STATE BANK ORGANIZED AS A CORPORATION MAY BE MERGED WITH OR CONVERTED INTO A LIMITED LIABILITY COMPANY, SO LONG AS IT SATISFIES THE REQUIREMENTS OF THIS CODE.

(5) (a) A STATE BANK ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL HAVE A WRITTEN OPERATING AGREEMENT CONTAINING ANY PROVISIONS FOR THE AFFAIRS OF THE BANK AND THE CONDUCT OF ITS BUSINESS AS MAY BE AGREED UPON BY THE MEMBERS AND WHICH PROVISIONS ARE CONSISTENT WITH THIS CODE AND THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S.

(b) A COPY OF THE WRITTEN OPERATING AGREEMENT SHALL BE FILED WITH THE BANKING BOARD PRIOR TO THE GRANTING OF A CHARTER TO THE STATE BANK, AND ANY AMENDMENTS TO THE OPERATING AGREEMENT SHALL BE FILED WITH AND APPROVED BY THE BANKING BOARD PRIOR TO ADOPTION.

(c) THE BANKING BOARD MAY PROMULGATE RULES ESTABLISHING ADDITIONAL REQUIREMENTS RELATING TO OPERATING AGREEMENTS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

(6) ALL DISTRIBUTIONS MADE BY A STATE BANK ORGANIZED AS A LIMITED LIABILITY COMPANY TO ITS MEMBERS SHALL BE SUBJECT TO THE REQUIREMENTS

APPLICABLE TO DIVIDENDS ISSUED BY A STATE BANK ORGANIZED AS A CORPORATION UNDER THIS CODE AND THE RULES OF THE BANKING BOARD.

(7) FOR PURPOSES OF IMPLEMENTING THIS SECTION, THE FOLLOWING DEFINITION CONSTRUCTIONS SHALL APPLY:

(a) WHERE THIS CODE REFERS TO "ARTICLES OF INCORPORATION", THAT TERM SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S ARTICLES OF ORGANIZATION, AS THAT TERM IS DEFINED IN SECTION 7-80-102 (1), C.R.S.;

(b) WHERE THIS CODE REFERS TO "BYLAWS", THAT TERM SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S OPERATING AGREEMENT, AS THAT TERM IS DEFINED IN SECTION 7-80-102 (11), C.R.S.;

(c) WHERE THIS CODE REFERS TO "COMMON STOCK" OR "SHARES" OF A STATE BANK, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S MEMBERSHIP INTERESTS;

(d) WHERE THIS CODE REFERS TO A "CORPORATION", SUCH TERM SHALL BE CONSTRUED TO INCLUDE A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S, WHICH LIMITED LIABILITY COMPANY CONFORMS TO THIS SECTION AND THE REQUIREMENTS ESTABLISHED BY THE BANKING BOARD PURSUANT TO SECTION 11-2-103 (5.5);

(e) WHERE THIS CODE REFERS TO A "DIRECTOR" OR A "BOARD OF DIRECTORS" OF A STATE BANK, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A MANAGER OR THE MANAGERS OF A LIMITED LIABILITY COMPANY;

(f) WHERE THIS CODE REFERS TO AN "INCORPORATOR", SUCH TERM SHALL BE CONSTRUED TO APPLY TO THE ORGANIZERS OF A LIMITED LIABILITY COMPANY;

(g) WHERE THIS CODE REFERS TO A "SHAREHOLDER" OR A "STOCKHOLDER" OF A STATE BANK, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A MEMBER OF A LIMITED LIABILITY COMPANY.

SECTION 3. 11-3-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-3-101. General corporate powers. (6) NO STATE BANK SHALL COMMIT ITSELF, EITHER DIRECTLY OR INDIRECTLY, TO UNDERTAKE THE RESPONSIBILITY FOR THE TAX LIABILITY OF ITS SHAREHOLDERS OR MEMBERS.

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

11-22-101.3. Industrial bank organized as a limited liability company.

(1) PURSUANT TO SECTION 11-2-103 (5.5) (b), AN INDUSTRIAL BANK CHARTER MAY BE ISSUED TO A LIMITED LIABILITY COMPANY THAT OTHERWISE MEETS THE REQUIREMENTS OF THIS ARTICLE.

(2) AN INDUSTRIAL BANK ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL NOT BE REQUIRED TO EXIST IN PERPETUITY; EXCEPT THAT THE ARTICLES OF ORGANIZATION OF SUCH AN INDUSTRIAL BANK SHALL PROVIDE FOR A METHOD TO EXTEND THE EXISTENCE OF THE INDUSTRIAL BANK IN THE EVENT THAT TERMINATION OCCURS. IN ADDITION, THE ARTICLES OF ORGANIZATION OF SUCH AN INDUSTRIAL BANK SHALL REQUIRE THAT LIQUIDATION OF THE LIMITED LIABILITY COMPANY CONFORM WITH THE REQUIREMENTS OF THIS CODE.

(3) UPON APPROVAL OF THE BANKING BOARD, AN INDUSTRIAL BANK ORGANIZED AS A LIMITED LIABILITY COMPANY MAY BE MERGED WITH OR CONVERTED INTO ANOTHER ENTITY REGARDLESS OF THE FORM OF THE SURVIVING ENTITY, SO LONG AS THE SURVIVING ENTITY SATISFIES THE REQUIREMENTS OF THIS CODE.

(4) UPON APPROVAL OF THE BANKING BOARD, AN INDUSTRIAL BANK ORGANIZED AS A CORPORATION MAY BE MERGED WITH OR CONVERTED INTO A LIMITED LIABILITY COMPANY, SO LONG AS IT SATISFIES THE REQUIREMENTS OF THIS CODE.

(5)(a) AN INDUSTRIAL BANK ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL HAVE A WRITTEN OPERATING AGREEMENT CONTAINING ANY PROVISIONS FOR THE AFFAIRS OF THE BANK AND THE CONDUCT OF ITS BUSINESS AS MAY BE AGREED UPON BY THE MEMBERS AND WHICH PROVISIONS ARE CONSISTENT WITH THIS CODE AND THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S.

(b) A COPY OF THE WRITTEN OPERATING AGREEMENT SHALL BE FILED WITH THE BANKING BOARD PRIOR TO THE GRANTING OF A CHARTER TO THE INDUSTRIAL BANK, AND ANY AMENDMENTS TO THE OPERATING AGREEMENT SHALL BE FILED WITH AND APPROVED BY THE BANKING BOARD PRIOR TO ADOPTION.

(c) THE BANKING BOARD MAY PROMULGATE RULES ESTABLISHING ADDITIONAL REQUIREMENTS RELATING TO OPERATING AGREEMENTS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

(6) ALL DISTRIBUTIONS MADE BY AN INDUSTRIAL BANK ORGANIZED AS A LIMITED LIABILITY COMPANY TO ITS MEMBERS SHALL BE SUBJECT TO THE REQUIREMENTS APPLICABLE TO DIVIDENDS ISSUED BY AN INDUSTRIAL BANK ORGANIZED AS A CORPORATION UNDER THIS CODE AND THE RULES OF THE BANKING BOARD.

(7) FOR PURPOSES OF IMPLEMENTING THIS SECTION, THE FOLLOWING DEFINITION CONSTRUCTIONS SHALL APPLY:

(a) WHERE THIS CODE REFERS TO "ARTICLES OF INCORPORATION", THAT TERM SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S ARTICLES OF ORGANIZATION, AS THAT TERM IS DEFINED IN SECTION 7-80-102 (1), C.R.S.;

(b) WHERE THIS CODE REFERS TO "BYLAWS", THAT TERM SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S OPERATING AGREEMENT, AS THAT TERM IS DEFINED IN SECTION 7-80-102 (11), C.R.S.;

(c) WHERE THIS CODE REFERS TO "COMMON STOCK" OR "SHARES" OF AN INDUSTRIAL BANK, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S MEMBERSHIP INTERESTS;

(d) WHERE THIS CODE REFERS TO A "CORPORATION", SUCH TERM SHALL BE CONSTRUED TO INCLUDE A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S, WHICH LIMITED LIABILITY COMPANY CONFORMS TO THIS SECTION AND THE REQUIREMENTS ESTABLISHED BY THE BANKING BOARD PURSUANT TO SECTION 11-2-103 (5.5);

(e) WHERE THIS CODE REFERS TO A "DIRECTOR" OR A "BOARD OF DIRECTORS" OF AN INDUSTRIAL BANK, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A MANAGER OR THE MANAGERS OF A LIMITED LIABILITY COMPANY;

(f) WHERE THIS CODE REFERS TO AN "INCORPORATOR", SUCH TERM SHALL BE CONSTRUED TO APPLY TO THE ORGANIZERS OF A LIMITED LIABILITY COMPANY;

(g) WHERE THIS CODE REFERS TO A "SHAREHOLDER" OR A "STOCKHOLDER" OF AN INDUSTRIAL BANK, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A MEMBER OF A LIMITED LIABILITY COMPANY.

SECTION 5. 11-22-101 (1), Colorado Revised Statutes, is amended to read:

11-22-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bank" or "industrial bank" means an industrial bank incorporated under the provisions of section 11-22-101.2 OR UNDER THE PROVISIONS OF SECTION 11-22-101.3.

SECTION 6. Article 23 of title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

11-23-102.7. Trust company organized as a limited liability company.

(1) PURSUANT TO SECTION 11-2-103 (5.5) (c), A TRUST COMPANY CHARTER MAY BE ISSUED TO A LIMITED LIABILITY COMPANY THAT OTHERWISE MEETS THE REQUIREMENTS OF THIS ARTICLE.

(2) A TRUST COMPANY ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL NOT BE REQUIRED TO EXIST IN PERPETUITY; EXCEPT THAT THE ARTICLES OF ORGANIZATION OF SUCH A TRUST COMPANY SHALL PROVIDE FOR A METHOD TO EXTEND THE EXISTENCE OF THE TRUST COMPANY IN THE EVENT THAT TERMINATION OCCURS. IN ADDITION, THE ARTICLES OF ORGANIZATION OF SUCH A TRUST COMPANY SHALL REQUIRE THAT LIQUIDATION OF THE LIMITED LIABILITY COMPANY CONFORM WITH THE REQUIREMENTS OF THIS CODE.

(3) UPON APPROVAL OF THE BANKING BOARD, A TRUST COMPANY ORGANIZED AS A LIMITED LIABILITY COMPANY MAY BE MERGED WITH OR CONVERTED INTO ANOTHER ENTITY REGARDLESS OF THE FORM OF THE SURVIVING ENTITY, SO LONG AS THE SURVIVING ENTITY SATISFIES THE REQUIREMENTS OF THIS CODE.

(4) UPON APPROVAL OF THE BANKING BOARD, A TRUST COMPANY ORGANIZED AS A CORPORATION MAY BE MERGED WITH OR CONVERTED INTO A LIMITED LIABILITY COMPANY, SO LONG AS IT SATISFIES THE REQUIREMENTS OF THIS CODE.

(5) (a) A TRUST COMPANY ORGANIZED AS A LIMITED LIABILITY COMPANY SHALL HAVE A WRITTEN OPERATING AGREEMENT CONTAINING ANY PROVISIONS FOR THE AFFAIRS OF THE TRUST COMPANY AND THE CONDUCT OF ITS BUSINESS AS MAY BE AGREED UPON BY THE MEMBERS AND WHICH PROVISIONS ARE CONSISTENT WITH THIS CODE AND THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S.

(b) A COPY OF THE WRITTEN OPERATING AGREEMENT SHALL BE FILED WITH THE BANKING BOARD PRIOR TO THE GRANTING OF A CHARTER TO THE TRUST COMPANY, AND ANY AMENDMENTS TO THE OPERATING AGREEMENT SHALL BE FILED WITH AND APPROVED BY THE BANKING BOARD PRIOR TO ADOPTION.

(c) THE BANKING BOARD MAY PROMULGATE RULES ESTABLISHING ADDITIONAL REQUIREMENTS RELATING TO OPERATING AGREEMENTS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

(6) ALL DISTRIBUTIONS MADE BY A TRUST COMPANY ORGANIZED AS A LIMITED LIABILITY COMPANY TO ITS MEMBERS SHALL BE SUBJECT TO THE REQUIREMENTS APPLICABLE TO DIVIDENDS ISSUED BY A TRUST COMPANY ORGANIZED AS A CORPORATION UNDER THIS CODE AND THE RULES OF THE BANKING BOARD.

(7) FOR PURPOSES OF IMPLEMENTING THIS SECTION, THE FOLLOWING DEFINITION CONSTRUCTIONS SHALL APPLY:

(a) WHERE THIS CODE REFERS TO "ARTICLES OF INCORPORATION", THAT TERM SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S ARTICLES OF ORGANIZATION, AS THAT TERM IS DEFINED IN SECTION 7-80-102 (1), C.R.S.;

(b) WHERE THIS CODE REFERS TO "BYLAWS", THAT TERM SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S OPERATING AGREEMENT, AS THAT TERM IS DEFINED IN SECTION 7-80-102 (11), C.R.S.;

(c) WHERE THIS CODE REFERS TO "COMMON STOCK" OR "SHARES" OF A TRUST COMPANY, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A LIMITED LIABILITY COMPANY'S MEMBERSHIP INTERESTS;

(d) WHERE THIS CODE REFERS TO A "CORPORATION", SUCH TERM SHALL BE CONSTRUED TO INCLUDE A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE "COLORADO LIMITED LIABILITY COMPANY ACT", ARTICLE 80 OF TITLE 7, C.R.S, WHICH LIMITED LIABILITY COMPANY CONFORMS TO THIS SECTION AND THE REQUIREMENTS ESTABLISHED BY THE BANKING BOARD PURSUANT TO SECTION 11-2-103 (5.5);

(e) WHERE THIS CODE REFERS TO A "DIRECTOR" OR A "BOARD OF DIRECTORS" OF A TRUST COMPANY, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A MANAGER OR THE MANAGERS OF A LIMITED LIABILITY COMPANY;

(f) WHERE THIS CODE REFERS TO AN "INCORPORATOR", SUCH TERM SHALL BE CONSTRUED TO APPLY TO THE ORGANIZERS OF A LIMITED LIABILITY COMPANY;

(g) WHERE THIS CODE REFERS TO A "SHAREHOLDER" OR A "STOCKHOLDER" OF A

TRUST COMPANY, SUCH TERMS SHALL BE CONSTRUED TO APPLY TO A MEMBER OF A LIMITED LIABILITY COMPANY.

SECTION 7. Effective date. This act shall take effect July 1, 2003.

SECTION 8. 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: May 14, 2003