

## CHAPTER 96

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**FINANCIAL INSTITUTIONS**


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**HOUSE BILL 04-1110**

BY REPRESENTATIVE(S) White, Coleman, Harvey, Hodge, Hoppe, Larson, Marshall, McCluskey, Paccione, Rhodes, Wiens, Butcher, McFadyen, Miller, Stafford, and Weddig;  
also SENATOR(S) Teck, Hanna, Isgar, and Taylor.

**AN ACT**

**CONCERNING THE CONTINUATION OF THE REGULATION OF BANKING BY THE DIVISION OF BANKING, AND, IN CONNECTION THEREWITH, INCREASING THE STATE BANK COMMISSIONER'S SUPERVISION OF AFFILIATED ENTITIES, ALLOWING ADDITIONAL LOAN PRODUCTION OFFICES, RAISING THE THRESHOLD FOR REQUIRED REAL ESTATE APPRAISALS, AND REPEALING THE "COLORADO INVESTMENT DEPOSIT ACT".**

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

**SECTION 1.** 11-102-101 (3) (b), Colorado Revised Statutes, is amended to read:

**11-102-101. Division of banking - creation - subject to termination - repeal of article.** (3) (b) This article is repealed, effective July 1, ~~2004~~ 2013.

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 Repeal.** 24-34-104 (34) (b), Colorado Revised Statutes, is repealed as follows: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

(b) ~~The division of banking, created by article 102 of title 11, 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:

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*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 DIVISION OF BANKING, CREATED BY ARTICLE 102 OF TITLE 11, C.R.S.

**SECTION 4.** 11-102-301 (3) (a) and (3) (f) (I), Colorado Revised Statutes, are amended to read:

**11-102-301. Examinations and examiner's reports.** (3) (a) The commissioner, if he or she deems it necessary or if required by the banking board, may examine the books and records of the controlling shareholder of a state bank and any affiliated entities of the controlling shareholder, AS WELL AS ANY RELATIONSHIP AMONG THE CONTROLLING SHAREHOLDER AND ITS AFFILIATED ENTITIES, for the purpose of determining the safety and soundness of the state bank.

(f) For purposes of this subsection (3):

(I) "Affiliated entity" or "affiliate" means an entity in control of a controlling shareholder OR AN ENTITY CONTROLLED BY A CONTROLLING SHAREHOLDER.

**SECTION 5.** 11-105-101 (1), Colorado Revised Statutes, is amended to read:

**11-105-101. Branch banks and practices prohibited.** (1) Any bank, upon application to and approval by the banking board, may operate one OR MORE loan production ~~office~~ OFFICES as defined by the banking board.

**SECTION 6.** 11-105-401 (1) (d), Colorado Revised Statutes, is amended to read:

**11-105-401. Acquisition of property to satisfy indebtedness.** (1) A state bank may take property of any kind to satisfy, in whole or in part, or to protect indebtedness previously created in good faith by it. Property acquired by a state bank to apply on an indebtedness to a state bank shall be held subject to the following limitations:

(d) The property shall be entered on the books at not more than cost or fair market value, whichever is less, except as otherwise provided by the banking board. Each bank maintaining property acquired to satisfy indebtedness will obtain an initial written appraisal and subsequent appraisals as to fair market value by a qualified independent appraiser or such other person as the banking board may approve. Such subsequent appraisals shall be obtained pursuant to rules of the state banking board; except that, for purposes of this paragraph (d), an appraisal, as defined in section 12-61-702 (1), C.R.S., by an appraiser certified, licensed, or registered pursuant to section 12-61-708, C.R.S., shall not be required on properties initially valued pursuant to this paragraph (d) at ~~one~~ TWO hundred FIFTY thousand dollars or less. If such appraiser or other person approved by the banking board certifies in writing such appraiser's or other person's opinion that the fair market value has not declined, this opinion may be substituted for a subsequent appraisal.

**SECTION 7. Repeal.** Article 37 of title 11, Colorado Revised Statutes, is repealed.

**SECTION 8.** 39-22-104 (4) (a.5), Colorado Revised Statutes, is amended to read:

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - definitions.** (4) There shall be subtracted from federal taxable income:

(a.5) For income tax years commencing on and after January 1, 1990, an amount equal to any interest income earned on Colorado investment deposits issued by qualified financial institutions pursuant to article 37 of title 11, C.R.S., AS THAT ARTICLE EXISTED PRIOR TO ITS REPEAL ON JULY 1, 2004, to the extent included in federal taxable income, but not to exceed twenty thousand dollars in any taxable year;

**SECTION 9.** 11-10.5-103 (2), Colorado Revised Statutes, is amended to read:

**11-10.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(2) "Bank" means any bank organized or chartered under articles ~~1 to 11 or 22~~ 10.5 OR 101 TO 109 of this title or any bank organized or chartered under chapter 2 of Title 12 of the United States Code. For purposes of section 11-10.5-104 and 11-10.5-111 (1) only, the definition of "bank" also includes those banks chartered under the laws of other states.

**SECTION 10.** 11-37.5-103 (15) (b), Colorado Revised Statutes, is amended to read:

**11-37.5-103. Definitions.** As used in this article, unless the context otherwise requires:

(15) "Supervisory agency" means any of the following:

(b) The commissioner and the department, for purposes of administering and enforcing this article and the "Colorado Banking Code", ~~of 1957~~, articles ~~1 to 11, 22, and 23~~ 101 TO 109 of this title;

**SECTION 11.** 11-37.5-104, Colorado Revised Statutes, is amended to read:

**11-37.5-104. Scope and applicability - construction in harmony with banking law.** This part 1 and part 2 of this article set forth the terms and conditions under which a foreign or domestic financial institution may do business in Colorado as a state-chartered foreign capital depository. All provisions of the "Colorado Banking Code", ~~of 1957~~, articles ~~1 to 11, 22, and 23~~ 101 TO 109 of this title, shall apply to such institutions except to the extent of any conflict with the provisions of this article, in which case the provisions of this article shall control.

**SECTION 12.** 11-37.5-107, Colorado Revised Statutes, is amended to read:

**11-37.5-107. Effect of injunction, rule, or order.** An injunction, rule, or order issued under this article, including without limitation section 11-37.5-501 or 11-37.5-502, supersedes any conflicting provision of this article or of the "Colorado Banking Code", ~~of 1957~~, articles ~~1 to 11, 22, and 23~~ 101 TO 109 of this title.

**SECTION 13.** 11-37.5-111 (1) (a), Colorado Revised Statutes, is amended to read:

**11-37.5-111. Suspension, revocation, and restoration of charter.** (1) The board may suspend or revoke the charter of a depository if the board finds that the depository or any director, executive officer, or controlling person of the depository has:

(a) Violated any provision of this article or any rule validly adopted pursuant to this article or the "Colorado Banking Code", ~~of 1957~~, articles ~~1 to 11, 22, and 23~~ 101 TO 109 of this title;

**SECTION 14.** 11-37.5-121 (3), Colorado Revised Statutes, is amended to read:

**11-37.5-121. Sale or transfer of charter prohibited - penalty.** (3) Nothing in this section shall be construed to prohibit the sale or transfer of corporate shares of a foreign capital depository; except that the sale of control of an existing foreign capital depository shall be subject to the change-of-control provisions of the "Colorado Banking Code". ~~of 1957~~.

**SECTION 15.** 11-71-102 (3) (a) (II), Colorado Revised Statutes, is amended to read:

**11-71-102. Definitions.** As used in this article, unless the context otherwise requires:

(3) (a) "Depository institution" means:

(II) A trust company or other institution that is chartered pursuant to article ~~23~~ 109 of this title.

**SECTION 16.** 11-37.5-109 (1) (c) (I), Colorado Revised Statutes, is amended to read:

**11-37.5-109. Charter eligibility and application requirements.** (1) In order to lawfully conduct business in Colorado as a foreign capital depository, a person intending to own or operate a depository shall:

(c) Submit an application to the board on a form provided by the commissioner and accompanied by:

(I) A SET OF FINGERPRINTS AND documents certifying that the identity of each director, executive officer, and controlling person of the proposed depository has been verified by means of a background check;

**SECTION 17.** 11-37.5-110 (4), Colorado Revised Statutes, is amended to read:

**11-37.5-110. Charter application - grounds for denial.** (4) The board may authorize the commissioner to ~~conduct or obtain from the Colorado bureau of investigation or a private investigative service a background check on~~ FORWARD THE FINGERPRINTS OF any director, executive officer, or controlling person of the applicant TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL

BUREAU OF INVESTIGATION for the purposes of determining whether an applicant is of good character. NOTHING IN THIS SUBSECTION (4) SHALL PRECLUDE THE COMMISSIONER FROM MAKING FURTHER INQUIRIES INTO THE BACKGROUND OF THE APPLICANT.

**SECTION 18.** 11-37.5-403, Colorado Revised Statutes, is amended to read:

**11-37.5-403. State revenue - assessment - collection - distribution.** (1) A foreign capital depository shall pay to the department of revenue on June 15 and December 15 of each year a fee that is equal to one-quarter of one percent of the total value of assets on deposit or in a safe deposit box, resulting in a total annual rate of assessment of one-half of one percent. THE TOTAL VALUE OF ASSETS ON DEPOSIT SUBJECT TO THE ONE-QUARTER OF ONE PERCENT ASSESSMENT SHALL BE DETERMINED UNDER SUBSECTION (2) OF THIS SECTION. THE DEPARTMENT OF REVENUE SHALL TRANSMIT such fees ~~shall be paid~~ to the state treasurer, who shall credit the same to the general fund of the state.

(2) The basis of the value ascribed to each asset is:

(a) For currency, THE AVERAGE OF THE HIGHEST DAILY BALANCES OF the United States dollar exchange value of the currency on deposit ~~on the date of assessment~~ FOR THE PERIODS FROM JUNE 1 TO NOVEMBER 30, AND FROM DECEMBER 1 TO MAY 30;

(b) For gold, silver, platinum, and other precious metals held in precious metals accounts, as defined in section 11-37.5-127, THE AVERAGE OF THE HIGHEST DAILY BALANCES BASED ON the spot market price as published in the "Wall Street Journal" ~~on the date of assessment~~ FOR THE PERIODS FROM JUNE 1 TO NOVEMBER 30, AND FROM DECEMBER 1 TO MAY 30; or

(c) The market value of other tangible personal property held in safe deposit boxes or other accounts at the time of the assessment, as determined by the depository using a method approved by the commissioner. THE METHOD APPROVED BY THE COMMISSIONER SHALL NOT REQUIRE DAILY APPRAISALS, SHALL TAKE INTO ACCOUNT THE CHANGES IN APPRAISED VALUE WHEN THEY ARE SUBSTANTIAL, AND SHALL AVERAGE THE VALUE OF NEWLY DEPOSITED OR RECENTLY WITHDRAWN PROPERTY OVER THE SIX-MONTH ASSESSMENT PERIOD IN A MANNER SIMILAR TO THAT ESTABLISHED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (2). The depository shall submit to the department of revenue within sixty days after the appraisal a report that documents the method and calculations of the appraisal.

(d) FOR ANY DISPUTES UNDER THIS SECTION OR OTHERWISE REGARDING THE DETERMINATION OF THE VALUE ASCRIBED TO EACH ASSET, THE INTERPRETATION OF THIS SECTION MADE BY A FINAL DETERMINATION OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE SHALL BE GRANTED DEFERENCE BY THE COURTS, AND THE INSTITUTION SHALL BEAR THE BURDEN OF SHOWING BY CLEAR AND CONVINCING EVIDENCE THAT THE EXECUTIVE DIRECTOR'S DETERMINATION IS IN ERROR.

**SECTION 19. Effective date.** Section 18 of this act shall take effect on June 1, 2004, and the remaining sections shall take effect upon passage.

**SECTION 20. 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 7, 2004