

CHAPTER 395

PROFESSIONS AND OCCUPATIONS

SENATE BILL 13-171

BY SENATOR(S) Kerr, Tochtrop;
also REPRESENTATIVE(S) Foote, Hullinghorst, Mitsch Bush, Singer.

AN ACT

CONCERNING THE CONTINUATION OF THE LICENSING OF MONEY TRANSMITTERS, AND, IN CONNECTION THEREWITH, CONTINUING THE AUTHORITY OF THE BANKING BOARD AND THE STATE BANK COMMISSIONER OVER MONEY TRANSMITTERS.

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

SECTION 1. In Colorado Revised Statutes, 12-52-117, **amend** (1) as follows:

12-52-117. Repeal of article - review of functions. (1) This article is repealed, effective ~~July 1, 2013~~ SEPTEMBER 1, 2024.

SECTION 2. In Colorado Revised Statutes, 24-34-104, **amend** (44) introductory portion; **repeal** (44) (k); and **add** (55) as follows:

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:

(k) ~~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.;~~

(55) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, TERMINATE ON SEPTEMBER 1, 2024:

(b) THE LICENSING FUNCTIONS OF THE BANKING BOARD AND THE STATE BANK COMMISSIONER IN ACCORDANCE WITH ARTICLE 52 OF TITLE 12, C.R.S., REGARDING PERSONS WHO TRANSMIT MONEY.

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

SECTION 3. In Colorado Revised Statutes, **amend** 12-52-104 as follows:

12-52-104. License required - investigations. (1) A person shall not engage in the business of ~~selling or issuing exchange or in the business of~~ money transmission without first procuring a license from the banking board; except that ~~no license under this article shall be required of any~~ AN agent, subagent, or representative of a licensee or AN employee of ~~such~~ AN agent, subagent, or representative who acts on behalf of ~~such~~ A licensee in the ~~sale of exchange issued~~ TRANSMISSION OF MONEY by the licensee IS NOT REQUIRED TO BE LICENSED UNDER THIS ARTICLE.

(2) THE BOARD MAY INVESTIGATE ANY PERSON BELIEVED TO BE ENGAGING IN THE BUSINESS OF MONEY TRANSMISSION WITHOUT A VALID LICENSE REQUIRED UNDER THIS SECTION.

SECTION 4. In Colorado Revised Statutes, 12-52-111, **amend** (1) as follows:

12-52-111. Multiple locations. (1) Each licensee may conduct business at ~~such~~ locations within this state ~~as such~~ THE licensee may desire and through ~~such~~ agents and subagents ~~as such~~ THE licensee may from time to time appoint. Each licensee shall notify the banking board ~~within ten days~~, by certified mail of any increase in the number of locations at which it conducts its business and shall provide proof that the LICENSEE HAS INCREASED THE REQUIRED bond or securities ~~required have been increased~~ accordingly. THE NOTIFICATION AND PROOF ARE DUE ON THE DATE ON WHICH THE LICENSEE'S NEXT REPORT REQUIRED UNDER SECTION 12-52-110 (2) (b) IS DUE.

SECTION 5. In Colorado Revised Statutes, 12-52-110, **amend** (2) (b) as follows:

12-52-110. Examination - fee - financial statements and reports to commissioner - change in control. (2) (b) Every licensee shall ~~make and~~ file with the commissioner:

(I) Not less than three reports during each calendar year according to the form ~~which may be~~ prescribed by the commissioner. Each ~~such~~ report ~~shall~~ MUST exhibit in detail, as may be required by the commissioner, the resources and liabilities of the licensee at the close of business on the day ~~past to be~~ specified by ~~said~~ THE commissioner in writing.

(II) A WRITTEN NOTIFICATION WITHIN FIFTEEN DAYS AFTER THE OCCURRENCE OF ANY OF THE FOLLOWING:

(A) A CHANGE IN THE LICENSEE'S MANAGING OFFICIAL;

(B) THE FILING OF A PETITION BY OR AGAINST THE LICENSEE UNDER THE UNITED STATES BANKRUPTCY CODE, 11 U.S.C. SECS. 101 TO 110, AS AMENDED, FOR BANKRUPTCY OR REORGANIZATION;

(C) THE FILING OF A PETITION BY OR AGAINST THE LICENSEE FOR RECEIVERSHIP OR THE COMMENCEMENT OF ANY OTHER JUDICIAL OR ADMINISTRATIVE PROCEEDING FOR ITS DISSOLUTION OR REORGANIZATION;

(D) THE COMMENCEMENT OF A PROCEEDING TO REVOKE OR SUSPEND ITS LICENSE IN A STATE OR COUNTRY IN WHICH THE LICENSEE ENGAGES IN BUSINESS OR IS LICENSED; OR

(E) A FELONY CONVICTION OF THE LICENSEE OR OF A MANAGING OFFICIAL, PRINCIPAL MEMBER, PRINCIPAL SHAREHOLDER, OR AGENT OF THE LICENSEE.

SECTION 6. In Colorado Revised Statutes, 12-52-103, **add** (1.6) and (2.5) as follows:

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

(1.6) "CONTROL" MEANS:

(a) OWNERSHIP OF, OR THE POWER TO VOTE, DIRECTLY OR INDIRECTLY, TWENTY-FIVE PERCENT OR MORE OF A CLASS OF VOTING SECURITIES OR VOTING INTERESTS OF A LICENSEE, APPLICANT, OR PERSON IN CONTROL OF A LICENSEE OR APPLICANT;

(b) THE POWER TO ELECT A MAJORITY OF EXECUTIVE OFFICERS, MANAGERS, DIRECTORS, TRUSTEES, OR OTHER PERSONS EXERCISING MANAGERIAL AUTHORITY OF A LICENSEE, APPLICANT, OR PERSON IN CONTROL OF A LICENSEE OR APPLICANT; OR

(c) THE POWER TO EXERCISE, DIRECTLY OR INDIRECTLY, A CONTROLLING INFLUENCE OVER THE MANAGEMENT OR POLICIES OF A LICENSEE, APPLICANT, OR PERSON IN CONTROL OF A LICENSEE OR APPLICANT.

(2.5) "EXECUTIVE OFFICER" MEANS A PRESIDENT, CHIEF EXECUTIVE OFFICER, CHAIRPERSON OF AN EXECUTIVE COMMITTEE, RESPONSIBLE INDIVIDUAL, OR CHIEF FINANCIAL OFFICER OF A LICENSEE, AND ANY OTHER PERSON WHO PERFORMS SIMILAR FUNCTIONS.

SECTION 7. In Colorado Revised Statutes, **add** 12-52-110.3 as follows:

12-52-110.3. Change in control - rule. (1) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OR (c) OF THIS SUBSECTION (1), WHEN A LICENSEE PROPOSES A CHANGE OF CONTROL, THE LICENSEE SHALL:

(I) GIVE THE COMMISSIONER WRITTEN NOTICE OF THE PROPOSED CHANGE OF CONTROL WITHIN FIFTEEN DAYS AFTER LEARNING OF THE PROPOSED CHANGE OF CONTROL;

(II) REQUEST APPROVAL OF THE CHANGE OF CONTROL; AND

(III) SUBMIT A NONREFUNDABLE FEE IN AN AMOUNT ESTABLISHED UNDER SECTION 11-102-104 (11), C.R.S., WITH THE NOTICE.

(b) THE BOARD, BY RULE OR ORDER, MAY EXEMPT A PERSON FROM ANY OF THE REQUIREMENTS OF SUBPARAGRAPH (II) OR (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1) IF THE BOARD FINDS THAT IT IS IN THE PUBLIC INTEREST TO DO SO.

(c) THIS SUBSECTION (1) DOES NOT APPLY TO A PUBLIC OFFERING OF SECURITIES.

(2) AFTER REVIEW OF A REQUEST FOR APPROVAL UNDER SUBSECTION (1) OF THIS SECTION, THE BOARD MAY REQUIRE THE LICENSEE TO PROVIDE ADDITIONAL INFORMATION CONCERNING THE PERSONS PROPOSED TO CONTROL THE LICENSEE. THE ADDITIONAL INFORMATION MUST BE LIMITED TO THE SAME TYPES REQUIRED OF THE LICENSEE OR PERSONS IN CONTROL OF THE LICENSEE AS PART OF ITS ORIGINAL LICENSE OR RENEWAL APPLICATION.

(3) THE BOARD SHALL APPROVE A REQUEST FOR CHANGE OF CONTROL UNDER SUBSECTION (1) OF THIS SECTION IF, AFTER INVESTIGATION, THE BOARD DETERMINES THAT THE PERSON OR GROUP OF PERSONS REQUESTING APPROVAL HAS THE COMPETENCE, EXPERIENCE, CHARACTER, AND GENERAL FITNESS TO OPERATE THE LICENSEE OR PERSON IN CONTROL OF THE LICENSEE IN A LAWFUL AND PROPER MANNER AND THAT THE PUBLIC INTEREST WILL NOT BE JEOPARDIZED BY THE CHANGE OF CONTROL.

(4) WHEN AN APPLICATION FOR A CHANGE OF CONTROL UNDER THIS SECTION IS COMPLETE, THE BOARD SHALL GIVE WRITTEN NOTICE TO THE LICENSEE OF THE DATE ON WHICH THE BOARD DETERMINED THE REQUEST TO BE COMPLETE AND THE DATE ON WHICH THE BOARD WILL HOLD A HEARING ON THE APPLICATION.

(5) BEFORE FILING A REQUEST FOR APPROVAL TO ACQUIRE CONTROL OF A LICENSEE OR OF A PERSON IN CONTROL OF A LICENSEE, A PERSON MAY FILE A WRITTEN REQUEST FOR A DETERMINATION FROM THE BOARD AS TO WHETHER THE PERSON WOULD BE CONSIDERED A PERSON IN CONTROL OF A LICENSEE UPON CONSUMMATION OF A PROPOSED TRANSACTION. IF THE BOARD DETERMINES THAT THE PERSON WOULD NOT BE A PERSON IN CONTROL OF A LICENSEE, THE BOARD SHALL PROVIDE TO THE PERSON WRITTEN NOTIFICATION TO THAT EFFECT AND THE PROPOSED PERSON AND TRANSACTION ARE NOT SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (1) TO (3) OF THIS SECTION.

SECTION 8. In Colorado Revised Statutes, 12-52-107, **amend** (2) as follows:

12-52-107. Bond - condition - amount - rules. (2) (a) In lieu of ~~such~~ THE surety bond REQUIRED BY SUBSECTION (1) OF THIS SECTION, the licensee may deposit with the ~~banking~~ board securities with a par value equal to the amount of ~~any such~~ THE surety bond.

(b) ~~Such~~ Securities ~~shall~~ UNDER THIS SUBSECTION (2) MUST BE RATED IN ONE OF THE THREE HIGHEST GRADES AS DEFINED BY A NATIONALLY RECOGNIZED ORGANIZATION THAT RATES SECURITIES AND MUST consist of:

(I) General obligations of, or securities fully guaranteed by, the United States of America or any agency or instrumentality of or corporation wholly owned by the United States of America directly or indirectly; or

(II) Direct general obligations of the state of Colorado, or of any county, town, city, village, school district, or other political subdivision or municipal corporation of the state of Colorado.

(c) ~~Such~~ THE BOARD SHALL HOLD THE securities ~~shall be held by the banking board~~ to secure the same obligations as would any surety bond required by this article. The LICENSEE MAY EXCHANGE THE securities so deposited ~~may be exchanged~~ from time to time for other securities ~~which~~ THAT qualify as aforesaid UNDER THIS SUBSECTION (2) UPON WRITTEN NOTIFICATION TO, AND WRITTEN APPROVAL BY, THE COMMISSIONER. All ~~said~~ OF THE securities ~~shall be~~ ARE subject to sale and transfer, and the ~~disposal~~ BOARD MAY DISPOSE of the proceeds by ~~said banking board~~ only on the order of a court of competent jurisdiction. ~~Such~~ THE licensee ~~shall be permitted~~ IS ENTITLED to receive the interest or dividends on ~~such~~ THE securities unless prohibited by a court of competent jurisdiction. The ~~banking board~~ may provide for custody of ~~such~~ THE securities by any qualified trust company or bank located in the state of Colorado. The DEPOSITING LICENSEE SHALL PAY THE compensation of any ~~custodian for~~ PERSON acting as ~~such~~ CUSTODIAN under this section. ~~shall be paid by the depositing licensee.~~

SECTION 9. In Colorado Revised Statutes, 12-52-108, **amend** (1) and (3) as follows:

12-52-108. Issuance of license. (1) Upon the filing of an application, the commissioner shall investigate the applicant. THE APPLICANT SHALL PAY FOR THE COST OF THE INVESTIGATION. If the ~~banking board~~ finds that the applicant is of good moral character and financially responsible and can comply with this article, the ~~banking board~~ shall approve the application and notify the applicant in writing ~~who shall within ninety days post~~ THAT ITS APPROVAL EXPIRES SIX MONTHS AFTER THE APPROVAL DATE. ONCE THE APPROVED APPLICANT HAS NOTIFIED THE BOARD THAT HE OR SHE IS PREPARED TO COMMENCE OPERATIONS IN COLORADO, POSTED the required bond, and ~~pay~~ PAID the license fee, ~~whereupon~~ the ~~banking board~~ shall issue to the applicant a license to engage in the business of ~~selling or issuing exchange~~ MONEY TRANSMISSION subject to ~~the provisions of~~ this article.

(3) ~~No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon.~~ If the BOARD DENIES AN application, ~~is denied,~~ the ~~banking board~~ shall, within thirty days thereafter, prepare and file in its office a written order of denial, which ~~shall~~ MUST contain the ~~banking board's~~ findings and reasons supporting the denial and, within ten days after the filing of ~~such~~ THE order, THE BOARD shall notify the applicant and send him OR HER a copy of ~~such~~ THE order. THE APPLICANT MAY REQUEST A HEARING BY THE BOARD BY SUBMITTING A WRITTEN REQUEST TO THE BOARD WITHIN SIXTY DAYS AFTER RECEIVING NOTICE AS SPECIFIED IN SECTION 24-4-104 (9), C.R.S., AND IF SO REQUESTED THE BOARD SHALL HOLD A HEARING AS SPECIFIED IN SECTION 24-4-105, C.R.S.

SECTION 10. Applicability. This act applies to actions occurring on or after the effective date of this act.

SECTION 11. 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: June 5, 2013