

CHAPTER 388

CORPORATIONS AND ASSOCIATIONS

HOUSE BILL 03-1218

BY REPRESENTATIVE(S) Rose, Stengel, Cloer, Frangas, McFadyen, Paccione, Romanoff, and Veiga;
also SENATOR(S) Jones, Evans, Groff, Grossman, Hagedorn, Hanna, Nichol, Sandoval, and Tupa.

AN ACT**CONCERNING A PROHIBITION ON A PUBLIC CORPORATION FROM MAKING LOANS TO DIRECTORS.**

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

SECTION 1. 7-108-501 (4), Colorado Revised Statutes, is amended to read:

7-108-501. Conflicting interest transaction - repeal. (4) (a) A board of directors or a committee thereof shall not authorize a loan, by the corporation to a director of the corporation or to an entity in which a director of the corporation is a director or officer or has a financial interest, or a guaranty, by the corporation of an obligation of a director of the corporation or of an obligation of an entity in which a director of the corporation is a director or officer or has a financial interest, pursuant to paragraph (a) of subsection (2) of this section, until at least ten days after written notice of the proposed authorization of the loan or guaranty has been given to the shareholders who would be entitled to vote thereon if the issue of the loan or guaranty were submitted to a vote of the shareholders.

(b) (I) NOTWITHSTANDING ANY PROVISION OF PARAGRAPH (a) OF THIS SUBSECTION (4) TO THE CONTRARY, A BOARD OF DIRECTORS OR A SUBSIDIARY OF THE CORPORATION SHALL NOT AUTHORIZE THE CORPORATION OR SUBSIDIARY OF THE CORPORATION TO EXTEND OR MAINTAIN CREDIT, TO ARRANGE FOR THE EXTENSION OF CREDIT, OR TO RENEW AN EXTENSION OF CREDIT IN THE FORM OF A PERSONAL LOAN TO OR FOR A DIRECTOR OF THE CORPORATION PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION. FOR THE PURPOSES OF THIS PARAGRAPH (b), A CORPORATION OR ENTITY IS LIMITED TO AN ISSUER AS DEFINED IN SECTION 2 OF THE FEDERAL "SARBANES-OXLEY ACT OF 2002", 15 U.S.C. SEC. 7201.

(II) THE PROVISIONS OF THIS PARAGRAPH (b) SHALL NOT APPLY 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.

(A) AN EXTENSION OF CREDIT OR GUARANTY MAINTAINED BY A CORPORATION OR ENTITY ON THE EFFECTIVE DATE OF THIS ACT, SO LONG AS THERE IS NO MATERIAL MODIFICATION MADE TO THE EXTENSION OF CREDIT OR GUARANTY OR THE EXTENSION OF CREDIT OR GUARANTY IS NOT RENEWED;

(B) AN EXTENSION OF CREDIT OR GUARANTY FOR A HOME IMPROVEMENT LOAN OR MANUFACTURED HOME LOAN UNDER SECTION 5 OF THE FEDERAL "HOME OWNER'S LOAN ACT", 12 U.S.C. SEC. 1464;

(C) AN EXTENSION OF CREDIT OR GUARANTY FOR A CONSUMER CREDIT LOAN AS DEFINED IN THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1602;

(D) AN EXTENSION OF CREDIT UNDER AN OPEN END CREDIT PLAN PURSUANT TO SECTION 103 OF THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1602;

(E) AN EXTENSION OF CREDIT FROM A CHARGE CARD PURSUANT TO THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1637 (c) (4) (e);

(F) AN EXTENSION OF CREDIT BY A BROKER OR DEALER THAT BUYS, TRADES, OR CARRIES SECURITIES PERMITTED UNDER RULES OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM TO AN EMPLOYEE TO BUY, TRADE, OR CARRY SECURITIES; EXCEPT THAT SUCH EXTENSION OF CREDIT SHALL NOT INCLUDE AN EXTENSION OF CREDIT THAT WOULD BE USED TO PURCHASE STOCK OF THE CORPORATION OR ENTITY EMPLOYING SUCH EMPLOYEE; OR

(G) AN EXTENSION OF CREDIT THAT IS SUBJECT TO 12 CFR 215 OR 12 CFR 223, AS AMENDED, OR ANY RULE PROMULGATED BY THE DIVISION OF BANKING.

(III) AN EXTENSION OF CREDIT PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) SHALL BE ISSUED IN TERMS NO MORE FAVORABLE THAN TERMS OFFERED TO A MEMBER OF THE PUBLIC FOR AN EXTENSION OF CREDIT GENERALLY MADE AVAILABLE TO A MEMBER OF THE PUBLIC, AND MADE IN THE ORDINARY COURSE OF BUSINESS.

(IV) SUBPARAGRAPHS (I) TO (III) OF THIS PARAGRAPH (b) ARE REPEALED AS OF THE EFFECTIVE DATE OF ANY FEDERAL LAW THAT WOULD PERMIT ANY ACTIVITY DESCRIBED IN THIS PARAGRAPH (b).

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act

within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to loans made to directors of domestic and foreign entities that have publicly traded securities on or after the applicable effective date of this act.

Approved: June 5, 2003