

CHAPTER 23

FINANCIAL INSTITUTIONS

HOUSE BILL 07-1175

BY REPRESENTATIVE(S) Madden, Witwer, Borodkin, Gallegos, Kefalas, Marshall, McFadyen, McGihon, Solano, Soper, and Carroll T.;
also SENATOR(S) Fitz-Gerald, Kester, Brophy, May R., and Tochtrop.

AN ACT**CONCERNING A LIMITATION ON THE OPERATION OF INDUSTRIAL BANKS AT COMMERCIAL LOCATIONS.**

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

SECTION 1. Legislative declaration. (1) The general assembly recognizes that the decades-old federal policy against mixing banking and commerce is designed to keep lenders from having a conflict of interest with their own customers by competing with them. The general assembly believes this federal policy and the resulting regulatory restrictions and requirements are appropriate and that they should be universal in Colorado.

(2) The general assembly recognizes that this policy is not comprehensive in Colorado. Industrial banks exist in Colorado and six other states, are governed by laws of various states, and are FDIC-insured financial institutions. Not all industrial banks are covered by the federal prohibition against mixing banking and commerce. Financial holding companies that may own banks, savings institutions, and most other depository institutions have extensive federal regulation, are subject to extensive federal supervision, and are not permitted to engage in commerce. Financial holding companies may own industrial banks. An unintentional incomplete federal application of this policy allows an industrial bank to be owned by a commercial entity as well. As determined by the United States government accountability office, commercial owners of industrial banks do not have the same regulatory oversight, restrictions, and prohibitions as apply to all other owners of financial institutions. The general assembly opposes the ability of any depository institution to engage in banking in Colorado if it is not subject to such federal requirements and restrictions.

(3) It is the intent of the general assembly to support, defend, and promote this

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

federal policy by precluding in every fashion the mixing of banking and commerce in Colorado. Specifically, it is the intent of the general assembly to prohibit the acceptance of deposits or the making of loans at a commercial location except by financial institutions that are subject to the federal regulatory oversight, restrictions, and prohibitions for financial holding companies. It is the intent of the general assembly to leave the extension of consumer credit unaffected by this act; to leave national banks, state banks, trust companies, savings institutions or credit unions chartered and supervised under state or federal law, and industrial banks owned by a financial holding company unaffected by this act; and to leave the powers of industrial banks unaffected so that they remain the same as they are prior to the effective date of this act.

SECTION 2. 11-108-402, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-108-402. Requirements for acquiring control of industrial banks - definitions. (9) (a) NO INDUSTRIAL BANK MAY ACCEPT DEPOSITS OR MAKE LOANS AT A COMMERCIAL LOCATION UNLESS THE INDUSTRIAL BANK IS OWNED BY A FINANCIAL HOLDING COMPANY.

(b) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS AUTHORIZING ANY ADDITIONAL POWERS FOR AN INDUSTRIAL BANK OR OTHER FINANCIAL INSTITUTION.

(c) FOR THE PURPOSES OF THIS SUBSECTION (9):

(I) "COMMERCIAL LOCATION" MEANS A LOCATION OWNED, OPERATED, LEASED, OR OTHERWISE CONTROLLED BY AN ENTITY THAT DERIVES FIFTEEN PERCENT OR MORE OF ITS ANNUAL GROSS REVENUES, ON A CONSOLIDATED BASIS, INCLUDING ALL AFFILIATES OF THE ENTITY, FROM ENGAGING, ON AN ON-GOING BASIS, IN ACTIVITIES THAT ARE NOT FINANCIAL IN NATURE OR INCIDENTAL TO A FINANCIAL ACTIVITY DURING AT LEAST THREE OF THE PRIOR FOUR CALENDAR QUARTERS, AS DETERMINED BY THE DIVISION OF BANKING.

(II) "FINANCIAL HOLDING COMPANY" MEANS A FINANCIAL HOLDING COMPANY AS DEFINED IN 12 U.S.C. SEC. 1841 (p).

(d) THIS SUBSECTION (9) SHALL NOT APPLY TO AN INDUSTRIAL BANK THAT BECAME AN INSURED DEPOSITORY INSTITUTION PRIOR TO OCTOBER 1, 2003, AND THAT IS A SUBSIDIARY OF AN ENTITY THAT DERIVES LESS THAN FIFTEEN PERCENT OF ITS ANNUAL GROSS REVENUES, ON A CONSOLIDATED BASIS, INCLUDING ALL AFFILIATES OF THE ENTITY, FROM ENGAGING, ON AN ON-GOING BASIS, IN ACTIVITIES THAT ARE NOT FINANCIAL IN NATURE OR INCIDENTAL TO A FINANCIAL ACTIVITY DURING AT LEAST THREE OF THE PRIOR FOUR CALENDAR QUARTERS, AS DETERMINED BY THE DIVISION OF BANKING.

SECTION 3. 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, (August 8, 2007, if adjournment sine die is on May 9, 2007); 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 the acceptance of deposits and the making of commercial loans occurring on or after the applicable effective date of this act.

Approved: March 14, 2007