

CHAPTER 171

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 04-1112

BY REPRESENTATIVE(S) Welker, Harvey, Hodge, Hoppe, Larson, Marshall, McCluskey, Paccione, Rhodes, White, Wiens, Williams T., Borodkin, Butcher, Crane, Decker, Frangas, Salazar, and Stafford;
also SENATOR(S) Sandoval.

AN ACT

CONCERNING THE REGULATION OF PERSONS LICENSED TO DEAL IN CERTAIN MONETARY INSTRUMENTS, AND, IN CONNECTION THEREWITH, CONTINUING THE REGULATORY AUTHORITY OF THE BANKING BOARD AND THE STATE BANK COMMISSIONER OVER SUCH ACTIVITIES.

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

SECTION 1. 12-52-117 (1), Colorado Revised Statutes, is amended to read:

12-52-117. Repeal of article - review of functions. (1) This article is repealed, effective July 1, ~~2004~~ 2013.

SECTION 2. Repeal. 24-34-104 (34) (a), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (34) The following agencies, functions, or both, shall terminate on July 1, 2004:

(a) ~~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 3. 24-34-104 (44), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (44) The following agencies, functions, or both, shall terminate on July 1, 2013:

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

(g) 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 4. 12-52-110 (1) (a), Colorado Revised Statutes, is amended to read:

12-52-110. Examination - fee - financial statements and reports to commissioner. (1) (a) The commissioner ~~shall~~ MAY examine the books and records of every A licensee as often as deemed advisable and to the extent required USING RISK-BASED CRITERIA AND CONSIDERING OTHER AVAILABLE REGULATORY MECHANISMS AS DIRECTED by the banking board; shall make and file in 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 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 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 behalf of the commissioner. For such examination, the commissioner shall charge a fee in an amount set by the banking board pursuant to section 11-102-104 (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.

SECTION 5. 12-52-116, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-52-116. Notice - banking board - consumers. (3) (a) EXCEPT FOR A MONEY EXCHANGE OR TRANSMISSION CONDUCTED AT A BRANCH OF A FEDERALLY INSURED DEPOSITORY INSTITUTION, A LICENSEE SHALL POST AND MAINTAIN AT ITS ESTABLISHMENT A NOTICE ADVISING THE CUSTOMER THAT THE SELLING OR ISSUING OF EXCHANGE IS REGULATED BY THE DIVISION OF BANKING AND THAT THE CUSTOMER MAY REPORT ALLEGED VIOLATIONS OF THE LAW TO THE DIVISION OF BANKING. SUCH NOTICE SHALL BE CREATED AND FURNISHED TO THE LICENSEE BY THE COMMISSIONER.

(b) SUCH NOTICE SHALL BE POSTED CONSPICUOUSLY IN A WELL-LIGHTED PLACE VISIBLE TO CUSTOMERS.

SECTION 6. 12-52-107 (1) (a), Colorado Revised Statutes, is amended to read:

12-52-107. Bond - condition - amount. (1) (a) ~~Beginning July 1, 1992,~~ Each approved applicant shall furnish a corporate surety bond in the principal sum of one million dollars, except as otherwise provided in this subsection (1), by a bonding company or insurance company authorized to do business in this state, in which ~~he~~ THE APPLICANT is named as obligor, to be approved by the banking board, which shall run to the state of Colorado for the use and benefit of the state and of any creditor of the licensee for any liability incurred on any exchange issued by the licensee. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this article and will honestly and faithfully apply all funds

received for the performance of all obligations and undertakings for exchange issued and sold under this article and will pay to the state and to any person all money that becomes due and owing to the state or to such person under the provisions of this article because of any exchange sold or issued by such licensee. The bond shall remain in force and effect until the surety is released from liability by the banking board or until the bond is cancelled by the surety, which cancellation may be had only upon ~~thirty~~ NINETY days' written notice to the banking board. Such cancellation shall not affect any liability incurred or accrued prior to the termination of the ~~thirty-day~~ NINETY-DAY period. If the banking board finds, at any time, any bond to be exhausted, a replacement bond in an equal amount shall be filed by the licensee within thirty days after written demand therefor.

SECTION 7. 12-52-108 (1), Colorado Revised Statutes, is amended to read:

12-52-108. Issuance of license. (1) Upon the filing of an application, the commissioner shall investigate the applicant. ~~and~~ If the banking board finds that the applicant is of good moral character and financially responsible and can ~~meet the requirements of~~ COMPLY WITH this article, the banking board shall ~~give notice~~ APPROVE THE APPLICATION AND NOTIFY THE APPLICANT in writing, ~~of the approval of said application to the applicant,~~ who shall within ~~thirty~~ NINETY days post the required bond and pay the ~~required~~ license fee, whereupon the banking board shall ~~forthwith~~ issue to the applicant a license to engage in the business of selling or issuing exchange subject to the provisions of this article.

SECTION 8. 12-52-110 (2) (a) and (2) (c), Colorado Revised Statutes, are amended to read:

12-52-110. Examination - fee - financial statements and reports to commissioner. (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~~ FIFTY 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 the licensee's agents and subagents ~~relating to their~~ RESULTING FROM selling or issuing exchange under this article. THE FINANCIAL STATEMENTS SHALL BE ACCOMPANIED BY COPIES OF THE ENGAGEMENT AND MANAGEMENT LETTERS ISSUED BY THE INDEPENDENT AUDITOR.

(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~~ OF TWO HUNDRED FIFTY dollars for each additional day of delinquency as set by the banking board pursuant to section 11-102-104 (11), C.R.S.; except that, if in the opinion of the banking board the delay is excusable for good cause shown, no ~~assessment~~ PENALTY shall be paid.

SECTION 9. 12-52-103 (1), Colorado Revised Statutes, is amended, and the said 12-52-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

(1) "Banking board" OR "BOARD" means the banking board created in section 11-102-103, C.R.S.

(1.7) "ENGAGEMENT LETTER" MEANS A LETTER THAT SETS THE SCOPE AND TERMS OF AN INDEPENDENT AUDIT.

(4.1) "MANAGEMENT LETTER" MEANS A LETTER, WRITTEN BY THE AUDITOR TO THE MANAGEMENT OF A LICENSEE, REPORTING THE AUDITOR'S FINDINGS AND SUGGESTIONS RESULTING FROM AN INDEPENDENT AUDIT.

(4.2) "MANAGING OFFICIAL" MEANS A PERSON WHO HAS SIGNIFICANT OVERSIGHT DUTIES OVER A LICENSEE OR APPLICANT AS DETERMINED BY THE BOARD.

(4.7) "OWNER" MEANS A PERSON WITH AN OWNERSHIP INTEREST IN A LICENSEE OR APPLICANT THAT IS A SOLE PROPRIETORSHIP OR PARTNERSHIP.

(6) "PRINCIPAL MEMBER" MEANS A PERSON WHO HAS A SIGNIFICANT OWNERSHIP INTEREST IN A LICENSEE OR APPLICANT THAT IS AN ASSOCIATION, TRUST, OR LIMITED LIABILITY COMPANY OR SIMILAR ENTITY, AS DETERMINED BY THE BOARD.

(7) "PRINCIPAL SHAREHOLDER" MEANS A PERSON WHO HAS A SIGNIFICANT OWNERSHIP INTEREST IN A CORPORATE LICENSEE OR APPLICANT.

(8) "SIGNIFICANT OWNERSHIP INTEREST" MEANS AN OWNERSHIP INTEREST THAT CAUSES THE OWNER TO HAVE SIGNIFICANT CONTROL OF A LICENSEE OR APPLICANT AS DETERMINED BY THE BOARD.

SECTION 10. 12-52-101, Colorado Revised Statutes, is amended to read:

12-52-101. Short title. This article shall be known and may be cited as the "Money ~~Order~~ TRANSMITTERS Act".

SECTION 11. 12-52-103.5, Colorado Revised Statutes, is amended to read:

12-52-103.5. Applicability of powers of banking board and bank commissioner to money orders. The powers, duties, and functions of the banking board and the commissioner contained in article 102 of title 11, C.R.S., and the declaration of policy contained in section 11-101-102, C.R.S., shall apply to the provisions of this article. FOR THE PURPOSES OF THIS SECTION AND SECTION 11-102-104, C.R.S., THE BANKING BOARD SHALL HAVE THE SAME POWERS, DUTIES, AND FUNCTIONS CONCERNING A VIOLATION OF THIS ARTICLE OR A RULE ISSUED PURSUANT TO THIS ARTICLE AS THE BOARD HAS CONCERNING A VIOLATION OF THE "COLORADO BANKING CODE", A STATUTE, OR A RULE ISSUED PURSUANT TO THAT CODE.

SECTION 12. Article 52 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-52-110.5. Compliance with federal law. EACH LICENSEE SHALL COMPLY WITH STATE AND FEDERAL MONEY LAUNDERING LAWS, INCLUDING, BUT NOT LIMITED TO, THE FEDERAL "BANK SECRECY ACT", 12 U.S.C. SEC. 1951 ET SEQ.

12-52-115.5. Civil remedies - restraining orders - injunctions. (1) (a) IF THE BOARD HAS CAUSE TO BELIEVE THAT A PERSON HAS SOLD OR ISSUED EXCHANGE OR TRANSMITTED MONEY WITHOUT A LICENSE ISSUED UNDER THIS ARTICLE 52, THE BOARD MAY OBTAIN FROM THE DISTRICT COURT OF THE CITY AND COUNTY OF DENVER A TEMPORARY RESTRAINING ORDER OR A PRELIMINARY OR PERMANENT INJUNCTION PROHIBITING THE PERSON FROM VIOLATING THIS ARTICLE. IN SUCH ACTION, THE BOARD SHALL NOT BE REQUIRED TO PLEAD OR PROVE IRREPARABLE INJURY OR THE INADEQUACY OF THE REMEDY AT LAW.

(b) THE COURT SHALL NOT REQUIRE THE BOARD TO POST A BOND.

(c) THE DISTRICT COURT MAY ISSUE ANY ORDERS OR JUDGMENTS NECESSARY TO PREVENT A VIOLATION OF THIS ARTICLE. THE DISTRICT COURT MAY AWARD TO THE BOARD THE COSTS AND ATTORNEY FEES INCURRED IN ENFORCING THIS ARTICLE.

(2) A PERSON WHO VIOLATES A DISTRICT COURT ORDER OR INJUNCTION ENTERED PURSUANT TO THIS SECTION SHALL BE SUBJECT TO THE CONTEMPT POWERS OF THE DISTRICT COURT AND SHALL PAY A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH SUCH VIOLATION. EACH DAY A PERSON CONTINUES TO VIOLATE THE DISTRICT COURT ORDER SHALL BE A SEPARATE VIOLATION; EXCEPT THAT THE AGGREGATE TOTAL OF CIVIL PENALTIES SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS FOR A RELATED SERIES OF VIOLATIONS.

(3) THE CIVIL REMEDIES IMPOSED BY THIS SECTION SHALL BE IN ADDITION TO ANY OTHER PENALTY OR REMEDY FOR A VIOLATION OF THIS ARTICLE.

SECTION 13. 12-52-106 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH 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:

(d.5) CONTAIN A SET OF FINGERPRINTS FOR EACH OF THE OWNERS, PRINCIPAL SHAREHOLDERS, PRINCIPAL MEMBERS, DIRECTORS, TRUSTEES, OFFICERS, OR OTHER MANAGING OFFICIALS. THE COMMISSIONER SHALL FORWARD THE FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF OBTAINING A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. UPON RECEIPT OF FINGERPRINTS AND PAYMENT FOR THE COSTS, THE COLORADO BUREAU OF INVESTIGATION SHALL CONDUCT A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION. THE BOARD SHALL BE THE AUTHORIZED AGENCY TO RECEIVE INFORMATION REGARDING THE RESULT OF ANY NATIONAL CRIMINAL HISTORY RECORD CHECK. ONLY THE ACTUAL COSTS OF SUCH RECORD CHECK SHALL BE BORNE BY THE APPLICANT.

SECTION 14. 12-52-108, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-52-108. Issuance of license. (4) A LICENSE SHALL NOT BE ISSUED TO AN APPLICANT IF AN OWNER, PRINCIPAL SHAREHOLDER, PRINCIPAL MEMBER, DIRECTOR,

TRUSTEE, OFFICER, OR OTHER MANAGING OFFICIAL:

(a) SUBMITTED A LICENSE APPLICATION UNDER THIS ARTICLE THAT WAS FALSE OR MISLEADING AS A RESULT OF AN UNTRUE STATEMENT OF A MATERIAL FACT OR AN OMISSION TO STATE A MATERIAL FACT UNLESS THE APPLICANT DID NOT KNOW, AND IN THE EXERCISE OF REASONABLE CARE SHOULD NOT HAVE KNOWN, OF THE UNTRUTH OR OMISSION;

(b) WILLFULLY VIOLATED OR WILLFULLY FAILED TO COMPLY WITH THIS ARTICLE OR A RULE PROMULGATED OR ORDER ISSUED UNDER THIS ARTICLE;

(c) WITHIN THE PAST TEN YEARS, ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE TO, OR WAS CONVICTED OF, A FELONY OR MISDEMEANOR INVOLVING A BREACH OF FIDUCIARY DUTY OR FRAUD; OR

(d) IS SUBJECT TO A TEMPORARY OR PERMANENT INJUNCTION FOR VIOLATING A STATE OR FEDERAL LAW REGULATING THE FINANCIAL SERVICES INDUSTRY, INCLUDING, BUT NOT LIMITED TO, FEDERAL PROVISIONS REGARDING MONEY LAUNDERING, RECORD-KEEPING, AND REGISTRATION.

SECTION 15. 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 21, 2004