Colorado Revised Statutes 2017

TITLE 11

FINANCIAL INSTITUTIONS

Cross references: For provisions regarding funeral contract trust funds, see article 15 of title 10; for provisions regarding the "Money Transmitters Act", see article 52 of title 12; for the "Unclaimed Property Act", see article 13 of title 38.

BANKS AND INDUSTRIAL BANKS

Banking Code

Editor's note: (1) Unless otherwise specified, articles 1 to 10 were numbered as articles 1 to 7 and 9 to 11 of chapter 14, C.R.S. 1963. For amendments to these articles prior to their repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of articles 1 to 10 were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's note following each section in said articles 101 to 109.

ARTICLE 1

General Provisions

11-1-101 to 11-1-106. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 2

Division of Banking

11-2-101 to 11-2-122. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 3

Organization and Corporate Functions

11-3-101 to 11-3-123. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 4

Merger, Consolidation, Conversion, and Sale of Assets

11-4-101 to 11-4-110. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 5

Liquidation - Dissolution - Reorganization

11-5-101 to 11-5-109. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 6

Banking Practices

11-6-101 to 11-6-113. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 6.3

Holding Companies

11-6.3-101. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: This article was added in 1985. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 6.4

Acquisition of Control of Banks and
Bank Holding Companies

11-6.4-101 to 11-6.4-104. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: This article was added in 1988. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 6.5

Electronic Funds Transfers

Cross references: For electronic funds transfers for financial institutions other than banks, see article 48 of this title.

11-6.5-101 to 11-6.5-111. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: This article was added in 1977. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 7

Reserves - Loans - Investments

11-7-100.3 to 11-7-112. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 8

Property - Sales - Borrowing - Signature Guaranty

11-8-101 to 11-8-106. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 9

Safe Deposit and Safekeeping Facilities

11-9-101 to 11-9-107. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 10

Fiduciary Business

11-10-101 to 11-10-107. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

ARTICLE 10.5

Public Deposit Protection

Editor's note: (1) This article was added in 1975. This article was repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

(2) Current provisions concerning the "Colorado Banking Code" are located in articles 101 to 109 of this title.

11-10.5-101. Short title. This article shall be known and may be cited as the "Public Deposit Protection Act".

Source: L. 89: Entire article R&RE, p. 593, § 1, effective September 1.

Editor's note: This section is similar to former § 11-10.5-101 as it existed prior to 1989.

11-10.5-102. Legislative declaration. (1) The general assembly hereby declares that the purpose of this article is to serve the taxpayers and the citizens of Colorado by establishing standards and procedures to ensure the preservation and protection of all public funds held on deposit by a bank that are either not insured by or are in excess of the insured limits of federal deposit insurance, and to ensure the expedited repayment of such funds in the event of default and subsequent liquidation of a bank which holds such deposits.

(2) The general assembly further finds, determines, and declares that the protection of public funds on deposit in banks is a matter of statewide concern and importance and that as such:

(a) The provisions of this article shall prevail over any local government ordinance or resolution and over any home rule or territorial charter provision in conflict therewith; and

(b) The requirement that a national bank comply with the provisions of this article neither encroaches upon the prerogatives of a nationally chartered bank nor exceeds the authority of the state of Colorado.

Source: L. 89: Entire article R&RE, p. 593, § 1, effective September 1.

Editor's note: This section is similar to former § 11-10.5-102 as it existed prior to 1989.

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

(1) "Aggregate uninsured public deposits" means the total amount of cash, checks, or drafts on deposit at the close of a business day for credit to the official custodian accounts in an eligible public depository, and which are either not insured by or are in excess of the insurable limits of federal deposit insurance.

(2) "Bank" means any bank organized or chartered under this article and articles 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.

(3) "Banking board" means the banking board established by section 11-102-103.

(4) "Defaulting depository" means any eligible public depository to which an event of default has occurred.

(5) "Eligible collateral" means, with respect to the securing of uninsured public funds, those instruments or obligations approved to be used for such purposes by the banking board pursuant to the provisions of section 11-10.5-107.

(6) "Eligible public depository" means any bank which has been designated as an eligible public depository by the banking board.

(7) "Event of default" means the issuance of an order by a supervisory authority or a receiver which restrains an eligible public depository from paying its deposit liabilities.

(8) "Federal deposit insurance" means deposit insurance or guarantees provided by the federal deposit insurance corporation or any successor agency thereto.

(9) "Official custodian" means:

(a) A designee with plenary authority, including control over public funds of a public unit which the official custodian is appointed to serve. For purposes of this paragraph (a), "control" includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of plenary authority over the public funds of a public unit requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

(b) A designee, other than a designee described in paragraph (a) of this subsection (9), with authority, including control, over public funds of an entity, including the state of Colorado; any institution, agency, instrumentality, authority, county, municipality, city and county, school district, special district, or other political subdivision of the state of Colorado, including any institution of higher education; any institution, department, agency, instrumentality, or authority of any of the foregoing, including any county or municipal housing authority; any local government investment pool organized pursuant to part 7 of article 75 of title 24, C.R.S.; any public entity insurance pool organized pursuant to state statute; any public body corporate

created or established under the constitution of the state of Colorado or any state statute; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. For purposes of this paragraph (b), "control" includes possession of public funds, as well as the authority to establish accounts for such public funds in banks and to make deposits, withdrawals, or disbursements of such public funds. If the exercise of authority over such public funds requires action by or the consent of two or more putative official custodians, then such official custodians shall be treated as one official custodian with respect to such public funds.

(10) (a) "Political subdivision" includes any subdivision or any principal department of a public unit:

(I) The creation of which subdivision or principal department has been expressly authorized by state statute;

(II) To which some functions of government have been delegated by state statute; and

(III) To which funds have been allocated by ordinance or state statute for its exclusive use and control.

(b) "Political subdivision" also includes drainage, irrigation, navigation, improvement, levee, sanitary, school, and power districts and bridge and port authorities and any other special district created by state statute or compact between the state of Colorado and one or more states.

(c) "Political subdivision" does not include subordinate or nonautonomous divisions, agencies, or boards within principal departments of a public unit.

(11) "Public deposits" means all public funds on deposit in an eligible public depository in any form, whether time, savings, or demand.

(12) "Public funds" means all funds of a public unit and all funds of any entity referred to in paragraph (b) of subsection (9) of this section.

(13) "Public unit" means the state of Colorado, any county, city and county, city, or municipality, including any home rule city or town or territorial charter city, or any political subdivision thereof.

Source: L. 89: Entire article R&RE, p. 594, § 1, effective September 1. **L. 91:** (2) amended, p. 650, § 8, effective May 1. **L. 2003:** (3) amended, p. 1206, § 5, effective July 1. **L. 2004:** (2) amended, p. 324, § 9, effective April 7; (2) amended, p. 1190, § 17, effective August 4.

Editor's note: (1) This section is similar to former § 11-10.5-103 as it existed prior to 1989.

(2) Subsection (2) was amended in House Bill 04-1110. Those amendments were superseded by the amendment of subsection (2) in Senate Bill 04-239.

11-10.5-104. Applicability of article. The provisions of this article shall apply to all banks which elect to become eligible public depositories. No bank shall hold any public funds unless such bank has been designated as an eligible public depository pursuant to the provisions of this article.

Source: L. 89: Entire article R&RE, p. 595, § 1, effective September 1.

11-10.5-105. Authority of banking board. The banking board shall have the authority to implement any provision of this article by order and by rule and regulation and may obtain restraining orders and injunctions to prevent violation of or to enforce compliance with the provisions of this article and the orders and rules and regulations issued under such provisions. The authority of the banking board shall be liberally construed to ensure that the purposes of this article are properly implemented.

Source: L. 89: Entire article R&RE, p. 595, § 1, effective September 1.

Editor's note: This section is similar to former § 11-10.5-104 as it existed prior to 1989.

11-10.5-106. Designation as eligible public depository - acceptance of provisions. (1) No bank shall be a public depository or shall hold public funds without first being designated as an eligible public depository by the banking board pursuant to the provisions of this section.

(2) No bank shall be designated an eligible public depository unless the bank meets the following criteria:

(a) The deposits of such bank are insured or guaranteed by federal deposit insurance;

(b) The bank is in compliance with the capital standards established by the banking board; and

(c) The bank agrees in writing to abide by all regulatory directives, reporting requirements, examination requirements, and other criteria established for the administration and enforcement of the provisions and purposes of this article.

(3) (a) (I) Any bank which meets the criteria established in subsection (2) of this section and which desires to accept and hold public funds on and after September 1, 1989, shall file a written application with the banking board requesting designation as an eligible public depository. The request shall be signed by an executive officer of the bank and shall state that the bank agrees to abide by the provisions of this article and all rules and regulations promulgated by the banking board for the administration and enforcement of the provisions of this article.

(II) If the bank requesting such designation was an eligible public depository under applicable law in effect prior to September 1, 1989, and desires to continue to be an eligible public depository subject to the provisions of this article, it shall file the required written application within thirty days following August 1, 1989. If the banking board has no reason to believe that the bank would fail to meet the criteria or fail to follow the provisions of this article, it may designate such bank as an eligible public depository and issue an appropriate certificate evidencing such designation. Such immediate designation is provided for the convenience of the banking board in order to expedite transition from laws governing the protection of public funds in effect prior to September 1, 1989, and is not to be construed as granting a right or privilege to any bank to be designated as an eligible public depository.

(III) Any bank which was not an eligible public depository under applicable law in effect prior to September 1, 1989, or any bank which was granted a charter on or after said date, or any bank which has had its certificate as an eligible public depository withdrawn or revoked by either the banking board or the commissioner may at any time make written application to the banking board for designation as an eligible public depository. Such application shall be made on such forms or in such format as may be prescribed by the banking board. Upon submittal, the

application shall contain all required information and shall be accompanied by a fee to be determined by the banking board. The banking board shall review the application and, not more than sixty days from the date that the application was submitted, shall either grant and issue or deny issuance of a certificate evidencing such designation. The banking board may extend the sixty-day review period for not more than thirty additional days.

(b) (I) Designation as an eligible public depository shall not constitute either a right or a license, and such designation may be revoked, suspended, or placed under restrictions, limitations, or other conditions by the banking board if the board determines that the eligible public depository has failed to comply with the provisions of this article or any rule and regulation promulgated by the banking board for the administration or enforcement of this article or with the provisions of any order of the banking board.

(II) Once granted, designation as an eligible public depository may be retained by the bank to which it was granted unless the banking board acts to suspend, revoke, or otherwise limit the designation. Designation is unique to the bank to which it was granted and may not be sold or transferred to another bank. In the event that a bank designated as an eligible public depository is acquired or merged with another entity, the banking board shall review the continuation of such designation under either this paragraph (b) or paragraph (a) of this subsection (3).

Source: L. 89: Entire article R&RE, p. 595, § 1, effective September 1.

Editor's note: This section is similar to former § 11-10.5-105 as it existed prior to 1989.

11-10.5-107. Eligible collateral - uninsured public deposits. (1) The banking board shall establish by rule and regulation a list of approved instruments and obligations to be used as eligible collateral by an eligible public depository in order to comply with the provisions of this section. As part of its findings, the banking board shall determine that each approved obligation or instrument meets at least the following criteria:

(a) The obligation or instrument is characterized by attributes of safety, liquidity, and soundness meeting the purposes of this article for the preservation and protection of public funds;

(b) The obligation or instrument, with respect to its market value, shall be marketable or convertible into cash within such time periods as shall be prescribed by the banking board to assure that any claim made pursuant to section 11-10.5-110 is fully and promptly paid;

(c) The standards and relevant factors required to establish and evaluate the current market value of the obligation or instrument are prescribed by the banking board at the time the obligation or instrument is approved for use as eligible collateral, which standards and relevant factors may include statistical standards for deviations from the original market value assigned at the time of approval for use that would result in an automatic deletion from the list of approved eligible collateral;

(d) The market value of each obligation or instrument is verified at least monthly, unless the banking board prescribes a different period for a particular obligation or instrument;

(e) The banking board has at its disposal adequate resources to monitor and evaluate the market value of the obligation or instrument; and

(f) The obligation or instrument satisfies such other criteria as the banking board may establish.

(2) (a) Except as provided in subsection (4) of this section, the banking board shall not treat any eligible public depository differently than any other eligible public depository.

(b) In promulgating the list of eligible collateral pursuant to subsection (1) of this section, the banking board, within the bounds of safety and soundness, shall not establish market values or other evaluation criteria which are disproportionately more restrictive for banks than comparable market values or evaluation criteria for any other class of eligible public depositories operating under this article or any other state law. It is the intent of the general assembly that, to the extent practicable, competitive parity among eligible public depositories which existed under applicable law in effect prior to September 1, 1989, should be maintained.

(3) The banking board shall establish procedures to notify each eligible public depository in a timely manner of the obligations and instruments that have been approved for use as eligible collateral and of obligations and instruments that have been deleted from the list of approved eligible collateral. Any eligible public depository utilizing as collateral an obligation or instrument which has been deleted from the list of approved eligible collateral shall, within three business days of receiving notice of the deletion or within such longer period as prescribed by the banking board, remove it from its portfolio of collateral and substitute sufficient other obligations or instruments that are approved for use as eligible collateral to properly secure public funds as required by this article.

(4) (a) The banking board shall by rule establish criteria and procedures for reducing or removing any uninsured public funds deposited in an eligible public depository if said depository fails to comply with the capital or safety and soundness standards established by the banking board.

(b) The banking board shall require an eligible public depository to increase, substitute, add to, or modify the amount or type of eligible collateral held to secure any uninsured public funds so that the collateral is adequate to fully protect the public funds if the capital or financial condition of the eligible public depository fails to comply with the capital or safety and soundness standards established by the banking board. The banking board shall establish such procedures as may be necessary to ensure that all collateral held pursuant to an action taken under this paragraph (b) is characterized by the highest degree of marketability and liquidity so that, in the event of default, all public deposits may be promptly and fully repaid.

(5) As an ongoing requirement of designation as an eligible public depository, any such depository shall pledge collateral having a market value in excess of one hundred two percent of the aggregate uninsured public deposits.

(6) An eligible public depository shall remove any obligation or instrument pledged as eligible collateral if the banking board determines that the obligation or instrument has failed in some manner to meet the criteria required by this section and shall substitute another obligation or instrument of eligible collateral that is satisfactory to the banking board.

Source: L. 89: Entire article R&RE, p. 597, § 1, effective September 1. **L. 2009:** (4) amended, (HB 09-1053), ch. 159, p. 687, § 2, effective August 5.

11-10.5-108. Collateral - where held - right of substitution - income derived. (1) (a) Eligible collateral shall be held as provided in this article or by rules and regulations of the

banking board. Eligible collateral shall be held in the custody of any bank, including a federal reserve bank, or any depository trust company which has been approved by the banking board to hold eligible collateral and is supervised by the banking board, or an equivalent governmental agency responsible for the regulation of banks in the state in which such bank or depository trust company is located.

(b) An eligible public depository which has its own trust department may make application to the banking board to be allowed to segregate its required eligible collateral from the other assets of the eligible public depository and to hold such collateral in its own trust department under such conditions as the banking board shall prescribe by rule and regulation. The banking board may require an eligible public depository that is holding its own eligible collateral in its own trust department to cease doing so and to have the eligible collateral held by some other entity authorized to hold collateral by paragraph (a) of this subsection (1). Any eligible public depository which holds collateral for any other eligible public depository and which is granted permission by the banking board to hold its own collateral as well shall at all times keep the collateral held for each such eligible public depository segregated.

(2) Under circumstances where eligible collateral is maintained as required by this article, and where such eligible collateral is not held by the eligible public depository's own trust department, each eligible public depository shall provide in a written deposit or pledge agreement between the said eligible public depository and the custodian of the collateral, or in such other manner as shall be prescribed by the banking board by rule and regulation, that:

(a) In the event of default or insolvency of the eligible public depository for which the collateral is held, the custodian shall surrender such collateral to the banking board; and

(b) The custodian shall make available to the banking board the eligible collateral and any books, records, and papers pertaining thereto for any examination or other reason necessary for the administration of this article.

(3) An eligible public depository may at any time make substitutions of eligible collateral maintained or pledged for the purposes of this article pursuant to collateral substitution procedures established by the banking board and shall at all times be entitled to collect and retain all income derived from such collateral without restriction. The privilege granted under this subsection (3) may be suspended or revoked by the banking board if the eligible public depository has become the subject of increased regulatory oversight as a result of its failure to maintain capital standards required by the banking board for the holding of public funds.

Source: L. 89: Entire article R&RE, p. 598, § 1, effective September 1. **L. 91:** (1) and (3) amended, p. 650, § 9, effective May 1.

Editor's note: This section is similar to former § 11-10.5-109 as it existed prior to 1989.

11-10.5-109. Verification of collateral held - reports required. (1) Each eligible public depository shall submit reports at least monthly to the banking board in such format as the banking board may prescribe. Such report shall demonstrate that the eligible public depository is in full compliance with the provisions of this article. In addition, each eligible public depository shall submit copies of its quarterly call reports to the banking board thirty days after the close of each fiscal quarter.

(2) The board of directors of an eligible public depository shall cause an annual audit to be completed at least annually, but at intervals of not more than fifteen months, by an independent accounting firm composed of certified public accountants or a director's examination by a public accountant or any other independent person or persons as determined by the banking board. The banking board shall adopt regulations regarding the qualifications of such public accountant and other independent person or persons who shall assume the responsibility for due care in such directors' examinations. The banking board's regulations shall also establish the scope of such directors' examinations which shall include safeguards to insure that such examinations adequately describe the financial condition of the financial institution. Such independent audit or directors' examination shall be completed and submitted to the banking board within the time lines the banking board requires. Such audits or directors' examinations shall include, but shall not be limited to, the following information:

(a) The official custodian on whose behalf any public funds are held;

(b) The name and address of each such official custodian;

(c) The amount of public funds on deposit for each such custodian;

(d) The amount of federal deposit insurance coverage for each such official custodian;

(e) The eligible collateral pledged for aggregate uninsured public deposits and the market value of such eligible collateral; and

(f) Any other information which may be required by the banking board by rule and regulation.

(3) The banking board may examine all public deposits held by and all eligible collateral required to be maintained by an eligible public depository, and all books, records, and papers pertaining thereto.

(4) Each eligible public depository shall be assessed reasonable expenses by the banking board to meet the costs of any examinations made in accordance with the provisions of this section.

Source: L. 89: Entire article R&RE, p. 599, § 1, effective September 1. **L. 90:** IP(2) amended, p. 667, § 35, effective June 7.

Editor's note: This section is similar to former §§ 11-10.5-109.5 and 11-50-111 as they existed prior to 1989.

11-10.5-110. Procedures when event of default occurs. (1) When the banking board has determined that an eligible public depository has experienced an event of default, the banking board shall proceed in the following manner:

(a) The board shall seize and take possession of all eligible collateral belonging to or held on behalf of the defaulting depository from wherever such eligible collateral is held.

(b) The board shall ascertain the aggregate amounts of public funds held by the defaulting depository as disclosed by the records of such depository. The board shall determine for each official custodian for whom public funds are held by the defaulting depository the accounts and the amount of federal deposit insurance that is available for each account. It shall then determine for each such official custodian the amount of uninsured public funds and the eligible collateral that is pledged to secure such funds. Upon completion of this analysis, the board shall provide each such official custodian with a statement that reports the amount of

public funds held by the defaulting depository in his behalf, the amount that may be protected by federal deposit insurance, and the amount that is safeguarded by eligible collateral as required by this article. Each such official custodian shall verify this information from his records within ten working days after receiving the report and information from the banking board.

(c) Upon receipt of a verified report from such official custodian and if the defaulting eligible public depository is to be liquidated or otherwise removed from status as an eligible public depository, the banking board shall proceed to liquidate all eligible collateral held for the safeguarding of public deposits and shall repay each official custodian for the uninsured public deposits held by the depository in his behalf.

(2) In the event that a federal deposit insurance agency is appointed and acts as liquidator or receiver of any eligible public depository under state or federal law, those duties under this article that are specified to be performed by the banking board in the event of default may be delegated to and performed by the said federal deposit insurance agency. Any liquidation occurring under the provisions of this section shall conform to the procedures established in section 11-103-804.

Source: L. 89: Entire article R&RE, p. 600, § 1, effective September 1. **L. 2003:** (2) amended, p. 1206, § 6, effective July 1.

Editor's note: This section is similar to former § 11-10.5-113 as it existed prior to 1989.

11-10.5-111. Public funds to be deposited only in eligible public depositories - responsibilities of official custodians and eligible public depositories - penalty. (1) Any official custodian may deposit public funds in any bank which has been designated by the banking board as an eligible public depository. It is unlawful for an official custodian to deposit public funds in any bank other than one that has been so designated.

(2) Each official custodian shall inform an eligible public depository that the public funds on deposit are subject to the provisions of this article before entering into a depository agreement with the eligible public depository. It is the responsibility of the official custodian to maintain documents or other verification necessary to properly identify the public funds which are subject to the provisions of this article.

(3) The division, in consultation with the state treasurer and the state controller, shall establish the necessary controls to ensure the proper identification of public depository accounts.

(4) (a) An official custodian who acted in good faith in selecting, designating, or approving any eligible public depository for the deposit of public funds shall not be liable for any loss of public funds deposited in an eligible public depository if such loss is caused by the occurrence of an event of default of such eligible public depository.

(b) Any official custodian who violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, which fine shall be mandatory and may not be reimbursed nor paid by the public unit. Upon any such conviction, the court may adjudge that the official custodian be removed from public office.

(c) Any director, bank officer, or manager who knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of

not less than two hundred dollars nor more than two thousand dollars, which fine shall be mandatory.

(5) It is unlawful for any director, bank officer, or manager of any bank to accept or receive any public funds while such bank is insolvent or while under verbal or written order from the banking board not to accept or receive any public funds.

(6) Notwithstanding any other provision of this section to the contrary, nothing shall be construed to prevent a bank which is an eligible public depository operating pursuant to the provisions of this article from being or acting as an agent on behalf of any official custodian for the purposes of making investments as authorized by part 6 of article 75 of title 24, C.R.S. Any such bank shall maintain such accounting records as are necessary to readily distinguish between the activities authorized by said part 6 and the purposes of the public deposit protection requirements imposed upon it as a condition of being an eligible public depository. The banking board may promulgate such rules and regulations as it deems necessary to ensure that the activities authorized under part 6 of article 75 of title 24, C.R.S., and the protection of public funds pursuant to this article are not commingled.

Source: L. 89: Entire article R&RE, p. 601, § 1, effective September 1. **L. 2001:** (3) amended, p. 155, § 1, effective March 28.

Editor's note: This section is similar to former §§ 11-10.5-118, 11-10.5-119, and 11-10.5-121 as they existed prior to 1989.

11-10.5-112. Annual fees and assessments. (1) There is hereby created in the state treasury the public deposit administration fund. The fund shall consist of moneys required to be credited to the fund pursuant to subsection (2) of this section and all interest earned on the investment of the moneys in the fund. Any such interest shall be credited at least annually to said fund. Moneys in the fund shall be subject to appropriation by the general assembly to the banking board to be used solely for the administration and enforcement of the provisions of this article. No moneys shall be appropriated from the general fund for payment of any expenses incurred under this section, and no such expenses shall be charged against the state.

(2) Every eligible public depository shall be assessed an annual fee in an amount established by the banking board for the costs of enforcement and administration of this article. Such fees shall fairly and equitably apply to all eligible public depositories calculated according to the proportion of aggregate public funds that each depository holds in relation to the total of all aggregate public deposits held by all eligible public depositories for each annual period for which they were eligible public depositories. The banking board shall transmit such fees to the state treasurer who shall credit the same to the public deposit administration fund.

(3) All fees assessed against an eligible public depository in accordance with the provisions of section 11-10.5-109 (4) shall be transmitted to the state treasurer who shall credit the same to the public deposit administration fund.

(4) In setting fees, the banking board shall apply the standards imposed on boards and commissions of the division of professions and occupations in the department of regulatory agencies for determining the amount of fees pursuant to the provisions of section 24-34-105 (2)(b) and (2)(c), C.R.S.

Source: L. 89: Entire article R&RE, p. 602, § 1, effective September 1. **L. 90:** (2) amended, p. 667, § 36, effective June 7.

Editor's note: This section is similar to former § 11-10.5-120 as it existed prior to 1989.

ARTICLE 11

Criminal Offenses

11-11-101 to 11-11-110. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: (1) This article was numbered as article 12 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

General Financial Provisions

ARTICLE 20

State Bank Commissioner - Duties - Powers

11-20-101 to 11-20-118. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: (1) This article was numbered as article 13 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

ARTICLE 21

Liquidation

11-21-101 to 11-21-123. (Repealed)

Source: L. 81: Entire article repealed, p. 611, § 36, effective July 1; entire article repealed, p. 2023, § 8, effective July 1.

Editor's note: This article was numbered as article 14 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

Cross references: For liquidation procedure under the "Colorado Banking Code", see article 103 of this title; for provisions concerning liquidation procedures for industrial banks, see part 6 of article 108 of this title.

Industrial Banks

ARTICLE 22

Industrial Banks

11-22-101 to 11-22-706. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: (1) This article was numbered as article 17 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

Trust Companies and Trust Funds

ARTICLE 23

Trust Company Act

11-23-101 to 11-23-125. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: (1) This article was numbered as article 20 of chapter 14, C.R.S. 1963. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

ARTICLE 24

Cross references: For fiduciary powers of banks, see article 106 of this title.

11-24-101. Short title. This article shall be known and may be cited as the "Uniform Common Trust Fund Act".

Source: L. 47: p. 894, § 5. **CSA:** C. 18, § 177. **CRS 53:** § 14-10-5. **C.R.S. 1963:** § 14-18-5.

11-24-102. Common trust funds established and operated. Any bank or trust company qualified to act as fiduciary in this state may establish and operate, alone or jointly with another bank or trust company qualified to act as fiduciary in this state, common trust funds for the purpose of furnishing investments to itself as fiduciary, to itself and others as cofiduciaries, to other banks or trust companies as fiduciaries, or to other banks or trust companies and others as cofiduciaries. Such fiduciary or cofiduciary may invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. Any person acting as cofiduciary with any such bank or trust company is hereby authorized to consent to the investment in such interests. In determining whether the investment of funds received or held by a bank or trust company as fiduciary in a common trust fund is proper, the bank or trust company may consider the common fund as a whole and shall not be prohibited from making such investment because of any particular asset.

Source: L. 47: p. 893, § 1. **CSA:** C. 18, § 173. **CRS 53:** § 14-10-1. **C.R.S. 1963:** § 14-18-1. **L. 77:** Entire section amended, p. 563, § 1, effective June 9.

11-24-103. Exclusive management and control. Any bank or trust company maintaining one or more common trust funds shall have the exclusive management and control of each common trust fund administered by it and the sole right at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the assets comprising same. Notwithstanding any other provision of law, such bank or trust company may deposit investments of a common trust fund, which investments are securities, with a clearing corporation or with a federal reserve bank pursuant to part 5 of article 1 of title 15, C.R.S., for the account of the bank or trust company and such investments shall be deemed for the purposes of this article to be in the custody of such bank or trust company.

Source: L. 47: p. 893, § 4. **CSA:** C. 18, § 176. **CRS 53:** § 14-10-3. **C.R.S. 1963:** § 14-18-3. **L. 77:** Entire section amended, p. 563, § 2, effective June 9.

11-24-104. Court accountings. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but, by application to the district court, it may secure approval of such an accounting on such conditions as the court may establish.

Source: L. 47: p. 893, § 2. **CSA:** C. 18, § 174. **CRS 53:** § 14-10-2. **C.R.S. 1963:** § 14-18-2.

11-24-105. Uniformity of interpretation. This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Source: L. 47: p. 893, § 3. **CSA:** C. 18, § 175. **CRS 53:** § 14-10-4. **C.R.S. 1963:** § 14-18-4.

11-24-106. Existing fiduciary relationships. This article became effective January 1, 1948, and applies to fiduciary relationships then in existence or thereafter established.

Source: L. 47: p. 894, § 8. **CSA:** C. 18, § 178. **CRS 53:** § 14-10-6. **C.R.S. 1963:** § 14-18-6.

11-24-107. Fiduciary defined. The word "fiduciary", whenever used in this article, means a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another or others in all matters connected with its undertaking and includes personal representatives [including executors, administrators, administrators with the will annexed (cum testamento annexo), administrators in succession acting under a will (de bonis non), ancillary administrators acting under a will, and ancillary executors], special administrators, guardians, conservators, trustees, whether of express or implied trusts, custodians under the "Colorado Uniform Transfers to Minors Act" (notwithstanding anything in said act which may be interpreted as contrary to this grant of authority), assignees, receivers, managing agents, as defined in this section, and any other person acting in a similar capacity. "Managing agent" means a fiduciary acting in the fiduciary relationship assumed upon the creation of a relationship which confers investment discretion on the fiduciary, but as to which the technical legal relationship is that of agent and principal.

Source: L. 77: Entire section added, p. 564, § 3, effective June 9. **L. 84:** Entire section amended, p. 393, § 3, effective July 1.

Cross references: For the "Colorado Uniform Transfers to Minors Act", see article 50 of this title.

BRANCH INSTITUTIONS

ARTICLE 25

Financial Institutions - Operation of Branches -
Organizational and Operational Equality

11-25-101 to 11-25-107. (Repealed)

Source: L. 2003: Entire article repealed, p. 1051, § 1, effective July 1.

Editor's note: (1) This article was added in 1991. For amendments to this article prior to its repeal in 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) The provisions of this article were relocated to articles 101 to 109 of this title. For the location of specific provisions, see the editor's notes following each section in said articles.

CREDIT UNIONS

ARTICLE 30

Credit Unions - General Provisions

Cross references: For the "Unclaimed Property Act", see article 13 of title 38.

Law reviews: For article, "Arbitrating Lender Liability Claims", see 18 Colo. Law. 879 (1989).

11-30-101. Definitions - organization - charter - investigation. (1) (a) A credit union is a cooperative association, incorporated pursuant to this article for the twofold purpose of promoting thrift among its members and creating a source of credit for them at fair and reasonable rates of interest.

(b) As used in this article:

(I) "Board" means the financial services board, created in section 11-44-101.6.

(I.1) "Commissioner" means the state commissioner of financial services.

(II) "Division" means the division of financial services created in section 11-44-101.

(2) A credit union may be organized in the following manner:

(a) Any eight or more residents of the state of Colorado who meet the membership requirements of section 11-30-103 (2) may execute, in a number of copies to be specified by the commissioner, articles of incorporation setting forth therein the terms by which they agree to be bound. The articles shall state the name and address of the proposed credit union; the names and addresses of the incorporators; the number of shares subscribed by each incorporator; and the term of existence of the corporation, which may be perpetual.

(b) The incorporators shall prepare, in a number of copies to be specified by the commissioner, proposed bylaws for the governing of the credit union, consistent with the provisions of this article, on standard forms approved by the commissioner and shall define therein the proposed eligibility requirements for membership.

(c) The proposed bylaws shall further set forth: The classes of shares which the credit union is authorized to issue; if such shares are to consist of one class only, the par value of each of the shares or a statement that all of the shares are without par value, or, if the shares are to be divided into classes, a statement of the par value of the shares of each such class or that the shares are to be without par value. In addition, if the shares are to be divided into classes, the

bylaws shall designate each class and a statement of its preferences, its limitations, and its relative rights with respect to the shares of each other class.

(3) (a) An application in such form as may be prescribed by the commissioner together with the articles of incorporation and the bylaws shall be filed with the commissioner, in a number of copies to be specified by the commissioner, upon the payment of a filing fee, as determined from time to time by the commissioner, to cover the reasonable and necessary expense to the division attributable to such application. Within thirty days after such filing and payment of such fee, the commissioner shall determine whether the same conform to the provisions of this article and whether such a credit union would benefit the members and proposed members thereof, consistent with the purposes of this article, the general character and fitness of the incorporators, and the economic advisability of establishing the proposed credit union. Except for a community charter application, which application shall be submitted to the board for hearing pursuant to section 11-30-101.7, the commissioner may approve or deny an application without notice and hearing.

(b) The commissioner shall make or cause to be made an investigation to determine whether the incorporators and organizers are qualified and whether their qualifications and financial experience are consistent with their responsibilities and duties. An investigation shall also be conducted to determine if an incorporator or organizer has been convicted of any criminal activity. The commissioner may establish by rule the content of such investigations and what, if any, investigations by other agencies or authorities may be treated as substantially equivalent to and accepted in lieu of an investigation by the commissioner.

(4) Upon approval of an application and documents by the commissioner, or by the board with respect to a community charter application, the commissioner shall issue a certificate of approval, in a number of copies equal to the number of copies of the articles of incorporation required to be filed pursuant to subsection (2)(a) of this section as specified by the commissioner, and attach a copy thereof to each copy of the said articles of incorporation. The incorporators shall then file approved articles with the secretary of state, and a copy of the articles, certified by the secretary of state, shall be filed with the commissioner. The incorporators shall pay to the secretary of state a fee for filing the articles of incorporation and a fee for certifying the copy of articles of incorporation furnished by the incorporators for filing with the commissioner, both fees to be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(5) After the said certified copy of articles of incorporation have been filed with the commissioner, he shall issue a charter for such credit union, at which time the credit union shall become a body corporate having the powers enumerated in section 7-103-102, C.R.S., except as otherwise provided or limited in this article.

(6) The bylaws approved by the commissioner shall then be adopted by the initial board of directors of the credit union.

Source: L. 31: p. 295, § 1. **CSA:** C. 47, § 1. **L. 41:** p. 370, § 1. **CRS 53:** § 38-1-1. **C.R.S. 1963:** § 38-1-1. **L. 67:** p. 315, § 1. **L. 73:** p. 497, § 1. **L. 79:** (2)(a) amended, p. 414, § 1, effective May 22. **L. 83:** (2)(a) amended and (2)(c) added, p. 483, § 1, effective July1; (4) amended, p. 876, § 39, effective July 1. **L. 89:** (3) amended, p. 608, § 1, effective April 19. **L. 90:** (1) and (2)(b) amended, p. 1837, § 6, effective May 31. **L. 93:** (1)(b), (3), and (4) amended, p. 1442, § 1, effective June 6; (5) amended, p. 861, § 27, effective July 1, 1994. **L. 94:** (3)

amended, p. 62, § 1, effective July 1. **L. 96:** (2)(a), (2)(b), (3)(a), and (4) amended, p. 184, § 1, effective April 8.

11-30-101.7. Hearing procedures for community field of membership credit unions. (1) An application for a community field of membership shall be subject to approval by the board after the required notice and hearing requirements in this section are met.

(2) Upon submission by the commissioner, pursuant to section 11-30-101 (3), of a community field of membership application, the board shall hold a public hearing to consider the application. Such hearing shall be set by the board within six months after receipt of an application from a group that is subject to the requirements of this section; except that the board may postpone such hearing for valid reasons and good cause.

(3) (a) The board shall give notice of a hearing on a community field of membership application at least thirty days before the hearing date, by registered or certified mail, to the principal office of each credit union, savings and loan association, or bank within the neighborhood, community, or rural district sought to be served by the proposed community credit union, and to such other persons or credit unions, savings and loan associations, or banks as the board may designate.

(b) Such notice must be in the form prescribed by the board and must include the names of the incorporators, the name and location of the proposed community credit union, the date, time, and place of the hearing, and a statement that the application and proposed or amended articles of incorporation and proposed bylaws are available for inspection in the office of the board. The board shall also cause such notice to be published at least once, not less than twenty days prior to the hearing date, in a newspaper of general circulation within the neighborhood, community, or rural district in which the proposed credit union is to be located.

(c) Notwithstanding any other provisions in this section to the contrary, if the board has given the required notice of a hearing and as of the tenth day prior to the hearing has received no written protest against such application, the board may grant such community field of membership without a hearing if the applicants are known to the board.

(4) On hearing, the board may admit into evidence the application and any other relevant information in the files of the division. The applicant and all others who receive notice by registered or certified mail pursuant to subsection (3) of this section shall be entitled to be heard and to introduce testimony at such hearing. The board may entertain such evidence or testimony from others as the board determines, in its sole discretion, to be necessary.

(5) Within ninety days following the conclusion of a hearing, the board shall issue a written order granting a community field of membership if the board finds:

(a) That the application, articles of incorporation, and bylaws conform to the provisions of this article and any rules promulgated by the board;

(b) That the credit union would benefit its members or proposed members, consistent with the purposes of this article, that the general character and fitness of the incorporators is appropriate, and that it is advisable from an economic standpoint to establish the proposed credit union;

(c) That the neighborhood, community, or rural district is politically, geographically, socially, or economically well-defined; and

(d) That the members of other credit unions within the neighborhood, community, or rural district are specifically excluded from membership, except as otherwise provided by the board for good cause.

(6) A credit union seeking to establish a community field of membership as part of a conversion from a federal to a state charter is subject to the notice and hearing requirements of this section.

Source: L. 93: Entire section added, p. 1443, § 2, effective June 6. **L. 2004:** (1), (2), (3), IP(5), and (6) amended, p. 129, § 1, effective July 1. **L. 2013:** (3) amended, (SB 13-154), ch. 282, p. 1471, § 28, effective July 1.

11-30-102. Bylaws of credit unions. The commissioner shall cause to be prepared a standard form of bylaws, consistent with this article, to be issued to all credit unions. All credit unions shall operate under the standard bylaws; except that each such credit union, subject to the approval of the commissioner, shall propose its own name, its field of membership, the number of members of its board of directors, its credit committee, its supervisory committee, provisions relative to times and places of meetings of the membership and of the board of directors, provisions relative to the conduct of elections and balloting of the credit union, and modifications of the standard bylaws deemed appropriate by the board of directors for the operation of the individual credit union. Any and all amendments to the bylaws shall be approved by the commissioner before they become operative.

Source: L. 31: p. 297, § 2. **CSA:** C. 47, § 2. **L. 41:** p. 371, § 2. **CRS 53:** § 38-1-2. **C.R.S. 1963:** § 38-1-2. **L. 67:** p. 316, § 2. **L. 84:** Entire section amended, p. 372, § 1, effective July 1.

11-30-103. Membership. (1) Credit union membership shall consist of the incorporators and any other persons and organizations which are elected to membership and which pay any entrance fee. Organizations, incorporated or otherwise, composed for the most part of the same general group as the credit union membership may be members. A central credit union may be organized under this article and may have a membership made up principally of other credit unions organized pursuant to this article or any credit unions authorized to operate within the state of Colorado, and such membership may also include the officers and committee members of such credit unions, members or persons within the field of membership of credit unions within the state which have entered into or are about to enter into voluntary or involuntary liquidation proceedings, and small groups which the commissioner determines lack the potential membership to organize their own credit union if such groups have a common bond of employment or association.

(2) Credit union organization and membership, other than those of a central credit union, shall be limited to groups having a common bond of employment or association or groups which reside within a well-defined neighborhood, community, or rural district having a population of no more than twenty-five thousand or as otherwise authorized by the board. Small groups which the commissioner determines to lack the potential membership to organize their own credit union may be eligible for membership in an existing credit union if such small groups have a common bond of employment or association. A member of the immediate family of any person who,

under the provisions of this article, is eligible for membership in a credit union may also be admitted to membership therein. "Immediate family" means persons related by blood, by marriage, or by adoption.

(3) A member who leaves the field of membership of the credit union may retain membership in the credit union as provided by the bylaws of the credit union.

(4) Except as to accounts, which are defined in and which shall be paid as provided for in article 15 of title 15, C.R.S., nothing in this article shall be construed to prohibit credit unions organized under this article from carrying membership accounts in the names of two or more persons in joint tenancy; and, if any credit union transacting business in this state issues shares and deposits in the names of two or more persons payable to them or to any of them, such shares and deposits, or any part thereof or any interest or dividend thereon, may be paid to any one of said persons whether the others are living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient discharge to the credit union from all of said persons and their heirs, executors, administrators, and assigns, and such shares and deposits shall be deemed to be owned by said persons in joint tenancy with the right of survivorship.

Source: L. 31: p. 298, § 5. **CSA:** C. 47, § 5. **L. 41:** p. 372, § 5. **L. 45:** p. 307, § 1. **CRS 53:** § 38-1-5. **C.R.S. 1963:** § 38-1-5. **L. 67:** p. 317, § 4. **L. 73:** p. 1646, § 4. **L. 75:** (3) R&RE, p. 393, § 1, effective July 1; (4) amended, p. 586, § 2, effective July 1. **L. 77:** (1) and (2) amended, p. 565, § 1, effective July 1. **L. 83:** (1) amended, p. 483, § 2, effective July 1. **L. 84:** (2) amended, p. 372, § 2, effective July 1. **L. 90:** (2) amended, p. 1837, § 7, effective May 31; (4) amended, p. 920, § 3, effective July 1. **L. 93:** (2) amended, p. 1444, § 3, effective June 6. **L. 2002:** (4) amended, p. 1359, § 6, effective July 1.

11-30-103.5. Branches. (Repealed)

Source: L. 93: Entire section added, p. 1445, § 4, effective June 6. **L. 2013:** Entire section repealed, (SB 13-159), ch. 193, p. 790, § 3, effective May 11.

11-30-104. Powers. (1) A credit union has the following powers to:

(a) Receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations or plans within the membership;

(b) Make loans to its members;

(c) Make loans to other credit unions as provided in this article;

(d) Deposit in state and national financial institutions insured by an agency of the federal government and to invest in the shares and deposits of the central credit union organized pursuant to this article;

(e) Invest in any of the following: Obligations of the United States or securities guaranteed or insured by any agency of the United States; obligations of any state or territory of the United States, or of any political subdivision or instrumentality thereof, except revenue obligations issued to provide, enlarge, or improve electric power, gas, water, or sewer facilities, or any combination thereof, issued by any city or town, or other similar municipal corporation having a population of less than five thousand persons, as determined by the latest federal decennial census; and, to an extent which shall not exceed ten percent of its shares, deposits, and

undivided earnings, in shares of mutual funds or investment companies, stocks, bonds, or other securities of any corporation or religious or educational organizations, as may be approved as prudent and sound by the commissioner;

(f) Borrow money as provided in section 11-30-115;

(g) Apply for and hold membership in a central credit union organized pursuant to this article, in any other central credit union authorized to transact business in this state, and in any organization or association of credit unions;

(h) Acquire, through purchase or other lawful transactions, and to hold title to real and personal property necessary and incidental to the operation of the credit union, and to sell, mortgage, or otherwise dispose of the same;

(i) Exercise such incidental powers as shall be necessary to enable it to carry on effectively the business for which it is incorporated;

(j) Upon the written approval of the commissioner, engage in any activity in which such credit union could engage were it operating under a federal charter at the time, provided such activity is not prohibited by the laws of this state;

(k) Sell all or any portion of its assets and purchase all or any portion of the assets of another credit union and assume the liabilities of the selling credit union and its field of membership, subject to the approval of the commissioner;

(l) Allow shares and deposits to be paid for, transferred, and withdrawn for payment to the account holder or to third parties in such manner and with such procedures as may be established by the board of directors. This paragraph (l) shall apply only with respect to share draft accounts in which the entire beneficial interest is held by one or more individuals or members or by an organization which is operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and which is not operated for profit.

(m) Make loans to, or permit the assumption of loans by, officers or employees of the division who are members of the credit union;

(n) Participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members when the borrower is a member of either the credit union originating the loan or the credit union purchasing a participation interest in the loan;

(o) Act as trustee or custodian of individual retirement accounts for the credit union's members authorized by federal or state law or as trustee or custodian of any plan established pursuant to the federal "Self-Employed Individuals Tax Retirement Act of 1962", as amended, or the federal "Employee Retirement Income Security Act of 1974", as amended, if a significant portion of the participants in any such plan are eligible for membership in the credit union and the funds held in the trustee or custodial capacity are invested in the credit union's shares or deposits;

(p) Act as fiscal agent for and receive payments on shares and deposits from nonmember units of the federal government or the state of Colorado or any agency or political subdivision thereof;

(q) Receive payment on deposits from nonmember financial institutions which are supervised under the laws of this state, the United States, or another state or territory of the United States.

(2) As authorized pursuant to section 10-2-601 (2), C.R.S., a credit union may, pursuant to federal law or under such rules as may be adopted by the financial services board or the

commissioner of insurance pursuant to section 10-2-601, C.R.S., act as the agent, through the credit union or any credit union service organization, for any insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For such services, a credit union or credit union service organization may receive such fees or commissions as may be agreed between such entity and the insurance company.

Source: L. 31: p. 297, § 4. **CSA:** C. 47, § 4. **L. 41:** p. 372, § 4. **CRS 53:** § 38-1-4. **C.R.S. 1963:** § 38-1-4. **L. 67:** p. 316, § 3. **L. 75:** (1)(d) amended, p. 394, § 1, effective June 16; (1)(j) added, p. 374, § 3, effective June 26. **L. 79:** (1)(k) added, p. 415, § 1, effective July 1. **L. 81:** (1)(l) and (1)(m) added, p. 612, § 1, effective July 1. **L. 83:** (1)(k) amended and (1)(n) and (1)(o) added, p. 484, § 3, effective July 1. **L. 84:** (1)(d) and (1)(e) amended and (1)(p) and (1)(q) added, p. 373, § 3, effective July 1. **L. 90:** (1)(e), (1)(j), (1)(k), and (1)(m) amended, p. 1837, § 8, effective May 31. **L. 96:** (1)(q) amended, p. 185, § 2, effective April 8. **L. 97:** (2) added, p. 432, § 8, effective April 24. **L. 2003:** (1)(m) amended, p. 1207, § 7, effective July 1. **L. 2004:** (1)(m) and (1)(n) amended, p. 130, § 2, effective July 1.

Cross references: For the "Self-Employed Individuals Tax Retirement Act of 1962", see Pub.L. 87-792, 76 Stat. 809; for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.

11-30-105. Exclusive right to use "credit union" in title. A credit union organized in accordance with the provisions of this article, or in accordance with the laws of the United States or the laws of another state or territory of the United States, has the exclusive right to use the words "credit union" in its name or title; but an association composed of credit unions transacting business in this state may use the words "credit union" in its name or title. Any other person, association, corporation, or partnership using the words "credit union" in its name or title is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment.

Source: L. 31: p. 297, § 3. **CSA:** C. 47, § 3. **L. 41:** p. 371, § 3. **CRS 53:** § 38-1-3. **C.R.S. 1963:** § 38-1-3. **L. 92:** Entire section amended, p. 934, § 1, effective April 2.

11-30-106. Examinations - reports - powers of commissioner. (1) (a) Credit unions shall be under the supervision of the commissioner. Every credit union shall be examined by the commissioner at least once during any eighteen-month period. The commissioner shall assess each credit union an amount to cover the expenses of the division attributable to the supervision of state-chartered credit unions subject to the commissioner's jurisdiction. The amount assessed shall be determined according to a schedule or schedules or any other method established by the commissioner to be appropriate, but the assessment shall be at the same rate for all credit unions; except that the commissioner may establish a separate rate schedule for corporate and central credit unions. The commissioner may waive the payment of all or a portion of the assessment with respect to the year in which a charter is issued or cancelled or in which a final distribution is made in liquidation.

(b) The commissioner shall establish the division's annual assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division for each fiscal year.

(c) Repealed.

(2) Annually, every credit union shall file a financial report with the commissioner on a date established by the commissioner, in a form prescribed by the commissioner. Said commissioner may require that additional reports be filed. For failure to file a report when due, unless excused for cause, a credit union shall pay to said commissioner a penalty, as prescribed by regulation, for each day of delinquency in filing.

(3) The board may issue rules and regulations necessary for the administration and enforcement of this article and shall reference the same to the sections of this article to which they apply. Such rules and regulations shall be promulgated pursuant to the provisions of article 4 of title 24, C.R.S., and a copy of such rules and regulations and of each order shall be mailed to each credit union in this state at least thirty days prior to the effective date thereof, except as to temporary or emergency rules.

(4) Except in cases where there is a statutory right to appeal to the board, any person aggrieved and directly affected by a final order of the commissioner may obtain judicial review thereof by filing an action for review with the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S., within thirty days after the date of issuance of such order.

(5) The commissioner has the power to charge off the whole or any part of any asset of any credit union which could not be lawfully acquired by it and to reduce the value of any asset of a credit union to its market value or to a reasonable value, if no market value can be established. If the losses of a credit union exceed its undivided earnings and reserve funds so that the reasonable value of its assets is less than the total amount due the shareholders, the commissioner may order a reduction in the liability to each shareholder, dividing the loss proportionately among all shareholders. Any reduction from each share account shall be a specified percentage sufficient to correct the impaired condition and preserve the solvency of the credit union. If thereafter the credit union shall realize from such assets a greater amount than that fixed by the order of reduction, such excess shall be divided proportionately among the shareholders to whom liability was previously reduced but only to the extent of such reduction.

(6) The commissioner has the power to issue subpoenas and require attendance of any and all officers, directors, agents, and employees of any credit union and such other witnesses as he may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the commissioner, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the commissioner. Upon application of the commissioner, any person served with a subpoena issued by him may be required, by order of the district court of the county where the credit union has its principal office, to appear and answer such questions as may be put to him by the commissioner and be required to produce such books, papers, or documents in his possession as may be required by the commissioner.

(7) The commissioner may issue cease-and-desist orders if the commissioner determines from competent and substantial evidence that a credit union is engaged or has engaged, or when the commissioner has reasonable cause to believe the credit union is about to engage, in an unsafe or unsound practice or is violating or has violated, or when the commissioner has reasonable cause to believe the credit union is about to violate, a material provision of any law or

regulation or any condition imposed in writing by the commissioner or any written agreement made with the commissioner. Any person aggrieved by a final order of the commissioner issued pursuant to this section may appeal such order to the financial services board pursuant to section 11-44-101.8.

(8) (a) (I) The commissioner may suspend or remove any director, officer, or employee of a credit union when the commissioner determines such person has:

(A) Violated the provisions of this article or a lawful regulation or order issued thereunder;

(B) Engaged or participated in any unsafe or unsound practice in the conduct of credit union business;

(C) Committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the credit union, and the credit union has suffered or will probably suffer financial loss or other damage, or the interests of members or account holders may be seriously prejudiced thereby; or

(D) Received financial gain by reason of a violation, practice, or breach of fiduciary duty that involved personal dishonesty or demonstrated a willful or continuing disregard for the safety or soundness of the credit union.

(II) The commissioner may suspend or remove any director, officer, or employee of a credit union who, under the laws of this state, the United States, or any other state or territory of the United States:

(A) Has entered a plea of guilty or nolo contendere to or been convicted of a crime involving theft or fraud that is classified as a felony; or

(B) Is subject to an order removing or suspending such individual from office, or prohibiting such individual's participation in the conduct of the affairs of any credit union, savings and loan association, bank, or other financial institution.

(b) (I) A suspension or removal order shall specify the grounds for the suspension or removal. A copy of the order shall be sent to the credit union concerned and to each member of its board of directors. The commissioner shall send written notice by certified mail, return receipt requested, to any person affected by paragraph (a) of this subsection (8), at least ten days prior to a hearing held pursuant to section 24-4-105, C.R.S., at which the commissioner shall preside.

(II) If the commissioner determines that extraordinary circumstances require immediate action, a person may be suspended or removed under paragraph (a) of this subsection (8) without notice or a hearing, but the commissioner shall conduct a hearing under section 24-4-105, C.R.S., within thirty days after such suspension or removal.

(III) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

(IV) Any person who performs any duty or exercises any power of a credit union after receipt of a suspension or removal order under paragraph (a) of this subsection (8) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 31: p. 298, § 6. **CSA:** C. 47, § 6. **L. 41:** p. 373, § 6. **L. 51:** p. 314, § 1. **CRS 53:** § 38-1-6. **L. 56:** p. 132, § 1. **L. 62:** p. 142, § 1. **C.R.S. 1963:** § 38-1-6. **L. 67:** p. 317, § 5. **L.**

75: (1) amended, p. 380, § 4, effective July 1. **L. 81:** (1) amended, p. 615, § 1, effective July 1. **L. 83:** (2) amended, p. 484, § 4, effective July 1. **L. 89:** (1) and (2) amended and (6) to (8) added, p. 608, § 2, effective April 19. **L. 92:** (1) amended, p. 928, § 5, effective February 25. **L. 93:** (3) and (7) amended, p. 1445, § 5, effective June 6. **L. 94:** (1)(b), (2), (4), and (8) amended, p. 63, § 2, effective July 1. **L. 95:** (1)(a) amended, p. 85, § 1, effective March 23. **L. 96:** (1)(c) repealed, p. 185, § 3, effective April 8. **L. 2000:** (2) amended, p. 155, § 1, effective August 2. **L. 2002:** (8)(b)(IV) amended, p. 1470, § 35, effective October 1. **L. 2004:** IP(8)(a)(I) amended, p. 130, § 3, effective July 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (8)(b)(IV), see section 1 of chapter 318, Session Laws of Colorado 2002.

11-30-106.5. Assessment of civil money penalties. (1) (a) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the commissioner may assess and collect a civil money penalty from any person who has violated any final cease-and-desist order issued by the commissioner pursuant to section 11-30-106 (7) or any suspension order issued pursuant to section 11-30-120.

(b) For the purposes of this section, a violation includes, but is not limited to, any action, by any person alone or with another person, which causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(c) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty may be appealed to the financial services board pursuant to section 11-44-101.8. On appeal, the board may consider, among other matters, whether the civil money penalty assessed by the commissioner is appropriate considering the financial resources of the person assessed.

(3) In determining the amount of the civil money penalty to be assessed, the commissioner shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, and such other matters as the commissioner may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed is determined by the commissioner to be in violation of a cease-and-desist order or an order of suspension or removal. Alternatively, the commissioner may assess a civil money penalty for such violation in a lump-sum amount not to exceed fifty thousand dollars.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the commissioner; except that the commissioner may, in the commissioner's discretion, compromise, modify, or set aside any civil money penalty. If any person fails to pay an

assessment after it has become due and payable, the commissioner may refer the matter to the attorney general, who shall recover the amount assessed by action in the district court for the city and county of Denver. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

Source: L. 89: Entire section added, p. 610, § 3, effective April 19. **L. 93:** (2) amended, p. 1445, § 6, effective June 6. **L. 94:** (3) amended, p. 64, § 3, effective July 1. **L. 99:** Entire section amended, p. 1008, § 1, effective August 4.

11-30-107. Fiscal year - meetings. The fiscal year of all credit unions shall end December 31 of each year. The annual meeting shall be held within five months after the close of said fiscal year. Special meetings may be held in the manner indicated in the bylaws. At all meetings a member shall have but a single vote, whatever his share holdings. There shall be no voting by proxy, but a member other than a natural person may cast a single vote through a delegated agent.

Source: L. 31: p. 299, § 7. **CSA:** C. 47, § 7. **L. 41:** p. 374, § 7. **CRS 53:** § 38-1-7. **C.R.S. 1963:** § 38-1-7. **L. 67:** p. 318, § 6. **L. 79:** Entire section amended, p. 416, § 1, effective July 1.

11-30-108. Elections. (1) At the annual meeting, or by other proper balloting within thirty days before and twenty days after the annual meeting, the credit union members shall elect from the membership a board of directors of not less than five members. A supervisory committee of not less than three members and a credit committee of not less than three members or a credit officer shall be elected by the credit union members or appointed by the board of directors as provided in the bylaws of the credit union. All such persons shall hold office for such terms respectively as the bylaws provide and until successors are elected or appointed and qualify. In addition, one or more alternate members of the credit committee may be elected by the credit union members or appointed by the board of directors to serve in the absence of members of the credit committee. No member shall hold more than one elected office simultaneously. A record of the names and addresses of the members of the board and such committees, such alternates, and the officers shall be filed with the commissioner within twenty days after their election or appointment.

(2) Notwithstanding subsection (1) of this section, the board of directors may, as provided in the bylaws, appoint an audit committee in lieu of a supervisory committee to carry out the duties and responsibilities of the supervisory committee as contained in section 11-30-111. A record of the names and addresses of the members of the audit committee must be filed with the commissioner within twenty days after their election or appointment.

Source: L. 31: p. 300, § 8. **CSA:** C. 47, § 8. **L. 41:** p. 374, § 8. **L. 47:** p. 379, § 1. **CRS 53:** § 38-1-8. **C.R.S. 1963:** § 38-1-8. **L. 67:** p. 318, § 7. **L. 77:** Entire section amended, p. 567, § 1, effective July 1. **L. 84:** Entire section amended, p. 373, § 4, effective July 1. **L. 2004:** Entire section amended, p. 131, § 5, effective July 1. **L. 2016:** Entire section amended, (SB 16-125), ch. 99, p. 286, § 1, effective August 10.

11-30-109. Directors and officers - compensation. (1) At its first meeting after the annual election, the board of directors shall elect from its own number an executive officer, who may be designated as chair of the board or president; a vice-chair of the board or one or more vice-presidents; a treasurer; and a secretary. The offices of secretary and treasurer may be combined into one office known as secretary-treasurer. The persons so elected shall be the executive officers of the corporation. The board of directors shall be responsible for the general management of the affairs of the credit union, and more specifically to:

(a) Act on applications for membership, or to appoint from among the membership of the credit union, one or more membership officers who may act on applications for membership;

(b) Set policies, terms, and conditions under which loans will be available to members, determine interest rates on loans and on deposits, determine whether an interest refund shall be made to members, and declare the rates of any such interest refund and the classes of loans to which such refund shall apply. Any such refund shall be paid from interest income of the credit union and shall be paid only to members who paid interest to the credit union during the period and who were members of record of the credit union at the close of such period, but no refund shall be paid to a member whose loan is delinquent more than the period of time specified by the board of directors.

(c) Fix the amount of the blanket surety bond which shall cover all elected and appointed officials and all employees of the credit union. Such blanket surety bond shall be in an amount equal to the assets of the credit union as of December 31 of the previous year or one million dollars, whichever is less, or in such other amount as may be prescribed by the commissioner.

(d) Declare dividends and, subject to approval by the commissioner, adopt amendments to the bylaws of the credit union;

(e) Determine when any vacancy exists in the board of directors or in the credit committee, and to fill vacancies in the board and in the credit committee until successors are elected or appointed and qualify, and to appoint one or more assistant secretaries or treasurers or both, as needed; and the board may employ an officer in charge of operations whose title shall be either president or general manager, or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union;

(f) Determine the maximum individual share holdings in the credit union and the maximum amount of individual loans which can be made either with or without security;

(g) Have charge of and supervise investments of credit union funds;

(h) Maintain records pursuant to rules promulgated by the financial services board concerning how long records should be retained and in what manner;

(i) Provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee and of loan officers appointed by the credit committee, and to establish any salary which shall be paid to the treasurer or general manager.

(2) The duties of the officers shall be as determined in the bylaws; except that the treasurer shall be the general manager if none has been employed pursuant to paragraph (e) of subsection (1) of this section.

(3) A credit union may reasonably compensate a director for his or her services to the credit union. Providing reasonable life, health, accident, and similar insurance protection is not considered compensation. Directors, officers, and committee members may be reimbursed for necessary expenses incidental to the performance of the official business of the credit union.

Source: L. 31: p. 300, § 9. **CSA:** C. 47, § 9. **L. 41:** p. 374, § 9. **L. 51:** p. 315, § 2. **CRS 53:** § 38-1-9. **C.R.S. 1963:** § 38-1-9. **L. 67:** p. 318, § 8. **L. 77:** IP(1) and (1)(e) amended, p. 567, § 2, effective July 1. **L. 81:** (1)(b) amended, p. 612, § 2, effective July 1. **L. 83:** (1)(b) amended, p. 484, § 5, effective July 1. **L. 84:** IP(1), (1)(b), (1)(c), (1)(g), and (2) amended and (3) added, p. 374, § 5, effective July 1. **L. 90:** (1)(c) amended, p. 1838, § 9, effective May 31. **L. 94:** IP(1) and (1)(b) amended, p. 65, § 4, effective July 1. **L. 2004:** (1)(h) amended, p. 130, § 4, effective July 1. **L. 2016:** (3) amended, (SB 16-125), ch. 99, p. 287, § 2, effective August 10.

11-30-110. Credit committee - credit officer. The credit committee or credit officer shall have the general supervision of all loans to members. Applications for loans shall be on a form approved by the credit committee or the credit officer. At least a majority of the members of the credit committee or the credit officer shall pass and approve or disapprove all loans; except that the credit committee or the credit officer may appoint one or more loan officers and delegate to the same the power to approve or disapprove loans which are within limits prescribed by the credit committee or the credit officer. Each loan officer shall furnish to the credit committee or the credit officer a record of each loan application received by him within seven days after the date of filing of the application. All loans not approved by a loan officer may be considered by the credit committee or the credit officer. No member of the credit committee shall receive any compensation as a loan officer or be employed by the credit union in any other capacity. A credit officer may receive compensation in connection with the performance of his duties. The credit committee shall meet as often as may be necessary after due notice to each member. Vacancies in the credit committee shall be filled pursuant to section 11-30-109 (1)(e).

Source: L. 31: p. 301, § 10. **CSA:** C. 47, § 10. **L. 41:** p. 375, § 10. **CRS 53:** § 38-1-10. **C.R.S. 1963:** § 38-1-10. **L. 67:** p. 319, § 9. **L. 75:** Entire section amended, p. 394, § 2, effective June 16. **L. 79:** Entire section amended, p. 416, § 2, effective July 1.

11-30-111. Supervisory committee. (1) The supervisory committee shall:

(a) Make, or cause to be made, a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of the annual audit to the board of directors and a summary of that report to the members at the next annual meeting. The committee shall make or cause to be made such supplementary audits or examinations as it deems necessary.

(b) Make an annual report and submit the same at the annual meeting of the members;

(c) By unanimous vote of the committee if it deems such action to be necessary for the proper conduct of the credit union, suspend any officer or director of the credit union, or any member of the credit committee, and shall call a special meeting of the members of the credit union not less than seven nor more than fourteen days thereafter to act on such suspension. The members at said meeting may sustain any such suspension and remove any such officer, director, or member of the credit committee permanently and elect a successor thereto for the unexpired term of office or may reinstate any such person.

(d) Biennially verify, or cause to be verified, by a random sampling or by verification of all members' accounts, the members' share, deposit, and loan accounts. Such verification may be obtained by either sending or causing to be sent a statement of account to each member or by such means as may be specified by the commissioner.

(2) By majority vote, the supervisory committee may call a special meeting of the members of the credit union to consider any violation of any provision of this article, the bylaws, or any rule or requirement of the credit union, by any officer, director, member of any committee, or any member, which the committee deems to be detrimental to the credit union. The supervisory committee shall fill vacancies in its own membership until the next annual election of the credit union.

Source: L. 31: p. 301, § 11. **CSA:** C. 47, § 11. **L. 41:** p. 375, § 11. **L. 51:** p. 315, § 3. **CRS 53:** § 38-1-11. **C.R.S. 1963:** § 38-1-11. **L. 67:** p. 319, § 10. **L. 75:** (1)(a) amended, p. 396, § 1, effective June 16. **L. 84:** (1)(a) amended, p. 375, § 6, effective July 1. **L. 95:** (1)(d) amended, p. 85, § 2, effective March 23. **L. 2013:** (1)(d) amended, (SB 13-159), ch. 193, p. 791, § 4, effective May 11.

11-30-112. Capital. The capital of a credit union shall consist of the payments that have been made to it in shares by the several members thereof. The credit union has a lien on the shares and deposits of a member for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee and an annual membership fee, but such fees shall be uniform to all members.

Source: L. 31: p. 302, § 12. **CSA:** C. 47, § 12. **L. 41:** p. 376, § 12. **CRS 53:** § 38-1-12. **C.R.S. 1963:** § 38-1-12. **L. 79:** Entire section amended, p. 417, § 3, effective July 1. **L. 83:** Entire section amended, p. 485, § 6, effective July 1.

11-30-113. Minors. Shares may be issued and deposits received in the name of a minor. A member who is a minor shall be entitled to withdraw or pledge any shares owned by him and to receive from the credit union any and all dividends, or other moneys, at any time the same become due, in the same manner and subject to the same conditions as an adult, and any receipt or acquittance signed by such a minor shall constitute a valid release and discharge to the credit union for the payment of such moneys. The board of directors of the credit union may provide in the bylaws of the credit union a minimum age of any minor to be eligible for membership in the credit union and to vote at any meeting of the members.

Source: L. 31: p. 302, § 13. **CSA:** C. 47, § 13. **L. 41:** p. 376, § 13. **CRS 53:** § 38-1-13. **C.R.S. 1963:** § 38-1-13. **L. 67:** p. 320, § 11.

11-30-114. Rates. (Repealed)

Source: L. 31: p. 302, § 14. **CSA:** C. 47, § 14. **L. 41:** p. 376, § 14. **L. 51:** p. 315, § 4. **CRS 53:** § 38-1-14. **C.R.S. 1963:** § 38-1-14. **L. 80:** Entire section amended, p. 469, § 1, effective March 10. **L. 85:** Entire section repealed, p. 398, § 1, effective March 1.

11-30-115. Power to borrow and loan money. A credit union may borrow from any source a total sum which shall not exceed fifty percent of its shares, deposits, and undivided earnings. No credit union shall loan more than ten percent of its assets to any member or to another credit union.

Source: L. 31: p. 303, § 15. **CSA:** C. 47, § 15. **L. 41:** p. 376, § 15. **L. 53:** p. 239, § 1. **CRS 53:** § 38-1-15. **C.R.S. 1963:** § 38-1-15. **L. 67:** p. 320, § 12. **L. 84:** Entire section amended, p. 375, § 7, effective July 1.

11-30-116. Loans. A credit union may make loans to members subject to the provisions of this article and the bylaws of the credit union. A borrower may repay a loan in whole or in part any day the office of the credit union is open for business. A credit union may make loans to its own directors, credit officers, or members of its own supervisory committee or credit committee, but no such loan or aggregate of loans to any one director, credit officer, or committee member that exceeds twenty thousand dollars plus pledged shares may be made unless approved by the board of directors.

Source: L. 31: p. 303, § 16. **CSA:** C. 47, § 16. **L. 41:** p. 376, § 16. **L. 51:** p. 315, § 5. **L. 53:** p. 239, § 2. **CRS 53:** § 38-1-16. **C.R.S. 1963:** § 38-1-16. **L. 67:** p. 320, § 13. **L. 83:** Entire section amended, p. 485, § 7, effective July 1. **L. 84:** Entire section amended, p. 375, § 8, effective July 1. **L. 87:** Entire section amended, p. 464, § 1, effective May 8. **L. 2004:** Entire section amended, p. 131, § 6, effective July 1.

11-30-117. Reserves.

(1) (Deleted by amendment, L. 2004, p. 131, § 7, effective July 1, 2004.)

(2) The board may require reserves to protect the interest of members by general rules, including reserve requirements for any privately insured credit union. In addition, the commissioner may require special reserves by an order directed to an individual credit union in any special case.

Source: L. 31: p. 303, § 17. **CSA:** C. 47, § 17. **L. 41:** p. 377, § 17. **L. 45:** p. 308, § 2. **CRS 53:** § 38-1-17. **C.R.S. 1963:** § 38-1-17. **L. 67:** p. 321, § 14. **L. 79:** Entire section R&RE, p. 417, § 4, effective July 1. **L. 90:** (2) amended, p. 1838, § 10, effective May 31. **L. 2004:** Entire section amended, p. 131, § 7, effective July 1.

11-30-117.5. Share insurance required - confidentiality. (1) Each credit union shall apply for insurance on its shares and deposits as provided by the national credit union administration board under section 201 of the "Federal Credit Union Act", 12 U.S.C. sec. 1781, or comparable insurance approved by the commissioner. Credit unions with debt and equity capital consisting primarily of funds from other credit unions shall not be subject to the requirements of this section.

(2) Any credit union which is denied a commitment for such insurance shall, within thirty days of such denial, commence steps to liquidate or merge with an insured credit union or shall apply in writing to the commissioner for an extension of time to obtain an insurance commitment. The commissioner shall grant one or more extensions of time to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to satisfy the conditions precedent to the issuance of an insurance commitment.

(3) No credit union shall be granted a charter by the commissioner unless such credit union has applied for insurance on its shares and deposits as provided in this section.

(4) Neither the commissioner, the commissioner's deputy, nor any other person appointed by the commissioner shall divulge any information acquired in the discharge of the person's duties; except that:

(a) A person specified in the introductory portion to this subsection (4) may divulge information acquired in the discharge of the person's duties if doing so is made necessary by law or under order of court in an action involving the division or in criminal actions;

(b) Any party entitled to appear in a hearing on an application for a community credit union charter shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws;

(c) The commissioner may furnish information as to the condition of a credit union to the national credit union administration board or its successors, a qualified insuring organization, a liquidating agent appointed by the commissioner, a federal home loan bank, a federal reserve bank, the division of banking, the executive director of the department of regulatory agencies, or a department or division of any other state having supervisory authority over credit unions and may accept any report of examination made on behalf of such board, organization, liquidating agent, bank, department, or division;

(d) The commissioner may give records or information in the commissioner's possession to a licensing agency within the department of regulatory agencies relating to possible misconduct by a person or entity licensed by said agency;

(e) The board, the commissioner, and their respective designees may exchange information obtained by the division as to possible criminal violations of any law relating to the activities of a credit union with the appropriate law enforcement agencies; and

(f) Notwithstanding any provision of this article to the contrary, the commissioner may disclose any information in the records of the division or acquired by the commissioner in the discharge of the commissioner's duties that is available from the national credit union administration board or its successors, or the disclosure of which has been specifically authorized by the board of directors of the credit union to which such information relates. Nothing in this section shall be construed to authorize the board of directors of a credit union to waive any privileges that belong solely to the financial services board, the division, or its employees.

Source: L. 81: Entire section added, p. 616, § 2, effective July 1. **L. 89:** (4) amended, p. 611, § 4, effective April 19. **L. 93:** (4) amended, p. 1446, § 7, effective June 6. **L. 94:** (1) and (3) amended, p. 65, § 5, effective July 1. **L. 99:** (4) amended, p. 1009, § 2, effective August 4. **L. 2004:** (4) amended, p. 132, § 8, effective July 1. **L. 2007:** (4) amended, p. 2020, § 13, effective June 1. **L. 2008:** (4) amended, p. 179, § 1, effective August 5.

11-30-118. Dividends. At such intervals and for such periods of time as the board of directors may authorize and after provision for the required reserves, the board of directors may declare a dividend. Dividends may be paid at various rates on different classes of shares, and dividend credit may be accrued on different classes of shares, as determined by the board of directors. Dividends shall not be paid in excess of available earnings.

Source: L. 31: p. 303, § 18. **CSA:** C. 47, § 18. **L. 41:** p. 377, § 18. **L. 45:** p. 309, § 3. **L. 51:** p. 315, § 6. **CRS 53:** § 38-1-18. **C.R.S. 1963:** § 38-1-18. **L. 67:** p. 321, § 15. **L. 75:** Entire

section amended, p. 395, § 3, effective June 16. **L. 81:** Entire section amended, p. 613, § 3, effective July 1. **L. 83:** Entire section amended, p. 485, § 8, effective July 1. **L. 84:** Entire section amended, p. 375, § 9, effective July 1.

11-30-118.5. Preauthorized transfers - credit union must have written authorization. (Repealed)

Source: L. 88: Entire section added, p. 345, § 9, effective July 1. **L. 89:** Entire section repealed, p. 592, § 1, effective April 7.

11-30-119. Expulsion or withdrawal of members. (1) Any member may withdraw from the credit union at any time, but notice of withdrawal may be required in the bylaws. The board of directors may expel any member from membership in the credit union if such member fails to comply with the written rules and policies of the credit union as adopted and made available to the membership.

(2) A member shall not be expelled until the member has been informed in writing of the reasons for the expulsion and has had reasonable opportunity to be heard.

(3) All amounts paid on shares or as deposits of an expelled member or withdrawing member, together with any dividends or interest accredited thereto, to the date thereof, as funds become available and after deducting all amounts due from the member to the credit union, shall be paid to such member. The credit union may require sixty days' written notice of intention to withdraw shares and thirty days' written notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but shall not, by such expulsion or withdrawal, be released from any remaining liability to the credit union.

(4) (Deleted by amendment, L. 2004, p. 133, § 9, effective July 1, 2004.)

Source: L. 31: p. 304, § 19. **CSA:** C. 47, § 19. **L. 41:** p. 377, § 19. **CRS 53:** § 38-1-19. **C.R.S. 1963:** § 38-1-19. **L. 67:** p. 322, § 16. **L. 81:** Entire section amended, p. 613, § 4, effective July 1. **L. 2001:** Entire section amended, p. 200, § 1, effective September 1. **L. 2004:** (3) and (4) amended, p. 133, § 9, effective July 1.

11-30-120. Suspension - liquidation - procedures. (1) (a) If it appears that any credit union is insolvent, or that it has willfully violated any provision of this article, or that it is operating in an unsafe or unsound manner, the commissioner may issue his order for such credit union to show cause why its operations should not be suspended until such insolvency, violation, or manner of operation is rectified and afford the credit union an opportunity for a hearing not less than ten days nor more than twenty days after such order. Such order shall be in writing and delivered by registered or certified mail. If the credit union fails to answer such order or if any officer or director of or attorney for the credit union fails to appear at the time set for the hearing, the commissioner either may revoke the certificate of incorporation of the credit union or may order the immediate suspension of operations of the credit union, except the collection of payments on outstanding loans or other obligations due the credit union, or both, and may enforce any such order by an action, filed in the district court of the judicial district wherein the principal office of the credit union is located, seeking to enjoin further operations or to appoint a receiver for such credit union.

(b) Any credit union to which an order to show cause has been issued pursuant to paragraph (a) of this subsection (1) may include with any answer or may present at any hearing resulting from such order its proposed plan to continue operations and rectify the insolvency, violation, or manner of operation specified in said order; or the credit union may request that it be dissolved and liquidated and a liquidating agent be appointed by the commissioner. Any credit union may request a stay of execution of any order of the commissioner revoking its certificate of incorporation or suspending its operations by filing an action in the district court for the judicial district in which the principal office of the credit union is located, within ten days after the issuance of such order.

(c) If the commissioner revokes the charter of the credit union, he shall appoint a liquidating agent to liquidate the assets of the credit union pursuant to subsection (3) of this section.

(d) If in the opinion of the board an emergency exists which may result in serious losses to the members, the board may revoke the charter of a credit union and immediately appoint a liquidating agent without notice or a hearing. Notice of the board's emergency determination shall be posted on the premises of the credit union that is the subject of the determination. Within ten days after an emergency determination by the board, the credit union or the directors of the credit union may file an application with the board to rescind such determination. The filing of an application to rescind a determination shall not act as a stay of the board's action pursuant to this subsection (1). The board shall grant the application if it finds that its action was unauthorized and upon granting an application shall rescind its action and restore the credit union to its board of directors. If no application is filed within ten days after the board's emergency determination, all action taken by the board shall be final.

(1.5) (a) The commissioner may appoint himself or herself or a third party as conservator of any credit union and immediately take possession and control of the business and assets of the credit union if the commissioner determines that:

(I) Such action is necessary to conserve the assets of the credit union or to protect the interests of its members from acts or omissions of the existing management;

(II) The credit union, by a resolution of its board of directors, consents to such action;

(III) There is a willful violation of a cease-and-desist order that results in the credit union being operated in an unsafe or unsound manner; or

(IV) The credit union is significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized.

(b) The commissioner may appoint a conservator and take immediate possession of the credit union without prior notice or a hearing; except that, within ten days after the conservator is appointed, the credit union may file an appeal with the board requesting the board to rescind the commissioner's appointment of a conservator. Upon receipt of a timely appeal, the board shall set a date for a hearing and determine whether the commissioner's appointment should be rescinded; except that such appeal shall not act as a stay of the commissioner's action. If the board finds the commissioner's action was unauthorized, the board shall restore control of the credit union to its board of directors. If no appeal is filed within ten days after the commissioner's appointment of a conservator, any action taken by the commissioner shall be final.

(c) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to this subsection (1.5) shall be exempt from any provision of law requiring that

proceedings of the board be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the credit union.

(d) The conservator shall have all the powers of the members, directors, officers, and committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets as directed by the commissioner. The conservator shall conduct the business of the credit union and make regular reports to the commissioner until such time as the commissioner has determined that the purposes of conservatorship have been accomplished and the credit union should be returned to the control of its board of directors. All costs incident to the conservatorship shall be paid out of the assets of the credit union. If the commissioner determines that the purposes of the conservatorship will not be accomplished, the commissioner may proceed with the involuntary liquidation of the credit union in the manner described in subsection (1) of this section.

(e) If a conservator is appointed, and is other than the national credit union administration, another approved insurer, or an employee of the division of financial services, the conservator and any assistants shall provide a bond, payable to the credit union and executed by a surety company authorized to do business in this state, which meets with the approval of the financial services board, for the faithful discharge of their duties in connection with such conservatorship and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the credit union. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof. This requirement may be deemed met if the financial services board determines that the credit union's fidelity bond covers the conservator and any assistants.

(2) Any credit union may be voluntarily dissolved and liquidated upon majority vote of the entire membership thereof at a meeting especially called for the purpose or at the annual meeting where notice of such proposed action is mailed to the members at least thirty days prior to such meeting. In either event, a copy of the notice shall be delivered to the commissioner not less than ten days prior to such meeting. Any member of a credit union may cast his ballot for or against such dissolution and liquidation by mail within twenty days after such meeting. If a majority of the members of the credit union vote in favor of dissolution and liquidation, the board of directors, within five days after the close of voting, shall notify the commissioner of such action and specify the names and addresses of the directors and officers of the credit union who will conduct the dissolution and liquidation of the credit union. Upon such favorable vote, the credit union shall cease to do business except for the collection of payments on outstanding loans or other obligations due the credit union.

(3) Under any procedure to dissolve and liquidate a credit union pursuant to subsection (1) or (2) of this section, the credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and it may sue and be sued for the enforcement of its debts and operations until its affairs are fully adjusted in liquidation. The assets of the credit union shall be used to pay: First, the expenses incidental to liquidation; second, liabilities due nonmembers; and third, deposits and savings club accounts. Any remaining assets shall be distributed to the members proportionately to the shares held by each member as of the date of dissolution.

(4) Upon the liquidation and distribution of all assets of the credit union which may be reasonably expected to be collectible, the board of directors or the liquidating agent, as the case may be, shall execute in duplicate a certificate of dissolution, prescribed by the commissioner,

upon which date the credit union shall cease to exist, and file the same with the secretary of state.

Source: L. 31: p. 304, § 20. **CSA:** C. 47, § 20. **L. 41:** p. 377, § 20. **L. 51:** p. 316, §§ 7, 8. **CRS 53:** § 38-1-20. **C.R.S. 1963:** § 38-1-20. **L. 67:** p. 322, § 17. **L. 94:** (1)(d) added, p. 65, § 6, effective July 1. **L. 96:** (4) amended, p. 185, § 4, effective April 8. **L. 99:** (1.5) added, p. 1010, § 3, effective August 4.

11-30-120.5. Conversion - state to federal credit union - federal to state credit union. (1) A credit union organized under the provisions of this article may be converted into a federal credit union by complying with the requirements of this section.

(2) (a) The proposition for such conversion shall first be approved by a majority of the directors of the credit union. If so approved, the proposition shall be submitted to a meeting of its members. The notice of such meeting shall be in writing and may be delivered in person to each member or mailed to each member at the address for such member appearing on the records of the credit union. Such delivery or mailing shall be not more than thirty days nor less than seven days prior to the time of the meeting. Approval of the proposition for conversion shall be by the affirmative vote of not less than two-thirds of the members present and voting at the meeting.

(b) A copy of the minutes of such meeting, verified by the affidavits of the president or vice-president and the secretary of the meeting, shall be filed with the administrator within ten days after the meeting.

(3) Within ninety days after such meeting, the credit union shall take such action as may be necessary under the federal credit union act to convert into a federal credit union, and, within ten days after receipt of the federal credit union charter, there shall be filed with the commissioner a copy of the charter thus issued. Upon such filing the credit union shall cease to be a state credit union.

(4) Upon ceasing to be a state credit union, such credit union shall no longer be subject to any of the provisions of the state law under which said credit union was organized; except that the successor federal credit union, being vested with all of the assets, shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(5) A credit union organized under the laws of the United States may be converted into a credit union organized under the laws of this state by complying with all requirements to cease being a federal credit union and doing all acts and obtaining all authorization necessary to organize as a credit union under the provisions of this article.

Source: L. 75: Entire section added, p. 396, § 2, effective June 16. **L. 84:** (5) added, p. 375, § 10, effective July 1. **L. 90:** (3) amended, p. 1838, § 11, effective May 31.

11-30-121. Change in place of business. A credit union may change its place of business to a location outside of the county or city and county in which previously located upon receiving written permission therefor from the commissioner. A credit union may change its place of business within the county or city and county in which previously located by providing written notice of the new address and the effective date of such change to the commissioner.

Source: L. 31: p. 305, § 21. **CSA:** C. 47, § 21. **L. 41:** p. 378, § 21. **L. 51:** p. 316, § 9. **CRS 53:** § 38-1-21. **C.R.S. 1963:** § 38-1-21. **L. 67:** p. 323, § 18.

11-30-122. Merger. (1) The method of merger of two or more credit unions shall be as follows:

(a) (I) The board of directors of the continuing and each merging credit union shall:

(A) Approve a plan for the proposed merger; and

(B) Authorize representatives of each credit union to act on each credit union's behalf to bring about the merger.

(II) The plan shall include such information as the board deems appropriate.

(b) Upon approval of the merger plan by each board of directors for each credit union involved in the transaction, the merger plan, together with the resolutions of each board of directors, shall be submitted to the board. If the board determines that the merger plan complies with the provisions of this article and any applicable rules thereto, the board may approve the merger plan, subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger.

(c) A meeting of the members of each merging credit union involved shall be called for the purpose of considering a merger. Notice of the meeting, including purpose, date, time, place, and ballot of the merger plan shall be given to the entire membership. At such meeting, at least two-thirds of the members present and voting must approve the proposed merger. If any member approves or disapproves the merger by returning a ballot, signed by such member, to the secretary of the credit union at or before the meeting, such ballot for all purposes of this section shall be deemed equivalent to the vote of such member at such meeting, notwithstanding the member is not then present.

(2) The merger shall thereupon be consummated in the following manner:

(a) The duly authorized representatives of each credit union shall execute, in duplicate, a certificate of merger stating:

(I) That the board of directors of each credit union has approved the merger;

(II) That more than two-thirds of the members of each merging credit union have approved the terms and conditions of the proposed merger at a meeting of the members called for that purpose; and

(III) The name and location of the continuing credit union.

(b) The continuing credit union shall prepare and adopt any bylaw amendments required by the board, consistent with the provisions of this article, and execute the same in duplicate.

(c) The certificate above provided for and any required bylaw amendments, both executed in duplicate, shall be forwarded to the board.

(3) (Deleted by amendment, L. 2004, p. 133, § 10, effective July 1, 2004.)

(4) If the board approves the certificate and bylaw amendments, it shall so notify the representatives and shall issue a certificate of approval, attach it to the duplicate certificate of merger, and return the same to the representatives of the participating credit unions together with the duplicate of the bylaw amendments.

(5) The duplicate of the certificate of merger with the board's certificate of approval attached shall be filed with the secretary of state who shall make a record of said certificate and return it, with his certificate of record attached, to the board for permanent record. The fee for said filing shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(6) Thereupon the participating credit unions shall be merged in accordance with the provisions of this section. The continuing credit union shall take over the assets and assume all the liabilities of each merging credit union.

(7) A state chartered credit union may merge with a federal credit union provided all requirements outlined in this article and the appropriate federal credit union regulations have been complied with and approval of such proposed merger has been authorized by the board of directors of each credit union involved.

Source: L. 31: p. 305, § 21. **CSA:** C. 47, § 21. **L. 41:** p. 378, § 21. **L. 51:** p. 316, § 9. **CRS 53:** § 38-1-22. **C.R.S. 1963:** § 38-1-22. **L. 75:** (1) amended and (7) added, p. 397, § 3, effective June 16. **L. 83:** (5) amended, p. 876, § 40, effective July 1. **L. 84:** (2)(a) amended, p. 376, § 11, effective July 1. **L. 90:** (2)(c) and (3) to (5) amended, p. 1838, § 12, effective May 31. **L. 93:** (2)(c) and (3) to (5) amended, p. 1446, § 8, effective June 6. **L. 2004:** (1) to (4) and (6) amended, p. 133, § 10, effective July 1. **L. 2005:** (2)(a) amended, p. 763, § 16, effective June 1.

11-30-123. Taxation. A credit union shall be deemed an institution for savings and, together with all accumulations therein, shall not be subject to taxation except as to real estate owned. The shares of a credit union shall not be subject to a stock transfer tax when issued by the corporation or when transferred from one member to another.

Source: L. 31: p. 305, § 22. **CSA:** C. 47, § 22. **L. 41:** p. 378, § 22. **CRS 53:** § 38-1-23. **C.R.S. 1963:** § 38-1-23.

11-30-124. Transfer of functions - conforming of statutes. (1) As of April 11, 1988, the powers, duties, and functions of the state bank commissioner under this article are transferred to the state commissioner of financial services.

(2) On April 11, 1988, all employees of the division of banking whose principal duties are concerned with the powers, duties, and functions transferred to the state commissioner of financial services and whose employment in the division of financial services is deemed necessary by the executive director of the department of regulatory agencies to carry out the purposes of this article are transferred to the division of financial services and shall become employees thereof. Such employees shall retain all rights to state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous.

(3) On April 11, 1988, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the division of banking pertaining to the powers, duties, and functions transferred to the state commissioner of financial services pursuant to this section shall be transferred to the division of financial services and shall become the property thereof.

(4) Whenever the state bank commissioner or the division of banking is referred to or designated by any contract or other document in connection with the powers, duties, and functions transferred to the state commissioner of financial services, such reference or designation shall be deemed to apply to the state commissioner of financial services or the division of financial services, as the case may be. All contracts entered into by the state bank commissioner or the division of banking prior to April 11, 1988, in connection with the powers,

duties, and functions transferred to the state commissioner of financial services are hereby validated, with the state commissioner of financial services succeeding to all the rights and obligations of such contracts.

(5) On April 11, 1988, any unexpended appropriations of funds for the current fiscal year made to the division of banking and allocated for the administration and enforcement of this article shall be transferred to the division of financial services. The executive director of the department of regulatory agencies shall have the final authority to determine the allocation of funds for purposes of the transfer under this subsection (5).

(6) The revisor of statutes is authorized to change all references to the state bank commissioner in this article to refer to the state commissioner of financial services and to change all references to the division of banking in this article to refer to the division of financial services.

Source: L. 88: Entire section added, p. 416, § 6, effective April 11. **L. 89:** Entire section amended, p. 618, § 9, effective July 1.

11-30-125. Notice of branch opening and closing. (1) Any credit union that has its principal place of business in this state, upon thirty days' prior written notice to the state commissioner of financial services, may establish one or more de novo branches anywhere in this state.

(2) No later than ninety days prior to the proposed date of any branch closing, a notice of branch closing shall be filed with the commissioner. The notice of branch closing shall include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

Source: L. 2004: Entire section added, p. 135, § 11, effective July 1.

11-30-126. Trust account - limited documentation required - certificate of trust. (1) For any transaction with any credit union in this state by one or more persons expressly acting as a trustee or trustees for one or more other named person or persons pursuant to or purporting to be pursuant to a written trust agreement, a trustee may provide the credit union with a certificate of trust to evidence the trust relationship. The certificate of trust must be a duly acknowledged affidavit executed by any trustee and must include the following:

(a) A statement that the trust exists and the date the trust instrument was executed;

(b) The identity of the settlor;

(c) The identity and address of the current acting trustee;

(d) The powers of the trustee in the pending transaction;

(e) A statement whether the trust is revocable and the identity of any person holding the power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or fewer than all cotrustees are required in order to exercise the powers of the trustee;

(g) The name in which title to trust property may be taken; and

(h) Any other information that may be required by the credit union, including an indemnification that is acceptable to the credit union.

(2) If a credit union decides to accept a certificate of trust pursuant to this section:

(a) For a transaction that consists of opening a deposit account, the credit union may administer the account in accordance with the certificate of trust without requiring receipt of a copy of the written trust agreement; and

(b) For a transaction that consists of obtaining, guaranteeing, or encumbering trust property to secure a loan, or entering into any agreement with a credit union, the trustee or trustees shall be conclusively presumed to have had the authority specified in the trust certificate for purposes of determining whether the trustees were acting within their authority in entering into, or causing the trust to enter into, a transaction, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the credit union has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(3) If a credit union decides to accept a certificate of trust in opening a deposit account pursuant to this section, upon the death, resignation, or adjudication of incompetence of all named trustees and successor trustees noted on the certificate of trust, the credit union may withhold disposition of any funds on deposit in the account until receipt of one of the following:

(a) An order by a court of competent jurisdiction directing the disposition of funds;

(b) A newly executed certificate of trust created pursuant to this section from a person acting or purporting to act as a newly appointed successor trustee under the same trust; or

(c) Other documentation that establishes to the satisfaction of the credit union the manner in which the funds are to be administered or distributed.

(4) If a credit union decides to accept a certificate of trust in opening a deposit account pursuant to this section, the credit union shall not be liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the credit union has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(5) Nothing in this section obligates a credit union to enter into a transaction with a trustee who refuses to furnish the credit union with a copy of a written trust agreement. In addition, nothing in this section shall be construed to prohibit a credit union from requesting additional information in order to enter into a transaction with a trustee, including a request that the certificate of trust be executed by all trustees.

(6) Knowledge of the terms of a written trust agreement may not be inferred solely from the fact that a copy of all or part of a written trust agreement is held by the person relying upon the certification or affidavit.

Source: L. 2017: Entire section added, (HB 17-1157), ch. 77, p. 242, § 2, effective March 23.

MARIJUANA FINANCIAL SERVICES COOPERATIVES

ARTICLE 33

Marijuana Financial Services Cooperatives

11-33-101. Short title. This article shall be known and may be cited as the "Marijuana Financial Services Cooperatives Act".

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1621, § 1, effective June 6.

11-33-102. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) Because marijuana is currently illegal to grow, possess, or sell under federal law, financial institutions are reluctant to provide financial services to marijuana businesses even when those businesses are properly licensed and fully legal under Colorado law; and

(II) Consequently, most Colorado-licensed marijuana businesses must operate almost entirely on a cash-only basis;

(b) Declares that this lack of access to financial services harms the public interest by:

(I) Stimulating the marijuana black market's competitive advantage by increasing licensed marijuana businesses' costs of doing business;

(II) Increasing the crime rate associated with licensed marijuana businesses due to the large amounts of cash that must be kept on premises; and

(III) Impeding Colorado's ability to track and independently verify the accounting of licensed marijuana businesses' revenues; and

(c) Declares that the enactment of this article, by authorizing the formation of marijuana financial services cooperatives, is necessary for the promotion and preservation of the public welfare.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1621, § 1, effective June 6.

11-33-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Cannabis credit co-op" or "co-op" means a marijuana financial services cooperative.

(2) "Commissioner" means the state commissioner of financial services appointed pursuant to section 11-44-102.

(3) "Division" means the division of financial services created in section 11-44-101.

(4) "Licensed marijuana business" means an entity licensed pursuant to section 12-43.3-402, 12-43.3-403, 12-43.3-404, 12-43.4-402, 12-43.4-403, 12-43.4-404, or 12-43.4-405, C.R.S.

(5) "Member" means a licensed marijuana business, industrial hemp business, or an entity that provides goods or services to a licensed marijuana business and that provides documentation to the co-op of an inability to get comparable services from a bank or credit union, acting through one or more of its current partners, executive officers, or directors.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1622, § 1, effective June 6.

11-33-104. Organization - charter - investigation. (1) A marijuana financial services cooperative, referred to in this article as a cannabis credit co-op, is a cooperative association incorporated pursuant to this article for the twofold purpose of providing specified financial services to its members and creating a source of credit for them.

(2) A co-op may be organized in the following manner:

(a) (I) Any eight or more Colorado residents may execute, in a number of copies to be specified by the commissioner, articles of incorporation that set forth the terms by which they agree to be bound. The articles must state the name and address of the proposed co-op; the

names and addresses of the incorporators; the number of shares subscribed by each incorporator; and the term of existence of the corporation, which may be perpetual.

(II) A co-op may be incorporated and organized for the purpose of providing financial services to licensed marijuana businesses in good standing with the executive director of the state licensing authority created in section 12-43.3-201, C.R.S., industrial hemp businesses, and entities that provide goods or services to licensed marijuana businesses and that provide documentation to the co-op of an inability to get comparable services from a bank or credit union.

(b) The incorporators must prepare, in a number of copies to be specified by the commissioner, proposed bylaws for the governing of the co-op, consistent with this article, on standard forms approved by the commissioner and must define in the bylaws the proposed eligibility requirements for membership.

(c) The proposed bylaws must set forth:

(I) The classes of shares that the co-op is authorized to issue;

(II) If the shares are to consist of one class only, the par value of each of the shares or a statement that all of the shares are without par value, or, if the shares are to be divided into classes, a statement of the par value of the shares of each such class or that the shares are to be without par value; and

(III) If the shares are to be divided into classes, the bylaws must designate each class and a statement of its preferences, limitations, and relative rights with respect to the shares of each other class.

(3) (a) The incorporators must file an application in such form as may be prescribed by the commissioner together with the articles of incorporation and the bylaws with the commissioner, in a number of copies to be specified by the commissioner, upon the payment of a filing fee, as determined from time to time by the commissioner, to cover the reasonable and necessary expense to the division attributable to the application. Within sixty days after the filing and payment of the fee, the commissioner shall determine whether the application complies with this article and whether the co-op would benefit its members and proposed members, consistent with the purposes of this article, the general character and fitness of the incorporators, and the economic advisability of establishing the proposed co-op. Upon such determination and written evidence of approval by the federal reserve system board of governors, the commissioner may approve or deny an application without notice and hearing. If federal deposit insurance provided by the federal deposit insurance corporation or national credit union administration becomes available for banks, savings and loan associations, and credit unions organized to provide financial services to the licensed marijuana industry, the commissioner may determine that the continued issuance of charters under this article is no longer necessary or desirable.

(b) The commissioner shall make or cause to be made an investigation to determine whether the incorporators and organizers are qualified and whether their qualifications, experience concerning federal compliance issues, and financial experience are consistent with their responsibilities and duties. The commissioner shall investigate whether an incorporator or organizer has been convicted of any criminal activity. The commissioner may establish by rule the content of the investigations and what, if any, investigations by other agencies or authorities may be treated as substantially equivalent to and accepted in lieu of an investigation by the commissioner.

(4) (a) Before the commencement of operations or the conduct of business by the co-op, the incorporators of the co-op must provide to the commissioner written evidence of approval by the federal reserve system board of governors for access by the co-op to the federal reserve system in connection with the proposed depository activities of the co-op.

(b) Upon receipt of written evidence of approval by the federal reserve system board of governors:

(I) The commissioner and the executive director of the department of regulatory agencies shall convene a stakeholder group, including all trade associations representing banks and credit unions, to identify conflicts that may exist between this article and other provisions of state law, including title 4, C.R.S. The commissioner shall file a report with the general assembly regarding the conflicts and suggested resolution of the conflicts, and shall not approve an application or issue a certificate pursuant to subparagraph (II) of this paragraph (b) until the general assembly resolves all of the identified state law conflicts.

(II) Upon approval of an application, receipt of all necessary documents, and resolution of any state law conflicts as specified in subparagraph (I) of this paragraph (b), the commissioner shall issue a certificate of approval, in a number of copies equal to the number of copies of the articles of incorporation required to be filed pursuant to paragraph (a) of subsection (2) of this section as specified by the commissioner, and attach a copy of the certificate to each copy of the articles of incorporation. The incorporators must then file approved articles with the secretary of state and a copy of the articles, certified by the secretary of state, with the commissioner. The incorporators must pay to the secretary of state a fee for filing the articles of incorporation and a fee for certifying the copy of articles of incorporation furnished by the incorporators for filing with the commissioner, both fees to be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(5) (a) After the incorporators have filed a certified copy of articles of incorporation with the commissioner, the commissioner shall issue a charter for the co-op, at which time the co-op becomes a body corporate having the powers enumerated in section 7-103-102, C.R.S., except as otherwise provided or limited in this article.

(b) The commissioner shall not permit more than ten co-op charters to be outstanding at any one time.

(6) The initial board of directors of the co-op shall then adopt the bylaws approved by the commissioner.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1622, § 1, effective June 6.

11-33-105. Bylaws. The commissioner shall cause to be prepared a standard form of bylaws, consistent with this article, to be issued to all cannabis credit co-ops. All co-ops shall operate under the standard bylaws; except that each co-op, subject to the approval of the commissioner, must propose its own name, the number of members of its board of directors, its credit committee, its supervisory committee, provisions relative to times and places of meetings of the membership and of the board of directors, provisions relative to the conduct of elections and balloting of the co-op, and modifications of the standard bylaws deemed appropriate by the board of directors for the operation of the individual co-op. The commissioner must approve any and all amendments to the bylaws before they become operative.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1625 § 1, effective June 6.

11-33-106. Membership - disclosures. (1) Cannabis credit co-op membership consists of licensed marijuana businesses, industrial hemp businesses, and entities that provide goods or services to licensed marijuana businesses and that provide documentation to the co-op of an inability to get comparable services from a bank or credit union, that are qualified and elected to membership and that pay any entrance fee; except that the co-op shall perform due diligence on each applicant for membership, including background checks and investigations, as specified in section 11-33-126 before the co-op grants the applicant membership in the co-op.

(2) (a) Co-op membership is limited to only entities that own, operate, or are licensed marijuana businesses in good standing with the executive director of the state licensing authority created in section 12-43.3-201, C.R.S., industrial hemp businesses, and entities that provide goods or services to licensed marijuana businesses and that provide documentation to the co-op of an inability to get comparable services from a bank or credit union.

(b) An individual is not qualified to be a member of a co-op, regardless of whether the individual is licensed, including pursuant to section 12-43.3-401 (1)(d) or 12-43.4-401 (1)(e), C.R.S., to own, operate, manage, or be employed by a licensed marijuana business, either as a sole proprietor or any other form of ownership that gives the individual sole control over the licensed marijuana business.

(3) Once a member no longer owns or operates a licensed marijuana business or industrial hemp business, or no longer provides goods or services to a licensed marijuana business, the member is no longer qualified to be a member and shall promptly terminate its deposits with and repay its loans from the co-op.

(4) (a) Each co-op shall disclose to its members or prospective members that:

(I) Federal law does not authorize financial institutions, including marijuana financial services cooperatives, to accept proceeds from activity that is illegal under federal law, such as that from licensed marijuana businesses;

(II) Deposits with and the capital of the co-op are:

(A) Subject to seizure by the federal government;

(B) Not federally insured;

(C) Not backed by the full faith and credit of the state of Colorado; and

(III) It is not the obligation of the state of Colorado to defend the co-op or its deposits and capital in the event of a seizure.

(b) A co-op shall make the disclosures:

(I) On its website;

(II) In each advertisement or offer of services;

(III) Before accepting an applicant as a member; and

(IV) Before a member accepts a loan from the co-op.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1625, § 1, effective June 6.

11-33-107. Powers. (1) A cannabis credit co-op has the power to:

(a) Receive the savings of its members either as payment on shares or as deposits;

(b) Make loans to its members;

(c) Make loans to other co-ops as provided in this article;

(d) Make deposits in state and national financial institutions insured by an agency of the federal government that voluntarily accepts those deposits;

(e) Invest in any of the following:

(I) Obligations of the United States or securities guaranteed or insured by any agency of the United States;

(II) Obligations of any state or territory of the United States, or of any political subdivision or instrumentality thereof, except revenue obligations issued to provide, enlarge, or improve electric power, gas, water, or sewer facilities, or any combination thereof, issued by any city or town, or other similar municipal corporation having a population of fewer than five thousand persons, as determined by the latest federal decennial census; and

(III) To an extent that must not exceed ten percent of its shares, deposits, and undivided earnings, in shares of mutual funds or investment companies, stocks, bonds, or other securities of any corporation or religious or educational organizations;

(f) Acquire, through purchase or other lawful transactions, and hold title to real and personal property necessary and incidental to the operation of the co-op, and sell, mortgage, or otherwise dispose of the property;

(g) Exercise such incidental powers as are necessary to enable it to carry on effectively the business for which it is incorporated as authorized in this article;

(h) Sell all or any portion of its assets and purchase all or any portion of the assets of another co-op and assume the liabilities of the selling co-op, subject to the approval of the commissioner; and

(i) Participate with other co-ops or financial organizations in making loans to co-op members when the borrower is a member of either the co-op originating the loan or the co-op purchasing a participation interest in the loan.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1626, § 1, effective June 6.

11-33-108. Title protection. (1) A cannabis credit co-op:

(a) Shall not use the word "bank" or the phrase "credit union" in its articles of incorporation, trade name, or an advertisement or offer of services;

(b) Shall use:

(I) The phrase "marijuana financial services cooperative" in its articles of incorporation; and

(II) The words "marijuana" or "cannabis" in its trade name and any advertisement or offer of services; and

(c) May use the phrases "financial services cooperative", "financial services co-op", "financial cooperative", "financial co-op", "credit cooperative", or "credit co-op" in its trade name or an advertisement or offer of services.

(2) (a) A co-op organized in accordance with this article has the exclusive right to use the phrases "cannabis credit cooperative", "marijuana credit cooperative", "cannabis credit co-op", "marijuana credit co-op", "cannabis financial services cooperative", "marijuana financial services cooperative", "cannabis financial services co-op", and "marijuana financial services co-

op" in its name, title, and advertisements or offers of services; but an association composed of co-ops transacting business in this state may use those phrases in its name, title, and advertisements or offers of services.

(b) Any person other than a co-op or an association of co-ops using the phrases specified in paragraph (a) of this subsection (2) in its name, title, or advertisements or offers of services is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, imprisonment in the county jail for not more than sixty days, or both.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1627, § 1, effective June 6.

11-33-109. Examinations - reports - powers of commissioner - rules - fund created. (1) (a) Cannabis credit co-ops are under the supervision of the commissioner. The commissioner shall examine every co-op at least once during any six-month period. The commissioner shall assess each co-op an amount to cover the expenses of the division attributable to the supervision of co-ops. The commissioner shall determine the amount assessed according to a schedule or schedules or any other method established by the commissioner to be appropriate, but the assessment must be at the same rate for all co-ops. The commissioner may waive the payment of all or a portion of the assessment with respect to a year in which a charter is issued or cancelled or in which a final distribution is made in liquidation.

(b) The commissioner shall establish the division's annual assessment, to be collected at least semiannually in amounts sufficient to generate the moneys appropriated by the general assembly to the division for each fiscal year.

(c) (I) There is hereby created in the state treasury the cannabis credit co-op fund, consisting of:

(A) Revenues appropriated to the fund; and

(B) Assessments made pursuant to paragraph (a) of this subsection (1).

(II) Revenues credited to the fund and unexpended at the end of each fiscal year remain in the fund and do not revert to the general fund. All interest derived from the deposit and investment of revenues in the fund remains in the fund and does not revert to the general fund. The division shall use revenues in the fund only for the purpose of implementing this article.

(2) Quarterly, every co-op shall file a financial report with the commissioner on a date established by the commissioner, in a form prescribed by the commissioner. The commissioner may require that additional reports be filed. For failure to file a report when due, unless excused for cause, a co-op shall pay to the commissioner a penalty, as prescribed by rule, for each day of delinquency in filing.

(3) The commissioner may adopt rules necessary for the administration and enforcement of this article and shall reference the rules to the sections of this article to which they apply. The commissioner shall promulgate the rules pursuant to article 4 of title 24, C.R.S., and shall mail a copy of the rules and of each order to each co-op at least thirty days before their effective date, except as to temporary or emergency rules.

(4) Except in cases where there is a statutory right to appeal to the commissioner, any person aggrieved and directly affected by a final order of the commissioner may obtain judicial review of the order by filing an action for review with the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S., within thirty days after the date of issuance of the order.

(5) The commissioner may charge off the whole or any part of any asset of any co-op that could not be lawfully acquired by it and to reduce the value of any asset of a co-op to its market value or to a reasonable value, if no market value can be established. If the losses of a co-op exceed its undivided earnings and reserve funds so that the reasonable value of its assets is less than the total amount due the shareholders, the commissioner may order a reduction in the liability to each shareholder, dividing the loss proportionately among all shareholders. Any reduction from each share account must be a specified percentage sufficient to correct the impaired condition and preserve the solvency of the co-op. If thereafter the co-op realizes from the assets a greater amount than that fixed by the order of reduction, the commissioner shall divide the excess proportionately among the shareholders to whom liability was previously reduced, but only to the extent of the reduction.

(6) The commissioner may issue subpoenas and require attendance of any officers, directors, agents, and employees of a co-op and such other witnesses as the commissioner deems necessary in relation to its affairs, transactions, and conditions, and may require the witnesses to appear and answer such questions as the commissioner puts to them, and may require the witnesses to produce such books, papers, or documents in their possession as the commissioner may require. Upon application of the commissioner, a person served with a subpoena issued by the commissioner may be required, by order of the district court of the county where the co-op has its principal office, to appear and answer such questions as the commissioner may put to the witness and be required to produce such books, papers, or documents in the witness' possession as the commissioner may require.

(7) The commissioner may issue cease-and-desist orders if the commissioner determines from competent and substantial evidence that a co-op is engaged or has engaged, or when the commissioner has reasonable cause to believe the co-op is about to engage, in an unsafe or unsound practice or is violating or has violated, or when the commissioner has reasonable cause to believe the co-op is about to violate, a material provision of any law or rule or any condition imposed in writing by the commissioner or any written agreement made with the commissioner.

(8) (a) (I) The commissioner may suspend or remove a director, officer, or employee of a co-op when the commissioner determines that the person has:

(A) Violated a provision of this article or a lawful rule or order issued pursuant to this article;

(B) Engaged or participated in an unsafe or unsound practice in the conduct of a co-op;

(C) Committed or engaged in an act, omission, or practice that constitutes a breach of fiduciary duty to the co-op, and the co-op has suffered or will probably suffer financial loss or other damage, or the interests of members or account holders may be seriously prejudiced thereby; or

(D) Received financial gain by reason of a violation, practice, or breach of fiduciary duty that involved personal dishonesty or demonstrated a willful or continuing disregard for the safety or soundness of the co-op.

(II) The commissioner may suspend or remove a director, officer, or employee of a co-op who, under the laws of this state, the United States, or any other state or territory of the United States:

(A) Has entered a plea of guilty or nolo contendere to or been convicted of a crime involving theft or fraud that is classified as a felony; or

(B) Is subject to an order removing or suspending the individual from office or prohibiting the individual's participation in the conduct of the affairs of a co-op, savings and loan association, bank, or other financial institution.

(b) (I) A suspension or removal order must specify the grounds for the suspension or removal. The commissioner shall send a copy of the order to the co-op concerned and to each member of its board of directors. The commissioner shall send written notice by certified mail, return receipt requested, to each person affected by paragraph (a) of this subsection (8) at least ten days before a hearing held pursuant to section 24-4-105, C.R.S., at which the commissioner shall preside.

(II) If the commissioner determines that extraordinary circumstances require immediate action, the commissioner may suspend or remove a person under paragraph (a) of this subsection (8) without notice or a hearing, but the commissioner shall conduct a hearing under section 24-4-105, C.R.S., within thirty days after the suspension or removal.

(III) In extraordinary circumstances, upon order of the commissioner, a hearing conducted pursuant to this section is exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the co-op.

(IV) A person who performs a duty or exercises a power of a co-op after receipt of a suspension or removal order under paragraph (a) of this subsection (8) commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1628, § 1, effective June 6.

11-33-110. Assessment of civil fines. (1) (a) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against the person for the same act or practice, the commissioner may assess and collect a civil fine from a person who has violated a final cease-and-desist order issued by the commissioner pursuant to section 11-33-109 (7) or a suspension order issued pursuant to section 11-33-122.

(b) For the purposes of this section, a violation includes an action by any person, alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(c) In extraordinary circumstances, upon order of the commissioner, a hearing conducted pursuant to this section is exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from a co-op.

(2) (a) The commissioner must assess civil fines by written notice of assessment of a civil fine served upon the person to be assessed. The notice of assessment of a civil fine must state the amount of the fine, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The person may file a request for a rehearing regarding the notice of assessment of a civil fine with the commissioner pursuant to paragraph (b) of this subsection (2).

(b) A person must file the notice of rehearing with the commissioner within thirty days after the assessment. The notice must contain a brief statement of the pertinent facts upon which

the request is based. Within sixty days after the request is filed, the commissioner shall fix a date, time, and place for the rehearing and shall notify the person at least thirty days before the date of the rehearing. The commissioner may stay the civil fine pending the rehearing. On rehearing, the commissioner may consider, among other matters, whether the civil fine assessed is appropriate considering the financial resources of the person assessed. The decision of the commissioner is final agency action.

(c) In extraordinary circumstances, upon order of the commissioner, a rehearing conducted pursuant to paragraph (a) of this subsection (2) is exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from a co-op.

(3) In determining the amount of the civil fine to be assessed, the commissioner shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, and such other matters as the commissioner deems appropriate; except that the civil fine must be not more than one thousand dollars per day for each day the person assessed is determined by the commissioner to be in violation of a cease-and-desist order or an order of suspension or removal. Alternatively, the commissioner may assess a civil fine for the violation in a lump sum amount not to exceed fifty thousand dollars.

(4) Civil fines assessed pursuant to this section are due and payable and must be collected within thirty days after the commissioner issues the notice of assessment of a civil fine; except that the commissioner may compromise, modify, or set aside any civil fine. If a person fails to pay an assessment after it has become due and payable, the commissioner may refer the matter to the attorney general, who shall recover the amount assessed by action in the district court for the city and county of Denver. A civil fine collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1631, § 1, effective June 6.

11-33-111. Fiscal year - meetings. The fiscal year of all cannabis credit co-ops ends on December 31 of each year. The co-op shall hold its annual meeting within five months after the close of the fiscal year. Special meetings may be held in the manner indicated in the bylaws. At all meetings a member has but a single vote, whatever the member's share holdings. Voting by proxy is prohibited.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1632, § 1, effective June 6.

11-33-112. Elections. (1) (a) At the annual meeting, or by other proper balloting within thirty days before and twenty days after the annual meeting, the cannabis credit co-op members must elect from the membership, or the board of directors must appoint as provided in the bylaws of the co-op:

(I) A board of directors of not less than five members;

(II) A supervisory committee of not less than three members; and

(III) A credit committee of not less than three members or a credit officer.

(b) In addition, the co-op members may elect, or the board may appoint, one or more alternate members of the credit committee to serve in the absence of members of the credit committee.

(2) All persons appointed or elected pursuant to subsection (1) of this section hold office for the terms specified in the bylaws and until successors are elected or appointed and are qualified. A person shall not hold more than one elected office simultaneously.

(3) The co-op shall file with the commissioner a record of the names and addresses of the members of the board and the committees, alternates, and officers within twenty days after their election or appointment.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1632, § 1, effective June 6.

11-33-113. Directors and officers. (1) At its first meeting after the annual election, the board of directors shall elect from its own number: An executive officer, who may be designated as chair of the board or president; a vice-chair of the board or one or more vice-presidents; a treasurer; and a secretary. A single person shall not serve as both secretary and treasurer. The persons so elected are the executive officers of the corporation. The board of directors is responsible for the general management of the affairs of the cannabis credit co-op, and more specifically for:

(a) Acting on applications for membership, or appointing from among the membership of the co-op one or more membership officers who may act on applications for membership;

(b) Setting policies, terms, and conditions under which loans will be available to members, and determining interest rates on loans and on deposits;

(c) Fixing the amount of the blanket surety bond that covers all elected and appointed officials and all employees of the co-op. The blanket surety bond must be in an amount equal to the assets of the co-op as of December 31 of the previous year or one million dollars, whichever is less, or in such other amount as the commissioner may prescribe.

(d) Declaring dividends and, subject to approval by the commissioner, adopting amendments to the bylaws of the co-op;

(e) Determining when any vacancy exists in the board of directors or in the credit committee, filling vacancies in the board and in the credit committee until successors are elected or appointed and qualify, and appointing one or more assistant secretaries or treasurers or both, as needed; and the board shall employ:

(I) An officer in charge of operations whose title is either president or chief executive officer to act as general manager and who shall be in active charge of the affairs of the co-op; and

(II) A chief financial officer;

(f) Determining the maximum individual share holdings in the co-op and the maximum amount of individual loans that can be made either with or without security;

(g) Having charge of and supervising investments of co-op funds;

(h) Maintaining records pursuant to rules promulgated by the commissioner concerning how long records must be retained and in what manner;

(i) Providing for compensation for necessary clerical and auditing assistance requested by the supervisory committee and of loan officers appointed by the credit committee and

establishing any salary to be paid to the chief executive officer, president, or chief financial officer.

(2) The bylaws must determine the duties of the officers; except that the treasurer is the general manager if a general manager has not been employed pursuant to paragraph (e) of subsection (1) of this section.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1633, § 1, effective June 6.

11-33-114. Credit committee - credit officer. The credit committee or credit officer is responsible for the general supervision of all loans to members. Applications for loans must be on a form approved by the credit committee or the credit officer. At least a majority of the members of the credit committee or the credit officer must approve or disapprove all loans; except that the credit committee or the credit officer may appoint one or more loan officers and delegate to the loan officer the power to approve or disapprove loans that are within limits prescribed by the credit committee or the credit officer. Each loan officer shall furnish to the credit committee or the credit officer a record of each loan application received by the loan officer within seven days after the date of filing of the application. The credit committee or the credit officer may consider all loans not approved by a loan officer. A member of the credit committee shall not receive any compensation as a loan officer or be employed by the cannabis credit co-op in any other capacity. A credit officer may receive compensation in connection with the performance of his or her duties. The credit committee shall meet as often as necessary after due notice to each member. Vacancies in the credit committee shall be filled pursuant to section 11-33-113 (1)(e).

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1634, § 1, effective June 6.

11-33-115. Supervisory committee. (1) The supervisory committee shall:

(a) Make, or cause to be made, a comprehensive annual audit of the books and affairs of the cannabis credit co-op and shall submit a report of the annual audit to the board of directors and a summary of that report to the members at the next annual meeting. The committee shall make or cause to be made such supplementary audits or examinations as it deems necessary or as required by the commissioner.

(b) Make an annual report and submit the report at the annual meeting of the members;

(c) By unanimous vote of the committee if it deems the action to be necessary for the proper conduct of the co-op, temporarily suspend an officer or director of the co-op or a member of the credit committee, and call a special meeting of the members of the co-op not less than seven nor more than fourteen days after the suspension to take final action on the suspension. The members at the meeting may sustain the suspension and remove the officer, director, or member of the credit committee permanently and elect a successor thereto for the unexpired term of office or may reinstate the person.

(d) Annually verify, or cause to be verified, by a random sampling or by verification of all members' accounts, the members' share, deposit, and loan accounts. The verification may be

obtained by either sending or causing to be sent a statement of account to each member or by such means as may be specified by the commissioner.

(e) Not less frequently than twice annually, or as otherwise required by the commissioner, examine the continued eligibility of each member and expel each member that is no longer qualified to be a member.

(2) By majority vote, the supervisory committee may call a special meeting of the members of the co-op to consider a violation of a provision of this article, rules of the commissioner, the bylaws, or a rule or requirement of the co-op, by an officer, director, member of a committee, or a member, that the committee deems to be detrimental to the co-op. The supervisory committee shall fill vacancies in its own membership until the next annual election of the co-op.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1634, § 1, effective June 6.

11-33-116. Capital - no full faith and credit. (1) The capital of a cannabis credit co-op consists of the payments that have been made to it in shares by its members. The co-op has a lien on the shares and deposits of a member for any sum due to the co-op from a member or for any loan endorsed by a member. A co-op may charge an entrance fee and an annual membership fee, but the fees must be uniform to all members.

(2) The deposits with and capital of a co-op are not backed by the full faith and credit of the state of Colorado.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1635, § 1, effective June 6.

11-33-117. Loans. A cannabis credit co-op may make loans to members subject to this article and the bylaws of the co-op. A borrower may repay a loan in whole or in part any day the office of the co-op is open for business.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1635, § 1, effective June 6.

11-33-118. Reserves. The commissioner may require reserves to protect the interest of members by general rules. In addition, the commissioner may require special reserves by an order directed to an individual cannabis credit co-op in a special case.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1635, § 1, effective June 6.

11-33-119. Confidentiality. (1) Neither the commissioner, the commissioner's deputy, nor any other person appointed by the commissioner shall divulge any information acquired in the discharge of the person's duties; except that:

(a) A person specified in the introductory portion to this subsection (1) may divulge information acquired in the discharge of the person's duties if doing so is made necessary by law or under order of court in an action involving the division or in criminal actions;

(b) The commissioner may furnish information as to the condition of a cannabis credit co-op to a liquidating agent appointed by the commissioner, a federal reserve bank, the division of banking, the executive director of the department of regulatory agencies, or a department or division of any other state having supervisory authority over marijuana financial services cooperatives or analogous organizations and may accept any report of examination made on behalf of the liquidating agent, bank, department, or division;

(c) The commissioner may give records or information in the commissioner's possession to a licensing agency within the department of regulatory agencies or the department of revenue relating to possible misconduct by a person or entity licensed by the agency;

(d) (I) The commissioner and the commissioner's designees may exchange information obtained by the division as to possible criminal violations of any law relating to the activities of a co-op with the appropriate law enforcement agencies; and

(II) The commissioner or the commissioner's designees shall exchange information obtained by the division with the appropriate state law enforcement agencies as to criminal violations of any law relating to the activities of a co-op that the commissioner reasonably believes have occurred; and

(e) Notwithstanding any provision of this article to the contrary, the commissioner may disclose information in the records of the division or acquired by the commissioner in the discharge of the commissioner's duties the disclosure of which has been specifically authorized by the board of directors of the co-op to which the information relates. Nothing in this section authorizes the board of directors of a co-op to waive any privileges that belong solely to the commissioner, the division, or its employees.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1635, § 1, effective June 6.

11-33-120. Dividends. At intervals and for periods of time that the board of directors may authorize and after provision for the required reserves, the board of directors of a cannabis credit co-op may declare a dividend. Dividends may be paid at various rates on different classes of shares, and dividend credit may be accrued on different classes of shares, as determined by the board of directors. The board shall not pay dividends in excess of available earnings.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1636, § 1, effective June 6.

11-33-121. Expulsion or withdrawal of members. (1) A member may withdraw from a cannabis credit co-op at any time, but the bylaws may require advance notice of the withdrawal. The board of directors may expel a member from membership in a co-op if the member fails to comply with the written rules and policies of the co-op as adopted and made available to the membership.

(2) The board shall not expel a member until the board informs the member in writing of the reasons for the expulsion and the member has had reasonable opportunity to be heard.

(3) The co-op shall pay to an expelled or withdrawing member all amounts paid on shares or as deposits of the member, together with any dividends or interest accredited to the member, to the date of the withdrawal or expulsion, as funds become available and after deducting all amounts due from the member to the co-op. The co-op may require sixty days' written notice of intention to withdraw shares and thirty days' written notice of intention to withdraw deposits. Withdrawing or expelled members have no further rights in the co-op but are not, by such expulsion or withdrawal, released from any remaining liability to the co-op.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1636, § 1, effective June 6.

11-33-122. Suspension - liquidation - procedures. (1) (a) (I) If it appears that a cannabis credit co-op is insolvent, has willfully violated a provision of this article, or is operating in an unsafe or unsound manner, the commissioner:

(A) May issue an order for the co-op to show cause why its operations should not be suspended until the insolvency, violation, or manner of operation is rectified; and

(B) Shall afford the co-op an opportunity for a hearing not less than ten days nor more than twenty days after issuance of the order.

(II) The order must be in writing and be delivered by registered or certified mail.

(III) If the co-op fails to answer the order or if an officer or director of or attorney for the co-op fails to appear at the time set for the hearing, the commissioner may:

(A) Revoke the articles of incorporation of the co-op, order the immediate suspension of operations of the co-op except the collection of payments on outstanding loans or other obligations due the co-op, or both; and

(B) Enforce the order by an action filed in the district court of the judicial district in which the principal office of the co-op is located, seeking to enjoin further operations or to appoint a conservator for the co-op.

(b) (I) A co-op to which an order to show cause has been issued pursuant to paragraph (a) of this subsection (1) may:

(A) Include with its answer or present at a hearing resulting from the order its proposed plan to continue operations and rectify the insolvency, violation, or manner of operation specified in the order; or

(B) Request that it be dissolved and liquidated and that the commissioner appoint a liquidating agent.

(II) A co-op may request a stay of execution of an order of the commissioner revoking its articles of incorporation or suspending its operations by filing an action in the district court for the judicial district in which the principal office of the co-op is located within ten days after the issuance of the order.

(c) If the commissioner revokes the charter of a co-op, the commissioner shall appoint a liquidating agent to liquidate the assets of the co-op pursuant to subsection (5) of this section.

(d) If in the opinion of the commissioner an emergency exists that may result in serious losses to the members, the commissioner may revoke the charter of a co-op and immediately appoint a liquidating agent without notice or a hearing. The commissioner shall post notice of the commissioner's emergency determination on the premises of the co-op that is the subject of the determination. Within ten days after an emergency determination by the commissioner, the

co-op or the board of directors of the co-op may file an appeal with the court of appeals. The filing of an appeal to rescind a determination does not stay the commissioner's action pursuant to this subsection (1). If the court finds the commissioner's action was unauthorized, the commissioner shall rescind the action and restore the co-op to its board of directors. If the co-op does not file an appeal within ten days after the commissioner's emergency determination, all action taken by the commissioner is final.

(2) (a) The commissioner may appoint himself or herself or a third party as conservator of a co-op and immediately take possession and control of the business and assets of the co-op if the commissioner determines that:

(I) Such action is necessary to conserve the assets of the co-op or to protect the interests of its members from acts or omissions of the existing management;

(II) The co-op, by a resolution of its board of directors, consents to such action;

(III) There is a willful violation of a cease-and-desist order that results in the co-op being operated in an unsafe or unsound manner; or

(IV) The co-op is significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized.

(b) The commissioner may appoint a conservator and take immediate possession of the co-op without prior notice or a hearing; except that, within ten days after the conservator is appointed, the co-op may file an appeal with the court of appeals requesting the commissioner to rescind the commissioner's appointment of a conservator. The filing of an appeal does not stay the commissioner's action. If the court finds the commissioner's action was unauthorized, the commissioner shall restore control of the co-op to its board of directors. If no appeal is filed within ten days after the commissioner's appointment of a conservator, the action taken by the commissioner becomes final.

(c) In extraordinary circumstances, upon order of the commissioner, a hearing conducted pursuant to this subsection (2) is exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the co-op.

(d) The conservator has all the powers of the members, directors, officers, and committees of the co-op and is authorized to operate the co-op in its own name or to conserve its assets as directed by the commissioner. The conservator shall conduct the business of the co-op and make regular reports to the commissioner until the commissioner has determined that the purposes of conservatorship have been accomplished and the co-op should be returned to the control of its board of directors. All costs incident to the conservatorship shall be paid out of the assets of the co-op. If the commissioner determines that the purposes of the conservatorship will not be accomplished, the commissioner may proceed with the involuntary liquidation of the co-op in the manner described in subsection (1) of this section.

(e) If a conservator is appointed, and is other than an employee of the division, the conservator and any assistants shall provide a bond, payable to the co-op and executed by a surety company authorized to do business in this state, that meets with the approval of the commissioner, for the faithful discharge of their duties in connection with the conservatorship and the accounting for all moneys coming into their hands. The cost of the bond shall be paid from the assets of the co-op. Suit may be maintained on the bond by a person injured by a breach of the conditions of the bond. This requirement may be deemed met if the commissioner determines that the co-op's fidelity bond covers the conservator and any assistants.

(3) A co-op may be voluntarily dissolved and liquidated upon majority vote of the entire membership of the co-op at a meeting specially called for the purpose or at the annual meeting where notice of the proposed action is mailed to the members at least thirty days before the meeting. In either event, a copy of the notice shall be delivered to the commissioner not less than ten days before the meeting. A member of a co-op may cast a ballot for or against the dissolution and liquidation by mail within twenty days after the meeting. If a majority of the members vote in favor of dissolution and liquidation, the board of directors, within five days after the close of voting, shall notify the commissioner of the action and specify the names and addresses of the directors and officers of the co-op who will conduct the dissolution and liquidation of the co-op. Upon a favorable vote, the co-op shall cease to do business except for the collection of payments on outstanding loans or other obligations due the co-op.

(4) Under any procedure to dissolve and liquidate a co-op pursuant to this section, the co-op continues in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and it may sue and be sued for the enforcement of its debts and operations until its affairs are fully adjusted in liquidation. The assets of the co-op shall be used to pay: First, the expenses incidental to liquidation; and second, deposit accounts. Any remaining assets shall be distributed to the members proportionately to the shares held by each member as of the date of dissolution.

(5) Upon the liquidation and distribution of all assets of the co-op that may be reasonably expected to be collectible, the board of directors or the liquidating agent, as the case may be, shall execute in duplicate a certificate of dissolution, prescribed by the commissioner, upon which date the co-op ceases to exist, and file the certificate with the secretary of state.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1637, § 1, effective June 6.

11-33-123. Change in place of business. A cannabis credit co-op may change its place of business to a location outside of the county or city and county in which it was previously located upon receiving written permission from the commissioner. A co-op may change its place of business within the county or city and county in which it was previously located by providing written notice of the new address and the effective date of the change to the commissioner.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1640, § 1, effective June 6.

11-33-124. Merger. (1) The method of merger of two or more cannabis credit co-ops is as follows:

(a) (I) The board of directors of each merging co-op shall:

(A) Approve a plan for the proposed merger; and

(B) Authorize representatives of each co-op to act on each co-op's behalf to bring about the merger.

(II) The plan must include information that the commissioner deems appropriate.

(b) Upon approval of the merger plan by each board of directors for each co-op involved in the transaction, the co-ops shall submit the merger plan, together with the resolutions of each board of directors, to the commissioner. If the commissioner determines that the merger plan

complies with this article and any applicable rules, the commissioner may approve the merger plan, subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger.

(c) The boards of directors of each co-op involved shall call a meeting of the members of each co-op involved for the purpose of considering a merger. The boards of directors shall give notice of the meeting, including purpose, date, time, place, and ballot of the merger plan, to the entire membership. At the meeting, at least two-thirds of the members present and voting must approve the proposed merger. If any member approves or disapproves the merger by returning a ballot, signed by the member, to the secretary of the co-op at or before the meeting, the ballot for all purposes of this section is equivalent to the vote of the member at the meeting, notwithstanding that the member is not then present.

(2) Upon approval of the merger by the members of the co-op, the merger shall be consummated in the following manner:

(a) The duly authorized representatives of each co-op shall execute, in duplicate, a certificate of merger stating:

(I) That the board of directors of each co-op has approved the merger;

(II) That at least two-thirds of the voting members of each merging co-op have approved the terms and conditions of the proposed merger at a meeting of the members called for that purpose; and

(III) The name and location of the continuing co-op.

(b) The continuing co-op shall prepare and adopt any bylaw amendments required by the board, consistent with this article, and execute the amendments in duplicate.

(c) The continuing board of directors shall file the certificate provided for in paragraph (a) of this subsection (2) and any required bylaw amendments, both executed in duplicate, to the commissioner.

(3) If the commissioner approves the certificate and bylaw amendments, the commissioner shall so notify the representatives and shall issue a certificate of approval, attach it to the duplicate certificate of merger, and return them to the representatives of the participating co-ops together with the duplicate of the bylaw amendments.

(4) The continuing co-op shall file the duplicate of the certificate of merger with the commissioner's certificate of approval attached with the secretary of state, who shall make a record of the certificate and return it, with the secretary's certificate of record attached, to the commissioner for permanent record. The fee for the filing shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(5) Upon compliance with all requirements of subsections (1) to (4) of this section, the participating co-ops are merged, and the continuing co-op shall take over the assets and assume all the liabilities of the participating co-ops.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1640, § 1, effective June 6.

11-33-125. Taxation. A cannabis credit co-op is not tax-exempt and is subject to taxation as provided by federal, state, and local laws.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1642, § 1, effective June 6.

11-33-126. Compliance with federal requirements - due diligence. (1) Each cannabis credit co-op shall comply with all applicable requirements of federal law, including:

(a) The federal "Bank Secrecy Act", 12 U.S.C. sec. 1951 et seq.;

(b) The requirement to maintain a due diligence program pursuant to 31 CFR 1020.610;

(c) The requirement to establish a customer identification policy pursuant to 31 CFR 1020.220; and

(d) The requirement to file suspicious activity reports pursuant to 31 CFR sec. 1020.320.

(2) Each co-op shall:

(a) Conduct due diligence with regard to the activities of its members so as to prevent:

(I) The distribution of marijuana to minors;

(II) Revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

(III) The diversion of marijuana from states where it is legal under state law in some form to other states;

(IV) State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

(V) Violence and the use of firearms in the cultivation and distribution of marijuana;

(VI) Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;

(VII) The growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

(VIII) Marijuana possession or use on federal property; and

(b) File an annual report with the commissioner regarding its compliance with the laws and requirements specified in this section.

(3) The commissioner shall revoke the charter of a co-op that violates any of the laws or due diligence requirements specified in this section.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1642, § 1, effective June 6.

11-33-127. Reports - suspicious transactions. (1) **General.** (a) (I) Every co-op shall file with the commissioner, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law, rule, or federal regulation.

(II) For purposes of this section, a transaction or conduct that is illegal or a violation of law solely because marijuana is a controlled substance under federal law is not subject to being reported.

(b) A co-op shall report a transaction if it is conducted or attempted by, at, or through the co-op, it involves or aggregates at least five thousand dollars in funds or other assets, and the co-op knows, suspects, or has reason to suspect that:

(I) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities as part of a

plan to violate or evade any federal or state law or regulation or to avoid any transaction reporting requirement under federal or state law or regulation;

(II) The transaction is designed to evade any requirements of this article, a rule promulgated pursuant to this article, the federal "Bank Secrecy Act", 12 U.S.C. sec. 1951 et seq., or a regulation promulgated under the federal "Bank Secrecy Act"; or

(III) The transaction has no business or apparent lawful purpose or is not the sort in which the particular member would normally be expected to engage, and the co-op knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(2) **Filing procedures.** (a) **What to file.** A co-op shall report a suspicious transaction by completing a suspicious transaction report, referred to in this section as an STR, and collecting and maintaining supporting documentation as required by subsection (4) of this section.

(b) **When to file.** A co-op shall file an STR no later than thirty calendar days after the date of initial detection by the co-op of facts that may constitute a basis for filing an STR. If no suspect was identified on the date of the detection of the incident requiring the filing, a co-op may delay filing an STR for an additional thirty calendar days to identify a suspect. In no case may a co-op delay reporting for more than sixty calendar days after the date of initial detection of a reportable transaction. In situations involving violations that require immediate attention, such as, for example, ongoing money-laundering schemes, the co-op shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely an STR.

(3) **Exceptions.** A co-op is not required to file an STR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities or for lost, missing, counterfeit, or stolen securities with respect to which the co-op files a report pursuant to the reporting requirements of 17 CFR 240.17f-1.

(4) **Retention of records.** A co-op shall maintain a copy of each STR filed and the original or business record equivalent of any supporting documentation for a period of five years after the date of filing the STR. The co-op shall identify supporting documentation and maintain the documentation as such, which documentation shall be deemed to have been filed with the STR. Upon request, a co-op shall make all supporting documentation available to:

(a) The commissioner;

(b) Any federal, state, or local law enforcement agency;

(c) Any federal regulatory authority that examines the co-op for compliance with the federal "Bank Secrecy Act"; or

(d) Any state regulatory authority administering a state law that requires the co-op to comply with the federal "Bank Secrecy Act" or otherwise authorizes the state authority to ensure that the co-op complies with the federal "Bank Secrecy Act".

(5) **Confidentiality of STRs.** (a) An STR and any information that would reveal the existence of an STR are confidential and shall not be disclosed except as authorized in this subsection (5). For purposes of this subsection (5) only, an STR includes any suspicious activity report filed with the federal financial enforcement network of the department of the treasury pursuant to any regulation in chapter X of subtitle B of title 31 of the code of federal regulations.

(b) **Prohibition on disclosures by co-ops.** (I) **General rule.** A co-op and a director, officer, employee, or agent of any co-op shall not disclose an STR or any information that would reveal the existence of an STR. Any co-op, and any director, officer, employee, or agent of any co-op that is subpoenaed or otherwise requested to disclose an STR or any information that

would reveal the existence of an STR, shall decline to produce the STR or such information, citing this section, 31 U.S.C. sec. 5318 (g)(2)(A)(i), and 31 CFR 1020.320, and shall notify the commissioner of any such request and the response thereto.

(II) **Rules of construction.** So long as none of the persons involved in a reported suspicious transaction is notified that the transaction has been reported, this paragraph (b) does not prohibit:

(A) To the full extent authorized in 31 U.S.C. sec. 5318 (g)(2)(B), the disclosure by a co-op or by a director, officer, employee, or agent of a co-op, of an STR or any information that would reveal the existence of an STR, to: The commissioner or any federal, state, or local law enforcement agency; a federal regulatory authority that examines the co-op for compliance with the federal "Bank Secrecy Act"; or a state regulatory authority administering a state law that requires the co-op to comply with the federal "Bank Secrecy Act" or otherwise authorizes the state authority to ensure that the co-op complies with the federal "Bank Secrecy Act". In addition, the co-op and its officers, directors, employees, and agents may disclose the underlying facts, transactions, and documents upon which an STR is based to another financial institution, or a director, officer, employee, or agent of a financial institution, for the preparation of a joint STR or in connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. sec. 5318 (g)(2)(B).

(B) The sharing by a co-op, or any director, officer, employee, or agent of the co-op, of an STR, or any information that would reveal the existence of an STR, within the co-op's corporate organizational structure for purposes consistent with Title II of the federal "Bank Secrecy Act" as determined by federal regulation or in guidance.

(c) **Prohibition on disclosures by government authorities.** A federal, state, local, territorial, or tribal government authority and any director, officer, employee, or agent of a federal, state, local, territorial, or tribal government shall not disclose an STR, or any information that would reveal the existence of an STR, except as necessary to fulfill official duties consistent with Title II of the federal "Bank Secrecy Act". For purposes of this section, "official duties" do not include the disclosure of an STR, or any information that would reveal the existence of an STR, in response to a request for disclosure of nonpublic information or a request for use in a private legal proceeding, including a request pursuant to 31 CFR 1.11.

(6) **Limitation on liability.** A co-op and any director, officer, employee, or agent of any co-op, that makes a voluntary disclosure of any possible violation of law, rule, or federal regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another institution, is protected from liability to any person for any such disclosure or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. sec. 5318 (g)(3).

(7) **Compliance.** The commissioner shall examine co-ops for compliance with this section.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1643, § 1, effective June 6.

11-33-128. Repeal of article - review. (1) This article is repealed, effective September 1, 2020. Upon repeal of this article, each cannabis credit co-op shall immediately cease its

operation and take prudent and necessary steps to dissolve. Each co-op shall complete its dissolution by September 1, 2021.

(2) Prior to the repeal of this article, the department of regulatory agencies shall conduct a sunset review of the commissioner's regulation of cannabis credit co-ops as described in section 24-34-104 (5), C.R.S.

Source: L. 2014: Entire article added, (HB 14-1398), ch. 353, p. 1645, § 1, effective June 6. **L. 2016:** (2) amended, (HB 16-1192), ch. 83, p. 232, § 6, effective April 14.

MISCELLANEOUS

ARTICLE 35

Surety Bond Alternatives

11-35-101. Alternatives to surety bonds permitted - requirements - definition. (1) The requirement of a surety bond as a condition to licensure or authority to conduct business or perform duties in this state provided in sections 5-16-124 (1), 6-16-104.6, 12-6-111, 12-6-112, 12-6-112.2, 12-6-512, 12-6-513, 12-59-115 (1), 12-61-907, 23-64-121 (1), 33-4-101 (1), 33-12-104 (1), 35-55-104 (1), 37-91-107 (2) and (3), 38-29-119 (2), 39-21-105, 39-27-104 (2)(a), (2)(b), (2)(c), (2)(d), (2)(e), (2.1)(a), (2.1)(b), (2.1)(c), (2.5)(a), and (2.5)(b), 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6) may be satisfied by a savings account or deposit in or a certificate of deposit issued by a state or national bank doing business in this state or by a savings account or deposit in or a certificate of deposit issued by a state or federal savings and loan association doing business in this state. The savings account, deposit, or certificate of deposit must be in the amount specified by statute, if any, and must be assigned to the appropriate state agency for the use of the people of the state of Colorado. The aggregate liability of the bank or savings and loan association must in no event exceed the amount of the deposit. For the purposes of the sections referred to in this section, "bond" includes the savings account, deposit, or certificate of deposit authorized by this section.

(2) Each appropriate state agency required to accept such bonds, savings accounts, deposits, or certificates of deposit shall promulgate rules and regulations defining the method of assignment, required period of liability, and such other procedures as may be necessary.

(3) All rules adopted or amended by state agencies pursuant to subsection (2) of this section are subject to section 24-4-103 (8)(c) and (8)(d), C.R.S., and section 24-4-108 or 24-34-104 (6)(b), C.R.S.

Source: L. 79: Entire article added, p. 419, § 1, effective July 1. **L. 80:** (1) and (3) amended, pp. 786, 791, §§ 15, 36, effective June 5. **L. 81:** (1) amended, p. 617, § 2, effective April 30; (3) amended, p. 1177, § 2, effective July 1. **L. 82:** (1) amended, p. 621, § 8, effective April 2. **L. 83:** (1) amended, p. 1292, § 1, effective April 21; (1) amended, p. 701, § 4, effective June 10. **L. 84:** (1) amended, p. 409, § 2, effective March 5; (1) amended, p. 1007, § 2, effective March 26; (1) amended, p. 920, § 6, effective January 1, 1985. **L. 85:** (1) amended, p. 437, § 2, effective July 1. **L. 87:** (1) amended, p. 473, § 5, effective July 1. **L. 89:** (1) amended, p. 1394, § 2, effective April 12. **L. 90:** (1) amended, p. 1681, § 5, effective October 1. **L. 92:** (1) amended,

p. 2168, § 8, effective June 2; (1) amended, p. 1863, § 28, effective July 1. **L. 93:** (1) amended, p. 1773, § 27, effective June 6; (1) amended, p. 260, § 5, effective July 1; (1) amended, p. 1236, § 4, effective July 1; (1) amended, p. 1391, § 10, effective January 1, 1995. **L. 94:** (1) amended, p. 1630, § 32, effective May 31; (1) amended, p. 2545, § 20, effective January 1, 1995. **L. 95:** (1) amended, p. 1091, § 2, effective May 31; (1) amended, p. 1332, § 3, effective July 1. **L. 2000:** (1) amended, p. 1937, § 16, effective October 1; (1) amended, p. 3, § 3, effective July 1, 2001. **L. 2001:** (1) amended, p. 1214, § 43, effective January 1, 2002. **L. 2003:** (1) amended, p. 1340, § 2, effective April 22. **L. 2006:** (1) amended, p. 1587, § 2, effective July 1. **L. 2007:** (1) amended, p. 1850, § 3, effective July 1. **L. 2009:** (1) amended, (SB 09-117), ch. 123, p. 527, § 21, effective April 16; (1) amended, (SB 09-151), ch. 89, p. 346, § 3, effective July 1. **L. 2016:** (3) amended, (HB 16-1192), ch. 83, p. 232, § 7, effective April 14; (1) amended, (HB 16-1129), ch. 262, p. 1078, § 5, effective August 10; (1) amended, (SB 16-036), ch. 292, p. 1181, § 2, effective August 10. **L. 2017:** (1) amended, (SB 17-294), ch. 264, p. 1386, § 11, effective May 25; (1) amended, (HB 17-1238), ch. 260, p. 1172, § 16, effective August 9; (1) amended, (HB 17-1239), ch. 261, p. 1202, § 2, effective August 9.

Editor's note: (1) Amendments to subsection (1) by House Bill 83-1133 and Senate Bill 83-165 were harmonized.

(2) Amendments to subsection (1) by Senate Bill 84-87 were harmonized with House Bill 84-1063 and Senate Bill 84-78 effective January 1, 1985.

(3) Amendments to subsection (1) by House Bill 92-1359 and Senate Bill 92-88 were harmonized.

(4) Amendments to subsection (1) by House Bill 93-1254 were harmonized with House Bill 93-1268, House Bill 93-1270, and House Bill 93-1342.

(5) Amendments to subsection (1) by Senate Bill 94-1 and Senate Bill 94-206 were harmonized.

(6) Amendments to subsection (1) by House Bill 95-1011 and House Bill 95-1212 were harmonized.

(7) Amendments to subsection (1) by House Bill 00-1155 and House Bill 00-1479 are harmonized effective July 1, 2001.

(8) Amendments to subsection (1) by Senate Bill 09-151 and Senate Bill 09-117 were harmonized.

(9) Amendments to subsection (1) by HB 16-1129 and SB 16-036 were harmonized.

(10) Amendments to subsection (1) by Senate Bill 17-294 were harmonized with House Bill 17-1238 and House Bill 17-1239.

11-35-101.5. Irrevocable letter of credit permitted - requirements. (1) Where there is the requirement of either an irrevocable letter of credit or a bond as a condition to licensure in sections 35-36-119 (1) and 35-37-106 (1) or where an irrevocable letter of credit is permitted as an alternative to a surety bond, evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section 11-35-101, as a condition to licensure or authority to conduct business or perform duties in this state, provided in sections 33-4-101 (1), 33-12-104 (1), 35-36-119 (1)(a), 35-37-105 (5), 35-37-106 (1)(a), 37-91-107 (2), and 39-27-104 (2.1)(c), the requirement shall be satisfied by an irrevocable letter of credit issued by a state or national bank or a state or federal savings and loan association doing business in this state. The

requirement shall also be satisfied by an irrevocable letter of credit issued by the bank or banks for cooperatives that are organized pursuant to federal statutes and that serve the region in which the state of Colorado is located. Such letter of credit shall be in an amount specified by statute, if any, and shall name the appropriate state agency as beneficiary, in favor of the people of the state of Colorado.

(2) Each appropriate state agency required to accept such irrevocable letters of credit shall define the method of transferability, the required period of liability, and such other procedures as may be necessary.

(3) Repealed.

Source: L. 87: Entire section added, p. 473, § 6, effective May 8. **L. 88:** (1) amended, p. 446, § 1, effective March 31. **L. 89:** (1) amended, p. 1394, § 3, effective April 12. **L. 92:** (1) amended, p. 2168, § 9, effective June 2. **L. 93:** (1) amended, p. 1391, § 11, effective January 1, 1995. **L. 94:** (1) amended, p. 1630, § 33, effective May 31; (1) amended, p. 2545, § 34, effective January 1, 1995. **L. 2000:** (1) amended, p. 1937, § 17, effective October 1. **L. 2002:** (1) amended, p. 1013, § 9, effective June 1. **L. 2009:** (1) amended, (SB 09-151), ch. 89, p. 347, § 4, effective July 1. **L. 2013:** (3) repealed, (HB 13-1034), ch. 5, p. 15, § 9, effective September 1. **L. 2017:** (1) amended, (SB 17-225), ch. 262, p. 1245, § 3, effective August 9.

ARTICLE 36

Small Business Development
Credit Corporations

11-36-101 to 11-36-118. (Repealed)

Editor's note: (1) This article was added in 1988. For amendments to this article prior to its repeal in 1994, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Section 11-36-117 provided for the repeal of this article, effective July 1, 1994. (See L. 94, p. 66.)

ARTICLE 37

Colorado Investment Deposits

11-37-101 to 11-37-105. (Repealed)

Source: L. 2004: Entire article repealed, p. 323, § 7, effective April 7.

Editor's note: This article was added in 1990 and was not amended prior to its repeal in 2004. For the text of this article prior to 2004, consult the 2003 Colorado Revised Statutes.

ARTICLE 37.5

11-37.5-101 to 11-37.5-503. (Repealed)

Source: L. 2009: Entire article repealed, (HB 09-1053), ch. 159, p. 687, § 1, effective August 5.

Editor's note: This article was added in 1999. For amendments to this article prior to its repeal in 2009, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 38

Reverse Mortgages

11-38-101. Legislative declaration. (1) The general assembly hereby finds that Colorado's elderly homeowners should have the opportunity and be permitted to meet their financial needs by accessing the equity in their homes through a reverse mortgage loan transaction.

(2) The general assembly further finds that many restrictions and requirements that exist to govern traditional mortgage loan transactions in Colorado are inapplicable in the context of reverse mortgages and that state law should be clarified to ensure that inapplicability.

(3) The general assembly therefore declares that, in order to foster reverse mortgage transactions and better serve the elderly citizens of this state, it is necessary to enact this article authorizing the making of reverse mortgages and expressly relieving reverse mortgage lenders and borrowers from compliance with inappropriate statutory requirements.

Source: L. 92: Entire article added, p. 939, § 1, effective April 23.

11-38-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Borrower" means the person receiving cash advances pursuant to the terms of and obligated for repayment of a reverse mortgage. "Person" includes plural as well as singular.

(2) "Independent counseling" means counseling by a person unaffiliated with the lender, including but not limited to a housing counseling agency approved by the United States department of housing and urban development.

(3) "Lender" means a bank, savings and loan association, or credit union organized under the laws of the United States or the state of Colorado or a person who regularly makes loans or advances secured by interests in residential real property.

(4) "Reverse mortgage" means a written instrument evidencing or creating a nonrecourse loan secured by real property which:

(a) Provides cash advances, whether in the form of a lump sum, periodic payments, a line of credit, or other similar methods, or a combination thereof, to a borrower based on the equity in the borrower's owner-occupied principal residence, which periodic payments may be derived from an annuity purchased with such cash advances;

(b) Requires no partial or other payment of principal or interest until the entire loan becomes due and payable; and

(c) Is made by any lender as defined in subsection (3) of this section.

Source: L. 92: Entire article added, p. 939, § 1, effective April 23.

11-38-103. Prepayment. Payment of a reverse mortgage, in whole or in part, shall be permitted without penalty at any time during the period of such reverse mortgage.

Source: L. 92: Entire article added, p. 940, § 1, effective April 23.

11-38-104. Intervening liens. All advances made under a reverse mortgage and all interest on such advances shall have priority over any lien arising after recording an instrument evidencing the lien arising from such reverse mortgage with the clerk and recorder of the county where the real property securing such reverse mortgage is located.

Source: L. 92: Entire article added, p. 940, § 1, effective April 23.

11-38-105. Interest - periodic advances. (1) A reverse mortgage may provide for an interest rate which is fixed or adjustable and may also provide for interest that is contingent on the appreciation in the value of the home securing such reverse mortgage.

(2) If a reverse mortgage provides for periodic advances to a borrower, such advances shall not be reduced in amount or number based on any adjustment in the interest rate on such reverse mortgage.

(3) The interest rate contracted for in any reverse mortgage shall not exceed the loan finance charge rates provided by section 5-2-201, C.R.S., although the effective rate may exceed those rates. Such interest rate shall be calculated on the assumption that the reverse mortgage will be repaid according to the agreed terms and will not be repaid before the end of the agreed term.

Source: L. 92: Entire article added, p. 940, § 1, effective April 23. **L. 2000:** (3) amended, p. 1872, § 106, effective August 2.

11-38-106. Lender default. Any lender failing to make loan advances as required by the terms of the reverse mortgage, and failing to cure such a default as required by such terms, shall forfeit the right to collect any interest on such reverse mortgage and shall be liable for any civil damages arising from such default. This section shall not apply if the default is by an insurance company which is not owned or controlled directly or indirectly by the lender and the default by the insurance company is pursuant to an annuity purchased by a borrower with reverse mortgage loan advances.

Source: L. 92: Entire article added, p. 941, § 1, effective April 23.

11-38-107. Repayment. (1) A reverse mortgage may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the reverse mortgage is sold.

(b) The borrower ceases to occupy the home as a principal residence.

(c) Any fixed maturity date agreed to by the lender and the borrower is reached.

(d) An event occurs which is specified in the terms of the reverse mortgage and which jeopardizes the lender's security.

(e) Upon death of the borrower.

(2) The repayment requirement described in subsection (1) of this section is also expressly subject to the following additional conditions:

(a) Temporary absences from the home not exceeding sixty consecutive days shall not cause the reverse mortgage to become due and payable.

(b) Temporary absences from the home exceeding sixty consecutive days but not exceeding one year shall not cause the reverse mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a manner satisfactory to the lender.

(c) The lender's right to collect reverse mortgage proceeds shall be subject to the applicable statute of limitations for loan contracts pursuant to section 13-80-103.5, C.R.S.; except that the statute of limitations shall commence on the date that the reverse mortgage becomes due and payable.

(d) Prior to the closing of a reverse mortgage, the lender must prominently disclose any interest or other fees to be charged during the period that commences on the date that the reverse mortgage becomes due and payable and ends when repayment in full is made.

Source: L. 92: Entire article added, p. 941, § 1, effective April 23.

11-38-108. Inapplicability of related statutes. (1) A reverse mortgage may be made or acquired without regard to the following provisions for other types of mortgage transactions set out in the statutes specified in this subsection (1):

(a) Any law of this state limiting loan-to-value ratios;

(b) Prohibitions on balloon payments pursuant to section 5-3-208, C.R.S.;

(c) Any law of this state limiting interest on interest, the adding of deferred interest to principal, or the compounding of interest;

(d) Subject to section 11-38-105 (3), interest rate limits under the usury statutes pursuant to sections 5-12-103 and 18-15-104, C.R.S.;

(e) Any law of this state applicable to insurance or insurance companies under title 10, C.R.S.

Source: L. 92: Entire article added, p. 942, § 1, effective April 23. **L. 2000:** (1)(b) amended, p. 1872, § 107, effective August 2.

11-38-109. Disclosure - total loan cost. (1) Any lender making reverse mortgage loans shall provide to a borrower prior to closing on such a loan a written statement of the projected total loan cost rate for all reverse mortgage loans except for reverse mortgage loans subject to federal "Truth in Lending Act", as amended, total annual loan cost disclosure requirements. As used in this section, "total loan cost rate" means the total of all loan costs including, but not limited to, any origination fee, closing costs, servicing fee, insurance premium contingent

interest based on appreciation, and the annual interest rate charged on the reverse mortgage balance which is expressed as a single annual average rate of interest. Such statement shall include:

(a) An explanation of why the total loan cost rate on reverse mortgages is greatest in the early years of the loan and decreases over the term of the loan; and

(b) A chart or table containing projections of the total loan cost rate at certain anniversary dates during the term of the loan, beginning at the end of year two and thereafter not more than every four years from the date of the loan to year thirty and utilizing not less than three annual average home appreciation percentages from between zero and ten percent.

Source: L. 92: Entire article added, p. 942, § 1, effective April 23. **L. 96:** IP(1) amended, p. 1561, § 14, effective July 1.

Cross references: For the "Truth in Lending Act", see 15 U.S.C. sec. 1601 et seq.

11-38-110. Treatment of reverse mortgage loan proceeds by public benefit programs. (1) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(2) Undisbursed funds under a reverse mortgage shall be treated as equity in a borrower's home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(3) This section shall apply to any law relating to means-tested programs of aid provided by this state, including but not limited to supplemental security income, low-income energy assistance, and the "Colorado Medical Assistance Act", articles 4, 5, and 6 of title 25.5, C.R.S.

Source: L. 92: Entire article added, p. 943, § 1, effective April 23. **L. 2006:** (3) amended, p. 2000, § 40, effective July 1.

11-38-111. Consumer information and counseling. No reverse mortgage shall be made by a lender unless the loan applicant attests, in writing, that the applicant has been advised by the lender to obtain independent counseling regarding the advisability of such applicant's entering into a reverse mortgage transaction and that such applicant has either obtained such counseling or waived such counseling in writing.

Source: L. 92: Entire article added, p. 943, § 1, effective April 23.

11-38-112. Application of article. This article shall apply to all reverse mortgages entered into on and after July 1, 1992, and shall not invalidate any reverse mortgage entered into prior to July 1, 1992.

Source: L. 92: Entire article added, p. 943, § 1, effective April 23.

SAVINGS AND LOAN ASSOCIATIONS

ARTICLE 40

Savings and Loan Association Law

Cross references: For the "Unclaimed Property Act", see article 13 of title 38.

Law reviews: For article, "Arbitrating Lender Liability Claims", see 18 Colo. Law. 879 (1989).

11-40-101. Short title. Articles 40 to 46 of this title shall be known and may be cited as the "Savings and Loan Association Law".

Source: L. 33: p. 284, § 1. **CSA:** C. 25, § 1. **L. 51:** p. 212, § 1. **CRS 53:** § 122-1-1. **C.R.S. 1963:** § 122-1-1.

Cross references: For additional provisions relating to savings and loan associations, see articles 47 and 48 of this title.

11-40-102. Definitions. As used in articles 40 to 46 of this title, unless the context otherwise requires:

(1) "Branch" means any office or other place of business in this state operated by an association other than its principal office in this state where subscriptions are sold, taken, or solicited for shares or stock.

(2) "Certificate value" means the aggregate of payments by a certificate holder on shares evidenced by such certificate, plus dividends credited thereto, less withdrawals thereon.

(3) "Commissioner" means the state commissioner of financial services.

(4) "Division" means the division of financial services.

(5) "Domestic savings and loan association" is one organized under the laws of Colorado and complying with the provisions thereof.

(6) "Dues" means the periodic payments made or to be made by a member in the purchase of savings shares.

(7) "Federal savings and loan association" means one organized or chartered under the "Home Owners' Loan Act of 1933", as may from time to time be amended, or under any federal act which may be enacted as a successor act to regulate the organization and operation of associations formerly organized or chartered under said "Home Owners' Loan Act of 1933". Federal savings and loan associations shall not be subject to the provisions of articles 40 to 46 of this title.

(8) "Foreign savings and loan association" means an association or a holding company of an association which is organized under the laws of any other state or nation, except federal savings and loan associations which are organized under the "Home Owners' Loan Act of 1933", and any amendments thereto.

(9) "Free share" means a share not pledged to the association by which issued as collateral security for the repayment of a loan to the owning member.

(10) "Invested capital" means the aggregate of all certificate values, plus the aggregate par value of all permanent stock issued and paid for, if a permanent stock association.

(11) "Loan share" means a share which has been pledged to the association by which issued as collateral security for the repayment of a loan to the owning member.

(12) "Member" means any person owning or having control of an account with an association evidenced by certificate or passbook or any person borrowing from or assuming a loan held by an association or obligated upon a loan held by an association through purchase or otherwise, or a purchaser of property securing a loan held by an association, or a purchaser of property on a contract from an association.

(12.5) "Net worth" includes the sum of all reserve accounts, undivided profits, permanent stock, preferred stock, and surplus, the principal amount of any subordinated debt securities, and any other account or item included as net worth by regulation of the commissioner or by any law, rule, regulation, order, or decision of the federal deposit insurance corporation or its successor or any other state or federal agency that is applicable to federal savings and loan associations.

(13) "Permanent stock" means stock which cannot be withdrawn or the value paid to the holder thereof until all liabilities of the association have been fully liquidated and paid.

(14) "Share" means a unit having a par value of one hundred dollars evidenced by issued certificate, the certificate value of which represents the proportionate interest of a holder in the association.

(15) "Shareholder" means the holder of shares which may be withdrawn upon due and proper notice in accordance with the bylaws or as the laws of the state may provide and the withdrawal or payment of which is not contingent upon the payment of all liabilities of the association.

(16) "Stockholder" means a holder of permanent stock.

(17) "Subordinated debt security" means any note, secured or otherwise, debenture, or other debt security issued by a savings and loan association which is subordinated or junior, on liquidation or otherwise, to any liability or claim of any order or rank, including all claims having the same priority as or a higher priority than savings account holders.

(18) "Tax and loan account" means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of federal taxes and certain United States' obligations. Tax and loan accounts are not shares, savings or share accounts, savings deposits, or deposit accounts.

Source: L. 33: p. 285, § 3. **CSA:** C. 25, § 3. **L. 39:** pp. 237, 238, §§ 1-4. **CRS 53:** § 122-1-3. **L. 55:** p. 756, § 1. **C.R.S. 1963:** § 122-1-3. **L. 69:** p. 1013, § 2. **L. 77:** (12.5) and (17) added, p. 569, § 1, effective July 1. **L. 79:** (18) added, p. 430, § 1, effective June 19. **L. 88:** (8) amended, p. 461, § 5, effective July 1. **L. 89:** (3) and (4) amended, p. 618, § 7, effective July 1. **L. 2004:** (12.5) amended, p. 148, § 53, effective July 1.

Cross references: For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.

11-40-103. Savings and loan association defined. A "savings and loan association", within the meaning of articles 40 to 46 of this title, is any domestic or foreign association or corporation formed, created, or organized to carry on the business of a savings and loan association, which is formed to encourage industry, thrift, home building, and saving among its

members, by the accumulation of funds through the issuance and sale of its own shares, capital notes, or debentures, the acceptance of savings deposits, or any other manner permitted by the provisions of articles 40 to 46 of this title, the loaning or investment of the funds so accumulated to assist its members in acquiring real estate, in making improvements thereon, and in paying off existing encumbrances thereon, or for any other purposes or in any other manner permitted by the provisions of articles 40 to 46 of this title, and which accumulates funds to be returned to its members.

Source: L. 33: p. 284, § 2. **CSA:** C. 25, § 2. **CRS 53:** § 122-1-2. **C.R.S. 1963:** § 122-1-2. **L. 69:** p. 1013, § 1.

11-40-104. Fiscal year - closing dates - net earnings. (1) Each domestic savings and loan association shall have such fiscal year as may be fixed from time to time by resolution of its board of directors, but the fiscal years of all such associations shall be fixed so as to end as of the last day of a calendar month. Every domestic savings and loan association shall close its books at least once annually as of the close of business on the last day of its fiscal year and may close its books at such other time as may be fixed by resolution of its board of directors. Any reference in this section or elsewhere in articles 40 to 46 of this title to the closing date of an association means the date fixed for the closing of its books as provided in this section. The books and records of every association shall reflect all the accrued liabilities on the above dates.

(2) The net earnings of each period ending on a closing date fixed as provided in this section shall be determined by deducting from gross income of such periods operating and nonoperating expenses and dividends and interest paid to shareholders or depositors. Expenses shall include:

(a) Charges for estimated depreciation and obsolescence of home office building and furniture and fixtures, with contra credits to a depreciation reserve account;

(b) Charges for all losses actually sustained during such periods from the sale of securities, real estate, or other assets or such portion of such losses as have not been charged to reserves pursuant to the provisions of section 11-42-111.

(3) The remaining balance of gross income thus arrived at is the association's net income and shall be available for dividends on permanent stock or be credited to general reserve accounts or the undivided profits account in a manner as provided in section 11-42-111. Provision may be made for an undivided profits account not to exceed five percent of invested capital, unless an excess amount is approved by the commissioner.

(4) No income shall be considered as earned until collected; except that interest due and unpaid may be accrued for a period of not more than six months and considered as earnings.

Source: L. 33: p. 356, § 12. **CSA:** C. 25, § 80. **CRS 53:** § 122-1-4. **L. 55:** p. 756, § 2. **C.R.S. 1963:** § 122-1-4. **L. 69:** p. 1014, § 3. **L. 73:** p. 1236, §§ 1, 2.

11-40-105. File annual reports. (1) On or before February 1 in each year, every association shall make an annual written report to the commissioner, in a form to be prescribed by the commissioner, of its affairs and operations for the twelve months ending on December 31 of the previous year.

(2) If any association fails to file such report or if any such report is delayed or withheld beyond the day when the report should be so filed, such association shall forfeit and pay the sum of ten dollars for every day such report is withheld or delayed or not completed, and any member of any association or any party in interest may maintain an action in his or her own name to receive such penalty, and the penalty shall be paid to the state treasurer.

(3) (a) Every association, on or before the first day of the third calendar month after the end of its fiscal year, shall mail to each member or may, at its option, publish in a newspaper of general circulation a report in a form prescribed or approved by the commissioner of its financial condition, setting forth a statement of its assets, liabilities, and reserves in the form of a statement of condition.

(b) Paragraph (a) of this subsection (3) shall take effect July 1, 1973, and shall apply to loans or contracts for loans entered into on or after that date. Nothing in this subsection (3) shall be deemed to affect loans or contracts for loans entered into prior to July 1, 1973.

Source: L. 33: p. 355, § 11. **CSA:** C. 25, § 79. **L. 39:** p. 252, § 27. **CRS 53:** § 122-1-5. **C.R.S. 1963:** § 122-1-5. **L. 67:** p. 259, §§ 1, 2. **L. 73:** p. 1236, § 3. **L. 2000:** (1) and (2) amended, p. 155, § 2, effective August 2.

11-40-106. Annual fees and assessments - fund. (1) Every domestic savings and loan association operating in this state shall pay to the division of financial services such fees for administration, supervision, and examination as the commissioner may determine sufficient to meet the budget of the division of financial services as appropriated by the general assembly for the fiscal year commencing July 1. The fees shall be determined as follows:

(a) At least semiannually, the commissioner shall assess each association, based on its total assets, to meet the costs of administration, examination, and supervision by the division for that fiscal year. Such assessments shall be calculated in terms of cents per thousand dollars of total assets but shall in no case exceed in total the costs of administration, examination, and supervision by the division for that fiscal year. The assessment calculation or ratio of the assessment charged to total assets shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment.

(b) As of July 1 of each year, the commissioner may estimate a per diem rate to be charged for the examination of each association during the fiscal year. At the conclusion of its examination, each association shall pay the actual cost of the examination, if required by the commissioner.

(c) At least semiannually, the commissioner shall assess each state and federal savings and loan association that has been designated as an eligible public depository, as defined in section 11-47-103 (6), based on its total public deposits held, to meet its share of the division's supervisory costs of monitoring compliance with the provisions of the "Savings and Loan Association Public Deposit Protection Act", article 47 of this title, for that fiscal year. Such assessments shall be calculated in terms of cents per thousand dollars of total public deposits held. The assessment calculation, or ratio of the assessment charged to total public deposits held, shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment.

(d) In the same manner as specified in paragraph (b) of this subsection (1), the commissioner may charge any state or federal savings and loan association that has been

designated as an eligible public depository, as defined in section 11-47-103 (6), for the actual cost of any examination necessary to assure its compliance with article 47 of this title.

(2) All fees and collections of every kind shall be transmitted to the state treasurer, who shall credit the same to the division of financial services cash fund, which fund is hereby created in the state treasury. All moneys in the fund shall be subject to appropriation by the general assembly for the direct and indirect costs of the activities of the division of financial services. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

Source: L. 33: p. 352, § 4. **CSA:** C. 25, § 72. **L. 39:** p. 252, § 25. **L. 45:** p. 240, § 3. **L. 47:** p. 317, § 2. **CRS 53:** § 122-1-6. **C.R.S. 1963:** § 122-1-6. **L. 67:** p. 892, § 1. **L. 81:** (1) amended, p. 619, § 1, effective April 30. **L. 83:** (1)(c) added, p. 487, § 1, effective May 10. **L. 84:** (1)(d) added, p. 377, § 1, effective May 11. **L. 88:** IP(1) and (1)(a) amended, p. 455, § 1, effective March 18. **L. 89:** IP(1) amended, p. 618, § 8, effective July 1. **L. 92:** (1)(a) and (2) amended, p. 928, § 6, effective February 25. **L. 2004:** (1)(a)(II) and (1)(a)(III) amended, p. 135, § 12, effective July 1. **L. 2005:** (1) amended, p. 14, § 1, effective February 23.

11-40-106.5. Preauthorized transfers - savings and loan association must have written authorization. (Repealed)

Source: L. 88: Entire section added, p. 346, § 10, effective July 1. **L. 89:** Entire section repealed, p. 592, § 1, effective April 7.

11-40-107. Defamation of associations - penalty. Any person who willfully makes, circulates, or transmits any false statement, rumor, report, or suggestion, written, printed, or spoken, concerning the financial condition or management or assets of any savings and loan association, either by name or as a particular group of any particular city, town, or county, which incites the public or any person or creates an impression detrimental to the standing, solvency, or responsibility of said savings and loan association, or which tends to result or results in the withdrawal of funds from such association or in the exchange of shares in savings and loan associations for any other stock, bonds, notes, debentures, or other evidences of indebtedness or for any other property of any kind or character whatsoever, or which tends to result or results in impairing the confidence which may be reposed in said association and any person aiding, advising, and abetting such person in such matters and things is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than three months nor more than one year, or by both such fine and imprisonment.

Source: L. 33: p. 352, § 3. **CSA:** C. 25, § 71. **CRS 53:** § 122-1-7. **C.R.S. 1963:** § 122-1-7.

11-40-108. Circulating false information - penalty. Any person who willfully and knowingly concurs in or is responsible, directly or indirectly, for the making, publishing, or posting, either generally or privately, to actual or prospective members or investors of any false

or misleading information tending to imply that any other business operated in this state is a savings and loan association or operated in the manner of a savings and loan association or is regulated in whole or in part under the provisions of articles 40 to 46 of this title is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three hundred dollars, or by imprisonment in the county jail for a period of not less than six months nor more than one year, or by both such fine and imprisonment.

Source: L. 33: p. 359, § 17. **CSA:** C. 25, § 85. **CRS 53:** § 122-1-8. **L. 63:** p. 292, § 12. **C.R.S. 1963:** § 122-1-8.

11-40-109. Suits interfering with business of association. No order, judgment, or decree providing for an accounting of, or enjoining, restraining, or interfering with the transaction of, the business of any savings and loan association organized or doing business under the provisions of articles 40 to 46 of this title shall be made or granted otherwise than upon the application of the attorney general, after his or her approval of a written request therefor by the commissioner, except in an action by a judgment creditor or in proceedings supplementary to execution.

Source: L. 33: p. 358, § 14. **CSA:** C. 25, § 82. **CRS 53:** § 122-1-9. **C.R.S. 1963:** § 122-1-9. **L. 2016:** Entire section amended, (HB 16-1094), ch. 94, p. 265, § 6, effective August 10.

ARTICLE 41

Organization and Powers

Cross references: For electronic funds transfers for financial institutions organized under this article, see article 48 of this title.

11-41-101. General organization. Domestic associations may be incorporated with shares or stock or both and with all the rights, powers, and privileges and subject to all the restrictions set forth in articles 40 to 46 of this title.

Source: L. 33: p. 287, § 1. **CSA:** C. 25, § 4. **CRS 53:** § 122-2-1. **C.R.S. 1963:** § 122-2-1.

11-41-102. Restriction on corporate name. The name of each domestic association incorporated on or after May 17, 1939, shall include the words "savings and loan association". If the name of the domestic association contains the words "savings and loan association", it need not comply with the requirements of part 6 of article 90 of title 7, C.R.S. No association shall include in its name the words "guaranty" or "guarantee" or "mutual", unless organized without stock, or "permanent", unless organized with stock. The provisions of this section shall not affect the right of any association existing before May 17, 1939, to continue the use of its name.

Source: L. 33: p. 287, § 2. **CSA:** C. 25, § 5. **L. 39:** p. 238, § 5. **CRS 53:** § 122-2-2. **C.R.S. 1963:** § 122-2-2. **L. 79:** Entire section amended, p. 430, § 2, effective June 19. **L. 93:**

Entire section amended, p. 861, § 28, effective July 1, 1994. **L. 2000:** Entire section amended, p. 989, § 107, effective July 1.

11-41-103. Use of name "savings and loan association" restricted. It is unlawful for any person, firm, company, association, partnership, society, or corporation, either domestic or foreign, to transact business under any name or title which contains the term "savings and loan", or use any sign or circulate or use any letterhead, billhead, circular, or paper whatsoever, or advertise in any manner to indicate that its business is the character or kind of business carried on or transacted by a savings and loan association or which is calculated to lead the public to believe that its business is that of a savings and loan association, unless it is lawfully authorized to do business in this state under the provisions of articles 40 to 46 of this title or its charter and is actually engaged in carrying on a savings and loan business in this state under the provisions of said articles 40 to 46, and, upon action brought by the commissioner, injunction will lie to restrain any person, firm, company, partnership, society, corporation, or agent thereof from continuing to violate any of the provisions of this section.

Source: L. 33: p. 359, § 18. **CSA:** C. 25, § 86. **CRS 53:** § 122-2-3. **C.R.S. 1963:** § 122-2-3.

11-41-104. Articles of incorporation. (1) Any five or more persons who are citizens of this state and who may desire to form a corporation for the purpose of carrying on the business of a savings and loan association shall make, sign, and acknowledge, in triplicate, before some officer competent to take the acknowledgment of deeds, a certificate in writing, known as the articles of incorporation, in which shall be stated:

(a) The name of said association, which shall not be identical with that of any other association in this state nor which so resembles the name of any other association as to be likely to lead to confusion as to its identity;

(b) The objects for which the association is formed;

(c) The name of the city or town and county in this state wherein the principal office of the association is to be located;

(d) In the event it is a permanent stock company, the number of shares of permanent stock authorized and the number of shares of permanent stock subscribed for and the amount of cash actually paid in thereon;

(e) The names of the incorporators, their respective occupations and residence addresses, and a statement of the number of shares or amount of stock subscribed by each and the amount of cash paid upon the shares or stock of each;

(f) The kind or classes of shares or stock the association proposes to issue and a statement of all or any of the designations and the powers, rights, qualifications, limitations, or restrictions in respect of any classes of stock or shares of the association;

(g) That the association shall have perpetual existence;

(h) Whether or not cumulative voting shall be allowed in the election of directors;

(i) That, if such is the case, the association is created for the purpose of carrying on part or all of its business beyond the limits of this state;

(j) The number of directors and the names and residences of the directors who shall serve for the first year of its existence and until their successors are elected and qualified;

(k) A statement as to whether the association is organized to issue and sell its shares and otherwise operate as a share association or to accept savings deposits and operate as a deposit association, as provided by the provisions of articles 40 to 46 of this title.

(2) The certificate may also contain any other provisions which the incorporators may see fit to insert for the regulation and conduct of the affairs of the association, the directors, shareholders, and stockholders, or any class of shareholders or stockholders, but such provisions shall not conflict with the provisions of articles 40 to 46 of this title or the laws of the state of Colorado.

(3) The provisions of this section shall be the exclusive authority for the incorporation of a domestic association, and nothing in either section 11-41-121 (1.5) or 11-41-133 (6) shall be construed or interpreted to authorize the organization of a domestic association by a foreign association by incorporation of a charter de novo.

Source: L. 33: p. 288, § 3. **CSA:** C. 25, § 6. **CRS 53:** § 122-2-4. **C.R.S. 1963:** § 122-2-4. **L. 69:** p. 1014, § 4. **L. 88:** (3) added, p. 457, § 1, effective July 1.

Cross references: For persons before whom acknowledgments may be taken, see § 38-30-126.

11-41-105. Minimum stock subscription - issuance of preferred stock. (1) No permanent stock association shall be organized on or after July 1, 1983, unless, prior to the filing of its articles of incorporation, such minimum amount of its permanent stock and paid-in surplus as required by the commissioner has been subscribed for and the same paid for in lawful money of the United States and is in the custody of the persons named in the articles of incorporation as the members of the first board of directors.

(2) Preferred stock may be issued by a permanent stock association at any time and shall have such preferences, powers, conversion provisions, and rights as the board of directors of the association may approve.

Source: L. 33: p. 289, § 4. **CSA:** C. 25, § 7. **L. 39:** p. 261, § 36. **L. 43:** p. 200, § 1. **CRS 53:** § 122-2-5. **C.R.S. 1963:** § 122-2-5. **L. 77:** Entire section amended, p. 569, § 2, effective July 1. **L. 83:** (1) amended, p. 489, § 1, effective April 26.

11-41-106. Approval of articles of incorporation. The articles of incorporation of any savings and loan association organized under articles 40 to 46 of this title shall not be filed in the office of the secretary of state of the state of Colorado or be received by the secretary of state for filing unless accompanied by a certificate of approval by the commissioner.

Source: L. 33: p. 290, § 5. **CSA:** C. 25, § 8. **L. 39:** p. 238, § 6. **CRS 53:** § 122-2-6. **C.R.S. 1963:** § 122-2-6.

11-41-107. Documents deposited with commissioner. (1) Every domestic savings and loan association proposing to incorporate in this state shall first deposit with the commissioner the following documents:

(a) Two signed and verified copies of the articles of incorporation of the association;

(b) Two copies of the bylaws of the association;

(c) Applications signed and verified by a majority of the initial directors of such association, setting forth: Names and addresses of the proposed incorporators, directors, and officers of such association; a statement of the experience and general fitness of the officers and directors to engage in the savings and loan business; an itemized statement of the estimated receipts and expenditures of such association for the first year showing that such association will have a reasonable chance to succeed in the territory in which it proposes to operate; and such other matters as the commissioner may require. Such application shall be accompanied by a fee in the form of a certified check in the amount established by the commissioner, payable to the division of financial services.

(2) Upon receipt of such documents, the commissioner shall immediately examine and investigate into the advisability of issuing a certificate of approval for such association, and he shall issue such certificate of approval if, upon examination, the commissioner finds:

(a) That the articles of incorporation comply with all the provisions of articles 40 to 46 of this title;

(b) That the bylaws comply with the provisions of articles 40 to 46 of this title;

(c) That the provisions of articles 40 to 46 of this title have been complied with;

(d) That it is expedient and desirable to permit such association to engage in business;

(e) That the officers and directors have the experience and general fitness to engage in a savings and loan business;

(f) That the financial program of the association is sound;

(g) That the association has a probable chance to succeed;

(h) That its name is not so similar to that of any other association operating in this state as to mislead the public; but the words "the", "and", "mutual", "permanent", and "savings and loan association" shall not themselves constitute such similarity of names as to be likely to mislead the public.

(3) If the commissioner's finding is adverse to the association in any of the particulars recited in subsection (2) of this section, he shall not issue a certificate of approval.

Source: L. 33: p. 291, § 6. **CSA:** C. 25, § 9. **L. 39:** p. 238, § 7. **CRS 53:** § 122-2-7. **C.R.S. 1963:** § 122-2-7. **L. 83:** (1)(c) amended, p. 493, § 1, effective July 1. **L. 84:** (1)(c) amended, p. 377, § 2, effective May 11. **L. 89:** (1)(c) amended, p. 620, § 13, effective July 1.

11-41-108. Refusal of certificate - appeal. If the commissioner, after an examination, believes for any reason that a certificate of approval should not be issued and refuses to issue the same, he shall file a written statement with a board consisting of the governor, the attorney general, and the state treasurer of the state of Colorado giving in detail his reasons for such refusal. After notice to all concerned and after a hearing, said board may order the commissioner to issue the certificate of approval or may approve his action in refusing a certificate of approval.

Source: L. 33: p. 293, § 7. **CSA:** C. 25, § 10. **CRS 53:** § 122-2-8. **C.R.S. 1963:** § 122-2-8.

Cross references: For hearing procedures, see § 24-4-105.

11-41-109. Certificate of approval - where articles filed. (1) If the commissioner finds affirmatively for the association upon all the matters set forth in section 11-41-107, he shall issue a certificate of approval under his hand and seal, executed in duplicate, within sixty days thereafter, in which shall be recited in substance the following:

(a) That the articles of incorporation and bylaws have been filed in his office;

(b) That said articles of incorporation and bylaws conform to the provisions of the law;

(c) That he has approved the same.

(2) The commissioner shall attach one of said certificates to each copy of the articles of incorporation and shall retain one copy of the articles of incorporation and bylaws in his office and return the other copy of the articles and bylaws, with the certificate of approval attached thereto, to the association. Upon receipt from the commissioner of the articles of incorporation, the association shall file the same with the secretary of state, and certified copies of the articles of incorporation shall be filed by the association in the office of the county clerk and recorder of each county in this state in which said association may own real estate. The failure to file a certified copy in the office of the clerk and recorder of any county in this state shall not affect the validity of the incorporation of any association which has made its filing with the secretary of state and has obtained a certificate of approval. In the event a true copy of such articles of incorporation is presented to the secretary of state with the request that the same be certified, he shall certify the same for a fee which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., which certificate shall contain, in addition to the usual statement, a statement that the same is a true copy of the original articles of incorporation on file in his office and a statement as to the date of the filing of such articles of incorporation. When articles of incorporation or amendments thereto have been filed in the office of the secretary of state, he shall record and carefully preserve the same in his office, and a copy thereof, duly certified by the secretary of state under the great seal of the state of Colorado, shall be evidence of the existence of such association and prima facie evidence of the contents of said articles of incorporation or such amendments thereto.

(3) The secretary of state shall charge for the filing of documents for savings and loan associations the same fees that are charged for corporations with like capital stock, as prescribed in the "Colorado Corporation Code", and such fees shall be deposited in the department of state cash fund created in section 24-21-104 (3), C.R.S.

Source: L. 33: p. 293, § 8. **CSA:** C. 25, § 11. **CRS 53:** § 122-2-9. **C.R.S. 1963:** § 122-2-9. **L. 67:** p. 492, § 1. **L. 83:** (2) and (3) amended, p. 876, § 41, effective July 1.

Editor's note: The "Colorado Corporation Code", articles 1 to 10 of title 7, referred to in subsection (3) was repealed, effective July 1, 1994, and was replaced on that date by the "Colorado Business Corporation Act", articles 101 to 117 of title 7.

Cross references: For fees for filing documents under the "Colorado Business Corporation Act", see part 2 of article 101 of title 7.

11-41-110. Body corporate. Upon making the articles of incorporation, obtaining a certificate of approval from the commissioner, filing the articles of incorporation and certificate of approval in the office of the secretary of state, and paying the filing fees therefor to the

secretary of state, the persons so associating and their successors and assigns shall, from the date of the filing of the same with the office of the secretary of state, be a body corporate by the name set forth in said articles of incorporation, subject to dissolution as provided in articles 40 to 46 of this title and the laws of Colorado not in conflict with said articles 40 to 46. No association shall cease to exist or expire from neglect on the part of the association to elect officers or directors at the time mentioned in their articles of incorporation and bylaws, and all officers or directors elected by an association shall hold office until their successors are duly elected and qualified.

Source: L. 33: p. 295, § 9. **CSA:** C. 25, § 12. **CRS 53:** § 122-2-10. **C.R.S. 1963:** § 122-2-10.

11-41-111. Renewal of corporate life. (1) Any association incorporated under any law prior to June 8, 1933, may extend its corporate life upon the affirmative vote of at least a majority of its directors at a special meeting of the board of directors called for that purpose, setting out the purpose of said meeting, and ratified by the written consent of persons holding in the aggregate more than two-thirds in book value of the outstanding stock and shares in such association.

(2) The president or vice-president and the secretary or assistant secretary of said association shall certify the fact, under the seal of said association, and shall make as many certificates as may be necessary so as to file one in the office of the county clerk and recorder in each county wherein the association may do business, one in the office of the secretary of state, and one in the office of the commissioner, and thereupon the corporate life of said association shall be renewed in perpetuity, or for the term mentioned in the certificate, upon filing such certificate in the office of the secretary of state. All stockholders or shareholders have the same rights in the new association, so extended, as they had in the association as originally formed.

(3) The extension of the term of existence of any such association in the manner provided shall not be so construed as enlarging any of the powers, privileges, or franchises theretofore enjoyed by such association. Upon the proper filing of any certificate of extension mentioned in articles 40 to 46 of this title, the corporate existence shall be considered as extended and continuous for the period specified in such certificate from the date of the previous expiration of such corporate existence, and said association shall be considered as then having had a continuous corporate existence to the time of the filing of such certificate of renewal.

Source: L. 33: p. 295, § 10. **CSA:** C. 25, § 13. **CRS 53:** § 122-2-11. **C.R.S. 1963:** § 122-2-11.

11-41-112. Powers of savings and loan associations. (1) Savings and loan associations have the following powers:

(a) To have succession of its corporate name;

(b) As to all associations incorporated prior to June 8, 1933, to have existence for the period named in their articles of incorporation and, on the termination of such period, perpetually if so provided in the extension;

(c) As to all associations incorporated under articles 40 to 46 of this title, to have existence perpetually;

(d) To sue and be sued in any court of law or equity;

(e) To have a corporate seal and to alter the same and use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise;

(f) To appoint such officers and agents as the business of the association shall require and allow them reasonable compensation;

(g) To make bylaws, not inconsistent with the constitution or laws of the United States or of this state or the provisions of articles 40 to 46 of this title, and alter the same at pleasure, and make all needed rules and regulations for the transaction of its business and the control of its property and affairs, if a certified copy of same has been filed with the commissioner. The bylaws of an association may be amended either by the stockholders or shareholders at their annual meeting or by the board of directors of an association at any regular meeting of the board of directors; but no change in the bylaws shall take effect until approved by the commissioner.

(h) To acquire, hold, mortgage, and convey all such real estate and personal property as may be transferred to it in the operation of its business;

(i) To levy, assess, and collect from its shareholders such sums of money by way of installment dues and interest on loans as the association may provide in its bylaws;

(j) To issue and sell shares as provided in sections 11-42-101 to 11-42-106 or, in the case of deposit associations operated under the provisions of section 11-42-125, to accept savings deposits as provided by such section;

(k) To redeem its shares and repay the funds acquired thereby with such earnings as the same may be entitled according to the terms of the issue thereof if the same are no longer required for the purposes of the association;

(l) To act as a trustee, custodian, or manager or in any other fiduciary capacity to the same extent authorized and permitted from time to time by the laws and regulations applicable to federal savings and loan associations in Colorado, and upon specific approval by the commissioner, by permission granted such federal associations by the federal office of thrift supervision or its successor, including specifically, but without limitation, the power to act as the trustee, custodian, or manager of any trust created or organized in the United States and forming a part of a stock bonus, pension, profit-sharing, or retirement plan that is qualified for specific tax treatment under the provisions of the federal "Self-Employed Individuals Tax Retirement Act of 1962", as from time to time amended or supplemented, or under the provisions of any other act of congress enacted after June 2, 1971, as a substitute or replacement for the federal "Self-Employed Individuals Tax Retirement Act of 1962" or under the provisions of the federal "Employee Retirement Income Security Act of 1974", 29 U.S.C. sec. 1001 et seq., as from time to time amended or supplemented. The association managing funds of any such plan, trust, or fund shall have, to the extent applicable to federal savings and loan associations in Colorado, all of the rights, powers, privileges, and immunities and shall be subject to the same obligations and duties as an individual fiduciary under like circumstances with power to make investments. All funds held in such fiduciary capacity by any association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this paragraph (l). An association acting as a trustee may control accounts in or securities of such association pursuant to the exercise of its authority as a trustee. The exercise by an association of any authority vested in it shall not affect any other authority of such association.

(m) To, subject to the regulations of the United States treasury department and the federal office of thrift supervision or its successor, establish a tax and loan account and serve as

a depository for federal taxes or as a treasury tax and loan depository, and to satisfy any requirement in connection therewith;

(n) To provide in its articles of incorporation for the elimination or limitation of the personal liability of a director to the corporation or to its stockholders for monetary damages for breach of fiduciary duty as a director; except that such provision shall not eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for: Any breach of the director's duty of loyalty to the corporation or its stockholders; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any act or omission occurring prior to the date when such provision becomes effective.

(o) Pursuant to federal law or under such rules and regulations as may be prescribed by the financial services board and subject to regulations promulgated by the commissioner of insurance concerning the sale of insurance by savings and loan associations as provided in section 10-2-601, C.R.S., to act as the agent, through the savings and loan association or any service corporation thereof, for any fire, life, or other insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For services so rendered, such savings and loan association or service corporation of such savings and loan association may receive such fees or commissions as may be agreed upon between such entity and the insurance company for which it may act as agent.

Source: L. 33: p. 295, § 11(1)-(11). **CSA:** C. 25, § 14. **CRS 53:** § 122-2-12. **C.R.S. 1963:** § 122-2-12. **L. 69:** p. 1014, § 5. **L. 71:** p. 1145, § 1. **L. 79:** (1)(m) added, p. 430, § 3, effective June 19. **L. 81:** (1)(l) amended, p. 622, § 1, effective May 18. **L. 87:** (1)(n) added, p. 368, § 6, effective May 20. **L. 97:** (1)(o) added, p. 432, § 9, effective April 24. **L. 2004:** (1)(l) and (1)(m) amended, p. 135, § 13, effective July 1.

Cross references: For the "Self-Employed Individuals Tax Retirement Act of 1962", see Pub.L. 87-792, 76 Stat. 809; for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.

11-41-112.5. Savings and loan association as fiduciary. It is unlawful for a savings and loan association to act as fiduciary, other than as escrow agent, unless it is authorized to do so by the commissioner.

Source: L. 81: Entire section added, p. 623, § 2, effective May 18.

11-41-113. Federal home loan bank membership. (1) Any savings and loan association organized and incorporated under the laws of this state as a savings and loan association that is eligible to become a member of the federal home loan bank, in accordance with the provisions of the act of congress known and cited as the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., approved July 22, 1932, is authorized to subscribe for stock of the federal home loan bank for the district in which it is located and to invest its funds in such stock for the purpose and to the extent required and permitted by the provisions of the "Federal

Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., or any amendment thereto, and is further authorized to furnish to the federal office of thrift supervision or its successor and to the federal home loan bank reports of examinations of such associations made by the commissioner, and is further authorized to consent to an examination to be made by the federal office of thrift supervision or its successor or the federal home loan bank, and is further authorized to do all other things as may be required by the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq., or any amendment thereto, necessary to obtain and to continue membership in the federal home loan bank and to obtain advances therefrom or that may be incidental to acquiring or holding membership and to obtaining advances therefrom, and is authorized to assume all the duties, obligations, responsibilities, and liabilities and become entitled to all the benefits provided in the "Federal Home Loan Bank Act", 12 U.S.C. sec. 1421 et seq.

(2) Any savings and loan association has the power to borrow money from the federal home loan bank, when authorized by resolution of its board of directors, upon such terms and rates of interest as may be agreed upon and is authorized to assign and pledge its notes, bonds, mortgages, or other property and to repledge the shares of stock pledged to it as collateral security without securing the consent of the owner thereto as security for the repayment of its indebtedness for money borrowed.

(3) Such pledgee of any note or other evidence of indebtedness due to an association has the right to enforce in its own name or in the name of the association all appropriate remedies to enforce collection, whether or not the shares described in connection with said note are held by such pledgee. Any obligation incurred by or loan made to an association shall constitute a claim against the association's assets and shall be payable in advance of and by preference over all claims or rights of the shareholders or stockholders of such association and shall be prior to and outrank any demand or application for withdrawal or cancellation of all classes of shares or stock or units or certificates in said association including prepaid and matured shares. The existence of a withdrawal list consisting of members desiring to withdraw from the association shall not prevent the board of directors of such association, in its discretion, from borrowing money from the federal home loan bank, to be used for the purpose of making mortgage loans to the members of the association or retiring bank loans, in which event all such amount of borrowed money may be exclusively used for the purpose borrowed or for other purposes, subject to the approval of the commissioner; but no savings and loan association shall at any time borrow money from the federal home loan bank in an amount exceeding any limit fixed by the laws of this state.

(4) Any savings and loan association having funds in its treasury for investment, which funds are deemed by it to be in excess of the amount needed for loans to its members and for the payment of matured shares and withdrawals, has the power to invest such portion of these excess funds in the obligations, bonds, debentures, and other securities of the federal home loan bank; but such investments may not be made in an amount in excess of the limit, if any, provided by the laws of this state for investment of funds in classes of investment other than in mortgage loans to members of the association.

(5) Any officer, director, trustee, attorney, or agent of a savings and loan association, or other borrower, acting as agent for a federal home loan bank in the collection of interest, amortization, or installment payments on collateral deposited with said bank, who applies the proceeds of such collections otherwise than as provided in the agreement with the bank is guilty of theft and shall be subject to the punishment provided by the laws of this state for that offense.

Source: L. 33: p. 300, § 11(12). **CSA:** C. 25, § 14. **CRS 53:** § 122-2-13. **C.R.S. 1963:** § 122-2-13. **L. 2004:** (1) amended, p. 136, § 14, effective July 1.

11-41-114. How funds invested. (1) Any savings and loan association may invest any portion of its funds in any of the following:

(a) Loans to its members, secured by first lien trust deeds or mortgages upon improved real estate, and upon such plans of repayment, as provided in section 11-41-119, and in such other loans to its members as the commissioner may approve;

(b) Bonds and other obligations of, or guaranteed as to interest and principal by, the United States;

(c) Bonds or debentures issued by any federal home loan bank in accordance with the provisions of the "Federal Home Loan Bank Act";

(d) Consolidated federal home loan bank bonds or debentures issued by the federal home loan bank administration in accordance with the provisions of the "Federal Home Loan Bank Act";

(e) Bonds or debentures issued by the federal deposit insurance corporation or its successor in accordance with the provisions of Title IV of the "National Housing Act", and any amendments thereto;

(f) Insured shares of savings and loan associations to the extent that each investment is insured by the federal deposit insurance corporation or its successor and uninsured shares of savings and loan associations but not to exceed ten thousand dollars in any one uninsured association, if such associations are incorporated under the laws of this state or the federal government and are doing business in this state and if such associations are functioning and operating without any restrictions imposed by order of the commissioner or federal home loan bank administration;

(g) Bonds and legal registered warrants as are a direct obligation of the state of Colorado or of any county, city and county, school district, or incorporated city or town therein which has continuously existed as a lawful corporation for a period of at least fifteen years prior to the date thereof and whose bonds have not been in default as to principal or interest for a period of five years prior to the purchase of the same by any savings and loan association;

(h) Other investments, as approved by the commissioner, in which and to the same extent that savings and loan associations, chartered in accordance with the provisions of the "Home Owners' Loan Act of 1933", as amended, may invest;

(i) (I) Capital stock, obligations, or other securities of any corporation, if such corporation is engaged only in such businesses and activities as may be engaged in by corporations whose capital stock is a lawful investment for federal savings and loan associations under the laws, rules, and regulations applicable to all federal savings and loan associations similarly situated. The maximum total investment by any association in any such corporation or combination of corporations shall not exceed the maximum investment which federal savings and loan associations are permitted to maintain in capital stock, obligations, or other securities of similar corporations.

(II) In addition to the maximum total investment provided in subparagraph (I) of this paragraph (i), an association may invest an additional three percent of its assets in such corporation or combination of corporations solely for residential real estate development through joint ventures. Nothing in this subparagraph (II) shall authorize participation in such joint

ventures conditioned upon utilization of any real property held, directly or indirectly, by such corporation. This subparagraph (II) shall not be construed to authorize such corporation or combination of corporations to invest in real property unless such investment is initiated through a joint venture.

(III) No association organized under the laws of this state shall acquire the capital stock, obligations, or other securities of any such corporation until there has been filed in the office of the commissioner a statement by such corporation agreeing to permit, and pay all costs of, such examinations or audits of the corporation by the commissioner as he deems necessary in order to confirm compliance with the provisions of this paragraph (i).

(j) Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under Title I of the "Housing and Community Development Act of 1974", as amended, but no investment in real property may exceed an aggregate investment of two percent of the assets of the association;

(k) Loans as to which the association has the benefit of any guaranty under Title IV of the "Housing and Urban Development Act of 1968", as amended, or under part B of the "Urban Growth and New Community Development Act of 1970", as amended, or under section 802 of the "Housing and Community Development Act of 1974", as amended, or of a commitment or agreement therefor;

(l) Revenue obligations issued to provide, enlarge, or improve electric power, gas, water, and sewer facilities by any city or town having a population of not less than two thousand people at the time of the investment located in any state in the United States and such investment shall be in accordance with the laws of this state.

(2) In addition to the acceptance of deposit or share accounts, any association may borrow money and negotiate for and receive such long-time or short-time loans evidenced by notes, bonds, debentures, or other securities as may be found necessary to advance the purposes of the association, subject to any limitations as to the total aggregate amount of such borrowings contained in the charter or articles of incorporation of the association or imposed by rules and regulations duly adopted by the commissioner. Except as limited by the terms of its charter or articles of incorporation or by duly adopted rules and regulations of the commissioner, an association may secure such borrowings by the mortgage, pledge, collateral assignment, or other hypothecation of its properties, including a trust or pool or mortgages or other encumbrance held by it. Without limiting the generality of the foregoing, an association may issue and sell securities guaranteed pursuant to section 306 (g) of the "National Housing Act", as amended, and may secure such securities as permitted in this subsection (2) and may issue and sell any other guaranteed or unguaranteed securities of a type or kind which may be issued and sold by federal savings and loan associations and secure the same with the property of the association to the same extent as permitted for federal savings and loan associations.

(3) Any association may invest in real estate or interests therein, including buildings and related parking facilities, for use in the conduct of the business of the association or for the conduct of such business and for rental to others of excess space; but no such investment may be made without the prior approval in writing of the commissioner if the total amount of all of such investments made by the association exceeds the aggregate amount of the association's general reserves, undivided profits, and surplus. A permitted investment under the foregoing provision

shall be deemed to include the ownership of stock of a wholly-owned subsidiary corporation having as its exclusive activity the ownership and management of such property or interests.

(4) An association may loan an amount not exceeding three percent of the association's assets in a manner not otherwise authorized by articles 40 to 47 of this title, on condition that such loans are related to real estate or housing.

(5) An association may invest in real estate, real estate interests, and real estate related enterprises for the purpose of producing income, for inventory and sale, improvement, or rental by direct purchase or otherwise. The maximum total investment by an association pursuant to this subsection (5) shall not exceed ten percent of its assets reduced by the amount invested by the association in real estate through service corporations pursuant to paragraph (i) of subsection (1) of this section. In connection with such investment, the association may exercise all rights of an owner.

Source: L. 33: p. 303, § 11(13). **CSA:** C. 25, § 14. **L. 39:** p. 240, §§ 10, 11. **L. 45:** p. 238, § 1. **CRS 53:** § 122-2-14. **L. 57:** p. 650, § 1. **L. 59:** p. 664, § 6. **C.R.S. 1963:** § 122-2-14. **L. 69:** p. 1014, § 6. **L. 71:** pp. 1145, 1146, §§ 2, 3. **L. 72:** p. 617, § 151. **L. 77:** (4) added, p. 570, § 3, effective July 1. **L. 79:** (1)(j), (1)(k), and (1)(l) added, p. 431, § 4, effective June 19. **L. 83:** (1)(i) amended, p. 495, § 1, effective May 25. **L. 85:** (5) added, p. 397, § 2, effective May 16. **L. 2004:** (1)(e) and (1)(f) amended, p. 149, § 54, effective July 1.

Cross references: For other legal investments, see §§ 32-4-544 and 32-11-810; for the "Federal Home Loan Bank Act", see Pub.L. 72-304, codified at 12 U.S.C. sec. 1421 et seq.; for the "National Housing Act", see Pub.L. 73-479, codified at 12 U.S.C. sec. 1710 et seq.; for the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.; for the "Housing and Community Development Act of 1974", see Pub.L. 93-383, 88 Stat. 633 (1974); for the "Housing and Urban Development Act of 1968", see Pub.L. 90-448, 82 Stat. 476 (1968); for the "Urban Growth and New Community Development Act of 1970", see Pub.L. 91-609, 84 Stat. 1791 (1970).

11-41-115. Interest rates on loans. (1) Any savings and loan association may charge, contract for, and recover such rate of interest as may be provided in the notes or other evidences of indebtedness taken by the association. Notes secured solely by the pledge of shares and notes secured by real estate mortgages repayable upon the sinking fund plan shall be nonnegotiable in form, and all other notes, including those insured by the federal housing administrator and those taken in connection with loans to veterans under the provisions of the "Servicemen's Readjustment Act of 1944", may be either negotiable or nonnegotiable in form.

(2) A substantial portion of the business of all associations shall be devoted to the acceptance of savings deposits from or the sale of their shares to their members and the lending of those funds to their members as set forth in section 11-40-103 and otherwise in articles 40 to 46 of this title, but associations may also purchase loans of a type which they are permitted to make and sell loans with or without recourse so long as such purchase or sale of loans is conducted as a part of and in connection with the other permitted business activities of an association.

(3) Each mortgage loan sold by an association may be sold with or without recourse and, if under a contract to service the same, shall be sold on a basis which will reimburse the

association adequately for the cost of such servicing. All sale and servicing agreements shall be in writing and on file in the association.

(4) No interest that may accrue to an association shall be deemed usurious, and the same may be collected as debts of like amount are now by law collected in this state.

(5) No law of this state limiting interest or interest rates or the compounding of interest shall apply to any graduated payment mortgage or deed of trust made to individuals, or any mortgage or deed of trust to individuals where periodic disbursement of part of the loan proceeds is made by an association over a period of time as established by the mortgage or deed of trust, or over an expressed period of time ending with the death of such individuals, including but not limited to mortgages or deeds of trust having provisions for adding deferred interest to principal or otherwise providing for the charging of interest on interest.

Source: L. 33: p. 305, § 11. **CSA:** C. 25, § 14. **L. 45:** p. 239, § 2. **CRS 53:** § 122-2-15. **C.R.S. 1963:** § 122-2-15. **L. 71:** p. 1146, § 4. **L. 79:** (5) added, p. 431, § 5, effective June 19. **L. 83:** (3) amended, p. 493, § 2, effective July 1. **L. 94:** (3) amended, p. 66, § 8, effective July 1.

Cross references: For the "Servicemen's Readjustment Act of 1944", see Pub.L. 78-346, 58 Stat. 284 (1944).

11-41-116. Where associations may operate. Upon approval of the commissioner, a savings and loan association may conduct business in this state, in other states, in the District of Columbia, in the territories and colonies of the United States, and in foreign countries, and have one or more offices out of this state, and own, hold, purchase, mortgage, lease, and convey real and personal property out of this state if such powers are included within the objects set forth in its articles of incorporation and are not in violation of any other provision of articles 40 to 46 of this title.

Source: L. 33: p. 296, § 11. **CSA:** C. 25, § 14. **CRS 53:** § 122-2-16. **C.R.S. 1963:** § 122-2-16.

11-41-117. Insurance of shares. (1) A savings and loan association shall obtain and maintain insurance of its shares with the federal deposit insurance corporation or its successor as provided by the "Federal Deposit Insurance Act", 12 U.S.C. 1811, et seq., and any amendments thereto. Notice of any such actions by associations shall be submitted to the division.

(2) The commissioner, in connection with all such insured associations, shall furnish said insurance corporation with reports of examination, orders, and requirements issued in connection therewith and other information coming to his attention bearing on the financial condition and administration and may collaborate with said corporation in any merger, reorganization, dissolution, liquidation, or examination and audit of any such insured association.

Source: L. 33: p. 241, § 13. **CSA:** C. 25, § 14(1). **CRS 53:** § 122-2-17. **C.R.S. 1963:** § 122-2-17. **L. 87:** (1) amended, p. 466, § 1, effective July 1. **L. 2004:** (1) amended, p. 137, § 15, effective July 1.

11-41-117.5. Insurance of obligations. (1) A savings and loan association shall obtain and maintain insurance of its obligations, including accounts, with the federal deposit insurance corporation or its successor.

(2) (a) An association is further authorized to obtain and maintain insurance of any obligations, including accounts, or portions thereof not otherwise insured pursuant to subsection (1) of this section, with any federal agency, with any state agency, or with any other insurer meeting the requirements of paragraph (b) of this subsection (2).

(b) Any insurer insuring obligations pursuant to paragraph (a) of this subsection (2), other than the federal deposit insurance corporation or its successor shall be certified by the commissioner as having met the following:

(I) The contract of insurance contemplated is written upon substantially the same basis as to form, coverage, maturity, voluntary and involuntary termination, and other provisions as the insurance contract provided at that time by the federal deposit insurance corporation or its successor and complies with such further requirements for protection as the commissioner may promulgate by rule.

(II) The insurer has a net worth or, in the case of a governmental or statutorily authorized entity, reserves reasonably commensurate with the risks underwritten.

(III) The insurer, if a nongovernmental entity, is authorized to do business in this state as an insurer or is otherwise authorized by law to insure obligations.

(3) Within twenty days after June 30 and December 31 of each year, each insurer certified pursuant to paragraph (b) of subsection (2) of this section shall file with the commissioner a report for the preceding six months showing its financial condition. Said report shall be prepared, insofar as possible, in conformity with generally accepted accounting principles.

(4) The commissioner or his duly designated representative may investigate the affairs and examine the books, accounts, records, and files of the insurer at such intervals as the commissioner deems prudent, but not less than once a year, and shall have free access for such purposes. Costs of such investigations and examinations shall be paid by the insurer. If any such investigation or examination reveals that the insurer is not conducting its affairs in accordance with this section or that the insurer is not actuarially sound or is impaired and may be unable to fulfill its obligations, the commissioner may exercise any powers available under article 44 of this title until such time as compliance is restored or the impairment is terminated.

(5) The commissioner and the insurer may exchange information regarding an insured savings and loan association.

(6) The commissioner shall determine as of June 30 each year the cost of supervision of the insurer and shall assess such cost against the insurer. The assessment shall be paid on or before September 30 following assessment.

Source: L. 83: Entire section added, p. 497, § 1, effective May 26. **L. 84:** (3) to (6) added, p. 378, § 3, effective May 11. **L. 87:** (1) amended, p. 466, § 2, effective July 1. **L. 2004:** (1), IP(2)(b), and (2)(b)(I) amended, p. 137, § 16, effective July 1.

11-41-118. Loans - investment in notes or bonds. (1) Savings and loan associations are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator and to obtain such insurance;

(b) To make such loans, secured by real property or leasehold, as the federal housing administrator insures or makes a commitment to insure and to obtain such insurance.

(2) Associations may sell any loans authorized by this section, and each such loan sold by an association shall be sold without recourse and, if under a contract to service the same, on a basis which will reimburse the association adequately for the cost of such servicing. All sale and servicing agreements shall be in writing and on file in the association.

(3) It shall be lawful for savings and loan associations to invest their funds and the moneys in their custody or possession which are eligible for investment in notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, and in obligations of national mortgage associations or similar credit institutions organized under Title III of the "National Housing Act", and in debentures issued by the federal housing administrator.

(4) No laws of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount, or form of such security, or prescribing or limiting the period for which loans or investments may be made, or affecting the negotiability of the loan instrument shall be deemed to apply to loans or investments made pursuant to this section.

(5) An association may make loans for the purpose of mobile home financing, subject to any limitation as to maximum loan amounts which may be prescribed from time to time by the commissioner for all associations. For the purposes of this subsection (5), "mobile home" means a mobile accommodation used or designed for use as living quarters.

(6) An association may make loans for the repair, equipping, alteration, or improvement of any real property, including mobile homes, subject to such restrictions, limitations, prohibitions, conditions, and provisions as the commissioner may from time to time, by rule or regulation duly adopted, prescribe.

(7) An association may make loans or invest in obligations and advances of credit, referred to in this article as "loans", for the payment of expenses for postsecondary school education; but the total aggregate principal amount of an association's investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, shall not exceed five percent of its invested capital.

(8) An association may issue letters of credit, subject to regulation by the commissioner pursuant to section 11-44-103.

Source: L. 33: p. 242, § 14. **CSA:** C. 25, § 14(2). **L. 43:** p. 201, § 3. **CRS 53:** § 122-2-18. **C.R.S. 1963:** § 122-2-18. **L. 69:** p. 1015, § 7. **L. 73:** p. 237, § 16. **L. 75:** (5) and (6) amended, p. 1464, § 2, effective July 18. **L. 76:** (6) amended, p. 394, § 1, effective April 19. **L. 79:** (6) amended, p. 431, § 6, effective June 19. **L. 83:** (8) added, p. 499, § 1, effective July 1.

Cross references: For the "National Housing Act", see Pub.L. 73-479, codified at 12 U.S.C. sec. 1701 et seq.

11-41-119. Loans to members and other loans. (1) An association may invest any portion of its funds in loans to its members, secured by first lien trust deeds or mortgages upon improved real estate; except that additional loans or advances on the same property secured by

additional encumbrances shall be deemed to be first liens for the purposes of articles 40 to 46 of this title, unless an intervening lien has been recorded, and upon the shares issued by such association, or upon both such securities; and except that, only in the case of an association not subject to regulation by the federal deposit insurance corporation or its successor, no one loan can be made in excess of five percent of the gross assets of the association at the close of the preceding month, nor in any event shall the total of loans in excess of fifty thousand dollars exceed twenty percent of the gross assets of the association at the close of the preceding month.

(2) An association may make loans on the security of its shares if the association obtains a first lien upon, or a pledge of, such account as security therefor. No such loan may exceed the withdrawal or repurchase value of the account securing the loan, and no such loan shall be made when there is an impairment of invested share capital or when the association has any application for withdrawal which has been on file and unpaid more than thirty days. Upon any default of such loan, the association may, after giving ten days' written notice to the last address of the owner of such account appearing on the books of the association, cancel such account, to the extent and in the amount sufficient to repay said loan and accrued interest thereon. The commissioner may prescribe such regulations concerning such certificate share loans as may be necessary.

(3) An association may make real estate loans, secured by encumbrances provided for in subsection (1) of this section, repayable upon the following plans:

(a) (I) Installment loans. Loans may be made or purchased for an amount not in excess of ninety-five percent of the appraised value of the tendered security, repayable within forty years in consecutive monthly, quarterly, or annual installments, equal or unequal. Lump-sum payments may be required in the initial contract. The provisions and limitations of this paragraph (a) shall not apply if authority is otherwise permitted by federal law, rule, or regulation.

(II) The initial contract may provide for changes in the interest rate based upon an index agreed to by the borrower and the association. Such provision shall specify that changes in the index shall apply equally to increases or decreases in the interest rate. Decreases shall be mandatory and increases may be at the option of the association. Interest changes may be implemented through changes in the installment amount or the rate of amortization, or any combination thereof, as provided in the initial contract. The installment amount may not be increased more often than at the end of any consecutive twelve-month period of the loan term, and shall be sufficient to amortize the remaining principal balance within forty years from the initial date of the loan.

(b) Loans without amortization. Loans of any type that an association may make on an installment basis may also be made without amortization of principal; but interest shall be payable at least annually, and any such loan may be made for an amount not in excess of eighty percent of the appraised value of the property and for a term of not more than twenty years. The aggregate amount of such loans shall not, at any time, exceed an amount equal to twenty percent of the association's gross assets. In no case may an association provide a loan or loans under this subsection (3) to any one borrower which exceeds five percent of the association's gross assets.

(c) Construction loans. Loans may be made without full amortization of principal if made for the purpose of construction; but any such loan may be made for an amount not in excess of ninety percent of the appraised value of the property, excluding cost of land, and for a term of not more than one year.

(d) Sinking fund loans. Loans made under this plan shall be repayable by crediting to such loans the certificate value of pledged savings shares. Such borrowing members shall be required to carry such monthly periodical savings shares with the association as shall have a par value equal to the loan, and every share issued shall be subject to a lien for any advance made thereon or other lawful claims against the holder, and the payments on such pledged shares shall not be less than thirty-five cents per share per month. At the beginning of foreclosure of any mortgage or trust deed to an association securing such sinking fund loans, credit shall be allowed on the mortgage indebtedness for the value of any pledged shares held by the association as collateral for the loan, and the shares shall be cancelled at the conclusion of the foreclosure proceedings.

(e) Insured or guaranteed loans. An association may make such loans as may be insured or guaranteed by an agency of the federal or state government in such amounts and upon such terms as may be provided by the statutes and regulations affecting such loans, and the proviso in paragraph (a) of this subsection (3) shall not apply to such insured or guaranteed loans.

(4) Other loans. Any association operating under articles 40 to 46 of this title, notwithstanding anything to the contrary contained therein, may make any type or kind of loan and for any purpose that a federal savings and loan association at any time may be authorized to make by any law, rule, regulation, decision, or order which is or may be applicable to federal savings and loan associations. The commissioner, by rule or regulation duly adopted and applicable to all associations, may also authorize all associations organized and operating under articles 40 to 46 of this title to make any investment, in addition to those expressly permitted by said articles 40 to 46, which federal savings and loan associations are authorized to make by any laws, rules, regulations, decisions, or orders applicable to such federal savings and loan associations; but any rule or regulation adopted by the commissioner granting other investment authority shall, to the extent found by the commissioner to be applicable, be subject to the same limitations, restrictions, prohibitions, conditions, and provisions as are applicable in the case of federal savings and loan associations.

(5) Loans secured by first lien trust deeds or mortgages upon improved real estate shall not be made until a signed application for such loan has been submitted, nor until a signed appraisal has been submitted, nor until the loan has been approved by the board of directors or by a committee authorized by the board of directors. Appraisals may be made by any two of the association's directors, officers, employees, or attorneys or by an independent appraiser who is not a director, officer, employee, or attorney of the association; but no such officer, director, employee, or attorney shall act as an appraiser nor act on any committee approving a loan in which he has an interest either in the property tendered as security or in the sale of the property. The association shall furnish to each borrower, upon the closing of the loan, a loan settlement statement, indicating in detail the charges or fees such borrower has paid or obligated himself to pay to the association or to any other person in connection with such loan, and a copy of such statement shall be retained in the records of the association.

(6) Every real estate loan shall be evidenced by a proper instrument in writing obligating the borrower to repay the full amount of the loan and shall be secured by a mortgage or deed of trust constituting a first lien upon real estate securing the loan or, if an additional advance, by a deed of trust or mortgage properly providing for such additional advance. An encumbrance shall provide specifically for full protection to the association with respect to usual insurance risks,

taxes, special assessments, other governmental levies, and maintenance and repairs and may provide for an assignment of rents and the appointment of a receiver upon any default.

(7) An association may pay taxes, special assessments, insurance premiums, repairs, and other charges for the protection of the real estate security. All such payments may be charged to a special account or may be added to the unpaid principal balance of the loan and shall be equally secured by the first lien on the real property. An association may require life insurance to be assigned as additional security upon any real estate loan; in such event, the association shall obtain a first lien upon such policy and may advance premiums thereon, and such premium advances may be added to the unpaid principal of the loan and shall be equally secured by the first lien on the security property.

(8) An association may require the borrower to pay monthly in advance, in addition to interest or interest and principal payments, a prorated portion of the estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing the loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of such monthly charges may be adjusted by the association as the need therefor arises. Every association shall keep an accurate record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans and on all real and other property owned by it.

(9) Payment on the principal indebtedness of all loans on real estate security shall be applied directly to the reduction of such indebtedness. Payments on all monthly installment loans, other than construction loans, insured loans, and guaranteed loans, shall begin not later than sixty days after the date of the note. Insured loans and guaranteed loans may be repayable upon terms acceptable to the insuring or guaranteeing agency. An association may charge, for the privilege of prepayment in part or in full of a loan relating to an owner-occupied single family residence, if the original contract so provides, an amount not greater than ninety days' interest on the amount prepaid. An association may charge, for the privilege of prepayment in part or in full for any loan not otherwise specifically provided for in this subsection (9), an amount specified in the original contract. Any loan contract may be modified by the parties by written agreement and within the limitations of this section as the need therefor may arise.

(10) An association may make additional advances secured by the original encumbrance if the original loan contract makes proper provision therefor.

(11) An association may purchase loans of any type that it may make, and it may also purchase insured or guaranteed loans made on homes wherever located; but no loan may be purchased from an affiliated company or an officer, director, employee, or attorney of the association without prior approval of the board of directors.

(12) If additional collateral is encumbered on any loan as additional security, an association may invest in said loan for an amount in excess of the percentage provided in paragraph (c) of subsection (3) of this section. Said association may accept as such additional collateral any security it is authorized to invest in as set forth in section 11-41-114; but such encumbered additional security shall not increase the maximum percentage of said loan beyond the actual value of such additional security.

(13) An association may lend on the security of a first security interest on stock or a membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation organized under article 33.5 of title 38, C.R.S., and as defined by section 216 of the federal "Internal Revenue Code of 1986", as amended, and the assignment by way of

security of the borrower's interest in the proprietary lease or right of tenancy in property covered by such cooperative housing corporation, if all of the real property owned by such corporation is located within the state and if such loan is made subject to the same limitations, restrictions, prohibitions, conditions, and provisions as are applicable in the case of federal savings and loan associations.

Source: L. 39: p. 245, § 18. **CSA:** C. 25, § 14(3). **CRS 53:** § 122-2-19. **L. 55:** p. 757, § 3. **L. 61:** p. 649, § 1. **C.R.S. 1963:** § 122-2-19. **L. 65:** p. 970, § 1. **L. 69:** p. 1015, § 8. **L. 75:** (4) amended, p. 373, § 2, effective June 26. **L. 77:** (3)(a) and (4) amended, p. 570, §§ 4, 5, effective July 1. **L. 80:** (13) added, p. 706, § 3, effective July 1. **L. 81:** (3)(a) and (3)(b) amended, p. 625, § 1, effective May 26. **L. 83:** (9) amended, p. 500, § 1, effective April 29. **L. 2000:** (13) amended, p. 1841, § 13, effective August 2. **L. 2004:** (1) amended, p. 149, § 55, effective July 1.

Cross references: For the "Internal Revenue Code of 1986", see title 26 of the United States Code.

11-41-119.5. Reporting of loans. (Repealed)

Source: L. 88: Entire section added, p. 457, § 2, effective July 1. **L. 96:** Entire section repealed, p. 30, § 3, effective March 13.

11-41-120. Branches. (Repealed)

Source: L. 33: p. 306, § 13. **CSA:** C. 25, § 16. **CRS 53:** § 122-2-20. **C.R.S. 1963:** § 122-2-20. **L. 84:** Entire section amended, p. 378, § 4, effective May 11. **L. 91:** Entire section amended, p. 666, § 6, effective May 31. **L. 2003:** Entire section amended, p. 1208, § 12, effective July 1. **L. 2004:** Entire section repealed, p. 137, § 17, effective July 1.

11-41-121. Merger, consolidation, and transfer. (1) As used in this section, the word "association" shall include federal savings and loan associations incorporated under the "Home Owners' Loan Act of 1933".

(1.5) (a) A domestic association may merge with a foreign association and, subject to the limitations specified in this subsection (1.5), notwithstanding any other provision of articles 40 to 46 of this title to the contrary, if the association proposing to merge with a domestic association is a foreign association, the foreign association shall, in addition to submitting all information pertinent to the evaluation of the application under this section that the commissioner may require together with all applicable fees, meet the following criteria:

(I) The foreign association seeking the merger shall have deposits that it may hold insured by the federal deposit insurance corporation or its successor in accordance with the provisions of section 11-41-117; and

(II) The foreign association shall be in compliance with the capital requirements specified in this subparagraph (II) as follows:

(A) and (B) (Deleted by amendment, L. 2004, p. 149, § 56, effective July 1, 2004.)

(C) On and after January 1, 1993, the foreign association shall have a ratio of total capital to total assets of not less than six percent or the prevailing regulatory capital requirements

established by the federal deposit insurance corporation or its successor, whichever is greater; and

(II.5) Once a capital threshold is established in accordance with the provisions of subparagraph (II) of this paragraph (a) it shall be the prevailing standard for purposes of this section to be applied by the commissioner regardless of any reduction below the prevailing regulatory capital threshold requirement unless the general assembly authorizes the application of a lower standard; and

(III) The commissioner shall not approve any proposed merger under the provisions of this subsection (1.5) if the merger would result in the foreign association controlling at the time of the merger more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purposes of this subsection (1.5), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency; and

(IV) Except as otherwise provided in paragraph (b) of this subsection (1.5), the foreign association shall be domiciled or conduct its principal operations in a state which is both contiguous to Colorado and which also has laws that allow a domestic association to establish business operations in that state under conditions which are determined by the commissioner to be not more restrictive than those provided in articles 40 to 46 of this title. For the purpose of this subparagraph (IV), the place where an association "conducts its principal operations" means the place where the largest percentage of the aggregate deposits of the foreign association and all of its subsidiaries are held.

(b) On or after January 1, 1991, a foreign association seeking to merge with a domestic association may be domiciled or have its principal offices in any state without regard to its proximity to this state and without regard to the statutory conditions required by subparagraph (IV) of paragraph (a) of this subsection (1.5).

(c) Whenever a foreign association which meets the criteria established by this subsection (1.5) proposes to merge with a domestic association, the foreign association shall make an application for prior approval to the commissioner in such form and with such information that the commissioner may require, and such application shall be accompanied by a nonrefundable filing fee in such amount as determined by the commissioner. Upon receipt of a properly submitted application for merger, the commissioner shall proceed to investigate the application in accordance with the provisions of this section. The commissioner shall not grant approval of the merger until he is satisfied that the criteria imposed by this section have been met and that the merger is not contrary to the public interest.

(d) No foreign association may merge with a domestic association except in accordance with the provisions of this section, and no such merger may be completed without the approval of the commissioner.

(e) Any officer of a foreign association that merges with a domestic association pursuant to this section whose primary duty is managing the day-to-day operations of the Colorado offices of such foreign association shall be a resident of Colorado.

(f) Nothing in this section shall be construed to limit or otherwise curtail the powers of the commissioner with respect to supervisory mergers as established in section 11-44-110.5.

(2) Any two or more associations are authorized to merge and become incorporated in one body by transfer of all their assets and obligations upon such terms as set forth in an

agreement of merger. The respective boards of directors of such associations, by a majority vote of each board, shall make or authorize to be made between such associations an agreement of merger.

(3) Copies of the proposed agreement of merger, signed by the president or vice-president of such association and verified by his affidavit and attested by the secretary or assistant secretary thereof with the seal of the association thereunto affixed, shall be submitted together with a fee in the amount established by the commissioner to the commissioner for his approval or disapproval, and he shall cause a certificate of approval or disapproval to be attached to said copies of the proposed agreement, one copy to be filed in the division and one returned to each of the associations.

(4) If approved by the commissioner, such approved agreement shall be presented to the members of each of the merging associations at special meetings called for the purpose of considering and voting upon such approved agreement; but, in the case of associations having permanent stock, only the holders of the permanent stock shall be entitled to any notice other than the published notice of such special meeting or to vote upon the agreement of merger. The complete agreement of merger, as adopted by the boards of directors and approved by the commissioner, shall be furnished each member entitled to vote on such merger at the time notice of such meetings, as required by section 11-41-123, is given. If at such meetings two-thirds of all votes of the members present in person or by proxy and entitled to vote on such merger are in favor of such approved agreement, the associations may proceed to merge in accordance therewith. The proceedings of such meetings shall be submitted to the commissioner for his approval in the same manner as required for the submission of the agreement by the boards of directors. Unless the agreement of merger fixes a later effective date thereof, the effective date of merger shall be the date upon which the commissioner accepts for filing the certified copies of the proceedings of the meetings of members adopting the approved agreement of merger.

(5) In the event any association involved in a proposed merger is a federal savings and loan association, the commissioner shall transmit to the federal office of thrift supervision or its successor, a copy of the proposed agreement of merger and shall not approve the agreement of merger unless and until he or she has been advised in writing by the federal office of thrift supervision or its successor that said office has no objection to the agreement.

(6) No such transfer shall prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct, and the reorganized association shall be liable for all obligations to members of the associations existing prior to such consolidation.

(7) Upon the effective date of the merger, all of the assets and property of every kind and character, real, personal, and mixed and tangible and intangible, choses in action, rights and credits then owned by the merging associations or which inure to any of them, immediately by operation of law, and without any conveyance or transfer, and without any further act or deed, shall be vested in and become the property of the association into which the other associations are absorbed, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, and enjoyed by the merging associations prior to such merger. Such association shall be a continuation of the entity and identity of the association into which the other associations are absorbed, and all of the rights and obligations of the merging associations shall remain unimpaired, and the association, at the time of the taking effect of such

merger, shall succeed to all of the rights and obligations and duties and liabilities of the merging associations. All rights and remedies of creditors and all liens upon the property of the merging associations shall be preserved, and all debts, liabilities, and duties of the respective merging associations shall thenceforth attach to the association and may be enforced against it to the same extent as if such debts, liabilities, and duties had been incurred or contracted by it.

(8) All pending actions or other judicial proceedings to which any of the associations is a party shall not be deemed to have abated or to have discontinued by reason of such merger but may be pressed to final judgment, order, or decree in the same manner as if a merger had not been made; or the association resulting from such merger may be substituted as a party to such action or proceedings, and any judgment, order, or decree may be rendered for or against it which might have been rendered for or against any of the merging associations theretofore involved in such action or other judicial proceedings.

Source: L. 33: p. 306, § 12. **CSA:** C. 25, § 15. **L. 39:** p. 256, § 33. **CRS 53:** § 122-2-21. **C.R.S. 1963:** § 122-2-21. **L. 69:** p. 1016, § 9. **L. 84:** (3) amended, p. 378, § 5, effective May 11. **L. 88:** (1.5) added, p. 458, § 3, effective July 1. **L. 2004:** (1.5)(a)(I), (1.5)(a)(II)(A) to (1.5)(a)(II)(C), and (5) amended, pp. 149, 138, §§ 56, 18, effective July 1. **L. 2005:** IP(1.5)(a) amended, p. 763, § 17, effective June 1.

Editor's note: In 2000, subsection (1.5)(a)(II)(D), enacted in 1988, was renumbered as subsection (1.5)(a)(II.5) on revision.

Cross references: For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.

11-41-122. Membership fees. (1) Savings and loan associations shall not, directly or indirectly, charge any membership, admission, repurchase, withdrawal, or other fee, fine, penalty, or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the association or for any other cause, except as provided in subsection (2) of this section; except that reasonable charges may be made to reflect the cost of servicing accounts and upon the making, transfer, or assumption of a loan and for defaults and prepayments of a loan and, after July 1, 1977, for the establishment and maintenance of any Keogh or individual retirement account. Reasonable notice of the amount of and conditions relating to such charges shall be given to affected members.

(2) Subject to such additional limitations, conditions, and provisions as may be promulgated in regulations of the commissioner, a savings and loan association required under a subpoena issued in a civil action to prepare disclosures of private records shall be reimbursed by the requesting party for such services as follows:

(a) For reproduction costs, including copies produced by printer or reproduction processes, the amount provided in section 13-32-104 (1), C.R.S. Costs of photographs, films, and other materials required shall be reimbursed at actual costs.

(b) For travel expenses incurred as a result of compliance, the amount provided in section 13-33-103 (1), C.R.S.;

(c) For personnel costs incurred as a result of compliance, the amount of two dollars and fifty cents for each quarter hour, or fraction thereof.

Source: L. 33: p. 354, § 8. **CSA:** C. 25, § 76. **L. 39:** p. 252, § 26. **CRS 53:** § 122-2-22. **L. 59:** p. 659, § 1. **C.R.S. 1963:** § 122-2-22. **L. 77:** Entire section amended, p. 572, § 1, effective June 4. **L. 79:** Entire section amended, p. 431, § 7, effective June 19. **L. 83:** Entire section amended, p. 494, § 3, effective July 1. **L. 87:** Entire section amended, p. 468, § 1, effective May 1. **L. 2008:** (2)(a) amended, p. 1881, § 15, effective August 5.

11-41-123. Directors and meetings. (1) The corporate powers shall be exercised by a board of directors, which may be any number not less than five as shall be fixed by and stated in the articles of incorporation and which directors shall hold office until their successors are duly elected and qualified. At each annual meeting, the successors to the directors whose terms of office then expire shall be elected by the members entitled to vote at such time and place as shall be directed by the articles or bylaws of the association.

(2) Public notice of the time and place of holding such elections, and also of all special meetings of the members, shall be published at least once, not more than thirty days nor less than ten days prior to the date fixed for said meeting, in a newspaper of general circulation printed in the county where the principal office of said corporation is located, and, if there is no such newspaper, then in a newspaper printed in an adjoining county, and, with respect to any special meeting or any annual meeting to be held at a time or place other than as specified in the articles of incorporation or bylaws of the association, by delivering personally to each member or depositing in the post office at least thirty days before such meeting a copy of said notice, addressed to each member entitled to vote thereat, with the signature of the president or secretary printed thereon, stating the time and, in case of special meetings, the objects of said meeting; and no business shall be transacted at any special meeting except such as shall be mentioned in said notice; if any member fails to furnish the secretary with his correct post-office address, he shall not be entitled to separate notice.

(3) Whenever any notice is required to be given under the provisions of articles 40 to 46 of this title or under the provisions of the articles or bylaws of any association organized under the laws of Colorado, a waiver thereof in writing signed by the persons entitled to said notice, whether before, at, or after the time stated therein, shall be deemed equivalent to such notice.

(4) Members who are entitled to vote may vote either in person or by proxy at such meetings. Any number of members present in person or by proxy at a regular or special meeting of the members shall constitute a quorum unless otherwise specifically provided in articles 40 to 46 of this title. If a majority of the votes represented at any annual or special meeting are in favor of adjournment, such meeting may be adjourned for a period not to exceed sixty days at one adjournment. Each member entitled to vote shall be permitted to cast, in person or by proxy, one vote for each one hundred dollars, or fraction thereof, of the total certificate value of all his shares and stock. A borrowing member holding a membership certificate shall be permitted, as a borrower, to cast one vote and has such voting right in all cases where articles 40 to 46 of this title give such right to shareholders.

(5) A majority of all votes cast at any meeting of members shall determine any question unless otherwise specifically provided. The members who are entitled to vote at any meeting of the members shall be those of record on the books of the association at the end of the calendar month next preceding the date of the meeting of members, except those who have ceased to be members. In balloting for directors, members may vote for as many directors as are to be elected, or, in case the certificate of incorporation of the association permits cumulative voting, each

member may cumulate his votes and give one candidate as many votes as the number of directors multiplied by the number of his votes or distribute them on the same principle among as many candidates as he may desire; and the person having the highest number of votes in consecutive order shall be declared elected. By the unanimous vote of all the members represented at such meeting, the secretary of the meeting may be authorized and instructed to cast one ballot for one or more of all the directors to be elected.

(6) When any vacancy occurs among the directors by death, resignation, or otherwise, it shall be filled for the remainder of the year by a majority vote of the remaining directors, unless otherwise provided by the bylaws of said association.

Source: L. 33: p. 307, § 14. **CSA:** C. 25, § 17. **L. 39:** p. 243, § 17. **CRS 53:** § 122-2-23. **C.R.S. 1963:** § 122-2-23. **L. 69:** p. 1016, § 10. **L. 84:** (1) amended, p. 379, § 6, effective May 11.

11-41-124. Officers or directors to receive no commission. No officer or director of any savings and loan association shall take or receive for himself, directly or indirectly, any commission, compensation, remuneration, gift, speculative interest, or other thing of value as an inducement to the making of any loan by the association or the purchase of any securities for the association or for the sale of any of the stock of the association.

Source: L. 33: p. 354, § 6. **CSA:** C. 25, § 74. **CRS 53:** § 122-2-24. **C.R.S. 1963:** § 122-2-24.

11-41-125. Loans to officers and directors. No officer or director of any savings and loan association shall negotiate for or receive a mortgage loan from such association, except for the bona fide financing of the home of such officer or director, unless the commissioner has first approved such loan.

Source: L. 33: p. 358, § 16. **CSA:** C. 25, § 84. **CRS 53:** § 122-2-25. **L. 55:** p. 761, § 4. **C.R.S. 1963:** § 122-2-25.

11-41-126. Bonds of officers. Every officer, employee, and agent handling or having custody or charge of funds or securities belonging to a savings and loan association, before entering upon the discharge of his duties, shall give a good and sufficient bond in such sum as may be fixed by the board of directors of any such association. Such bond shall be in such form and provide such coverage as the commissioner may direct and shall be made by a surety corporation authorized to do business in this state. The amount of such bond as to each person shall be subject to the approval of the commissioner. In lieu of individual bonds, a blanket bond covering all active officers, agents, and employees of such association may be executed, subject to approval by the commissioner. Every such bond shall be in force until ten days after notice to such commissioner that the same is to be cancelled.

Source: L. 33: p. 362, § 22. **CSA:** C. 25, § 90. **L. 39:** p. 255, § 31. **CRS 53:** § 122-2-26. **C.R.S. 1963:** § 122-2-26.

11-41-127. Violations - penalties. (1) Any officer, director, agent, or employee of any savings and loan association who, directly or indirectly or by indirection, commits or causes the commission of theft, abstraction, or misapplication of any of the funds or securities or other property of or under the control of any savings and loan association, with intent to deceive, injure, cheat, wrong, or defraud any person, commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully and knowingly violates section 11-41-103 and sections 11-41-124 to 11-41-126 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment, and each such violation shall constitute a separate offense.

Source: L. 33: p. 362, § 23. **CSA:** C. 25, § 91. **L. 39:** p. 256, § 32. **CRS 53:** § 122-2-27. **C.R.S. 1963:** § 122-2-27. **L. 77:** (1) amended, p. 871, § 26, effective July 1, 1979. **L. 89:** (1) amended, p. 822, § 13, effective July 1. **L. 2002:** (1) amended, p. 1471, § 39, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

11-41-128. Acknowledgments. No notary public or other public officer qualified to take acknowledgments or proof of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing in which a savings and loan association is interested by reason of his employment by or his being a member or officer of the savings and loan association interested in such instrument.

Source: L. 33: p. 353, § 5. **CSA:** C. 25, § 73. **L. 51:** p. 216, § 4. **CRS 53:** § 122-2-28. **C.R.S. 1963:** § 122-2-28.

11-41-129. Amendment of articles of incorporation. (1) Except as provided in section 11-41-130.5, if the holders of at least one-third of the outstanding voting stock or shares of any association request, in writing, the president or other head officer thereof to call a meeting of stockholders or shareholders of such association for the purpose of considering a proposed amendment to the articles of incorporation of such association, setting forth in such written request the substance of each proposed amendment, or if the board of directors of any association votes to submit to the stockholders or shareholders thereof a proposed amendment to the articles of incorporation of such association, the president or secretary of the association forthwith shall call a special meeting of the voting stockholders or shareholders of such association for the purpose of considering said proposed amendment for a time not less than thirty nor more than sixty days thereafter. In the event that the request for a meeting of

stockholders or shareholders to consider a proposed amendment of the articles of incorporation is presented within ninety days prior to the date of the next annual meeting of the stockholders or shareholders of the association or in the event that the amendment is proposed by the board of directors of the association, the board of directors may cause such proposed amendment to be submitted for consideration at such next annual meeting, or at an adjourned session thereof, rather than at a special meeting of stockholders or shareholders called for such purpose.

(2) If at any such meeting the proposed amendment to the articles of incorporation of such association receives the affirmative vote of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, or such greater amount as may be required by the articles of incorporation, or any amendment thereto, of the stock or shares of each class outstanding having voting power, such amendment shall be deemed adopted; but, where necessary for any association to increase its authorized permanent stock to conform to the requirements of said section 11-42-107, the affirmative vote of a majority of such stock or shares shall be required.

(3) If any proposed amendment to the articles of incorporation would alter or change the preference given to any one or more classes of shares or stock or would convert the stock into shares or shares into stock, the holders of each class of stock or shares so affected by said amendment shall be entitled to vote as a class upon such amendment, whether by the terms of the articles of incorporation such class is entitled to vote or not, and the affirmative vote of the holders of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, of the amount of each class of stock or shares outstanding so affected by the amendment shall be necessary to the adoption thereof, as well as the affirmative vote of the holders of the majority, but in the case of associations having stock issued pursuant to section 11-42-107 two-thirds, of all classes of stock or shares outstanding having voting power.

(4) A certificate setting forth such amendment and the adoption thereof, signed by the president or vice-president of such association, verified by his affidavit, and attested by the secretary or assistant secretary thereof, with the seal of the association thereunto affixed, shall be submitted together with the fee established by the commissioner to the commissioner for his approval or disapproval, and, if he approves, he shall cause a certificate of approval to be attached to said proposed amendment, and then the same shall be filed in the same manner as articles of incorporation, and thereafter said amendment shall be in full force and effect to the same extent, except as provided in section 11-41-130.5, as if the same had been included in the original articles of incorporation. No amendment to the articles of incorporation shall be filed in the office of the secretary of state of the state of Colorado or received by the secretary of state unless a certificate of approval by the commissioner is attached thereto.

(5) Except as provided in section 11-41-130.5, any association organized under the laws of this state, from time to time, may amend its articles of incorporation by increasing or decreasing its authorized stock or shares or reclassifying the same, or by changing the number, designation, preference, relation, or participating or other special rights of shares or stock or the qualifications, limitations, or restrictions of such rights, or by changing its corporate title, or by making any other change or alteration in its articles of incorporation that may be desired, if such articles of incorporation, as so amended, contain only such provisions as it would be lawful and proper to insert in original articles of incorporation made at the time of making such amendment. Except as provided in section 11-41-130.5, no association by any amendment shall so change its

articles of incorporation as to work a change in the objects or purposes for which the association was originally organized.

Source: L. 33: p. 310, § 15. **CSA:** C. 25, § 18. **CRS 53:** § 122-2-29. **C.R.S. 1963:** § 122-2-29. **L. 65:** p. 971, § 1. **L. 69:** p. 1017, § 11. **L. 84:** (1), (4), and (5) amended, p. 379, § 7, effective May 11.

11-41-130. Reorganization. (1) The board of directors of any association, at a meeting called for that purpose, may adopt a plan of reorganization of the association. Two copies of the proposed plan of reorganization, signed by the president or vice-president of such association, verified by his affidavit, and attested by the secretary or assistant secretary thereof, with the seal of the association thereunto affixed, shall be submitted to the commissioner for his approval or disapproval, and he shall cause a certificate of approval or disapproval to be attached to said proposed plan, one copy to be filed in the division and one returned to the association. If approved by the commissioner, such approved plan shall be presented to the members at a special meeting called for the purpose of considering and voting upon such approved plan. The complete plan of reorganization, as adopted by the board of directors and approved by the commissioner, shall be furnished each member at the time notice of such meeting, as required by section 11-41-123, is given. If at such meeting two-thirds of all votes of the members present in person or by proxy are in favor of such approved plan, the association may proceed to reorganize in accordance therewith.

(2) The proceedings of such meeting shall be submitted to the commissioner for his approval in the same manner as required for the submission of the plan by the board of directors. Unless the plan of reorganization fixes a later effective date thereof, the effective date of reorganization shall be the date upon which the commissioner accepts for filing the certified copies of the proceedings of the meetings of members adopting the approved plan of reorganization.

(3) The privilege of reorganization is likewise extended to savings and loan associations which are in the course of voluntary or involuntary liquidation.

(4) In order that equity may be done for all members of such association in the event of reorganization, all pending withdrawal applications shall be cancelled.

(5) In addition to all other lawful provisions, the plan may provide for the exchange of shares or stock or both in the association for shares or stock or both of the same or a different class of the reorganized association. Without limiting the methods by which an association may reorganize, any association may:

(a) Provide for reorganization under the existing name of the association or under a different name;

(b) Provide for segregation by division, on the records of the association or on the records of any reorganized association, of any part of its assets and liabilities, including division of the certificate value of the shares or stock or both, and of any reserves created to absorb losses;

(c) Provide for segregation by division, between the association and a reorganized association or between two reorganized associations, of any part of its assets and liabilities, including division of the certificate value of the shares or stock or both and of any reserves created to absorb losses;

(d) Fix the time prior to which notice of withdrawal of such shares so issued in exchange for shares in the associations being reorganized shall not be given.

(6) The reorganization of such association shall not prejudice the right of any creditor of any such association to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of or prejudiced in any right of action then existing against the officers or directors of said association for any neglect or misconduct. All obligations to any such prior association shall inure to the benefit of the reorganized association and shall be enforceable by it and in its name, and demands, claims, and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced theretofore; and all deeds, notes, mortgages, contracts, judgments, transactions, and proceedings whatsoever theretofore made, received, entered into, carried on, or done by such association before such reorganization shall be as good, valid, and effectual in law as though such association had never been reorganized.

Source: L. 33: p. 365, § 28. **CSA:** C. 25, § 96. **L. 39:** p. 258, § 34. **CRS 53:** § 122-2-30. **C.R.S. 1963:** § 122-2-30.

11-41-130.5. Cessation of business as an association - amendment of articles. (1) Notwithstanding any provision of this article to the contrary, in connection with the sale of all or a substantial part of its assets, the board of directors of any savings and loan association may propose an amendment to its articles of incorporation to amend the objects and purposes to conform to those authorized in the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and to make such other amendments authorized by and not inconsistent with the provisions of article 110 of title 7, C.R.S. Such proposed amendments shall be submitted to the members or, if the savings and loan association has permanent stock, to the stockholders of said association for their approval. Upon approval, said amendments shall be submitted to the commissioner, together with a plan pursuant to subsection (2) of this section, for his approval.

(2) The amendments to a savings and loan association's articles of incorporation shall be accompanied by a plan for the cessation of the conduct of a savings and loan association in the state.

(3) (a) The commissioner shall approve a plan only if:

(I) He determines that an association has paid or has made provision through an assumption agreement or otherwise for its known and unclaimed liabilities to its depositors and account holders;

(II) The amended articles of incorporation delete the words "savings and loan association"; and

(III) The amended articles of incorporation expressly prohibit the conduct of a savings and loan or banking business in Colorado by the corporation.

(b) In approving a plan, the commissioner may impose such terms and conditions as he deems necessary to protect the depositors, account holders, stockholders, members, and creditors of the savings and loan association.

(4) Upon approval of a plan and the amendments to the articles of incorporation by the commissioner pursuant to this article and upon the filing of such amendments, along with the applicable filing fees with the secretary of state as provided by section 11-41-129 (4), a corporation shall continue in existence pursuant to the "Colorado Business Corporation Act",

articles 101 to 117 of title 7, C.R.S., but said corporation shall cease to be a savings and loan association or an association. The corporation's certificate of authority as a savings and loan association or an association shall automatically be cancelled, without further action, and the corporation shall be deemed to be organized pursuant to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., and shall cease to be subject to the provisions of the "Savings and Loan Association Law", articles 40 to 46 of this title.

Source: L. 84: Entire section added, p. 380, § 8, effective May 11. **L. 93:** (1) and (4) amended, p. 861, § 29, effective July 1, 1994.

11-41-131. Dissolution. (1) Any domestic association may elect to abandon its certificate of authority, liquidate its affairs, and dissolve as provided in this section. The affirmative vote of at least a majority of the directors must be cast in favor of such proposal at a special meeting thereof. A certified copy of such action shall be furnished to the commissioner, who shall forthwith examine said association, and, if he determines that such association is solvent and that it is to the best interests of the members that such liquidation be accomplished in the manner provided in this section, he shall certify his approval thereto. Upon the granting of such approval, a special meeting of all members entitled to vote shall be called in the manner provided by section 11-41-123. If a majority vote of all such members of the association is cast in favor of the proposal to liquidate and ultimately dissolve such association under the provisions of this section, such proposal shall be deemed adopted. A certified copy of all proceedings taken prior to and at such meeting shall be filed with the commissioner, who shall determine whether or not such proceedings have been conducted in accordance with law. If the commissioner finds that such proceedings are legal and proper, he shall certify his approval thereon and authorize said association to proceed with the liquidation in the manner provided in this section.

(2) The board of directors shall act as trustees for liquidation, and shall proceed as speedily as may be practical to wind up the affairs of the association, and, to the extent necessary, shall exercise all the powers granted by articles 40 to 46 of this title to active associations and to the commissioner in the case of departmental liquidation, and, without prejudice to the generality of such authority, may carry out executory contracts, enter into new contracts, borrow money, mortgage or pledge property, sell assets at public or private sale, make and receive conveyances in the corporate name, lease real estate, settle or compromise claims, commence and prosecute all actions and proceedings necessary to enable liquidation, distribute assets either in cash or in kind among members according to their respective rights, after paying or adequately providing for the payment of liabilities, and do and perform all acts necessary or expedient to the winding up of the association. The board of directors has power to exchange or otherwise dispose of or place in trust all or any part of the assets upon such terms and conditions and for such considerations as may be deemed reasonable or expedient and may distribute such considerations among the members in proportion to their interest therein. In the absence of fraud, any determination of value made by said board of directors for any such purpose shall be conclusive.

(3) The association, during the liquidation of the assets of the association, shall be subject to the supervision of the commissioner, and shall pay such fees and assessments as are provided for in articles 40 to 46 of this title in the case of active associations and shall report the progress of such liquidation to the commissioner as he may require. Upon completion of

liquidation, a final report and accounting of the affairs of the association shall be made to the commissioner. Upon the approval of such report by the commissioner, the board of directors, without the necessity of further action by the members of the association, shall proceed to dissolve such association in the manner provided by law in the case of general corporations.

(4) Nothing in this section shall prejudice the rights of the commissioner to take possession of any association, under the authority vested in him by the provisions of section 11-44-110, upon determining that such procedure is to the best interest of the members.

Source: L. 39: p. 260, § 35. **CSA:** C. 25, § 98. **CRS 53:** § 122-2-31. **C.R.S. 1963:** § 122-2-31.

11-41-132. Escheat proceedings. (1) If the affairs of an association have been voluntarily liquidated as provided in articles 40 to 46 of this title and any liquidating dividends remain unclaimed after the approval of the final report of liquidation, the trustees for liquidation may transfer such unclaimed liquidating dividends to the commissioner. In case of such transfer or in case an association has been liquidated by the commissioner and any liquidating dividends remain unclaimed six years after the approval of the final report of such liquidation, the commissioner may elect to pay such unclaimed liquidating dividends to the state treasurer.

(2) Due notice of such election shall be given by publication once a week for four successive weeks in some newspaper of general circulation in the county in this state where the last principal place of business of such association was located. Within fifteen days after the first publication, the commissioner shall mail a copy of the notice to each person whose liquidating dividends are to be paid to the state treasurer at the last address appearing on the books of the association.

(3) After thirty days from the date of the last publication, the commissioner shall pay to the state treasurer any such liquidating dividends in his possession, less the costs of publication and mailing, and shall file with the state treasurer the affidavit of publication by the publisher and the affidavit of mailing by the commissioner, showing the dates of such publications and mailing. The state shall be answerable for such funds, without interest, anytime within twenty-one years after the same have been paid into the treasury, to such persons as shall be legally entitled thereto. After the lapse of twenty-one years from the time any such moneys have been paid into the state treasury, no claim therefor having been made and established by any person entitled thereto, said moneys shall become the property of the state and shall be transferred to the general fund.

(4) Payment to the state treasurer shall discharge the commissioner from any further liability or responsibility for such moneys.

Source: L. 51: p. 216, § 5. **CSA:** C. 25, § 99. **CRS 53:** § 122-2-32. **C.R.S. 1963:** § 122-2-32.

11-41-133. Acquisition of majority control over an existing association - definitions. (1) As used in this section, unless the context otherwise requires:

(a) "Entity" means a person or group of persons.

(b) "Person" means an individual, corporation, partnership, trust, or similar organization.

(c) An entity shall be deemed "to have control" of an association if said entity:

(I) Directly or indirectly, or acting in concert with one or more persons, owns, controls, holds with the power to vote, or holds proxies representing more than twenty-five percent of the permanent stock of such association;

(II) Controls in any manner the election of a majority of the directors of such association; or

(III) Exercises a controlling influence over the management or policies of such association.

(2) (a) Whenever an entity proposes to take an action or conduct an activity which would cause such entity to have control of that association, the entity shall first make application to the commissioner for a certificate of approval of such action or activity.

(b) The application shall be in such form and provide such information as the commissioner may require by rule or regulation and shall be accompanied when submitted by a nonrefundable filing fee in the amount established by the commissioner.

(3) After receipt of an application, the commissioner shall make an investigation and shall issue the certificate of approval only after he has determined:

(a) That the controlling entity is qualified by character, experience, and financial responsibility to control the association in a legal and proper manner; and

(b) That the interests of the public generally will not be jeopardized by the proposed action or activity causing the entity to have control of the association.

(4) This section shall not apply to the acquisition of:

(a) Directors' voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting a debt contracted in good faith; except that it shall apply two years after the date of acquisition; or

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale thereof.

(5) When the commissioner has not acted upon a completed application within sixty days of receipt thereof, it shall be considered approved.

(6) (a) A domestic association may, subject to any applicable regulations of the federal deposit insurance corporation or its successor, invest in an association that is domiciled or conducts its principal operations in another state and acquire control of such association, and notwithstanding any other provision of articles 40 to 46 of this title to the contrary, if the entity proposing to acquire control of a domestic association is a foreign association, the foreign association shall, in addition to submitting all information pertinent to the evaluation of the application under this section that the commissioner may require together with all applicable fees, meet the following criteria:

(I) The foreign association seeking the acquisition shall have deposits that it may hold insured by the federal deposit insurance corporation or its successor in accordance with the provisions of section 11-41-117; and

(II) The foreign association shall be in compliance with the capital requirements specified in this subparagraph (II) as follows:

(A) and (B) (Deleted by amendment, L. 2004, p. 150, § 57, effective July 1, 2004.)

(C) On and after January 1, 1993, the foreign association shall have a ratio of total capital to total assets of not less than six percent or the prevailing regulatory capital requirements established by the federal deposit insurance corporation or its successor, whichever is greater; and

(II.5) Once a capital threshold is established in accordance with the provisions of subparagraph (II) of this paragraph (a) it shall be the prevailing standard for purposes of this section to be applied by the commissioner regardless of any reduction below the prevailing regulatory capital threshold requirement unless the general assembly authorizes the application of a lower standard; and

(III) The commissioner shall not approve any application for acquisition under this subsection (6) if such acquisition would result in the foreign association controlling at the time of the acquisition more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purposes of this subsection (6), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency; and

(IV) Except as provided in paragraph (b) of this subsection (6), the foreign association shall be domiciled or conduct its principal operations in a state which is both contiguous to Colorado and which also has laws that allow a domestic association to establish business operations in that state under conditions which are determined by the commissioner to be not more restrictive than those provided in articles 40 to 46 of this title. For the purpose of this subsection (6), the place where an association "conducts its principal operations" means the place where the largest percentage of the aggregate deposits of the foreign association and all of its subsidiaries are held.

(b) On or after January 1, 1991, a foreign association seeking to acquire control of a domestic association may be domiciled or have its principal offices in any state without regard to its proximity to this state and without regard to the statutory conditions required by subparagraph (IV) of paragraph (a) of this subsection (6).

(c) Whenever a foreign association which meets the criteria established by this subsection (6) proposes to acquire control of a domestic association, the foreign association shall make an application for prior approval to the commissioner in such form and with such information that the commissioner shall require, and such application shall be accompanied by a nonrefundable filing fee in such amount as determined by the commissioner. Upon receipt of a properly submitted application to acquire control of a domestic association, the commissioner shall proceed to investigate the application in accordance with the provisions of this section. The commissioner shall not grant approval of the merger until he is satisfied that the criteria imposed by this section have been met and that the acquisition is not contrary to the public interest.

(d) No foreign association may acquire control of a domestic association except in accordance with the provisions of this section, and no such acquisition shall be completed without a certificate of approval issued by the commissioner.

(e) A domestic association which is acquired in accordance with the provisions of this section may continue to operate as a domestic association subject to the provisions of articles 40 to 46 of this title. Any officer of a foreign association that acquires a domestic association pursuant to this section whose primary duty is managing the day-to-day operations of the Colorado offices of such foreign association shall be a resident of Colorado.

Source: L. 83: Entire section added, p. 489, § 2, effective April 26. **L. 84:** (2)(b) amended, p. 381, § 9, effective May 11. **L. 88:** (6) added, p. 459, § 4, effective July 1. **L. 89:** (2)(a), (3)(a), and (3)(b) amended, p. 611, § 5, effective April 19. **L. 2004:** IP(6)(a), (6)(a)(I), and (6)(a)(II)(A) to (6)(a)(II)(C) amended, p. 150, § 57, effective July 1.

Editor's note: In 2000, subsection (6)(a)(II)(D), enacted in 1988, was renumbered as subsection (6)(a)(II.5) on revision.

11-41-134. Indemnification and personal liability of directors, officers, employees, and agents - legislative declaration. (1) The savings and loan association shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in article 109 of title 7, C.R.S. Savings and loan association directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in article 109 of title 7, C.R.S. Savings and loan association directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section 7-108-402 (2), C.R.S., for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

(2) (a) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in articles 40 to 46 of this title:

(I) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, which provides insurance coverage to directors or officers, or both, of a savings and loan association but which does not grant coverage or which excludes coverage for claims made by any depository insurance organization or any other state or federal corporation, organization, or entity acting as receiver, conservator, or liquidator of such savings and loan association, whether in its own name or in behalf of any other person or entity; or

(II) Any fidelity bond, financial institution bond, or depository institution bond in effect or issued on or after April 30, 1993, that provides for termination of such bond upon the taking over of the savings and loan association by a receiver or other liquidator or by state or federal officials.

(b) No provision of articles 40 to 46 of this title shall be construed to contravene or modify the expressed public policy set forth in this subsection (2).

Source: L. 87: Entire section added, p. 371, § 16, effective May 20. **L. 93:** Entire section amended, p. 620, § 4, effective April 30; (1) amended, p. 862, § 30, effective July 1, 1994.

Editor's note: Amendments to this section by House Bill 93-1154 and House Bill 93-1261 were harmonized.

ARTICLE 42

Shares and Stock

11-42-101. Investment and savings shares. (1) Every association may issue and sell an unlimited number of shares of the following types, as described in this section:

(a) "Investment shares" are shares on which the full payment has been made and on which dividends shall be paid in cash.

(b) "Savings shares" are shares on which an initial payment has been made, and upon which further payments are to be made at such times and in such amounts as are optional with the member, and on which dividends shall be credited unless otherwise agreed that all or part shall be paid in cash.

(c) "Short-term savings shares" are shares which are to be withdrawn in less than twenty-four months from the date on which such share account is opened, or a share account established for the purpose of accumulating funds to pay taxes or insurance premiums, or both, in connection with a loan on the security of a lien on real estate. No association shall be required to distribute earnings on short-term savings shares.

Source: L. 33: pp. 312-317, §§ 1-6. **CSA:** C. 25, § 19. **L. 39:** p. 248, § 19. **L. 43:** p. 202, § 4. **CRS 53:** § 122-3-1. **L. 55:** p. 761, § 5. **L. 59:** p. 659, § 2. **C.R.S. 1963:** § 122-3-1.

11-42-102. Preliminary requirements. Shares may be purchased and held absolutely by or in trust for any person, partnership, association, corporation, or trustee. Certificates shall be issued to each purchaser of shares at the time of making full or initial payment thereon, and at the same time share account books shall be issued to purchasers of savings shares.

Source: L. 33: pp. 312-317, §§ 1-6. **CSA:** C. 25, § 19. **L. 39:** p. 248, § 19. **L. 43:** p. 202, § 4. **CRS 53:** § 122-3-2. **L. 55:** p. 761, § 6. **C.R.S. 1963:** § 122-3-2.

11-42-103. Contents of certificate - accounts. A share account shall be kept on the books of the association with each certificate holder showing the aggregate of all payments made, plus dividends paid in cash or credited. The aggregate of all payments made, plus dividends credited, less withdrawals, shall be termed the "certificate value" or "withdrawal value" of the account.

Source: L. 33: pp. 312-317, §§ 1-6. **CSA:** C. 25, § 19. **L. 39:** p. 248, § 19. **L. 43:** p. 202, § 4. **CRS 53:** § 122-3-3. **L. 55:** p. 762, § 7. **C.R.S. 1963:** § 122-3-3.

11-42-104. Participating and limited dividend shares. Shares may be issued to participate fully or to a limited extent in the net earnings of the association if the articles of incorporation so provide, and such participation shall be specified in the body of the certificate. All shares participating fully in net earnings shall be entitled to an equal rate of dividend, if earned, as fixed by the board of directors. Shares participating to a limited extent shall be entitled to such rate of dividend, if earned, as fixed by the board of directors for the semiannual periods ending June thirtieth and December thirty-first of each year; but, if the rate is decreased, the shareholders thus affected shall be given written notice of the new rate, within thirty days after date of declaration, by mailing such notice to their last known addresses.

Source: L. 33: pp. 312-317, §§ 1-6. **CSA:** C. 25, § 19. **L. 39:** p. 248, § 19. **L. 43:** p. 202, § 4. **CRS 53:** § 122-3-4. **L. 55:** p. 762, § 8. **C.R.S. 1963:** § 122-3-4.

11-42-105. Responsibility for losses - extent. The members of an association shall not be responsible for any losses which its invested capital is not sufficient to satisfy, except to the extent provided in sections 11-42-108 to 11-42-110, and the shares shall not be subject to assessment, nor shall certificate holders be liable for any unpaid installment on their shares. Except as provided in article 47 of this title, no preference between certificate holders shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of an association. Shareholders in mutual associations shall participate in the distribution of all assets, and in permanent stock associations they shall participate first, but only to the extent of their share investments.

Source: L. 33: pp. 312-317, §§ 1-6. **CSA:** C. 25, § 19. **L. 39:** p. 248, § 19. **L. 43:** p. 202, § 4. **CRS 53:** § 122-3-5. **C.R.S. 1963:** § 122-3-5. **L. 75:** Entire section amended, p. 406, § 2, effective January 1, 1976.

11-42-106. Transfer of shares. Share certificates are transferable on the books of the association by the holder thereof, in person or by a duly authorized attorney, upon surrender of the certificate properly endorsed. The association may treat the holder of record thereof as the owner for all purposes without being affected by any notice to the contrary until the certificate is transferred on the books of the association. A transfer charge of not to exceed fifty cents may be charged for each certificate transferred on its books.

Source: L. 33: pp. 312-317, §§ 1-6. **CSA:** C. 25, § 19. **L. 39:** p. 248, § 19. **L. 43:** p. 202, § 4. **CRS 53:** § 122-3-6. **L. 55:** p. 762, § 9. **C.R.S. 1963:** § 122-3-6.

11-42-107. Permanent stock. (1) Permanent stock shall be of one class only, shall have the full voting rights, and shall have a par value of not less than one dollar per share; and the proceeds thereof, to the extent of such par value, shall be set apart, shall be nonwithdrawable, and shall be a reserve to absorb losses after all surplus, undivided profits, and other reserves available for losses have been depleted.

(2) Any paid-in surplus may be made available for payment of organization and initial operating expenses, or may be credited to surplus, or to the contingent reserve, or to the federal insurance reserve, or may be transferred to permanent stock as a stock dividend and prorated to the holders of permanent stock. An association shall not issue permanent stock for a consideration other than cash or for a price less than the par value thereof, but, with the approval of the commissioner, stock may be issued for a consideration other than cash in connection with mergers, consolidations, or transfers, and, when fully paid, the stock shall be kept unimpaired to the extent of its par value.

(3) An association may declare and distribute stock dividends from net earnings, or surplus, or undivided profits. With the prior consent of the commissioner, the stock of an association may be reduced by resolution of the board of directors approved by vote or written consent of the holders of a majority of the outstanding stock of such association to such amount as the commissioner shall approve, and any such reduction shall be credited to the contingent

reserve account and shall not be available for dividends to stockholders or shareholders; but any reduction in the amount of permanent stock is subject to the provisions of this section and section 11-41-105 fixing minimum permanent stock requirements.

(4) Except as may be required by the commissioner pursuant to section 11-41-105, no association shall be required to maintain permanent stock in excess of five hundred thousand dollars; however, the total amount of permanent stock subscribed to and paid for shall not at any time, until the maximum of five hundred thousand dollars has been reached, be less than at least the following percentages of the aggregate certificate value of the outstanding invested capital (excluding permanent stock) standing on the records of the association as of January 1 of the current year: Three percent on five million dollars; two percent on five million one dollars through seven million five hundred thousand dollars; one percent on all over seven million five hundred thousand dollars.

(5) (a) As used in this subsection (5), the term "impaired" means a condition in which an association is unable to meet current obligations as they mature.

(b) Cash dividends may be declared and paid on permanent stock unless an association is in an impaired condition or the payment thereof would cause the association's assets to be impaired. Nothing in this subsection (5) shall affect subsection (1) of this section, section 11-42-111 (1) or (7), or other provisions of articles 40 to 47 of this title, restricting the payment of dividends on permanent stock. Subject to the provisions of articles 40 to 47 of this title, permanent stock shall be entitled to such rate of dividends, if earned, as fixed by the board of directors.

(c) Any association which intends to declare a cash dividend on permanent stock shall provide a minimum of thirty days' written notice of its intention to the commissioner.

(6) Directors' and stockholders' meetings shall be called, advertised, and held in accordance with section 11-41-123, but the holders of permanent stock shall have exclusive voting rights.

Source: L. 33: p. 317, § 1. **CSA:** C. 25, § 25. **L. 43:** p. 204, § 5. **L. 51:** p. 212, § 2. **CRS 53:** § 122-3-7. **L. 55:** p. 762, § 10. **L. 59:** p. 660, § 3. **L. 61:** p. 649, § 2. **C.R.S. 1963:** § 122-3-7. **L. 83:** (4) and (5) amended, p. 490, § 3, effective April 26. **L. 85:** (5)(c) added, p. 399, § 1, effective May 24. **L. 2006:** (4) amended, p. 1491, § 17, effective June 1.

11-42-108. Assessment to restore impaired permanent stock. (1) Stockholders, after their stock has been fully paid, are not liable to creditors or for assessments upon their stock issued on or after July 1, 1981, except as provided by this section. If the commissioner, as a result of any examination or from any report made to him, finds that the permanent stock of any association is impaired, he shall notify the association that such impairment exists. In the event the amount of the impairment, as determined by the commissioner, is questioned by the association, then, upon application filed within ten days, the value of the assets in question shall be determined by appraisals made by independent appraisers acceptable to the commissioner and the association.

(2) If the bylaws of an association expressly give the directors the authority to levy an assessment on permanent stock, then, subject to any limitations contained in the bylaws, the directors may levy and collect assessments upon permanent stock. The directors of an association which has received such notice may levy a pro rata assessment upon the permanent

stock thereof to make good such impairment and shall cause notice of the finding of the commissioner and such levy to be given in writing to each stockholder of such association and the amount of assessment which the stockholder must pay for the purpose of making good such impairment; but, in lieu of making such assessment, the impairment may be made good, without the consent of the commissioner, by the reduction of the permanent stock in the manner provided in section 11-42-107.

Source: L. 33: p. 317, § 1. **CSA:** C. 25, § 25. **L. 43:** p. 204, § 5. **L. 51:** p. 212, § 2. **CRS 53:** § 122-3-8. **C.R.S. 1963:** § 122-3-8. **L. 81:** Entire section amended, p. 623, § 3, effective May 18.

11-42-109. Sale of delinquent stock. (1) If any stockholder refuses or neglects to pay the assessment specified in such notice within sixty days from the date of mailing, the directors of such association shall have the right to sell to the highest bidder at public auction any part or all of the stock necessary to pay the assessment of such stockholder, after giving a previous notice of such sale for ten days in a newspaper of general circulation published in the county where the principal office of such association in this state is located, and a copy of such notice of sale shall also be served on such stockholder by mailing a copy of the notice to his last known address ten days before the day fixed for such sale, or such stock may be sold at a private sale and without public notice; but, before making such private sale thereof, an offer in writing shall first be obtained and a copy thereof served upon the owner of record of the stock to be sold by mailing a copy of such offer to his last known address, and, if, after service of such offer, such owner still refuses or neglects to pay such assessment within thirty days from the time of the service of such offer, the directors may accept the offer and sell such stock to the person making such offer or to any other person making a larger offer than the amount named in the offer submitted to the stockholder, but such stock in no event shall be sold for less than the amount of such assessment so called for and the expense of the sale.

(2) Out of the proceeds of the stock sold, the directors shall pay the amount of assessment levied thereon and the necessary cost of sale, and the balance, if any, shall be paid to the person whose stock has been sold. A sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificate evidencing the stock sold and shall make the same null and void, and a new certificate shall be issued by the association to the purchaser thereof.

Source: L. 33: p. 317, § 1. **CSA:** C. 25, § 25. **L. 43:** p. 204, § 5. **L. 51:** p. 212, § 2. **CRS 53:** § 122-3-9. **C.R.S. 1963:** § 122-3-9.

11-42-110. Forfeiture of delinquent stock. (1) If no bid or offer is received equal to or more than the amount of such assessment and the expense of sale, such stock shall be declared forfeited to the association and accepted in full satisfaction of such assessment, and such stock shall not be reissued except in accordance with a permit thereafter obtained from the commissioner pursuant to section 11-42-112.

(2) The proceeds from any assessment, less the cost of any sales and any forfeiture of delinquent stock, shall be credited to the contingent reserve account.

Source: L. 33: p. 317, § 1. **CSA:** C. 25, § 25. **L. 43:** p. 204, § 5. **L. 51:** p. 212, § 2. **CRS 53:** § 122-3-10. **C.R.S. 1963:** § 122-3-10.

11-42-111. Reserves and distribution of earnings. (1) Every association shall maintain general reserves for the sole purpose of meeting losses. Such reserves shall include the following: Permanent stock, federal insurance reserve, contingent reserve, state tax reserve, and any special purpose reserve established for the sole purpose of absorbing losses by action of the association's board of directors or at the request of the commissioner.

(2) Repealed.

(3) Every association shall set up and maintain a reserve, referred to in articles 40 to 46 of this title as the "contingent reserve", by transfers from net earnings on the closing date fixed for such associations as provided in articles 40 to 46 of this title.

(4) Every association may set up and maintain a reserve, referred to in articles 40 to 46 of this title as the "state tax reserve" in accordance with article 2 of title 29 and articles 20 to 28 of title 39, C.R.S., by annual transfers from the contingent reserve. The state tax reserve shall be considered as a part of the contingent reserve.

(5) Any losses may be charged against general reserves; except that losses may not be charged against permanent stock until all other reserves available for losses have been depleted. Moreover, losses may not be charged to the contingent reserve until any special reserve set up to absorb such losses has been exhausted. Any determined excess in any other reserve may be transferred to the contingent reserve. Allowance for depreciation of assets shall not be charged against general reserves but shall be charged to undivided profits, surplus, or net earnings.

(6) As of each closing date fixed for such association as provided in articles 40 to 47 of this title, each association shall transfer to general reserves an amount which is not less than five percent of its net earnings until general reserves are equal to ten percent of invested capital (excluding permanent stock). If, after having reached ten percent, general reserves should fall below ten percent of invested capital (excluding permanent stock), credits of five percent of net income shall be resumed until general reserves shall again equal ten percent of invested capital (excluding permanent stock). General reserves may be increased over the required ten percent in any amount as may be determined by the board of directors to be for the best interest of the association. Notwithstanding the number of closing dates fixed for an association, not more than two such transfers shall be required annually, but more frequent transfers may be made by an association with the approval of the commissioner.

(7) As of each closing date fixed for such association as provided in articles 40 to 47 of this title, the board of directors of each association shall declare a dividend on all share accounts, if any, that it then has and may also, from net earnings, declare a dividend on permanent stock in such association, but no association shall be required to distribute earnings on Christmas savings shares or deposits or other short-term savings shares or deposits or on share or deposit balances of less than an amount specified by the board of directors, if said amount is disclosed to shareholders or depositors in advance, including reasonable notice of changes. In lieu of or in addition to such net earnings, all or any part of undivided profits or surplus of an association may be likewise distributed, but no funds received as part of the sale price of permanent stock or paid in as an assessment shall be distributed as a cash dividend on permanent stock.

(8) Dividends shall be declared on and pro rata to the certificate value of each share at the beginning of the dividend period, plus payments made thereon during the dividend period

(less amounts withdrawn and, for purposes of participation in earnings, deducted from the latest previous payments), computed at the declared rate for the time invested, determined as provided in subsection (9) of this section.

(9) The date of investment shall be the date of actual receipt of such payments by the association unless the board of directors fixes a date, not later than the tenth of the month, for determining the date of investment of payments on shares or designated classes thereof. Payments affected by such determination date, received by the association on or before such determination date, shall receive earnings as if invested on the first of such month.

(10) Payments affected by such determination date, received subsequent to such determination date, shall receive earnings as if invested on the first of the next succeeding month.

(11) In all mutual associations issuing limited dividend shares, no dividends shall be paid or credited on fully participating free shares until all current maximum dividends on limited dividend shares have been paid or credited and until at least an equal dividend has been credited to fully participating loan shares.

(12) In permanent stock associations, no dividends shall be declared on the permanent stock until all current maximum dividends on limited dividend shares have been paid or credited.

(13) With approval of the commissioner, associations may pay a variable rate of dividends on shares.

(14) Notwithstanding any other provision of the Colorado "Savings and Loan Association Law", article 40 of this title, any association may distribute earnings on its shares on such other dates, on such other bases, and in accordance with such other terms and conditions as may from time to time be authorized by regulations made by the federal office of thrift supervision or its successor or the federal deposit insurance corporation or its successor for federal savings and loan associations when such regulations are approved by the commissioner.

(15) A depreciation reserve, an unearned profits account, an interest due and uncollected account, and a bonus reserve shall be set up and maintained when required.

Source: L. 33: p. 364, § 26. **CSA:** C. 25, § 94. **L. 39:** p. 254, § 30. **CRS 53:** § 122-3-11. **L. 59:** p. 661, § 4. **C.R.S. 1963:** § 122-3-11. **L. 72:** p. 617, § 152. **L. 73:** p. 1237, § 4. **L. 77:** (7) amended, p. 572, § 2, effective June 4. **L. 83:** (6) and (7) amended, p. 491, § 4, effective April 26. **L. 2004:** (2) repealed and (14) amended, pp. 151, 138, §§ 58, 19, effective July 1.

11-42-112. Requirements for sale of permanent stock. (1) No association shall sell, offer for sale, negotiate for the sale of or take subscriptions for, or issue any of its permanent stock until it has first applied for and secured from the commissioner a permit authorizing it so to do. Such application shall be in writing, verified, and filed with the commissioner. In such application, the association shall set forth the names and addresses of its officers, the location of its office, an itemized account of its financial condition, the amount and character of its stock and shares, a copy of any prospectus or advertisement or other description of its stock to be distributed or published, a copy of all minutes of any proceedings of its directors, shareholders, or stockholders relating to or affecting the issue of such stock, and such additional information concerning the association, its condition, and its affairs as the commissioner may require. Upon the filing of such application, it shall be the duty of the commissioner to examine it and the other papers and documents filed therewith.

(2) If he finds that the proposed issue is such as will not mislead the public as to the nature of the investment or will not work a fraud upon the purchaser thereof, the commissioner shall issue to the association a permit authorizing it to issue and dispose of its stock in such amounts as the commissioner may in such permit provide; otherwise he shall deny the application and notify the association in writing of his decision.

(3) Every permit shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or endorsement of the stock permitted to be issued. The commissioner may impose conditions requiring the impoundment of the proceeds from the sale of such stock and limiting the expense in connection with the sale thereof and such other conditions as he may deem reasonable and necessary or advisable to insure the disposition of the proceeds from the sale of such stock in the manner and for the purposes provided in such permit. The commissioner from time to time may amend, alter, or revoke any permit issued by him or temporarily suspend the rights of such association under such permit. The commissioner has the power to establish such rules and regulations as may be reasonable or necessary to carry out the purposes and provisions of this section.

Source: L. 33: p. 318, § 2. **CSA:** C. 25, § 26. **CRS 53:** § 122-3-12. **C.R.S. 1963:** § 122-3-12.

11-42-113. Redemption of shares or stock. Every savings and loan association may redeem its shares or stock and repay the funds acquired thereby with such earnings as the same may be entitled to according to the terms of the issue thereof if the same are no longer required for the purposes of the association upon giving thirty days' written notice in the manner provided in the bylaws of the association, but the association cannot redeem permanent stock. The method of redemption shall be prescribed in the bylaws of the association.

Source: L. 33: p. 355, § 9. **CSA:** C. 25, § 77. **CRS 53:** § 122-3-13. **C.R.S. 1963:** § 122-3-13.

11-42-114. Bonus plan. (1) Any association may adopt a plan for the payment of a cash bonus to members agreeing to make share investments in order to provide funds for the financing of homes. Such plan, before being adopted, shall be approved by a majority of the members of the board of directors at any regular or special meeting thereof and shall become effective upon the filing with and approval of the commissioner. The board of directors at any regular or special meeting may abolish the bonus plan as to shares purchased after the date of such action.

(2) After adoption and approval of such bonus plan, the board of directors shall transfer out of net earnings to an account designated "bonus reserve" an amount which, together with existing credits to the bonus reserve, is sufficient to pay the bonus on all accounts then entitled to participation in the bonus reserve in accordance with the provisions of this section. The board of directors may transfer any excess in the bonus reserve to the undivided profits account.

Source: L. 33: p. 357, § 13. **CSA:** C. 25, § 81. **L. 39:** p. 254, § 29. **CRS 53:** § 122-3-14. **L. 59:** p. 664, § 5. **C.R.S. 1963:** § 122-3-14.

11-42-115. Power to issue shares to minors or in trust. (1) Every association has the power to issue stock or shares to a minor of any age and either sex and receive payments thereon from, by, or for the minor. He shall be entitled to withdraw, transfer, or pledge any such shares owned by him and to receive from such association any dividends or other moneys at any time becoming due thereon in the same manner and subject to the same conditions as an adult, and his receipt or acquittance therefor shall constitute a valid release and discharge to the association for the payment of such moneys. The dealing of an association with a minor shall have the same effect upon the association's liability as if the minor were of full legal capacity, until his guardian or conservator files with the association a certified copy of the order of a Colorado court having jurisdiction appointing the guardian or conservator and directing otherwise.

(2) Subject to such regulations as the board of directors of the association may prescribe, an association may contract with the proper authorities of any public or nonpublic elementary or secondary school or any public or charitable institution caring for minors for the participation by the association in any school or institutional thrift or savings plan.

(3) Every association has power to issue stock or shares to any person on a revocable trust for another person, who is either named in writing as beneficiary thereof or who is unnamed. At any time during the lifetime of the trustee, the stock or shares, together with dividends, if any, shall be withdrawn only by the trustee. On the death of the trustee, the stock or shares, together with dividends, if any, shall be paid to the person for whom the stock or shares were issued as designated beneficiary, even though the beneficiary is not of full legal capacity, and, if there is no designated beneficiary living at that time, then to the personal representative of the trustee.

(4) The foregoing authorization shall not be construed as providing an exclusive method for a trustee to invest in stock or shares of an association. Nothing contained in this section shall be construed as limiting or repealing either section 28-5-214 or 28-5-301, C.R.S., with respect to investment of funds by guardians and conservators of minor and incompetent beneficiaries of the veterans administration, heretofore or hereafter appointed, or part 3 of article 1 of title 15, C.R.S., with respect to investments by fiduciaries.

Source: L. 33: p. 351, § 1. **CSA:** C. 25, § 69. **CRS 53:** § 122-3-15. **L. 57:** p. 652, § 1. **C.R.S. 1963:** § 122-3-15. **L. 79:** (1) amended, p. 647, § 3, effective July 1. **L. 2002:** (3) amended, p. 1359, § 7, effective July 1.

Cross references: For competence of persons 18 years of age or older generally, see § 13-22-101.

11-42-116. Joint accounts. Except as to accounts, which are defined in and which are paid as provided in article 15 of title 15, C.R.S., where shares or stock of an association is issued in the name of two or more persons or the survivors of them, such shares or stock and all dues paid on account thereof by either or any of such persons shall become the property of such persons as joint tenants, and the same, together with dividends, shall be held for the exclusive use of such persons and may be paid to either or any of them during their lifetimes or to the survivors of them after the death of one or more of them, and such payment and the receipt and acquittance of the persons to whom such payment is made shall be a valid and sufficient release and discharge to such association for all payments made on account of such shares or stock.

Source: L. 33: p. 351, § 2. **CSA:** C. 25, § 70. **CRS 53:** § 122-3-16. **C.R.S. 1963:** § 122-3-16. **L. 73:** p. 1649, § 14. **L. 75:** Entire section amended, p. 587, § 3, effective July 1. **L. 90:** Entire section amended, p. 920, § 4, effective July 1.

11-42-117. Notice of intention to withdraw. Each association may, at its option, prescribe a period or periods of notice of intention to withdraw. The period of any such notice of intention to withdraw shall not exceed sixty days. All notices of intention to withdraw shall be set forth and be a part of the bylaws of the association. All periods of notice of intention to withdraw shall be disclosed to members at the time of opening an account and shall appear on the shares as described in section 11-42-101. Each association may prescribe by its bylaws the terms and conditions of withdrawal which are not contrary to the provisions of articles 40 to 46 of this title. The shares shall state that the right of withdrawal is subject to the provisions of articles 40 to 46 of this title. This section shall not apply to tax and loan accounts, note accounts, or similar accounts when, subject to the regulations of the United States treasury, the association is serving as a depository for federal taxes or as a treasury tax and loan depository.

Source: L. 33: p. 319, § 1. **CSA:** C. 25, § 27. **CRS 53:** § 122-3-17. **C.R.S. 1963:** § 122-3-17. **L. 79:** Entire section amended, p. 432, § 8, effective June 19. **L. 83:** Entire section R&RE, p. 501, § 1, effective May 23.

11-42-118. Form of notice. Any notice of intention to withdraw shall be invalid unless it is given in writing and is signed by a member entitled to make a withdrawal.

Source: L. 33: p. 320, § 2. **CSA:** C. 25, § 28. **CRS 53:** § 122-3-18. **C.R.S. 1963:** § 122-3-18. **L. 83:** Entire section amended, p. 501, § 2, effective May 23.

11-42-119. Filing of notice. All notices of intention to withdraw shall be filed when received by each association in the order in which they are received, and each shall be kept on file with the exact time of the receipt thereof noted thereon, or recorded, until it is paid or cancelled at the written request of the member.

Source: L. 33: p. 320, § 3. **CSA:** C. 25, § 29. **CRS 53:** § 122-3-19. **C.R.S. 1963:** § 122-3-19. **L. 83:** Entire section amended, p. 501, § 3, effective May 23.

11-42-120. Shares or account not withdrawable. No member whose shares are pledged or whose account is pledged as security for a real estate loan from the association issuing such shares or accepting such account shall be permitted to make a withdrawal or be entitled to give any valid notice of intention to withdraw in respect of such shares or account until the indebtedness for which such shares are pledged or for which such account is pledged as security has been fully paid; except that withdrawals may be made without notice if the full amount of such withdrawals is used to pay such indebtedness or any part thereof.

Source: L. 33: p. 320, § 4. **CSA:** C. 25, § 30. **CRS 53:** § 122-3-20. **C.R.S. 1963:** § 122-3-20. **L. 83:** Entire section amended, p. 502, § 4, effective May 23.

11-42-121. Payment of withdrawals. (1) In case the funds of an association applicable to withdrawals are not sufficient to pay off all members desiring to withdraw, such members may be paid off in either one of two methods, dependent upon which method the board of directors of the association may desire to follow, in full in the order in which withdrawal notices are filed or on a pro rata basis, as follows:

(a) In the event an association elects to pay withdrawals in full in the order in which withdrawal notices are filed, all notices of withdrawal shall be filed in writing in order of time in which filed, and shall be kept in numerical order and so numbered, and shall be paid in the order filed as funds are available for that purpose.

(b) As to associations which elect to pay withdrawals on a pro rata basis, all shares or accounts on which notices of withdrawal have been filed during any period of notice shall receive their pro rata share of the funds available for withdrawal at the end of such notice period, based upon the withdrawal value of the shares or account at the time distribution is made.

(c) Repealed.

(2) Notice of withdrawal shall not make such withdrawing member a creditor of the association.

(3) As to all shares on which a withdrawal notice is on file, the holder thereof shall be entitled to the same rate of dividends paid like shares not on withdrawal.

(4) In all cases, withdrawals shall be governed by the bylaws of the association insofar as such bylaws are not in conflict with the provisions of articles 40 to 46 of this title.

Source: L. 33: p. 321, § 5. **CSA:** C. 25, § 30. **CRS 53:** § 122-3-20. **C.R.S. 1963:** § 122-3-20. **L. 83:** IP(1), (1)(a), (1)(b), and (2) amended and (1)(c) repealed, pp. 502, 503, §§ 5, 7, effective May 23.

11-42-122. Limitation on withdrawals. (1) If an association has on file more withdrawal requests than can be met in full from current funds, the association shall apply to such withdrawals one-half of the monthly receipts, after first deducting the amount necessary to pay the actual and reasonable expenses incurred in the operation of the association and the protection of its assets and reserves set up by it for cash dividends on its shares; except that, should such one-half fail to retire at least five percent of the aggregate withdrawal requests, such portion of the other one-half shall be applied as shall be necessary to retire five percent of the total amount on withdrawal.

(2) "Receipts", as used in this section, means all funds coming into the hands of the association except borrowed money.

Source: L. 33: p. 322, § 6. **CSA:** C. 25, § 32. **CRS 53:** § 122-3-22. **C.R.S. 1963:** § 122-3-22.

Editor's note: Subsections within this section were renumbered on revision to conform to statutory numbering format.

11-42-123. Matured shares. If, at the time shares in a savings and loan association have matured, the association has withdrawal notices on file to such an extent that the funds of the association, applicable to withdrawals, are not sufficient to pay off all shareholders desiring to

withdraw, as well as shares which have matured and are unpaid, and the holder of the matured shares desires to withdraw, he shall file a notice of intention to withdraw and thereafter be subject to all the rights and liabilities of articles 40 to 46 of this title governing withdrawing shareholders; except that he shall be entitled to the full amount of any dividends declared on like shares during the time he has a withdrawal notice on file on same.

Source: L. 33: p. 323, § 7. **CSA:** C. 25, § 33. **CRS 53:** § 122-3-23. **C.R.S. 1963:** § 122-3-23.

11-42-124. Applicable to previously issued certificates. All stock or shares or certificates or instruments of whatsoever kind issued by savings and loan associations prior to June 8, 1933, evidencing savings in said associations by the holders thereof, except permanent or nonwithdrawable stock, shall be subject to all the rights and all the liabilities of articles 40 to 46 of this title, and such holders shall be treated as shareholders.

Source: L. 33: p. 323, § 8. **CSA:** C. 25, § 34. **CRS 53:** § 122-3-24. **C.R.S. 1963:** § 122-3-24.

11-42-125. Associations authorized to accept deposit accounts. (1) Any other provision of articles 40 to 46 of this title to the contrary notwithstanding, any association organized under articles 40 to 46 of this title may be organized as, or may convert to, an association authorized to accept savings deposits. No association shall accept savings deposits of the type provided for by this section unless its articles of incorporation and bylaws shall specifically provide, or have been amended to provide, for the acceptance of such deposits. For the purposes of this section, all associations authorized to accept savings deposits shall be referred to as "deposit associations", and other associations organized under articles 40 to 46 of this title shall be referred to as "share associations".

(2) Except as provided in this section, no deposit association shall issue or sell shares, as otherwise provided in articles 40 to 46 of this title, except permanent stock in the case of associations organized as permanent stock companies; but all shares issued and outstanding at the time an association converts to a deposit association shall retain their status as shares with the same relative rights, privileges, duties, and obligations otherwise applicable to shares in a share association, unless the holders thereof exchange or convert such shares to savings deposits. If any law, rule, regulation, order, or decision regulating federal savings and loan associations hereafter authorizes federal savings and loan associations to accept both savings accounts, other than savings deposits (or issue and sell shares), and savings deposits having substantially the same characteristics as deposits permitted by this section, the commissioner, by rules and regulations duly adopted, may authorize deposit associations to issue shares or accept accounts having the same relative rights and other characteristics permitted by such federal law, rule, regulation, decision, or order, subject to the same limitations, restrictions, prohibitions, conditions, and provisions, to the extent found by the commissioner to be applicable, as are provided from time to time by such federal laws, rules, regulations, decisions, or orders.

(3) Except as otherwise specifically provided in this section and except to the extent that such construction clearly would be inconsistent with the provisions and intent of articles 40 to 46 of this title, all references in articles 40 to 46 of this title (other than in this section) to shares or

share accounts and to the owners or holders of shares or share accounts or to shareholders shall, with respect to the savings deposits authorized by this section, be applicable in the same manner and to the same extent that they would be applicable if such savings deposits were share interests in the association, and, except as provided in this section, the relationships between a deposit association and the holders of savings deposits therein shall be the same, and they shall have or be subject to the same rights, privileges, options, discretions, duties, obligations, restrictions, limitations, prohibitions, and conditions, as if the savings deposits were shares or the depositors were shareholders in a share association, including, but without limitation, the right of savings deposit holders to be members of the association and to have voting rights therein and the right of such associations to issue accounts to minors or in trust, to issue joint accounts, to adopt bonus plans, to issue permanent stock, and to otherwise conduct their operations in the manner provided by the provisions of articles 40 to 46 of this title.

(4) Notwithstanding any other provisions of articles 40 to 46 of this title, in the event of voluntary or involuntary liquidation, dissolution, or winding up of a deposit association or in the event of any other situation in which the priority of savings deposits authorized by this section is in controversy, all savings deposits, to the extent of their certificate value or withdrawal value at the time of the determination of priority, shall be deemed debts of the association, having the same priority as the claims of all general creditors of the association who do not have priority, other than any priority arising or resulting from consensual subordination, over other general creditors of the association, and, in addition, such savings deposits shall have the same right to share in the remaining assets of the association that they would have had if they were shares of such association. If, at the time of the determination of priority, there are outstanding in a deposit association any shares or share accounts in the association, such shares or share accounts shall, to the extent of their certificate value or withdrawal value, have the same priority as against other creditors or claimants as if they were savings deposits.

(5) The provisions of sections 11-42-117 to 11-42-123 shall be applicable to savings deposits, but any deposit association which fails to make full payment on any withdrawal demand within ten days after expiration of any advance notice period prescribed by the association's bylaws and permitted by articles 40 to 46 of this title may be found by the commissioner to be conducting its business in an unsafe or unauthorized manner or to be in an unsafe condition and subject to the penalties or actions resulting from such findings, including, but without limitation, the actions prescribed by sections 11-44-110 and 11-44-116.

(6) The provisions of sections 11-41-131 and 11-44-116 respecting the voluntary and involuntary liquidation of an association shall apply to all deposit associations, except to the extent that the order of priority of payment as between the claims of creditors, holders of savings deposits, shareholders, holders of permanent stock, or other investors is changed by the provisions of this section.

(7) If the laws, rules, regulations, orders, or decisions applicable to federal savings and loan associations hereafter authorize federal savings and loan associations to pay or contract to pay interest at an agreed rate on deposits or on one or more classes of deposits, then, deposit associations organized and operating under articles 40 to 46 of this title may likewise pay or contract to pay interest, subject to such restrictions, limitations, prohibitions, conditions, and requirements as the commissioner, by rules and regulations duly adopted and applicable to all deposit associations, may prescribe.

(8) In order to achieve substantial equality between deposit associations operating pursuant to the provisions of this section and federal savings and loan associations authorized to accept savings deposits, the commissioner is authorized, by rule or regulation duly adopted, to impose or grant, to the extent consistent with the provisions of articles 40 to 46 of this title, the same restrictions, limitations, prohibitions, conditions, requirements, duties, liabilities, provisions, authorities, powers, rights, options, and discretions as are from time to time applicable to federal savings and loan deposit associations under the laws, rules, regulations, orders, and decisions applicable to such federal savings and loan associations.

(9) Savings deposits in a deposit association shall be evidenced by such certificates, account books, or passbooks as the association could issue or would be required to issue for a corresponding share account if it were not a deposit association; but any such certificate, account book, or passbook shall be modified so as to clearly reveal that the interest or obligation evidenced thereby is a savings deposit and not a share or share account in the issuing association. The term "invested capital", as applied to a deposit association, shall include the certificate values of all savings deposits therein. A deposit association may accept such one or more types of savings deposits as are permitted by the bylaws of the association, if such deposits are of a type and kind that may be accepted by savings and loan associations insured by the federal deposit insurance corporation or its successor.

(10) Any provision to the contrary notwithstanding, all shares or accounts in a federal or state chartered savings and loan association having substantially the same relative rights and characteristics as either shares or savings deposits provided for by this section, whether described or referred to as shares, savings shares, investment shares, share accounts, certificates, certificate accounts, savings accounts, savings deposits, or any other similar name, are the equivalent of each other for all purposes involving the right or authority to invest or deposit public or private funds, including funds held in trust or any other fiduciary capacity, in any such association; and, if, by any law, statute, ordinance, resolution, rule, regulation, order, decision, agreement, declaration, trust agreement, last will and testament, or other similar enactment or instrument, the state of Colorado or any of its counties, municipalities, districts, or other political subdivisions, including special districts authorized by law, any institution, agency, official, instrumentality, or department of any of the political entities described in this subsection (10), any bank, savings bank, credit union, fraternal benefit society, trust deposit and security company, trust company, or other financial institution, any insurance company, or any agent, executor, administrator, trustee, custodian, or other fiduciary or agent, including trustees or custodians of public or private pension or retirement funds, is authorized or required to invest or deposit such public or private funds in the shares of a federal or state chartered savings and loan association or in any one or more of the other types of savings and loan accounts named in this subsection (10), such funds may also be invested or deposited in any one or more of the other types of accounts specified in this subsection (10) in such an association, whether the earnings to be paid on such accounts are in the form of dividends or of interest.

Source: L. 69: p. 1017, § 12. **C.R.S. 1963:** § 122-3-25. **L. 83:** (5) amended, p. 502, § 6, effective May 23. **L. 2004:** (9) amended, p. 151, § 59, effective July 1. **L. 2013:** (10) amended, (SB 13-154), ch. 282, p. 1471, § 29, effective July 1.

ARTICLE 43

Foreign Savings and Loan Associations

11-43-101. Restrictions on foreign associations. No foreign savings and loan association which conducts a savings and loan business as defined in section 11-40-103 shall operate an office in this state in order to sell its shares or accounts or make new loans in this state. Violation of this section is a class 2 misdemeanor which shall subject the offender and its officers, agents, and representatives, upon conviction thereof, to the penalties which are authorized in section 18-1.3-501 (1), C.R.S., and each separate business transaction in violation of this section shall constitute a separate offense; but nothing in this section shall be construed to prohibit a foreign association from transacting business in respect to executory contracts in force on May 17, 1939.

Source: L. 33: p. 324, § 1. **CSA:** C. 25, § 35. **L. 39:** p. 242, § 15. **CRS 53:** § 122-4-1. **C.R.S. 1963:** § 122-4-1. **L. 88:** Entire section amended, p. 455, § 2, effective March 18. **L. 2002:** Entire section amended, p. 1471, § 40, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ARTICLE 44

Division of Financial Services

11-44-101. Division of financial services created. There is hereby created a division of financial services, within the department of regulatory agencies, which shall be administered by the state commissioner of financial services. When any law of this state refers to the savings and loan department of the state of Colorado, said law shall be construed as referring to the division of financial services.

Source: L. 33: p. 331, § 1. **CSA:** C. 25, § 47. **CRS 53:** § 122-6-1. **C.R.S. 1963:** § 122-5-1. **L. 68:** p. 125, § 126. **L. 89:** Entire section amended, p. 616, § 1, effective July 1.

11-44-101.4. Definitions. As used in articles 30 and 40 to 46 of this title, unless the context otherwise requires, "board" means the financial services board, created in section 11-44-101.6.

Source: L. 93: Entire section added, p. 1447, § 9, effective June 6.

11-44-101.5. Division subject to termination - repeal of article. (1) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of financial services created by section 11-44-101.

(2) This article is repealed, effective September 1, 2024.

Source: L. 76: Entire section added, p. 621, § 4, effective July 1. **L. 89:** Entire section amended, p. 616, § 2, effective July 1. **L. 91:** Entire section amended, p. 678, § 6, effective April 20. **L. 94:** (2) amended, p. 66, § 9, effective July 1. **L. 2004:** (2) amended, p. 138, § 20, effective July 1. **L. 2013:** (2) amended, (SB 13-159), ch. 193, p. 790, § 1, effective May 11.

11-44-101.6. Financial services board - creation. (1) There is hereby established in the division the financial services board which shall consist of five members.

(2) (a) There shall be three members who during their tenure are, and shall remain, executive officers of state credit unions and shall have not less than five years' practical experience as an active executive officer of a credit union.

(b) There shall be one member who during such member's tenure is, and shall remain, the executive officer of a state savings and loan association and shall have not less than five years' practical experience as an active executive officer of a savings and loan association.

(c) There shall also be one member to serve as a public member of the board who shall have expertise in finance through current experience in business, industry, agriculture, or education.

(d) Not more than three members shall be of the same major political party. No member of the board shall have any interest, direct or indirect, in a financial institution in which another member of the board shall have any such interest.

(3) Members shall be appointed by the governor, with the consent of the senate. Appointments shall take effect on July 1, 1993. The term of office of each member shall be four years with the exception of the first appointments wherein two members shall be appointed for a two-year term to effect the staggering of terms. The governor may, after notice and hearing, remove a member for cause. Any board member who is absent from three consecutive board meetings is subject to immediate removal by the governor.

(4) Each member of the board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such expenses and allowances shall be made upon vouchers therefor, which shall be filed with the department of personnel.

(5) The board shall meet at least once every three months. The chair of the board may call additional meetings of the board upon at least seventy-two hours' notice to all members of the board and shall do so upon the request of two members. All members of the board shall be subject to immediate call in the event of an emergency. Three members of the board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present shall be the action of the board. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, one or more members may be authorized to conduct any hearing required under articles 30 and 40 to 46 of this title. In the event that less than a quorum of the board is present during the conduct of the hearing, at least a quorum of the board shall read the entire record before voting thereon. No member who is, or was at any time in the preceding twelve months, a director, officer, partner, employee, member, or stockholder of a corporation, partnership, or unincorporated association which is a party to a proceeding before the board shall participate in such a proceeding. A member may disqualify himself or herself from participating in a proceeding for any other cause deemed by the member to be sufficient.

(6) A quorum may be established by means of a conference telephone call which shall be recorded in the board's minutes. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, the board may hold an executive session to consider certain matters required by statute to be kept confidential under articles 30 and 40 to 46 of this title. Any agenda and the minutes of executive sessions shall be kept confidential by the board.

(7) Such clerical, technical, and legal assistance as the board may require shall be provided by the division.

(8) The members of the board shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by law. Any person who willfully violates this oath is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(9) The board shall elect a chair from among its members to serve for a term not exceeding two years, as determined by the board. No chair shall be eligible to serve as such for more than two successive terms. In addition to the amounts received pursuant to subsection (4) of this section, the chair shall receive per diem compensation and reimbursement of expenses in the amounts provided by section 24-34-102 (13), C.R.S., for each day spent in attending to the duties of the board.

(10) For the fiscal year beginning July 1, 1993, all moneys necessary to fund the board, including but not limited to per diem compensation and reimbursement of expenses for board members, shall be transferred from the moneys allocated for travel expenses for the division.

Source: L. 93: Entire section added, p. 1447, § 9, effective June 6. **L. 95:** (4) amended, p. 637, § 20, effective July 1. **L. 96:** (4) amended, p. 1513, § 40, effective June 1.

11-44-101.7. Powers of the financial services board. (1) The board is the policy-making and rule-making authority for the division and has the power to:

(a) Regulate its own procedure and practice; and

(b) Make, modify, reverse, and vacate rules for the proper enforcement and administration of articles 30, 40 to 46, and 49 of this title 11.

(2) In addition to any other powers conferred on it by articles 30, 40 to 46, and 49 of this title 11, the board has the power to:

(a) Make all final decisions with respect to the organization, conversion, or merger of credit unions and savings and loan associations and administration of life care institutions or providers pursuant to article 49 of this title 11;

(b) Make all final decisions with respect to the suspension or liquidation of credit unions and savings and loan associations under article 30 of this title and this article.

(c) (Deleted by amendment, L. 95, p. 1092, § 3, effective May 31, 1995.)

(3) The board has the power to:

(a) Prohibit the taking of shares or deposits or to restrict the withdrawal of shares or deposits, or both, from any one or more state credit unions or savings and loan associations when the board finds that extraordinary circumstances make such a restriction necessary for the proper protection of depositors in the affected state credit union or savings and loan association;

(b) Authorize state credit unions and savings and loan associations to engage in any activity in which such financial institutions could engage were they operating under a federal charter or certificate of approval at the time such authority is granted, so long as such activity is not prohibited by state law and to the extent permissible under the rules and regulations of the board;

(c) Affirm, modify, reverse, vacate, or stay the enforcement of any order, ruling, or determination made by the commissioner acting pursuant to authority delegated by the board;

(d) Issue a declaratory order with respect to the applicability of articles 30, 40 to 46, and 49 of this title 11, or any rule issued by the board to any person, property, or state of facts under said provisions;

(e) Review and comment on the preliminary budget draft for the division prior to its submission to the department of regulatory agencies;

(f) Annually establish such fees and assessments and the percentages thereof as are necessary to generate the moneys appropriated by the general assembly to the division;

(g) Comment to the executive director of the department of regulatory agencies on who shall be the commissioner and to recommend to said executive director the termination of the commissioner for cause;

(h) Perform any acts and make any decisions incidental to or necessary for carrying out its functions as set forth in articles 30, 40 to 46, and 49 of this title 11;

(i) Issue subpoenas and require attendance of any and all officers, directors, and employees of any credit union, savings and loan association, or life care institution or provider, and such other witnesses as the board may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the board, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the board. Upon application of the board and subject to any protective order which may be entered by a district court, any person served with a subpoena issued by the board may be required, by order of the district court of the county where the credit union, savings and loan association, or life care institution or provider has its principal office, to appear and answer such questions as may be put to such person by the board and be required to produce such books, papers, or documents in such person's possession as may be required by the board.

(4) The board may issue cease-and-desist orders, suspend a director, officer, or employee of a credit union or savings and loan association, or assess civil money penalties, in the same manner as provided in section 11-30-106 (7) and (8), concerning powers of the commissioner, and section 11-44-106.5, concerning suspension or removal of directors, officers, or employees, and as provided in sections 11-30-106.5 and 11-44-123, concerning assessment of civil money penalties by the commissioner.

(5) Except with respect to the organization of community charter credit unions, the board may, in its discretion, delegate to the commissioner any of its powers, duties, and functions.

(6) The board may, in its discretion, require the commissioner to report to the board periodically with respect to any powers delegated pursuant to subsection (5) of this section.

(7) The board shall have the power to approve or deny merger agreements for credit unions as provided in section 11-30-122. Mergers involving a community charter shall be subject to a public hearing pursuant to section 11-30-101.7.

(8) Repealed.

Source: L. 93: Entire section added, p. 1449, § 9, effective June 6. **L. 94:** (3)(b) amended and (8) repealed, pp. 66, 67, §§ 10, 11, effective July 1. **L. 95:** (2)(a), (2)(c), (3)(d), and (3)(h) amended, p. 1092, § 3, effective May 31. **L. 99:** (1) amended, p. 1011, § 4, effective August 4. **L. 2013:** (3)(i) amended, (SB 13-159), ch. 193, p. 791, § 5, effective May 11. **L. 2017:** (1)(b), IP(2), (2)(a), (3)(d), and (3)(h) amended, (SB 17-226), ch. 159, p. 589, § 4, effective August 9.

11-44-101.8. Review of commissioner actions by financial services board - judicial review. (1) (a) Any credit union, savings and loan association, or life care institution or provider, or any officer, director, employee, agent, advisor, or volunteer thereof, may appeal to the board any actions taken pursuant to authority delegated by the board pursuant to section 11-44-101.7 (5) or as otherwise specifically provided by statute. Notice of such appeal shall be filed with the commissioner within thirty days after such findings, ruling, order, decision, or other action. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is based. Within sixty days after the appeal is filed, the board shall fix a date, time, and place for hearing the appeal and shall notify the credit union, savings and loan association, or life care institution or provider at least thirty days prior to the date of said hearing. Any such action of the commissioner may be stayed by the board pending the appeal to the board. The findings, order, decision, ruling, or other action of the board shall be deemed final agency action.

(b) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to paragraph (a) of this subsection (1) shall be exempt from any provision of law requiring that proceedings of the board be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from an institution.

(2) Any credit union, savings and loan association, or life care institution or provider, or any officer, director, employee, agent, advisor, or volunteer thereof, or any other party, aggrieved or directly affected by a final order of the board, may obtain judicial review thereof by filing an action for review pursuant to the provisions of section 24-4-106, C.R.S., with the Colorado court of appeals pursuant to section 24-4-106 (11), C.R.S. The commencement of such proceeding does not, unless specifically ordered by the court, operate as a stay of the board's ruling, order, decision, or other action.

Source: L. 93: Entire section added, p. 1451, § 9, effective June 6. **L. 94:** (2) amended, p. 67, § 12, effective July 1. **L. 95:** (2) amended, p. 1092, § 4, effective May 31. **L. 97:** (2) amended, p. 8, § 1, effective March 13. **L. 99:** (1) amended, p. 1011, § 5, effective August 4. **L. 2004:** (1)(a) amended, p. 138, § 21, effective July 1.

11-44-102. Commissioner - duties - employees. (1) The head of the division of financial services shall be the state commissioner of financial services, referred to in this article as the "commissioner". The commissioner shall have had at least five years' practical experience in the operation or regulation of financial institutions or financial service operations. The commissioner shall be appointed by the executive director of the department of regulatory agencies, pursuant to section 13 of article XII of the state constitution.

(2) The commissioner may appoint, pursuant to section 13 of article XII of the state constitution, a deputy commissioner of financial services, a secretary, and such other employees as deemed necessary for the proper conduct of the division.

(3) The deputy commissioner, the secretary, and all other employees of the division shall be under the direct supervision of the commissioner who shall have full power and control over such employees. Neither the commissioner nor any officer or employee of the division shall be personally liable for any acts done in good faith while in the performance of his duties as prescribed by law.

(4) Repealed.

(5) (Deleted by amendment, L. 2004, p. 138, § 22, effective July 1, 2004.)

(6) The commissioner, the deputy commissioner, the secretary, and all employees shall be reimbursed for all necessary expenses of their office, including all traveling expenses necessarily incurred in the performance of their duties, upon vouchers therefor properly itemized and filed in accordance with law.

(7) Repealed.

(8) (a) Neither the commissioner nor any employee of the division shall:

(I) Be an officer, director, committee member, attorney for, or stockholder in any credit union or savings and loan association; or

(II) Receive, directly or indirectly, any payment, gratuity, or compensation from any institution over which the division has regulatory authority.

(b) The provisions of paragraph (a) of this subsection (8) shall not prohibit the commissioner or any employee of the division from being a depositor, account holder, borrower, or user of other available financial services on the same terms as are available to the general public or membership.

(c) Notwithstanding any provision of this subsection (8) to the contrary, this subsection (8) shall not prohibit the credit union or savings and loan members of the financial services board pursuant to section 11-44-101.6 (2)(a) or (2)(b) from:

(I) Being executive officers in credit unions or savings and loan associations; and

(II) Receiving bona fide compensation as such officers.

Source: L. 33: p. 332, § 2. **CSA:** C. 25, § 48. **L. 43:** p. 207, § 6. **L. 47:** p. 315, § 1. **CRS 53:** § 122-6-2. **C.R.S. 1963:** § 122-5-2. **L. 68:** p. 125, § 127. **L. 89:** (1), (2), and (4) amended, p. 616, § 3, effective July 1. **L. 91:** (7) added, p. 674, § 3, effective May 1. **L. 2004:** (1), (2), and (5) amended and (8) added, p. 138, § 22, effective July 1. **L. 2013:** (4) repealed, (SB 13-159), ch. 193, p. 791, § 6, effective May 11.

Editor's note: Subsection (7)(b) provided for the repeal of subsection (7), effective January 1, 1992. (See L. 91, p. 674.)

11-44-103. Powers of commissioner. The commissioner has general supervision and control over all domestic and foreign savings and loan associations doing business in this state and has full power to grant, refuse, or revoke a permit or license to any association to do business in this state when such association is not conducting its business in conformity with the laws of the state or is conducting its business in such an unsafe manner as to render its further operations hazardous to the public or any of its shareholders. All articles of incorporation and amendments thereto, all bylaws and amendments thereto, and all certificates of stock and shares of associations subject to articles 40 to 46 of this title shall be submitted to said commissioner for his approval or disapproval, and said commissioner has the authority to approve, modify, or

reject any such articles of incorporation or amendments thereto, bylaws or amendments thereto, and certificates of stock or shares. The commissioner has full power and authority to prescribe all necessary and proper rules and regulations for the conduct and operation of savings and loan associations in this state and shall prescribe the manner in which the books and records of associations doing business in this state shall be kept.

Source: L. 33: p. 334, § 3. **CSA:** C. 25, § 49. **CRS 53:** § 122-6-3. **C.R.S. 1963:** § 122-5-3.

11-44-103.5. Record retention by the commissioner. The commissioner shall retain records pursuant to part 1 of article 80 of title 24, C.R.S., and may, in his or her discretion, destroy records pursuant to said part 1.

Source: L. 2004: Entire section added, p. 139, § 23, effective July 1.

11-44-104. Commissioner may delegate powers. The commissioner may delegate such of his powers and authority to his deputies as he may deem necessary for proper administration of the division and may designate appropriate titles for his deputies and any of his employees. Any such delegation or designation made may be rescinded by the commissioner at any time. All such actions shall be in writing and of record in the files of the division. The acts of deputies performing such delegated powers and authority shall be of the same legal effect as if performed personally by the commissioner.

Source: L. 39: p. 250, § 21. **CSA:** C. 25, § 49(1). **CRS 53:** § 122-6-4. **C.R.S. 1963:** § 122-5-4.

11-44-105. Commissioner may institute suits. The commissioner shall report to the attorney general, and he shall institute and prosecute suits and actions to enjoin violations of articles 40 to 46 of this title or violations of orders or decisions of the commissioner rendered pursuant to said articles and to enforce any civil penalties provided by said articles. The commissioner shall notify the proper district attorney of any violation of the provisions of articles 40 to 46 of this title which constitutes a felony or misdemeanor, and such district attorney shall forthwith prosecute the person charged with such offense. Upon failure or refusal of the district attorney to so prosecute, it shall be the duty of the attorney general to conduct such prosecution.

Source: L. 33: p. 335, § 4. **CSA:** C. 25, § 50. **CRS 53:** § 122-6-5. **C.R.S. 1963:** § 122-5-5.

11-44-106. Issuance of subpoenas. The commissioner has the power to issue subpoenas and require attendance of any and all officers, directors, agents, salesmen, collectors, and employees of any association and such other witnesses as he may deem necessary in relation to its affairs, transactions, and conditions, and may require such witnesses to appear and answer such questions as may be put to them by the commissioner, and may require such witnesses to produce such books, papers, or documents in their possession as may be required by the

commissioner. Upon application of the commissioner, any person served with a subpoena issued by him may be required, by order of the district court of the county where the association has its principal office, to appear and answer such questions as may be put to him by the commissioner and be required to produce such books, papers, or documents in his possession as may be required by the commissioner.

Source: L. 33: p. 336, § 5. **CSA:** C. 25, § 51. **CRS 53:** § 122-6-6. **C.R.S. 1963:** § 122-5-6.

11-44-106.5. Suspension or removal of directors, officers, or employees. (1) (a) The commissioner may suspend or remove any director, officer, or employee of an association who in the opinion of the commissioner has:

(I) Violated the savings and loan association laws or a lawful regulation or order issued thereunder;

(II) Engaged or participated in any unsafe or unsound practice in the conduct of savings and loan business;

(III) Committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty to the association and the association has suffered or will probably suffer financial loss or other damage or the interests of account holders may be seriously prejudiced thereby; or

(IV) Received financial gain by reason of a violation, practice, or breach of fiduciary duty that involved personal dishonesty or demonstrated a willful or continuing disregard for the safety or soundness of the association.

(b) The commissioner may suspend or remove any director, officer, or employee of an association who, under the laws of this state, the United States, or any other state or territory of the United States:

(I) Has entered a plea of guilty or nolo contendere to or been convicted of a crime involving theft or fraud that is classified as a felony; or

(II) Is subject to an order removing or suspending such individual from office, or prohibiting such individual's participation in the conduct of the affairs of any credit union, savings and loan association, bank, or other financial institution.

(1.2) A suspension or removal order issued pursuant to subsection (1) of this section shall include a description of the grounds for the suspension or removal. A copy of the order shall be sent to the association concerned and to each member of its board of directors.

(2) (a) The commissioner shall send written notice by certified mail, return receipt requested, to any person affected by subsection (1) of this section, at least ten days prior to a hearing held pursuant to section 24-4-105, C.R.S., at which the commissioner shall preside.

(b) If the commissioner determines that a specific case involves extraordinary circumstances which require immediate action, he may suspend or remove a person under subsection (1) of this section without notice or a hearing, but he shall conduct a hearing under section 24-4-105, C.R.S., within thirty days after such suspension or removal.

(c) Any person who performs any duty or who exercises any power of a domestic savings and loan association after receipt of a suspension or removal order under subsection (1) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(d) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

Source: L. 85: Entire section added, p. 399, § 2, effective May 24. **L. 89:** (1) amended and (2)(d) added, p. 612, §§ 6, 7, effective April 19. **L. 94:** (1) amended and (1.2) added, p. 67, § 13, effective July 1. **L. 2002:** (2)(c) amended, p. 1471, § 41, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(c), see section 1 of chapter 318, Session Laws of Colorado 2002.

11-44-107. Confidentiality. (1) Neither the commissioner, the commissioner's deputy, nor any other person appointed by the commissioner shall divulge any information acquired in the discharge of the person's duties; except that:

(a) A person specified in the introductory portion to this subsection (1) may divulge information acquired in the discharge of the person's duties if doing so is made necessary by law or under order of court in an action involving the division of financial services or in criminal actions;

(b) Any party entitled to appear in a hearing on an application for a savings and loan association charter or approval of a merger of savings and loan associations shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws;

(c) The commissioner may furnish information as to the condition of a savings and loan association to the federal office of thrift supervision or its successors, a federal home loan bank, the savings and loan departments of other states, an insurer authorized to insure obligations or accounts pursuant to articles 40 to 47 of this title, the executive director of the department of regulatory agencies, or the division of banking;

(d) The commissioner may give records or information in the commissioner's possession to a licensing agency within the department of regulatory agencies relating to possible misconduct by a person or entity licensed by said agency;

(e) The board, the commissioner, and their respective designees may exchange information obtained by the division of financial services as to possible criminal violations of law relating to the activities of a savings and loan association with the appropriate law enforcement agencies; and

(f) Notwithstanding any provision contained in this article to the contrary, the commissioner, the commissioner's deputies, or other persons appointed by the commissioner may disclose any information in the records of the division of financial services or acquired in the discharge of the person's duties that is available from the federal office of thrift supervision or its successors or the disclosure of which has been specifically authorized by the board of directors of the association to which such information relates. Nothing in this section shall be construed to authorize the board of directors of an association to waive any privileges that belong solely to the financial services board, the division of financial services, or its employees.

Source: L. 33: p. 336, § 6. **CSA:** C. 25, § 52. **CRS 53:** § 122-6-7. **C.R.S. 1963:** § 122-5-7. **L. 79:** Entire section amended, p. 432, § 9, effective June 19. **L. 84:** Entire section amended, p. 381, § 10, effective May 11. **L. 85:** Entire section amended, p. 400, § 3, effective May 24. **L. 89:** Entire section amended, p. 617, § 4, effective July 1. **L. 93:** Entire section amended, p. 1452, § 10, effective June 6. **L. 99:** Entire section amended, p. 1012, § 6, effective August 4. **L. 2008:** Entire section amended, p. 180, § 2, effective August 5.

11-44-108. Seal of commissioner. (Repealed)

Source: L. 33: p. 337, § 7. **CSA:** C. 25, § 53. **CRS 53:** § 122-6-8. **C.R.S. 1963:** § 122-5-8. **L. 89:** Entire section amended, p. 618, § 5, effective July 1. **L. 94:** Entire section repealed, p. 68, § 14, effective July 1.

11-44-109. Examination by commissioner - procedure - penalty. (1) The commissioner, in person or by his deputy or one or more of his or her employees, at such intervals as the commissioner shall determine to be necessary or desirable in order to ascertain that each association is conducting its business in a safe and authorized manner, shall visit the home office and such branch offices as the commissioner deems necessary and examine into the affairs of every domestic association doing business in this state. The commissioner's deputy or any employee of the commissioner, before being entitled to make such examination, shall produce under the hand and seal of the commissioner his or her authority to make such examination. The commissioner and his deputy have the power to administer oaths and to examine under oath any director, officer, employee, or agent of any association concerning the business and affairs thereof. If the association has neither been audited by a registered or certified public accountant, in such manner and by auditors satisfactory to the commissioner, within the twelve-month period immediately preceding the date of such examination or within the period that has elapsed since such last preceding examination, whichever is greater, nor adopted and maintained an internal audit program acceptable to the federal deposit insurance corporation or its successor and the division, the examination by the division shall include an audit. The cost, as computed by the division, of any such audit shall be paid by the association audited; except that there shall be no charge by the division for making an audit when such audit has been made by reason of collaboration as provided in section 11-41-117.

(1.5) In lieu of making his or her own examination, the commissioner may accept the examination report prepared by the federal office of thrift supervision or its successor or other appropriate regulatory authority.

(2) When, in the judgment of the commissioner, the condition of any association renders it necessary or expedient to make an extra examination or to devote any such extraordinary attention to its affairs, the commissioner has authority to make any extra examinations and to devote any necessary extra attention to the conduct of its affairs and may cause a registered or certified public accountant, appointed by the commissioner, to make an audit or examination of such association's business and affairs. In any such case, the association shall pay a reasonable fee based on actual cost to be affixed by the commissioner for all such extra services rendered by the division or by such accountant. A copy of the commissioner's report on each examination must be furnished to the association examined, and each director must note thereon that he has read the same.

(3) The commissioner or his deputy shall annually examine into the affairs of every foreign association doing business in this state, and for every such examination made outside this state a reasonable expense and the actual traveling expenses incurred shall be paid by the association so examined. If the commissioner deems it necessary, he may cause a public accountant, appointed by the commissioner, to make an audit or examination of such association's business and affairs, and, in any such case, such association shall pay a reasonable price to be fixed by the commissioner for such extra services rendered by such accountant. Should any foreign association fail to pay the costs incurred in any such examination, such costs shall be paid by the state treasurer upon the order of the commissioner, and the amount so paid shall be a first lien upon all the assets and property of such association and may be recovered by suit by the attorney general on behalf of the state of Colorado and restored to the fund from which paid.

(4) For the purpose of the examinations provided for in this section, the commissioner and his deputy or any other person authorized by him to make the examination has free access to all books and papers of the association which relate to its business and to the books and papers kept by any officer, agent, or employee relating thereto or upon which any record of its business is kept and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any such association or any other person in relation to its affairs, transactions, and conditions. He may require and compel the production of records, books, papers, contracts, or other documents by court action if necessary.

(5) Any person who knowingly or willfully testifies falsely in reference to any matter material to said examination is guilty of perjury in the second degree and, upon conviction thereof, shall be punished accordingly; and any person who willfully refuses or fails to attend, answer, or produce books or papers, or who refuses to give said commissioner or his deputy or the person authorized by him full and truthful information and answer in writing to any inquiry or question made in writing by said commissioner or deputy or the person authorized by him in regard to the business carried on by such association or other matters under investigation, or who refuses or willfully fails to appear and testify under oath before the commissioner, his deputy, or the person authorized by him is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

(6) Any director, officer, agent, or employee of any association who knowingly or willfully makes any false certificate, entry, or memorandum upon any of the books or the papers of any association or upon any statement filed or offered to be filed in the division of financial services of this state or used in the course of any examination, inquiry, or investigation, with the intent to deceive the commissioner, his deputy, or any person employed or appointed by him to make such examination, inquiry, or investigation, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not less than two months nor more than twelve months, or by both such fine and imprisonment.

Source: L. 33: p. 337, § 8. **CSA:** C. 25, § 54. **L. 39:** p. 250, § 22. **CRS 53:** § 122-6-9. **L. 55:** p. 765, § 1. **L. 57:** p. 650, § 2. **C.R.S. 1963:** § 122-5-9. **L. 69:** p. 1021, § 1. **L. 71:** p. 1147, § 5. **L. 72:** p. 567, § 44. **L. 84:** (1) amended and (1.5) added, p. 381, § 11, effective May 11. **L. 89:**

(6) amended, p. 618, § 6, effective July 1. **L. 2004:** (1) and (1.5) amended, pp. 151, 140, §§ 60, 24, effective July 1.

11-44-110. Power to take possession of association. (1) If the commissioner, as the result of any examination or from any report made to him, finds that any association doing business in this state is violating the provisions of its articles of incorporation or bylaws or of the laws of this state provided for its government or is conducting its business in an unsafe or unauthorized manner, by an order addressed to such association, he may direct a discontinuance of such violations or unsafe or unauthorized practices and a conformity with all the requirements of law.

(2) If such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the commissioner that any association is in an unsafe condition or is conducting its business in an unsafe manner such as to render its further proceedings hazardous to the public or to any of its members, or if he finds that its assets are impaired to such an extent that it threatens loss to the withdrawable shares, or if any association refuses to submit its books, papers, and accounts to the inspection of the commissioner or any of his examiners, his deputy, or his assistants, or if any officer refuses to be examined upon oath concerning the affairs of such association, then the commissioner may revoke the certificate of authority of such association, which shall act as an injunction against the association issuing any new shares or stock, making any new loans, transferring any shares or stock, or making any change in its managerial or directorial personnel during the time such revocation is in effect.

(3) The commissioner may, with the written approval of the board, take possession of the property, business, and assets of such an association and retain such possession until such association, with the consent of the commissioner, resumes business or until its affairs are liquidated. Such association, with the consent of the commissioner, may resume business upon such conditions as may be prescribed by the commissioner, but such savings and loan association shall pay all the expenses of the commissioner and the commissioner's deputy and employees in so taking possession of its property and assets.

(4) (a) In addition to all other powers to take possession of any association, the commissioner may appoint himself or herself or a third party as conservator of any association and immediately take possession and control of the business and assets of the association if the commissioner determines that:

(I) Such action is necessary to conserve the assets of the association or to protect the interests of its shareholders from acts or omissions of the existing management;

(II) The association, by a resolution of its board of directors, consents to such action;

(III) There is a willful violation of a cease-and-desist order that results in the association being operated in an unsafe or unsound manner; or

(IV) The association is significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized.

(b) The commissioner may appoint a conservator and take immediate possession of the association without prior notice or a hearing; except that, within ten days after the conservator is appointed, the association may file an appeal with the board requesting the board to rescind the commissioner's appointment of a conservator. Upon receipt of a timely appeal, the board shall set a date for hearing and determine whether the commissioner's appointment should be rescinded; except that such appeal shall not act as a stay of the commissioner's action. If the

board finds the commissioner's action was unauthorized, the board shall restore control of the association to its board of directors. If no appeal is filed within ten days after the commissioner's appointment of a conservator, all action taken by the commissioner shall be final.

(c) In extraordinary circumstances, upon order of the board, any hearing conducted pursuant to this subsection (4) shall be exempt from any provision of law requiring that proceedings of the board be conducted publicly. Such extraordinary circumstances occur only when specific concern arises about prompt withdrawal of moneys from the association.

(d) The conservator shall have all the powers of the shareholders, directors, and officers of the association and shall be authorized to operate the association in its own name or to conserve its assets as directed by the commissioner. The conservator shall conduct the business of the association and make regular reports to the commissioner until such time as the commissioner has determined that the purposes of conservatorship have been accomplished and the association should be returned to the control of its board of directors. All costs incident to the conservatorship shall be paid out of the assets of the association. If the commissioner determines that the purposes of the conservatorship will not be accomplished, the commissioner may proceed with the involuntary liquidation of the association in the manner described in subsections (2) and (3) of this section.

(e) If a conservator is appointed, and is other than the federal deposit insurance corporation, the office of thrift supervision or its successors, or an employee of the division of financial services, the conservator and any assistants shall provide a bond, payable to the association and executed by a surety company authorized to do business in this state, which meets with the approval of the financial services board, for the faithful discharge of their duties in connection with such conservatorship and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the association. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof. This requirement may be deemed met if the financial services board determines that the association's fidelity bond covers the conservator and any assistants.

Source: L. 33: p. 340, § 9. **CSA:** C. 25, § 55. **CRS 53:** § 122-6-10. **C.R.S. 1963:** § 122-5-10. **L. 99:** (3) amended and (4) added, p. 1012, § 7, effective August 4.

11-44-110.5. Supervisory mergers. As a condition to allowing an association to resume business, the commissioner may require the association to merge with a domestic, foreign, or federal savings and loan association. In the case of such a supervisory merger initiated by the commissioner or the federal deposit insurance corporation or its successor, the provisions of section 11-43-101 shall not apply.

Source: L. 82: Entire section added, p. 246, § 1, effective March 25. **L. 2004:** Entire section amended, p. 152, § 61, effective July 1.

11-44-111. Appeal from commissioner's action. When any association, of whose property, business, and assets the commissioner has taken possession, deems itself aggrieved thereby, it may appeal to the financial services board pursuant to section 11-44-101.8 and receive expedited consideration as soon as practicable, and if it has, within ten days after the commissioner took possession, served written notice on the commissioner of its intention to seek

to enjoin in court the commissioner's further proceedings, it may apply at any time within thirty days after such taking possession to the district court of the county in which the principal office of the association is located to enjoin further proceedings. After citing the commissioner to show cause why further proceedings should not be enjoined and hearing the evidence of the parties and determining the facts, the court may, upon the merits, dismiss such application or enjoin the commissioner from further proceedings and direct the commissioner to surrender such business, property, and assets to such association. An appeal from such judgment shall operate as a stay from the commissioner's taking possession, and no bond need be given if such appeal is taken by the commissioner; but, if such appeal is taken by such association, a bond shall be given as required by the court.

Source: L. 33: p. 341, § 10. **CSA:** C. 25, § 56. **CRS 53:** § 122-6-11. **C.R.S. 1963:** § 122-5-11. **L. 93:** Entire section amended, p. 1452, § 11, effective June 6.

11-44-112. Appointment of commissioner as receiver - assignment for benefit of creditors prohibited. Upon application to the district court, the commissioner may be appointed the receiver to operate a savings and loan association when such appointment is necessary to avoid the association's assets becoming impaired or when the association is operating in an unsafe manner. In lieu of the commissioner being appointed a receiver or liquidator, the federal deposit insurance corporation or its successor, or an insurer authorized to insure obligations or accounts pursuant to articles 40 to 47.5 of this title, may be tendered an appointment as receiver or liquidator. For the purposes of rule 98 of the Colorado rules of civil procedure, venue of the commissioner is in the city and county of Denver. No savings and loan association shall make an assignment for the benefit of creditors.

Source: L. 33: p. 342, § 11. **CSA:** C. 25, § 57. **CRS 53:** § 122-6-12. **C.R.S. 1963:** § 122-5-12. **L. 82:** Entire section amended, p. 246, § 2, effective March 25. **L. 84:** Entire section amended, p. 382, § 12, effective May 11. **L. 2004:** Entire section amended, p. 152, § 62, effective July 1.

11-44-113. Procedure under court order. (1) The commissioner may retain possession of any savings and loan association for the purpose of liquidating its affairs, but before doing so he shall furnish a bond, executed by some surety company authorized to do business in this state and running to the people of the state of Colorado, in a penal sum equal to the value of the negotiable assets of the association, as nearly as may be determined, for the faithful discharge of his duties in connection with liquidating the affairs of the association and accounting for all moneys coming into his hands. Such bond shall be approved by the governor and be filed in the office of the secretary of state. The cost of such bond shall be paid from the assets of the association. Suits may be maintained on such bond by any person injured by a breach of the conditions thereof.

(2) Upon taking such possession, the commissioner shall have authority to collect all moneys due to such association, and to give full receipt therefor, and to do such other acts as are necessary or expedient to collect, conserve, or protect its business, property, and assets.

(3) If the commissioner is in possession of the business, property, and assets of any association, regardless of whether or not he is liquidating the affairs of such association, the

commissioner, in his discretion, may apply to the district court of the county in which the principal office in this state of such association is located for an order confirming any action taken by the commissioner or authorizing the commissioner to do any act or to execute any instrument not expressly authorized by articles 40 to 46 of this title, which order shall be made after a hearing, on such notice as the court shall prescribe. He may pay and discharge any secured claims against such association, and, within six months after taking such possession, he may disaffirm any executory contracts, including leases, to which such association is a party and disaffirm any partially executed contracts, including leases, to the extent that they remain executory.

Source: L. 33: p. 342, § 12. **CSA:** C. 25, § 58. **CRS 53:** § 122-6-13. **C.R.S. 1963:** § 122-5-13.

11-44-114. Noncompliance with orders - penalty. If the commissioner demands possession of the property, business, and assets of any association, pursuant to section 11-44-110, the refusal of any officer, agent, employee, or director of such association to comply with such demand shall constitute a misdemeanor, punishable by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment; and, if such demand is not complied with within twenty-four hours after service, the commissioner may call to his assistance the sheriff of the county in which the principal place of business of such association is located, by written demand under his hand and official seal; whereupon it shall become the duty of such official to enforce the demands of the commissioner.

Source: L. 33: p. 343, § 13. **CSA:** C. 25, § 59. **CRS 53:** § 122-6-14. **C.R.S. 1963:** § 122-5-14.

11-44-115. Officers to furnish schedule of property. Upon taking possession of the property, business, and assets of any association, the commissioner shall require the president and secretary of such association to make a schedule of all its property and assets and of all collateral held by it as security for loans, and to make oath that such schedule sets forth all such property, assets, and collateral which such association owns or to which it is entitled, and to deliver such schedule and the possession of all such property and collateral as may not have been so previously delivered to the commissioner, who may examine under oath such president and secretary, the other officers of such association, or the directors, agents, or employees thereof at any time to determine whether or not all the property, assets, and collateral which such association owns or to which it is entitled have been transferred and delivered into his possession.

Source: L. 33: p. 344, § 14. **CSA:** C. 25, § 60. **CRS 53:** § 122-6-15. **C.R.S. 1963:** § 122-5-15.

11-44-116. Liquidation powers of commissioner. (1) In liquidating the affairs of an association, the commissioner has the power to collect all moneys due to and all claims of such association and give full receipt therefor; to release or reconvey all real or personal property

pledged, hypothecated, or transferred in trust as security for loans; to approve and pay all just and equitable claims; to commence and prosecute all actions and proceedings necessary to enforce liquidations; to compound bad or doubtful debts and to compound and settle with any debtor or creditor of such association or with the persons having possession of its property or being in any way responsible at law or in equity to such association, upon such terms and conditions and in such manner as he deems just and beneficial to such association; in case of mutual dealings between the association and any person, to allow just setoffs in favor of such persons in all cases in which the same ought to be allowed according to law and equity; in case of borrowers holding shares of the association pledged to the association as security for said loan, to allow the amount paid in on said shares, together with all dividends legally declared thereon, to be set off against the amount due on said loan; and to sell, convey, and transfer real and personal property.

(2) If a purchaser for any bad or doubtful debts cannot be obtained and it appears improbable that recovery thereon can be had and that the costs of actions to enforce collections of the same would probably be lost, the court may direct that suits thereon need not be brought.

(3) For the purpose of executing and performing any of the powers and duties conferred upon him, the commissioner, in the name of such association or in his own name, may prosecute and defend any and all suits and other legal proceedings and, in the name of such association or in his own name, as commissioner, may execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or other transaction in connection with the liquidation of such association. Any deed, assignment, release, or other instrument executed pursuant to the authority given shall be valid and effectual for all purposes as though the same had been executed by the officers of such association by authority of its board of directors.

(4) In case any of the real property so sold is located in a county other than the county in which the application to the court for leave to sell the same is made, the commissioner shall cause a certified copy of the order authorizing or ratifying such sale to be filed in the office of the recorder of the county in which such real property is located.

(5) Upon determining to liquidate an association, the commissioner shall cause an inventory of all the assets of such association to be made in duplicate, the original to be filed with the court and the duplicate in the office of the commissioner. He shall cause due notice to be given, by publication once a week for four successive weeks in some newspaper of general circulation published at or near the principal place of business of such association in this state, to all persons having claims against it as creditors, or investors, or otherwise, to present and file same and make legal proof thereof at a place and within a time to be designated in such publication, which time shall be not less than two months after such first publication. Within ten days after such first publication, he shall cause a copy of such notice to be mailed to all persons whose names appear of record upon its books as creditors or investors, and, upon the expiration of the time fixed for the presentation of claims, the commissioner shall prepare or cause to be prepared in duplicate a full and complete schedule of all claims presented, specifying by classes those that have been approved and those that have been disapproved, and shall file the original with the court and the duplicate in the office of the commissioner. Not later than five days after the time of filing such schedule with the court, written notice shall be mailed to all claimants whose claims have been rejected.

(6) Action to enforce the payment of any rejected claim must be brought and service had within four months after the date of filing of the schedule of claims with the proper court; otherwise all such actions shall be forever barred. All claims of creditors, investors, or other persons against the association or against any property owned or held by it must be presented to the commissioner in writing, verified by the claimant or someone in his behalf, within the period limited in the notice mentioned in subsection (5) of this section for the presentation of claims; and any claims not so presented shall be forever barred; but the claim of any investor, appearing upon the books of the association as a valid claim, presented after the expiration of the time fixed in said notice shall be entitled to share in any dividends declared subsequent to the presentation of such claim.

(7) The commissioner under his hand and official seal may appoint one or more special deputies to assist in the duties of liquidation and distribution under his direction and may also employ such special legal counsel, accountants, and assistants as may be needful and requisite and fix the salaries and compensation to be allowed and paid to each, all to be in a reasonable and commensurate sum. All such salaries and compensation and such other reasonable and necessary expenses as may be incurred in the liquidation shall be paid by the commissioner from the funds of such association in his hands.

(8) From the net realization of such assets in excess of such salaries, compensation, and expenses, the commissioner shall first pay all approved claims other than to investors, and thereafter he shall distribute and pay dividends in liquidation to the shareholders and investors in the association, other than holders of permanent stock, until their claims are fully paid or such assets or funds are exhausted. Such distributions shall be made as funds are available therefor, to the extent of ten percent or more of the approved claims of the class of claimants then entitled to distribution, and shall continue until all the assets have been realized upon and a final dividend in liquidation is declared and paid.

(9) Upon the payment of a final dividend in liquidation, the commissioner shall prepare and file with the court a full and final statement of the liquidation, including a summary of the receipts and disbursements, and a duplicate thereof shall be filed in the office of the commissioner, and, after due hearing and approval by the court, the liquidation shall be deemed to be closed.

(10) The determination by the commissioner to liquidate any association, evidenced by filing written notice of such determination with the court, shall operate to stay or dissolve any actions or attachments instituted or levied within thirty days next preceding the taking of possession of such association by the commissioner, and, pending the process of liquidation, no attachment or execution shall be levied nor lien created upon any of the property of such association.

(11) Whenever, in case of any association which has issued permanent stock, the commissioner has fully liquidated all claims other than claims of such stockholders, and has made due provision for any and all known or unclaimed liabilities, excepting claims of permanent stockholders, and has paid all expenses of liquidation, he shall call a meeting of the stockholders of said savings and loan association by giving notice thereof for thirty days in one or more newspapers published in the county in which the principal office of the association is located. At such meeting the commissioner shall deliver to such stockholders all the property and effects of said association remaining in his possession, except its records, which shall be retained by him as part of the records of his office, and, upon such transfer and delivery, he shall be

discharged from any and all further liability to said association or its creditors, and thereupon the association shall be in the same position as though it had never been authorized to transact a savings and loan business.

Source: L. 33: p. 344, § 15. **CSA:** C. 25, § 61. **CRS 53:** § 122-6-16. **C.R.S. 1963:** § 122-5-16.

11-44-117. Setoffs. Credits on loan shares of all persons indebted to any savings and loan association in the possession of the commissioner, whether such indebtedness is due or to become due, shall be applied by him on account of such indebtedness.

Source: L. 33: p. 349, § 16. **CSA:** C. 25, § 62. **CRS 53:** § 122-6-17. **C.R.S. 1963:** § 122-5-17.

11-44-118. Commissioner and deputy not to accept gifts. Neither the commissioner nor his deputy shall receive or accept any bribe, gratuity, or reward from any person or association for any purpose whatever or knowingly and willfully make any false or fraudulent report of the condition of any association for any purpose whatsoever. One or more of the directors of any association may be present at any examination of the affairs thereof, but the absence of any or all of the officers or directors shall not operate to prevent the commissioner or his deputy from proceeding with such examination.

Source: L. 33: p. 349, § 17. **CSA:** C. 25, § 63. **CRS 53:** § 122-6-18. **C.R.S. 1963:** § 122-5-18.

11-44-119. Association's right to resort to court. Nothing in articles 40 to 46 of this title shall be construed to prevent an association or person affected by any order, ruling, proceeding, act, or action of the commissioner or the financial services board or any person acting on behalf and at the instance of the commissioner or the financial services board, or both, from testing the validity of the same in any court of competent jurisdiction, through injunction, appeal, or other proper process or proceeding, mandatory or otherwise.

Source: L. 33: p. 350, § 18. **CSA:** C. 25, § 64. **CRS 53:** § 122-6-19. **C.R.S. 1963:** § 122-5-19. **L. 93:** Entire section amended, p. 1453, § 12, effective June 6.

11-44-120. Records of commissioner. (1) The commissioner shall maintain annually revised summaries disclosing the names of the officers and directors of all savings and loan associations doing business in the state of Colorado during the preceding year, the financial condition of such savings and loan associations, together with a statement of the assets, liabilities, and reserves of the associations, and such other information concerning the same as he may see fit.

(2) These data and any other material circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

(3) Repealed.

Source: L. 33: p. 350, § 19. **CSA:** C. 25, § 65. **L. 39:** p. 251, § 23. **CRS 53:** § 122-6-20. **L. 64:** p. 169, § 133. **C.R.S. 1963:** § 122-5-20. **L. 83:** (2) and (3) amended, p. 827, § 9, effective July 1. **L. 96:** (3) repealed, p. 1231, § 55, effective August 7.

Cross references: For the legislative declaration contained in the 1996 act repealing subsection (3), see section 1 of chapter 237, Session Laws of Colorado 1996.

11-44-121. Commissioner may destroy records. (Repealed)

Source: L. 55: p. 764, § 11. **CRS 53:** § 122-6-21. **C.R.S. 1963:** § 122-5-21. **L. 2004:** Entire section repealed, p. 140, § 25, effective July 1.

11-44-122. Waiver of membership or stockholder voting. Notwithstanding any other provision of state law, whenever the commissioner finds that it is necessary to effect a merger, consolidation, purchase and assumption agreement, conversion to stock association, conversion to mutual association, conversion to federal association, or conversion to state association or other action, as a result of the assets of any association being impaired to the extent that it threatens loss to the withdrawable shares or the association being in an unsafe condition and the time required to give proper notice and hold a meeting to vote on the action is deemed by the commissioner to increase the threat of loss to the withdrawable shares, the commissioner may waive the requirement of a membership or stockholder vote on the action. There shall be no requirement of prior written notice to the affected parties of said waiver.

Source: L. 82: Entire section added, p. 247, § 3, effective March 25.

11-44-123. Assessment of civil money penalties. (1) (a) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the commissioner may assess and collect a civil money penalty from any person who has violated any final order issued by the commissioner pursuant to section 11-44-110 (1) or any suspension or removal order issued pursuant to section 11-44-106.5, or who has violated section 11-41-133.

(b) For the purposes of this section, a violation includes, but is not limited to, any action, by any person alone or with another person, which causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(c) In extraordinary circumstances, upon order of the commissioner, any hearing conducted pursuant to this section shall be exempt from any provision of law requiring that proceedings of the commissioner be conducted publicly. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from the institution.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty may be appealed to the financial services board pursuant to section 11-44-101.8. On appeal, the board may consider, among other matters, whether the civil

money penalty assessed by the commissioner is appropriate considering the financial resources of the person assessed.

(3) In determining the amount of the civil money penalty to be assessed, the commissioner shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, and such other matters as the commissioner may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed is determined by the commissioner to be in violation of a cease-and-desist order or an order of suspension or removal. Alternatively, the commissioner may assess a civil money penalty for such violation in a lump-sum amount not to exceed fifty thousand dollars.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the commissioner; except that the commissioner, in the commissioner's discretion, may compromise, modify, or set aside any civil money penalty. If any person fails to pay an assessment after it has become due and payable, the commissioner may refer the matter to the attorney general, who shall recover the amount assessed by action in the district court for the city and county of Denver. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

Source: L. 89: Entire section added, p. 612, § 8, effective April 19. **L. 93:** (2) amended, p. 1453, § 13, effective June 6. **L. 99:** Entire section amended, p. 1014, § 8, effective August 4.

ARTICLE 45

Conversion

11-45-101. Conversion into federal association. (1) Any savings and loan association or other home-financing organization, by whatever name or style it may be designated, which is eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by the following procedure:

(a) At any regular or special meeting of the shareholders of any such association called to consider such action and held in accordance with the laws governing such association, such shareholders, by an affirmative vote of the shareholders owning and voting the number of shares required for authorization of the sale of the association's assets or required to accomplish a consolidation or a merger, whichever is the greater, present in person or by proxy, may declare by resolution the determination to convert said association into a federal savings and loan association.

(b) A copy of the minutes of such meeting of the shareholders, verified by the affidavit of the president or vice-president and the secretary of the meeting, shall be filed within ten days after said meeting in the office or division of this state having supervision of such association. Such verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(c) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, the association shall take such action as may be necessary to make it a federal savings and loan association, and, within ten days after receipt of the federal charter,

there shall be filed in the office or division of this state having supervision of such association a copy of said charter issued to such association by the office of thrift supervision or its successor or a certificate showing the organization of such association as a federal savings and loan association certified by, or on behalf of, the office of thrift supervision or its successor. Upon the filing of such instrument, such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

Source: L. 35: p. 263, § 1. **CSA:** C. 25, § 67. **CRS 53:** § 122-7-1. **C.R.S. 1963:** § 122-6-1. **L. 2004:** (1)(c) amended, p. 140, § 26, effective July 1.

11-45-102. Effect of conversion. At the time when such conversion becomes effective, such association shall cease to be supervised by this state, and all of the property of such association, including all of its right, title, and interest in and to all property of every kind and character, whether real, personal, or mixed, immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed, shall continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction; and said federal savings and loan association shall have, hold, and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held, and enjoyed by it as a state association, and said federal savings and loan association, at the time of the taking effect of such conversion, shall continue to be responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place. It is expressly declared that such federal savings and loan association shall be merely a continuation of the state association under a new name, a new jurisdiction, and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

Source: L. 35: p. 265, § 2. **CSA:** C. 25, § 68. **CRS 53:** § 122-7-2. **C.R.S. 1963:** § 122-6-2.

11-45-103. Conversion into state association. (1) Any federal savings and loan association may convert itself into an association under articles 40 to 46 of this title by the majority vote of all members present in person or by proxy at an annual meeting or at any special meeting called to consider such action. Copies of the minutes of the proceedings of such meeting of members, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the commissioner and mailed to the office of thrift supervision, or its successor, within ten days after such meeting. Such verified copies of the proceedings of the meeting when so filed shall be prima facie evidence of the holding and action of such meeting.

(2) At the meeting at which conversion is voted upon, the members shall also vote upon the directors who shall be the directors of the state-chartered association after conversion takes effect. Such directors shall then execute two copies of the certificate of incorporation and four copies of the bylaws. The directors chosen for the association shall all sign and acknowledge the certificate of incorporation as subscribers thereto and the bylaws as incorporators of the association. The commissioner may provide, by regulation, for the procedure to be followed by any such federal savings and loan association converting into an association under articles 40 to

46 of this title. The state-chartered association shall be a continuation of the corporate entity of the converting federal association and continue to have all of its property and rights.

Source: L. 39: p. 251, § 24. **CSA:** C. 25, § 68(1). **CRS 53:** § 122-7-3. **C.R.S. 1963:** § 122-6-3. **L. 2004:** (1) amended, p. 140, § 27, effective July 1.

ARTICLE 46

Safe Deposit Facilities

11-46-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Fiduciary" means any person as defined in section 15-1-103 (2), C.R.S.

(2) "Lease" means the contract between lessor and lessee governing the use, payment, and other terms and conditions with regard to a safe deposit box.

(3) "Lessee" means a person contracting with a lessor for the use of a safe deposit box.

(4) "Lessor" means any association defined in section 11-46-102 which maintains safe deposit facilities.

(5) "Person" means any natural person, partnership, whether limited or general, corporation, or entity leasing a safe deposit box.

(6) "Safe deposit box" means any vault, box, receptacle, or other safekeeping facility maintained by a lessor for lease to third persons.

Source: L. 59: p. 664, § 7. **CRS 53:** § 122-8-2. **C.R.S. 1963:** § 122-7-2.

11-46-102. Safe deposit boxes. Any savings and loan associations organized under articles 40 to 46 of this title and any federal savings and loan associations organized under the "Home Owners' Loan Act of 1933", as amended, except to the extent that laws, rules, and regulations under which they operate are inconsistent with this article, may engage in the business of leasing safe deposit boxes in accordance with the provisions of this article.

Source: L. 59: p. 664, § 7. **CRS 53:** § 122-8-1. **C.R.S. 1963:** § 122-7-1.

Cross references: For the "Home Owners' Loan Act of 1933", see Pub.L. 73-42, codified at 12 U.S.C. sec. 1461 et seq.

11-46-103. Lease to natural persons. A lessor may lease a safe deposit box to any natural person and, in connection therewith, deal with such person without liability until there is filed with such lessor a certified copy of any order of a Colorado court indicating that such person is under a legal disability and directing the lessor to deal with such person's fiduciary.

Source: L. 59: p. 665, § 7. **CRS 53:** § 122-8-5. **C.R.S. 1963:** § 122-7-5.

11-46-104. Leases to joint tenants. (1) Any lessor may lease a safe deposit box to one or more natural persons as joint tenants, and any one of such joint tenants shall have the right of access to such safe deposit box.

(2) Upon the death of any joint tenant, the provisions of section 15-10-111, C.R.S., and of this section with regard to examination shall apply.

(3) Nothing in this section shall be construed to prevent the making of leases for safe deposit boxes, the terms of which may require the signature and presence of more than one person as a condition for access to said box.

Source: L. 59: p. 665, § 7. **CRS 53:** § 122-8-6. **C.R.S. 1963:** § 122-7-6. **L. 73:** p. 1650, § 15. **L. 81:** (2) amended, p. 1883, § 1, effective May 27. **L. 2002:** (2) amended, p. 1360, § 8, effective July 1.

11-46-105. Access by fiduciaries. (1) Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the instrument of authority pursuant to which such fiduciaries are acting and copies of which have been furnished the lessor, allow access thereto as follows:

(a) By any one or more of the persons acting as executors or administrators;

(b) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing and signed by all other persons so acting;

(c) By any agent authorized in writing and signed by all of the persons acting as fiduciaries.

Source: L. 59: p. 665, § 7. **CRS 53:** § 122-8-3. **C.R.S. 1963:** § 122-7-3.

11-46-106. Effect of lessee's death or incompetence. Where a lessor, without written notice or actual knowledge of the death or of a determination of legal incompetence of the lessee, deals with said lessee or his agent pursuant to a written power of attorney signed by such lessee, the transaction binds the lessor and the estate of the lessee.

Source: L. 59: p. 665, § 7. **CRS 53:** § 122-8-4. **C.R.S. 1963:** § 122-7-4. **L. 75:** Entire section amended, p. 922, § 8, effective July 1; entire section amended, p. 207, § 9, effective July 16.

Editor's note: Amendments to this section by Senate Bill 75-135 and Senate Bill 75-453 were harmonized.

11-46-107. Search procedure on death. The provisions of section 15-10-111, C.R.S., shall apply to the search procedure of a safe deposit box on the death of a lessee.

Source: L. 59: p. 666, § 7. **CRS 53:** § 122-8-7. **C.R.S. 1963:** § 122-7-7. **L. 73:** p. 1650, § 16.

11-46-108. Adverse claims to contents of safe deposit box. (1) A lessor shall not deny access to a safe deposit box to its lessee unless the claim of said lessee is adverse within the terms of this section. A claim shall be considered adverse when:

(a) The lessor is directed to deny such access by a court order issued in an action in which the lessee is served with process and named as a party by a name which identified him with the name in which the safe deposit box is leased; or

(b) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property are held in a fiduciary capacity for a named beneficiary and the adverse claim is supported by a sworn written statement of facts disclosing that it is made by or on behalf of such a beneficiary and that there is reason to know that the fiduciary may misappropriate the trust property; or

(c) One of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or when one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or when it is claimed that a lessee is the same person as one using another name.

Source: L. 59: p. 666, § 7. **CRS 53:** § 122-8-8. **C.R.S. 1963:** § 122-7-8.

11-46-109. Nonpayment of rent. If the rental on a safe deposit box has not been paid for one year after it is due, the lessor may petition a court of competent jurisdiction to make disposition of the contents of such safe deposit box, and the lessor shall have the right to claim and accept any proceeds from such disposition to satisfy accumulated charges, court costs, and attorneys' fees in connection with the rental and disposition of said safe deposit box.

Source: L. 59: p. 667, § 7. **CRS 53:** § 122-8-9. **C.R.S. 1963:** § 122-7-9.

ARTICLE 47

Protection of Deposits of Public Moneys

11-47-101. Short title. This article shall be known and may be cited as the "Savings and Loan Association Public Deposit Protection Act".

Source: L. 75: Entire article added, p. 399, § 1, effective July 1.

11-47-102. Legislative declaration. (1) The general assembly declares that the purpose of this article is to provide protection of public moneys on deposit in state-chartered and federally chartered savings and loan associations in this state above and beyond the protection provided by the federal deposit insurance corporation or its successor and to ensure prompt payment of deposit liabilities to governmental units in the event of default or insolvency of any such association.

(2) The general assembly further declares that the inclusion of self-insurance pools formed by governmental units within the scope of the provisions of this article is to clarify that such self-insurance pools have been and shall continue to be entitled to protection as provided by the provisions of this article.

Source: L. 75: Entire article added, p. 399, § 1, effective July 1. **L. 88:** Entire section amended, p. 428, § 6, effective April 20. **L. 2004:** (1) amended, p. 141, § 28, effective July 1.

11-47-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Affected governmental unit" means any governmental unit whose deposits of public moneys are affected by an event of default.

(2) "Capital funds" means, with respect to any eligible public depository, the aggregate sum of its capital stock, surplus, and undivided profits and of all reserves required by any law or regulation, together with the amount of any debt subordinated to deposit liabilities when such debt has been allowed to be included in its stated capital position by the applicable regulatory authority.

(3) "Commissioner" means the state commissioner of financial services.

(4) "Defaulting depository" means an eligible public depository to which an event of default has occurred.

(5) "Eligible collateral" means:

(a) Obligations of the United States or of any agency thereof;

(b) Obligations wholly or partially guaranteed or insured as to payment of principal by the United States or any agency thereof;

(c) Obligations of the state of Colorado, including anticipation warrants, and general obligations of any governmental unit of this state, including obligations the interest and principal of which are secured by deposit in escrow of an amount of obligations of the United States or any agency thereof sufficient to secure such payment;

(d) Obligations evidenced by notes secured by first lien mortgages or deeds of trust on real property, whether or not situate in this state, if such obligations are not for construction or land acquisition and development and if such obligations shall not exceed one hundred percent of the value of all eligible collateral on pledge, which obligations shall not be in default in any respect and are wholly owned by the eligible depository;

(e) Revenue bonds, except industrial development revenue bonds, issued by the state of Colorado or any agency thereof, or by any county, city and county, municipality, school district, special district, or other authority within this state, as well as special improvement district bonds issued by any such political subdivision or authority;

(f) Mortgage-backed securities issued by the federal home loan mortgage corporation, the federal national mortgage association, or the government national mortgage association and such other mortgage-backed securities as are approved by the commissioner;

(g) Such liquid assets, as such term is defined in the federal regulations governing members of a federal home loan bank, as are approved by the commissioner;

(h) Irrevocable and unconditional standby letters of credit issued by a federal home loan bank if:

(I) The letter of credit is in the standard format approved by the Colorado division of financial services;

(II) The Colorado division of financial services is designated as the beneficiary of the letter of credit; and

(III) Securities issued by the federal home loan bank remain triple A-rated by one or more nationally recognized organizations which regularly rate such obligations.

(6) "Eligible public depository" means any state-chartered savings and loan association or any federally chartered savings and loan association having an office in this state which is authorized by the laws of the United States to accept deposit accounts, which deposits are

insured by the federal deposit insurance corporation or its successor, and which depository has been designated as an eligible public depository by the commissioner.

(7) "Event of default" means the issuance of an order by a supervisory authority or a receiver restraining an eligible public depository from making payments of its deposit liabilities.

(8) "Governmental unit" means the state of Colorado, every municipality, city and county, county, school district, special district, and authority located in this state, every public body corporate created or established under the constitution or any law of this state, and every board, commission, department, institution, agency of, and every entity created by intergovernmental agreement among, any of the foregoing which collects, receives, or has custody of or control over public moneys.

(8.5) (a) "Market value" means, for eligible collateral consisting of obligations wholly or partially guaranteed or insured as to payment of principal by the United States or any agency thereof, or other obligations evidenced by notes secured by first lien mortgages or deeds of trust, the lower of current market quotation or seventy-five percent of the unpaid principal of the note evidencing the obligation.

(b) For all other eligible collateral, "market value" means the current market quotation.

(9) (Deleted by amendment, L. 2004, p. 141, § 29, effective July 1, 2004.)

(10) "Net deposit liability" means, with respect to a defaulting depository, the amount of its deposit liability to a governmental unit after deduction of any applicable federal deposit insurance corporation or its successor insurance with respect thereto.

(11) "Public deposits" means and includes all public moneys on deposit in an eligible public depository, whether payable on demand or at a certain time.

(12) "Public moneys" means all moneys under the control of or in the custody of governmental units.

(13) "Valuation date" means the last business day of either March or September of each year, as the occasion may require.

Source: L. 75: Entire article added, p. 399, § 1, effective July 1. **L. 76:** (9) amended, p. 300, § 22, effective May 20. **L. 77:** (5)(d) and (5)(e) amended, p. 574, § 1, effective June 10. **L. 79:** (5)(b) and (5)(d) amended and (8.5) added, p. 1614, § 3, effective June 8. **L. 81:** (5)(d) amended, p. 620, § 3, effective April 30. **L. 83:** (8.5)(a) amended, p. 487, § 2, effective May 10. **L. 85:** (5)(d) and (5)(e) amended and (5)(f) and (5)(g) added, p. 401, § 1, effective May 31. **L. 88:** (8) amended, p. 429, § 7, effective April 20. **L. 89:** (3) amended, p. 621, § 14, effective July 1. **L. 94:** (6) amended, p. 68, § 15, effective July 1. **L. 97:** (5)(h) added, p. 159, § 1, effective March 28. **L. 2004:** (9) and (10) amended, p. 141, § 29, effective July 1.

11-47-104. Administration - powers of commissioner and financial services board. The provisions of this article shall be administered by the commissioner under the supervision of the financial services board. The financial services board and the commissioner shall have the authority to do all acts necessary and required to carry out the purpose of this article. To this end, the financial services board is empowered to make, amend, and rescind rules and regulations consistent with said provisions and to prescribe a standard form for the statements and reports required to be made or filed by eligible public depositories and to require uniform use of the same. Acts of the commissioner are subject to appeal to the financial services board pursuant to section 11-44-101.8.

Source: L. 75: Entire article added, p. 401, § 1, effective July 1. **L. 93:** Entire section amended, p. 1453, § 14, effective June 6.

11-47-105. Acceptance of provisions - designation as eligible public depository. (1) Every state-chartered savings and loan association and every federally chartered savings and loan association having an office in this state that is otherwise eligible to be an eligible public depository and that desires to accept and hold public deposits in an amount in excess of the amount insured by the federal deposit insurance corporation or its successor shall file with the commissioner, on a form provided by him or her for such purpose, a statement signed and sworn to by an executive officer of such association electing to accept and become subject to the provisions of this article and setting forth the amount of its capital funds and the aggregate amount and nature of all public deposits held by it. Upon the filing of such statement and acceptance, the commissioner shall forthwith designate such savings and loan association as an eligible public depository and shall issue an appropriate certificate evidencing such designation.

(2) (Deleted by amendment, L. 2004, p. 141, § 30, effective July 1, 2004.)

Source: L. 75: Entire article added, p. 401, § 1, effective July 1. **L. 94:** Entire section amended, p. 68, § 16, effective July 1. **L. 2004:** Entire section amended, p. 141, § 30, effective July 1.

11-47-106. Minimum amount of eligible collateral required to be maintained as security for public deposits. (Repealed)

Source: L. 75: Entire article added, p. 401, § 1, effective July 1. **L. 93:** (3) amended, p. 1453, § 15, effective June 6. **L. 2004:** Entire section repealed, p. 142, § 31, effective July 1.

11-47-107. Eligible collateral - when required to be maintained. (Repealed)

Source: L. 75: Entire article added, p. 402, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 142, § 32, effective July 1.

11-47-108. Method of securing public deposits. (1) Except as provided in section 11-47-112 (6)(a), any eligible public depository shall secure public deposits accepted and held by it by pledging eligible collateral having a market value, at all times, equal to at least one hundred percent of the aggregate of said deposits not insured by the federal deposit insurance corporation or its successor.

(2) The eligible collateral pledged shall be held as specified in section 11-47-109; except that the depository shall be required to furnish each governmental unit whose deposit is so secured with a statement, signed under oath by an executive officer of said depository, certifying to said governmental unit that its deposit is secured in the manner specified in subsection (1) of this section and specifying where the collateral pledged is being held in custody.

Source: L. 75: Entire article added, p. 402, § 1, effective July 1. **L. 87:** (1) amended, p. 469, § 2, effective May 1. **L. 2004:** Entire section amended, p. 143, § 33, effective July 1.

11-47-109. Where collateral held - right of substitution - income derived. (1) The eligible collateral required to be pledged as provided in section 11-47-108 shall be held in escrow by another savings and loan association in Colorado, by a state or national bank in Colorado, or by any federal home loan bank or branch thereof or any federal reserve bank or branch thereof approved by the commissioner, and held in such manner as the financial services board shall prescribe by rule. All collateral so held shall be clearly identified as being security maintained or pledged for the aggregate amount of public deposits accepted and held on deposit by said eligible public depository.

(2) Said depository shall have the right at any time to make substitutions of eligible collateral maintained or pledged and shall at all times be entitled to collect and retain all income derived from the same without restriction.

Source: L. 75: Entire article added, p. 403, § 1, effective July 1. **L. 77:** (1) amended, p. 574, § 2, effective June 10. **L. 86:** (1) amended, p. 603, § 1, effective March 10. **L. 89:** (1) amended, p. 613, § 9, effective April 19. **L. 93:** (1) amended, p. 1454, § 16, effective June 6. **L. 2004:** (1) amended, p. 143, § 34, effective July 1.

11-47-110. Subsequent elections upon approval of commissioner. (Repealed)

Source: L. 75: Entire article added, p. 403, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 143, § 35, effective July 1.

11-47-111. Reports required - when filed - contents. On a date specified by the commissioner, every eligible public depository shall file a report with the commissioner that contains such information as required by the commissioner. The commissioner may require more frequent reports from eligible public depositories.

Source: L. 75: Entire article added, p. 403, § 1, effective July 1. **L. 83:** Entire section amended, p. 488, § 3, effective May 10. **L. 94:** Entire section amended, p. 69, § 17, effective July 1. **L. 2000:** Entire section amended, p. 156, § 3, effective August 2.

11-47-112. Power and authority of financial services board. (1) The commissioner shall have specific power and authority to require any eligible public depository to furnish, at any time, such information as the commissioner may request or demand concerning the amount of public deposits held by it, the portion thereof that is insured by the federal deposit insurance corporation or its successor, the amount of its capital funds, and the nature, amount, market value, and location of the eligible collateral maintained or pledged by it to secure said deposits.

(2) If any such depository shall fail or refuse to furnish the information requested or demanded within ten days after the date of the request or demand, the commissioner shall have the authority to forthwith deny it the right to accept and hold any additional public deposits until such time as said information is furnished to him and he has acknowledged receipt thereof, and, at his discretion, he may make public announcement of such denial.

(3) The commissioner shall have the authority to determine and fix the date upon which any event of default is deemed to have occurred, after taking into account and giving due

consideration to any rule, regulation, or lawful order of any supervisory authority as the same may affect the inability or failure of an eligible public depository to repay deposit liabilities.

(4) The commissioner shall have the authority to require any eligible public depository to substitute new eligible collateral for any of its maintained or pledged collateral which he deems to be ineligible.

(5) If any depository violates any regulation promulgated by the commissioner pursuant to section 11-47-104 or violates any provision of this article, the commissioner shall have the authority to deny, forthwith, the right of said depository to accept and hold any additional public deposits until such time as the depository complies with the regulations or the provisions of this article. The commissioner, at his discretion, may make public announcement of such denial.

(6) (a) The financial services board may promulgate rules to require an eligible public depository to reduce or eliminate its uninsured public deposit liability if said depository's regulatory capital does not comply with the minimum requirement of the federal deposit insurance corporation or its successor. Notwithstanding any other provision in this article to the contrary, the financial services board also may promulgate rules to require a depository to pledge eligible collateral having a market value in excess of one hundred percent of the aggregate amount of public deposits not insured by the federal deposit insurance corporation or its successor, if said depository's regulatory capital does not comply with the minimum requirement of the federal deposit insurance corporation or its successor. Notwithstanding any other provision in this article to the contrary, the financial services board may promulgate rules to require an eligible public depository to pledge a minimum amount of eligible collateral.

(b) Repealed.

Source: L. 75: Entire article added, p. 403, § 1, effective July 1. **L. 85:** (4) added, p. 402, § 2, effective May 31. **L. 87:** (5) and (6) added, p. 469, § 3, effective May 1. **L. 89:** (6)(a) amended and (6)(b) repealed, pp. 614, 615, §§ 10, 13, effective April 19. **L. 93:** (6) amended, p. 1454, § 17, effective June 6. **L. 2004:** (1) and (6)(a) amended, pp. 152, 144, §§ 63, 36, effective July 1.

11-47-113. Procedure when event of default occurs. (1) When the commissioner has determined that an event of default has occurred with respect to any eligible public depository and has determined and fixed the date of such occurrence, he or she shall proceed in the following manner:

(a) He shall forthwith seize and take possession of all eligible collateral, maintained or pledged, belonging to the defaulting depository, wherever held in custody.

(b) Within twenty days after seizing and taking possession of all eligible collateral pursuant to paragraph (a) of this subsection (1), the commissioner shall ascertain the aggregate amount of public deposits held by the defaulting depository, as disclosed by the records of such depository, and the portion thereof that is insured by the federal deposit insurance corporation or its successor, and shall notify each affected governmental unit of the amount of its deposit, as so disclosed, and the portion thereof that is so insured, and shall require each affected governmental unit to provide him or her with a verified statement showing the amount of its deposit, as disclosed by its own records, within thirty days after receipt of such notification.

(c) Upon receipt of all verified statements from an affected governmental unit, he shall determine and fix the net deposit liability of the defaulting depository to such affected

governmental unit. Upon receipt of all such verified statements from all affected governmental units, he shall determine and fix the aggregate net deposit liability of the defaulting depository to all affected governmental units.

(d) The commissioner shall proceed to liquidate the eligible collateral maintained or pledged by the defaulting depository which he had theretofore seized and may, from time to time, apply the amount realized from such liquidation against the net deposit liability to any governmental unit. The commissioner shall maintain a reserve from such amount realized for the payment of the aggregate net deposit liability to all affected governmental units until payment is made to all affected governmental units.

(e) In the event the federal deposit insurance corporation or its successor is appointed and acts as liquidator or receiver of any eligible public depository under state or federal law, those duties specified in this section to be performed by the commissioner may, where the commissioner deems appropriate, be delegated by the commissioner to and performed by the federal deposit insurance corporation or its successor.

Source: L. 75: Entire article added, p. 404, § 1, effective July 1. **L. 87:** (1)(e) amended, p. 469, § 4, effective May 1. **L. 89:** (1)(b) to (1)(d) amended, p. 614, § 11, effective April 19. **L. 2004:** IP(1), (1)(b), and (1)(e) amended, p. 144, § 37, effective July 1.

11-47-114. Assessments made - exceptions. (Repealed)

Source: L. 75: Entire article added, p. 404, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 145, § 38, effective July 1.

11-47-115. When assessments payable - procedure if not paid. (Repealed)

Source: L. 75: Entire article added, p. 405, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 145, § 39, effective July 1.

11-47-116. Disposition of assessments - subrogation of claims - expenses. (Repealed)

Source: L. 75: Entire article added, p. 405, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 145, § 40, effective July 1.

11-47-117. No impairment of obligations. (Repealed)

Source: L. 75: Entire article added, p. 405, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 146, § 41, effective July 1.

11-47-118. Public moneys to be deposited only in eligible public depositories - penalty for violation. (1) It shall be unlawful for any public moneys to be deposited in any state-chartered savings and loan association, or in any federally chartered savings and loan association having its principal office in this state, other than one that has been designated by the commissioner as an eligible public depository, unless the entire amount of such deposit is insured by the federal deposit insurance corporation or its successor.

(2) Any official of a governmental unit having custody of or control over public moneys who violates the provisions of subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, which fine shall be mandatory, and, upon any such conviction, the court may adjudge that he be removed from office.

(3) Notwithstanding any other provision of this section to the contrary, nothing shall be construed to prevent a savings and loan association which is an eligible public depository operating pursuant to the provisions of this article from being or acting as an agent in behalf of any public entity for the purposes of making investments as authorized by part 6 of article 75 of title 24, C.R.S. Any such savings and loan association shall maintain such accounting records as are necessary to readily distinguish between the activities authorized by said part 6 of article 75 of title 24, C.R.S., and the purposes of the public deposit protection requirements imposed upon it as a condition of being an eligible public depository. The financial services board may promulgate such rules and regulations as it deems desirable to ensure that the activities authorized under part 6 of article 75 of title 24, C.R.S., and the protection of public funds pursuant to this article are not commingled.

Source: L. 75: Entire article added, p. 406, § 1, effective July 1. **L. 89:** (3) added, p. 615, § 12, effective April 19. **L. 93:** (3) amended, p. 1454, § 18, effective June 6. **L. 2004:** (1) amended, p. 146, § 42, effective July 1.

11-47-119. Liability of officials of governmental units. No official of a governmental unit who acted in good faith in selecting, designating, or approving any eligible public depository for the deposit of public moneys in his custody or under his control shall be liable for any loss of public moneys deposited therein by reason of the occurrence of an event of default with respect to such depository.

Source: L. 75: Entire article added, p. 406, § 1, effective July 1.

11-47-120. Authority to accept deposits - acceptance of insured deposits. Any state-chartered savings and loan association, or any federally chartered savings and loan association having its principal office in this state that is authorized by the laws of this state or of the United States to accept deposit accounts or savings deposits, is authorized to accept and hold, and any governmental unit is authorized to make and maintain in such association, deposits of public moneys as provided in this article. Any such association is authorized to accept and hold, and any governmental unit is authorized to make and maintain therein, deposits of public moneys to the extent that the full amount thereof is insured by the federal deposit insurance corporation or its successor, even though such association has not elected to be designated as an eligible public depository under the provisions of this article.

Source: L. 75: Entire article added, p. 406, § 1, effective July 1. **L. 2004:** Entire section amended, p. 146, § 43, effective July 1.

ARTICLE 47.5

11-47.5-101 to 11-47.5-109. (Repealed)

Source: L. 91: Entire article repealed, p. 666, § 7, effective May 31.

Editor's note: This article was added in 1987. For amendments to this article prior to its repeal in 1991, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 48

Electronic Funds Transfers for Financial
Institutions Other Than Banks

Cross references: For electronic funds transfers for banks, see article 105 of this title.

11-48-101. Applicability - definition. This article applies to any savings and loan association organized under article 41 of this title or under federal law and having its principal office in this state and any credit union organized under article 30 of this title or federal law and having its principal office in this state. As used in this article, "financial institution" means any such savings and loan association or credit union.

Source: L. 77: Entire article added, p. 553, § 3, effective May 20. **L. 2003:** Entire section amended, p. 1208, § 13, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1472, § 30, effective July 1.

11-48-102. Limitations. This article shall be construed to authorize any financial institution to engage in electronic funds transfers only to the extent of transactions authorized in applicable law governing such institutions. The provisions of this article shall govern as to communications facilities owned or controlled by such institutions.

Source: L. 77: Entire article added, p. 553, § 3, effective May 20.

11-48-103. Communications facility. As used in this article, "communications facility" means an attended or unattended electronic information processing device, other than an ordinary telephone instrument, located in this state separate and apart from a financial institution and through which account holders and financial institutions may engage in transactions by means of either the instant transmission (online) of electronic impulses to and from the financial institution or its data processing agent or the recording of electronic impulses or other indicia of a transaction for delayed transmission (off-line) to a financial institution or its data processing agent. Such a device located on the premises of a financial institution shall be a communications facility if such device is utilized by the account holders of other financial institutions.

Source: L. 77: Entire article added, p. 553, § 3, effective May 20.

11-48-104. No operation by financial institution employees. No communications facility located separate and apart from a financial institution shall be operated by an employee or agent of any financial institution, and no agent or employee of the retailer where a facility is located who operates it shall be deemed to be the agent or employee of any financial institution using the facility or with which transactions are accomplished by means of the facility. No employee or agent of any financial institution shall be stationed at any communications facility located separate and apart from the financial institution except on a temporary basis for the purpose of instructing customers in the use of facilities or for servicing or observing the operation of such facilities.

Source: L. 77: Entire article added, p. 554, § 3, effective May 20.

11-48-105. Sharing. (1) A financial institution shall make any communications facility available to any similar financial institution for the use of its account holders on the basis of fair, equitable, and nondiscriminatory standards and charges. For purposes of this section, a savings and loan association is similar to any other savings and loan association and a credit union is similar to any other credit union. A communications facility on the premises of a financial institution is not subject to the mandatory access provisions of this subsection (1). Such a facility may but is not required to be made available for use by the account holders of any similar financial institution.

(2) A financial institution may but is not required to make the use of any communications facility available to a dissimilar financial institution and to any state or national bank in this state for the use of its account holders. Any such use shall be on a fair and reasonable contractual basis.

Source: L. 77: Entire article added, p. 554, § 3, effective May 20. **L. 2013:** (1) amended, (SB 13-154), ch. 282, p. 1472, § 31, effective July 1.

11-48-106. Consumer protection. (1) Every financial institution using a communications facility shall provide its account holders, at the time the facility is used, with a receipt or record of each transaction initiated at a facility. Such receipt or record shall be admissible as evidence in any legal action or proceeding and shall constitute prima facie proof of the transaction evidenced by such receipt or record. When a financial institution furnishes a statement of account to an account holder, such statement shall reflect each transaction affecting such account made by the account holder at a communications facility during the period covered by the statement.

(2) With respect to any card or other device issued to an account holder for use at a communications facility, any account holder whose card or device is lost or stolen and subsequently used by an unauthorized person shall only be liable for the lesser of fifty dollars or the amount of money, goods, or services obtained by the unauthorized use prior to notice to the financial institution which issued the card or device of the theft or loss. If the unauthorized use occurs through no fault of the account holder, no liability shall be imposed on the account holder.

(3) No account holder shall be held liable for any loss occurring as the result of any tampering or manipulation of a communications facility unless he performs or authorizes such acts.

Source: L. 77: Entire article added, p. 554, § 3, effective May 20.

11-48-107. Access to automated clearinghouse. Effective January 1, 1978, an automated clearinghouse in this state shall permit direct access to or membership in such clearinghouse by any financial institution if such access is not prohibited by any rule or regulation of the federal reserve board and if the financial institution agrees to abide by the rules of the clearinghouse. For purposes of this section, "automated clearinghouse" means a group of financial institutions or banks which have agreed to abide by certain rules and procedures for the purpose of exchanging payments and settling balances of participating financial institutions on computer tape to accomplish settlement of transactions by posting credits and debits to reserve balances maintained by member banks of the federal reserve systems through the federal reserve system.

Source: L. 77: Entire article added, p. 554, § 3, effective May 20.

ARTICLE 49

Life Care Institutions

Editor's note: This article 49 was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article 49, see the comparative tables located in the back of the index.

11-49-101. Definitions. As used in this article 49, unless the context otherwise requires:

(1) "Aged person" means any person sixty-two years of age or older.

(2) "Board" means the financial services board created in section 11-44-101.6.

(3) "Commissioner" means the state commissioner of financial services, serving in accordance with section 11-44-102.

(4) "Entrance fee" means the total of any initial or deferred transfer to or for the benefit of a provider of a sum of money or other property made or promised to be made as full or partial consideration for the acceptance or maintenance of a specified individual as a resident in a facility.

(5) "Facility" means the place in which a provider undertakes to provide life care to a resident.

(6) "Life care" means care provided, pursuant to a life care contract, for the life of an aged person, including but not limited to services such as health care, medical services, board, lodging, or other necessities.

(7) "Life care contract" means a written contract to provide life care to a person for the duration of the person's life conditioned upon the transfer of an entrance fee to the provider of the services in addition to or in lieu of the payment of regular periodic charges for the care and services involved. Any life care contract payable to or for the provider in four or more

installments shall be subject to the provisions of the "Uniform Consumer Credit Code", articles 1 to 9 of title 5.

(8) "Living unit" means a room, apartment, or other area within a facility set aside for the exclusive use or control of one or more identified residents.

(9) "Person" means all corporations, associations, partnerships, or individuals, including fraternal or benevolent orders or societies.

(10) "Provider" means a person who undertakes to provide services in a facility pursuant to a life care contract.

(11) "Resident" means any person entitled pursuant to a life care contract to receive life care in a facility.

(12) "Third-party service providers" means any person, other than a provider, who is the holder of a management contract with a provider or who contracts with a provider to provide life care services to residents.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 567, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-101 as it existed prior to 2017.

11-49-102. Escrow account for entrance fees. (1) Each provider shall establish an escrow account that provides that all of any entrance fee received by the provider prior to the date the resident is permitted to occupy his or her living unit in the facility be placed in escrow with a bank, trust company, or other licensed corporate escrow agent located in Colorado and approved by the commissioner, subject to the condition that the funds may be released only as follows:

(a) If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider at such time as the living unit becomes available for occupancy by the new resident and is in compliance with local government regulations applicable to living units, as certified by the provider.

(b) If the entrance fee applies to a living unit that has not previously been occupied by any resident, the entrance fee shall be released to the provider at such time as the commissioner is satisfied that all of the following conditions exist:

(I) Construction or purchase of the facility has been substantially completed, and an occupancy permit covering the living unit has been issued by the local government having authority to issue the permits;

(II) A commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds submitted by the provider and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied;

(III) Aggregate entrance fees received or receivable by the provider pursuant to binding life care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to not less than ninety percent of the aggregate cost of constructing, equipping, and furnishing, or purchasing the facility and not less than ninety percent of the funds estimated in the statement of anticipated source and application of funds

submitted by the provider to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to life care contracts.

(2) If the funds in an escrow account required to be established under subsection (1) of this section are not released within such time as provided by rules issued by the commissioner, then the funds shall be returned by the escrow agent to the persons who had made payment to the provider.

(3) An entrance fee held in escrow may be returned by the escrow agent to the person or persons who had made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that the person is entitled to a refund of the entrance fee.

(4) Nothing in this section shall be interpreted as requiring the escrow of any nonrefundable application fee designated as such in the life care contract received by the provider from a prospective resident.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 568, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-104 as it existed prior to 2017.

11-49-103. Withdrawal or dismissal of person - refund. (1) If the agreement permits withdrawal or dismissal of the resident from the life care institution prior to the expiration of the agreement, with or without cause, an amount equal to the difference between the amount paid in and the amount used for the care of the resident during the time he or she remained in the institution, based upon the per capita cost to the institution as determined in a manner acceptable to the commissioner, shall be refunded to the resident; but in cases where a consideration greater than the minimum charge has been paid for accommodations above standard, a sum equal to the difference between the amount paid in and the ratio of the amount paid to the minimum consideration for standard accommodations times the current per capita cost to the institution applied to the period the resident remained in the institution shall be refunded to the resident. If the per capita cost to the institution during the period cannot be established otherwise, the cost during the period shall be deemed to be the cost at the time of the withdrawal or dismissal. For refund purposes, "cost" shall include a reasonable profit to the provider.

(2) If the provider is an organization described in section 501 (c)(3) of the federal "Internal Revenue Code of 1986", as amended, and exempt from income taxation under section 501 (a) of the federal "Internal Revenue Code of 1986", as amended, it shall be entitled to make a refund according to a schedule provided in its agreement with the resident so long as the schedule provides for amortization of the amount paid by the resident over a period of not less than sixty months or over the life expectancy of the resident if the expectancy is less than sixty months. In such case, the refund may be delayed for a reasonable period thereafter until the securing by the provider of a substitute fee from another resident or prospective resident. The provider may also deduct from any such refund amounts due it from the resident for damage done or for any other legitimate offsetting item.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 569, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-105 as it existed prior to 2017.

11-49-104. Recording of lien by commissioner. (1) The commissioner shall record with the county clerk and recorder of any county a notice of lien on behalf of all residents who enter into life care contracts with a provider to secure performance of the provider's obligations to residents pursuant to life care contracts. All reasonable costs of recording the lien shall be paid by the provider.

(2) From the time of the recording, there exists a lien for an amount equal to the reasonable value of services to be performed under a life care contract in favor of each resident on the land and improvements owned by the provider, not exempt from execution, that are listed in the notice of lien filed pursuant to subsection (3) of this section and that are located in the county in which the notice of lien is recorded.

(3) The lien shall be perfected by the commissioner by executing by affidavit the notice and claim of lien, which shall contain:

(a) The legal description of the lands and improvements to be charged with a lien;

(b) The name of the owner of the property affected;

(c) A statement providing that the lien has been filed by the commissioner pursuant to this section.

(4) The lien may be foreclosed by civil action.

(5) Any number of persons claiming liens against the same property pursuant to this section may join in the same action. If separate actions are commenced, the court may consolidate the actions. The court shall, as part of the costs, allow reasonable attorney fees for each claimant who is a party to the action.

(6) In a civil action filed pursuant to this section, the judgment shall be given in favor of each resident having a lien who has joined in the foreclosure action for the amount equal to the reasonable value of services to be performed under a life care contract in favor of each resident. The court shall order the sheriff to sell any property subject to the lien at the time judgment is given, in the same manner as real and personal property is sold on execution. The lien for the reasonable value of services to be performed under a life care contract shall be on equal footing with claims of other residents. If a sale is ordered and the property sold and the proceeds of the sale are not sufficient to discharge all liens of residents against the property, the proceeds shall be prorated among the respective residents.

(7) The liens provided for in this section are preferred to all liens, mortgages, or other encumbrances upon the property attaching subsequently to the time the lien is recorded and are preferred to all unrecorded liens, mortgages, and other encumbrances. The amount secured by any lien having priority to the lien filed pursuant to this section may not be increased without prior approval of the commissioner.

(8) The commissioner shall file a release of the lien upon proof of complete performance of all obligations to residents pursuant to life care contracts.

(9) The commissioner may subordinate any lien filed pursuant to this section to the lien of a first mortgage or other long-term financing obtained by the provider, regardless of the time at which the subsequent lien attaches.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 570, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-106 as it existed prior to 2017.

11-49-105. Reserve requirements. (1) Any provider shall maintain reserves covering obligations under all life care agreements. The reserves shall be equivalent to the sum of the following:

(a) (I) For those debt obligations that are collateralized by the provider's facility and that require a balloon payment, the amount of interest due and payable or accrued in the next eighteen months.

(II) For purposes of this subsection (1)(a), any amounts held in reserve or escrow to fulfill debt agreements shall be considered eligible to meet the requirements of this subsection (1)(a).

(b) (I) For all other debt obligations that are collateralized by the provider's facility, an amount equal to the next twelve months' principal and interest.

(II) For purposes of this subsection (1)(b), any amounts held in reserve or escrow to fulfill debt agreements shall be considered eligible to meet the requirements of this subsection (1)(b).

(c) (I) An amount not less than twenty percent of the facility's operating expenses for the immediately preceding year.

(II) For purposes of this subsection (1)(c), "operating expenses":

(A) Includes all expenses of the facility, except interest included in subsections (1)(a) and (1)(b) of this section and depreciation or amortization expenses; and

(B) Means budgeted expenses pursuant to a budget approved by the governing board of the provider, for providers in operation less than twelve months.

(2) The reserves shall consist of the following:

(a) Savings accounts or certificates of deposit in state or national banks located in this state that are members of the federal deposit insurance corporation or any successor agency thereto;

(b) Savings accounts or savings certificates in state or federal savings or loan associations located in this state that are members of the federal deposit insurance corporation or any successor agency thereto;

(c) Notes receivable from residents to the extent of the portion due and payable within twelve months;

(d) Bonds and stocks selected from an approved list, as determined by the commissioner. If stocks, bonds, and securities that are not on the approved list are part of the reserves, and if they are to be retained as part of the reserves, it shall not be necessary that the unapproved stocks, bonds, and securities be disposed of immediately, but they shall be disposed of in accordance with rules promulgated pursuant to this article 49, which disposal shall be accomplished in a gradual manner so as to avoid loss to providers. Securities that, although not on the approved list, should be retained in the reserve for reasons acceptable to the commissioner may be retained with the specific approval of the commissioner. Investments in stocks and bonds will be valued at their fair market value.

(e) (I) Except as provided in subsection (2)(e)(II) of this section, accounts receivable with respect to life care contracts that are:

(A) Not considered past due by the provider if owed to the provider by a natural person;

(B) Due from the United States or any agency thereof, any state in the United States or any agency thereof, or any institution, pension fund, or trust fund from which collection is reasonably assured.

(II) Accounts receivable that are eligible under this subsection (2)(e) may be used to fulfill no more than fifty percent of the provider's total reserve requirement.

(f) Investment certificates or shares in open-end investment trusts whose management has been managing a mutual fund registered under the federal "Investment Company Act of 1940", 15 U.S.C. secs. 80a-1 to 80a-64, or whose management has been registered as an investment adviser under the federal "Investment Advisers Act of 1940", 15 U.S.C. secs. 80b-1 to 80b-21, and in either case currently has at least one hundred million dollars under its supervision, is qualified for sale in Colorado, has at least forty percent of its directors or trustees not affiliated with the fund's management company or principal underwriter or any of their affiliates, is registered under the federal "Investment Company Act of 1940", and is a fund listed as qualifying under rules maintained by the secretary of state in cooperation with the division of insurance.

(3) Any person or organization that entered into life care contracts prior to January 1, 1974, but that was not required prior to that date to obtain a license is not required to maintain reserves covering obligations assumed under any such contract entered into prior to January 1, 1974.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 571, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-107 as it existed prior to 2017.

11-49-106. Annual report by providers - fee. (1) Each provider shall file an annual report with the commissioner within ninety days after the end of its fiscal year that contains the certified financial statements for each facility and such other information as may be required by the commissioner. The annual report shall be made in a form prescribed by the commissioner.

(2) A provider shall amend its annual report on file with the commissioner if an amendment is necessary to prevent the report from containing a material misstatement of fact or omission of a material fact.

(3) A provider shall make its annual report available to residents upon request.

(4) The failure to file an annual report within the time prescribed in subsection (1) of this section shall constitute a violation of this article 49.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 573, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-108 as it existed prior to 2017.

11-49-107. Examination - fees. The commissioner may conduct an examination of the affairs of any provider as often as the commissioner deems it necessary for the protection of the interests of the people of this state. Providers shall maintain copies of their books and records in Colorado to provide access for the purposes of this article 49. The commissioner shall assess

each provider at least semiannually, to cover the annual direct and indirect costs of examinations, supervision, and administration conducted pursuant to the provisions of this section. The assessments shall be calculated in terms of cents per thousand dollars of total escrowed entrance fees and reserves maintained. The assessment calculation, or ratio of the assessment charged to total escrowed entrance fees and reserves maintained, shall be alike in all cases. On or before the dates specified by the commissioner, each association shall pay its assessment. If deemed necessary, the commissioner may estimate a per diem rate to be charged for examinations and charge a provider for the actual cost of any examination documented by the commissioner.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 573, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-110 as it existed prior to 2017.

11-49-108. Rules. The board may promulgate reasonable rules in accordance with article 4 of title 24 for effectuating any provision of this article 49.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 573, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-111 as it existed prior to 2017.

11-49-109. Violation. Any person acting in the capacity of a provider who enters into a life care contract, or extends the term of an existing life care contract, without acting in compliance with the provisions of this article 49 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 573, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-112 as it existed prior to 2017.

11-49-110. Article does not apply to facilities licensed by department of public health and environment. The provisions of this article 49 shall not apply to any hospital or other facility that the department of public health and environment is authorized to license pursuant to part 1 of article 1.5 and part 1 of article 3 of title 25; except that nursing care facilities and assisted living residences that are part of the facility of a provider as defined in section 11-49-101 shall be subject to the provisions of this article 49.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 573, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-113 as it existed prior to 2017.

11-49-111. Life care contract - content. (1) Each life care contract shall be written in a clear and coherent manner using words with common and everyday meanings and shall:

(a) Show the value of all property transferred, including but not limited to donations, subscriptions, fees, and any other amounts initially paid or payable by or on behalf of the prospective resident;

(b) Show all the services that are to be provided by the provider to the prospective resident, including, in detail, all items that the prospective resident will receive, such as board, room, clothing, incidentals, medical care, transportation, and burial, and whether the items will be provided for a designated time period or for life and the monthly charge for the services;

(c) Be accompanied by a financial statement showing in reasonable detail the financial condition of the provider, including a statement of earnings for the previous twenty-four-month period, or such shorter period if the facility has been in operation for a lesser period, that shall be furnished to the prospective resident;

(d) Specify the monthly service fee and whether the fee is subject to adjustment;

(e) Explicitly state what rights, if any, a resident will have to participate either individually or as part of a group of residents in management and financial decisions affecting the facility.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 574, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-114 as it existed prior to 2017.

11-49-112. Register. (1) Every provider shall maintain a register setting forth the following facts concerning each person residing in the life care institution:

(a) Name;

(b) Last previous address;

(c) Age;

(d) Nearest of kin, if any;

(e) Mother's maiden name;

(f) The person responsible for each resident's care and maintenance;

(g) Such other data as the commissioner may reasonably require.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 574, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-115 as it existed prior to 2017.

11-49-113. Advertisements and solicitations of life care contracts - requirements. Any report, circular, public announcement, certificate, or financial statement, or any other printed matter or advertising material that is designed for or used to solicit or induce persons to enter into any life care contract, and that lists or refers to the name of any individual or organization as being interested in or connected with the person, association, or corporation to perform the contract, shall clearly state the extent of financial responsibility assumed by that

individual or organization for the person, association, or corporation and the fulfillment of its contracts.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 575, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-116 as it existed prior to 2017.

11-49-114. Injunction against violations - prosecution. (1) The commissioner may bring an action, through the attorney general, to enjoin the threatened violation or continued violation of the provisions of this article 49 or of any of the rules promulgated pursuant to this article 49, in the district court for the county in which the violation occurred or is about to occur. Any proceeding under the provisions of this section shall be subject to the Colorado rules of civil procedure; except that the commissioner shall not be required to allege facts necessary to show or tending to show the lack of an adequate remedy at law or to show or tending to show irreparable damage or loss. The court may award the attorney general all costs incurred in bringing any action under this section.

(2) Upon application by the commissioner, the attorney general or the district attorney of any judicial district in this state shall institute and prosecute an action for the criminal violation of any provision of this article 49.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 575, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-117 as it existed prior to 2017.

11-49-115. Local regulations. The provisions of this article 49 shall not prevent local authorities of any county, city, town, or city and county, within the reasonable exercise of the police power, from adopting rules, by ordinance or resolution, prescribing standards of sanitation, health, and hygiene for facilities that are not in conflict with the provisions of this article 49 or the rules adopted by the commissioner pursuant thereto, and requiring a local health permit for the maintenance or conduct of any such facility within the county, city, town, or city and county.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 575, § 1, effective August 9.

Editor's note: This section is similar to former § 12-13-118 as it existed prior to 2017.

SECURITIES

Fiduciaries and Trusts

ARTICLE 50

Editor's note: This article, formerly known as the "Colorado Uniform Gifts to Minors Act", was numbered as article 3 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1984, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Law reviews: For article, "Statutory Custodianship Trusts", see 13 Colo. Law. 786 (1984); for article, "Colorado Uniform Transfers to Minors Act", see 13 Colo. Law. 2223 (1984); for article, "Uniform State Laws of Interest to Colorado Probate Lawyers", see 14 Colo. Law. 1961 (1985); for article, "Anticipating Disabilities: Voluntary Planning Opportunities in Colorado", see 17 Colo. Law. 437 (1988); for article, "Standards of Prudent Investment for Minors Act Custodians", see 19 Colo. Law. 39 (1990); for article, "Current Issues Relating to Transfers to Minors", see 29 Colo. Law. 73 (Oct. 2000); for article, "Age Requirements in Colorado: A Guide for Estate Planners", see 34 Colo. Law. 87 (Aug. 2005); for article, "Retaining Control of Gifts to Minors: UTMA and IRC 2503(c) Trust Options", see 34 Colo. Law. 39 (Nov. 2005); for article, "The Uniform Transfers to Minors Act: Extending the Period of Protection", see 35 Colo. Law. 27 (Jan. 2006).

11-50-101. Short title. This article shall be known and may be cited as the "Colorado Uniform Transfers to Minors Act".

Source: L. 84: Entire article R&RE, p. 383, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-101 as it existed prior to 1984.

11-50-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Adult" means an individual who has attained the age of twenty-one years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means the district or probate court which would have jurisdiction of the minor's estate, if he had property other than custodial property, as provided in section 15-14-108 (1), C.R.S.

(6) "Custodial property" means:

(a) Any interest in property transferred to a custodian under this article; and

(b) The income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under section 11-50-110 or a successor or substitute custodian designated under section 11-50-119.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of twenty-one years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(13.5) "Qualified minor's trust" means a trust, including a trust created by a custodian, of which a minor is the sole current beneficiary and that satisfies the requirements of section 2503 (c) of the federal "Internal Revenue Code of 1986" and the regulations implementing that section.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under section 11-50-110.

(16) "Transferor" means a person who makes a transfer under this article.

(17) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

Source: L. 84: Entire article R&RE, p. 383, § 1, effective July 1. **L. 2000:** (5) amended, p. 1832, § 2, effective January 1, 2001. **L. 2007:** (13.5) added, p. 126, § 2, effective July 1.

Editor's note: This section is similar to former § 11-50-102 as it existed prior to 1984.

11-50-103. Scope and jurisdiction. (1) This article applies to a transfer that refers to this article in the designation under section 11-50-110 (1) by which the transfer is made if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this article despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this article is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

Source: L. 84: Entire article R&RE, p. 384, § 1, effective July 1.

11-50-104. Nomination of custodian. (1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act"". The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 11-50-110 (1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 11-50-110. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 11-50-110.

Source: L. 84: Entire article R&RE, p. 385, § 1, effective July 1.

11-50-105. Transfer by gift or exercise of power of appointment. A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 11-50-110.

Source: L. 84: Entire article R&RE, p. 385, § 1, effective July 1.

11-50-106. Transfer authorized by will or trust. (1) A personal representative or trustee may make an irrevocable transfer pursuant to section 11-50-110 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under section 11-50-104 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under section 11-50-104, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 11-50-110 (1).

Source: L. 84: Entire article R&RE, p. 385, § 1, effective July 1.

11-50-107. Other transfer by fiduciary. (1) Subject to subsection (3) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 11-50-110, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 11-50-110.

(3) A transfer under subsection (1) or (2) of this section may be made only if:

(a) The personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor;

(b) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

(c) The transfer is authorized by the court if it exceeds ten thousand dollars in value.

Source: L. 84: Entire article R&RE, p. 385, § 1, effective July 1.

11-50-108. Transfer by obligor. (1) Subject to subsections (2) and (3) of this section, a person not subject to section 11-50-106 or 11-50-107 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 11-50-110.

(2) If a person having the right to do so under section 11-50-104 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under section 11-50-104, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds ten thousand dollars in value.

Source: L. 84: Entire article R&RE, p. 386, § 1, effective July 1.

11-50-109. Receipt for custodial property. A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

Source: L. 84: Entire article R&RE, p. 386, § 1, effective July 1.

11-50-110. Manner of creating custodial property and effecting transfer - designation of initial custodian - control. (1) Custodial property is created and a transfer is made whenever:

(a) An uncertificated security or a certificated security in registered form is either:

(I) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(II) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in

substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(I) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(II) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act"";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(I) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(II) Delivered to an adult other than the transferor or to a trust company, endorsed to that person, followed in substance by the words: "as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act""; or

(g) An interest in any property not described in paragraphs (a) to (f) of this subsection (1) is transferred to an adult other than the transferor or to a trust company by written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of paragraphs (a)(II) and (g) of subsection (1) of this section:

TRANSFER UNDER THE "COLORADO UNIFORM
TRANSFERS TO MINORS ACT"

I, _____ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act", the following: (insert a description of the custodial property sufficient to identify it).

Date: _____

_____
(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the "Colorado Uniform Transfers to Minors Act".

Dated: _____

_____
(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

Source: L. 84: Entire article R&RE, p. 386, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-103 as it existed prior to 1984.

11-50-111. Single custodianship. A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this article by the same custodian for the benefit of the same minor constitutes a single custodianship.

Source: L. 84: Entire article R&RE, p. 388, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-103 as it existed prior to 1984.

11-50-112. Validity and effect of transfer. (1) The validity of a transfer made in a manner prescribed in this article is not affected by:

(a) Failure of the transferor to comply with section 11-50-110 (3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 11-50-110 (1); or

(c) Death or incapacity of a person nominated under section 11-50-104 or designated under section 11-50-110 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to section 11-50-110 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this article, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this article.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this article and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this article.

Source: L. 84: Entire article R&RE, p. 388, § 1, effective July 1.

11-50-113. Care of custodial property. (1) A custodian shall:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(a) The life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(b) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for _____ (name of minor) under the "Colorado Uniform Transfers to Minors Act"".

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years.

Source: L. 84: Entire article R&RE, p. 388, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-105 as it existed prior to 1984.

11-50-114. Powers of custodian. (1) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(1.5) At any time, a custodian may transfer part or all of a custodial property to a qualified minor's trust without a court order. Such a transfer terminates the custodianship to the extent of the transfer.

(2) This section does not relieve a custodian from liability for breach of section 11-50-113.

Source: L. 84: Entire article R&RE, p. 389, § 1, effective July 1. **L. 2007:** (1.5) added, p. 126, § 3, effective July 1.

Editor's note: This section is similar to former § 11-50-105 as it existed prior to 1984.

11-50-115. Use of custodial property. (1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(a) The duty or ability of the custodian personally or of any other person to support the minor; or

(b) Any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Source: L. 84: Entire article R&RE, p. 389, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-105 as it existed prior to 1984.

11-50-116. Custodian's expenses, compensation, and bond. (1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under section 11-50-105, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in section 11-50-119 (6), a custodian need not give a bond.

Source: L. 84: Entire article R&RE, p. 390, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-106 as it existed prior to 1984.

11-50-117. Exemption of third person from liability. (1) A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(a) The validity of the purported custodian's designation;

(b) The propriety of, or the authority under this article for, any act of the purported custodian;

(c) The validity or propriety under this article of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(d) The propriety of the application of any property of the minor delivered to the purported custodian.

Source: L. 84: Entire article R&RE, p. 390, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-107 as it existed prior to 1984.

11-50-118. Liability to third persons. (1) A claim based on a contract entered into by a custodian acting in a custodial capacity, an obligation arising from the ownership or control of custodial property, or a tort committed during the custodianship may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

Source: L. 84: Entire article R&RE, p. 390, § 1, effective July 1.

11-50-119. Renunciation, resignation, death, or removal of custodian - designation of successor custodian. (1) A person nominated under section 11-50-104 or designated under section 11-50-110 as custodian may decline to serve by delivering a valid disclaimer in the form provided in part 12 of article 11 of title 15, C.R.S., to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 11-50-104, the person who made the nomination may nominate a substitute custodian under section 11-50-104; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 11-50-110 (1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under section 11-50-105 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of fourteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 11-50-105 or to require the custodian to give appropriate bond.

Source: L. 84: Entire article R&RE, p. 391, § 1, effective July 1. **L. 94:** (1) amended, p. 1039, § 16, effective July 1, 1995. **L. 2011:** (1) amended, (SB 11-166), ch. 203, p. 868, § 3, effective August 10.

Editor's note: This section is similar to former § 11-50-108 as it existed prior to 1984.

11-50-120. Accounting by and determination of liability of custodian. (1) A minor who has attained the age of fourteen years, the minor's guardian or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court:

(a) For an accounting by the custodian or the custodian's legal representative; or

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 11-50-118 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this article or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under section 11-50-119 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Source: L. 84: Entire article R&RE, p. 392, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-109 as it existed prior to 1984.

11-50-121. Termination of custodianship. (1) The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(a) The minor's attainment of twenty-one years of age; or

(b) The minor's death.

Source: L. 84: Entire article R&RE, p. 392, § 1, effective July 1. **L. 91:** Entire section amended, p. 1442, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-105 as it existed prior to 1984.

11-50-122. Applicability. (1) This article applies to a transfer within the scope of section 11-50-103 made on or after July 1, 1984, if:

(a) The transfer purports to have been made under the "Colorado Uniform Gifts to Minors Act" as it existed prior to said date; or

(b) The instrument by which the transfer purports to have been made uses in substance the designation: "as custodian under the uniform gifts to minors act" or "as custodian under the uniform transfers to minors act" of any other state, and the application of this article is necessary to validate the transfer.

Source: L. 84: Entire article R&RE, p. 392, § 1, effective July 1.

11-50-123. Effect on existing custodianships. (1) Any transfer of custodial property as now defined in this article made before July 1, 1984, is validated notwithstanding that there was no specific authority in the "Colorado Uniform Gifts to Minors Act", as it existed prior to July 1, 1984, for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This article applies to all transfers made before July 1, 1984, in a manner and form prescribed in the former "Colorado Uniform Gifts to Minors Act", except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on July 1, 1984.

(3) Sections 11-50-102 and 11-50-121 with respect to the age of a minor for whom custodial property is held under this article do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of eighteen before July 1, 1984.

Source: L. 84: Entire article R&RE, p. 392, § 1, effective July 1.

11-50-124. Uniformity of application and construction. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

Source: L. 84: Entire article R&RE, p. 393, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-110 as it existed prior to 1984.

11-50-125. Severability. If any provisions of this article or its application to any person or circumstance are held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Source: L. 84: Entire article R&RE, p. 393, § 1, effective July 1.

11-50-126. Prior transfers not affected. To the extent that this article, pursuant to section 11-50-123 (2), does not apply to transfers made in a manner prescribed in the "Colorado Uniform Gifts to Minors Act", as it existed prior to July 1, 1984, or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal and reenactment of the "Colorado Uniform Gifts to Minors Act" does not affect those transfers or those powers, duties, and immunities.

Source: L. 84: Entire article R&RE, p. 393, § 1, effective July 1.

Editor's note: This section is similar to former § 11-50-111 as it existed prior to 1984.

Securities

ARTICLE 51

Securities

Editor's note: This article was numbered as article 1 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1990, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For provisions on investment securities, see article 8 of title 4.

Law reviews: For article, "Recent Developments Affecting Securities Litigation in Colorado", see 13 Colo. Law. 1161 (1984); for article, "Securities", which discusses Tenth Circuit decisions dealing with securities law, see 61 Den. L.J. 369 (1984), 62 Den. U.L. Rev. 295 (1985), and 63 Den. U. L. Rev. 435 (1986); for article, "Securities Regulation in the Burger Court", see 56 U. Colo. L. Rev. 193 (1985); for article, "Securities and Commodity Futures Regulation", which discusses Tenth Circuit decisions dealing with securities law, see 64 Den. U.L. Rev. 329 (1987); for article, "Securities Fraud and the Governmental Issuer", see 16 Colo. Law. 1392 (1987); for article, "Arbitration with a View to the Future", see 17 Colo. Law. 2175 (1988); for article "Resort Condominiums and the Federal Securities Laws", see 18 Colo. Law. 229 (1989); for a discussion of Tenth Circuit decisions dealing with securities law, see 66 Den. U.L. Rev. 797 (1989); for article, "The New Colorado Securities Act", see 19 Colo. Law. 1767 (1990); for article, "Securities Litigation in the 1990s", see 19 Colo. Law. 2045 (1990); for article, "Colorado Securities Act of 1990: The Securities Commissioner's View", see 19 Colo. Law. 2041 (1990); for a discussion of Tenth Circuit decisions dealing with securities law, see 67 Den. U. L. Rev. 767 (1990); for article, "Colorado's Regulation of Investment Advisers", see 28 Colo. Law. 39 (April 1999); for article, "Contribution Rights in Colorado Securities Fraud

Cases", see 29 Colo. Law. 51 (June 2000); for article, "Colorado Securities Act Twenty Years Later", 40 Colo. Law. 31 (Dec. 2011).

PART 1

SHORT TITLE, PURPOSE, AND SCOPE

11-51-101. Short title and purpose. (1) This article shall be known and may be cited as the "Colorado Securities Act".

(2) The purposes of this article are to protect investors and maintain public confidence in securities markets while avoiding unreasonable burdens on participants in capital markets. This article is remedial in nature and is to be broadly construed to effectuate its purposes.

(3) The provisions of this article and rules made under this article shall be coordinated with the federal acts and statutes to which references are made in this article and rules and regulations promulgated under those federal acts and statutes, to the extent coordination is consistent with both the purposes and the provisions of this article.

Source: L. 90: Entire article R&RE, p. 700, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-101 as it existed prior to 1990.

11-51-102. Scope of article. (1) Except as provided in subsection (7) of this section, sections 11-51-301, 11-51-401 (1) and (2), 11-51-501, and 11-51-503 apply to persons who sell or offer to sell when an offer to sell is made in this state or when an offer to purchase is made and accepted in this state.

(2) Sections 11-51-401 (1) and (2), 11-51-501, and 11-51-503 apply to persons who purchase or offer to purchase when an offer to purchase is made in this state or when an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to purchase is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and is received at the place to which it is directed or, in the case of a mailed offer, at any post office in this state.

(4) For the purpose of this section, an offer to purchase or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror is to be in this state and it is received at the place to which it is directed or, in the case of a mailed acceptance, at any post office in this state.

(5) (a) For the purpose of subsections (1) to (4) of this section, an offer to sell or to purchase made in a newspaper or other publication of general, regular, and paid circulation is not made in this state if the publication:

(I) Is not published in this state; or

(II) Is published in this state, but has had more than two-thirds of its circulation outside this state during the past twelve months.

(b) For the purpose of this subsection (5), if a publication is published in editions, each edition is a separate publication except for material common to all editions.

(6) (a) For the purpose of subsections (1) to (4) of this section, an offer to sell or to purchase made in a radio or television broadcast or other publicly distributed electronic communication received in this state which originates outside this state is not made in this state. For the purpose of subsection (8) of this section, investment advisory services limited to holding oneself out as an investment adviser or financial planner or similar type of adviser or consultant, but not the transaction of any further business, in a radio or television broadcast or other publicly distributed electronic communication received in this state in a manner originating outside this state shall not be construed as investment advisory services provided in this state.

(b) For the purpose of this subsection (6), a radio or television broadcast or other publicly distributed electronic communication originates in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(I) The broadcast or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(II) The broadcast or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(III) The broadcast or communication is an electronic signal that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(IV) The broadcast or communication consists of an electronic signal that originates in this state, but which is not intended for redistribution to the general public in this state.

(7) Section 11-51-301 and section 11-51-604, to the extent such section relates to section 11-51-301, do not apply to any person with respect to a sale or offer to sell where the sale or offer to sell is directed to another person not located in this state, does not violate a securities registration requirement or its equivalent in the laws of the jurisdiction in which the other person is located, and is not made for the purpose of evading the provisions of this article.

(8) For purposes of section 11-51-401 (1.5), (1.6), and (2.5), "transacting business in this state" includes engaging in any of the activities enumerated in section 11-51-201 (9.5)(a) or holding oneself out as an investment adviser, financial planner, or similar type of adviser or consultant if such activities are engaged in, or the holding out occurs, within the state regardless of whether a person to whom services are provided or to whom such holding out is made is physically present within the state. "Transacting business in this state" also includes engaging in the services or so holding oneself out whenever a person to whom such services are provided or to whom such holding out is made is both a resident of, and physically present within, the state.

(9) Section 11-51-501 (2) and (3) apply if:

(a) Any of the proscribed conduct occurs within this state regardless of whether a client or prospective client is present within the state when such conduct occurs; or

(b) A client or prospective client is physically present within the state when any of the proscribed conduct occurs in this state.

Source: L. 90: Entire article R&RE, p. 700, § 1, effective July 1. **L. 98:** (1), (2), and (6)(a) amended and (8) and (9) added, p. 546, § 1, effective April 30.

Editor's note: This section is similar to former § 11-51-127 as it existed prior to 1990.

PART 2

DEFINITIONS AND REFERENCES TO
FEDERAL STATUTES AND RULES

11-51-201. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bank" means a banking institution organized under the laws of the United States, a member bank of the federal reserve system, any other banking institution or trust company, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the comptroller of the currency, which is supervised and examined by a state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of the federal "Securities Act of 1933", and a receiver, conservator, or other liquidating agent of any institution or firm described in this subsection (1).

(2) "Broker-dealer" means a person engaged in the business of effecting purchases or sales of securities for the accounts of others or in the business of purchasing and selling securities for the person's own account. The term does not include the following:

(a) A sales representative;

(b) An issuer with respect to purchasing and selling the issuer's own securities;

(c) A bank; or

(d) Any other person or class of persons the securities commissioner designates by rule or order.

(3) "Central registration depository" means the computer registration system known as the central registration depository, which is maintained by the financial industry regulatory authority and the states that participate in that system, or any successor system.

(4) "Commodity futures trading commission" means the commission established by the federal "Commodity Exchange Act".

(5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive deposits, including deposits in savings, share, certificate, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise under the authority of the comptroller of the currency and is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(5.5) (a) "Federal covered adviser" means a person who is registered or required to be registered under section 203 of the federal "Investment Advisers Act of 1940".

(b) "Federal covered adviser" does not include either a person excepted from the definition of "investment adviser" or exempt from registration under the federal "Investment

Advisers Act of 1940" solely by reason of the fact such person advises a local government investment pool trust fund under article 75 of title 24, C.R.S.

(6) "Financial or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Advisers Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an investment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consist of investing, purchasing, selling, or trading in securities of more than one issuer and not of its own issue and that has total assets in excess of five million dollars as of the end of its latest fiscal year;

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958"; and

(j) Any other institutional buyer.

(7) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

(8) "Fraudulent conduct" means, for the purposes of section 11-51-410, conduct within this state which constitutes a willful violation of section 11-51-501 or conduct outside this state which would constitute a willful violation of section 11-51-501 if it had occurred within this state.

(9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(9.5) (a) (I) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

(II) "Investment adviser" includes financial planners or other persons who, as an integral component of other financially related services, provide investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing investment advisory services to others for compensation.

(b) "Investment adviser" does not include:

(I) A federal covered adviser;

(II) A publisher of a bona fide newspaper, magazine, or business or financial publication with a regular paid circulation;

(III) A publisher of a securities advisory newsletter with a regular and paid circulation who does not provide advice to subscribers on their specific investment situations;

(IV) An author of material included in a newspaper, magazine, publication, or newsletter who does not otherwise come within the definition of an investment adviser or investment adviser representative;

(V) An investment adviser representative;

(VI) A licensed broker-dealer or sales representative for a licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of the person's business as a broker-dealer and who receives no special compensation for such services;

(VII) A depository institution or a person employed by or directly associated with a depository institution;

(VIII) Any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of that person's profession;

(IX) A person who provides investment advisory services solely while acting as an investment banker or business broker on behalf of one or more parties to, and in connection with, a transaction or proposed transaction for the transfer of a controlling interest in a business enterprise;

(X) An official, employee, or representative of the United States, an individual state, a political subdivision of an individual state, or an agency or a corporate or other instrumentality of the United States or an individual state, while acting in such person's official capacity on behalf of such entity;

(XI) A licensed real estate broker or salesperson whose advice to clients relates only to the investment or acquisition of real property or an interest in real property; or

(XII) Any other person or class of persons excluded by rule or order of the securities commissioner.

(9.6) (a) "Investment adviser representative" with respect to an investment adviser means an individual who has a place of business in this state; who is a partner, officer, or director of an investment adviser; who occupies a status similar to or performs functions similar to those of a partner, officer, or director for an investment adviser; or who is employed or otherwise associated with an investment adviser who:

(I) Makes recommendations or otherwise renders advice to clients regarding securities;

(II) Manages securities accounts or portfolios for clients;

(III) Determines which recommendation or advice regarding securities should be given to clients; or

(IV) Supervises employees of, or persons otherwise associated with, an investment adviser or a federal covered adviser who perform any of the duties specified in this paragraph (a).

(b) "Investment adviser representative" for a federal covered adviser means any individual with a place of business in this state who is an "investment adviser representative" as defined by the securities and exchange commission in rule 203A-3 promulgated under the federal "Investment Advisers Act of 1940".

(c) The term "investment adviser representative" does not include:

(I) A licensed sales representative for a licensed broker-dealer whose performance of investment advisory services is solely incidental to the conduct of business as a sales

representative and who receives no special consideration in connection with providing such services; or

(II) Any other individual or class of individuals excluded by rule or order of the securities commissioner.

(9.7) "Investment advisory services" means those activities performed by a person in connection with such person's engaging in any of the activities described in paragraph (a) of subsection (9.5) of this section, including such activities by a federal covered adviser or an investment adviser representative for a federal covered adviser.

(10) "Issuer" means any person who issues or proposes to issue any security; except that, with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; except that, in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that, with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that, with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of offering them for sale.

(11) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(11.5) "Online intermediary" means a person:

(a) Acting pursuant to section 11-51-308.5 as an intermediary in a transaction involving the offer through a website of securities for the account of an issuer; and

(b) Who does not:

(I) Offer investment advice or recommendations;

(II) Solicit purchases, sales, or offers to buy the securities offered or displayed on its website;

(III) Compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website;

(IV) Hold, manage, possess, or otherwise handle purchaser funds or securities;

(V) Act as an exchange or listing or quotation service for the offer or sale of securities by third parties; or

(VI) Engage in such other activities as the securities commissioner, by rule, determines is inappropriate.

(12) "Person" means an individual, a corporation, a partnership, an association, an estate, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a governmental subdivision or agency, or any other legal entity.

(12.5) "Place of business" for investment adviser representatives shall have the same meaning as defined by the securities and exchange commission in rule 203A-3 promulgated under the federal "Investment Advisers Act of 1940".

(13) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(b) "Purchase" or "buy" includes every contract of purchase of, contract to buy, or acquisition of a security or interest in a security for value. "Offer to purchase" includes every attempt or offer to acquire, or solicitation of an offer to sell, a security or interest in a security for value.

(c) "Offer" means an offer to sell or an offer to purchase.

(d) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered, sold, and purchased for value.

(e) A purported gift of assessable stock is considered to involve an offer, sale, and purchase.

(f) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(g) An "offer", "offer to sell", "offer to purchase", "sale", and "purchase" shall be deemed to be involved so far as the security holders of a corporation or other person are concerned where, pursuant to statutory provisions of the jurisdiction under which such corporation or other person is organized, or pursuant to provisions contained in its articles of incorporation or similar controlling instruments, or otherwise, there is submitted for the vote or consent of such security holders a plan or agreement for the following:

(I) A reclassification of securities of such corporation or other person, other than a stock split, reverse stock split, or change in par value, which involves the substitution of a security for another security;

(II) A statutory merger or consolidation or similar plan of acquisition in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any other person, except where the sole purpose of the transaction is to change an issuer's domicile; or

(III) A transfer of assets of such corporation or other person to another person, in consideration of the issuance of securities of such other person or any of its affiliates, if:

(A) Such plan or agreement provides for dissolution of the corporation or other person whose security holders are voting or consenting;

(B) Such plan or agreement provides for a pro rata or similar distribution of such securities to the security holders voting or consenting;

(C) The board of directors or similar representative of such corporation or other person adopts resolutions relative to sub-subparagraph (A) or (B) of this subparagraph (III) within one year after taking of such vote or consent; or

(D) The transfer of assets is a part of a preexisting plan for distribution of such securities, notwithstanding the provisions of sub-subparagraph (A), (B), or (C) of this subparagraph (III).

(h) The terms defined in this subsection (13) do not include any bona fide pledge or loan or any dividend payable by an issuer only in its own securities if nothing of value is given by stockholders for the dividend.

(14) "Sales representative" means an individual, other than a broker-dealer, either authorized to act and acting for a broker-dealer in effecting or attempting to effect purchases or sales of securities or authorized to act and acting for an issuer in effecting or attempting to effect purchases or sales of the issuer's own securities. An individual so acting for an issuer is not a sales representative if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer. A partner, officer, or director of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is a sales representative only if the individual otherwise comes within the definition.

(15) "Securities and exchange commission" means the commission established by the federal "Securities Exchange Act of 1934".

(16) "Securities commissioner" means the commissioner of securities created by section 11-51-701.

(17) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate of subscription; transferable share; investment contract; viatical settlement investment; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period. For purposes of this article, an "investment contract" need not involve more than one investor nor be limited to those circumstances wherein there are multiple investors who are joint participants in the same enterprise.

(18) "Self-regulatory organization" means a national securities exchange registered under section 6 of the federal "Securities Exchange Act of 1934", a national securities association of broker-dealers registered under section 15A of the federal "Securities Exchange Act of 1934", a clearing agency registered under section 17A of the federal "Securities Exchange Act of 1934", the municipal securities rule-making board established under section 15B of the federal "Securities Exchange Act of 1934", or a futures association registered under section 21 of the federal "Commodity Exchange Act".

(19) "State" means any state, territory, or possession of the United States, the District of Columbia, or Puerto Rico.

(20) "Viatical settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, in exchange for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment" does not include:

(a) Any transaction between a viator and a viatical settlement provider as defined by section 10-7-602, C.R.S.;

(b) Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by section 10-7-

602, C.R.S., or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;

(c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, savings association, credit union, or other licensed lending institution as collateral for a loan; or

(d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with title 10, C.R.S.

Source: L. 90: Entire article R&RE, p. 702, § 1, effective July 1. **L. 98:** (5.5), (9.5), (9.6), (9.7), and (12.5) added, p. 547, § 2, effective April 30. **L. 2005:** (17) amended and (20) added, p. 1324, § 2, effective January 1, 2006. **L. 2015:** (3) and (20)(c) amended, (SB 15-104), ch. 177, p. 575, § 2, effective May 11; (11.5) added, (HB 15-1246), ch. 98, p. 286, § 2, effective August 5.

Editor's note: This section is similar to former § 11-51-102 as it existed prior to 1990.

Cross references: For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.; for the "Commodity Exchange Act", see Pub.L. 67-331, codified at 7 U.S.C. sec. 1 et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940); for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.; for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Small Business Investment Act of 1958", see Pub.L. 85-699, codified at 15 U.S.C. sec. 661 et seq.

11-51-201.5. Investment adviser registration depository - definition. As used in this article, unless the context otherwise requires:

(1) "Investment adviser registration depository" means the electronic computer registration system known as the investment adviser registration depository, which is operated and maintained by the financial industry regulatory authority and by the states that participate in the system. The term includes any successor system.

Source: L. 2001: Entire section added, p. 15, § 1, effective March 9. **L. 2015:** Entire section amended, (SB 15-104), ch. 177, p. 576, § 3, effective May 11.

11-51-202. References to federal statutes. (1) Each reference in this article to a federal act or statute means, unless the context otherwise requires, that act or statute as in effect on January 1, 1990, together with all rules and regulations under such act or statute as in effect on that date, except as subsequent amendments may become applicable under this article pursuant to subsection (2) of this section.

(2) (a) Whenever an amendment to any federal act or statute to which reference is made in this article is enacted with an effective date on or after January 1, 1990, or whenever an amendment to any rule or regulation under any such federal act or statute is promulgated with an effective date on or after such date, the securities commissioner shall determine whether giving effect to such amendment is inconsistent with the purposes of this article set forth in section 11-

51-101 (2), any other provision of this article, or any rule under this article. If the securities commissioner determines that an inconsistency exists, the securities commissioner shall commence rule-making proceedings for the purpose of making, amending, or rescinding such rules under this article as may be appropriate to carry out the policy stated in section 11-51-101 (3). If no rule-making proceeding with respect to such amendment is commenced within ninety days after the effective date of such amendment (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), such amendment shall apply to this article and the rules under this article. If a rule-making proceeding with respect to such amendment is commenced within ninety days after the effective date of such amendment (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), such amendment shall not apply to this article or any rule under this article except as may be provided by rule upon completion of such rule-making proceeding.

(b) No provision of this article imposing any liability upon a person or providing a basis for any sanction against a person applies to any act done or omitted by such person in good faith and in conformity with the provisions of this article and the rules under this article, as in effect prior to the effective date of any amendment to any federal act or statute to which reference is made in this article or any amendment to any rule or regulation under any such federal act or statute during the period commencing upon the effective date of such amendment and ending on the date determined by the following:

(I) If no rule-making proceeding with respect to such amendment is commenced under this subsection (2) within ninety days after its effective date (or within ninety days after the effective date of this article as set forth in section 11-51-801, if later), ending on the ninetieth day after such effective date; or

(II) If such a rule-making proceeding is commenced within such period of ninety days, ending upon completion of such rule-making proceeding.

(3) Each reference in this article to the federal "Investment Advisers Act of 1940" means that act in effect on April 30, 1998, together with all rules and regulations under such federal act as in effect on that date, except as subsequent amendments may become applicable under this article pursuant to subsection (2) of this section.

Source: L. 90: Entire article R&RE, p. 706, § 1, effective July 1. **L. 98:** (3) added, p. 549, § 3, effective April 30.

Cross references: For the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

PART 3

REGISTRATION OF SECURITIES AND EXEMPTIONS

11-51-301. Requirement for registration of securities. It is unlawful for any person to offer to sell or sell any security in this state unless it is registered under this article or unless the security or transaction is exempted under section 11-51-307, 11-51-308, 11-51-308.5, or 11-51-309.

Source: L. 90: Entire article R&RE, p. 707, § 1, effective July 1. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 757, § 18, effective June 6.

Editor's note: This section is similar to former § 11-51-107 (1) as it existed prior to 1990.

Cross references: For the applicability of this section, see § 11-51-102 (1) and (7). For securities exempted from this section, see § 11-51-307.

11-51-302. General registration provisions. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a broker-dealer licensed or exempt under this article.

(2) Every registration statement filed under section 11-51-303 or 11-51-304 shall be accompanied by a registration fee, which shall be determined and collected pursuant to section 11-51-707.

(3) Any document or portion thereof filed with the securities commissioner under this article or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in a registration statement to the extent that such document or portion thereof is accurate at the time of such incorporation by reference.

(4) The securities commissioner may, by rule or order, permit the omission of any item of information or document from any registration statement.

(5) The securities commissioner may, by rule or order, require as a condition of registration under section 11-51-304 that the proceeds from the sale of the registered security be held in escrow until the issuer receives a specified amount. The securities commissioner may, by rule or order, determine the conditions of any escrow required under this subsection (5), but the securities commissioner may not reject a depository solely because of its location in another state. Improper release by a depository of such escrow in violation of this subsection (5) is punishable pursuant to section 11-51-603 (2).

(6) (a) In the case of any offering registered under section 11-51-303 or 11-51-304 where less than seventy-five percent of the net proceeds from the sale of the registered securities are committed for use in one or more specific lines of business, eighty percent of the net proceeds received by the issuer shall be placed into escrow until:

(I) The completion of a transaction or series of transactions whereby at least fifty percent of the gross proceeds received from the sale of registered securities (including any amounts actually received by the issuer upon exercise of registered warrants or rights to purchase or subscribe to another security) are committed for use in one or more specific lines of business; and

(II) The lapse of no more than ten days after receipt by the securities commissioner of notice of the proposed release of funds from such escrow.

(b) Such notice must contain the information and be in the form the securities commissioner by rule requires. If an escrow is released and warrants or rights which were once registered remain outstanding, then this subsection (6) shall apply separately to the proceeds from any subsequent exercise of such warrants or rights. Proceeds received from the exercise of such warrants or rights shall then be subject to release upon the conditions stated in this subsection (6), and this subsection (6) shall then each time apply separately with respect to

proceeds from the exercise of warrants or rights which were once registered and still remain outstanding. The securities commissioner may, by rule or order, determine the conditions of any escrow required under this subsection (6), but the securities commissioner may not reject a depository solely because of its location in another state. Improper release by a depository of such escrow in violation of this subsection (6), is punishable pursuant to section 11-51-603 (2). The securities commissioner may, by rule or order, waive the requirements of this subsection (6), in whole or in part, with respect to any class of registrations or any specific registration if the securities commissioner finds that such waiver is in the public interest and that compliance with the requirements of this subsection (6) is not necessary for the protection of investors.

(7) (a) Except as provided in paragraph (b) of this subsection (7), a registration statement filed and effective under section 11-51-303 is effective for one year after its effective date and thereafter is effective during the period or periods, but only those periods, when the prospectus contained in the registration statement filed under the federal "Securities Act of 1933" meets the requirements of subsection (a) of section 10 of such federal "Securities Act of 1933".

(b) (I) A registration statement filed and effective under section 11-51-303 or 11-51-304 on behalf of an investment company registered under the federal "Investment Company Act of 1940" is effective for one year after its effective date and may be renewed by filing a renewal notice with the securities commissioner.

(II) Any person filing a renewal notice pursuant to this paragraph (b) shall pay a renewal fee pursuant to section 11-51-707.

(c) A registration statement filed and effective under section 11-51-304 is effective for one year after its effective date unless the securities commissioner by rule or order extends the period of effectiveness.

(d) A registration statement effective under section 11-51-303 or 11-51-304 may be terminated or withdrawn upon the request of the issuer or the person who filed the registration statement and with the consent of the securities commissioner.

(e) All outstanding securities of the same class as a registered security are considered to be registered for the purpose of a nonissuer transaction or series of transactions while the registration statement is effective.

(8) So long as a registration statement under section 11-51-304 is effective, the securities commissioner may, by rule or order, require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(9) A registration statement under section 11-51-303 or 11-51-304 may be amended after its effective date so as to increase the quantity of securities specified as being offered. Every person filing such an amendment shall pay a registration fee, which shall be determined and collected pursuant to section 11-51-707, with respect to the additional securities being registered. Such an amendment becomes effective when the securities commissioner so orders. If the additional securities being registered have been sold before such amendment is filed and the person filing the amendment provides such information as the securities commissioner may request to show that the failure to register the additional securities prior to their sale was in good faith and not for the purpose of avoiding compliance with this article, the securities commissioner may by order provide that the effectiveness of the amendment shall relate back to the first date of sale of the additional securities.

Source: L. 90: Entire article R&RE, p. 707, § 1, effective July 1. **L. 94:** (7) amended, p. 1838, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-108 as it existed prior to 1990.

Cross references: For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940).

11-51-303. Registration by coordination. (1) Securities for which a registration statement has been filed under the federal "Securities Act of 1933" or any securities for which filings have been made pursuant to the security and exchange commission's regulation A, promulgated pursuant to section 3(b) of the federal "Securities Act of 1933", in connection with the offering of the securities may be registered by coordination. A registration statement and accompanying records shall be filed with the securities commissioner pursuant to this section and must contain the following information and be accompanied by the consent to service of process required by section 11-51-706:

(a) A copy of the latest form of prospectus, offering circular, or letter of notification filed under the federal "Securities Act of 1933";

(b) (I) A current copy of the issuer's articles of incorporation and bylaws or, if so determined by the securities commissioner, the substantial equivalent of the issuer's articles of incorporation and bylaws;

(II) A copy of any agreement with or among the underwriters of the security to be registered;

(III) A copy of any indenture or other instrument governing the issuance of the security to be registered;

(IV) A specimen, copy, or description of the security that is required by rule promulgated by the securities commissioner or order issued pursuant to this article; and

(c) A copy of other information or records filed by the issuer under the federal "Securities Act of 1933" that the securities commissioner may request.

(d) (Deleted by amendment, L. 2004, p. 512, 1, effective July 1, 2004.)

(2) Any amendments to the federal prospectus, offering circular, or letter of notification shall be promptly filed with the securities commissioner after the amended prospectus or other filing is filed with the federal securities and exchange commission; except that an amendment to the prospectus that only delays the effective date of the registration statement shall not be filed with the securities commissioner.

(3) A registration statement or other filing required to be filed with the securities commissioner pursuant to this section shall be considered effective simultaneously with or subsequent to the federal registration statement or other filing when all of the following conditions are satisfied:

(a) A stop order under subsection (4) of this section or section 11-51-306, or issued by the federal securities and exchange commission, is not in effect and a proceeding is not pending against the issuer under section 11-51-410; and

(b) The registration statement or other filing has been on file with the securities commissioner for at least twenty days; except that the securities commissioner may establish, by rule or order, a period less than twenty days.

(4) The registrant shall promptly notify the securities commissioner of the date when the federal registration statement or other filing becomes effective and the content of any price amendment. The registrant shall promptly file the notice containing the price amendment with the securities commissioner. If the notice is not timely received, the securities commissioner may, without prior notice or hearing, issue a stop order, which retroactively denies the effectiveness of a registration statement or suspends the effectiveness of the registration statement until the registrant complies with this section. The securities commissioner shall promptly notify the registrant of a stop order by telephone or electronic means and be able to confirm that notice of the stop order was given to the registrant. If the registrant subsequently complies with the notice requirements of this section, the stop order becomes void as of the date of its issuance.

(5) If the federal registration statement or other federal filing becomes effective before all of the conditions of this section are satisfied, or if a condition of this section is waived by the securities commissioner, the registration statement or other filing becomes effective when all of the conditions of this section are either satisfied or waived by the securities commissioner. If the registrant notifies the securities commissioner of the date when the federal registration statement or other federal filing is expected to become effective, the securities commissioner shall promptly notify the registrant by telephone or electronic means whether all of the conditions of this section have been satisfied by the registrant or the securities commissioner is waiving one or all of the conditions. The securities commissioner shall also notify the registrant if the securities commissioner intends to institute a proceeding against the registrant pursuant to section 11-51-306 and be able to confirm that such notice was provided to the registrant. Failure of the securities commissioner to notify the registrant of the securities commissioner's intent to institute an action pursuant to section 11-51-306 does not invalidate or preclude the institution of such action.

(6) The commissioner shall promulgate a rule that defines the prompt filing and notification provisions of this section.

Source: L. 90: Entire article R&RE, p. 709, § 1, effective July 1. **L. 2004:** Entire section amended, p. 512, § 1, effective July 1. **L. 2015:** Entire section amended, (SB 15-104), ch. 177, p. 576, § 4, effective May 11.

Cross references: For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.; for the Security and Exchange Commission's regulation A, see 17 CFR 230.251 to 17 CFR 230.263.

11-51-304. Registration by qualification. (1) A security may be registered by qualification.

(2) A registration statement under this section shall contain full and fair disclosure of all material facts respecting the investment offered, including the following information, shall state the title of the security and the number or amount being registered under this article, and shall be

accompanied by the following documents in addition to the consent to service of process required by section 11-51-706:

(a) With respect to the issuer, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, the name, address, and principal occupation for the past five years; the amount of securities of the issuer held as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(c) With respect to persons covered by paragraph (b) of this subsection (2), the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all such persons in the aggregate;

(d) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (b) of this subsection (2) other than the occupation;

(e) With respect to every promoter, if the issuer was organized within the past three years, the information specified in paragraph (b) of this subsection (2), any amount paid within that period or intended to be paid to that person, and the consideration for any such payment;

(f) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, the name and address, the amount of securities of the issuer held as of the date of the filing of the registration statement, a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected, and a statement of the person's reasons for making the offering;

(g) The capitalization and long-term debt on both a current and pro forma basis of the issuer, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion is to be made to any person or class of persons, other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is

to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; and the amounts of any funds to be raised; and, if any part of the proceeds is to be used to acquire any property including goodwill otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, and the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expenses in connection with the acquisition including the cost of borrowing money to finance the acquisition;

(j) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (d), (e), (f), or (h) of this subsection (2) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(k) The date of, parties to, and general effect concisely stated of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any litigation or proceeding known to be contemplated by governmental authorities;

(l) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of its effective date to be used in connection with the offering;

(m) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(n) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(o) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation other than a public and official document or statement which is used in connection with the registration statement;

(p) The balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) Such additional information as the securities commissioner requires by rule or order and as is required for full and fair disclosure respecting the investment offered.

(3) A registration statement under this section becomes effective when the securities commissioner so orders or twenty-eight calendar days from the date of filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

(4) The securities commissioner may, by rule or order, require as a condition of registration under this section that an offering circular containing any designated part of the information specified in subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with: The first written offer made to such person otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made or by any broker-dealer or underwriter who is offering part of an unsold allotment or subscription taken as a participant in the distribution; the confirmation of any sale made by or for the account of any person; or a payment made pursuant to any such sale or the delivery of the security pursuant to any such sale, whichever first occurs.

(5) The date of filing shall be the date that the registration statement or an amendment to the registration statement is received by the securities commissioner.

(6) The securities commissioner shall by rule prescribe a limited offering registration procedure for any offering of securities by an issuer if the issuer has its principal office and the majority of its full-time employees in Colorado; if the issuer provides in its offering document that at least eighty percent of the net proceeds from the offering will be used in connection with the operations of such issuer in this state; if the gross proceeds from such offering of securities and any other offering of securities will not exceed five million dollars within any twelve-month period; and if the registration statement and offering documents for such limited offering contain the following:

(a) With respect to the issuer, its principal business address, and its form, state or foreign jurisdiction, and date of its organization;

(b) The general character and location of its business and a description of its physical properties and equipment;

(c) The name and address of every officer and director of the issuer and of every person occupying a similar status or performing similar functions, and for each such person, a brief description of their business experience within the last five years, a description of any transaction during the preceding year or any proposed transaction between any such persons and the issuer, and a description of any of the following events occurring within the last five years that are material to an evaluation of the offering:

(I) The filing of a petition in bankruptcy by or against, or the filing of a receivership action against, any such person personally or by or against any entity for which they served as officer, director, or in a similar status or function;

(II) Any conviction of any such person in a criminal proceeding, or the filing of any indictment, information, or criminal complaint against any such person (excluding traffic violations and other minor offenses); and

(III) Any order, judgment, or decree, not subsequently reversed, suspended, or vacated, against any such person entered by a court of competent jurisdiction or any federal or state regulatory authority involving the violation by such person of any federal or state securities law or in connection with any matter material to the offering, the issuer, or its business;

(d) The principal factors contributing to the risks of the enterprise, including, when applicable, the absence of an operating history of the issuer, the absence of profitable operations in recent periods, the nature of the business or proposed business in which the issuer will engage, and the absence of any previous market for the securities of the issuer;

(e) The amount of authorized and issued securities of the issuer;

(f) The kind and amount of securities to be offered, the proposed offering price, and the minimum and maximum amounts that will be raised in the offering;

(g) The name, address, and amount of compensation of any underwriter or broker-dealer to receive compensation in connection with the offering;

(h) The estimated proceeds to be received by the issuer from the offering and the purposes for which such proceeds are to be used;

(i) An unaudited balance sheet as of a date within four months of the filing of the registration statement and an unaudited profit and loss statement and analysis of surplus for the most recent fiscal year of the issuer and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's existence if less than one year; and

(j) The following legend prominently stated on the cover page of the offering document:

THESE SECURITIES ARE OFFERED PURSUANT TO A LIMITED OFFERING REGISTRATION WITH THE COLORADO DIVISION OF SECURITIES. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COLORADO DIVISION OF SECURITIES NOR HAS THE DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE STATE OF COLORADO HAS INSTITUTED THIS LIMITED OFFERING REGISTRATION PROCEDURE IN AN EFFORT TO SIMPLIFY AND EXPEDITE THE SMALL BUSINESS CAPITAL FORMATION PROCESS. INVESTORS ARE ENCOURAGED TO ASK QUESTIONS OF AND SEEK ADDITIONAL INFORMATION FROM THE ISSUER AND UNDERWRITER OF THESE SECURITIES.

(7) In the case of a registration by qualification under subsection (6) of this section, the securities commissioner may not require as a condition of registration under section 11-51-302 (5) that any of the gross proceeds from the sale of the registered security be held in escrow in the case of an offering underwritten by a broker-dealer registered under the federal "Securities Exchange Act of 1934", or that more than thirty-five percent of the gross proceeds from the sale of the registered security be held in escrow in the case of an offering not underwritten by such a broker-dealer.

(8) A registration statement under subsection (6) of this section becomes effective when the securities commissioner so orders or fourteen calendar days from the date of the filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

Source: L. 90: Entire article R&RE, p. 710, § 1, effective July 1. **L. 2014:** IP(6) amended, (HB 14-1079), ch. 72, p. 302, § 1, effective August 6.

Editor's note: This section is similar to former § 11-51-109 as it existed prior to 1990.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-22, codified at 15 U.S.C. sec. 78a et seq.

11-51-305. Filing of sales literature. The securities commissioner may, by rule or order, require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, unless the security or the transaction is exempted by section 11-51-307, 11-51-308, or 11-51-309.

Source: L. 90: Entire article R&RE, p. 714, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-114 as it existed prior to 1990.

Cross references: For securities exempted from this section, see § 11-51-307.

11-51-306. Denial, suspension, or revocation of registration. (1) The securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement, if the securities commissioner finds violations of the escrow provisions in section 11-51-302 (5) or (6), or, in the case of any registration statement under section 11-51-304, if the securities commissioner finds that the order is in the public interest and that any one of the following grounds exists:

(a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, any amendment under section 11-51-302 (9) as of its effective date, or any report under section 11-51-302 (8) contains any false or misleading statement in violation of section 11-51-502;

(b) Any provision of this article or any rule, order, or condition imposed under this article has been violated, in connection with the offering, by the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer. Notwithstanding any other provision of this article, the securities commissioner shall not issue any stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement on the grounds that the offering, when viewed on its merits as an investment, is unfair, unjust, or inequitable.

(c) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering; but the securities commissioner may not institute a proceeding against an effective registration statement under this paragraph (c) more than one year from the date of the order or injunction relied on, and the securities commissioner may not enter an order under this paragraph (c) on the basis of an order or injunction entered under any other state law unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section; or

(d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed.

(1.5) With respect to a security sought to be registered pursuant to section 11-51-303, the securities commissioner may issue a stop order denying effectiveness to, or suspending or

revoking the effectiveness of, any registration statement if the securities commissioner finds that there has been a failure to comply with section 11-51-303 (2).

(2) The securities commissioner may, by summary order under section 11-51-606 (3)(a), summarily postpone or suspend the effectiveness of a registration statement pending final determination of any proceeding under this section.

(3) No stop order may be entered under this section, except under subsection (2) of this section, without the provision to the issuer of an appropriate prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

(4) The securities commissioner may vacate or modify a stop order if the securities commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Source: L. 90: Entire article R&RE, p. 714, § 1, effective July 1. **L. 94:** (2) amended, p. 1839, § 2, effective July 1. **L. 2004:** (1.5) added, p. 514, § 2, effective July 1.

Editor's note: This section is similar to former § 11-51-112 as it existed prior to 1990.

11-51-307. Exempt securities. (1) The following securities are exempted from sections 11-51-301 and 11-51-305:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of any of them or any certificate of deposit for any of them;

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of any of them, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any depository institution organized under the laws of the United States or any depository institution organized and supervised under the laws of any state;

(d) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(e) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: Subject to the jurisdiction of the surface transportation board; a registered holding company under the federal "Public Utility Holding Company Act of 1935" or a subsidiary of such a company within the meaning of that act; or regulated in respect of its issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(f) Any security listed or approved for listing upon notice of issuance on any national securities exchange registered under the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78f, as amended, or any other security of the same issuer that is of a senior or substantially equal rank; any security called for by subscription rights or warrants so listed, designated, or approved; or any warrant or right to purchase or subscribe to any of them;

(g) Any security which is issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, or charitable purposes or as a chamber of commerce or trade or professional association and which is offered or sold to a bona fide constituent or member of such organization or association, if no direct or indirect commission or remuneration is paid in connection with the offer or sale of such security except to a licensed broker-dealer; or any security which is issued by any cooperative association engaged in the sale or production of electricity and regulated by the public utilities commission of this state;

(h) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(i) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(j) Any security issued by a cooperative association as defined in article 55 of title 7, C.R.S.; and

(k) Any security issued by an issuer registered as an open-end management investment company or unit investment trust under the federal "Investment Company Act of 1940" if:

(I) (A) The issuer is advised by an investment adviser that is a depository institution exempt from registration under the federal "Investment Advisers Act of 1940" or that is currently registered, and has been registered or is affiliated with an adviser that has been registered, as an investment adviser under the federal "Investment Advisers Act of 1940" for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k) and the adviser has acted, or is affiliated with an investment advisor that has acted, as investment adviser to one or more registered investment companies or unit investment trusts for at least three years next preceding an offer or sale of a security claimed to be exempt under this paragraph (k); or

(B) The issuer has a sponsor that has at all times throughout the three years before an offer or sale of a security claimed to be exempt under this paragraph (k) sponsored one or more registered investment companies or unit investment trusts the aggregate total assets of which have exceeded one hundred million dollars; and

(II) There is filed with and paid to the securities commissioner prior to any sale of any securities claimed to be exempt under this paragraph (k):

(A) A notice of intention to sell which has been executed by the issuer and which sets forth the name and address of the issuer and the title of the securities to be offered in this state; and

(B) An exemption fee, which shall be determined and collected pursuant to section 11-51-707, for open-end management companies and for unit investment trusts.

(2) Any notice filed and exemption fee paid under paragraph (k) of subsection (1) of this section shall be effective only for securities sold within twelve months after the date on which such notice was filed with the securities commissioner. For the purposes of paragraph (k) of subsection (1) of this section, an investment adviser is affiliated with another investment adviser if it controls, is controlled by, or is under common control with the other investment adviser. For the purposes of paragraph (k) of subsection (1) of this section, a "sponsor" of a unit investment trust means the person primarily responsible for the organization of the unit investment trust or

who has continuing responsibilities for the administration of the affairs of the unit investment trust other than a trustee or custodian. "Sponsor" includes the depositor of the unit investment trust.

Source: L. 90: Entire article R&RE, p. 715, § 1, effective July 1. **L. 2001:** (1)(e) amended, p. 1267, § 7, effective June 5. **L. 2008:** (1)(f) amended, p. 21, § 10, effective August 5.

Editor's note: This section is similar to former § 11-51-113 as it existed prior to 1990.

Cross references: For the "Public Utility Holding Company Act of 1935", see Pub.L. 74-333, codified at 15 U.S.C. sec. 79 et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

11-51-308. Exempt transactions. (1) The following transactions are exempted from sections 11-51-301 and 11-51-305:

(a) Any isolated nonissuer transaction, whether or not effected through a broker-dealer;

(b) Any nonissuer distribution of an outstanding security:

(I) If a recognized securities manual contains the name of the issuer, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within the eighteen-month period immediately preceding the date of the distribution, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

(II) If the security has a fixed maturity or a fixed interest or dividend provision and there has been no default by the issuer during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividend on any security of the issuer;

(III) If any class of securities of the issuer is registered under section 12 of the federal "Securities Exchange Act of 1934";

(IV) If the issuer is an investment company registered under the federal "Investment Company Act of 1940"; or

(V) If the issuer of the security has filed and maintained with the securities commissioner, for not less than ninety days next preceding the transaction, such information as the securities commissioner may specify by rule and has paid an exemption fee to be determined and collected as provided in section 11-51-707;

(c) Any nonissuer transaction effected by or through a licensed broker-dealer pursuant to an unsolicited order or offer to buy, if either the confirmation of the transaction delivered to the customer clearly states that the transaction was unsolicited or the broker-dealer obtains a written acknowledgment signed by the customer that the transaction was unsolicited and a copy of the confirmation or the acknowledgment is preserved by the broker-dealer for such period as the securities commissioner may, by rule, require;

(d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(e) Any transaction in a bond or other evidence of indebtedness secured by a mortgage, security interest, or deed of trust or by an agreement for the sale of real estate or chattels, if the

entire mortgage, security interest, deed of trust, or agreement together with all the bonds or other evidences of indebtedness secured thereby is offered and sold as a unit;

(f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(g) Any transaction executed by a bona fide pledgee without any purpose of evading the provisions of this article;

(h) Any offer or sale to a financial or institutional investor or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(i) Any transaction not involving any public offering;

(j) Any transaction pursuant to an offering of securities directed by the offeror to not more than twenty persons (other than those designated in paragraph (h) of this subsection (1)) in this state and sold to not more than ten buyers (other than those designated in paragraph (h) of this subsection (1)) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees or buyers is then present in this state, if:

(I) The seller reasonably believes that all the buyers in this state (other than those designated in paragraph (h) of this subsection (1)) are purchasing for investment; and

(II) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in paragraph (h) of this subsection (1)) except to a licensed broker-dealer or a licensed sales representative;

(k) Any offer or sale of a preorganization certificate or subscription if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, if the number of subscribers does not exceed twenty-five, and if no payment is made by any subscriber;

(l) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state except to a licensed or exempt broker-dealer;

(m) A transaction involving an offer to sell, but not a sale, of a security if:

(I) A registration or offering statement or similar document as required under the federal "Securities Act of 1933" has been filed with the securities and exchange commission, but is not effective;

(II) A registration statement, if required, has been filed under section 11-51-303, but is not effective; and

(III) No stop order of which the offeror is aware has been entered by the securities commissioner or the securities and exchange commission;

(n) A transaction involving an offer to sell, but not a sale, of a security if:

(I) A registration statement has been filed under section 11-51-304 but is not effective; and

(II) No stop order of which the offeror is aware has been entered by the securities commissioner;

(o) A transaction described in section 11-51-201 (13)(g); and

(p) Any offer or sale of a security in compliance with an exemption from registration with the securities and exchange commission under section 3(b)(1) or 4(a)(2) of the federal

"Securities Act of 1933", as amended, 15 U.S.C. secs. 77c (b)(1) and 77d (a)(2), pursuant to regulations adopted in accordance with the federal act by the securities and exchange commission; except that an offer or sale of a security in compliance with an exemption from registration with the securities and exchange commission under regulation A, codified at 17 CFR 230.251 to 17 CFR 230.263 and adopted pursuant to section 3(b) of the federal "Securities Act of 1933", as amended, is not exempted under this section. The issuer shall file with the securities commissioner a notification of exemption, in a form prescribed by the securities commissioner, and pay an exemption fee to be determined and collected pursuant to section 11-51-707.

Source: L. 90: Entire article R&RE, p. 717, § 1, effective July 1. **L. 2015:** (1)(p) amended, (SB 15-104), ch. 177, p. 578, § 5, effective May 11; (1)(p) amended, (SB 15-264), ch. 259, p. 944, § 14, effective August 5.

Editor's note: (1) This section is similar to former § 11-51-113 as it existed prior to 1990.

(2) Amendments to this section by SB 15-104 and SB 15-264 were harmonized.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 78-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.

11-51-308.5. Crowdfunding - intrastate offering of securities - online intermediaries - rules - fees - short title - legislative declaration. (1) **Short title.** This act shall be known and may be cited as the "Colorado Crowdfunding Act".

(2) **Legislative declaration.** The general assembly hereby:

(a) Finds that:

(I) Start-up companies play a critical role in expanding economic opportunities, creating new jobs, and generating revenues; and

(II) Lack of access to capital is an obstacle to starting and expanding small business, inhibits job growth, and has negatively affected the state's economy;

(b) Determines that:

(I) The costs and complexities of state securities registration can outweigh the benefits to Colorado businesses seeking to raise capital by small securities offerings;

(II) The use of crowdfunding, or raising money online through small contributions from a large number of investors, is presently restricted by our state securities laws; and

(III) Crowdfunding allows small companies to access the capital they need to start or expand businesses; and

(c) Declares that:

(I) In compliance with exemptions from federal law, the exemption provided by this section applies only if:

(A) The investor is a Colorado resident or is an entity formed pursuant to Colorado laws;

(B) The issuer of the securities is an entity formed pursuant to Colorado laws and doing business in Colorado; and

(C) The issuer intends to use and uses at least eighty percent of the proceeds of the sale of securities in Colorado; and

(II) Creating a Colorado crowdfunding option, with limitations to protect investors, will enable Colorado businesses to obtain capital, democratize venture capital formation, and facilitate investment by Colorado residents in Colorado start-ups, thereby promoting the formation and growth of local companies and the accompanying job creation.

(3) **Exemption.** If an offer or sale of a security by an issuer made after the securities commissioner initially promulgates rules to implement this section is conducted in accordance with all the following requirements and those contained in the rules promulgated pursuant to subsection (4) of this section, the transaction is exempt from section 11-51-301:

(a) The issuer of the security must be a business entity organized pursuant to the laws of Colorado and authorized to do business in Colorado and meet all of the following requirements:

(I) The securities must meet the requirements of the federal exemption for intrastate offerings in section 3 (a)(11) of the federal "Securities Act of 1933", 15 U.S.C. sec. 77c (a)(11), and the securities and exchange commission's rule 147 adopted pursuant to said act, 17 CFR 230.147, for an intrastate offering being conducted in Colorado. Prior to any sale pursuant to this exemption, the issuer shall obtain documentary evidence from each prospective purchaser that provides the seller with a reasonable basis to believe that the purchaser meets the requirements of subsection (d) of the securities and exchange commission's rule 147, 17 CFR 230.147 (d).

(II) The sum of all cash and other consideration to be received for all sales of the security pursuant to the exemption provided by this section must not exceed one million dollars during any twelve-month period; except that, if before offering and selling the securities, the issuer submits audited financial statements regarding the issuer to the securities commissioner, the sum must not exceed two million dollars.

(III) The aggregate amount sold to any purchaser during the twelve-month period preceding the date of the sale must not exceed five thousand dollars unless the purchaser is an accredited investor as defined by the securities and exchange commission's rule 501 of Regulation D, 17 CFR 230.501.

(IV) Unless waived or modified by written consent by the securities commissioner, not less than ten days before the commencement of an offering of securities pursuant to the exemption provided by this section, the issuer must do all the following:

(A) Make a notice filing with the securities commissioner on a form prescribed by the securities commissioner, including a consent to service of process in such form as the securities commissioner may require;

(B) Pay the fee established by the securities commissioner;

(C) Provide the securities commissioner with a copy of the disclosure document to be provided to prospective purchasers pursuant to subparagraph (X) of this paragraph (a);

(D) Provide the securities commissioner with a copy of an escrow agreement with a depository institution authorized to do business in Colorado in which the issuer will deposit the purchaser's funds or cause the purchaser's funds to be deposited and that the issuer may access only as provided in sub-subparagraph (F) of this subparagraph (IV). The depository institution in which the purchaser funds are deposited shall act only at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any purchaser or other person. A purchaser may cancel the purchaser's commitment to invest if the

minimum amount established pursuant to sub-subparagraph (F) of this subparagraph (IV) is not raised before the time stated in the escrow agreement.

(E) Maintain all records with respect to any offering conducted pursuant to the exemption provided by this section as the securities commissioner may by rule require; and

(F) Establish both a minimum and a maximum offering amount, and deposit all funds raised from purchasers pursuant to the exemption provided by this section into an escrow account established pursuant to sub-subparagraph (D) of this subparagraph (IV); except that, once the minimum offering amount has been raised and deposited in the escrow account, the issuer may terminate the escrow arrangement. The minimum established must be not less than one-half of the maximum offering amount. The maximum amount must not exceed the limitations set forth in subparagraph (II) of this paragraph (a). The issuer shall not access the escrow funds until the aggregate funds raised from all purchasers equals or exceeds the minimum amount. The issuer shall use all funds in accordance with representations made to purchasers.

(V) The issuer must not be, either before or as a result of the offering, an investment company, as defined in section 3 of the federal "Investment Company Act of 1940", 15 U.S.C. sec. 80a-3, an entity that would be an investment company but for the exclusions provided in section 3 (c) of the federal "Investment Company Act of 1940", 15 U.S.C. sec. 80a-3 (c), or subject to the reporting requirements of section 13 or 15 (d) of the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78m or 78o (d).

(VI) The issuer shall inform all prospective purchasers of securities offered pursuant to the exemption provided by this section, in plain, nontechnical language using words with common and everyday meaning that are understandable to the average reader, that the securities have not been registered pursuant to federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document required by subparagraph (X) of this paragraph (a):

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH, APPROVED BY, OR RECOMMENDED BY ANY FEDERAL OR STATE AGENCY. IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SECURITIES AND EXCHANGE COMMISSION RULE 147, 17 CFR 230.147 (e), AS PROMULGATED PURSUANT TO THE FEDERAL "SECURITIES ACT OF 1933", AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

(VII) The issuer shall require each purchaser to certify in writing or electronically as follows:

I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering cannot be readily sold, are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.

(VIII) The issuer must obtain from each purchaser of a security offered pursuant to the exemption provided by this section evidence that the purchaser is a resident of Colorado or, if the purchaser is an entity, is organized pursuant to the laws of Colorado and, if applicable, is an accredited investor.

(IX) All payments for purchase of securities offered pursuant to the exemption provided by this section must be directed to and held by the depository institution specified in sub-subparagraph (D) of subparagraph (IV) of this paragraph (a). The securities commissioner may request from the depository institution information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection.

(X) The issuer of securities offered pursuant to the exemption provided by this section must provide a disclosure document to each prospective purchaser at the time the offer of securities is made to the prospective purchaser that contains the information that the securities commissioner requires by rule.

(XI) All sales pursuant to an offering or single plan of financing pursuant to the exemption provided by this section must meet all of the terms and conditions of this section. The exemption provided by this section shall not be used in conjunction with any other exemption pursuant to section 11-51-307, 11-51-308, or 11-51-309 during the immediately preceding twelve-month period.

(XII) The exemption provided by this section is not available if an issuer or a person affiliated with the issuer or offering is subject to disqualification established by the securities commissioner by rule or contained in the securities and exchange commission's rule 506 (d) adopted pursuant to the federal "Securities Act of 1933", 17 CFR 230.506 (d).

(XIII) An issuer of a security pursuant to this section shall provide, free of charge, a quarterly report to the issuer's owners. An issuer may satisfy the reporting requirement of this subparagraph (XIII) by making the information available on a website operated by an online intermediary if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report required pursuant to this subparagraph (XIII) with the division and, if the quarterly report is made available on a website operated by an online intermediary, the issuer shall also provide a written copy of the report to any owner upon request. The report must contain all the following:

(A) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

(B) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(XIV) The issuer may distribute a notice within Colorado that is limited to a statement that the issuer is conducting an offering and that includes:

(A) The name of the online intermediary, sales representative, or licensed broker-dealer through which the offering is being conducted; and

(B) A link directing the potential investor to the online intermediary's or broker-dealer's website.

(b) An issuer may make an offering pursuant to the exemption provided by this section through:

(I) A broker-dealer that is licensed pursuant to part 4 of this article with its principal place of business in Colorado;

(II) A sales representative that is licensed pursuant to part 4 of this article; or

(III) An online intermediary that meets the requirements of paragraph (c) of this subsection (3).

(c) (I) Before acting as an online intermediary for an offering pursuant to the exemption provided by this section, the online intermediary must file a statement with the securities commissioner, accompanied by the filing fee established by the securities commissioner, that includes all the following:

(A) That the online intermediary consents to service of process in Colorado pursuant to section 11-51-706;

(B) That the online intermediary will provide information with respect to the offer of securities in Colorado only pursuant to the exemption provided by this section;

(C) The identity and location of, and contact information for, the online intermediary, including the names and physical addresses of the officers, directors, managers, partners, and other persons who control the business decisions of the online intermediary;

(D) A statement that sets forth any changes to the information contained in the original or any subsequently filed statement required by this subparagraph (I); and

(E) Notice of its intention to act as online intermediary for an offering, which statement must be on such form as the securities commissioner requires.

(II) An online intermediary shall maintain records of all offers of securities effected through its website and shall provide ready access to the records to the division, upon request. The records of an online intermediary required pursuant to this subparagraph (II) are subject to the reasonable periodic, special, or other examination or inspection by a representative of the securities commissioner, in or outside Colorado, as the securities commissioner considers necessary or appropriate in the public interest and for the protection of purchasers. An examination or inspection may be made at any time and without prior notice. The securities commissioner may copy, and remove for examination or inspection copies of, all records that the securities commissioner reasonably considers necessary or appropriate to conduct the examination or inspection. The securities commissioner may assess a reasonable charge for

conducting an examination or inspection pursuant to this subparagraph (II). The securities commissioner may by rule require an online intermediary to:

(A) File with the securities commissioner specified financial and other information;

(B) Make and maintain specified records and preserve such records for five years or such other period as may be specified by rule; and

(C) Establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article.

(III) An online intermediary shall:

(A) Limit its offer of securities pursuant to the exemption provided by this section to only Colorado residents as that term is defined in subsection (d) of the securities and exchange commission's rule 147, 17 CFR 230.147 (d);

(B) Not hold a financial interest in any issuer or be affiliated with or under common control with an issuer whose securities appear on any website maintained for the offer of securities by the online intermediary; and

(C) Not be an owner of any issuer offering securities pursuant to the exemption provided by this section.

(IV) An online intermediary shall not be compensated based on the amount of securities sold. The fee that an online intermediary may charge an issuer for an offering of securities pursuant to the exemption provided by this section must be either:

(A) A fixed amount for each offering;

(B) A variable amount based on the length of time that the securities are offered by the online intermediary; or

(C) A combination of the fixed and variable amounts.

(V) An online intermediary shall not identify, promote, or otherwise refer to any individual security offered by it in any advertising for or on behalf of the online intermediary.

(VI) An online intermediary shall not engage in any other activities that the securities commissioner, by rule, determines are prohibited by the online intermediary.

(VII) An online intermediary and a director, executive officer, general partner, managing member, or other person with management authority over the online intermediary must not have been subject to any conviction, order, judgment, decree, or other action that would disqualify an issuer from claiming an exemption pursuant to rule 506 (a) to (d) adopted by the securities exchange commission pursuant to the federal "Securities Act of 1933", 17 CFR 230.506 (a) to (d).

(4) **Rules.** The securities commissioner may adopt rules to:

(a) Implement or enforce this section or provide exceptions or waivers to the requirements of this section; or

(b) Conform or add to the requirements of this section to accommodate the requirements of federal law applicable to the offer or sale of a security by an issuer under this section.

Source: L. 2015: Entire section added, (HB 15-1246), ch. 98, p. 279, § 1, effective August 5. **L. 2016:** (3)(a)(IV)(D), (3)(a)(IV)(F), and (3)(a)(IX) amended, (HB 16-1049), ch. 3, p. 5, § 1, effective March 9.

11-51-309. Discretionary exemptions. The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, from time to time add any

securities to the securities exempted in section 11-51-307 or add any transactions to the transactions exempted in section 11-51-308, if the securities commissioner finds that the application of sections 11-51-301 and 11-51-305 to such securities or transactions is not necessary in the public interest and for the protection of investors.

Source: L. 90: Entire article R&RE, p. 719, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-113 as it existed prior to 1990.

11-51-310. Denial or revocation of exemptions. (1) (a) The securities commissioner may, by order, deny or revoke the exemption specified in section 11-51-307 (1)(g) with respect to a specific security or transaction if the securities commissioner finds that such order is necessary in the public interest and for the protection of investors.

(b) The securities commissioner may, by summary order under section 11-51-606 (3)(b), summarily suspend the exemption specified in section 11-51-307 (1)(g) as to a specific security or issuer pending final determination of any proceeding under this subsection (1).

(2) The securities commissioner may, by rule or order, deny or revoke any exemption specified in section 11-51-308 (1)(i), (1)(j), and (1)(p) with respect to a specific security, transaction, issuer, or class of persons if the issuer, any of its predecessors, or any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, or any of its promoters then presently connected with the issuer in any capacity has been convicted within ten years of any felony in connection with the purchase or sale of any security. Such ten years shall be any ten years prior to any offer or sale of a security for which such exemption would otherwise be available.

(3) No order under subsection (1) or (2) of this section may operate retroactively. No person may be considered to have violated section 11-51-301 or 11-51-305 by reason of any offer or sale effected after the entry of an order under subsection (1) or (2) of this section if that person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.

Source: L. 90: Entire article R&RE, p. 720, § 1, effective July 1. **L. 94:** (1)(b) amended, p. 1839, § 3, effective July 1.

Editor's note: This section is similar to former § 11-51-113 as it existed prior to 1990.

11-51-311. Coordination of exemptions. In furtherance of the policy stated in section 11-51-101 (3), the exemptions under sections 11-51-307 to 11-51-309 shall be coordinated with exemptions for securities and transactions under the federal "Securities Act of 1933" so that an offering registered under the federal "Securities Act of 1933" shall be subject to registration by filing under this article in the absence of an exemption under this article and so that an offering exempt from registration under the federal "Securities Act of 1933", other than pursuant to the exemption for intrastate offerings, shall also be exempt from registration under this article. The securities commissioner shall make, amend, and rescind rules in order to effectuate such policy. Nothing in this section shall limit the powers or actions of the securities commissioner to make, amend, and rescind rules with regard to exemptions provided by sections 11-51-307 and 11-51-

308 or added by section 11-51-309 but not contained in the federal "Securities Act of 1933" or rules and regulations thereunder.

Source: L. 90: Entire article R&RE, p. 720, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-113 as it existed prior to 1990.

Cross references: For the "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.

PART 4

LICENSING AND REGULATION OF BROKER-DEALERS AND SALES REPRESENTATIVES

11-51-401. Licensing and notice filing requirements. (1) A person shall not transact business in this state as a broker-dealer or sales representative unless licensed or exempt from licensing under section 11-51-402.

(1.5) A person with a place of business in this state shall not transact business in this state as an investment adviser or investment adviser representative unless such person is licensed as such or exempt from licensing under section 11-51-402.

(1.6) A federal covered adviser either with a place of business in this state or who employs or otherwise engages an individual with a place of business in this state to act as an investment adviser representative shall not transact business in this state as a federal covered adviser unless such adviser has filed with the securities commissioner the notice and fee required in sections 11-51-403 and 11-51-404.

(2) Neither a broker-dealer nor an issuer shall employ or otherwise engage an individual to act as a sales representative in this state unless the sales representative is licensed or exempt from licensing under section 11-51-402.

(2.5) An investment adviser shall not employ or otherwise engage any individual with a place of business in this state to act as an investment adviser representative in this state unless such individual is licensed in accordance with section 11-51-403 or is exempt from licensing under section 11-51-402 (1).

(3) No broker-dealer, investment adviser, or issuer shall employ or otherwise engage a person to participate in any activity in this state contrary to an order by the securities commissioner applicable to that person under section 11-51-410. A broker-dealer, investment adviser, or issuer does not violate this subsection (3) if the broker-dealer, investment adviser, or issuer sustains the burden of proof that it did not know and in the exercise of reasonable care could not have known of the order. Upon request from a broker-dealer, investment adviser, or issuer and for good cause shown, the securities commissioner may waive the prohibition of this subsection (3) with respect to a person subject to an order under section 11-51-410.

(4) No person shall act as an investment adviser for a local government investment pool trust fund under article 75 of title 24, C.R.S., unless the person has first notified the securities commissioner by filing the form prescribed by the securities commissioner.

Source: L. 90: Entire article R&RE, p. 720, § 1, effective July 1. **L. 98:** (1.5), (1.6), (2.5), and (4) added and (3) amended, p. 550, § 4, effective January 1, 1999.

Editor's note: This section is similar to former § 11-51-105 as it existed prior to 1990.

Cross references: For provisions concerning the use of the term "transacting business in this state" in subsections (1.5), (1.6), and (2.5) of this section, see § 11-51-102 (8); for the applicability of subsections (1) and (2), see § 11-51-102 (1) and (2).

11-51-402. Exempt broker-dealers, sales representatives - sanctions - exempt investment advisers and investment adviser representatives. (1) The following broker-dealers are exempt from the license requirement of section 11-51-401 (1):

(a) A broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" and has no place of business in this state if the business transacted in this state as a broker-dealer is exclusively with the following:

(I) Issuers in transactions involving their own securities;

(II) Other broker-dealers licensed or exempt from licensing under this article, except when the broker-dealer is acting as a clearing broker-dealer for such other broker-dealers;

(III) Financial or institutional investors;

(IV) Individuals who are existing customers of the broker-dealer and whose principal places of residence are not in this state;

(V) During any twelve consecutive months, not more than five persons in this state, excluding persons described in subparagraphs (I) to (IV) of this paragraph (a);

(b) Other broker-dealers the securities commissioner by rule or order exempts; and

(c) An online intermediary operating pursuant to section 11-51-308.5.

(2) The following sales representatives are exempt from the license requirement of section 11-51-401 (1):

(a) A sales representative employed or otherwise engaged by a broker-dealer exempt under subsection (1) of this section;

(b) A sales representative employed or otherwise engaged by an issuer in effecting transactions only in securities exempted by section 11-51-307 (1)(a) to (1)(d) or (1)(j);

(c) A sales representative employed by an issuer in effecting transactions only with employees, partners, officers, or directors of the issuer or of a parent or subsidiaries of the issuer, if no commission or other similar compensation is paid or given directly or indirectly to the sales representative for soliciting an employee, partner, officer, or director in this state; and

(d) Other sales representatives the securities commissioner by rule or order exempts.

(3) Any real estate broker or salesman licensed pursuant to part 1 of article 61 of title 12, C.R.S., who is trading only in securities comprised of notes, bonds, or evidences of indebtedness secured by mortgages or deeds of trust upon real estate, where the broker or salesman acts as the agent for the buyer or seller of the real estate securing the note, bond, or evidence of indebtedness being traded and is neither the issuer nor affiliated with or under the direct or indirect control of the issuer or an affiliate of the issuer of the note, bond, or evidence of indebtedness, is exempt from the license requirement of section 11-51-401 (1).

(4) (a) The securities commissioner may by order revoke, suspend, or impose conditions upon exemptions available pursuant to subparagraph (III) of paragraph (a) of subsection (1) of

this section and paragraph (a) of subsection (2) of this section if the securities commissioner finds that a broker-dealer or sales representative who has an exemption pursuant to either of said sections offered or sold, other than in an unsolicited transaction, to a public entity in the state of Colorado a financial instrument that such broker-dealer or sales representative knew or should have known does not qualify for sale to the public entity pursuant to section 24-75-601.1, C.R.S., and that such action by the securities commissioner is in the public interest.

(b) Any proceeding concerning an order made pursuant to this subsection (4) shall be conducted as a proceeding under section 11-51-606 (1), (2), (4), and (5).

(5) The following investment advisers with no place of business in this state are exempt from the license requirement of section 11-51-401 (1.5):

(a) An investment adviser who:

(I) Is exempt from registration as an investment adviser pursuant to section 203 (b) of the federal "Investment Advisers Act of 1940";

(II) Has only clients in this state that are: Other investment advisers; federal covered advisers; broker-dealers; depository institutions; insurance companies; employee benefit plans with assets of not less than one million dollars; or other institutional investors other than any local government investment pool trust fund under article 75 of title 24, C.R.S., as are designated by rule or order of the securities commissioner; or

(III) During the preceding twelve-month period, has had not more than five clients other than those specified in subparagraph (II) of this paragraph (a).

(b) The commissioner may by rule or order exempt other investment advisers from the license requirement of section 11-51-401 (1.5).

(6) Investment adviser representatives employed by or otherwise associated with an investment adviser exempt under subsection (5) of this section are exempt from the license requirement of section 11-51-401 (1.5).

Source: L. 90: Entire article R&RE, p. 721, § 1, effective July 1. **L. 95:** (4) added, p. 773, § 2, effective May 24. **L. 98:** (5) and (6) added, p. 550, § 5, effective January 1, 1999. **L. 99:** (6) amended, p. 619, §10, effective August 4. **L. 2003:** (3) amended, p. 1988, § 23, effective May 22. **L. 2015:** IP(1), (1)(a)(V), and (1)(b) amended and (1)(c) added, (HB 15-1246), ch. 98, p. 287, § 3, effective August 5.

Editor's note: This section is similar to former § 11-51-105 as it existed prior to 1990.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

11-51-403. Application for license - notice filing requirements. (1) An applicant for a license as a broker-dealer, sales representative, investment adviser, or investment adviser representative shall file with the securities commissioner or with the securities commissioner's designee an application for a license and the consent to service of process required by section 11-51-706. The application shall contain the information and be in the form the securities commissioner requires by rule. If the information contained in an application is inaccurate or incomplete in any material respect when the application is filed or becomes inaccurate or

incomplete in any material respect as a result of any subsequent event, the applicant shall promptly file an amendment to the application to cure the inaccuracy or omission. The securities commissioner may require an applicant to submit additional information that is material to an understanding of information about the applicant available to the securities commissioner in the application or otherwise, and an application shall be incomplete until all additional information required by the securities commissioner has been submitted.

(2) The application requirement of subsection (1) of this section for broker-dealers and sales representatives is satisfied by an applicant who has filed and maintains complete and current registration information with the securities and exchange commission, in the case of a broker-dealer, or a self-regulatory organization, in the case of a sales representative, if that registration information and the consent to service of process required by section 11-51-706 are provided to the securities commissioner through the central registration depository. Any additional information the securities commissioner may require from such an applicant pursuant to subsection (1) of this section must be material to an understanding of information about the broker-dealer or sales representative that is provided to the securities commissioner through the central registration depository.

(2.5) The application requirement of subsection (1) of this section for an investment adviser and an investment adviser representative is satisfied by an applicant who has filed and maintains complete and current registration information with the investment adviser registration depository if that registration information and the consent to service of process required by section 11-51-706 are provided to the securities commissioner through the investment adviser registration depository. Any additional information the securities commissioner may require from such an applicant pursuant to subsection (1) of this section must be material to an understanding of information about the investment adviser or investment adviser representative that is provided to the securities commissioner through the investment adviser registration depository.

(3) (a) A federal covered adviser who, during any calendar year, either has a place of business in this state or employs or engages an investment adviser representative with a place of business in this state shall file with the securities commissioner annually a consent to service of process and such documents as are filed by such adviser with the securities and exchange commission that the commissioner may require by rule or order.

(b) The notice filing requirement described in paragraph (a) of this subsection (3) does not apply to any federal covered adviser who, during such calendar year, neither has a place of business in this state nor employs nor engages an investment adviser representative with a place of business in this state.

(c) A notice filing under this section shall be effective from its receipt by the securities commissioner until December 31 of each year. Thereafter, it may be renewed annually until the following December 31 by filing with the securities commissioner a copy of such documents as are required pursuant to paragraph (a) of this subsection (3) and payment of a fee pursuant to section 11-51-404.

(4) Any person required to pay a fee under this section may transmit through any designee of the securities commissioner any fee required by this section or by rules promulgated under this section.

Source: L. 90: Entire article R&RE, p. 722, § 1, effective July 1. **L. 98:** Entire section amended, p. 551, § 6, effective April 30. **L. 2001:** (1) amended and (2.5) and (4) added, p. 15, § 2, effective March 9.

11-51-404. License and notice fees. (1) (a) An applicant for a license as a broker-dealer, sales representative, investment adviser, or investment adviser representative shall pay an initial license fee, and a licensed person shall pay an annual license fee, determined and collected by the division of securities pursuant to section 11-51-707.

(b) A federal covered adviser required to file an annual notice with the securities commissioner pursuant to section 11-51-403 (3)(a) shall pay an annual notice fee that shall be determined and collected pursuant to section 11-51-707.

(2) If an annual license fee is not paid within ninety days after the application is filed, the securities commissioner may deem the application to be withdrawn.

(3) (a) (I) If an annual license or notice fee is not paid within thirty days after the securities commissioner sends a written notice that the fee was not paid when due, the amount of the annual license fee shall be double the amount originally payable.

(II) In the case of a broker-dealer, investment adviser, or federal covered adviser, written notice is deemed sent when the notice is sent to the broker-dealer, investment adviser, or federal covered adviser.

(III) In the case of a sales representative, written notice is deemed sent to the sales representative when the notice is sent to a broker-dealer or an issuer for whom the sales representative is licensed to act.

(IV) In the case of an investment adviser representative, written notice is deemed sent when the notice is sent to the investment adviser or federal covered adviser for whom the investment adviser representative is licensed to act.

(b) (I) If an annual license or notice fee is not paid within sixty days after the securities commissioner sends the written notice described in paragraph (a) of this subsection (3), the securities commissioner may by order summarily suspend the license or, in the case of a federal covered adviser, the authority to do business in this state.

(II) In the case of a broker-dealer, investment adviser, or federal covered adviser, the securities commissioner shall send a copy of the order to the broker-dealer, investment adviser, or federal covered adviser whose license or authority to do business in this state has been summarily suspended.

(III) In the case of a sales representative who has been licensed to act for a broker-dealer or an issuer and whose license has been summarily suspended, the securities commissioner shall send a copy of the order to a broker-dealer or an issuer for whom the sales representative has been licensed to act.

(IV) In the case of an investment adviser representative who has been licensed to act for an investment adviser or federal covered adviser and whose license has been summarily suspended, the securities commissioner shall send a copy of the order to the investment adviser or federal covered adviser for whom the investment adviser representative has been licensed to act.

(4) If the annual license or notice fee is not paid within thirty days after the effective date of an order of summary suspension, the securities commissioner may by order summarily

revoke the license or authority to do business in this state on the grounds that the license or authority has been abandoned.

(5) If an application is denied or withdrawn, or a license or authority to do business in this state is abandoned, revoked, suspended, or withdrawn, the securities commissioner shall retain all fees paid.

Source: L. 90: Entire article R&RE, p. 722, § 1, effective July 1. **L. 98:** Entire section amended, p. 552, § 7, effective April 30. **L. 2015:** (1)(a) amended, (SB 15-104), ch. 177, p. 578, § 6, effective May 11.

Editor's note: This section is similar to former § 11-51-106 as it existed prior to 1990.

11-51-405. Examinations and alternate qualifications. (1) In the case of a license as a broker-dealer, if the applicant is not registered as a broker-dealer under the federal "Securities Exchange Act of 1934", the securities commissioner may by rule require the successful completion of a standardized written examination by any individual who will have primary responsibility to supervise any licensed sales representative of the broker-dealer. In the case of an application for a license as a sales representative to act for a broker-dealer who is not registered as a broker-dealer under the federal "Securities Exchange Act of 1934" or to act for an issuer, the securities commissioner may by rule require the successful completion of a standardized written examination by the applicant. Examinations may differ among classes of applicants. Any examination may be administered by the securities commissioner or any person the securities commissioner may designate.

(2) An applicant for a license as a broker-dealer or sales representative who is a licensed real estate broker or salesman pursuant to part 1 of article 61 of title 12, C.R.S., and whose securities activities in this state are limited to trading in securities comprised of notes, bonds, or other evidences of indebtedness secured by mortgages or deeds of trust upon real estate shall be excused from any examination requirement under subsection (1) of this section.

(3) In the case of a license as an investment adviser representative, the securities commissioner may by rule require the successful completion of one or more standardized written examinations. Examinations may differ among classes of applicants. Any examination may be administered by the securities commissioner or any person the securities commissioner may designate.

(4) The securities commissioner may by rule designate other qualifications and credentials that will be accepted in lieu of meeting the examination requirement set forth in subsection (3) of this section.

Source: L. 90: Entire article R&RE, p. 723, § 1, effective July 1. **L. 98:** (3) and (4) added, p. 553, § 8, effective January 1, 1999. **L. 2003:** (2) amended, p. 1989, § 24, effective May 22.

Editor's note: This section is similar to former § 11-51-106 (2.1) as it existed prior to 1990.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

11-51-406. General provisions. (1) (a) Unless a proceeding under section 11-51-410 is instituted, the license of a broker-dealer, sales representative, or investment adviser representative becomes effective upon the last to occur of the following:

(I) The passage of thirty days after the filing of the application or, in the event any amendment is filed before the license becomes effective, the passage of thirty days after the filing of the latest amendment, if the application, including all amendments, if any, was complete at the commencement of the thirty-day period;

(II) The examination requirement under section 11-51-405 is satisfied;

(III) In the case of a broker-dealer, the requirements of section 11-51-407 are satisfied; and

(IV) The required fee has been paid.

(b) The securities commissioner may authorize an earlier effective date of licensing.

(c) A notice filing by a federal covered adviser becomes effective upon receipt by the securities commissioner of the documents and fee required to be filed pursuant to sections 11-51-403 and 11-51-404.

(2) The securities commissioner may by rule or order, waive or reduce any of the requirements of this section and sections 11-51-405 and 11-51-407 with respect to any person or class of persons and, in connection with the waiver or reduction of any requirement, may limit or impose conditions on the securities activities that such person or class of persons may conduct in this state.

(3) (a) The license of a sales representative is effective only with respect to actions taken for a broker-dealer or issuer for whom the sales representative is licensed.

(b) The license of an investment adviser representative is effective only with respect to actions taken for an investment adviser or federal covered adviser with whom such investment adviser representative is employed or otherwise associated with as shown in the most current information filed by or on behalf of such representative pursuant to section 11-51-403 or 11-51-407 (3).

(4) (a) A person may act as a sales representative for more than one broker-dealer or issuer.

(b) A person may act as an investment adviser representative for more than one investment adviser or federal covered adviser and may also act as an investment adviser representative and a sales representative.

(5) (a) If a licensed sales representative ceases to be employed or otherwise engaged by a broker-dealer or issuer or ceases to act as a sales representative, the broker-dealer or, in the case of a sales representative licensed to act for an issuer, the sales representative shall promptly notify the securities commissioner. A notification required by this subsection (5) may be given by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of 1934" by filing the information through the central registration depository.

(b) If a licensed investment adviser representative ceases to be employed or otherwise engaged by an investment adviser or federal covered adviser or ceases to act as an investment adviser representative, the investment adviser or federal covered adviser shall promptly notify the securities commissioner.

(6) The license of a broker-dealer, sales representative, or investment adviser representative is effective until terminated by revocation or withdrawal.

Source: L. 90: Entire article R&RE, p. 723, § 1, effective July 1. **L. 98:** IP(1)(a), (3), (4), (5), and (6) amended and (1)(c) added, p. 554, § 9, effective January 1, 1999.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

11-51-407. Operating requirements. (1) (a) The securities commissioner may by rule require licensed broker-dealers who are not registered under the federal "Securities Exchange Act of 1934":

(I) To satisfy specified minimum financial responsibility requirements;

(II) To file with the securities commissioner specified financial and other information;

(III) To make and maintain specified records and to preserve such records for five years or such other period as may be specified;

(IV) To establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article; and

(V) To acquire and keep in force a fidelity bond in such minimum amount and covering such risks as may be specified.

(b) The securities commissioner may by rule require licensed investment advisers whose principal office and place of business is in this state, and licensed investment advisers whose principal office and place of business is not in this state but that is either not licensed in the state where it maintains its principal office and place of business or not in compliance with such state's financial operating requirements or books and records requirements:

(I) To file with the securities commissioner specified financial and other information;

(II) To make and maintain specified records and to preserve such records for five years or such other period as may be specified; and

(III) To establish written supervisory procedures and a system for applying such procedures that is reasonably expected to prevent and detect violations of this article.

(c) If a broker-dealer or investment adviser at any time knows, or has reason to know, that it is not in compliance with any rule made by the securities commissioner under this subsection (1), the broker-dealer or investment adviser shall promptly notify the securities commissioner of all relevant facts.

(2) The securities commissioner may by rule require licensed broker-dealers who are registered under the federal "Securities Exchange Act of 1934" to make, maintain, and preserve specified records, but no rule made by the securities commissioner under this subsection (2) shall require any broker-dealer to make, maintain, or preserve any records other than those required to be made, maintained, and preserved under the federal "Securities Exchange Act of 1934".

(3) (a) Every licensed broker-dealer, licensed investment adviser, and every licensed sales representative shall file with the securities commissioner such information as may be necessary to correct any information in that person's application for license that is or has become inaccurate in any material respect. The requirements of this subsection (3) may be satisfied by a broker-dealer who is registered as a broker-dealer under the federal "Securities Exchange Act of

1934" or by a sales representative licensed to act for such a broker-dealer by filing the correcting information through the central registration depository.

(b) A federal covered adviser who has filed the notice described in section 11-51-403 shall file with the securities commissioner a copy of each amendment filed by such adviser with the securities and exchange commission at the time such amendment is filed with the securities and exchange commission.

(4) Every licensed broker-dealer who is not registered under the federal "Securities Exchange Act of 1934" shall at all times have in its employment one or more individuals who have passed the written examination required under section 11-51-405 for individuals with supervisory responsibility. Every licensed investment adviser shall at all times have one or more individuals employed or otherwise associated with the investment adviser designated as having supervisory responsibilities over the investment adviser representatives of such adviser. Such individual or individuals shall have primary responsibility to supervise all of the licensed sales representatives of the broker-dealer, or all of the licensed investment adviser representatives of the investment adviser, as the case may be, and, for the purposes of section 11-51-410, each such individual who is not a partner, officer, or director of the broker-dealer or investment adviser shall be deemed a person occupying a similar status or performing similar functions as a partner, officer, or director. A broker-dealer or investment adviser who is not in compliance with this subsection (4) shall promptly notify the securities commissioner of all relevant facts.

(5) No investment adviser with its principal office and place of business in this state or investment adviser representative of a licensed investment adviser with a place of business in this state shall take or maintain custody or possession of any funds or securities in which any client of such person has any beneficial interest unless:

(a) All of the securities of each client are segregated, marked to identify the particular client with any beneficial interest therein, and held in safekeeping in some place reasonably free from risk of loss, damage, or destruction; and

(b) (I) All of the funds of each client are deposited in one or more accounts, containing only clients' funds, at a depository institution; and

(II) Each account is maintained in the name of the investment adviser or a federal covered adviser as agent or trustee for such clients; and

(III) A separate record is maintained for each such account that shows the name and address of the depository institution where the account is maintained, the dates and amounts of deposits to and withdrawals from the account, and the exact amount of each client's beneficial interest in the account; and

(c) Written notification is sent to the client giving the place and manner in which the client's funds or securities will be maintained immediately after the investment adviser or investment adviser representative accepts custody or possession of such funds or securities from the client and thereafter, if and when there is any change in the place or manner, written notification is sent to the client explaining the change; and

(d) An itemized statement is sent to each client, at least once every three months, that shows the client's funds and securities in the custody or possession of the investment adviser or investment adviser representative at the end of the period and all debits, credits, and transactions affecting the funds and securities during the period; and

(e) A certified public accountant or, with the prior written consent of the client, a public accountant verifies all funds and securities of clients at least once during each calendar year

through an actual examination. Such examination shall be at a time chosen by the accountant without prior notice to the investment adviser or investment adviser representative. The investment adviser shall file with the securities commissioner promptly after each such examination a certificate from the accountant in which such accountant avers to the commissioner that the accountant has performed an examination of the funds and securities accounts, and in which the accountant describes the nature and extent of the examination, and the results and conclusions reached.

(f) The investment adviser or investment adviser representative who has custody of client funds or securities posts bonds in amounts and with conditions the securities commissioner may by rule prescribe, subject to the limitations of section 222 (c) of the federal "Investment Advisers Act of 1940". Any equivalent deposit of cash or securities shall be accepted in lieu of any bonds so required. Every bond shall provide for suit thereon by any person who has a cause of action under section 11-51-604 (3) and (5).

Source: L. 90: Entire article R&RE, p. 724, § 1, effective July 1. **L. 98:** (1), (3), and (4) amended and (5) added, p. 555, § 10, effective January 1, 1999.

Editor's note: This section is similar to former § 11-51-110 as it existed prior to 1990.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

11-51-408. Licensing of successor firms. (1) (a) A licensed broker-dealer or investment adviser may file an application for a license on behalf of a successor, whether or not the successor is in existence. If a broker-dealer or investment adviser succeeds to and continues the business of a licensed broker-dealer or investment adviser and the successor files an application for a license within thirty days after the succession, the license of the predecessor remains effective as the license of the successor for sixty days after the succession. An application filed pursuant to this subsection (1) must satisfy all requirements of an application under this article.

(b) A federal covered adviser may file a notice on behalf of a successor, whether or not the successor is in existence.

(2) If a successor is licensed or authorized to do business in this state pursuant to subsection (1) of this section, the license of each sales representative or investment adviser representative licensed to act for the predecessor shall remain effective as a license to act for the successor without a separate filing or payment of a separate fee.

Source: L. 90: Entire article R&RE, p. 725, § 1, effective July 1. **L. 98:** Entire section amended, p. 558, § 11, effective January 1, 1999.

11-51-409. Access to records. (1) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, the records, within or without this state, of a licensed broker-dealer or investment adviser that are required to be made and maintained pursuant to this article in order to determine compliance with this article. A licensed broker-

dealer or investment adviser may maintain such records in any form of data storage if the records are readily accessible to the securities commissioner in legible form.

(2) The securities commissioner, in a manner reasonable under the circumstances, may copy records required to be made and maintained under this article or require a licensed broker-dealer or investment adviser, at the expense of the broker-dealer or investment adviser, to copy such records and provide copies to the securities commissioner.

(3) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, the records, within or without this state, of a licensed sales representative or investment adviser representative that are made and maintained by the sales representative or investment adviser representative in the normal course of business in order to determine compliance with this article.

(4) The securities commissioner, in a manner reasonable under the circumstances, may copy records made and maintained by a licensed sales representative or investment adviser representative in the normal course of business or require a licensed sales representative or investment adviser representative, at the sales representative's or investment adviser representative's expense, to copy such records and provide copies to the securities commissioner.

Source: L. 90: Entire article R&RE, p. 725, § 1, effective July 1. **L. 98:** Entire section amended, p. 558, § 12, effective January 1, 1999.

Editor's note: This section is similar to former § 11-51-110 as it existed prior to 1990.

11-51-409.5. Mandatory disclosure - investment advisers and investment adviser representatives. (1) Each investment adviser and investment adviser representative of a licensed investment adviser shall furnish a written disclosure statement to each prospective client and to each client who is to receive investment advisory services. Such statement shall, at a minimum, contain the information the securities commissioner by rule requires to be furnished to clients or prospective clients by an investment adviser and an investment adviser representative. In the interests of uniformity, the requirements for disclosure of information under such rules should be coordinated and consistent with those that would be imposed under the federal "Investment Advisers Act of 1940" and the rules promulgated pursuant to that act, and with the requirements of other states, unless the securities commissioner makes the specific finding that to do so would be contrary to the public interest, the protection of investors and advisory clients in this state, and the purposes of this article.

(2) The disclosure statement described in subsection (1) of this section shall be delivered before the client or prospective client incurs any obligation for or in connection with the investment advisory services. In addition, the investment adviser or investment adviser representative shall annually deliver or offer to deliver without charge upon written request of each client a true copy of the most recently available disclosure statement.

Source: L. 98: Entire section added, p. 559, § 13, effective January 1, 1999.

Cross references: For the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

11-51-410. Denial, suspension, or revocation. (1) The securities commissioner may by order deny an application for a license, suspend or revoke a license, censure a licensed person, limit or impose conditions on the securities activities that a licensed person may conduct in this state, and bar a person from association with any licensed broker-dealer, investment adviser, or federal covered adviser in the conduct of its business in this state in such capacities and for such period as the order specifies. These sanctions may be imposed only if the securities commissioner makes a finding, in addition to the findings required by section 11-51-704 (2), that the applicant or licensed person or, in the case of a broker-dealer or investment adviser, a partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) Has filed an application for a license with the securities commissioner that, as of the effective date of the license or as of any date after filing in the case of an order denying effectiveness, 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 sustains the burden of proof that the applicant did not know and in the exercise of reasonable care could not have known of the untruth or omission;

(b) Has willfully violated or willfully failed to comply with any provision of this article or any rule or order under this article, except any rule that is subject to the additional findings required by paragraph (g) of this subsection (1);

(c) Within the past ten years, has entered a plea of guilty or nolo contendere to, or has been convicted of, any felony, any misdemeanor involving a breach of fiduciary duty or fraud, or any misdemeanor in connection with a purchase or sale of a security;

(d) Is subject to a temporary or permanent injunction issued by a court of competent jurisdiction in an action instituted by the securities commissioner, the securities agency or administrator of another state or a foreign jurisdiction, the securities and exchange commission, or the commodity futures trading commission, for violating any securities registration or broker-dealer, investment adviser, federal covered adviser, or similar license requirement in any federal, state, or foreign law or for engaging in fraudulent conduct;

(e) Is currently the subject of an order of the securities commissioner denying, suspending, or revoking the person's license as a broker-dealer, investment adviser, sales representative, or investment adviser representative or barring the person from association with any licensed broker-dealer, investment adviser, or federal covered adviser;

(f) Is currently the subject of any of the following orders issued within the past five years:

(I) An order by the securities agency or administrator of another state or a foreign jurisdiction, entered after notice and opportunity for hearing and based upon fraudulent conduct, denying or revoking the person's license as a broker-dealer, investment adviser, sales representative, or investment adviser representative, or the substantial equivalent of those terms, or suspending or barring the right of the person to be associated with a broker-dealer, investment adviser, or federal covered adviser;

(II) An order by the securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a broker-dealer under the federal "Securities Exchange Act of 1934" or as an investment adviser under the federal "Investment Advisers Act of 1940" or suspending or barring the right of the person to be associated with a broker-dealer or investment adviser;

(III) An order by the commodity futures trading commission, entered after notice and opportunity for hearing, denying, suspending, or revoking registration under the federal "Commodity Exchange Act"; or

(IV) A suspension or expulsion from membership in or association with a member of a self-regulatory organization;

(g) Has willfully engaged in a course of conduct involving the violation of one or more rules made by the securities commissioner that prohibit unfair and dishonest dealings by a broker-dealer or sales representative, including any rule that may be made to define conduct prohibited by section 11-51-501, if each such rule is based upon a finding, in addition to the findings required by section 11-51-704 (2), which finding itself must be based on information provided by broker-dealers and sales representatives at a hearing on the proposed rule, that licensed broker-dealers and sales representatives who will be required to comply with the rule generally agree that the conduct prohibited by the rule does not meet prevailing standards of fair and honest dealing within the securities industry and that it is reasonable to expect the rule will prevent or deter such conduct;

(h) In the case of a broker-dealer who is not registered under the federal "Securities Exchange Act of 1934", is not in compliance with of section 11-51-407 (4);

(i) Has failed reasonably to supervise, with a view to preventing violations of this article, another person who is subject to the person's supervision and who commits such a violation, but for the purpose of this paragraph (i) no person shall be deemed to have failed to supervise another person if there existed established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and such person reasonably discharged the duties and obligations incumbent upon such person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

(j) Has ceased to do business as a broker-dealer, investment adviser, sales representative, or investment adviser representative;

(k) Has offered or sold to a public entity in the state of Colorado a financial instrument that such person knew or should have known does not qualify for sale to the public entity under section 24-75-601.1, C.R.S.;

(l) In the case of an investment adviser or investment adviser representative, willfully has:

(I) Failed to provide a client with a written disclosure statement as required pursuant to section 11-51-409.5; or

(II) Engaged in conduct contrary to one or more rules wherein the securities commissioner prohibits dishonest or unethical conduct in connection with providing investment advisory services. This subparagraph (II) applies to an investment adviser representative employed by or affiliated with a federal covered adviser only to the extent permitted under the federal "National Securities Markets Improvement Act of 1996". In the interests of uniformity, any rules promulgated pursuant to this subparagraph (II) shall be coordinated and consistent with the regulation of federal covered advisers by the securities and exchange commission under the federal "Investment Advisers Act of 1940" and the rules promulgated pursuant to that act, and with the rules of other states regarding such conduct by investment advisers and investment adviser representatives, unless the securities commissioner makes the specific finding that to do

so would be contrary to the public interest, the protection of investors and advisory clients in this state, and the purposes of this article.

(m) After notice and opportunity for a hearing, has been found within the previous ten years:

(I) By a court with jurisdiction, to have wilfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(II) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, sales representative, investment adviser, investment adviser representative, or similar person; or

(III) To have been suspended or expelled from membership or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction; or

(n) (I) Is not qualified because of training, experience, or knowledge of the securities business; except that in the case of an applicant who is a sales representative for a broker-dealer that is a member of a self-regulatory organization or for an individual as an investment adviser representative, a denial order may not be based on this paragraph (n) if the applicant has successfully completed all examinations required by this article.

(II) The securities commissioner may require an applicant for a license pursuant to section 11-51-403, who has not been registered or licensed in any state within the two years preceding the filing of an application in this state, to successfully complete an examination.

(2) The securities commissioner may not begin a proceeding under this section against any person more than ninety days after a license has been issued to that person on the basis of a fact or transaction which the person shows was known to the securities commissioner when the license was issued or when any prior license of the same class was issued to that person if such prior license was not revoked on the basis, in whole or in part, of such fact or transaction.

(3) For good cause shown the securities commissioner may waive or modify an order previously made under this section as it applies to any person with the consent of that person.

(4) The securities commissioner may suspend the license of a licensee pursuant to a summary order issued under section 11-51-606 (4) and such order shall be valid pending a final determination in any proceeding brought pursuant to this section subject to any modification made to such order under section 11-51-606 (4)(c).

(5) Where a person is an applicant for a license, or is licensed by the securities commissioner in more than one capacity, or both, and one or more grounds for sanction as set forth in subsection (1) of this section as they may apply to one application, license, or association with a broker-dealer, investment adviser, or federal covered adviser has been established either by findings of fact and conclusions of law or alleged before the securities commissioner on stipulation, the securities commissioner may impose one or more of such sanctions not only regarding the application, license, or association giving rise to the matter, but also upon any other application, license, or association under this section if the securities commissioner makes the additional findings that to do so is necessary and appropriate in the public interest and for the protection of investors.

Source: L. 90: Entire article R&RE, p. 726, § 1, effective July 1. **L. 94:** (1)(d) and (1)(f)(I) amended and (4) added, p. 1839, § 4, effective July 1. **L. 95:** (1)(i) and (1)(j) amended and (1)(k) added, p. 774, § 3, effective May 24. **L. 98:** (1) amended and (5) added, p. 559, § 14, effective January 1, 1999. **L. 2004:** (1)(m) and (1)(n) added, p. 515, § 3, effective July 1.

Editor's note: This section is similar to former § 11-51-111 as it existed prior to 1990.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940); for the "Commodity Exchange Act", see Pub.L. 67-331, codified at 7 U.S.C. sec. 1 et seq.; for the "National Securities Markets Improvement Act of 1996", see Pub.L. 104-290, 110 Stat. 3416 (1996).

11-51-411. Abandonment of license. If a licensed person has died or ceased to exist as a legal entity, has been adjudicated incompetent, or cannot be located by the securities commissioner after a reasonable search, the securities commissioner may by order summarily revoke the license on the grounds that the license has been abandoned.

Source: L. 90: Entire article R&RE, p. 728, § 1, effective July 1.

11-51-412. Withdrawal. (1) An application for a license may be withdrawn without prejudice by the applicant upon written notice to the securities commissioner before the license becomes effective unless a proceeding under section 11-51-410 to deny the license is pending.

(2) Withdrawal from licensing as a broker-dealer, investment adviser, sales representative, or investment adviser representative becomes effective thirty days after receipt by the securities commissioner of an application to withdraw, or at such earlier time as the securities commissioner may allow, unless:

(a) A proceeding under section 11-51-410 against the licensed person is pending when the application is filed or is instituted within thirty days thereafter; or

(b) Additional information regarding the application is requested by the securities commissioner within thirty days after the application is filed.

(3) If a proceeding is pending or instituted under subsection (2) of this section, withdrawal becomes effective at the time and upon the conditions the securities commissioner by order determines. If additional information is requested, withdrawal is effective thirty days after the additional information is received by the securities commissioner. If no proceeding is pending or instituted under subsection (2) of this section and withdrawal becomes effective, the securities commissioner may institute a proceeding under section 11-51-410 within one year after withdrawal became effective and enter an order as of the last date on which licensing was effective.

(4) Unless another date is specified by the federal covered adviser, withdrawal of a notice filing by a federal covered adviser becomes effective upon receipt by the securities commissioner of notice from such adviser of the withdrawal.

Source: L. 90: Entire article R&RE, p. 728, § 1, effective July 1. **L. 98:** (2) amended and (4) added, p. 562, § 15, effective January 1, 1999.

PART 5

FRAUD AND OTHER
PROHIBITED CONDUCT

11-51-501. Fraud and other prohibited conduct. (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for a custodian of the funds or securities of a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., to effect any transaction to relinquish possession of, distribute, expend, or transfer any of the assets of the trust fund without the prior written authorization of the board, except for:

(a) The purchase or sale of authorized investments or the exchange of such assets for other assets of equal or greater value if such sale, purchase, or exchange is solely in the accounts of the trust fund;

(b) Distributions to participating local governments; or

(c) The payment of routine fees and expenses that have been authorized by the board of trustees in the annual budget of the trust fund.

(3) It is unlawful for any investment adviser of a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., to:

(a) Take custody or possession of the funds or securities of the trust fund;

(b) Act as a principal in any transaction in securities with the trust fund unless the express prior written authorization of the board of trustees is obtained with regard to each such transaction and unless the transaction is effected without mark-up and at the fair market price of the securities purchased or sold; or

(c) Deposit, convey, or maintain the funds or securities of the trust fund in any account that is in any other name than that of the trust fund.

(4) It is unlawful for any broker-dealer or financial institution acting in an advisory capacity to a local government investment pool trust fund organized under the provisions of part 7 of article 75 of title 24, C.R.S., or any person employed by or directly associated with such broker-dealer or financial institution to:

(a) Act as a principal in any transaction in securities with the trust fund unless the express prior written authorization of the board of trustees is obtained with regard to each such transaction and unless the transaction is effected without mark-up and at the fair market price of the securities purchased or sold; or

(b) Deposit, convey, or maintain the funds or securities of the trust fund in any account that is in any other name than that of the trust fund.

(5) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or of any purchase or sale thereof, whether through the issuance of analyses or reports or otherwise to:

(a) Employ any device, scheme, or artifice to defraud any client or prospective client;

(b) Make an untrue statement of a material fact to any client or prospective client or to omit to state to any client or prospective client any material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading, in the disclosure statement delivered to any client or prospective client pursuant to section 11-51-409.5 or a similar document under the federal "Investment Advisers Act of 1940" or during the solicitation of any such client or otherwise in connection with providing investment advisory services; or

(c) Engage in any transaction, act, practice, or course of business that operates or would operate as a fraud or deceit upon any client or prospective client or that is fraudulent, deceptive, or manipulative.

(6) It is unlawful for an investment adviser or investment adviser representative acting as principal for such person's own account or on behalf of a third party to:

(a) Sell a security to a client without disclosing in writing pursuant to section 11-51-409.5 the capacity in which the investment adviser or investment adviser representative is acting before the completion of the transaction; or

(b) Fail to obtain the written consent of the client to such transaction after disclosure has been made and before completion of the transaction.

(7) Nothing in subsection (5) or (6) of this section shall relieve an investment adviser, federal covered adviser, or investment adviser representative of liability under any other subsection of this section.

Source: L. 90: Entire article R&RE, p. 728, § 1, effective July 1. **L. 93:** (2) to (4) added, p. 326, § 2, effective July 1. **L. 98:** (5) to (7) added, p. 562, § 16, effective January 1, 1999.

Editor's note: This section is similar to former § 11-51-123 (1) as it existed prior to 1990.

Cross references: For the applicability of this section, see § 11-51-102 (1), (2), and (9); for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

11-51-502. Misleading filings. It is unlawful for any person to make or cause to be made, in any document filed with the securities commissioner or in any proceeding under this article, any statement which the person knows or has reasonable grounds to know is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Source: L. 90: Entire article R&RE, p. 729, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-115 as it existed prior to 1990.

11-51-503. Unlawful representation concerning a license, registration, or exemption. (1) Neither the fact that an application for a license or a registration statement has been filed nor the fact that a person is licensed or a security is registered constitutes a finding by the securities commissioner that any document filed under this article is true, complete, and not

misleading. No such fact, nor the fact that an exemption or exception is available for a person, security, or transaction, means that the securities commissioner has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any person, security, or transaction.

(2) It is unlawful to make, or cause to be made, to any prospective purchaser or to any existing or prospective customer or client any representation inconsistent with subsection (1) of this section.

Source: L. 90: Entire article R&RE, p. 729, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-116 as it existed prior to 1990.

Cross references: For the applicability of this section, see § 11-51-102 (1) and (2).

PART 6

ENFORCEMENT AND CIVIL LIABILITY

11-51-601. Investigations - subpoenas. (1) The securities commissioner may make such public or private investigations within or outside of this state as the securities commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this article or any rule or order under this article or to aid in the enforcement of this article or in the prescribing of rules and forms under this article, may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this article or any rule or order under this article.

(2) For the purpose of any investigation or proceeding under this article, the securities commissioner or any officer designated by the securities commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the securities commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the securities commissioner, or the officer designated by the securities commissioner, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the securities commissioner, or in obedience to the subpoena of the securities commissioner or any officer designated by the securities commissioner, or in any proceeding instituted by the securities commissioner on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject that person to a penalty or forfeiture; but no document, evidence, or other information compelled under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an

individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

(5) (a) Information in the possession of, filed with, or obtained by the securities commissioner in connection with a private investigation under this section shall be confidential. No such information may be disclosed by the securities commissioner or any of the officers or employees of the division of securities unless necessary or appropriate in connection with a particular investigation or proceeding under this article or for any law enforcement purpose.

(b) As it relates solely to the preservation of the confidentiality of documents and other information obtained by the securities commissioner or any officer or employee of the division of securities pursuant to this section, the division of securities shall be construed as a criminal justice agency as defined in section 24-72-302 (3), C.R.S., and such documents and other information shall be treated as criminal justice records as defined in section 24-72-302 (4), C.R.S.

(c) Except as set forth in this subsection (5), no provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the securities commissioner or any of the officers or employees of the division of securities.

Source: L. 90: Entire article R&RE, p. 729, § 1, effective July 1. **L. 94:** (5) amended, p. 1840, § 5, effective July 1.

Editor's note: This section is similar to former § 11-51-119 as it existed prior to 1990.

11-51-602. Enforcement by injunction. (1) Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court of the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. If the action is against a broker-dealer, investment adviser, federal covered adviser, sales representative, or investment adviser representative and the court finds that such person has committed a violation of section 11-51-501, in addition to any other relief, the court may enter an order imposing such conditions on such person as the court deems appropriate. In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the securities commissioner to post a bond.

(2) The securities commissioner may include in any action authorized by subsection (1) of this section, relating to any violation of section 11-51-301, 11-51-401, or 11-51-501, a claim for damages under section 11-51-604 or restitution, disgorgement, or other equitable relief on behalf of some or all of the persons injured by the act or practice constituting the subject matter of the action, if the applicable scienter standard of section 11-51-604 is met. No person shall be liable for damages or for restitution, disgorgement, or other equitable relief in any action authorized by subsection (1) of this section for a violation of section 11-51-301 due solely to a

failure to file the prescribed notification of exemption or to pay the required exemption fee for an exemption under section 11-51-308 (1)(p).

Source: L. 90: Entire article R&RE, p. 730, § 1, effective July 1. **L. 98:** (1) amended, p. 563, § 17, effective January 1, 1999.

Editor's note: This section is similar to former § 11-51-122 as it existed prior to 1990.

11-51-603. Criminal penalties. (1) Any person who willfully violates the provisions of section 11-51-501 commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, except section 11-51-501, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(3) The securities commissioner may refer such evidence as is available to the securities commissioner under authority of this article concerning any violation which constitutes the commission of any felony or misdemeanor, including any violation of subsection (1) or (2) of this section, to the attorney general or the proper district attorney, who may, with or without such a reference, prosecute the appropriate criminal proceedings under this article or otherwise as authorized by law, or the securities commissioner may refer such evidence to the proper United States attorney.

(4) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(5) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

Source: L. 90: Entire article R&RE, p. 731, § 1, effective July 1. **L. 2002:** (1) and (2) amended, p. 1471, § 42, effective October 1.

Editor's note: This section is similar to former § 11-51-124 as it existed prior to 1990.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

11-51-603.5. Concurrent enforcement by attorney general - legislative declaration. (1) To facilitate the attorney general's enforcement of criminal violations under this article as contemplated by section 11-51-603 (3), the general assembly finds that the investigation of criminal violations under this article is the primary responsibility of the attorney general, concurrently with the district attorneys of this state.

(2) For the purpose of providing adequate funding to the department of law for the investigation and prosecution of allegations of securities fraud, a portion of the fees collected under this article shall be allocated to the department of law for the investigation and prosecution of criminal violations under this article.

Source: L. 2005: Entire section added, p. 802, § 1, effective June 1.

11-51-604. Civil liabilities. (1) Any person who sells a security in violation of section 11-51-301 is liable to the person buying the security from such seller for the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition. No person is liable under this subsection (1) for a violation of section 11-51-301 due solely to a failure to file the prescribed notification of exemption or to pay the required exemption fee for an exemption under section 11-51-308 (1)(p).

(2) (a) Except as provided in paragraph (b) of this subsection (2), any broker-dealer or sales representative who sells a security in violation of section 11-51-401 is liable to the person buying the security from such seller for the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition.

(b) No broker-dealer or sales representative is liable under this subsection (2) for a sale of a security exempt from registration under section 11-51-307 (1)(g) to (1)(j) or for a sale of a security in a transaction exempt from registration under section 11-51-308 (1)(a), (1)(e) to (1)(l), (1)(o), or (1)(p); but this paragraph (b) does not apply if at the time of such sale:

(I) In the case of a violation of section 11-51-401 arising from the failure of a broker-dealer to be licensed under this article, such broker-dealer was registered as a broker-dealer under the federal "Securities Exchange Act of 1934", licensed as a broker-dealer or its equivalent under the laws of another state, or held a limited license under this article; or

(II) In the case of a violation of section 11-51-401 arising from the failure of a sales representative to be licensed under this article, such sales representative was licensed as a sales representative or its equivalent under the laws of another state, held a limited license under this article, or in connection with such sale was acting for a broker-dealer which was registered as a broker-dealer under the federal "Securities Exchange Act of 1934", licensed as a broker-dealer or its equivalent under the laws of another state, or licensed under this article.

(2.5) An investment adviser or investment adviser representative who violates section 11-51-401 is liable to each person to whom investment advisory services are provided in violation of such section in an amount equal to the greater of one thousand dollars or the value of all the benefits derived directly or indirectly from the relationship or dealings with such person prior to such time as the violation may be cured, together with interest at the statutory rate from the date of receipt of such benefits, costs, and reasonable attorney fees.

(2.6) An investment adviser or investment adviser representative who provides investment advisory services to another person but who recklessly, knowingly, or with an intent to defraud fails to furnish to that person a written disclosure statement as required by section 11-51-409.5 is liable to such other person in an amount equal to one thousand dollars, the value of all benefits derived directly or indirectly from the relationship or dealings with such person, or

for actual damages suffered by such other person, whichever is greatest, plus interest at the statutory rate, costs, reasonable attorney fees, or such other legal or equitable relief as the court may deem appropriate.

(3) Any person who recklessly, knowingly, or with an intent to defraud sells or buys a security in violation of section 11-51-501 (1) or provides investment advisory services to another person in violation of section 11-51-501 (5) or (6) is liable to the person buying or selling such security or receiving such services in connection with the violation for such legal or equitable relief that the court deems appropriate, including rescission, actual damages, interest at the statutory rate, costs, and reasonable attorney fees.

(4) Any person who sells a security in violation of section 11-51-501 (1)(b)(the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission is liable to the person buying the security from such person, who may sue to recover the consideration paid for the security, together with interest at the statutory rate from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or is liable for damages if the buyer no longer owns the security. Damages are deemed to be the amount that would be recoverable upon a tender, less the value of the security when the buyer disposed of it, and interest at the statutory rate from the date of disposition.

(5) (a) Every person who, directly or indirectly, controls a person liable under subsection (1), (2), (2.5), (2.6), or (3) of this section is liable jointly and severally with and to the same extent as such controlled person, unless the controlling person sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(b) Every person who, directly or indirectly, controls a person liable under subsection (3) or (4) of this section is liable jointly and severally with and to the same extent as such controlled person, unless such controlling person sustains the burden of proof that such person acted in good faith and did not, directly or indirectly, induce the act or acts constituting the violation or cause of action.

(c) Any person who knows that another person liable under subsection (3) or (4) of this section is engaged in conduct which constitutes a violation of section 11-51-501 and who gives substantial assistance to such conduct is jointly and severally liable to the same extent as such other person.

(6) Any tender specified in this section may be made at any time before entry of judgment.

(7) Every cause of action under this article survives the death of any individual who might have been a plaintiff or defendant.

(8) No person may sue under subsection (1), (2), (2.5), or (2.6) or paragraph (a) of subsection (5) of this section more than two years after the contract of sale, or, as those provisions pertain to investment advisers, federal covered advisers, investment adviser representatives, and persons who provide investment advisory services, more than two years after the date of the violation. No person may sue under subsection (3) or (4) or paragraph (b) or (c) of subsection (5) of this section more than three years after the discovery of the facts giving rise to a cause of action under subsection (3) or (4) of this section or after such discovery should have been made by the exercise of reasonable diligence and in no event more than five years

after the purchase or sale, or, as those provisions pertain to investment advisers, federal covered advisers, investment adviser representatives, and persons who provide investment advisory services, more than five years after the date of the violation.

(9) No buyer or seller of securities or recipient of investment advice may sue under this section if:

(a) The buyer or seller of securities or recipient of investment advice receives, before the action is commenced, documentation of:

(I) An offer stating how liability under this section may arise and fairly advising the buyer or seller of securities or recipient of investment advice of that person's rights in connection with the offer and any information necessary, including financial, to correct any material misrepresentation or omission in the information that was required by this article to be furnished to the person at the time of the purchase, sale, or rendering of investment advice;

(II) If the basis for relief under this subsection (9) is for a violation of subsection (1), (3), or (4) of this section and the person seeking recision is a buyer of securities:

(A) An offer to repurchase the security for cash, payable on delivery of the security, in an amount equal to the consideration paid plus interest at the statutory rate from the date of the purchase less the amount of any income received on the security; or

(B) If the buyer no longer owns the security, an offer to pay the purchaser, upon acceptance of the offer, damages in the amount that would be recoverable upon tender of the security less the value of the security when the buyer disposed of the security plus interest at the statutory rate from the date of the purchase, in cash, equal to the damages computed in the manner provided in this subparagraph (II);

(III) If the basis for relief under this subsection (9) is for a violation of subsection (1), (3), or (4) of this section and the person seeking recision is a seller of securities:

(A) An offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the buyer, and interest at the statutory rate after the date of sale of the security to the buyer; or

(B) If the buyer no longer owns the security, an offer to pay the seller of the security upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the buyer's conduct that may have caused liability and interest at the statutory rate after the date of sale of the security by the seller to the buyer;

(IV) If the basis for relief under this subsection (9) is a violation of subsection (2) of this section:

(A) If the person is a buyer, an offer to pay pursuant to subparagraph (II) of this paragraph (a); or

(B) If the person is a seller of securities, an offer to tender or to pay as specified in subparagraph (III) of this paragraph (a);

(V) If the basis for relief under this subsection (9) is a violation of subsection (2.5) of this section, an offer to reimburse, in cash, the consideration paid for the advice and interest at the statutory rate from the date of the payment;

(VI) If the basis for relief under this subsection (9) is a violation of subsection (2.6) of this section, an offer to reimburse, in cash, the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the statutory rate from the date of the violation causing the loss;

(b) The offer pursuant to paragraph (a) of this subsection (9) states that the offer must be accepted by the buyer or seller of securities or recipient of investment advice within thirty days after the offer is mailed by the buyer or seller of securities or recipient of investment advice. The party seeking recision may request that the securities commissioner authorize a time period for acceptance that is less than thirty days but not less than three days. The securities commissioner shall have the authority to grant such change in the acceptance period.

(c) The offeror has the ability to pay the amount offered or to tender the security under paragraph (a) of this subsection (9) at the time the offer is made;

(d) The offer pursuant to paragraph (a) of this subsection (9) is delivered to the buyer or seller of securities or recipient of investment advice, or sent in a manner that ensures receipt by the buyer or seller of securities or recipient of investment advice; or

(e) The buyer or seller of securities or recipient of investment advice who accepts the offer made pursuant to paragraph (a) of this subsection (9) is paid in accordance with the terms of the offer.

(10) No person who has made or engaged in the performance of any contract in violation of any provision of this article or any rule or order under this article or who has acquired any purported right under any such contract with knowledge of the facts by reason of which the making or performance of any such contract was in violation may base any suit on the contract.

(11) Any condition, stipulation, or provision binding any person acquiring or disposing of any security to waive compliance with any provision of this article or any rule or order under this article is void.

(12) The rights and remedies provided by this article may be pleaded and proved in the alternative and are in addition to any other rights or remedies that may exist at law or in equity, but this article does not create any cause of action not specified in this section or section 11-51-602.

(13) Any person liable under this section may seek and obtain contribution from other persons liable under this section, directly or indirectly, for the same violation. Contribution shall be awarded by the court in accordance with the actual relative culpabilities of the various persons so liable.

(14) In the case of a willful violation of or a willful refusal to comply with or obey an order issued by the securities commissioner to any person pursuant to section 11-51-410 or 11-51-606, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the court regarding such violation or refusal. If the securities commissioner establishes by a preponderance of the evidence that the person willfully violated or willfully refused to comply with or obey the order, the court may impose legal and equitable sanctions as are available to the court in the case of contempt of court and as the court deems appropriate upon such person.

Source: L. 90: Entire article R&RE, p. 731, § 1, effective July 1. **L. 94:** (14) added, p. 1840, § 6, effective July 1. **L. 98:** (2.5) and (2.6) added and (3), (5)(a), and (8) amended, p. 564, § 18, effective January 1, 1999. **L. 2004:** (9) amended, p. 515, § 4, effective July 1.

Editor's note: This section is similar to former § 11-51-125 as it existed prior to 1990.

Cross references: For the applicability of this section, see § 11-51-102 (7); for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

11-51-605. Burden of proof. In any proceeding under this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

Source: L. 90: Entire article R&RE, p. 733, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-113 (5) as it existed prior to 1990.

11-51-606. Conduct of proceedings - cease-and-desist orders - consent orders - summary orders - issued by securities commissioner - rules. (1) Any administrative proceeding under this article shall be conducted pursuant to the provisions of sections 24-4-104 and 24-4-105, C.R.S.; except that section 24-4-104 (3), C.R.S., shall not apply to any proceeding conducted pursuant to this article. Except as specified in paragraph (d) of subsection (1.5) or paragraph (e) of subsection (3) of this section, the securities commissioner shall refer the conduct of all hearings to an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., or a panel of the securities board in the discretion of the securities commissioner, based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter. Every hearing in an administrative proceeding shall be public unless the securities commissioner, in the securities commissioner's discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

(1.5) (a) Whenever it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that a person has committed or may commit any of the acts or practices listed in paragraph (b) of this subsection (1.5), then, in addition to any specific powers granted under this article, the securities commissioner, in his or her discretion, may issue to such person an order to show cause why the securities commissioner should not enter a final order directing such person to cease and desist from the unlawful act or practice, or impose such other sanctions as provided in subparagraph (IV) of paragraph (d) of this subsection (1.5). The securities commissioner shall, within two calendar days, notify the chairperson of the securities board or an administrative law judge that an order to show cause has been issued, and the chairperson or administrative law judge shall set a date for hearing on such order before the securities board or administrative law judge as provided in paragraph (d) of this subsection (1.5).

(b) The securities commissioner may take action pursuant to paragraph (a) of this subsection (1.5) with regard to any of the following acts or practices:

(I) The sale of a security is subject to registration under this article and the security is being offered or has been offered or sold in violation of section 11-51-301, or any rule or order under said section;

(II) Any person has engaged or is about to engage in the offer or sale of a security or any other act or practice in violation of section 11-51-401 or any rule or order under said section;

(III) Any person has engaged or is about to engage in the offer or sale of a security or any other act or practice in violation of section 11-51-501 or any rule or order under said section;

(IV) Any person has engaged or is about to engage in any act or practice in violation of any provision of article 53 of this title; or

(V) Any person has violated or is about to violate any order previously entered by the securities commissioner.

(c) Any person against whom an order to show cause has been entered pursuant to paragraph (a) of this subsection (1.5) shall be promptly notified by the securities division of the entry of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the chairperson of the securities board or an administrative law judge for hearing on such order. Such notice may be served by United States mail, postage prepaid, to the last-known address of such person, by personal service, by facsimile transmission, or as may be practicable upon any person against whom such order is entered. Mailing or facsimile transmission of an order or other documents under this subsection (1.5), or personal service of such orders or documents, shall constitute notice thereof to the person.

(d) (I) The hearing on an order to show cause shall be commenced no sooner than ten nor later than twenty-one calendar days following the date of transmission or service of the notification by the securities division as provided in paragraph (c) of this subsection (1.5). The hearing may be continued by agreement of all of the parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than thirty-five calendar days following the date of transmission or service of the notification.

(II) If a person against whom an order to show cause entered pursuant to paragraph (a) of this subsection (1.5) does not appear at the hearing, the securities division may present evidence that notification was properly sent or served upon such person pursuant to paragraph (c) of this subsection (1.5) and such other evidence related to the matter as the securities board or administrative law judge deems appropriate. In the case where such person does not appear, the securities commissioner may not issue an order unless there is a finding by the securities board or administrative law judge that there is a reasonable basis to believe such notification was actually received or served, or, after reasonable search by the securities division, the person against whom the order was entered cannot be located. The securities commissioner shall enter such order within ten days after his or her determination related to reasonable attempts of notification of the respondent, and the order shall become final as to that person by operation of law.

(III) At any hearing pursuant to this paragraph (d), the securities board or administrative law judge shall take evidence and hear arguments from the securities division and the person against whom the order to show cause has been entered, pursuant to such rules and procedures as may be adopted by the securities commissioner. Based on the evidence entered and arguments heard at the hearing, the securities board or administrative law judge shall enter findings of fact, conclusions of law, and an initial decision recommending to the securities commissioner that a final order be entered affirming, denying, vacating, or otherwise modifying the order to show cause. The initial decision shall be issued within ten days after the conclusion of the hearing provided pursuant to this paragraph (d) and shall be promptly delivered to the securities commissioner.

(IV) If the securities commissioner reasonably finds that the person against whom the order to show cause was entered has engaged, or is about to engage, in acts or practices constituting violations as set forth in paragraph (b) of this subsection (1.5) and makes the

findings required by section 11-51-704 (2), he or she may issue a final cease-and-desist order imposing one or more of the following sanctions:

(A) Directing such person to cease and desist from further unlawful acts or practices;

(B) Censuring the person, if the person is a licensed broker-dealer, sales representative, investment adviser, or investment adviser representative; or

(C) Requiring such person to undertake or comply with conditions or limitations placed upon the activities, functions, or operations of such person, within such reasonable time period as may be imposed by the securities commissioner.

(V) The securities commissioner shall provide notice of the final order within ten calendar days after receiving the initial decision, in the manner set forth in paragraph (c) of this subsection (1.5), to each person against whom such order has been entered. The final order entered pursuant to subparagraph (IV) of this paragraph (d) shall be effective when issued, and shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(2) (a) Whenever it appears to the securities commissioner, based upon sufficient evidence presented to the securities commissioner in a stipulation between an officer or employee of the division of securities and any person, that such person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article, any rule promulgated pursuant to this article, or any order issued under this article, or any act or practice constituting grounds for administrative sanction under this article, the securities commissioner may issue a consent order against such person.

(b) In any consent order issued pursuant to this subsection (2), the securities commissioner may:

(I) Prohibit the respondent from any further violation of any provision, rule, or order under this article that is alleged in the stipulation to have been violated or from engaging in the conduct alleged in the stipulation as grounds for sanction under this article; and

(II) Impose conditions, limitations, or sanctions as stipulated.

(3) (a) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that, in the case of a registration statement subject to the escrow provisions in section 11-51-302 (5) or (6), there has been a violation of such escrow provisions, or, in the case of any registration statement under section 11-51-304, any of the grounds specified in section 11-51-306 (1) exist, the securities commissioner may enter a summary stop order postponing or suspending the effectiveness of the registration statement.

(b) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that sufficient grounds exist under section 11-51-310 (1), the securities commissioner may enter a summary order under section 11-51-310 (1)(b) suspending the exemption from securities registration under section 11-51-307 (1)(g) as to a specified security or issuer pending final determination of a proceeding under that section.

(c) No summary order may be entered pursuant to this subsection (3) unless the securities commissioner determines, in addition to the findings required under section 11-51-704 (2), that immediate issuance of such summary order is imperatively necessary for the protection of investors. An order issued pursuant to this subsection (3) is effective when entered and shall be accompanied by a brief statement of findings of fact and conclusions of law.

(d) Upon entering a summary order, the securities commissioner shall promptly notify each person against whom it has been entered of its entry and the basis therefor by providing to each such person at such person's last known mailing address a copy of the order and the accompanying findings of fact and conclusions of law.

(e) (I) Any person against whom a summary stop order or summary order suspending exemption has been entered may make a written request to the securities commissioner that the matter be set for a hearing if such request is made within twenty-one calendar days after the date of entry of the order. Upon receipt of such request, the securities commissioner shall notify the chairperson of the securities board, and the chairperson shall set a date for a hearing within twenty-one days to determine whether to continue the summary order.

(II) Any such hearing before the securities board shall be conducted pursuant to the provisions of section 24-4-105, C.R.S. Following the hearing, the securities board shall issue its initial decision, accompanied by findings of fact and conclusions of law. The securities commissioner shall then enter a decision that shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(III) If the securities commissioner does not receive a request for a hearing pursuant to subparagraph (I) of this paragraph (e), the order shall become final twenty-one calendar days after the entry of such order.

(4) (a) If it appears to the securities commissioner, based upon sufficient evidence as presented in a petition by an officer or employee of the division of securities, that any of the grounds specified in section 11-51-410 (1) exist as to any licensed person or, in the case of a licensed broker-dealer, a partner, officer, director, person occupying a similar status or performing similar functions, or a person directly or indirectly controlling a broker-dealer, the securities commissioner may issue to such person an order to show cause why the securities commissioner should not summarily suspend the license of that person or limit or impose conditions on the securities activities of that person pending final determination of a proceeding under sections 24-4-104 and 24-4-105, C.R.S. The securities commissioner shall promptly notify the chairperson of the securities board that an order to show cause has been issued, and the chairperson shall set a date for hearing on such order before the securities board.

(b) Any person against whom an order to show cause has been entered shall be promptly notified by the securities division of the entry of such order and the basis therefor. Such notice shall include a copy of the order, and shall include the date set by the chairperson of the securities board for hearing on such order. In the case of a broker-dealer, the notification shall be sent both to the broker-dealer's last known mailing address and, if different, the most current mailing address the broker-dealer has on file with the securities commissioner as required in section 11-51-407 (3). In the case of a sales representative, notification shall be sent to the sales representative's last known mailing address, the most current mailing address the sales representative has on file with the securities commissioner as required in section 11-51-407 (3), and the last known mailing address of the broker-dealer or issuer for which the sales representative is licensed to act.

(c) (I) The hearing on the order to show cause shall be commenced no sooner than seven, nor later than twenty, calendar days following the date of transmission of notification of the respondent by the division of securities as provided in paragraph (b) of this subsection (4).

(II) The securities board shall take evidence and hear arguments from the securities division and the respondent. If the respondent does not appear, the securities division may

provide evidence that notification was promptly sent by the securities division to the respondent pursuant to paragraph (b) of this subsection (4). In the case where the respondent does not appear, the securities commissioner may not issue an order unless there is a finding by the securities board that there is reasonable basis to believe the respondent either received actual notice, or, after reasonable search by the securities division, cannot be located.

(III) Based on the evidence entered and arguments heard at the hearing, the securities board shall enter findings of fact, conclusions of law, and its initial decision recommending to the securities commissioner that an order be entered either denying the petition of the securities division for summary order or suspending the license of that person or otherwise limiting or imposing conditions on the securities activities of that person pending final determination of a proceeding under sections 24-4-104 and 24-4-105, C.R.S. Exceptions to the initial decision of the securities board must be filed with the securities commissioner within ten calendar days of the date of entry of such order. The securities commissioner shall then issue an order, which shall be a final order for purposes of judicial review pursuant to section 11-51-607.

(d) Any order entered under paragraph (c)(III) of this subsection (4) suspending a license or otherwise limiting or imposing conditions on the securities activities of the licensed person shall remain in effect during the pendency of a proceeding under sections 24-4-104 and 24-4-105, C.R.S., unless vacated or modified on judicial review pursuant to section 11-51-607 or by subsequent order of the securities commissioner after notice and opportunity for hearing.

(5) No order under subsection (3)(b), (3)(c), or (4)(a) of this section may be entered by the securities commissioner unless a proceeding under sections 24-4-104 and 24-4-105, C.R.S., either has been commenced, or is commenced promptly following or contemporaneously with the entry of such an order.

(6) The securities commissioner may promulgate a rule that defines what constitutes prompt filing and notification pursuant to this section.

Source: L. 90: Entire article R&RE, p. 734, § 1, effective July 1. **L. 94:** Entire section amended, p. 1841, § 7, effective July 1. **L. 2001:** (1) amended and (1.5) added, p. 800, § 1, effective July 1. **L. 2004:** (1), (1.5)(a), (1.5)(c), and (1.5)(d) amended and (6) added, pp. 517, 519, §§ 5, 6, effective July 1.

11-51-607. Judicial review of orders. (1) Any person aggrieved by a final order of the securities commissioner may obtain a review of the order in the court of appeals pursuant to the provisions of section 24-4-106 (11), C.R.S.

(2) The commencement of proceedings under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the securities commissioner's order.

Source: L. 90: Entire article R&RE, p. 734, § 1, effective July 1. **L. 94:** (1) amended, p. 1844, § 8, effective July 1.

Editor's note: This section is similar to former § 11-51-120 as it existed prior to 1990.

PART 7

ADMINISTRATION AND FEES

11-51-701. Division of securities - creation - powers and duties. There is hereby created the division of securities within the department of regulatory agencies, the head of which shall be the commissioner of securities, who shall be appointed by the executive director of the department of regulatory agencies, pursuant to the provisions of section 13 of article XII of the state constitution, and the securities board. The division shall be responsible for the administration of the provisions of articles 51, 53, and 59 of this title and part 7 of article 75 of title 24, C.R.S., and shall perform such other duties as are imposed upon it by law.

Source: L. 90: Entire article R&RE, p. 734, § 1, effective July 1. **L. 91:** Entire section amended, p. 2425, § 3, effective June 8. **L. 93:** Entire section amended, p. 327, § 3, effective July 1. **L. 94:** Entire section amended, p. 1845, § 9, effective July 1.

Editor's note: This section is similar to former § 11-51-103 as it existed prior to 1990.

11-51-702. Division subject to termination. (Repealed)

Source: L. 90: Entire article R&RE, p. 734, § 1, effective July 1. **L. 91:** Entire section repealed, p. 678, § 7, effective April 20.

Editor's note: Prior to its repeal, this section was similar to former § 11-51-104 as it existed prior to 1990.

11-51-702.5. Securities board - creation - duties - repeal. (1) There is hereby created the securities board within the department of regulatory agencies which shall consist of five persons appointed by the governor, subject to the consent and approval of the senate, as follows:

(a) Two persons who are licensed by the state supreme court to practice law in the state of Colorado and who are conversant in securities law;

(b) One person certified as a certified public accountant pursuant to article 2 of title 12, C.R.S.; and

(c) Two persons who are members of the public at large.

(2) (a) One of the members of the securities board shall reside west of the continental divide.

(b) The members shall serve terms of three years with each term ending on July 1 of the year in which the term expires.

(c) Any vacancy on the securities board occurring before the expiration of the term shall be filled by the governor for the remainder of the term.

(d) Securities board members may be removed for cause.

(e) Securities board members shall be reimbursed for actual and necessary expenses, not to include out-of-state travel expenses.

(f) Members of the board shall not serve more than two consecutive terms on the board.

(3) Securities board members shall be subject to the conflict of interest limitations placed on other employees of the division of securities pursuant to section 11-51-703 (2).

(4) The securities board shall provide oversight to the securities commissioner and shall be available to advise the securities commissioner at the request of the securities commissioner on issues affecting the division of securities and securities regulations in the state.

(5) The securities board shall meet as often as is necessary, but no less than quarterly. Meetings may be called by the chairperson of the securities board at the request of the securities commissioner or any member of the securities board.

(6) (a) The securities board shall aid and advise the securities commissioner at the request of the securities commissioner in connection with the duties of the securities commissioner under articles 51, 53, and 59 of this title and part 7 of article 75 of title 24, C.R.S., including but not limited to the promulgation of rules, issuance of orders, formulation of policies, and the setting of fees under such articles and other issues affecting the division of securities and securities regulation in the state.

(b) (Deleted by amendment, L. 2004, p. 15, § 1, effective July 1, 2004.)

(c) The securities board shall hear the matters described in section 11-51-606 (1.5)(d), (3)(e), and (4)(d) and issue the initial decisions as provided therein. The chairperson of the securities board shall determine the date and place for such hearings and may appoint a panel of the securities board consisting of no less than three board members to conduct such hearings. Any hearing held regarding an order issued by the securities commissioner under section 11-51-606 (3) or (4) shall be heard by the securities board.

(7) (a) This section is repealed, effective September 1, 2026.

(b) Prior to such repeal, the functions of the securities board shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 94: Entire section added, p. 1845, § 10, effective July 1. **L. 96:** (6)(c) amended, p. 1467, § 6, effective June 1. **L. 2001:** (6)(c) amended, p. 802, § 2, effective July 1. **L. 2004:** (2)(f) added and (6)(b) and (7)(a) amended, p. 15, §§ 2, 1, effective July 1. **L. 2015:** (2)(b), (2)(f), and (7)(a) amended, (SB 15-102), ch. 249, p. 910, § 2, effective May 29.

11-51-703. Administration of article. (1) The securities commissioner is hereby empowered to administer and enforce all provisions of this article and to provide the division of securities with such books, records, files, and printing and other supplies and employ such officers and clerical and other assistance as may be necessary in the securities commissioner's discretion to perform the duties required of the securities commissioner under this article.

(2) It is unlawful for the securities commissioner or any of the officers or employees of the division of securities to use for personal benefit any information which is filed with or obtained by the securities commissioner and which is not made public. No provision of this article authorizes the securities commissioner or any of such officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this article. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the securities commissioner or any of the officers or employees of the division of securities.

(3) The securities commissioner may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby public documents may be initially filed and maintained in the central registration depository, the investment adviser registration depository, or with other agencies or authorities. It is the intent of this subsection (3) that the securities commissioner be provided with the power to reduce the duplication of filings, reduce administrative costs, and, in conjunction with other states and with

federal authorities, establish uniform procedures, forms, and administration to be used by this state and by such other states and by such federal authorities.

(4) The securities commissioner may delegate to any officer of the division of securities any power, duty, authority, or function created by this article and vested in the securities commissioner, but nothing in this subsection (4) shall authorize the securities commissioner to delegate to any officer the securities commissioner's authority to make rules, institute proceedings or actions under section 11-51-306, 11-51-410, or 11-51-602, refer evidence under section 11-51-603 (3), or exercise the authority created by this section, section 11-51-704 (1) or (2), or section 11-51-707 (3)(a) or (3)(b).

Source: L. 90: Entire article R&RE, p. 734, § 1, effective July 1. **L. 2001:** (3) amended, p. 16, § 3, effective March 9.

Editor's note: This section is similar to former § 11-51-117 as it existed prior to 1990.

11-51-704. Rules, forms, and orders. (1) The securities commissioner may, from time to time, make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this article, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purpose of rules and forms, the securities commissioner may classify securities, persons, and matters within the securities commissioner's jurisdiction and prescribe different requirements for different classes.

(2) No rule, form, or order may be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission with a view to effectuating the policy of this article to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(3) The securities commissioner may, by rule or order, prescribe the form and content of financial statements required under this article, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. Unless the securities commissioner by rule or order provides otherwise, a financial statement required under this article must be prepared in accordance with generally accepted accounting principles or other accounting principles as are prescribed for the issuer of the financial statement by the securities and exchange commission.

(4) No provision of this article imposing any liability upon a person or providing a basis for any sanction against a person applies to any act done or omitted in good faith and in conformity with any rule, form, or order of the securities commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by any judicial or other authority to be invalid for any reason.

Source: L. 90: Entire article R&RE, p. 735, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-118 as it existed prior to 1990.

11-51-705. Interpretive opinions. The securities commissioner may honor requests from interested persons for confirmation of the applicability of particular exemptions from securities registration under sections 11-51-307 to 11-51-309 or for other interpretive opinions regarding any provision of this article. Any person making such a request shall pay an opinion fee, which shall be determined and collected pursuant to section 11-51-707 and which shall not be refundable. In response to any request for a confirmation or other interpretive opinion received under this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making such request.

Source: L. 90: Entire article R&RE, p. 736, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-126 as it existed prior to 1990.

11-51-706. Consent to service of process. (1) An applicant for licensing under this article, a person filing a registration statement under this article, and an issuer who proposes to offer in this state through an agent a security registered under this article shall file with the securities commissioner, in such form as the securities commissioner by rule prescribes, an irrevocable consent appointing the securities commissioner or the successor in office of the securities commissioner to be the attorney for said person to receive service of any lawful process in any noncriminal suit, action, or proceeding against such person, or the successor, executor, or administrator of such person, arising under this article or any rule or order under this article after the consent has been filed with the same force and validity as if served personally on the person filing the consent.

(2) A person who has filed a consent in compliance with subsection (1) of this section in connection with a previous application for licensing or registration need not file an additional consent, but the securities commissioner may request, and in response to such request such person shall provide, verification of such previous consent.

(3) Service upon any person who has filed a consent pursuant to subsection (1) of this section may be made by leaving a copy of the process in the office of the securities commissioner, but it is not effective unless the plaintiff, who may be the securities commissioner in a suit, action, or proceeding instituted by the securities commissioner, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address on file with the securities commissioner and unless the plaintiff's affidavit of compliance with this subsection (3) is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(4) The methods of service of process provided for in this section are in addition to other methods of service of process provided for by law, including section 13-1-124, C.R.S. Any violation of this article shall be deemed to constitute the transaction of business within this state for the purpose of section 13-1-124, C.R.S.

Source: L. 90: Entire article R&RE, p. 736, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-127 as it existed prior to 1990.

11-51-707. Collection of fees - division of securities cash fund created. (1) A fee payable under this article shall be deemed paid when the securities commissioner receives the payment.

(2) The securities commissioner shall transmit all fees collected under this article, not including fees retained by contractors pursuant to contracts entered into in accordance with section 11-51-405 or 24-34-101, C.R.S., to the state treasurer, who shall credit the same to the division of securities cash fund, which fund is hereby created. Pursuant to subsection (3) of this section, the general assembly shall make annual appropriations from said fund for expenditures of the division of securities. The expenditures incurred by the division shall be made out of such appropriations upon vouchers and warrants drawn pursuant to law. All moneys credited to the division of securities cash fund shall be used as provided in this section and shall not be deposited in or transferred to the general fund of this state or any other fund.

(3) (a) The division shall set the amount of each fee which it is authorized by law to collect under this article. The budget request and the fees for the division shall reflect direct and indirect costs. The division, in the discretion of the securities commissioner, may set registration fees payable under section 11-51-302 according to a scale of rates applied to the dollar amount of securities to be registered, with a maximum fee specified. The division, in the discretion of the securities commissioner, may set an investment company registration renewal fee payable under section 11-51-302 (7) and an exemption fee payable under section 11-51-307 (1)(k) for each series, portfolio, separate account, or fund of an open-end management company or unit investment trust. The division, in the discretion of the securities commissioner, may set registration fees payable under section 11-51-905 (4), according to a scale of rates applied to the asset size of the trust fund as of the date of registration. The division, in the discretion of the securities commissioner, may set annual fees payable under section 11-51-906 (4)(e), according to a scale of rates applied to the asset size of the trust fund as of the date of the filing of the annual audit.

(b) Based upon the appropriation made and subject to the approval of the executive director of the department of regulatory agencies, the division shall set its fees for a fiscal year so that the revenue generated from said fees approximates its direct and indirect costs, including statewide indirect costs. Such fees for a fiscal year may be adjusted by the securities commissioner no more often than twice during that fiscal year.

(c) On July 1 each year, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, its fees, when adjusted for the fiscal year next following that in which the supplemental appropriation was made, shall be adjusted by an additional amount which is sufficient to compensate for such supplemental appropriation. Funds appropriated to the division in the annual long appropriations bill shall be designated as a cash fund and shall not exceed the amount anticipated to be raised from fees collected by the division.

Source: L. 90: Entire article R&RE, p. 737, § 1, effective July 1. **L. 93:** (3)(a) amended, p. 331, § 5, effective July 1. **L. 94:** (3)(a) amended, p. 1847, § 11, effective July 1. **L. 2004:** (2) amended, p. 1253, § 3, effective May 27.

Editor's note: This section is similar to former § 11-51-129 as it existed prior to 1990.

11-51-708. Administrative files. (1) A document is filed when it is received by the securities commissioner.

(2) The securities commissioner shall keep a register of all applications for licenses and registration statements which are or have ever been effective under this article and all orders which have been entered under this article. The register shall be open for public inspection.

(3) The information contained in or filed with any registration statement, application, or report may be made available to the public under article 72 of title 24, C.R.S.

(4) Upon request and at such reasonable charges as the securities commissioner prescribes, the securities commissioner shall furnish to any person photostatic or other copies of any entry in the register or any document which is a matter of public record and may certify their authenticity; and the securities commissioner may also provide certification of the absence of any entry in the register or the absence of any document or other record from division files which are of public record. In any action, proceeding, or prosecution under this article, any copy so certified, and any certification by the securities commissioner as to the absence of any such entry, document, or record from division files, are prima facie evidence of the contents of the entry, document, or record so certified or of the absence of the entry, document, or record which is the subject of such certification.

Source: L. 90: Entire article R&RE, p. 738, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-126 as it existed prior to 1990.

PART 8

EFFECTIVE DATE - REPEAL OF ARTICLE

11-51-801. Effective date of article. This article shall be effective on and after July 1, 1990, subject to the provisions of section 11-51-802.

Source: L. 90: Entire article R&RE, p. 738, § 1, effective July 1.

11-51-802. Savings provisions. (1) Except as otherwise provided in this section, articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, exclusively govern all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring prior to July 1, 1990; except that no civil suit or action may be maintained to enforce any liability under such prior law unless brought within any period of limitation which applied when the cause of action accrued.

(2) All registrations of securities under such prior law in effect immediately prior to July 1, 1990, shall remain in effect after said date subject to revocation, termination, or withdrawal as provided under such prior law and subject to all administrative orders and all conditions relating to such registrations as were in effect under such prior law.

(3) Such prior law applies to any offer to sell or sale made no later than January 1, 1991, pursuant to an offering begun in good faith before July 1, 1990, on the basis of an exemption available under said prior law.

(4) (a) Every person registered or exempt from registration as a broker, dealer, principal, or representative under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, shall be automatically licensed as a broker-dealer or sales representative, as the case may be, under this article on July 1, 1990, subject to all fines, censures, suspensions, revocations, conditions, or limitations imposed upon or in connection with such registration or exemption or upon such person, as if imposed upon or in connection with a license under this article, so long as such sanctions would have remained in effect under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990. Such sanctions shall continue to be governed by such prior law.

(b) There are no grounds for the denial of automatic licensing under paragraph (a) of this subsection (4). After July 1, 1990, every person automatically licensed under paragraph (a) of this subsection (4) shall comply with the provisions of this article as if such person's license had been originally obtained by application under the provisions of this article.

(c) No proceeding under section 11-51-410 may be initiated by the securities commissioner against any person who is licensed pursuant to paragraph (a) of this subsection (4) if the proceeding is based upon:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1)(c) to (1)(f) entered or imposed prior to July 1, 1990; or

(II) Any act or course of conduct within section 11-51-410 (1)(a), (1)(b), (1)(g), (1)(i), or (1)(j) initiated and concluded prior to July 1, 1990.

(d) Nothing in this subsection (4) limits the authority of the securities commissioner or any hearing officer, administrative law judge, or court to consider any event or circumstance which has occurred or existed prior to July 1, 1990:

(I) In connection with any proceeding or action other than a proceeding under section 11-51-410; or

(II) Solely in connection with a determination of appropriate sanctions in a proceeding under section 11-51-410 which is based upon:

(A) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1)(c), (1)(d), (1)(e), or (1)(f) entered or imposed on or after July 1, 1990; or

(B) Any act or course of conduct within section 11-51-410 (1)(a), (1)(b), (1)(g), (1)(h), (1)(i), or (1)(j) concluded on or after July 1, 1990.

(e) Nothing in this subsection (4) limits the authority of the securities commissioner to initiate a proceeding under section 11-51-410 with regard to:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1)(c) to (1)(f) entered or imposed on or after July 1, 1990, without regard for when the underlying act or conduct was initiated or concluded; or

(II) Any act or course of conduct within section 11-51-410 (1)(a), (1)(b), (1)(g), (1)(h), (1)(i), or (1)(j) concluded on or after July 1, 1990, without regard for when such act or conduct was initiated.

(f) Any administrative action by the securities commissioner under articles 51 and 52 of this title, as said articles existed prior to July 1, 1990, initiated or pending prior to July 1, 1990, against an applicant for registration, or a person registered or exempt from registration, as a

broker, dealer, principal, financial principal, representative, or financial representative shall be governed by such prior law; except that as of July 1, 1990, such action shall be construed as an action under section 11-51-410 either to deny an application for a license or to impose sanctions against a licensed person, as the case may be, and the sanctions provided under section 11-51-410 shall apply.

(5) (a) Any person with a place of business in this state who is registered with the securities and exchange commission as an "investment adviser" under the federal "Investment Advisers Act of 1940", who is exempt from registration as an investment adviser pursuant to section 203 (b) of said act, or who is registered as an investment adviser in any other state, and who, prior to January 1, 1999, has filed an application and paid the appropriate fee in compliance with the requirements set forth in sections 11-51-403 and 11-51-404, shall be licensed automatically as an investment adviser under this article effective January 1, 1999.

(b) Any individual with a place of business in this state who is associated either with a federal covered adviser, or an investment adviser licensed automatically pursuant to paragraph (a) of this subsection (5), and regarding whom, prior to or on January 1, 1999, an application has been filed and the appropriate fee paid in compliance with the requirements set forth in sections 11-51-403 and 11-51-404, shall be licensed automatically as an investment adviser representative for such federal covered adviser or investment adviser under this article, effective January 1, 1999. Automatic licensing under this paragraph (b) is unavailable to any individual who is the subject of any plea, conviction, decree, order, or other action described in section 11-51-410 (1)(c) to (1)(f) entered or imposed prior to January 1, 1999, or is currently the subject of a proceeding in which any of the sanctions set forth in such paragraphs could be imposed.

(c) After January 1, 1999, no proceeding under section 11-51-410 may be initiated by the securities commissioner against any person who is licensed automatically pursuant to paragraph (a) or (b) of this subsection (5) if the proceeding is based upon:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1)(c) to (1)(f) entered or imposed prior to January 1, 1999; or

(II) Any act or course of conduct within section 11-51-410 (1)(a), (1)(b), (1)(g), (1)(h), (1)(i), or (1)(j) initiated and concluded prior to January 1, 1999.

(d) Nothing in this subsection (5) limits the authority of the securities commissioner or any hearing officer, administrative law judge, or court to consider any event or circumstance that has occurred or existed prior to January 1, 1999:

(I) In connection with any proceeding or action other than a proceeding under section 11-51-410; or

(II) Solely in connection with a determination of appropriate sanctions in a proceeding under section 11-51-410 based upon:

(A) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1)(c) to (1)(f) entered or imposed on or after January 1, 1999; or

(B) Any act or course of conduct within section 11-51-410 (1)(a), (1)(b), (1)(g), (1)(h), (1)(i), or (1)(j) concluded on or after January 1, 1999.

(e) Nothing in this subsection (5) limits the authority of the securities commissioner to initiate a proceeding under section 11-51-410 with regard to:

(I) Any plea, conviction, decree, order, or other action described in section 11-51-410 (1)(c) to (1)(f) entered or imposed on or after January 1, 1999, without regard for when the underlying act or conduct was initiated or concluded; or

(II) Any act or course of conduct within section 11-51-410 (1)(a), (1)(b), (1)(g), (1)(h), (1)(i), or (1)(j) concluded on or after January 1, 1999, without regard for when such act or conduct was initiated.

Source: L. 90: Entire article R&RE, p. 738, § 1, effective July 1. **L. 98:** (5) added, p. 565, § 19, effective January 1, 1999.

Editor's note: This section is similar to former § 11-51-128 as it existed prior to 1990.

Cross references: For the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940).

11-51-803. Repeal of article. (1) This article is repealed, effective September 1, 2026.

(2) Prior to such repeal, the division of securities shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 90: Entire article R&RE, p. 740, § 1, effective July 1. **L. 91:** Entire section amended, p. 678, § 8, effective April 20. **L. 94:** (1) amended, p. 1847, § 12, effective July 1. **L. 2004:** (1) amended, p. 520, § 7, effective July 1. **L. 2015:** (1) amended, (SB 15-104), ch. 177, p. 578, § 7, effective May 11.

PART 9

LOCAL GOVERNMENT INVESTMENT
POOL TRUST FUND ADMINISTRATION
AND ENFORCEMENT ACT

11-51-901. Short title. This part 9 shall be known and may be cited as the "Local Government Investment Pool Trust Fund Administration and Enforcement Act".

Source: L. 93: Entire part added, p. 327, § 4, effective July 1.

11-51-902. General powers of securities commissioner. The securities commissioner is hereby empowered to administer and enforce the provisions of part 7 of article 75 of title 24, C.R.S., and all the provisions of this part 9.

Source: L. 93: Entire part added, p. 327, § 4, effective July 1.

11-51-903. Interests in local government investment pool trust fund. (1) For the purposes of this part 9, unless the context otherwise requires:

(a) The interest of a participating local government in a local government investment pool trust fund is a "security", as defined by section 11-51-201 (17); and

(b) The solicitation of a local government to participate in a local government investment pool trust fund constitutes an "offer" to sell a security, as defined by section 11-51-201 (13)(c), by the trust fund to the local government, and the consummation of an agreement to

participate in a local government investment pool trust fund constitutes a "sale" of a security, as defined by section 11-51-201 (13)(a), by the trust fund to the local government.

Source: L. 93: Entire part added, p. 327, § 4, effective July 1.

11-51-904. Requirement for registration of local government investment pools. (1) It is unlawful for the board of trustees of any local government investment pool trust fund to permit the investment of trust fund assets unless the trust fund is registered with the securities commissioner under this part 9.

(2) It is unlawful for a local government to participate in a local government investment pool trust fund unless the trust fund is registered with the securities commissioner under this part 9.

Source: L. 93: Entire part added, p. 328, § 4, effective July 1.

11-51-905. General registration requirements. (1) A local government investment pool trust fund shall register with the securities commissioner under this part 9 by filing a notice, in such form as prescribed by the securities commissioner, and a copy of the resolution adopted pursuant to section 24-75-703, C.R.S.

(2) Any local government investment pool trust fund organized pursuant to the provisions of part 7 of article 75 of title 24, C.R.S., as it existed prior to July 1, 1993, shall register with the securities commissioner under this part 9 by filing a notice, in such form as prescribed by the securities commissioner, and the resolution adopted pursuant to the provisions of part 7 of article 75 of title 24, C.R.S., as it existed prior to July 1, 1993, no later than thirty days after July 1, 1993.

(3) The information to be provided to the securities commissioner by a local government investment pool trust fund in the notice for registration shall include, but need not be limited to:

(a) The name and address of the trust fund;

(b) The name and address of the administrator of the trust fund;

(c) The name and address of each of the custodians of the assets of the trust fund;

(d) The name and address of each of the investment advisers of the trust fund and each of the financial institutions acting in an advisory capacity for the trust fund;

(e) Identification of each participating local government in the trust fund; and

(f) The total assets of the trust fund as of the date of filing.

(4) Every filing of the notice and resolution required under this section shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-51-707; except that no such registration fee shall be more than five thousand dollars.

Source: L. 93: Entire part added, p. 328, § 4, effective July 1.

11-51-906. Reports to securities commissioner. (1) A local government investment pool trust fund shall inform the securities commissioner of any material change regarding the administrator, investment adviser, broker-dealer, or financial institution acting in an advisory capacity, or custodian of the trust fund within ten days of such change.

(2) (a) The board of trustees of a local government investment pool trust fund shall file quarterly reports with the securities commissioner in the form prescribed by the securities commissioner.

(b) Such reports shall demonstrate that the trust fund is in full compliance with the provisions of part 7 of article 75 of title 24, C.R.S., as amended.

(c) The information to be provided in such quarterly reports may include, but need not be limited to:

(I) The identity of the participating local governments;

(II) The amount of participation of each such participating local government; and

(III) The total assets of the trust fund.

(d) In addition to the quarterly reports required in paragraph (a) of this subsection (2), the securities commissioner may, by rule or order, require the board of trustees of a local government investment pool trust fund to file such other periodic reports with the securities commissioner as are necessary to demonstrate that the trust fund is in full compliance with the provisions of part 7 of article 75 of title 24, C.R.S., as amended.

(3) The financial statements of a local government investment pool trust fund shall be prepared in accordance with generally accepted accounting principles except as the securities commissioner may otherwise provide by rule or order.

(4) (a) A local government investment pool trust fund shall file with the securities commissioner an annual audit of the trust fund to be completed at least annually, but at intervals of not more than fifteen months, performed by an independent certified public accountant.

(b) The securities commissioner may, by rule or order, provide that such audits include safeguards to ensure that they adequately describe the financial condition of the trust fund.

(c) Such audit shall be completed and submitted to the securities commissioner within the time lines the securities commissioner by rule or order prescribes.

(d) Such audit shall include, but need not be limited to, the following information:

(I) The name and address of each custodian holding or which at any time since the last annual audit held any assets of the trust fund;

(II) The amount and description of the assets of the trust fund on deposit with or otherwise in the custody of each such custodian; and

(III) Any other information the securities commissioner prescribes by rule or order.

(e) Every filing of the annual audit required under this subsection (4) shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-51-707; except that no such annual fee shall be more than two thousand dollars.

Source: L. 93: Entire part added, p. 329, § 4, effective July 1.

11-51-907. Access to records. (1) The securities commissioner, in a manner reasonable under the circumstances, may examine, without notice, any accounts held by a custodian on behalf of a local government investment pool trust fund and all books, records, and papers pertaining thereto, and all accounts, books, records, and papers pertaining thereto, within or without this state, in the possession of any administrator, the board of trustees, any investment adviser of or broker-dealer or financial institution acting in an advisory capacity to the trust fund, any person employed by or directly associated with such broker-dealer or financial institution in connection with providing such advisory services, or any investment adviser representative.

(2) The securities commissioner, in a manner reasonable under the circumstances, may copy, or cause to be copied, or request from and shall receive copies of such documents as are made and maintained by the custodians, administrator, board of trustees, investment adviser of or broker-dealer or financial institution acting in advisory capacity to the trust fund, any person employed by or directly associated with such broker-dealer or financial institution in connection with providing such advisory services, or any investment advisor representative in connection with a local government investment pool trust fund in the normal course of business, at the expense of such person, in order to determine compliance with this part 9 and part 7 of article 75 of title 24, C.R.S., as amended.

Source: L. 93: Entire part added, p. 330, § 4, effective July 1.

11-51-908. Confidentiality of information. Financial information and the identities of participating local governments in the possession of, filed with, or obtained by the securities commissioner under this part 9 shall be confidential. No such information may be disclosed by the securities commissioner or any of the officers or employees of the division of securities except in connection with any investigation or proceeding or with the consent of the board of trustees of the local government investment pool trust fund to which such information pertains. Such information shall be construed as information within the meaning of section 24-72-204 (3)(a)(IV), C.R.S.

Source: L. 93: Entire part added, p. 331, § 4, effective July 1.

PART 10

PROTECT VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT

Editor's note: Section 3 of chapter 289 (HB 17-1253), Session Laws of Colorado 2017, provides that the act adding this part 10 applies to suspected or attempted financial exploitation occurring on or after July 1, 2017.

Cross references: For the legislative declaration in HB 17-1253, see section 1 of chapter 289, Session Laws of Colorado 2017.

11-51-1001. Short title. The short title of this part 10 is the "Protection of Vulnerable Adults from Financial Exploitation Act".

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1604, § 2, effective July 1.

11-51-1002. Definitions. As used in this part 10, unless the context otherwise requires:
(1) "Broker-dealer" has the same meaning as in section 11-51-201 (2).
(2) "Eligible adult" means:
(a) A person seventy years of age or older; or

(b) An individual eighteen years of age or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

(3) "Financial exploitation" means an act or omission committed by a person who:

(a) Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an eligible adult of the use, benefit, or possession of any thing of value;

(b) Employs the services of a third party for the profit or advantage of the person or another person to the detriment of the eligible adult;

(c) Forces, compels, coerces, or entices an eligible adult to perform services for the profit or advantage of the person or another person against the will of the eligible adult; or

(d) Misuses the property of an eligible adult in a manner that adversely affects the eligible adult's ability to receive health care or health care benefits or to pay bills for basic needs or obligations.

(4) "Investment adviser" has the same meaning as in section 11-51-201 (9.5).

(5) "Investment adviser representative" has the same meaning as in section 11-51-201 (9.6).

(6) "Qualified individual" means any sales representative, investment adviser representative, or person who serves in a supervisory, compliance, or senior investor protection capacity for a broker-dealer or investment adviser.

(7) "Sales representative" has the same meaning as in section 11-51-201 (14).

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1604, § 2, effective July 1.

11-51-1003. Governmental disclosures - immunity. (1) If a qualified individual, while acting within the scope of employment, reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or may be or is being attempted, the broker-dealer or investment adviser shall promptly notify the commissioner of securities appointed pursuant to section 11-51-701. The securities commissioner shall forward a copy of the report within one business day to local law enforcement and to the county department of human or social services handling adult protective services.

(2) A qualified individual who, in good faith and exercising reasonable care, makes a disclosure of information pursuant to this section is immune from administrative or civil liability that might otherwise arise from the disclosure or for any failure to notify the customer of the disclosure.

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1605, § 2, effective July 1.

11-51-1004. Third-party disclosures - immunity. (1) If a qualified individual, while acting within the scope of employment, reasonably believes that financial exploitation of an eligible adult may have occurred, been attempted, or may be or is being attempted, a qualified individual may notify any third party previously designated by or reasonably associated with the eligible adult. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(2) Notwithstanding the provisions of subsection (1) of this section, if the qualified individual is also a person listed in section 18-6.5-108 (1)(b) and the qualified individual has made a report to law enforcement as required by section 18-6.5-108 (1), the report required by subsection (1) of this section does not have to be filed with the commissioner.

(3) A qualified individual who, in good faith and exercising reasonable care, complies with this section is immune from any administrative or civil liability that might otherwise arise from the disclosure.

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1605, § 2, effective July 1.

11-51-1005. Delaying disbursements - immunity. (1) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult, or an account on which an eligible adult is a beneficiary, if:

(a) The broker-dealer or investment adviser, reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of an eligible adult; and

(b) The broker-dealer or investment adviser:

(I) Immediately, but in no event more than two business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(II) Immediately, but in no event more than two business days after the requested disbursement, notifies the reporting agencies; and

(III) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the review's results to the commissioner within seven business days after the requested disbursement.

(2) Any delay of a disbursement as authorized by this section expires upon the sooner of:

(a) A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult; or

(b) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless the commissioner requests that the broker-dealer or investment adviser extend the delay. If a delay is requested, the delay expires no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated or extended by the commissioner or an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may also enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the commissioner of securities, protective services for eligible adults, the broker-dealer or investment adviser that initiated the delay under this section, or other interested party.

(4) A broker-dealer or investment adviser who, in good faith and exercising reasonable care, complies with this section is immune from any administrative or civil liability that might otherwise arise from the delay in a disbursement in accordance with this section.

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1606, § 2, effective July 1.

11-51-1006. Immunity for nondisclosure. A qualified individual who, in good faith and exercising reasonable care, fails to report pursuant to this part 10 is immune from any administrative, criminal, or civil liability for his or her failure to report.

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1607, § 2, effective July 1.

11-51-1007. Records. A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section are not public records as defined in part 2 of article 72 of title 24. Nothing in this section limits or otherwise impedes the authority of the state securities commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1607, § 2, effective July 1.

11-51-1008. Multiple duties to report. Compliance with this part 10 does not discharge the duty of a mandatory reporter under section 18-6.5-108 to report mistreatment to a local law enforcement agency.

Source: L. 2017: Entire part added, (HB 17-1253), ch. 289, p. 1607, § 2, effective July 1.

ARTICLE 51.5

Investor Protection

11-51.5-101 to 11-51.5-108. (Repealed)

Source: L. 84: Entire article repealed, p. 398, § 8, effective July 1.

Editor's note: This article was added in 1975. For amendments to this article prior to its repeal in 1984, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 52

False Statements Concerning Securities

11-52-101 and 11-52-102. (Repealed)

Source: L. 90: Entire article repealed, p. 741, § 8, effective July 1.

Editor's note: This article was numbered as article 4 of chapter 125, C.R.S. 1963. For amendments to this article prior to its repeal in 1990, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

ARTICLE 53

Colorado Commodity Code

Editor's note: (1) This article was numbered as article 5 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1989, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1989, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

(2) Prior to 1989, this article was referred to as the Antibucketing Law. When this article was repealed and reenacted in 1989, the Colorado Commodity Code replaced the Antibucketing Law. The Commodity Code is based on the Model State Commodity Code drafted in 1984 by a national committee of state, federal, and industry regulators and experts. It is designed to fill a jurisdictional void between securities and commodities laws.

PART 1

REGULATION OF COMMODITY SALES - UNLAWFUL ACTIVITIES

11-53-101. Short title. This article shall be known and may be cited as the "Colorado Commodity Code".

Source: L. 89: Entire article R&RE, p. 629, § 1, effective July 1.

11-53-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(2) "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on July 1, 1989, and all subsequent amendments, additions, or other revisions thereto, unless the commissioner, within ten days following the effective date of any such amendment, addition, or revision, disallows the application thereof to this article or to any provisions thereof by rule.

(3) "Commissioner" means the commissioner of securities created by section 11-51-701.

(4) "Commodity" means, except as otherwise specified by the commissioner by rule, regulation, or order, any agricultural, grain, or livestock product or by-product, any metal or

mineral (including a precious metal as defined in subsection (13) of this section), any gem or gemstone (whether characterized as precious, semi-precious, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. The term "commodity" shall not include:

(a) A numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains;

(b) Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such property; or

(c) Any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner thereof.

(5) "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(6) "Commodity exchange act" means the federal "Commodity Exchange Act", as amended, unless the commissioner, within ten days following the effective date of any amendment, addition, or revision thereto, disallows the application thereof to this article or to any provisions thereof by rule.

(7) "Commodity futures trading commission" means the federal commission established by the commodity exchange act.

(8) "Commodity merchant" means any of the following as defined or described in the commodity exchange act or by CFTC rule:

(a) Futures commission merchant;

(b) Commodity pool operator;

(c) Commodity trading advisor;

(d) Introducing broker;

(e) Leverage transaction merchant;

(f) An associated person of any of the foregoing;

(g) Floor broker; and

(h) Any other person (other than a futures association) required to register with the commodity futures trading commission.

(9) "Commodity option" means any account, agreement, or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise, but shall not include an option traded on a national securities exchange registered with the securities and exchange commission.

(10) "Financial institution" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(11) "Offer" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

(12) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government but does not include the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the securities and exchange commission (or any employee, officer or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(13) "Precious metal" means the following in either coin, bullion, or other form:

(a) Silver;

(b) Gold;

(c) Platinum;

(d) Palladium;

(e) Copper; and

(f) Such other items as the commissioner may specify by rule, regulation, or order.

(14) "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

(15) "Securities and exchange commission" means the commission established by the "Securities Exchange Act of 1934".

(16) "Securities Exchange Act of 1934" and "Investment Company Act of 1940" mean the federal statutes of those names as amended, unless the commissioner, within ten days following the effective date of any amendment, addition, or revision thereto, disallows the application thereof to this article or to any provision thereof by rule.

Source: L. 89: Entire article R&RE, p. 629, § 1, effective July 1. **L. 90:** (3) amended, p. 740, § 3, effective July 1.

Cross references: For the "Commodity Exchange Act", see Pub.L. 67-331, codified at 7 U.S.C. sec. 1 et seq.; for the "Securities Exchange Act of 1934", see Pub.L.. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940).

11-53-103. Unlawful commodity transactions. Except as otherwise provided in section 11-53-104 or 11-53-105, no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

Source: L. 89: Entire article R&RE, p. 631, § 1, effective July 1.

11-53-104. Exempt person transactions. (1) The prohibitions in section 11-53-103 shall not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

(a) A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

(b) A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration;

(c) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in paragraph (a) or (b) of this subsection (1);

(d) A person who is a member of a contract market designated by the commodity futures trading commission (or any clearinghouse thereof);

(e) A financial institution; or

(f) A person registered under the laws of this state as a securities broker or dealer whose activities require such registration.

(2) The exemption provided by subsection (1) of this section shall not apply to any transaction or activity which is prohibited by the commodity exchange act or CFTC rule.

Source: L. 89: Entire article R&RE, p. 632, § 1, effective July 1.

11-53-105. Exempt transactions. (1) The prohibitions in section 11-53-103 shall not apply to the following:

(a) An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the commodity exchange act;

(b) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment; except that, for purposes of this paragraph (b), physical delivery shall be deemed to have occurred if, within such twenty-eight-day period:

(I) Such quantity of precious metals purchased by such payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either:

(A) A financial institution;

(B) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission;

(C) A storage facility licensed or regulated by the United States or any agency thereof; or

(D) A depository designated by the commission; and

(II) Such depository (or other person which itself qualifies as a depository as provided in said subparagraph (I)) or a qualified seller issues and the purchaser receives a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants, each commodity subject thereto, or any by-product thereof; or

(d) A commodity contract under which the offeree or the purchaser is a person referred to in section 11-53-104, an insurance company, an investment company as defined in the "Investment Company Act of 1940", or an employee pension and profit sharing or benefit plan (other than a self-employed individual retirement plan or individual retirement account).

(2) For the purposes of paragraph (b) of subsection (1) of this section, a "qualified seller" is a person who:

(a) Is a seller of precious metals and has a tangible net worth of at least five million dollars (or has an affiliate who has unconditionally guaranteed the obligations and liabilities of the seller, and the affiliate has a tangible net worth of at least five million dollars);

(b) Has stored precious metals with one or more depositories on behalf of customers for at least the previous three years;

(c) Prior to any offer, and annually thereafter, files with the commissioner a sworn notice of intent to act as a qualified seller under paragraph (b) of subsection (1) of this section, containing:

(I) The seller's name and address, names of its directors, officers, controlling shareholders, partners, principals, and other controlling persons;

(II) The address of its principal place of business, state and date of incorporation or organization, and the name and address of the seller's registered agent in this state;

(III) A statement that the seller (or a person affiliated with the seller who has unconditionally guaranteed the obligations and liabilities of the seller) has a tangible net worth of at least five million dollars;

(IV) The name and address of the depository or depositories that the seller intends to use, and the name and address of each and every depository where the seller has stored precious metals on behalf of customers for the previous three years;

(V) Financial statements for the seller (or the person affiliated with the seller who has guaranteed the obligations and liabilities of the seller) for the past three years, including balance sheet and income statements which have been audited by an independent certified public accountant, together with the accountant's report;

(VI) A statement describing the details of all civil, criminal, or administrative proceedings currently pending or adversely resolved against the seller or its directors, officers, controlling shareholders, partners, principals, or other controlling persons during the past ten years including:

(A) Civil litigation and administrative proceedings involving securities or commodities law violations, or fraud;

(B) Criminal proceedings;

(C) Denials, suspensions, or revocations of securities or commodities licenses or registrations;

(D) Suspensions or expulsions from membership in, or association with, self-regulatory organizations registered under the "Securities Exchange Act of 1934" or the commodity exchange act; or

(E) A statement that there were no such proceedings;

(d) Notifies the commissioner within fifteen days of any material changes in the information provided in the notice of intent; and

(e) Annually furnishes to each purchaser for whom the seller is then storing precious metals, and to the commissioner, a report by an independent certified public accountant of the accountant's examination of the seller's precious metals storage program.

(3) The commissioner may, upon request by the seller, waive any of the exemption requirements in paragraph (b) of subsection (1) and subsection (2) of this section, conditionally or unconditionally.

(4) The commissioner may, by order, deny, suspend, revoke, or place limitations on the qualified seller exemption under paragraph (b) of subsection (1) and subsection (2) of this section if the commissioner finds that the order is in the public interest and that the seller, the seller's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing a similar function to the seller, or any person who directly or indirectly controls or is controlled by the seller, or the seller's affiliates or subsidiaries:

(a) Has filed a notice of intention under subsection (2) of this section with the commissioner or the designee of the commissioner which was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has violated or failed to comply with a provision of this article or is the subject of an adjudication or determination within the last five years by an agency, administrator, or court of competent jurisdiction of any other jurisdiction that the person has willfully violated the anti-fraud provisions of any state or federal securities or commodities law;

(c) Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime involving fraud or unlawful taking;

(d) Has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice in violation of the anti-fraud provisions of any state or federal securities or commodities law;

(e) Is the subject of any of the following orders which are in effect and issued within the last five years:

(I) An order by the administrator of any jurisdiction administering a state commodity law or the commodity futures trading commission entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity pool operator, commodity trading advisor, introducing broker, leverage transaction merchant, associated person, floor broker, or the substantial equivalent of those terms;

(II) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the commodity exchange act;

(III) A United States postal service fraud order; or

(IV) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the commodity exchange act;

(f) Has failed reasonably to supervise its sales representatives or sales employees engaged in the investment commodities business.

(5) The commissioner may designate an administrative law judge, appointed pursuant to part 10 of article 30 of title 24, C.R.S., to conduct hearings pursuant to section 24-4-105, C.R.S.

(6) Any person aggrieved by a final order of the commissioner may obtain review of the order in the district court of the city and county of Denver pursuant to the provisions of section 24-4-106, C.R.S.

(7) If the commissioner finds that any applicant or qualified seller is no longer in existence or has ceased to do business or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may, by order, revoke qualified seller status.

(8) By order or rule and subject to such terms and conditions prescribed therein, the commissioner may, from time to time, add any persons or transactions not within the exclusive jurisdiction of the commodity futures trading commission as granted by the commodity exchange act, to the persons and transactions exempted from the prohibitions set forth in section 11-53-103, if the commissioner finds that such prohibitions are not necessary in the public interest and for the protection of investors.

Source: L. 89: Entire article R&RE, p. 632, § 1, effective July 1. **L. 90:** (1)(b)(II) amended, p. 1839, § 13, effective May 31.

Cross references: For the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

11-53-106. Unlawful commodity activities. (1) No person shall engage in a trade or business of or otherwise act as a commodity merchant unless such person is either:

(a) Registered or temporarily licensed with the commodity futures trading commission for each activity constituting such person as a commodity merchant, and such registration or temporary license has not expired or been suspended or revoked; or

(b) Exempt from such registration by virtue of the commodity exchange act or a CFTC rule.

(2) No board of trade shall trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation has not been vacated, suspended, or revoked.

Source: L. 89: Entire article R&RE, p. 635, § 1, effective July 1.

11-53-107. Fraudulent conduct. (1) No person shall, directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of any commodity contract or commodity option prohibited by section 11-53-103 or made pursuant to section 11-53-104 or 11-53-105 (1)(b) or (1)(d):

(a) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;

(b) Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading;

(c) Engage in any transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or

(d) Misappropriate or convert the funds, security, or property of any other person.

Source: L. 89: Entire article R&RE, p. 636, § 1, effective July 1.

11-53-108. Misleading filings. It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this article, any statement which is, at the time and in the light of the circumstances under which it was made, false or misleading in any material respect.

Source: L. 89: Entire article R&RE, p. 636, § 1, effective July 1.

11-53-109. Liability of principals, controlling persons, and others. (1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of this article, every partner, officer, or director of such liable person, every person occupying a similar status or performing similar functions to such liable person, and every employee of such liable person who materially aids in the violation is also liable jointly and severally with and to the same extent as the person liable under the provisions of this article unless the person who is also liable by virtue of this subsection (2) sustains the burden of proof that the person did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

Source: L. 89: Entire article R&RE, p. 636, § 1, effective July 1.

11-53-110. Securities law unaffected. Nothing in this article shall impair, derogate, or otherwise affect the authority or powers of the commissioner under article 51 of this title or the application of any provision thereof to any person or transaction subject thereto.

Source: L. 89: Entire article R&RE, p. 636, § 1, effective July 1.

11-53-111. Purpose. This article shall be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and commodity options, and to maximize coordination with federal law and other states' laws and the administration and enforcement thereof. This article is not intended to create, abolish, or modify any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this article.

Source: L. 89: Entire article R&RE, p. 637, § 1, effective July 1.

PART 2

ENFORCEMENT OF COMMODITY
CODE - PENALTIES

11-53-201. Investigations - subpoenas. (1) The commissioner in his discretion may make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated any provision of this article or any rule or order under this article or to aid in the enforcement of this article, or, in the prescribing of rules and forms under this article, the commissioner may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated and may publish information concerning any proceeding brought under this article or any rule or order issued under this article.

(2) For purpose of any investigation or proceeding under this article, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner finds to be relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the commissioner, may issue to such person an order requiring the person to appear before the commissioner, or the officer designated by him, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner on the ground that the testimony or evidence, documentary or otherwise, required of the person subpoenaed may tend to incriminate said person or subject the person to a penalty or forfeiture; but no document, evidence, or other information compelled under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

Source: L. 89: Entire article R&RE, p. 637, § 1, effective July 1.

11-53-202. Enforcement - cease-and-desist orders. (1) Whenever it appears to the commissioner that any person has engaged in any act or practice constituting a violation of any provision of this article or any rule or order under this article, the commissioner may apply to the district court for the city and county of Denver, or to the appropriate courts of another state, for the appropriate legal or equitable relief, including but not limited to:

(a) A declaratory judgment;

(b) A temporary restraining order or preliminary or permanent prohibitory or mandatory injunction enjoining the act or practice in question and to enforce compliance with this article or any rule or order under this article;

(c) An order for restitution and disgorgement, or either of them; and

(d) An order for appointment of a receiver or conservator for the defendant or the defendant's assets.

(2) Whenever it appears to the commissioner that any person has engaged in any act or practice constituting a violation of any provision of this article or any rule or order under this article, then, in addition to the powers granted in subsection (1) of this section, the commissioner may enter an order to show cause directed to such person and shall follow substantially the procedure set forth in section 11-51-606 (1.5).

Source: L. 89: Entire article R&RE, p. 638, § 1, effective July 1. **L. 2001:** (2) added, p. 803, § 3, effective July 1.

11-53-203. Power of court to grant relief. (1) Upon a proper showing by the commissioner that a person has violated any provision of this article or any rule or order under this article, the court may grant appropriate legal or equitable remedies including a temporary restraining order, a preliminary and permanent prohibitory or mandatory injunction, and writ or prohibition or mandamus. In addition, the court may grant the following special remedies:

(a) Imposition of a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

(b) Disgorgement;

(c) Declaratory judgment;

(d) Restitution to investors wishing restitution; and

(e) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(2) In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

Source: L. 89: Entire article R&RE, p. 638, § 1, effective July 1.

11-53-204. Criminal penalties - statute of limitations. (1) Any person who willfully violates any provision of this article, except section 11-53-108, or who willfully violates section 11-53-108 when the person knows or should know that the statement the person makes in violation of section 11-53-108 is false or misleading in any material respect commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) The commissioner may refer such evidence as is available concerning violations of this article to the attorney general, the proper district attorney or other criminal prosecutor, who may, with or without such a reference from the commissioner, prosecute the appropriate criminal proceedings.

(3) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(4) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

Source: L. 89: Entire article R&RE, p. 638, § 1, effective July 1. **L. 2002:** (1) amended, p. 1472, § 43, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (1), see section 1 of chapter 318, Session Laws of Colorado 2002.

11-53-205. Administration of article. (1) This article shall be administered by the commissioner as the head of the division of securities within the department of regulatory agencies.

(2) Neither the commissioner nor any employees of the commissioner shall use any information which is filed with or obtained by the commissioner or the designee of the commissioner which is not public information for personal gain or benefit, nor shall the commissioner or employees of the commissioner conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

(3) Any information obtained by the commissioner or any designee of the commissioner under this article shall be nonpublic and confidential unless made public by the commissioner or the designee of the commissioner in connection with an investigation or proceeding under this article or under section 11-53-206. No provision of this article either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any designee of the commissioner.

Source: L. 89: Entire article R&RE, p. 639, § 1, effective July 1.

11-53-206. Cooperation with other agencies. (1) To encourage uniform application and interpretation of this article and commodities regulation and enforcement in general, the commissioner and the employees of the commissioner may cooperate, including bearing the expense of such cooperation, with law enforcement and other regulatory agencies of this state or other jurisdictions.

(2) The cooperation authorized by subsection (1) of this section shall include, but need not be limited to, the following:

(a) Making joint examinations or investigations;

(b) Holding joint administrative hearings;

(c) Filing and prosecuting joint litigation;

(d) Sharing and exchanging personnel;

(e) Sharing and exchanging information and documents; except that any information or documents shared by the commissioner with other agencies shall remain nonpublic and confidential as provided in section 11-53-205 (3) unless made public in connection with an investigation or proceeding brought by agencies with whom said information or documents was shared; and

(f) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases.

Source: L. 89: Entire article R&RE, p. 639, § 1, effective July 1.

11-53-207. General authority to adopt rules, forms, and orders. (1) In addition to specific authority granted elsewhere in this article, the commissioner may make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this article. Such rules or forms shall include, but need not be limited to, rules defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purpose of rules or forms, the commissioner may classify commodities, commodity contracts, commodity options, persons, and matters within the commissioner's jurisdiction.

(2) Unless specifically provided in this article, no rule, form, or order may be adopted, amended, or rescinded unless the commissioner finds that the action is:

(a) Necessary or appropriate in the public interest or for the protection of investors; and

(b) Consistent with the purposes fairly intended by the policy and provisions of this article.

(3) All rules and forms of the commissioner shall be published.

(4) No provision of this article imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the commissioner, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

Source: L. 89: Entire article R&RE, p. 639, § 1, effective July 1.

11-53-208. Scope of article. (1) Sections 11-53-103, 11-53-106, and 11-53-107 apply to persons who sell or offer to sell when an offer to sell is made in this state or when an offer to buy is made and accepted in this state.

(2) Sections 11-53-103, 11-53-106, and 11-53-107 apply to persons who buy or offer to buy when an offer to buy is made in this state or when an offer to sell is made and accepted in this state.

Source: L. 89: Entire article R&RE, p. 640, § 1, effective July 1.

11-53-209. Pleading exemptions. It shall not be necessary to plead in the negative any of the exemptions of this article in any complaint, information, or indictment or any writ or proceeding brought under this article; and the burden of proof of any such exemption shall be upon the party claiming the same.

Source: L. 89: Entire article R&RE, p. 640, § 1, effective July 1.

11-53-210. Affirmative defenses. (1) It shall be an affirmative defense in any complaint, information, or indictment, or to any writ or proceeding brought under this article alleging a violation of section 11-53-103 based solely on the failure in an individual case to

make physical delivery within the applicable time period under section 11-53-102 (5) or 11-53-105 (1)(b) if:

(a) Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, any person occupying a similar status or performing a similar function to the seller, or any person who directly or indirectly controls or is controlled by the seller, the seller's affiliates, subsidiaries, or successors; and

(b) Physical delivery was completed within a reasonable time under the applicable circumstances.

Source: L. 89: Entire article R&RE, p. 640, § 1, effective July 1.

11-53-211. Interpretive opinions. The securities commissioner may honor requests from interested persons for confirmation of the applicability of particular exclusions from the definitions set forth in section 11-53-102, for the applicability of exemptions set forth in sections 11-53-104 and 11-53-105, and for the applicability of any other provision of this article. Any person making such a request shall pay a nonrefundable fee which shall be set and collected pursuant to section 11-51-707. In response to any request for a confirmation or other interpretive opinion received pursuant to this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making the request.

Source: L. 94: Entire section added, p. 1847, § 13, effective July 1.

ARTICLE 54

Refunding Revenue Securities Law

Cross references: For refunding of economic development revenue bonds, see § 29-3-116.

11-54-101. Short title. This article shall be known and may be cited as the "Refunding Revenue Securities Law".

Source: L. 63: p. 886, § 7. **C.R.S. 1963:** § 125-8-1.

11-54-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Facility" means any of the facilities or properties, revenues derived from the operation of which are pledged to the payment of public securities.

(2) Repealed.

(3) "Governing body" means the city council, commission, board of county commissioners, board of trustees, board of directors, or other legislative body of the public body designated in this article in which body the legislative powers of the public body are vested.

(4) "Issuer" means the state or public body issuing any public security.

(5) "May" is permissive.

(6) "Net effective interest rate" means the net interest cost of public securities divided by the sum of the products derived by multiplying the principal amounts of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the public securities.

(7) "Net interest cost" means the total amount of interest to accrue on public securities from their dates to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said public securities are being or have been sold. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the public securities.

(8) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which a governing body of the state or public body exercising any power under this article takes formal action and adopts legislative provisions and matters of some permanency.

(9) "Public body of the state" means the transportation commission; any state educational institution, or other state institution, its board of regents, or other governing body thereof constituting a body corporate; any county; any incorporated city or incorporated town, whether incorporated or governed under a general act, special legislative act, or special charter enacted, granted, or adopted pursuant to article XX of the state constitution, or otherwise; any school district; and any metropolitan district, metropolitan sewage disposal district, metropolitan water district, water district, sanitation district, water and sanitation district, water conservancy district, metropolitan recreation district, health service district, city housing authority, county housing authority, urban renewal agency, community redevelopment agency, any other corporate district, any other corporate authority, any corporate commission, or any other political subdivision of the state constituting a body corporate.

(10) "Public security" means a bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money, issued by the state, any public body thereof, or any predecessor of any public body of the state, and payable from designated revenues or special fund, but excluding any obligation payable from ad valorem taxes, any obligation constituting a debt or an indebtedness within the meaning of any constitutional, charter, or statutory limitation, any obligation payable within one year from the date of its issuance, and any obligation payable from special assessments.

(11) "Shall" is mandatory.

(12) "State" means the state of Colorado, and any board, commission, department, corporation, instrumentality, or agency thereof.

(13) Words used in this article importing singular or plural number may be construed so that one number includes both; and words importing masculine gender shall be construed to apply to the feminine gender and to the neuter gender as well; but these rules of construction shall not apply to any part of this article containing express provisions excluding such construction, or where the subject matter or context is repugnant thereto.

Source: L. 63: p. 886, § 2. **C.R.S. 1963:** § 125-8-2. **L. 70:** p. 109, § 3. **L. 89:** (2) repealed, p. 1135, § 85, effective July 1. **L. 91:** (9) amended, p. 1056, § 9, effective July 1. **L. 96:** (9) amended, p. 471, § 4, effective July 1.

11-54-103. Refunding public securities. Any public securities issued by the state, or any public body thereof, may be refunded, without an election, by the state or public body issuing them, or any successor thereof, in the name of the state or public body issuing the public securities being refunded, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, pursuant to an ordinance to be adopted by the governing body of the issuer in the manner provided by law for the issuance of the public securities being refunded, to refund, pay, and discharge all or any part of such outstanding public securities, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional public securities, or to any project appertaining thereto or any combination thereof.

Source: L. 63: p. 888, § 3. **C.R.S. 1963:** § 125-8-3.

11-54-104. Method of issuance. Any public securities issued for refunding purposes either may be delivered in exchange for the outstanding public securities being refunded or may be publicly or privately sold.

Source: L. 63: p. 888, § 4. **C.R.S. 1963:** § 125-8-4.

11-54-105. Limitations upon issuance. No public securities may be refunded under this article unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding public securities. Provision shall be made for paying the public securities within said period of time. No maturity of any public security refunded may be extended over fifteen years, nor may the net effective interest rate of the issue of refunding securities be increased to any rate exceeding the maximum net effective interest rate authorized by the governing body. The principal amount of the refunding public securities may exceed the principal amount of the refunded public securities if the aggregate principal and interest costs of the refunding public securities do not exceed such unaccrued costs of the public securities refunded, except to the extent any interest on the public securities refunded in arrears or about to become due is capitalized with the proceeds of refunding public securities. The principal amount of the refunding public securities may also be less than or the same as the principal amount of the public securities being refunded so long as provision is duly and sufficiently made for their payment. The limitations of this section shall not apply to the refunding of public securities in order to avoid default.

Source: L. 63: p. 888, § 5. **C.R.S. 1963:** § 125-8-5. **L. 70:** p. 109, § 4.

11-54-106. Use of proceeds of refunding public securities. (1) The proceeds of refunding public securities shall either be immediately applied to the retirement of the public securities to be refunded or be placed in escrow in any state or national bank within the state which is a member of the federal deposit insurance corporation to be applied to the payment of the public securities upon their presentation therefor; but, to the extent any incidental expenses

have been capitalized, such security proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding public securities may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the governing body may determine.

(2) No such escrow shall necessarily be limited to proceeds of refunding public securities but may include other moneys available for its purpose. Any escrowed proceeds, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, any charges of the escrow agent payable therefrom to pay the public securities being refunded as they become due at their respective maturities or due at designated prior redemption dates in connection with which the governing body of the issuer shall exercise a prior redemption option. No purchaser of any public security issued under this article shall in any manner be responsible for the application of the proceeds thereof by the issuer or any of its officers, agents, or employees.

Source: L. 63: p. 888, § 6. **C.R.S. 1963:** § 125-8-6. **L. 89:** (2) amended, p. 1106, § 6, effective July 1.

11-54-107. Payment of refunding public securities. Refunding public securities may be made payable from any revenues derived from any utility, system, project, or other source which might be legally pledged for the payment of the public securities being refunded at the time of the refunding or at the time of the issuance of the public securities being refunded, as the governing body of the issuer may determine, notwithstanding the pledge of such revenues for the payment of the outstanding public securities being refunded is thereby modified; but there shall not be pledged for the payment of the refunding public securities any revenues which might not have been lawfully pledged for the payment of the public securities being refunded because of limitations in any question authorizing their issuance, unless the refunding public securities are similarly authorized at an election by the majority required by law for the issuance of the public securities being refunded.

Source: L. 63: p. 889, § 7. **C.R.S. 1963:** § 125-8-7.

11-54-108. Combination of refunding and other public securities. Public securities for refunding and public securities for any other authorized purpose may be issued separately or issued in combination in one series or more by the same issuer.

Source: L. 63: p. 889, § 8. **C.R.S. 1963:** § 125-8-8.

11-54-109. Supplemental provisions. Except as specifically provided or necessarily implied in this article, the relevant provisions in this article appertaining generally to the public securities being refunded shall be equally applicable in the authorization and issuance of refunding public securities, including their terms and security, the public security ordinance, trust indenture, use and service charges, and other aspects of the public securities.

Source: L. 63: p. 891, § 9. **C.R.S. 1963:** § 125-8-9.

11-54-110. Governing body's determination final. The determination of the governing body of the issuer that the limitations under this article imposed upon the issuance of refunding public securities have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: L. 63: p. 891, § 10. **C.R.S. 1963:** § 125-8-10.

11-54-111. Public security provisions. (1) Public securities, including refunding public securities issued under this article and local district college revenue securities issued under the provisions of article 71 of title 23, C.R.S., shall bear interest at a rate such that the net effective interest rate of the issue of refunding public securities or local district college revenue securities does not exceed the maximum net effective interest rate authorized. Such interest shall be payable semiannually or annually and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the issuer; except that the first coupon appertaining to any public security may evidence interest not in excess of one year, and such securities may be in one or more series, may bear such date, may mature at such times not exceeding forty years from their respective dates, may be designated or redesignated, may be in such denomination, may be payable in such medium of payment and at such place within or without the state, including but not limited to the office of any county treasurer in which the issuer is located wholly or in part, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denominations, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by ordinance of the governing body of the issuer. The governing body may provide for the subordination of the security of any public securities issued under this article and the payment of principal and interest thereon, to the extent deemed feasible and desirable by the governing body, to other public securities issued to finance facilities appertaining thereto or that may be outstanding when the public securities thus subordinated are issued and delivered.

(2) The public securities shall never be sold at less than ninety-five percent of the principal amount thereof and accrued interest thereon to the date of delivery, nor at a price which will result in a net effective interest rate to the issuer of more than the maximum net effective interest rate authorized by the governing body.

(3) Public securities may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and, where interest accruing on the public securities is not represented by interest coupons, the public securities may provide for the endorsing of payments of interest thereon; and the public securities generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants, and conditions, and with such other details as may be provided by the governing body, except as otherwise provided in this article.

(4) Subject to the payment provisions specifically provided in this article, the said public securities, any interest coupons thereto attached, and any temporary public securities shall be fully negotiable within the meaning and for all the purposes of investment securities (uniform

commercial code), article 8 of title 4, C.R.S., except as the governing body may otherwise provide; and each holder of each such public security, by accepting such security, shall be conclusively deemed to have agreed that such public security, except as otherwise provided, is and shall be fully negotiable within the meaning and for all the purposes of investment securities (uniform commercial code), article 8 of title 4, C.R.S.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing public securities under this article:

(a) May provide for the initial issuance of one or more public securities, called "public security" in this subsection (5), aggregating the amount of the entire issue, or any designated portion thereof;

(b) May make such provision for installment payments of the principal amount of any such public security as it may consider desirable;

(c) May provide for the making of any such public security, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such public securities; and

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such public security may in the future, at the request of the holder thereof, be converted into public securities of smaller denominations, which public securities of smaller denominations may in turn be either coupon public securities or public securities registrable as to principal or as to both principal and interest.

(6) If lost or completely destroyed, any public security authorized in this article may be reissued in the form and tenor of the lost or destroyed public security upon the owner furnishing, to the satisfaction of the governing body: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the public security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new public security.

(7) Any officer authorized to execute any public security, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed, with a facsimile signature in lieu of his manual signature, any public security authorized in this article; except that such a filing is not a condition of execution with a facsimile signature of any interest coupon, and except that at least one signature required or permitted to be placed on each such public security, excluding any interest coupon, shall be manually subscribed. The facsimile signature of an officer shall have the same legal effect as his manual signature.

(8) The clerk or secretary of the issuer may cause the seal of the issuer to be printed, engraved, stamped, or otherwise placed in facsimile on any public security. The facsimile seal shall have the same legal effect as the impression of the seal.

(9) The ordinance authorizing any public securities or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds or like public securities, including without limiting the generality of the foregoing, covenants designated in section 11-54-113.

Source: L. 63: p. 891, § 11. **C.R.S. 1963:** § 125-8-11. **L. 70:** p. 110, § 5. **L. 72:** p. 619, § 159. **L. 75:** (1) amended, p. 785, § 2, effective July 1; (4) amended, p. 207, § 12, effective July 16.

11-54-112. Signatures on public securities. (1) The public securities and any coupons bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the issuer, notwithstanding that before the delivery thereof and payment therefor any of the persons whose signatures appear thereon shall have ceased to be officers of the issuer.

(2) Any officer authorized or permitted to sign any public security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the public security or coupons appertaining thereto, or upon both the public security and such coupons.

Source: L. 63: p. 892, § 12. **C.R.S. 1963:** § 125-8-12.

11-54-113. Covenants in authorizing ordinance. (1) Any ordinance authorizing the issuance of public securities under this article, or any trust indenture or other instrument appertaining thereto, may contain covenants as to:

(a) The rates, fees, tolls, and charges to be charged for the services and commodities of the facilities, revenues derived from the operation of which are pledged for the payment of the public securities, and the use and disposition thereof, including but not limited to the foreclosure of liens for and collection of delinquencies, the discontinuance of services or facilities, prohibition against free service, the collection of penalties and collection costs, including disconnection and reconnection fees, and the use and disposition of any revenues of the issuer, derived or to be derived from any facilities;

(b) The creation and maintenance of reserves or sinking funds and the regulation, use, and disposition thereof, to secure the payment of the principal of and the interest on any public securities or of operation and maintenance expenses of any facilities, or part thereof; the determination or definition of revenues from any facilities, and of the expenses of operation and maintenance thereof; and the source, custody, security, use, and disposition of any such reserves or sinking funds, including but not limited to the powers and duties of any trustee with regard thereto;

(c) A fair and reasonable payment by the issuer to the account of such facilities for the services, commodities, or facilities furnished to the issuer or any of its departments by any facilities;

(d) The issuance of other or additional public securities or other instruments payable from or constituting a charge against the revenue of any facilities; the payment of the principal of and the interest on any public securities, and the sources and methods thereof, the rank or priority of any public securities as to any lien or security for payment, or the acceleration of any maturity of any public securities, or the issuance of other or additional public securities payable from or constituting a charge against or lien upon any revenues pledged for the payment of public securities and the creation of future liens and encumbrances against these revenues, and limitations thereon; and the purpose to which the proceeds of the sale of public securities may be applied, and the custody, security, use, expenditure, application, and disposition thereof;

(e) Books of account, the inspection and audit thereof, and other records appertaining to facilities; the insurance to be carried by the issuer and use and disposition of insurance moneys, the acquisition of completion or surety bonds appertaining to any project, funds, or personnel,

and the use and disposition of any proceeds of such bonds; the assumption or payment or discharge of any indebtedness, other obligation, lien, or other claim relating to any part of any facilities, or any public securities having or which may have a lien on any part of any revenues of the facilities; and limitations on the powers of the issuer to acquire or operate, or permit the acquisition or operation of, any plants, structures, or properties which may compete or tend to compete with the facilities;

(f) The rights, liabilities, powers, and duties arising upon the breach by the issuer of any covenants, conditions, or obligations; defining events of default; the payment of costs or expenses incident to the enforcement of the public securities or of the provisions of the ordinance authorizing the public securities or any trust indenture or other instrument appertaining thereto, or of any covenant or contract with the holders of the public securities; the procedure, if any, by which the terms of any covenant or contract with, or duty to, the holders of public securities, the public security ordinance, any trust indenture or other instrument, may be amended or abrogated, the amount of public securities the holders of which, or any trustee therefor, must consent thereto, and the manner in which such consent may be given or evidenced; the terms and conditions upon which the holders of the public securities or of a specified portion, percentage, or amount thereof, or any trustee therefor, shall be entitled to the appointment of a receiver, which receiver may enter and take possession of the facilities, or any part thereof, operate and maintain the same, prescribe rates, fees, tolls, and charges, and collect, receive, and apply all revenues thereafter arising therefrom in the same manner as the issuer itself might do; and the terms and conditions upon which any or all of the public securities shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(g) The vesting in a corporate or other trustee of such property, rights, powers, and duties in trust as the issuer may determine, which may include any of the rights, powers, and duties of any trustee appointed by any holders of public securities, and the limitation of liabilities of any such trustee, or the limitation or the abrogation of the right of such holders of public securities to appoint any trustee, or the limitation of the rights, powers, and duties of such trustee; and the terms and conditions upon which the holders of the public securities or any portion or percentage of them may enforce any covenants or provisions made under this article or duties imposed thereby; and

(h) All such acts and things as may be necessary or convenient or desirable in order to secure its public securities or, in the discretion of the governing body of the issuer, tend to make the public securities more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this article, it being the intention of this article to give an issuer power to do all things in the issuance of public securities and for their security.

Source: L. 63: p. 893, § 13. **C.R.S. 1963:** § 125-8-13.

11-54-114. Incontestable recital in public securities. Any ordinance authorizing, or any trust indenture or other instrument appertaining to, any public securities under this article may provide that each authorized public security shall recite that it is issued under authority of this article. Such recital shall conclusively impart full compliance with all of the provisions of this article, and all public securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 63: p. 895, § 14. **C.R.S. 1963:** § 125-8-14.

11-54-115. Cumulative and continuing rights of holders of public securities. (1) No right or remedy conferred upon any holder of any public security or of any coupon appertaining thereto or any trustee for such holder by this article or by any other law or proceedings appertaining thereto is exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this article or by any other law.

(2) The failure of any holder of any public securities or coupon issued under this article to proceed as provided in any proceedings appertaining to the issuance of such public security or coupon shall not relieve the issuer, its governing body, or any of its officers, agents, and employees of any liability for failure to perform or carry out any duty, obligation, or other commitment.

Source: L. 63: p. 895, § 15. **C.R.S. 1963:** § 125-8-15.

11-54-116. Construction of article. The powers conferred by this article shall be in addition and supplemental to and not in substitution for, and the limitations imposed by this article shall not affect, the powers conferred by any other law. Public securities may be issued under this article without regard to the provisions of any other law, except as otherwise provided in this article expressly or by necessary implication. Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

Source: L. 63: p. 895, § 16. **C.R.S. 1963:** § 125-8-16.

11-54-117. Validation. All outstanding refunding public securities of the state and of all public bodies thereof, and all acts and proceedings had or taken, or purportedly had or taken prior to April 27, 1963, by or on behalf of the state or any public body thereof under law or under color of law preliminary to and in the authorization, execution, sale, issuance, and payment, or any combination thereof, of all such public securities are hereby validated, ratified, approved, and confirmed, including but not necessarily limited to the terms, provisions, conditions, and covenants of any ordinance appertaining thereto, the redemption of public securities before maturity and provisions therefor, the levy and collection of rates, tolls, and charges and other revenues appertaining to such public securities, and the acquisition and application of such other revenues, the pledge and use of the proceeds thereof, and the establishment of liens thereon and funds therefor, appertaining to such public securities, except as provided in this article, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such public securities, acts, and proceedings, and in such authorization, execution, sale, issuance, and payment, including without limiting the generality of the foregoing such acts and proceedings appertaining to such public securities all or any part of which have not been issued nor purportedly issued prior to April 27, 1963. Such outstanding public securities are and shall be, and such public securities not issued nor purportedly issued prior to said date shall be, after their issuance, binding, legal, valid, and enforceable obligations of the state or the public body

issuing them in accordance with their terms and their authorizing proceedings, subject to the taking or adoption of acts and proceedings not had nor taken nor purportedly had nor taken prior to April 27, 1963, but required by and in substantial and due compliance with laws appertaining to any such public securities not issued nor purportedly issued prior to said date.

Source: L. 63: p. 896, § 17. **C.R.S. 1963:** § 125-8-17.

11-54-118. Effect - limitations. This article shall operate to supply such legislative authority as may be necessary to validate any refunding public security issued and any such acts and proceedings taken prior to April 27, 1963, which the general assembly could have supplied or provided for in the law under which such public securities were issued and such acts or proceedings were taken. This article shall be limited to the validation of public securities, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. Also this article shall not operate to validate, ratify, approve, confirm, or legalize any public security, act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined, and shall not operate to confirm, validate, or legalize any public security, act, proceeding, or other matter which has been determined prior to April 27, 1963, in any legal proceedings to be illegal, void, or ineffective.

Source: L. 63: p. 896, § 18. **C.R.S. 1963:** § 125-8-18.

11-54-119. Liberal construction. This article being necessary to secure the public health, safety, convenience, and welfare, it shall be liberally construed to effect its purposes.

Source: L. 63: p. 897, § 19. **C.R.S. 1963:** § 125-8-19.

PUBLIC SECURITIES

ARTICLE 55

Uniform Facsimile Signature
of Public Officials Act

Editor's note: This article was numbered as article 6 of chapter 125, C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

11-55-101. Short title. Sections 11-55-101 to 11-55-106 shall be known and may be cited as the "Uniform Facsimile Signature of Public Officials Act".

Source: L. 69: R&RE, p. 1082, § 1. **C.R.S. 1963:** § 125-6-1.

11-55-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authorized officer" means any official of this state or any of its departments, agencies, institutions, or other instrumentalities, or any of its political subdivisions, whose signature to a public security or instrument of payment is required or permitted.

(2) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(3) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(4) "Public security" means a bond, note, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, institutions, or other instrumentalities, or by any of its political subdivisions.

Source: L. 69: R&RE, p. 1082, § 1. **C.R.S. 1963:** § 125-6-2.

11-55-103. Facsimile signature. (1) Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security, but at least one signature required or permitted to be placed thereon shall be manually subscribed; and

(b) Any instrument of payment.

(2) Upon compliance with this article by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

Source: L. 69: R&RE, p. 1082, § 1. **C.R.S. 1963:** § 125-6-3.

Cross references: For effect of facsimile signatures on sewer system revenue bonds, see § 31-35-404 (7).

11-55-104. Use of facsimile seal. When the seal of this state or of any of its departments, agencies, institutions, or other instrumentalities, or of any of its political subdivisions, is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

Source: L. 69: R&RE, p. 1083, § 1. **C.R.S. 1963:** § 125-6-4.

11-55-105. Violation - penalty. Any person who with intent to defraud uses on a public security or an instrument of payment: A facsimile signature, or any reproduction of it, of any authorized officer; or any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, institutions, or other instrumentalities, or of any of its political subdivisions, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 69: R&RE, p. 1083, § 1. **C.R.S. 1963:** § 125-6-5. **L. 77:** Entire section amended, p. 871, § 28, effective July 1, 1979. **L. 89:** Entire section amended, p. 823, § 15, effective July 1. **L. 2002:** Entire section amended, p. 1472, § 44, effective October 1.

Editor's note: The effective date for amendments made to this section by chapter 216, L. 77, was changed from July 1, 1978, to April 1, 1979, by chapter 1, First Extraordinary Session, L. 78, and was subsequently changed to July 1, 1979, by chapter 157, § 23, L. 79. See People v. McKenna, 199 Colo. 452, 611 P.2d 574 (1980).

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

11-55-106. Uniformity of interpretation. This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Source: L. 69: R&RE, p. 1083, § 1. **C.R.S. 1963:** § 125-6-6.

11-55-107. Limitations on actions brought. (1) No action based upon any public security authorized and issued on or after July 1, 1969, shall be commenced more than eighteen years after the final maturity date of the issue of which such public security is one.

(2) No action based upon any public security issued prior to July 1, 1969, shall be commenced more than eighteen years after the final maturity date of the issue of which such public security is one.

(3) No action based upon any claim for interest accrued on any public security, whether said claim is evidenced by interest coupons or not, shall be commenced after action based upon said public security has been barred.

(4) The provisions of this section shall be inoperative as to any public security unless the treasurer of the issuing political subdivision at least six months and not more than twelve months prior has sent to the holder of record of such public security, at his last known address as shown on the books of such treasurer, a notice of the provisions of this section. A copy of such letter of notice held in such treasurer's records shall be conclusive proof that the requirements of this subsection (4) have been complied with.

Source: L. 69: R&RE, p. 1083, § 1. **C.R.S. 1963:** § 125-6-7.

11-55-108. Trust or fiduciary relationship between issuer and holder. Any trust or fiduciary relationship between the issuer of any public security and the holder thereof, regarding the principal of or interest on such security, shall be conclusively presumed to have been repudiated on the maturity date of such security unless the same is presented for payment before the expiration of the applicable limitation period set forth in sections 11-55-107 to 11-55-110.

Source: L. 69: R&RE, p. 1083, § 1. **C.R.S. 1963:** § 125-6-8.

11-55-109. Moneys to revert to general or other fund. Any public moneys from whatever source derived remaining in any fund or account reserved, pledged, or otherwise held for payment of the principal of or interest on any public security on which action for collection has been barred shall revert to the general fund of the issuing authority.

Source: L. 69: R&RE, p. 1083, § 1. **C.R.S. 1963:** § 125-6-9.

11-55-110. Payment authorized although suit for recovery barred. Nothing contained in sections 11-55-107 to 11-55-110 shall be so construed as to prevent the payment of any public security, or the interest having accrued thereon prior to or at its maturity, after the period specified in section 11-55-107 has passed, and the issuing body of such public security is authorized by sections 11-55-107 to 11-55-110 to make such payment if it deems it in its best interests so to do.

Source: L. 69: R&RE, p. 1084, § 1. **C.R.S. 1963:** § 125-6-10.

ARTICLE 56

Public Securities Refunding Act

11-56-101. Short title. This article shall be known and may be cited as the "Public Securities Refunding Act".

Source: L. 77: Entire article added, p. 582, § 1, effective July 1.

11-56-102. Legislative declaration - applicability. The general assembly hereby declares that the orderly refunding of any revenue obligation or any general obligation bond and any other lawful general obligation indebtedness by any public body of the state, as defined in section 11-56-103 (7), when advantageous to the public body or persons within the public body, will serve a public use and will promote the health, safety, security, and general welfare of the inhabitants thereof and of the people of the state of Colorado. It is the intent of this article to provide a consistent mechanism for refunding for such public bodies of the state.

Source: L. 77: Entire article added, p. 582, § 1, effective July 1.

11-56-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Escrow supplement" means any funds or moneys (other than bond proceeds) of a public body, legally available for the purpose, which are placed in an escrow or trust account established under the provisions of this article to be used and expended, together with the proceeds of refunding bonds or special obligation refunding bonds, or both, to accomplish the purposes of such escrow or trust account.

(2) Repealed.

(3) "General obligation" means general obligation bonds or any other lawful general obligation of a public body constituting a debt or indebtedness of such public body.

(4) "Governing body" means a city council, board of trustees, commission, board of county commissioners, board of directors, or other legislative body of a public body in which the legislative powers of such public body are vested.

(5) (a) "Net effective interest rate" of a proposed issue of refunding bonds means the net interest cost of said refunding issue divided by the sum of the products derived by multiplying the principal amounts expressed in one thousand dollar units of such refunding issue maturing on each maturity date by ten times the number of years from the date of said proposed refunding bonds to their respective maturities.

(b) "Net effective interest rate" of outstanding obligations to be refunded means the net interest cost of said obligations to be refunded divided by the sum of the products derived by multiplying the principal amounts expressed in one thousand dollar units of such obligations to be refunded maturing on each maturity date by ten times the number of years from the date of the proposed refunding bonds to the respective maturities of the obligations to be refunded. In all cases the net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the obligations to be refunded.

(6) (a) "Net interest cost" of a proposed issue of refunding bonds means the total amount of interest to accrue on said refunding bonds from their date to their respective maturities, less the amount of any premium above par or plus the amount of any discount below par, at which said refunding bonds are being or have been sold.

(b) "Net interest cost" of outstanding obligations to be refunded means the total amount of interest which would accrue on said outstanding obligations from the date of the proposed refunding bonds to the respective maturity dates of said outstanding obligations to be refunded. In all cases the net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the obligations to be refunded.

(7) "Public body" means the transportation commission; any state educational institution, or other state institution, its board of regents, or other governing body thereof constituting a body corporate; any county; any municipality as defined by section 31-1-101 (6), C.R.S.; any school district; any special district, including any local government agency, corporation, quasi-municipal corporation, or other entity, organized or acting pursuant to the provisions of title 32 (except article 8), C.R.S.; and any water conservancy district, city housing authority, county housing authority, urban renewal agency, community redevelopment agency, any other corporate district, any other corporate authority, any corporate commission, or any other political subdivision of this state constituting a body corporate.

(8) "Revenue obligation" means revenue bonds or any other obligation payable solely from and pledging only specified income or revenue of the public body, which bonds or obligations do not constitute a debt or indebtedness of such public body.

(9) "Special obligation refunding bonds" means bonds issued by the public body pursuant to section 11-56-112.

Source: L. 77: Entire article added, p. 582, § 1, effective July 1. **L. 81:** (7) amended, p. 1611, § 2, effective July 1. **L. 89:** (2) repealed, p. 1135, § 85, effective July 1. **L. 91:** (7) amended, p. 1057, § 10, effective July 1.

11-56-104. Purpose of refunding. (1) A refunding of outstanding obligations of a public body may be accomplished pursuant to this article by the issuance of bonds for refunding, paying, and discharging all or any part of such outstanding obligations, including a portion of one or more issues of such obligations and including any interest thereon in arrears or about to become due, and for one or more of the following purposes:

(a) Avoiding or terminating any default in the payment of interest on or principal of, or both interest on and principal of, said obligations;

(b) Reducing the net effective interest rate of said obligations;

(c) Reducing total interest payable over the life of the obligations, by issuing bonds of a shorter term, or at a lower net interest cost, or having a lower net effective interest rate;

(d) Reducing the total principal and interest payable on such obligations or the principal and interest payable thereon in any particular year or years, or affecting other economies;

(e) Modifying or eliminating restrictive contractual limitations appertaining to such obligations, to the incurring of additional indebtedness or obligations, or to any system, facility, or improvement appertaining thereto;

(f) Postponing the maturity of all or any part or portion of said obligations to a later date, subject to the limitations in section 11-56-107;

(g) Substituting an issue of bonds for a note or notes, or other obligations, including but not limited to any obligation issued in anticipation of the later issuance of bonds;

(h) Any combination of the foregoing purposes specified in this subsection (1).

(2) In making the computations necessary or appropriate pursuant to subsection (1) of this section for a refunding transaction in which all or any portion of the principal of or interest on the refunding bonds is to be paid from the proceeds of such refunding bonds or the interest or other income to be derived from the investment of such proceeds, including any refunding transaction as a part of which special obligation refunding bonds are to be issued, only those amounts with regard to bonds issued for refunding purposes which are to be payable by the public body from sources other than refunding bond proceeds and the interest and other income derived from the investment of such proceeds need to be considered.

Source: L. 77: Entire article added, p. 584, § 1, effective July 1.

11-56-104.5. Disclosures by underwriters of financial matters related to refunding. (1) (a) Whenever an underwriter proposes to refund the bonds of any public body, and competitive proposals have not been requested, the underwriter shall, simultaneously with the submission of the proposal, disclose, in writing, to the governing body of the public body, the entire income, from all sources, which he anticipates receiving if his proposal is accepted, specifying all such sources and amounts, as well as disclosing all expenses which he anticipates the public body will incur as a part of such refunding transaction. Any governing body may require such disclosure whenever any refunding proposals are to be considered.

(b) The underwriter shall also provide the governing body of the public body with a comparison of annual debt service requirements before and after refunding, by year and amount, including funds which are required in addition to bond proceeds. Such comparison shall also show the present value of all annual differences in debt service requirements, using as a discount factor the net effective interest rate of the refunding bonds. All such figures shall be computed from the date on which the transaction is closed and shall include funds provided by the issuer as a reduction of, or an addition to, debt service requirements. Funds provided by the issuer in excess of accrued principal and interest, and earnings on the funds, over the life of, and compounded at the net effective interest rate of, the refunding bonds, shall also be disclosed.

(2) The information specified in subsection (1) of this section shall be updated to the date of closing at the time of closing. Any governing body may require an additional disclosure at such time as final figures are available.

Source: L. 78: Entire section added, p. 304, § 1, effective March 29.

11-56-105. General provisions - limitations. (1) Any revenue obligations or general obligations issued or incurred by any public body may be refunded without an election by the public body issuing or incurring the same or any successor thereof, except as otherwise provided by this section, in the name of the public body which issued or incurred the obligation or indebtedness being refunded, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto.

(2) (a) The bonded indebtedness of any school district outstanding at the time of the inclusion of all such district's territory in another district by reorganization, consolidation, dissolution, or any other lawful means may be refunded by action of the governing body of the district, including such territory at the time of such refunding, whether or not such indebtedness has been assumed by the district including such territory.

(b) When an entire school district having outstanding bonded indebtedness has been divided and parts thereof included within two or more other districts by any lawful means, the refunding of such indebtedness shall require affirmative action by a majority of the members of the governing body of each of the districts within which any part of the territory of such district owing said indebtedness is then included, except as is provided in this article to the contrary.

(c) The bonded indebtedness of any school district outstanding at the time any territory of said district is detached therefrom by any lawful means, and which district has retained its lawful corporate existence subsequent to the detachment of such territory from said district, may be refunded by action of the governing body of such district from which territory has been detached with or without concurrence or action by the governing body of any district within which all or any part of said detached territory is included, and such districts from which territory has been detached and which retain their corporate existence subsequent to detachment are specifically exempted from the requirements and provisions of paragraph (b) of this subsection (2).

(3) (a) General obligation refunding bonds may be issued to refund all or any portion of one or more outstanding general obligations of a public body, but no two or more outstanding general obligations, or portions thereof, may be refunded by a single issue of refunding bonds unless the taxable property upon which tax levies are being made for payment of each such outstanding general obligation is identical to the taxable property on which such levies are being made for the payment of all other outstanding general obligations proposed to be refunded by such single issue of refunding bonds, and the same tax and debt limitations, if any, applicable to each obligation proposed to be refunded by such single issue of refunding bonds are also applicable to all other obligations to be refunded by such single issue.

(b) Refunding revenue bonds may be issued to refund all or any portion of one or more outstanding revenue obligations, but no two or more outstanding revenue obligations may be refunded by a single issue of refunding revenue bonds unless all of the outstanding revenue obligations could be issued as a single obligation at the time of the refunding. Subject to the provisions and limitations of section 11-56-106, general obligation refunding bonds may be issued to refund all or any portion of one or more outstanding revenue obligations, but no two or more outstanding revenue obligations may be refunded by a single issue of general obligation refunding bonds unless the property subject to taxation for the purpose for which each outstanding revenue obligation to be refunded was issued is identical to the property subject to taxation for the purpose for which each other outstanding revenue obligation to be refunded with

such single issue of refunding revenue bonds was issued, and the tax and debt limitations, if any, applicable to taxes levied for general obligations issued for all of the purposes for which the outstanding revenue obligations to be refunded with such single issue of general obligation bonds were issued are the same.

(4) Refunding bonds may be delivered in exchange for the obligations to be refunded or may be sold in such manner as determined by the governing body in the best interests of the public body and the proceeds of said sale applied as provided in this article. Said bonds may be sold at, above, or below the par value thereof if the price thereof will not result in a net effective interest rate in excess of the maximum net effective interest rate authorized by the governing body.

(5) No revenue obligation or general obligation may be refunded unless the holder thereof voluntarily surrenders the same for exchange or payment or the said obligations either mature or are callable by the issuer for prior redemption under their terms within twenty years from the date of issuance of the refunding bonds, and provision shall have been made in said refunding for paying the obligations being refunded within said period of time.

(6) (a) A public body shall be authorized to utilize an escrow supplement in accomplishing any refunding procedures undertaken pursuant to this article; except where the purpose of the refunding is to accomplish the purposes designated in section 11-56-104 (1)(b), (1)(c), or (1)(d), then:

(I) Where general obligations constituting a debt or indebtedness of the public body are to be refunded, such escrow supplement shall not exceed the aggregate principal and net interest cost of the obligations to be refunded less the aggregate principal and net interest cost of the refunding bonds, other than special obligation refunding bonds;

(II) Where general obligation refunding bonds are proposed to be issued to refund revenue obligations, pursuant to section 11-56-106, no escrow supplement in excess of the amount by which the principal amount of the obligations to be refunded exceeds the principal amount of the refunding bonds, other than special obligation refunding bonds, shall be permitted unless approved as a part of the refunding question submitted to the electors.

(b) Neither the principal of nor the interest on any special obligation refunding bonds issued in conjunction with any other refunding bonds pursuant to this article shall be considered when making any of the computations required by this subsection (6).

(c) The provisions of this subsection (6) shall not apply to the refunding bonds where the indebtedness refunded was incurred pursuant to subsection (3) of section 6 of article XI of the state constitution.

(7) Whenever any school district issues refunding bonds under the provisions of this article, the governing body shall provide for registration of the bonds in the manner provided for other school bonds by section 22-42-121, C.R.S., which registration shall have the same legal effect as specified in section 22-42-121, C.R.S.

(8) Any school district which issues refunding bonds under the provisions of this article shall file a report within sixty days after the issuance of said bonds with the state board of education. The report shall indicate the principal amount of obligations refunded, the net effective interest rate of both the obligations refunded and the refunding bonds, the net interest cost of both the obligations refunded and the refunding bonds, all school district costs incident to the issuance of refunding bonds, including those of the escrow agent, and such other items as may be determined by the state board of education.

(9) The issuance of refunding bonds by any public body for purposes of and in the manner authorized by this article, or by the provisions of any other law shall not be interpreted to be the creation of debt or indebtedness such that the same would require the approval at an election in accordance with the constitution or laws of this state, and no such approval shall be required for the issuance of such refunding bonds, except as specifically provided by this article. Any obligations which have been refunded, as provided in this article, either by immediate payment or redemption and retirement or by the placement of proceeds of refunding bonds in escrow, shall not be deemed outstanding for purposes of determining compliance with debt limitations or for determination of the relative position of the pledge or lien on any fund or moneys held by the refunding bonds from and after the date on which sufficient moneys are placed either with the paying agent of such outstanding obligations for the purpose of immediately paying or redeeming and retiring such bonds or with the escrow agent for the purpose of paying or redeeming and retiring such bonds at a designated future date. Sufficiency of any moneys for said purposes shall be determined as provided in section 11-56-109.

Source: L. 77: Entire article added, p. 584, § 1, effective July 1.

11-56-106. Refunding with bonds of another type. (1) Subject to the provisions of subsections (2), (3), and (4) of this section, nothing contained in this article shall be construed as authorizing a public body to issue any obligations constituting a debt or indebtedness for the purpose of refunding obligations which do not constitute debt or indebtedness.

(2) Any revenue obligations of a public body may be refunded by the issuance of general obligation refunding bonds only if the public body would be authorized by law to issue general obligations for the purposes for which such revenue obligations were originally issued at the time of the issuance of said refunding bonds, whether or not the public body was so authorized at the time of the issuance of such revenue obligations.

(3) If the issuance of general obligations for a particular purpose would be conditioned upon their approval by the qualified electors of the public body at an election, any general obligation refunding bonds proposed to be issued to refund revenue obligations originally issued for such purpose may be issued only if issuance of the refunding bonds has been approved at an election in the same manner.

(4) If a debt limitation pertains to general obligation bonds or other general obligations of a public body issued for a particular purpose, then no general obligation bonds shall be issued to refund any revenue obligations issued for such purpose in any principal amount which would cause such debt limitation to be exceeded.

Source: L. 77: Entire article added, p. 587, § 1, effective July 1.

11-56-107. Bond provisions. (1) The sum of the principal amount of any refunding revenue bonds may exceed the principal amount of the revenue obligations to be refunded thereby by such amount as is useful to effect the refunding if the sum of the aggregate principal and net interest cost of the refunding revenue bonds for the period ending on the scheduled final maturity date of the revenue obligations to be refunded, without regard to any redemptions that may be made prior to such scheduled maturity date, is the same or less than the aggregate principal and net interest cost of the revenue obligations to be refunded for the same time period,

excluding from the computation of the aggregate principal and net interest cost of the refunding revenue bonds any interest on the obligations to be refunded in arrears or about to become due and payable which is capitalized with the proceeds of the refunding revenue bonds and any interest on the refunding revenue bonds which is capitalized with the proceeds of the refunding revenue bonds. The principal amount of any general obligation refunding bonds shall not exceed the original authorized principal amount of the general obligations to be refunded. Except for refunding bonds where the indebtedness refunded was incurred pursuant to subsection (3) of section 6 of article XI of the state constitution, the principal amount of any general obligation bonds issued to refund outstanding revenue obligations shall not exceed the outstanding principal amount of the revenue obligations to be refunded, except to the extent that a larger principal amount of refunding bonds is authorized at an election pursuant to section 11-56-106 (3) or in the manner otherwise provided by law for incurring new indebtedness.

(2) Neither the principal of nor the interest on any special obligation refunding bonds issued in conjunction with any other refunding bonds pursuant to this article shall be considered when making any of the computations required by subsection (1) of this section.

(3) The principal amount of the refunding bonds may also be less than or the same as the principal amount of the obligations being refunded, so long as provision is duly and sufficiently made for payment in full and discharge of such refunded obligations.

(4) As the governing body may determine, any refunding bonds issued under this article shall:

(a) Be of a convenient denomination;

(b) Mature at such time not exceeding forty years from the date of said bonds as determined by the governing body;

(c) Bear interest, which may be evidenced by one or more sets of coupons, at a specified rate, payable annually or semiannually, but the first interest payment may be for interest accruing for any other period not to exceed three years;

(d) Be made payable, both principal and interest, in lawful money of the United States, at such place as determined by the governing body;

(e) Be negotiable in form and executed in substantially the same manner as prescribed for other bonds of such public body.

(5) The right to redeem all or part of said refunding bonds prior to their maturity, and the order of any such redemption, may be reserved in the ordinance or resolution of the governing body, as the case may be, authorizing the issuance of the bonds and, if so reserved, shall be set forth on the face of said bonds. Such redemption may be with or without the payment of a premium not exceeding five percent of principal, as determined by the governing body.

(6) Any ordinance or resolution authorizing, or any escrow agreement or trust indenture or other instrument appertaining to, any refunding bonds issued under this article may provide that each refunding bond shall recite that it is issued under authority of this article. Such recital shall conclusively impart full compliance with all of the provisions and limitations of this article, and all refunding bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Source: L. 77: Entire article added, p. 587, § 1, effective July 1. **L. 83:** (1) amended, p. 507, § 1, effective April 22.

11-56-108. Application of bond proceeds - procedures - limitations. (1) The proceeds derived from the issuance of refunding bonds under the provisions of this article, together with other legally available funds, if any, of the public body, shall either be immediately applied to the payment or redemption and retirement of the obligations to be refunded and the cost and expense incident to such procedures or shall be placed in escrow or trust to be applied for the purposes and in the manner required or permitted under this article as the governing body may determine.

(2) Proceeds of refunding bonds, including proceeds of special obligation refunding bonds, if any, and other moneys which are placed in escrow or trust, pursuant to the determination and direction of the governing body, shall be used and applied for the following purposes and in the following manner, the details of which shall be set forth in full and at length in the escrow agreement:

(a) For the purpose of paying the principal of, interest on, and prior redemption premiums, if any, for the obligations refunded only;

(b) For the purpose of paying all or specified portions of the principal of, interest on, and prior redemption premiums, if any, for the obligations to be refunded or the refunding bonds or any combination thereof;

(c) For the purpose of paying all of the principal of, interest on, and prior redemption premiums, if any, for the obligations refunded, and all of the principal of, interest on, and prior redemption premiums, if any, for all special obligation refunding bonds issued as a part of the refunding transaction;

(d) In specified portions, for one or more or all of the purposes described in this subsection (2).

(3) The escrow agreement shall in each case designate and set forth with regard to the obligations refunded, the refunding bonds, and the special obligation refunding bonds, if any:

(a) Any amounts of principal, interest, prior redemption premiums, and costs and expenses of the refunding transaction to be payable from the escrow or trust account; including, without limiting the generality of the foregoing, the capitalization of interest on the refunding bonds for such period of time as the governing body may determine;

(b) Whether each such amount is to be payable:

(I) From funds originally placed in such escrow or trust account; or

(II) From the interest or other income derived from the investment of the funds originally placed in such escrow or trust account; or

(III) From a specified combination of subparagraphs (I) and (II) of this paragraph (b), and, if so, in what proportions; or

(IV) From any moneys in such account without specification or restriction; and

(c) The order and priority, if any, which is to govern the use and application of all or any part of the funds held in said escrow or trust account to payment of any such amounts.

(4) The incidental costs and expenses of the refunding transaction may be paid by the purchaser of the refunding bonds, or by the public body from any general fund, subject to appropriations therefor and any other limitations on the use thereof as otherwise provided by law, or from other available revenues of the public body under the control of the governing body, or from the proceeds of the refunding bonds, or from the interest or other yield derived from the investment of any refunding bond proceeds or other moneys placed in the escrow or trust, or

from any other sources legally available therefor, or any combination thereof, as the governing body may determine.

(5) Any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon or the principal thereof, or to both interest and principal, or may be deposited in a reserve therefor, or may be used to pay refunded obligations by deposit in the escrow or trust account, or otherwise, or may be used to defray any incidental costs and expenses appertaining to the refunding, or any combination thereof, as the governing body may determine. In the event of any use of such accrued interest or premium other than for payment of interest on or principal of the refunding bonds, or as a reserve therefor, the net interest cost figures on the refunding bonds used in making the computations required in sections 11-56-105 (6) and 11-56-107 (1) shall be adjusted upward accordingly to reflect the amounts actually to be paid by the public body.

(6) For the purpose of implementing the provisions of this article, the governing body shall have the power to enter into escrow agreements and to establish escrow or trust accounts with any commercial bank having full trust powers located within the state of Colorado and which is a member of the federal deposit insurance corporation under protective covenants and agreements whereby such accounts shall be fully secured as provided by section 11-56-109.

Source: L. 77: Entire article added, p. 589, § 1, effective July 1. **L. 83:** (3)(a) amended, p. 508, § 2, effective April 22.

11-56-109. Proceeds of refunding bonds in escrow - investment - security - amounts. (1) Moneys placed in any escrow or trust shall not necessarily be limited to proceeds of refunding bonds but may include other moneys legally available for the purpose.

(2) Any moneys in escrow or trust, pending use for their intended purpose, may be invested or reinvested only in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(3) The escrow agent shall continuously secure any moneys placed in escrow or trust and not so invested or reinvested in securities by a pledge of such securities in a principal amount at all times at least equal to the total uninvested moneys held in such escrow or trust in strict accordance with the provisions of the escrow agreement. The requirements of this subsection (3) shall not apply with regard to any such uninvested moneys to the extent and during any time the same are fully insured by the federal deposit insurance corporation.

(4) Such moneys and investments in the escrow or trust account, together with the interest or other gain to be derived from any such investments, shall at all times be at least sufficient to make all of the payments required to be made pursuant to the escrow agreement in the manner and at the times specified in said agreement.

(5) The computations made in determining such sufficiency shall be verified by a certified public accountant licensed to practice in this state.

(6) No purchaser of any refunding bond issued under this article shall be responsible in any manner for the application of the bond proceeds or other moneys by the public body, the governing body, or any of the officers, agents, or employees of the public body.

Source: L. 77: Entire article added, p. 590, § 1, effective July 1. **L. 89:** (2) and (3) amended, p. 1106, § 7, effective July 1.

11-56-110. Sources of payment - limitations. Refunding bonds, other than special obligation refunding bonds, may be made payable from, and the governing body may pledge to the payment of such refunding bonds, any tax, or any income or revenue of the public body from any source, or both such taxes and such income or revenue, which could have been legally pledged to and used for the payment of the obligations being refunded at the time such obligations being refunded were issued or which could legally be pledged to and used for the payment of the obligations being refunded if the same were to be issued at the time of the refunding, as the governing body may determine, notwithstanding the pledge of such taxes, income or revenue for the payment of the outstanding obligations being refunded is thereby modified. In no event, however, shall any taxes, income, or revenues be pledged for the payment of any refunding bonds which could not have been lawfully pledged for the payment of the obligations being refunded because of the lack of the required approval of such pledge by the electors qualified to vote on the issuance of the obligations being refunded, or because of limitations in the election question authorizing their issuance, unless the refunding bonds and such pledge are similarly authorized by the electors at an election in substantially the manner required by law for the issuance of the obligations being refunded.

Source: L. 77: Entire article added, p. 591, § 1, effective July 1.

11-56-111. Combination of refunding bonds and other bonds - limitations. Any refunding bonds and bonds for any other purpose authorized by any other law may, in the discretion of the governing body, be issued separately or in combination in one or more series by the public body, subject, however, to the same limitations provided in section 11-56-105 (3) for combined refunding of two or more outstanding obligations.

Source: L. 77: Entire article added, p. 591, § 1, effective July 1.

11-56-112. Special obligation refunding bonds. (1) In addition to and in combination with the refunding bonds authorized by this article, the public body may concurrently issue special obligation refunding bonds, for the purpose of providing additional funds with which to accomplish the refunding of outstanding general obligations or outstanding revenue obligations. Such special obligation refunding bonds shall be payable solely from amounts pledged under the escrow or trust agreement derived from certain specified interest or principal, or both interest and principal, payments on the investments in said escrow or trust account.

(2) The total principal amount of special obligation refunding bonds shall not exceed the sum of the following items reduced by the total principal amount of refunding bonds, other than special obligation refunding bonds, to be issued as a part of such refunding transaction:

(a) The total outstanding principal amount of the obligations being refunded;

(b) The prior redemption premium, if any, payable on that portion of the obligations being refunded which are to be called for redemption prior to maturity, as set forth in the ordinance or resolution authorizing the refunding bonds;

(c) The total accrued and unaccrued interest payable on the obligations refunded to stated maturity dates or to the dates at which all or specified portions of the refunded obligations are to be called for redemption prior to maturity, as set forth in the ordinance or resolution

authorizing the refunding bonds, less the amount of any such accrued interest deposited into the escrow account by the issuer; and

(d) All costs incurred in the authorization, sale, issuance, and delivery of the refunding bonds and the special obligation refunding bonds.

(3) The public body shall have no authority or power, at any time or in any manner, to pledge its credit, or its taxing power or any other funds, moneys, income, or revenues of such public body other than as specified in this section, to the payment of the principal of or interest on the special obligation refunding bonds issued pursuant to this section, nor shall such special obligation refunding bonds be deemed to be a debt or indebtedness of the public body or the state of Colorado, and such condition shall be set forth on the face of the bonds; except that such public body may pledge any other taxing power, funds, moneys, income, or revenues of such public body as additional security for the special obligation refunding bonds.

(4) The general provisions of this article relating to refunding obligations shall equally apply to special obligation refunding bonds, except as otherwise provided in this article.

Source: L. 77: Entire article added, p. 591, § 1, effective July 1.

11-56-113. Tax exemption - exceptions. (1) Except as otherwise provided in this article, all general obligation refunding bonds, refunding revenue bonds, and special obligation refunding bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

(2) Bonds issued pursuant to this article for the purpose of refunding outstanding obligations which were neither exempt from such taxation at the time issued or at the time of the refunding nor which would have been exempt from such taxation if originally issued at the time of the refunding, shall be subject to taxation to the same extent and in the same manner as the outstanding obligations for the refunding of which they are issued.

Source: L. 77: Entire article added, p. 592, § 1, effective July 1.

11-56-114. Conclusive determination of governing body that statutory limitations have been met. The determination of the governing body that the provisions and limitations, in this article and any other applicable law, imposed upon the issuance of any bonds under this article, have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: L. 77: Entire article added, p. 592, § 1, effective July 1.

11-56-115. Prior obligations not impaired. Nothing in this article shall be construed in any manner so as to impair the obligations of any refunding bonds issued or any refunding transaction, consummated by a public body prior to the enactment of this article, or otherwise to invalidate any such bond, obligation, or refunding transaction.

Source: L. 77: Entire article added, p. 592, § 1, effective July 1.

11-56-116. Construction of this article. The powers conferred by this article are in addition and supplemental to and not in substitution for, and the limitations imposed by this article shall not directly or indirectly modify, limit, or affect, the powers conferred by any other law. Bonds may be issued under this article without regard to the provisions of any other law, and if so issued, insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

Source: L. 77: Entire article added, p. 592, § 1, effective July 1.

11-56-117. Liberal construction. This article shall be liberally construed so that the legislative intent may be fulfilled.

Source: L. 77: Entire article added, p. 593, § 1, effective July 1.

ARTICLE 57

Public Securities

PART 1

GENERAL

11-57-101. Applicability. This article applies to bonds, notes, warrants, certificates, or other securities evidencing loans or the advancement of moneys, to be issued by or on behalf of the state or any political subdivision thereof or any district, public board, commission, authority, or other public body corporate in the state pursuant to any general or special act or pursuant to any legislative or home rule charter.

Source: L. 83: Entire article added, p. 510, § 1, effective April 21.

11-57-102. Form - payment and transfer of securities. The securities described in section 11-57-101 shall be in such registered or bearer form, with or without interest coupons; be subject to such conditions for transfer; be subject to such provisions for conversion as to denomination or to bearer or registered form; be made registerable or payable, or both, by the treasurer or other officer of the issuing entity, or by such trustee, registrar, paying agent, or transfer agent within or without this state; be issued, transferred, and registered by such book entry; be in such denomination or denominations; bear such dates, signatures, and authentications; and be held in custody by such depository within or without this state, all as may be determined by the entity or the governing body of the entity authorized or empowered to issue such securities. Payment at designated due dates or in installments may be required by the authorizing proceedings to be by check, draft, or other medium of payment and need not be conditioned upon presentation of any security or coupon. Signatures on any printed securities issued under this article or any other statute may be manually subscribed or by facsimile, but any such printed security, other than an interest coupon, shall bear at least one manual signature,

which, notwithstanding the provisions of section 11-55-103 (1) or any other law, may be that of an official of the issuing entity or of the trustee, registrar, or transfer agent.

Source: L. 83: Entire article added, p. 510, § 1, effective April 21.

11-57-103. Determination by resolution or ordinance. The determination of the body authorized or empowered to issue such securities required by section 11-57-102 shall be made in the resolution or ordinance authorizing the issuance of such securities or in any ordinance, resolution, or other instrument supplemental thereto.

Source: L. 83: Entire article added, p. 511, § 1, effective April 21.

11-57-104. No restriction on other acts. This article shall constitute an additional and separate grant of powers which may be exercised without regard to any other act which contains the same subject matter; except that this article shall not be deemed to be a restriction or limitation on the exercise of powers by an issuing entity under any other act or home rule legislation.

Source: L. 83: Entire article added, p. 511, § 1, effective April 21.

11-57-105. Records - registered public obligations. Records, with regard to the ownership of or security interests in registered public obligations, shall not be subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records, notwithstanding any law to the contrary.

Source: L. 84: Entire section added, p. 399, § 1, effective March 26.

PART 2

SUPPLEMENTAL PUBLIC SECURITIES ACT

11-57-201. Short title. This part 2 shall be known and may be cited as the "Supplemental Public Securities Act".

Source: L. 2000: Entire part added, p. 133, § 1, effective August 2.

11-57-202. Legislative declaration. The general assembly hereby finds, determines, and declares that, due to the changes in the public securities market and recent technological developments, it is important to provide public entities with the option to elect to apply the provisions of this part 2 when issuing securities. This part 2 will serve a public use and will promote the health, safety, security, and general welfare of the people of the state of Colorado. The general assembly intends for this part 2 to provide supplemental procedures for the issuance of securities otherwise authorized by law. However, nothing in this part 2 authorizes an issuing authority to waive an election otherwise required under section 20 of article X or article XI of

the Colorado constitution or to hold an election inconsistent with the election requirements in section 20 of article X.

Source: L. 2000: Entire part added, p. 133, § 1, effective August 2.

11-57-203. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Act of issuance" means an ordinance, resolution, or decision to issue a security pursuant to delegated authority adopted by the issuing authority or officer of a public entity for the purpose of issuing a security or an amendment to such ordinance, resolution, or decision adopted by the issuing authority after the issuance of a security.

(2) "Issuing authority" means the governing body of any public entity in which the laws of this state vest the authority to issue securities through an act of issuance.

(3) "Public entity" means any state agency, state department, political subdivision, quasi-governmental entity, or any entity that is created by the constitution or statute of this state that is authorized to issue securities. Such entities include the following:

(a) The state treasurer;

(b) Any state educational institution, or other state institution, its governing board, or other issuing authority of such institution constituting a body corporate;

(c) Any county or city and county;

(d) Any municipality;

(e) Any school district;

(f) Any district organized or acting pursuant to the provisions of title 32, C.R.S.;

(g) Any district or authority organized or acting pursuant to the provisions of title 29, 30, or 31, C.R.S.;

(h) Any water conservancy district;

(i) Any other political subdivision or governmental or quasi-governmental entity of this state;

(j) Any other public entity as defined in section 24-75-601 (1), C.R.S.; or

(k) A nonprofit corporation organized under the law of this state and created solely for the purpose of issuing securities on behalf of an entity listed in paragraphs (a) to (i) of this subsection (3).

(4) "Revenues" means all or any portion of any taxes, tolls, fees, rates, charges, assessments, grants, contributions, or other income and revenues received by the public entity.

(5) "Securities" means any financial contract, note, warrant, bond, certificate, or debenture authorized to be issued by a public entity under other laws of this state.

Source: L. 2000: Entire part added, p. 133, § 1, effective August 2. **L. 2004:** (1) and (3) amended, p. 948, § 1, effective May 21.

11-57-204. Election of applicability. (1) This part 2 is applicable to securities issued by any public entity if the issuing authority of such public entity elects in an act of issuance to apply all or any of the provisions of this part 2 to the issuance of such securities. If a public entity elects to apply a provision of this part 2 and such provision conflicts with a provision of another statutory law, the provision of this part 2 shall control. No provision of this part 2 shall be interpreted to modify or limit the rights and powers conferred on such public entity by any other

provision of state law, unless the public entity elects to use such provisions in the issuance of its securities. This part 2 shall not modify or limit any provisions of articles 51 and 59 of this title.

(2) Nothing in this part 2 authorizes an issuing authority to waive an election otherwise required under section 20 of article X or article XI of the Colorado constitution or to hold an election inconsistent with the election requirements in section 20 of article X.

Source: L. 2000: Entire part added, p. 134, § 1, effective August 2.

11-57-205. Delegation of authority. (1) The issuing authority of a public entity may, in the act of issuance, at any time, delegate to any member of the issuing authority, chief executive officer, or chief financial officer of the public entity the authority to sign a contract for the purchase of the securities or to accept a binding bid for the securities. Such delegation shall be effective for one year after adoption of the act of issuance or such shorter period as specified in the act of issuance. In addition to any determinations that may be delegated in accordance with other provisions of state law, the following determinations may be delegated to such member or officer without any requirement that the issuing authority approve such determinations:

(a) The rate of interest on the securities;

(b) The conditions on which and the prices at which the securities may be redeemed before maturity;

(c) The existence and amount of any capitalized interest or reserve funds;

(d) The price at which the securities will be sold;

(e) The principal amount and denominations of the securities;

(f) The amount of principal maturing in any particular year;

(g) The dates on which principal and interest shall be paid;

(h) The securities to be refunded, if any; and

(i) Whether the securities will be secured by an assurance of payment as described in section 11-57-207 (2) and the terms of any agreement with the third party providing the assurance of payment.

(2) All terms of the securities other than the matters described in subsection (1) of this section shall be approved by the issuing authority of the public entity before the securities are delivered.

Source: L. 2000: Entire part added, p. 135, § 1, effective August 2. **L. 2004:** (1)(h) and (1)(i) added, p. 949, § 2, effective May 21. **L. 2008:** IP(1) amended, p. 626, § 1, effective August 5.

11-57-206. Fixed and variable rates of interest for securities - agreement with third party for interest determinations. The act of issuance authorizing the issuance of any securities or any trust indenture or other instrument created by such act of issuance may fix a rate or rates of interest, or provide for the determination of the rate or rates from time to time, by a designated agent according to the procedure specified in that act of issuance or other instrument. An issuing authority of a public entity may contract with or select any person to make such determinations.

Source: L. 2000: Entire part added, p. 135, § 1, effective August 2.

11-57-207. Denomination, maturity, interest, and negotiability of securities - rate of interest. (1) Any securities issued may:

(a) Mature at such time or times as determined by the public entity or as provided in section 11-57-205, not to exceed forty years;

(b) Bear interest at a rate or rates payable or compoundable at such intervals as determined by the public entity or as provided in section 11-57-205; and

(c) Be made payable in lawful money of the United States, at the office of the treasurer or other appropriate officer or employee of the public entity or any commercial bank or commercial banks within or without the state as may be authorized by the public entity.

(2) An issuing authority of a public entity may enter into an agreement with a third party for an assurance of payment of any principal, interest, or premiums due in connection with any securities issued by the issuing authority. The obligation of the issuing authority to reimburse that third party for any advances made pursuant to that agreement may be provided in that agreement, recited in those securities, or evidenced by another instrument. Such obligation shall be designated in the act of issuance as passed by such issuing authority that authorized the issuance of such securities or any other instrument. The issuing authority may assign its rights under that agreement.

Source: L. 2000: Entire part added, p. 136, § 1, effective August 2.

11-57-208. Pledged revenues received or credited subject to immediate lien - priority and validity of lien. (1) A public entity may pledge all or any portion of its revenues to the payment of its securities unless the use of any of such revenues is restricted by other laws of the state. In pledging the proceeds of an ad valorem property tax, an issuing authority may limit the rate of taxation or the amount of tax dollars that it is obligated to impose or collect to pay any securities as set forth in the act of issuance enacted by such body.

(2) The creation, perfection, enforcement, and priority of a pledge of revenues to secure or pay securities shall be governed by this section and the act of issuance passed by the issuing authority authorizing such securities. Revenues pledged for the payment of any securities, as received by or otherwise credited to the public entity, shall immediately be subject to the lien of each such pledge without any physical delivery, filing, or further act. The lien of each such pledge and the obligation to perform the contractual provisions made in the act of issuance or other instrument shall have priority over any or all other obligations and liabilities of the public entity, except as may be otherwise provided in this part 2, in the act of issuance, or in any other instrument. However, such pledges and liens shall be subject to any prior pledges and liens. The lien of each such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the public entity irrespective of whether such persons have notice of such liens.

Source: L. 2000: Entire part added, p. 136, § 1, effective August 2.

11-57-209. Recourse against public entities officers and agents - acceptance of securities constitutes waiver and release. If a member of the issuing authority, or any officer or agent of the public entity acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest, or prior redemption premiums.

Such recourse shall not be available either directly or indirectly through the issuing authority or the public entity, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the securities and as a part of the consideration of their sale or purchase, any person purchasing or selling such public security specifically waives any such recourse.

Source: L. 2000: Entire part added, p. 137, § 1, effective August 2.

11-57-210. Recital in securities conclusive evidence of validity and regularity of issuance. An act of issuance providing for the issuance of public securities or an indenture may provide that the securities shall contain a recital that they are issued pursuant to the supplemental public securities act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of such public securities after their delivery for value.

Source: L. 2000: Entire part added, p. 137, § 1, effective August 2.

11-57-211. Meetings aided by telecommunications devices. The act of issuance authorizing the issuance of securities may be adopted by the issuing authority at a meeting where one or more members of the issuing authority may participate in such meeting and may vote on such act of issuance through the use of telecommunications devices. Such participation may include but not be limited to the use of a conference telephone or similar communications equipment. Such participation through telecommunications devices shall constitute presence in person at such meeting. However, all such public meetings shall have at least one person physically present at the designated meeting area to ensure that the public meeting is in fact accessible to the public.

Source: L. 2000: Entire part added, p. 137, § 1, effective August 2.

11-57-212. Limitation of actions. No legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of securities by a public entity shall be commenced more than thirty days after the authorization of such securities.

Source: L. 2000: Entire part added, p. 137, § 1, effective August 2. **L. 2004:** Entire section amended, p. 949, § 3, effective May 21.

11-57-213. Confirmation of actions and powers. (1) In its discretion, the public entity may file a petition prior to the issuance of securities under the supplemental public securities act in the district court in any county in which the public entity or a portion thereof is located for a judicial examination and determination of any power conferred; any securities issued by the public entity or authorized to be issued by the public entity; any taxes, assessments, fees, or charges levied or otherwise made by the public entity or contracted to be levied by the public entity or otherwise made by the public entity; or of any other act, proceeding, or contract of the public entity whether or not such act, proceeding, or contract has been taken or executed, including proposed contracts for any improvement; proposed securities of the public entity to

defray in whole or in part the cost of the project or any refunding; the proposed acquisition, improvement, equipment, maintenance, operation, or disposal of any property pertaining thereto; or any combination thereof.

(2) A petition filed under subsection (1) of this section shall set forth the facts upon which the validity of such power, security, tax, assessment, fee, charge, act, proceeding, or contract is founded. The presiding officer of the public entity shall verify the petition before it is filed with the public entity court by signing said petition.

(3) Any action filed under this section shall be in the nature of a proceeding in rem. The district court shall have jurisdiction over all parties interested in the proceeding upon the publication and posting of a notice in accordance with this section.

(4) The clerk of the district court in which a petition is filed shall provide notice of such filing. The notice shall include a brief outline of the contents of the petition; the time, date, and location of the hearing; and the location where a complete copy of any documents at issue in the petition may be examined. The clerk shall serve the notice by:

(a) Publishing the notice at least once a week for five consecutive weeks by five weekly insertions in a newspaper of general circulation in the municipalities and counties in which the public entity is located; and

(b) Posting the notice in the office of the public entity at least thirty days prior to the date of the hearing on the petition.

(5) Any resident in the public entity or owner of real property within the boundaries of the public entity may appear at the hearing by either filing a motion to dismiss or an answer to the petition on or before the hearing date or within such time as the court may allow. The petition shall be taken as confessed by all persons who fail to appear.

(6) The petition and notice shall be sufficient to give the district court jurisdiction, and, upon hearing, the district court shall examine and determine all matters affecting the question submitted, shall make such findings with reference thereto, and shall render such judgment and decree thereon as the case warrants.

(7) Unless otherwise specified in this section, the Colorado rules of civil procedure shall govern any actions filed under this section in matters of pleading and practice.

(8) Costs may be divided or apportioned among any contesting parties in the discretion of the district court.

(9) Review of the judgment of the district court may be available as in other similar cases; except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the district court within thirty days.

(10) The district court shall disregard any error, irregularity, or omission that does not affect the substantial rights of the parties.

(11) All cases in which there may arise a question of validity of any matter provided for under this section shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

(12) Nothing in this section applies to any condemnation of property.

Source: L. 2000: Entire part added, p. 137, § 1, effective August 2.

11-57-214. Investments. Income received from any legal investment may be deposited by the public entity in any fund or account that the public entity maintains.

Source: L. 2000: Entire part added, p. 139, § 1, effective August 2. **L. 2004:** Entire section amended, p. 949, § 4, effective May 21.

ARTICLE 58

Public Securities Information
Reporting Act

11-58-101. Short title. This article shall be known and may be cited as the "Public Securities Information Reporting Act".

Source: L. 91: Entire article added, p. 667, § 1, effective June 1.

11-58-102. Legislative declaration. The general assembly hereby declares that the annual disclosure of financial and credit information for nonrated public securities will benefit both issuers and investors by expanding and stabilizing the market for nonrated public securities and thereby improve the marketability of such securities. The general assembly further declares that issuers of nonrated public securities are strongly encouraged to make such annual disclosure of financial and credit information and to make such disclosed information available to all of their investors.

Source: L. 91: Entire article added, p. 667, § 1, effective June 1.

11-58-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Annual information report" means a written report completed on forms prescribed by the director of the department of local affairs.

(2) "Conduit financing" means an outstanding nonrated public security for which a private profit making or nonprofit making issuer constitutes the ultimate credit source for the security.

(3) (Deleted by amendment, L. 2002, p. 541, § 1, effective October 1, 2002.)

(4) "Issued to the public" means offers and sales of nonrated public securities by an issuer except to the extent such securities have been offered and sold in accordance with federal rule 15c 2-12 (d)(1) of the federal "Securities Exchange Act of 1934".

(5) "Issuer" means the state, any political subdivision thereof, and any district, board, commission, authority, or other public corporate body issuing any nonrated public securities in Colorado.

(6) "Make public" means to file the annual information report with the department of local affairs.

(7) "National rating service" means Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc., or any other nationally recognized organization which regularly rates public securities.

(8) "Nonrated public securities" means bonds, notes, warrants, certificates, or other securities evidencing loans or the advancement of moneys which have been issued to the public by or on behalf of an issuer and have not been rated by a national rating service, but excluding conduit financing and any such obligation payable in full within one year after the date of its issuance; except that nothing in this article shall be construed to apply to any bond, note warrant, certificate, or other security issued for less than one million dollars.

(9) "Outstanding" in connection with any nonrated public security, means any nonrated public security which at the time has been issued, authenticated, and delivered under a financing document, and which has not been paid in full, cancelled, or deemed paid and which is otherwise outstanding in accordance with the terms of such financing document.

Source: L. 91: Entire article added, p. 667, § 1, effective June 1. **L. 2002:** (1), (3), and (6) amended, p. 541, § 1, effective October 1. **L. 2004:** (4) amended, p. 950, § 5, effective May 21.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.

11-58-104. Applicability of article. This article applies to the state, any political subdivision thereof, and any district, board, commission, authority, or other public corporate body in the state if there are at the time outstanding nonrated public securities which such entity has issued to the public or on its behalf has caused to be issued to the public.

Source: L. 91: Entire article added, p. 668, § 1, effective June 1.

11-58-105. Annual information report. Each issuer of nonrated public securities issued pursuant to sections 31-25-107 (9) and 31-25-807 (3), C.R.S., and title 32, C.R.S., shall make public within sixty days following the end of each of such issuer's fiscal year ending on or after December 31, 1991, an annual information report or reports with respect to any of such issuer's nonrated public securities which are outstanding as of the end of each such fiscal year. Nothing shall preclude any issuer not so required by this article from filing a report pursuant to this article.

Source: L. 91: Entire article added, p. 669, § 1, effective June 1. **L. 2002:** Entire section amended, p. 541, § 2, effective October 1.

11-58-106. Committee to develop standards - cash fund. (Repealed)

Source: L. 91: Entire article added, p. 669, § 1, effective June 1. **L. 96:** (3) and (4) repealed, p. 1268, § 190, effective August 7. **L. 2002:** Entire section repealed, p. 542, § 4, effective October 1.

11-58-107. Immunity from liability. The issuer or any public employee thereof shall be immune from liability for information contained in or omitted from any annual information report concerning a nonrated public security unless the inclusion or omission of such information

was willful and wanton for the purpose of materially misleading actual or potential holders of such nonrated public security.

Source: L. 91: Entire article added, p. 670, § 1, effective June 1.

11-58-108. Transfer of moneys to general fund - repeal. (Repealed)

Source: L. 2002: Entire section added, p. 542, § 3, effective October 1.

Editor's note: Subsection (2) provided for the repeal of this section, effective July 1, 2003. (See L. 2002, p. 542.)

ARTICLE 59

Colorado Municipal Bond
Supervision Act

Editor's note: Section 11-59-120 provides that the rule-making authority of the securities commissioner shall take effect July 1, 1991.

11-59-101. Short title. This article shall be known and may be cited as the "Colorado Municipal Bond Supervision Act".

Source: L. 91: Entire article added, p. 2404, § 1, effective January 1, 1992.

11-59-102. Legislative declaration. (1) The general assembly finds that:

(a) The financial reputation and integrity of all local governments and political subdivisions are a matter of statewide concern;

(b) There is a growing concern statewide with special districts and municipal and county improvement districts that are either insolvent or threatened with insolvency and the attendant impairment of viability and of the ability to provide public services; and

(c) The credit reputation of political subdivisions of the state of Colorado is of vital interest to citizens of the state.

(2) The general assembly determines that it is necessary to empower the securities commissioner to regulate and monitor the issuance of municipal bonds of political subdivisions and to develop information and recommendations for appropriate action for the general assembly in connection therewith.

(3) The general assembly declares that the annual disclosure of financial and credit information for public securities will benefit both issuers and investors by expanding and stabilizing the market for public securities and thereby improving the marketability of such securities.

(4) Therefore, the general assembly declares that it is in the best interests of this state and its citizens that safeguards and full disclosure be made in connection with the issuance of bonds of special districts and municipal and county improvement districts and that this article is necessary to protect the continued provision of public services and the credit of political

subdivisions. This article is remedial in nature and is to be broadly construed to effectuate its purposes.

Source: L. 91: Entire article added, p. 2404, § 1, effective January 1, 1992.

11-59-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Appraisal" shall have the same meaning as provided in section 12-61-702 (1), C.R.S.

(2) "Bond" means any bond, debenture, or other obligation authorized to be issued by any special district, municipal general improvement district, municipal special improvement district, county local improvement district, or county public improvement district.

(3) "County local improvement district" shall have the same meaning as district provided in section 30-20-602 (2), C.R.S.

(4) "County public improvement district" shall have the same meaning as improvement district provided in section 30-20-503 (3), C.R.S.

(5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive deposits, including deposits in savings, shares, certificates, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank, is permitted to exercise under the authority of the comptroller of the currency, and is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(6) "District" means a special district, a municipal improvement district, a municipal special improvement district, a county local improvement district, or a county public improvement district.

(7) "Division" means the division of securities created by section 11-51-701.

(8) "Financial institution or institutional investor" means any of the following, whether acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Advisers Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an investment adviser

registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consist of investing, purchasing, selling, or trading in securities of more than one issuer and not of its own issue and that has total assets in excess of five million dollars as of the end of its last fiscal year;

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958"; and

(j) Any other institutional buyer.

(9) "General obligation bond" means a bond constituting a debt or an indebtedness of a district backed by the full faith and credit and unlimited mill levy of such district.

(10) "Municipal general improvement district" shall have the same meaning as district provided in section 31-25-602 (1), C.R.S.

(11) "Municipal securities rule-making board" means the board established under section 15b of the federal "Securities Exchange Act of 1934".

(12) "Municipal special improvement district" shall have the same meaning as district provided in section 31-25-501 (1.5), C.R.S.

(13) "Person" means an individual, a corporation, a partnership, an association, an estate, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a governmental subdivision or agency, or any other legal entity.

(14) "Residential real property" shall have the same meaning as provided in section 39-1-102 (14.5), C.R.S.

(15) "Securities commissioner" means the commissioner of securities appointed pursuant to section 11-51-701.

(16) "Securities and exchange commission" means the commission established by the federal "Securities Exchange Act of 1934".

(17) "Special district" shall have the same meaning as provided in section 32-1-103 (20), C.R.S.

(18) "Taxing district" means a special district which is organized or acting under the provisions of title 32, C.R.S.

Source: L. 91: Entire article added, p. 2405, § 1, effective January 1, 1992.

Cross references: For the "Investment Company Act of 1940", see Pub.L. 76-768, 54 Stat. 789 (1940); for the "Investment Advisers Act of 1940", see Pub.L. 76-768, 54 Stat. 847 (1940); for the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.; for the "Securities Exchange Act of 1934", see Pub.L. 73-291, codified at 15 U.S.C. sec. 78a et seq.; for the "Small Business Investment Act of 1958", see Pub.L. 85-699, codified at 15 U.S.C. sec. 661 et seq.

11-59-104. General powers of securities commissioner. (1) The securities commissioner is hereby empowered to administer and enforce all provisions of this article and to provide the division with such books, records, files, and printing and other supplies and such officers and clerical and other assistance as may be necessary in the commissioner's discretion to

perform the duties required of the securities commissioner under this article, subject to appropriations made by the general assembly.

(2) The securities commissioner shall make such rules, forms, and orders as are necessary to assure that bonds issued by a district shall meet certain prescribed investment criteria and shall not unduly burden future property owners in such district. To further effectuate the purposes of this article, the securities commissioner may, from time to time, make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this article, including rules and forms governing applications for registration and reports and defining any terms, whether or not used in this article, insofar as the definitions are not inconsistent with the provisions of this article. For the purposes of rules and forms, the securities commissioner may classify bonds, issuers, and matters within the securities commissioner's jurisdiction and prescribe different requirements for different classes.

(3) No rule, form, or order shall be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors or present or future property owners and is consistent with the purposes and provisions of this article. In prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission, the municipal securities rule-making board, the department of local affairs, and the state auditor with a view to effectuating this article and to achieving uniformity in the form and content of applications and reports wherever practicable.

(4) (a) Unless otherwise prescribed by law, the securities commissioner may, by rule or order, prescribe the form and content of financial statements of persons other than districts required under this article, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by certified public accountants. Unless the commissioner by rule or order provides otherwise, a financial statement required of such persons under this article must be prepared in accordance with generally accepted accounting principles or other accounting principles or in such other form as may be prescribed for the issuer of the financial statement of such person by law.

(b) Unless otherwise prescribed by law, the securities commissioner may, by rule or order, prescribe the form and content of supplemental financial information of districts required under this article. Any supplemental financial information required under this article must be prepared in accordance with generally accepted accounting principles or such other accounting principles or in such other form as are prescribed for the supplemental financial information of such district by law.

(5) The securities commissioner may, by rule or order, establish standards and procedures for full disclosure to property owners in, and potential bond investors of, a district of such district's current financial condition.

(6) (a) The securities commissioner shall, by rule or order, require a special district to file with the securities commissioner a copy of the annual budget which such special district is required to file with the department of local affairs. Such budget shall not authorize the use of bond reserve funds or the proceeds of a sale or proposed sale of public facilities or improvements built or paid for with bond proceeds for bond payments without the prior written authorization of the securities commissioner.

(b) The securities commissioner shall, by rule or order, require districts to file with the securities commissioner a copy of the annual audit required pursuant to section 29-1-603,

C.R.S., at the same time as districts are required to file audits of such districts with the state auditor.

(c) Where the application for registration of a special district is effective pursuant to section 11-59-108, the securities commissioner may, by rule or order, require such a special district to file with the audited statement a further disclosure statement setting forth credit and financial information which will assist existing and potential investors in evaluating the district's ability to meet its debt service requirements, the enforcement of bondholders' rights and remedies, and the attainment of growth projections set forth in any documents accompanying the registration application.

(d) Any statements required to be filed pursuant to paragraph (a), (b), or (c) of this subsection (6) shall be made available to any person for inspection and copies thereof supplied as ordered by any person at a fee to be determined by the securities commissioner.

(7) The securities commissioner shall, by rule or order, require that a district obtain prior written approval of the securities commissioner before making any use of the proceeds of a bond offering in a manner that is contrary in any material respect to the use of proceeds that was described in the application for registration and declared effective by the securities commissioner.

(8) The securities commissioner shall, by rule or order, provide means by which bondholders, at their expense, may communicate with the holders of bonds of the same district so long as the confidentiality of the names and addresses of the bondholders is protected.

(9) The securities commissioner may compile information and reports and may make recommendations to the general assembly and the governor for such action, including legislation, as may be deemed desirable to promote the financial integrity of all investments in obligations of instrumentalities of the state. For such purposes, the securities commissioner may require from instrumentalities of the state such reports and information as may be necessary to determine the financial stability of such instrumentalities and the financial character of their obligations.

(10) All the powers of the securities commissioner described in this section relating to a district issuing bonds shall apply to any other taxing district signatory to a contract which pledges the revenues of such contract to the payment of the obligations of the issuing district.

Source: L. 91: Entire article added, p. 2407, § 1, effective January 1, 1992; except that subsection (1) is effective July 1, 1991. (See § 11-59-120.)

11-59-105. Colorado municipal bond supervision advisory board - creation. (1) (a) There is hereby created the Colorado municipal bond supervision advisory board, to be composed of three members of the general assembly, one municipal securities broker-dealer representative, one representative of a county, one representative of a municipality, one representative of a special district, one representative of banks that act as indenture trustees for municipal bond offerings, one bond counsel representative, one real estate developer representative, three members of the general public with experience in municipal financing as investors who are not associated with any of the other members or interests, and four owners of residential real property located in special districts who are not associated with any of the other members or interests. Except for the legislative members, members of the board shall be appointed by the governor, who shall take into account the extent to which the board represents

the geographic areas, population concentrations, and ethnic communities of this state. Appointments by the governor shall be for a period of four years. The three members of the general assembly shall be appointed one each by the governor, the speaker of the house of representatives, and the president of the senate. No more than two of said legislative members may be from the same major political party, and, except as provided in paragraph (b) of this subsection (1), each such legislative member shall be appointed for a term of two years or for the same term to which they were elected, whichever is less. Successors shall be appointed in the same manner as the original members. Vacancies of all other members shall be filled by appointment by the governor for unexpired terms. In the case of a vacancy, the remaining members of the board shall exercise all the powers and authority of the board until such vacancy is filled. The board shall choose its own chairperson by majority vote of the quorum present at a meeting called for the purpose of electing a chairperson. The board shall meet not less than annually. Except as otherwise provided in section 2-2-326, C.R.S., members of the board shall receive no compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their duties, and such expenses shall be paid from the appropriations from the division of securities cash fund created in section 11-51-707. A majority of the board shall constitute a quorum to transact business and for the exercise of any of the powers or authority conferred.

(b) The terms of the members appointed by the speaker of the house of representatives and the president of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall each appoint or reappoint one member in the same manner as provided in paragraph (a) of this subsection (1). Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(2) The board shall aid and advise the securities commissioner in connection with the commissioner's duties under this article including, but not limited to, development of policies, rules, orders, standards, guidelines, criteria and procedures regarding the registration of bond issues, ordinances, and resolutions and applications for authorization to file federal bankruptcy petitions and assuring impartiality and freedom from political influence in such activities.

(3) Repealed.

Source: L. 91: Entire article added, p. 2410, § 1, effective January 1, 1992; except that this section is effective July 1, 1991. (See § 11-59-120.) **L. 97:** (3) repealed, p. 102, § 2, effective March 24. **L. 2004:** (1) amended, p. 520, § 8, effective July 1. **L. 2007:** (1) amended, p. 176, § 5, effective March 22. **L. 2014:** (1) (a) amended, (SB 14-153), ch. 390, p. 1960, § 5, effective June 6.

11-59-106. Requirement for registration of district bonds. It is unlawful for any district to issue bonds or for any other person to make a distribution of such bonds unless they are first registered with the securities commissioner under section 11-59-108 or unless the issuance of bonds is exempted under section 11-59-110.

Source: L. 91: Entire article added, p. 2411, § 1, effective January 1, 1992. **L. 94:** Entire section amended, p. 1847, § 14, effective July 1.

11-59-107. General registration provisions. (1) An application for registration of bonds may be filed by the district proposing to issue the bonds or a broker-dealer licensed or exempt under article 51 of this title acting on behalf of such district.

(2) Every application for registration shall be accompanied by a fee, which shall be determined and collected pursuant to section 11-59-119.

(3) Any document or portion thereof filed with the securities commissioner under this article within five years preceding the filing of an application for registration may be incorporated by reference in an application to the extent that such document or portion thereof is accurate at the time of such incorporation by reference.

(4) The securities commissioner may, by rule or order, permit the omission of any item of information or document from any application.

(5) The securities commissioner may, by rule or order, require as a condition of registration under section 11-59-108 that a district require that persons building or developing improvements in the district furnish security to the district for their undertakings relating to payments supporting the offering. The commissioner may, by rule or order, determine the manner and form of such security, which may include but need not be limited to:

(a) Letters of credit or guarantees from depository institutions or such other persons, companies, or institutions approved by the securities commissioner;

(b) Escrow deposits of cash or securities; or

(c) First lien mortgages on land owned by developers or builders, together with recent appraisals.

(6) An application for registration may be amended after its effective date so as to increase the quantity of bonds being offered. A district filing such an amendment shall pay a fee, which shall be determined and collected pursuant to section 11-59-119, with respect to the additional bonds being registered.

Source: L. 91: Entire article added, p. 2411, § 1, effective January 1, 1992.

11-59-108. Registration of bonds. (1) An issuance of bonds may be registered by a district under this article.

(2) An application for registration of bonds under this section shall contain full and fair disclosure of all material facts respecting the bonds offered, including the following information, shall state the title of the bonds and the number and amount being registered under this article, and shall be accompanied by the following documents:

(a) The most recent district audit report;

(b) Engineering and architectural reports which describe the cost and location of improvements in the district;

(c) Copies of intergovernmental agreements, construction contracts, and competitive bids which disclose the material elements of any proposed project to be financed by the proceeds of the offering, if available;

(d) Copies of signed agreements, if available, with persons building or developing improvements in the district which are to be owned, managed, leased, or sold by such persons;

(e) Copies of agreements, if any, with the owners of major parcels of vacant or undeveloped land in the district which disclose development fees or other payments to be made to support the proposed bonds while the district is being developed in accordance with the service plan;

(f) Recently audited financial statements of persons building or developing improvements in the district for contracts in excess of fifty thousand dollars;

(g) In a special district, copies of the service plan and any amendments thereto and copies of all reports required by law to be filed with the county or counties wherein the special district is located and, where appropriate, evidence of compliance with any other requirement of law imposed on special districts issuing bonds; and

(h) Such additional information as the securities commissioner requires by rule or order and as is required for full and fair disclosure respecting the bonds offered.

(3) A registration application under this section becomes effective when the securities commissioner so orders, if the application is not subject to a stop order under section 11-59-109. In the case of an order of effectiveness, the securities commissioner shall include in such order a list of the documents reviewed in connection with the application for registration.

(4) The date of filing shall be the date that the application for registration or an amendment to the application is received by the securities commissioner.

(5) Districts are subject to the open meetings law under part 4 of article 6 of title 24, C.R.S., and the open records law under article 72 of title 24, C.R.S.

Source: L. 91: Entire article added, p. 2412, § 1, effective January 1, 1992. **L. 95:** (5) amended, p. 1093, § 5, effective May 31.

11-59-109. Denial, suspension, or revocation of registration. (1) The securities commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any application for registration, if the securities commissioner finds that the order is in the public interest and any one of the following grounds exists:

(a) The application for registration as of its effective date, or as of any earlier date in the case of an order denying effectiveness, or any amendment to such application as of its effective date contains any false or misleading statement in violation of section 11-59-112;

(b) Any provision of this article or any rule, order, or condition imposed under this article has been violated in connection with this offering by the district, or its agents, servants, or employees, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlled by the district, or any underwriter;

(c) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering; or

(d) The terms of the offering are substantially inconsistent with the standards, guidelines, and criteria the securities commissioner promulgates by rule to effectuate the purposes of this article, including, but not limited to:

(I) Guidelines for amounts of capitalized interest in connection with the total bond proceeds of the district. In no case shall the use of capitalized interest for bond payments for more than three years be permitted.

(II) Appraisal requirements for land in the district;

(III) Procedures for the appointment of a trustee, if necessary, to represent the bondholders of a district;

(IV) Guidelines and criteria for indentures of trust and the contents thereof included in bonds of a district;

(V) Procedures for the review of general obligation bonds for parity with other existing bonds of a district;

(VI) Standards for disclosure to bondholders in the official statement on the bonds of a district;

(VII) Guidelines and criteria for appropriate bidding, competitive arrangements, and contracts, in connection with the issuance of bonds of a district;

(VIII) Standards for the review of bidding, competitive arrangements, and contracts for conflict of interest;

(IX) Standards for underwriter fees in connection with the issuance of the bonds; and

(X) Requirements that adequate, prompt, and effective remedies be available to bondholders in the bond resolution in the event of default in the payment of bonds issued pursuant to an application for registration declared effective by the securities commissioner or in the event of failure of the district to abide by its covenants as contained in the bond resolution or ordinance or to abide by the rules promulgated by the securities commissioner under this article or any applicable law.

(2) The securities commissioner may, by emergency order, summarily postpone or suspend the effectiveness of an application for registration pending final determination of any proceeding under this section.

(3) No stop order shall be entered under this section, except under subsection (2) of this section, without the provision to the district of an appropriate prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

(4) The securities commissioner may vacate or modify a stop order if the securities commissioner finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Source: L. 91: Entire article added, p. 2413, § 1, effective January 1, 1992.

11-59-110. Exemptions from registration. (1) Subject to the requirements of subsection (2) of this section, the following issues of bonds by a district are exempted from all of the provisions of sections 11-59-104 and 11-59-106:

(a) Bonds issued on or before December 31, 1991;

(b) Any issue of general obligation bonds where the total obligation represented by the issue together with any other general obligation of the district does not at the time of issuance

exceed the greater of two million dollars or fifty percent of the valuation for assessment of the taxable property in the district as certified by the assessor;

(c) Any issue of bonds that is rated in one of its four highest rating categories by one or more nationally recognized organizations which regularly rate such obligations;

(d) Any issue of bonds by a district in which infrastructure is in place which has been determined by the board of such district to be necessary to construct or otherwise provide additional improvements specifically ordered by a federal or state regulatory agency to bring such district into compliance with applicable federal or state laws or regulations for the protection of the public health or the environment if the proceeds raised as a result of such issue are limited solely to the direct and indirect costs of the construction or improvements mandated and are used solely for those purposes;

(e) Any issue of bonds secured as to the payment of the principal and interest on the debt by a letter of credit, line of credit, or other credit enhancement, any of which must be irrevocable and unconditional, issued by a depository institution:

(I) With a net worth of not less than ten million dollars in excess of the obligation created by the issuance of the letter of credit, line of credit, or other credit enhancement;

(II) With the minimum regulatory capital as defined by the primary regulator of such depository institution to meet such obligation; and

(III) Where the obligation does not exceed ten percent of the total capital and surplus of the depository institution, as those terms are defined by the primary regulator of such depository institution;

(f) Any issue of bonds insured as to the payment of the principal and interest on the debt by a policy of insurance issued by an insurance company authorized to do business as an insurance company in this state and authorized for such risk by the insurance commissioner appointed pursuant to section 10-1-104, C.R.S.;

(g) Any issue of bonds not involving a public offering made exclusively to accredited investors, as that term is defined under sections 2(a)(15) and 4(a)(2) of the federal "Securities Act of 1933", as amended, 15 U.S.C. secs. 77b (a)(15) and 77d (a)(2), by regulation adopted thereunder by the securities and exchange commission;

(h) Any issue of bonds made pursuant to an order of a court of competent jurisdiction;

(i) Any issue of bonds by a district which has principal amounts payable from moneys other than the proceeds of an ad valorem tax, where the total of such obligations represented by the issue, together with other such bonds of the district, does not at the time of the issuance exceed two million dollars;

(j) Any issue of bonds of the district issued to the Colorado water resources and power development authority which evidences a loan from said authority to the district; and

(k) Any issue of bonds by a district that contains territory subject to an intergovernmental annexation agreement between the city and county of Denver and Adams county dated April 21, 1988, made pursuant to section 30-6-109.5, C.R.S.

(1.5) (a) The securities commissioner may make such rules, forms, and orders as are necessary to implement the provisions of subsection (1) of this section and to define any terms contained therein insofar as the definitions are not inconsistent with the provisions of this article.

(b) No such rule, form, or order may be made, amended, or rescinded unless the securities commissioner finds that the action is necessary or appropriate in the public interest or the protection of investors and is consistent with the purposes and provisions of this article. In

prescribing rules and forms, the securities commissioner may cooperate with the securities and exchange commission, the municipal securities rule-making board, the department of local affairs, and the state auditor with a view to effectuating subsection (1) of this section and to achieving uniformity wherever practicable.

(c) The securities commissioner may, by rule or order, provide means by which bondholders, at their expense, may communicate with the holders of bonds of the same district so long as the confidentiality of the names and addresses of the bondholders is protected.

(2) As conditions to the applicability of the exemptions provided in subsection (1) of this section, the district issuing the bonds must file or cause to be filed with the securities commissioner at least five days prior to the first sale of such bonds:

(a) A notice of claim of exemption in the form and containing the information prescribed by the securities commissioner;

(b) A copy of the official statement to be distributed in connection with such offering; and

(c) An exemption fee, which shall be determined and collected pursuant to section 11-59-119.

(2.5) For purposes of the application of this section, exemption from registration under subsection (1) of this section shall not be contingent upon review or approval of any information filed with the securities commissioner under subsection (2) of this section.

(3) The securities commissioner may, by rule or order and subject to such terms and conditions as prescribed therein, exempt specified bonds or types of bonds or transactions therein from section 11-59-106 if the securities commissioner finds that the application of section 11-59-106 to such bonds or transactions is not necessary in the public interest and for the protection of investors.

Source: L. 91: Entire article added, p. 2415, § 1, effective January 1, 1992. **L. 94:** IP(1) and (1)(i) amended and (1.5) and (2.5) added, p. 1848, § 15, effective July 1. **L. 2015:** (1)(g) amended, (SB 15-264), ch. 259, p. 944, § 15, effective August 5.

Cross references: For the federal "Securities Act of 1933", see Pub.L. 73-22, codified at 15 U.S.C. sec. 77a et seq.

11-59-111. Unlawful representation concerning registration or exemption. (1) Neither the fact that an application for registration has been filed nor the fact that an application for registration has become effective constitutes a finding by the securities commissioner that any document filed under this article is true, is complete, and is not misleading. No such fact, nor the fact that an exemption or exception is available for a security or transaction, means that the securities commissioner has passed in any way upon the merits or qualifications of, or has recommended or given approval to, any security or transaction. In the case of an issue of bonds made pursuant to an order of registration effective under section 11-59-108, nothing in this subsection (1) shall prohibit the inclusion in the official statement used in connection with the offer or sale of such bonds a representation that the issue of bonds has been registered with the securities commissioner and a statement identifying the documents reviewed by the securities commissioner in the course of the registration process.

(2) It is unlawful to make, or cause to be made, to any prospective or existing investor or property owner any representation inconsistent with subsection (1) of this section.

Source: L. 91: Entire article added, p. 2417, § 1, effective January 1, 1992.

11-59-112. Misleading filing. It is unlawful for any person to make or cause to be made, in any document filed with the securities commissioner or in any proceeding under this article, any statement which the person knows or has reasonable grounds to know is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect.

Source: L. 91: Entire article added, p. 2418, § 1, effective January 1, 1992.

11-59-113. Investigations - subpoenas. (1) The securities commissioner may make such public and private investigations within or outside of this state as the securities commissioner deems necessary to determine whether any person has violated or is about to violate any provision of this article or any rule or order under this article or to aid in the enforcement of this article or in the prescribing of rules and forms under this article, may require or permit any person to file a statement as to all the facts and circumstances concerning the matter to be investigated, and may publish information concerning any violation of this article or any rule or order under this article.

(2) For the purpose of any investigation or proceeding under this article, the securities commissioner or any officer designated by the securities commissioner may administer oaths and affirmations, subpoena witnesses, seek compulsion of their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the securities commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court of the city and county of Denver, upon application by the securities commissioner, may issue to the person an order requiring that person to appear before the securities commissioner, or the officer designated by the securities commissioner, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the securities commissioner, or in obedience to the subpoena of the securities commissioner or any officer designated by the commissioner, or in any proceeding instituted by the securities commissioner on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate the person or subject that person to a penalty or forfeiture; but no document, evidence, or other information compelled from an individual, after that individual claims the privilege against self-incrimination, under order of the district court of the city and county of Denver, or any information directly or indirectly derived from such document, evidence, or other information, may be used against an individual so compelled in any criminal case; except that the individual testifying is not exempt from prosecution and punishment for perjury in the first or second degree or contempt committed in testifying.

(5) Information in the possession of, filed with, or obtained by the securities commissioner in connection with a private investigation under this section shall be confidential. No such information may be disclosed by the securities commissioner or any officers or employees of the division except among themselves or when necessary or appropriate in connection with an investigation or a proceeding under this article or for any law enforcement purpose.

(6) It is unlawful for the securities commissioner or any officers or employees of the division to use for personal benefit any information which is filed with or obtained by the securities commissioner and which is not made public.

Source: L. 91: Entire article added, p. 2418, § 1, effective January 1, 1992.

11-59-114. Enforcement by injunction. (1) Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or order under this article, the securities commissioner may apply to the district court for the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy or a remedy at law. Under no circumstances shall the court require the commissioner to post a bond.

(2) The securities commissioner may include in any action authorized by subsection (1) of this section a claim for restitution, disgorgement, or other equitable relief on behalf of some or all of the persons injured by the act or practice constituting the subject matter of the action.

Source: L. 91: Entire article added, p. 2419, § 1, effective January 1, 1992.

11-59-115. Criminal and civil penalties and damages. (1) Any person who willfully violates the provisions of section 11-59-112 commits a class 3 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who willfully violates any of the provisions of this article, other than section 11-59-112, or any rule or order under this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., and any second violation of this section shall be punishable by a civil penalty of fifty dollars per day to a maximum penalty of one thousand dollars.

(3) Conviction of violation of any provision of this article under this section shall also establish a prima facie case for liability for civil damages by any person injured thereby.

(4) The securities commissioner may refer such evidence as is available to the securities commissioner under authority of this article concerning any violation which constitutes the commission of any felony or misdemeanor to the attorney general or the appropriate district attorney, who may, with or without such a reference, prosecute the appropriate criminal proceedings under this article or otherwise as authorized by law, or the securities commissioner may refer such evidence to the United States attorney.

(5) Nothing in this article limits the power of the state to punish any person for any conduct which constitutes a crime by statute.

(6) No person shall be prosecuted, tried, or punished for any criminal violation of this article unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense.

Source: L. 91: Entire article added, p. 2419, § 1, effective January 1, 1992. **L. 2002:** (1) and (2) amended, p. 1472, § 45, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsections (1) and (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

11-59-116. Administrative proceedings. Any administrative proceeding under this article shall be conducted pursuant to the provisions of section 24-4-105, C.R.S. The securities commissioner may refer the conduct of any administrative proceeding to an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S. Every hearing in an administrative proceeding shall be public unless the securities commissioner, in the commissioner's discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

Source: L. 91: Entire article added, p. 2420, § 1, effective January 1, 1992.

11-59-117. Judicial review of orders. (1) Any person claiming to be aggrieved by a final order of the securities commissioner, including a refusal to issue an order, may obtain judicial review thereof, and the securities commissioner may obtain an order of court for its enforcement in a proceeding as provided in this section.

(2) Such proceeding shall be brought in the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

(3) Such proceeding shall be initiated by the filing of a petition in the court of appeals and the service of a copy thereof upon the securities commissioner and upon all parties who appeared before the securities commissioner, and thereafter such proceeding shall be processed under the Colorado appellate rules. The court of appeals shall have jurisdiction of the proceeding and the questions determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying, and enforcing as so modified or setting aside the order of the securities commissioner in whole or in part.

(4) An objection that has not been urged before the securities commissioner shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(5) The findings of the securities commissioner as to the facts shall be conclusive if supported by substantial evidence.

(6) The jurisdiction of the court shall be exclusive, and its judgment and order shall be final, subject to review as provided by law and the Colorado appellate rules.

(7) The commencement of proceedings under subsection (1) of this section does not, unless specifically ordered by the court, operate as a stay of the securities commissioner's order.

Source: L. 91: Entire article added, p. 2420, § 1, effective January 1, 1992.

11-59-118. Interpretation and interpretive opinions. (1) The provisions and rules of this article shall be coordinated with the provisions and rules of article 51 of this title to the extent that such coordination is consistent with both the purposes and provisions of this article.

(2) The securities commissioner may, in such commissioner's discretion, honor requests from interested persons for interpretive opinions regarding any provision of this article or any rule or order under this article. Any person making such a request shall pay an opinion fee, which shall be determined and collected pursuant to section 11-59-119 and which shall not be refundable. In response to any request for an interpretive opinion received under this section, the securities commissioner may waive any condition imposed under this article as it applies to the person making such request.

Source: L. 91: Entire article added, p. 2421, § 1, effective January 1, 1992.

11-59-119. Collection of fees - division of securities cash fund. (1) A fee payable under this article shall be deemed paid when the securities commissioner receives the payment.

(2) The securities commissioner shall transmit all fees collected under this article to the state treasurer, who shall credit the same to the division of securities cash fund created by section 11-51-707. Moneys credited to the division of securities cash fund shall be used as provided in this section and in section 11-51-707 and shall not be deposited in or transferred to the general fund of this state or any other fund.

(3) The securities commissioner shall set the amount of each fee which the securities commissioner is authorized by law to collect under this article. In the discretion of the commissioner, the securities commissioner may set application for registration or amendment fees payable under section 11-59-104 by establishing a basic filing fee up to a maximum of five hundred dollars, plus a scale of rates applied to the dollar amount of bonds to be registered, not to exceed five dollars per ten thousand dollars, up to a maximum of ten thousand dollars based on the dollar amount of bonds to be issued. The securities commissioner may set the exemption fee payable under section 11-59-110 up to a maximum of one hundred dollars. Such fees for a fiscal year may be adjusted by the securities commissioner no more often than twice during that fiscal year.

Source: L. 91: Entire article added, p. 2422, § 1, effective January 1, 1992.

11-59-120. Effective date. The rule-making authority of the securities commissioner and the provisions of section 11-59-104 (1) and section 11-59-105 shall take effect July 1, 1991, and, unless otherwise provided, all other provisions of this article shall take effect January 1, 1992.

Source: L. 91: Entire article added, p. 2422, § 1, effective January 1, 1992.

ARTICLE 59.3

Interest Rate Exchange Agreements

11-59.3-101. Legislative declaration. The general assembly finds and declares that interest rate exchange agreements can be used to reduce net borrowing costs, to achieve desirable net effective interest rates in connection with the issuance and sale of public securities, and to provide an efficient means of debt management.

Source: L. 92: Entire article added, p. 949, § 1, effective April 29.

11-59.3-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Proposed public securities" means public securities for which a public entity has:

(a) Entered into a binding sale contract subject to customary conditions; or

(b) Received voter approval pursuant to section 20 of article X of the state constitution.

(2) "Public entity" means any of the following entities: The state of Colorado; any institution, agency, instrumentality, authority, county, city, town, city and county, district, or other political subdivision of the state, including any school district and institution of higher education; any institution, department, agency, instrumentality, or authority of any entity listed in this subsection (2); and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the entities listed in this subsection (2).

(3) "Public securities" means bonds, notes, debentures, interim certificates, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements, or certificates of participation therein, issued by or on behalf of a public entity.

Source: L. 92: Entire article added, p. 949, § 1, effective April 29. **L. 2004:** (3) amended, p. 950, § 6, effective May 21. **L. 2005:** (1) amended, p. 880, § 1, effective June 1.

11-59.3-103. Interest rate exchange agreements. (1) A public entity may enter into an agreement for an exchange of interest rates, cash flows, or payments as provided in this section if it finds that such an agreement would be in the best interests of the public entity. In entering into any agreement under this section, the public entity shall give consideration to the savings and debt management benefits to the citizens of the public entity. Such agreement shall contain such payment, security, default, remedy, and other terms and conditions as the public entity may deem appropriate, including provisions permitting the public entity to pay the party with whom the public entity enters the agreement for any loss of benefits under such agreement upon early termination thereof or default thereunder.

(2) A public entity may enter into an agreement to exchange interest rates, cash flows, or payments only if:

(a) The long-term debt obligations of the party with whom the public entity enters the agreement are rated in one of its two highest rating categories by one or more nationally recognized securities rating agencies which regularly rate such obligations; or

(b) The obligations under the agreement of the party with whom the public entity enters the agreement are either:

(I) Guaranteed by a party whose long-term debt obligations are rated in one of its two highest rating categories by one or more nationally recognized securities rating agencies which regularly rate such obligations; or

(II) Collateralized by obligations deposited with the public entity or an agent of the public entity which would be legal investments for the public entity pursuant to section 24-75-601.1, C.R.S., and which maintain a market value of not less than one hundred percent of the principal amount upon which the exchange of interest rates is based.

(3) A public entity may agree, with respect to public securities that the public entity has issued or proposed public securities bearing interest at a variable rate, to pay sums calculated at a fixed rate or rates or at a different variable rate or rates determined pursuant to a formula or formulas set forth in the agreement on an amount not to exceed the principal amount of the public securities or proposed public securities with respect to which the agreement is made, in exchange for the payment to the public entity of sums calculated at a variable rate or rates determined pursuant to a formula or formulas set forth in the agreement on the same principal amount.

(4) A public entity may agree, with respect to public securities that the public entity has issued or proposed public securities bearing interest at a fixed rate or rates, to pay sums calculated at a variable rate or rates or in fixed amounts determined pursuant to a formula or formulas or a schedule or schedules set forth in the agreement on an amount not to exceed the principal amount of the public securities or proposed public securities with respect to which the agreement is made, in exchange for an agreement for the payment to the public entity of sums calculated at a fixed rate or rates set forth in the agreement on the same principal amount.

(5) The term of an agreement entered into pursuant to this section shall not exceed the term of the public securities or proposed public securities with respect to which the agreement is made.

(6) An agreement entered into pursuant to this section is not a debt or indebtedness of the public entity for the purposes of any limitation upon the debt or indebtedness of the public entity or any requirement for an election with regard to the issuance of public securities that is applicable to the public entity.

(7) A public entity which has entered into an agreement pursuant to this section with respect to public securities or proposed public securities may treat the amount or rate of interest on the public securities or proposed public securities as the amount or rate of interest payable after giving effect to the agreement for the purpose of calculating:

(a) Rates and charges of a revenue-producing enterprise whose revenues are pledged to or used to pay public securities;

(b) Statutory requirements concerning revenue coverage that are applicable to public securities;

(c) Tax levies to pay debt service on public securities; and

(d) Any other amounts which are based upon the rate of interest of public securities.

(8) Subject to covenants applicable to the public securities, any payments required to be made by the public entity under the agreement may be made from and secured by amounts pledged to pay debt service on the public securities or proposed public securities with respect to which the agreement is made or from any other legally available source.

(9) Prior to entering into an interest rate exchange agreement, the governing board of the public entity shall receive information as to the costs, risks, and benefits of the agreement from the staff of the public entity.

(10) Any state agency, as defined in section 24-36-121 (3)(c), C.R.S., shall notify the state treasurer when it enters into an agreement for an exchange of interest rates, cash flows, or payments as provided in this section.

Source: L. 92: Entire article added, p. 950, § 1, effective April 29. **L. 2012:** (10) added, (SB 12-150), ch. 196, p. 786, § 2, effective May 24.

11-59.3-104. Construction of article. The powers conferred by this article shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this article shall not directly or indirectly modify, limit, or affect the powers conferred by any other law. Nothing in this article shall be construed to limit the powers of home rule municipalities organized under the provisions of article XX of the state constitution.

Source: L. 92: Entire article added, p. 952, § 1, effective April 29.

11-59.3-105. Liberal construction. This article shall be liberally construed so that the legislative intent may be fulfilled.

Source: L. 92: Entire article added, p. 952, § 1, effective April 29.

ARTICLE 59.5

No Federal Preemption Under
"Secondary Mortgage Market Enhancement Act of 1984"

11-59.5-101. Investments in mortgage-related securities - no federal preemption. No person, trust, corporation, partnership, association, business trust, or business entity or class thereof may purchase, hold, or invest in securities to which the provisions of paragraph (a) or (b) of section 106 of the federal "Secondary Mortgage Market Enhancement Act of 1984", Pub.L. 98-440, would otherwise be applicable except in accordance with any provision of Colorado law including, without limitation, the provisions of this title and of title 10, C.R.S.

Source: L. 91, 2nd Ex. Sess.: Entire article added, p. 54, § 1, effective October 1.

Editor's note: This article was numbered as article 59 by House Bill 91S2-1004, enacted at the Second Extraordinary Session of the Fifty-eighth General Assembly in 1991, but has been renumbered on revision for ease of location.

Cross references: For the "Secondary Mortgage Market Enhancement Act of 1984", see Pub.L. 98-440, 98 Stat. 1689 (1984).

RECOVERY AND REINVESTMENT FINANCE ACT

ARTICLE 59.7

Colorado Recovery and Reinvestment
Finance Act of 2009

11-59.7-101. Short title. This article shall be known and may be cited as the "Colorado Recovery and Reinvestment Finance Act of 2009".

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2190, § 1, effective June 2.

11-59.7-102. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, was enacted by the United States congress in response to a national economic crisis in order to stimulate spending, increase employment, and reduce unemployment in the United States as rapidly as possible, including spending and employment by states and local governments and those who provide goods and services to states and local governments;

(b) The purpose of this article is to stimulate spending, increase employment, and reduce unemployment in Colorado as rapidly as possible by authorizing Colorado public entities to take full advantage of financing opportunities available under the federal recovery and reinvestment act; and

(c) This article shall be interpreted in a manner that stimulates the maximum amount of spending, increases the maximum amount of employment, and reduces the maximum amount of unemployment in Colorado as rapidly as possible through the actions of Colorado public entities in taking full advantage of financing opportunities under the federal recovery and reinvestment act.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2190, § 1, effective June 2.

11-59.7-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Ancillary agreement" means any contract, agreement, or other arrangement that a public entity determines is necessary or convenient in connection with a stimulus obligation, including but not limited to any agreement, contract, or other arrangement:

(a) Pursuant to which the proceeds of such stimulus obligation are loaned or made available to or secured for another public entity, a nonprofit or for-profit corporation, a charter school, or any other person in accordance with the federal recovery and reinvestment act;

(b) Relating to property that is leased or subleased pursuant to a lease-purchase agreement or on which the proceeds of a lease-purchase financing are spent;

(c) For credit or liquidity enhancement of, credit or liquidity support for, or interest rate protection with respect to the stimulus obligation;

(d) That is an interest rate exchange agreement under article 59.3 of this title;

(e) That relates to the investment of proceeds of the stimulus obligation;

(f) For the purchase, sale, marketing, or remarketing of the stimulus obligation; or

(g) For services in connection with the stimulus obligation.

(2) "Ballot issue" has the same meaning as set forth in section 1-1-104 (2.3), C.R.S.

(3) "Ballot question" has the same meaning as set forth in section 1-1-104 (2.7), C.R.S.

(4) "Bond" means any bond, note, interim certificate, contract, evidence of indebtedness, loan, financing agreement, installment purchase or sale agreement, lease, or lease-purchase agreement on which payments by a public entity are not subject to annual appropriation by its governing body or any debt or multiple-fiscal year financial obligation issued or entered into by a public entity.

(5) "Build America bond" has the same meaning as set forth in section 54AA of the internal revenue code.

(6) "Charter school" means a charter school as defined in section 22-30.5-103 (2), C.R.S., an independent charter school as defined in section 22-30.5-302 (6), C.R.S., or an institute charter school as defined in section 22-30.5-502 (6), C.R.S.

(7) "Charter school bond issuer" means any public entity that is authorized under state law to finance or refinance a project for the benefit of a charter school through the issuance of bonds or the execution of a loan agreement, financing agreement, or lease-purchase agreement with a charter school.

(8) "Clean renewable energy bond" has the same meaning as set forth in section 54 of the internal revenue code.

(8.5) "Colorado energy office" means the Colorado energy office created in section 24-38.5-101 (1), C.R.S.

(9) "Commission on higher education" means the Colorado commission on higher education created and existing pursuant to article 1 of title 23, C.R.S.

(10) "Federal direct payments" means amounts that the federal government is to pay to or on behalf of a public entity that issues or enters into a stimulus obligation and elects to receive direct payments from the federal government with respect to the stimulus obligation pursuant to the internal revenue code.

(11) "Federal recovery and reinvestment act" means the federal "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5, and any amendments to the act or to any provision of the internal revenue code included in or amended by the act.

(12) "Governing body" means a city council, board of trustees, commission, board of county commissioners, board of directors, governing board of a public institution of higher education, or other legislative body of a public entity in which the legislative powers of the public entity are vested. The governing body of the state treasurer, or of the state treasurer, acting on behalf of the state, is the state treasurer.

(13) Repealed.

(14) "Internal revenue code" has the same meaning as set forth in section 39-23.5-102 (9.5), C.R.S.

(15) "Large local government" has the same meaning as set forth in section 54D of the internal revenue code.

(16) "Large municipality" has the same meaning as set forth in section 1400U-1 of the internal revenue code.

(17) "Lease-purchase agreement" means any agreement between a public entity and any other person:

(a) That is a lease or lease-purchase agreement under the laws of this state;

(b) Pursuant to which the public entity has agreed to make payments in future fiscal years subject to annual appropriation of the payments by the governing body of the public entity; and

(c) That is treated as an installment sale agreement for federal income tax purposes.

(18) "New clean renewable energy bond" has the same meaning as set forth in section 54C of the internal revenue code.

(19) "Project" means any property, goods, or services on which the proceeds of a bond or lease-purchase financing are or may be spent, including but not limited to any job training or educational program on which the proceeds of recovery zone economic development bonds may be spent under federal law.

(20) "Public entity" means the state, any agency, department, or political subdivision of the state, any quasi-governmental entity, or any other entity created by or pursuant to the constitution or laws of the state that is authorized under state law to issue bonds or enter into a lease-purchase agreement, including but not limited to:

(a) The state treasurer or the state treasurer, acting on behalf of the state;

(b) A state agency or department;

(c) A state authority;

(d) A public institution of higher education, state educational institution, or other state institution, including its governing body or any other issuing authority of the institution constituting a body corporate;

(e) A county or city and county;

(f) A municipality;

(g) A school district;

(h) A special district organized or acting pursuant to the provisions of title 32, C.R.S.;

(i) A district or authority organized or acting pursuant to the provisions of title 29, 30, or 31, C.R.S.;

(j) A water conservancy district created pursuant to article 45 of title 37, C.R.S.;

(k) Any other political subdivision or governmental or quasi-governmental entity of the state;

(l) Any other public entity as defined in section 24-75-601 (1), C.R.S.;

(m) A recovery and reinvestment act finance authority;

(n) An enterprise of any public entity listed in paragraphs (a) to (m) of this subsection (20); and

(o) A nonprofit corporation organized under the laws of the state that is authorized by law, or a trust created under the laws of the state that is authorized under its governing documents, to issue bonds or enter into lease-purchase agreements on behalf of one or more public entities listed in paragraphs (a) to (n) of this subsection (20).

(21) "Public institution of higher education" means any state-supported institution of higher education that is obligated to conform to the policies set by the commission on higher education pursuant to section 23-1-102 (2), C.R.S.

(22) "Public school capital construction assistance board" means the board created in section 22-43.7-106 (1)(a), C.R.S.

(23) "Qualified energy conservation bond" has the same meaning as set forth in section 54D of the internal revenue code.

(24) "Qualified energy conservation bond volume cap" means the dollar amount of qualified energy conservation bonds allocated to the state and the state's large local governments pursuant to section 54D of the internal revenue code.

(25) "Qualified school construction bond" has the same meaning as set forth in section 54F of the internal revenue code.

(26) "Qualified school construction bond volume cap" means the school district qualified school construction bond volume cap and the state qualified school construction bond volume cap and includes any portion of the school district qualified school construction bond volume cap that is reallocated to the public school capital construction assistance board pursuant to section 11-59.7-106.

(27) "Qualified zone academy bond" has the same meaning as set forth in section 54E of the internal revenue code.

(28) "Qualified zone academy bond volume cap" means the volume cap for qualified zone academy bonds allocated by the federal government to the state pursuant to section 54E of the internal revenue code.

(29) "Recovery and reinvestment act finance authority" means a separate legal entity created by contract between or among public entities for the purpose of issuing stimulus obligations pursuant to section 11-59.7-110.

(30) "Recovery zone" means:

(a) Any area designated by the public entity that issues or enters into a recovery zone bond as having significant poverty, unemployment, rate of home foreclosures, or general distress;

(b) Any area designated by the public entity that issues or enters into a recovery zone bond as economically distressed by reason of the closure or realignment of a military installation pursuant to the federal "Defense Base Closure and Realignment Act of 1990", Pub.L. 101-510; and

(c) Any area for which a designation as an empowerment zone or renewal community is in effect.

(31) "Recovery zone bond" means both a recovery zone economic development bond and a recovery zone facility bond.

(32) "Recovery zone economic development bond" has the same meaning as set forth in section 1400U-2 of the internal revenue code.

(33) "Recovery zone economic development bond project" means any property, goods, or services on which the proceeds of recovery zone economic development bonds may be spent under federal law.

(34) "Recovery zone economic development bond volume cap" means the dollar amount of recovery zone economic development bonds to be allocated by the federal government to the state and by the state to the state's counties and large municipalities pursuant to section 1400U-1 of the internal revenue code.

(35) "Recovery zone facility bond" has the same meaning as set forth in section 1400U-3 of the internal revenue code.

(36) "Recovery zone facility bond volume cap" means the dollar amount of recovery zone facility bonds to be allocated by the federal government to the state and by the state to the state's counties and large municipalities pursuant to section 1400U-1 of the internal revenue code.

(37) "School district qualified school construction bond volume cap" means the volume cap for qualified school construction bonds allocated by the federal government to school districts of the state pursuant to section 54F of the internal revenue code.

(37.5) "Specified tax credit bond" has the same meaning as set forth in section 6431 of the internal revenue code.

(38) "State qualified school construction bond volume cap" means the volume cap for qualified school construction bonds allocated by the federal government to the state pursuant to section 54F of the internal revenue code.

(39) "Stimulus obligation" means any bond or lease-purchase agreement that qualifies as a build America bond, clean renewable energy bond, new clean renewable energy bond, qualified energy conservation bond, qualified school construction bond, qualified zone academy bond, or recovery zone bond.

(40) "Stimulus obligation document" means any resolution, ordinance, trust indenture, loan agreement, financing agreement, lease-purchase agreement, lease, agreement, contract, or other instrument under which a stimulus obligation is issued or entered into or pursuant to which a public entity incurs obligations with respect to a stimulus obligation and any ancillary agreement entered into pursuant to section 11-59.7-104 (2).

(41) "Type of" means, when used with respect to any stimulus obligation, any one of a build America bond, clean renewable energy bond, new clean renewable energy bond, qualified energy conservation bond, qualified school construction bond, qualified zone academy bond, or recovery zone bond.

(42) "Volume cap" means the dollar amount of any stimulus obligation allocated to the state or another public entity pursuant to the federal recovery and reinvestment act or any other federal law.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2191, § 1, effective June 2. **L. 2010:** (10) and (11) amended and (37.5) added, (SB 10-200), ch. 234, p. 1027, § 1, effective May 18. **L. 2012:** (8.5) added and (13) repealed, (HB 12-1315), ch. 224, p. 956, § 1, effective July 1.

11-59.7-104. Stimulus obligations authorized under state law - ancillary agreements. (1) Public entities may issue or enter into stimulus obligations as authorized by this article. Except as otherwise provided in this section and section 11-59.7-105, each type of stimulus obligation shall be issued or entered into by a public entity in accordance with a law of the state that authorizes or permits the public entity to issue bonds or enter into a lease-purchase agreement to finance or refinance a project that may be financed or refinanced with proceeds of the type of stimulus obligation under federal law. Notwithstanding any inconsistent provision of any other law of the state:

(a) Any public entity that is authorized or permitted under the laws of the state to issue bonds to finance or refinance a project that under federal law may be financed or refinanced with proceeds of build America bonds may issue the bonds as build America bonds. Any public entity that is authorized or permitted under the laws of the state to enter into a lease-purchase agreement to finance or refinance a project that may be financed or refinanced under federal law with proceeds of build America bonds may enter into the lease-purchase agreement as a build America bond.

(b) (I) Any public entity that is authorized or permitted under the laws of the state to issue bonds to finance or refinance a project that under federal law may be financed or refinanced with proceeds of a type of stimulus obligation other than a build America bond may issue the type of stimulus obligation:

(A) To finance or refinance any project that may be financed or refinanced under federal law with proceeds of the type of stimulus obligation; and

(B) To issue bonds as the type of stimulus obligation under federal law.

(II) Any public entity that is authorized or permitted under the laws of the state to enter into a lease-purchase agreement to finance or refinance a project that may be financed or refinanced under federal law with proceeds of a type of stimulus obligation other than a build America bond may:

(A) Enter into a lease-purchase agreement to finance or refinance any project that may be financed or refinanced under federal law with proceeds of the type of stimulus obligation; and

(B) Enter into the lease-purchase agreement as a stimulus obligation under federal law.

(c) To the extent elected by a public entity pursuant to section 11-57-204 (1), part 2 of article 57 of this title shall apply to stimulus obligations issued or entered into by public entities, stimulus obligations shall be securities, and public entities, as defined in section 11-59.7-103 (20), shall also be public entities for purposes of part 2 of article 57 of this title.

(d) A stimulus obligation may be sold at any price, be subject to optional or mandatory redemption or optional or mandatory tender at any time and at any price, and contain any other special provisions that the governing body of the public entity determines are necessary or convenient to issue or enter into the stimulus obligation at a cost and on terms, and with payments scheduled in a manner, that is determined by the governing body to be advantageous to the public entity.

(e) The right to receive any payment of principal of, any interest on, or any other amount with respect to a stimulus obligation, the right to claim any tax credit with respect to a stimulus obligation, and the right to receive any federal direct payment in connection with a stimulus obligation may be stripped or separated from one another, may be issued or delivered to different persons, and may be owned and transferred independently of one another.

(f) Any outstanding stimulus obligation may be refunded by or on behalf of the public entity that issued or entered into it pursuant to article 56 of this title or any other law of the state that authorizes the public entity to issue or enter into refunding obligations.

(g) Section 22-41-110, C.R.S., relating to timely payment of school district obligations, shall apply to a stimulus obligation issued or entered into by a school district that is a general obligation bond issued by a school district pursuant to article 42 or 43 of title 22, C.R.S., an obligation of a school district in connection with a lease agreement or installment purchase agreement entered into by a school district under section 22-32-127 or 22-45-103 (1)(c), C.R.S., or a refunding bond issued by a school district pursuant to article 56 of this title.

(h) Section 23-5-139, C.R.S., relating to the higher education revenue bond intercept program, shall apply to any stimulus obligation:

(I) That is issued or entered into:

(A) By a public institution of higher education;

(B) By a recovery and reinvestment act finance authority created by a contract to which a public institution of higher education is a party; or

(C) By any other public entity to finance or refinance a project that is or is to be owned by or used by a public institution of higher education; and

(II) That meets the other conditions specified in section 23-5-139, C.R.S.

(i) Any stimulus obligation issued or entered into for the purpose of financing or refinancing charter school capital construction by a public entity other than a school district on behalf of a charter school that is entitled to receive funding from the public school fund pursuant to part 1 of article 30.5 of title 22, C.R.S., shall qualify for direct payments under section 22-30.5-406, C.R.S. The charter school debt service reserve fund, as defined in section 22-30.5-408 (1)(a), C.R.S., for any stimulus obligation that is issued by the Colorado educational and cultural facilities authority created in section 23-15-104 (1)(a), C.R.S., that is a qualified charter school bond, as defined in section 22-30.5-408 (1)(d), C.R.S., issued on behalf of a qualified charter school, as defined in section 22-30.5-408 (1)(c), C.R.S., and that meets the other conditions set forth in section 22-30.5-408, C.R.S., shall qualify for replenishment under section 22-30.5-408, C.R.S.

(j) Repealed.

(k) (I) Proceeds of stimulus obligations, moneys held in any sinking fund relating to any stimulus obligation, and other moneys relating to any stimulus obligation may be invested by the state treasurer in any investment or securities permitted by article 36 of title 24, C.R.S., and by the state treasurer or any other public entity in any investment or securities permitted by part 6 of article 75 of title 24, C.R.S., subject to the following modifications:

(A) Any limitations on the maturity of the investment or securities or any securities subject to a repurchase agreement, reverse repurchase agreement, or other investment shall not apply so long as the investment or securities mature on or before the last maturity of the stimulus obligation;

(B) Any limitations on variable rate investments and securities shall not apply; and

(C) Public entities may agree to invest moneys in the investment or securities in advance of the receipt of the moneys.

(II) Public entities also may direct a corporate trustee that holds proceeds of stimulus obligations, moneys held in any sinking fund relating to any stimulus obligation, and other moneys relating to any stimulus obligation to invest or deposit the proceeds or moneys in investments or deposits other than those specified by article 36 of title 24, C.R.S., and part 6 of article 75 of title 24, C.R.S., if the governing body of the public entity determines that the investment or deposit meets the standard established in section 15-1-304, C.R.S., the income is at least comparable to income available on investments or deposits specified by said article 36 or part 6, and the investment will assist the public entity in the financing or refinancing of projects that may be financed or refinanced with the proceeds of its stimulus obligations. Any earnings from any investment or securities permitted by this paragraph (k) may be used and may be pledged to make payments to the owners of stimulus obligations or other persons or may be used for any other lawful purpose for which the public entity may spend money.

(l) The interest on and income from any stimulus obligation shall be exempt from all taxation and assessments in the state. In the stimulus obligation documents, the public entity that issues or enters into a stimulus obligation may make elections under the internal revenue code, including but not limited to an election to designate the stimulus obligation as a qualified tax-exempt obligation for purposes of section 265 of the internal revenue code, an election to treat the stimulus obligation as a specified tax credit bond, or an election to receive federal direct

payments with respect to the stimulus obligation, and may waive the exemption of the interest on and income from any stimulus obligation from taxation and assessments in the state.

(m) All banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys within their control in stimulus obligations.

(n) Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in stimulus obligations if the stimulus obligations satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S. This paragraph (n) shall not limit the power of a public entity that issues or enters into a stimulus obligation to enter into an ancillary agreement with another public entity under which the other public entity agrees to make payments to the public entity that issues or enters into the stimulus obligation on any terms agreed to by the two public entities.

(o) A public entity may take any action in connection with any stimulus obligation, and the investment and use of the proceeds, any federal direct payments, or any other moneys received in connection with any stimulus obligation, that the governing body of the public entity determines is necessary or convenient and is not inconsistent with this article.

(2) Any public entity that is authorized to issue or enter into a stimulus obligation pursuant to subsection (1) of this section is also authorized to enter into ancillary agreements with respect to the stimulus obligation and to use and to pledge any amounts received or to be received by the public entity under any such ancillary agreement for the payment of or compliance with the terms of stimulus obligation documents relating to the stimulus obligation.

(3) A public entity that issues or enters into a stimulus obligation may take any action required to comply with, and may covenant in any stimulus obligation document that it will comply with, any provision of federal law applicable to the stimulus obligation, including but not limited to the applicable provisions of the federal recovery and reinvestment act relating to labor standards and reports to the federal government.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2196, § 1, effective June 2. **L. 2010:** (1)(g) and (1)(l) amended, (SB 10-200), ch. 234, p. 1028, § 2, effective May 18; (1)(j) repealed, (HB 10-1422), ch. 419, p. 2066, § 15, effective August 11.

Cross references: For the federal recovery and reinvestment act, see the "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5.

11-59.7-105. Federal tax credits - federal direct payments. (1) Any federal tax credit that may be claimed by an owner of a stimulus obligation or any other person in connection with a stimulus obligation shall not be treated as revenue of any public entity and shall not be considered in determining any amount payable by any public entity on or with respect to any stimulus obligation.

(2) A public entity that issues or enters into a stimulus obligation may elect in accordance with federal law to receive a federal direct payment and may use any federal direct payment to make payments to the owners of the stimulus obligation or other persons or for any other lawful purpose for which the public entity may spend money and may deposit any federal direct payment in any fund or account pending such use.

(3) For purposes of section 20 of article X of the state constitution, federal direct payments are federal funds, federal direct payments are not included in fiscal year spending of any public entity, and the receipt of federal direct payments is not a grant from any Colorado state or local government.

(4) A public entity may pledge any federal direct payments expected to be received in connection with bonds that qualify as stimulus obligations to make payments to the owners of the bonds or other persons. Any portion of the debt service on any stimulus obligation may be payable in amounts corresponding to expected federal direct payments, may be payable solely from expected federal direct payments, or may have a priority claim on expected federal direct payments. If, and to the extent that, a public entity pledges federal direct payments expected to be received in connection with bonds to make payments to the owners of the bonds or other persons, the federal direct payments that the public entity expects to receive with respect to the bonds shall be netted against and shall reduce the amount of interest on the bonds and all other amounts payable by the public entity on or with respect to the bonds for purposes of any notice delivered pursuant to section 20 (3)(b) of article X of the state constitution and for purposes of applying any limitation or restriction under the state constitution, any law of the state, any ballot question or ballot issue, any ancillary agreement, or any ordinance or resolution of the governing body of the public entity relating to the bonds, including but not limited to any limitation on:

(a) Interest or any other amount payable on or with respect to the bonds;

(b) The net effective interest rate and net interest cost on the bonds;

(c) The repayment cost of the bonds; and

(d) The amount of debt the public entity may incur.

(5) A public entity may identify federal direct payments expected to be received in connection with a lease-purchase agreement that qualifies as a stimulus obligation as the intended source for payment of any portion of the lease payments under the lease-purchase agreement. Any portion of the lease payments payable under any lease-purchase agreement that qualifies as a stimulus obligation may be payable in amounts corresponding to expected federal direct payments, and federal direct payments may be identified as the intended sole source or intended priority source for payment of any portion of the lease payments payable under any lease-purchase agreement that qualifies as a stimulus obligation. If, and to the extent that, a public entity identifies federal direct payments expected to be received in connection with a lease-purchase agreement as an intended source of payment of lease payments, the federal direct payments that the public entity expects to receive with respect to the lease-purchase agreement shall be netted against and shall reduce the amount of lease payments under the lease-purchase agreement representing interest, and all other amounts payable by the public entity under or with respect to the lease-purchase agreement, for purposes of applying any limitation or restriction under the state constitution, any state law, any ballot question or ballot issue, any ancillary agreement, or any ordinance or resolution of the governing body of the public entity relating to the lease-purchase agreement, including but not limited to any limitation on interest or any other amount payable under the lease-purchase agreement and any determination as to the reasonableness of the lease payments under the lease-purchase agreement.

(6) The governing body of a public institution of higher education may designate and treat any federal direct payment as revenues of an auxiliary facility or an institutional enterprise for purposes of sections 23-5-101.5 to 23-5-105.5, C.R.S., and section 23-5-139, C.R.S.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2200, § 1, effective June 2.

11-59.7-106. Qualified school construction bond volume cap. (1) The state qualified school construction bond volume cap shall be allocated to the public school capital construction assistance board, which, subject to the provisions of subsections (3) and (4) of this section, shall use the volume cap to enter into lease-purchase agreements to assist the financing or refinancing of projects pursuant to article 43.7 of title 22, C.R.S.

(2) Any portion of the school district qualified school construction bond volume cap for a calendar year that is allocated to a school district that has not been used on bonds issued or a lease-purchase agreement entered into by the school district or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of the calendar year shall, on November 11 of the calendar year, automatically by law and without any action by the school district be reallocated by the school district to the public school capital construction assistance board. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the public school capital construction assistance board on December 1 of the calendar year.

(3) If the public school capital construction assistance board determines that it cannot use, or that a school district or a charter school bond issuer can make better use of, any portion of the state qualified school construction bond volume cap for a calendar year or any portion of the school district qualified school construction bond volume cap for a calendar year that is reallocated to the board pursuant to subsection (2) of this section, the board may allocate the portion of the volume cap to the school district or charter school bond issuer for the purpose of financing or refinancing a project approved by the board. Any volume cap allocated to a school district or charter school bond issuer pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of any calendar year shall, on November 11 of the calendar year, automatically revert to the public school capital construction assistance board. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the public school capital construction assistance board on December 1 of the calendar year. The public school capital construction assistance board may use or reallocate to any school district or charter school bond issuer, for the purpose of financing or refinancing a project approved by the board, any volume cap that reverts to the board pursuant to this subsection (3) or may carry the volume cap forward pursuant to subsection (4) of this section. Any volume cap that is reallocated to a school district or charter school bond issuer pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into by noon, prevailing Denver time, on December 31 of a calendar year shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the public school capital construction assistance board.

(4) The public school capital construction assistance board shall carry forward to the next calendar year any portion of the qualified school construction bond volume cap that has not

been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year. In selecting projects to assist the financing or refinancing of pursuant to article 43.7 of title 22, C.R.S., and in selecting projects of school districts for the purpose of allocating the qualified school construction bond volume cap pursuant to this section, the public school capital construction assistance board shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1)(b). The public school capital construction assistance board shall use or allocate the qualified school construction bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1)(b) to minimize the qualified school construction bond volume cap that has not been used on bonds issued or one or more lease-purchase agreements entered into on or before the expiration of the qualified school construction bond program. A school district to which the school district qualified school construction bond volume cap has been allocated under federal law or a school district or charter school bond issuer to which the qualified school construction bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the public school capital construction assistance board. Any volume cap relinquished may be used by the public school capital construction assistance board to enter into lease-purchase agreements to assist the financing or refinancing of projects pursuant to article 43.7 of title 22, C.R.S., may be reallocated by the board to a school district or charter school bond issuer for the purpose of financing or refinancing a project approved by the board, or may be carried forward to the next calendar year. The public school capital construction assistance board may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the qualified school construction bond volume cap will be allocated.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2202, § 1, effective June 2.

11-59.7-107. Qualified energy conservation bond volume cap. (1) The qualified energy conservation bond volume cap shall be administered by the Colorado energy office pursuant to this section. The Colorado energy office shall allocate the qualified energy conservation bond volume cap to the state and large local governments in accordance with federal law for the purpose of financing or refinancing projects approved by the Colorado energy office. The qualified energy conservation bond volume cap for calendar year 2009 shall be allocated by the thirtieth day following June 2, 2009. The qualified energy conservation bond volume cap for each subsequent calendar year shall be allocated on or before February 15 of the calendar year.

(2) The state may reallocate any portion of the qualified energy conservation bond volume cap allocated or reallocated to the state pursuant to this section to any public entity for the purpose of financing or refinancing projects approved by the Colorado energy office.

(3) Any portion of the qualified energy conservation bond volume cap for a calendar year that is allocated to a large local government pursuant to subsection (1) of this section that has not been used on bonds issued or a lease-purchase agreement entered into or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of the calendar year shall, on November 11 of the calendar year, automatically revert to the Colorado energy office. If a contract to purchase

has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the Colorado energy office on December 1 of the calendar year. The Colorado energy office may reallocate to any public entity for the purpose of financing or refinancing a project approved by the office, or carry forward pursuant to subsection (4) of this section, any volume cap that reverts to the office pursuant to this subsection (3). Any volume cap that is reallocated to a public entity pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into by noon, prevailing Denver time, on December 31 of a calendar year shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the Colorado energy office.

(4) The Colorado energy office shall carry forward to the next calendar year any portion of the qualified energy conservation bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year. In selecting projects for the purpose of allocating the qualified energy conservation bond volume cap, the Colorado energy office shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1)(b). The Colorado energy office shall allocate the qualified energy conservation bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1)(b) to minimize the qualified energy conservation bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into on or before the expiration of the qualified energy conservation bond program. The Colorado energy office may allocate the qualified energy conservation bond volume cap to the state pursuant to this section in anticipation of the enactment by the general assembly of legislation authorizing a lease-purchase agreement. The state, any large local government, or any other public entity to which the qualified energy conservation bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the Colorado energy office. Any volume cap relinquished may be reallocated by the Colorado energy office to any public entity to finance or refinance a project approved by the office or may be carried forward to the next calendar year. The department of local affairs, in consultation with the Colorado energy office, may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the qualified energy conservation bond volume cap will be allocated.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2204, § 1, effective June 2. **L. 2012:** Entire section amended, (HB 12-1315), ch. 224, p. 956, § 2, effective July 1.

11-59.7-108. Recovery zone economic development bond volume cap - recovery zone facility bond volume cap. (1) The recovery zone economic development bond volume cap and the recovery zone facility bond volume cap shall be administered by the commission on higher education pursuant to this section and, to the extent provided in subsection (5) of this section, the department of local affairs.

(2) Subject to the provisions of subsections (3) to (7) of this section, the commission on higher education shall separately allocate the recovery zone economic development bond volume cap and the recovery zone facility bond volume cap to counties and large municipalities in accordance with federal law for the purpose of financing or refinancing projects that are located

in recovery zones, are approved by the commission, and either are or are to be owned or used by one or more public institutions of higher education or are expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility.

(3) Except as otherwise provided in subsection (5) of this section, any portion of the recovery zone economic development bond volume cap or recovery zone facility bond volume cap allocated to a county or a large municipality pursuant to subsection (2) of this section that has not been used on bonds issued or a lease-purchase agreement entered into to finance or refinance a project that is located in a recovery zone, is approved by the commission on higher education, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of any calendar year shall, on November 11 of the calendar year, automatically revert to the commission. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the commission on higher education on December 1 of the calendar year. The commission on higher education may reallocate any recovery zone economic development bond volume cap or recovery zone facility bond volume cap that reverts to the commission pursuant to this subsection (3) to any public entity for the purpose of financing or refinancing a project that is located in a recovery zone, is approved by the commission, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility or may carry the volume cap forward pursuant to subsection (4) of this section. Any recovery zone economic development bond volume cap or recovery zone facility bond volume cap that is reallocated to a public entity pursuant to this subsection (3) that has not been used on bonds issued or a lease-purchase agreement entered into to finance or refinance a project that is located in a recovery zone, is approved by the commission on higher education, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility by noon, prevailing Denver time, on December 31 of a calendar year, shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the commission.

(4) The commission on higher education shall carry forward to the next calendar year any portion of the recovery zone economic development bond volume cap or recovery zone facility bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year.

(5) Notwithstanding any other provision of this section, if any portion of the recovery zone economic development bond volume cap or the recovery zone facility bond volume cap, including any portion that has been carried forward pursuant to subsection (4) of this section, has

not been used on bonds issued or a lease-purchase agreement entered into by the ninetieth day preceding the date on which the recovery zone economic development bond program or recovery zone facility bond program, as applicable, is to expire under federal law, the remaining volume cap shall be allocated by the department of local affairs to public entities for the purpose of financing or refinancing any project that is located in a recovery zone and that qualifies for financing or refinancing with recovery zone economic development bonds or recovery zone facility bonds, as applicable. Any portion of any volume cap so allocated that has not been used on bonds issued or a lease-purchase agreement entered into by the fifteenth day preceding the date on which the recovery zone economic development bond program or recovery zone facility bond program, as applicable, is to expire under federal law shall revert to the department of local affairs, which shall reallocate the volume cap to public entities for the purpose of financing or refinancing any project that is located in a recovery zone and that qualifies for financing or refinancing with recovery zone economic development bonds or recovery zone facility bonds, as applicable.

(6) In selecting projects for the purpose of allocating the recovery zone economic development bond volume cap or recovery zone facility bond volume cap, the commission on higher education and the department of local affairs shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1)(b). The commission on higher education and the department of local affairs shall allocate the recovery zone economic development bond volume cap and the recovery zone facility bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1)(b) to minimize the volume cap that has not been used on bonds issued or one or more lease-purchase agreements entered into at the expiration of the recovery zone economic development bond program or the recovery zone facility bond program, as applicable, under federal law. Any county or large municipality to which the recovery zone economic development bond volume cap or recovery zone facility bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the commission on higher education or, in the circumstances described in subsection (5) of this section, the department of local affairs. Any volume cap relinquished may be reallocated by the commission on higher education to any public entity for the purpose of financing or refinancing a project that is located in a recovery zone, has been approved by the commission, and either is or is to be owned or used by one or more public institutions of higher education or is expected to increase economic development in the vicinity of a facility that is or is to be owned or used by one or more public institutions of higher education in a manner that is complementary to the use of such higher education facility, may be carried forward to the next calendar year, or, if the circumstances described in subsection (5) of this section apply, may be reallocated by the department of local affairs for the purpose of financing or refinancing any project that is located in a recovery zone and that qualifies for financing or refinancing with recovery zone economic development bonds or recovery zone facility bonds, as applicable. The commission on higher education and the department of local affairs may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the recovery zone economic development bond volume cap and the recovery zone facility bond volume cap that they are respectively responsible for allocating pursuant to this section will be allocated.

(7) On or before the one hundred eightieth day preceding the date on which the recovery zone economic development bond program or the recovery zone facility bond program, as

applicable, is to expire under federal law, the commission on higher education shall deliver to the department of local affairs a written report describing:

(a) The stimulus obligations that have been issued or entered into using the recovery zone economic development bond volume cap or recovery zone facility bond volume cap;

(b) The stimulus obligations that the commission on higher education expects to be issued or entered into with the recovery zone economic development bond volume cap or recovery zone facility bond volume cap on or before the ninetieth day preceding the date on which the recovery zone economic development bond program or the recovery zone facility bond program, as applicable, is to expire under federal law; and

(c) The actions that have not yet been taken and the events that have not yet occurred but that must be taken or that must occur before the stimulus obligations described in paragraphs (a) and (b) of this subsection (7) are issued or entered into, the date on which the actions and events are scheduled to be taken or to occur, and the commission's analysis of the likelihood that the actions or events will be taken or will occur and that the stimulus obligations will be issued or entered into on or before the ninetieth day preceding the date on which the recovery zone economic development bond program or the recovery zone facility bond program, as applicable, is to expire under federal law.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2205, § 1, effective June 2.

11-59.7-109. Qualified zone academy bond volume cap. (1) The qualified zone academy bond volume cap shall be administered by the public school capital construction assistance board pursuant to this section. The qualified zone academy bond volume cap shall be allocated to school districts to finance or refinance projects approved by the public school capital construction assistance board.

(2) Any portion of the qualified zone academy bond volume cap for a calendar year that is allocated to a school district pursuant to subsection (1) of this section and that has not been used on bonds issued or a lease-purchase agreement entered into or for which a contract to purchase bonds or instruments evidencing interests in a lease-purchase agreement has not been entered into on or before November 10 of the calendar year shall, on November 11 of the calendar year, automatically revert to the public school capital construction assistance board. If a contract to purchase has been entered into on or before November 10 of the calendar year but the related bonds or lease-purchase agreement is not issued or entered into on or before November 30 of the calendar year, the volume cap shall automatically revert to the public school capital construction assistance board on December 1 of the calendar year. The public school capital construction assistance board may reallocate to any school district for the purpose of financing or refinancing a project approved by the board any volume cap that reverts to the board pursuant to this subsection (2) or may carry the volume cap forward pursuant to subsection (3) of this section. Any volume cap that is reallocated to a school district pursuant to this subsection (2) that has not been used on bonds issued or a lease-purchase agreement entered into by noon, prevailing Denver time, on December 31 of a calendar year shall, at 12:01 p.m., prevailing Denver time, on December 31 of the calendar year, automatically revert to the public school capital construction assistance board.

(3) The public school capital construction assistance board shall carry forward to the next calendar year any portion of the qualified zone academy bond volume cap that has not been used on bonds issued or a lease-purchase agreement entered into by the end of a calendar year.

(4) In selecting projects for the purpose of allocating the qualified zone academy bond volume cap, the public school capital construction assistance board shall prioritize projects that are ready to be financed or refinanced and that are most consistent with the purpose of this article described in section 11-59.7-102 (1)(b). The public school capital construction assistance board shall allocate the qualified zone academy bond volume cap in a manner consistent with federal law and the purpose of this article described in section 11-59.7-102 (1)(b) to minimize the qualified zone academy bond volume cap that has not been used on bonds issued or lease-purchase agreements entered into by the expiration of the qualified zone academy bond program. Any school district to which the qualified zone academy bond volume cap has been allocated pursuant to this section may, at any time, relinquish the volume cap to the public school capital construction assistance board. Any volume cap relinquished may be reallocated by the public school capital construction assistance board to a school district to finance or refinance a project approved by the board or may be carried forward to the next calendar year. The public school capital construction assistance board may promulgate rules in accordance with article 4 of title 24, C.R.S., regarding the manner in which the qualified zone academy bond volume cap will be allocated.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2208, § 1, effective June 2.

11-59.7-110. Recovery and reinvestment act finance authorities. (1) Two or more public entities that are authorized to issue or enter into one or more types of stimulus obligations or one or more public entities that are authorized to issue or enter into one or more types of stimulus obligations and one or more public entities that may use or benefit from the project or projects to be financed or refinanced by one or more types of stimulus obligations may, by or pursuant to one or more contracts with each other, create a separate legal entity, to be known as a recovery and reinvestment act finance authority, for the purposes of issuing or entering into stimulus obligations of the type or types, providing for the use or distribution of the proceeds of the stimulus obligations, providing for the payment of the stimulus obligations, and addressing other matters relating to the stimulus obligations and the property and operations of the recovery and reinvestment act finance authority.

(2) The contract pursuant to which a recovery and reinvestment act finance authority is created shall specify:

(a) The name and purpose of the authority and the type or types of stimulus obligations that the authority is authorized to issue or enter into;

(b) The establishment and organization of the governing body of the authority, which shall be a board of directors in which all legislative power of the authority is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation, if any, and the procedure for filling vacancies on the board;

(II) The officers of the authority, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless otherwise specifically provided, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board; and

(IV) The duties of the board;

(c) The obligations and rights of the contracting public entities;

(d) Provisions for the disposition, division, or distribution of any property of the authority;

(e) The term of the contract creating the authority, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that the contract may not be rescinded or terminated so long as the authority has bonds or one or more lease-purchase agreements outstanding unless provision for full payment of the bonds or lease-purchase agreement or agreements, by escrow or otherwise, has been made pursuant to the terms of the bonds or lease-purchase agreement or agreements;

(f) The provisions for the amendment of the contract creating the authority;

(g) Any intention of the contracting public entities to create the authority as, and have the authority conduct its business in a manner that satisfies all requirements of the constitution and laws of the state for maintaining the status of, an enterprise, as defined in section 20 (2)(d) of article X of the state constitution; and

(h) The conditions required when adding or deleting public entities to or from the contract.

(3) The general powers of a recovery and reinvestment finance authority shall include the following powers:

(a) To issue or enter into bonds and lease-purchase agreements that qualify as the type or types of stimulus obligations identified in the contract;

(b) To use or distribute the proceeds of its stimulus obligations for the benefit of one or more of the contracting public entities;

(c) To make and enter into ancillary agreements and other contracts and agreements with the contracting public entities and other persons;

(d) To employ agents and employees, to enter into contracts with attorneys, accountants, investment bankers, and other consultants, and to do and perform any acts and things authorized by this section under, through, or by means of any employee, agent, or person with which it contracts;

(e) To sue and be sued in its own name;

(f) To have and use a corporate seal;

(g) To adopt, by resolution, bylaws, rules, and regulations respecting the exercise of its powers and the carrying out of its purposes;

(h) To deposit moneys not then needed in the conduct of its affairs in any depository authorized in section 24-75-603, C.R.S. For the purpose of making deposits, the board of directors of the authority may appoint, by written resolution, one or more persons to act as custodians of the moneys. The persons shall give surety bonds in such amounts and form and for such purposes as the board of directors requires.

(i) To exercise any other powers that are necessary or convenient to the exercise of its other powers.

(4) A recovery and reinvestment act finance authority shall be a political subdivision and a public corporation of the state, separate from the parties to the contract creating the authority,

and shall be a validly created and existing political subdivision and public corporation of the state irrespective of whether a public entity withdraws, whether voluntarily, by operation of law, or otherwise, from the authority subsequent to its creation under circumstances not resulting in the rescission or termination of the contract pursuant to the terms of the contract. A recovery and reinvestment act finance authority shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate.

(5) The income or other revenues of a recovery and reinvestment act finance authority and all property at any time owned by an authority shall be exempt from all taxation and assessments in the state.

(6) The contracting public entities may provide in the contract creating a recovery and reinvestment act financing authority for payment to the authority of moneys from any legally available source to be used for payment of the bonds, lease-purchase agreements, and contractual and other obligations and liabilities of the authority.

(7) (a) To carry out the purposes for which a recovery and reinvestment act finance authority was created, the authority may issue bonds and enter into lease-purchase agreements payable solely from amounts paid to the authority from the contracting public entities, amounts paid to the authority by other persons, and any other available moneys of the authority. The terms, conditions, and details of the bonds or lease-purchase agreements and the procedures related thereto shall be set forth in the stimulus obligation documents authorizing the bonds or lease-purchase agreements. The terms, conditions, and details of the bonds or lease-purchase agreements shall, as nearly as may be practicable and subject to the provisions of sections 11-59.7-104 and 11-59.7-105, be substantially the same as those provided in part 6 of article 4 of title 43, C.R.S., relating to regional transportation authorities. Bonds or lease-purchase agreements issued or entered into under this subsection (7) shall not constitute a debt of a recovery and reinvestment act finance authority or a debt or multiple-fiscal year financial obligation of the state or any of the contracting public entities within the meaning of any constitutional or statutory limitations or provisions. Each bond or lease-purchase agreement issued or entered into under this subsection (7) shall recite in substance that the bond or lease-purchase agreement, including the interest thereon, is payable solely from the revenues and other available funds of the recovery and reinvestment act finance authority pledged for the payment thereof and that the bond or lease-purchase agreement does not constitute a debt of the authority or a debt or multiple-fiscal year financial obligation of the state or any of the contracting public entities within the meaning of any constitutional or statutory limitations or provisions.

(b) The stimulus obligation documents under which bonds are issued or lease-purchase agreements are entered into pursuant to paragraph (a) of this subsection (7) shall constitute a contract with the holders thereof and may contain such provisions as are determined by the board of the recovery and reinvestment act finance authority to be appropriate and necessary in connection therewith and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the authority.

(8) The powers granted to a recovery and reinvestment act finance authority pursuant to this section are supplemental to and shall in no manner limit the powers of public entities to enter into intergovernmental agreements or contracts or to establish separate legal entities pursuant to any other provision of law.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2209, § 1, effective June 2.

11-59.7-111. Reporting requirements. (1) A public entity that issues or enters into a stimulus obligation authorized by the allocation or reallocation of the volume cap to the public entity pursuant to section 11-59.7-106, 11-59.7-107, 11-59.7-108, or 11-59.7-109, by the public school capital construction assistance board, the Colorado energy office, the commission on higher education, or the department of local affairs, as applicable, shall deliver a report to the entity that allocated or reallocated the volume cap within thirty days after the stimulus obligation is issued or entered into. The report shall include the following information and any other information requested by the entity that allocated or reallocated the volume cap:

(a) The type of stimulus obligation;

(b) The state law or laws under which the stimulus obligation was issued or entered into;

(c) The date on which the stimulus obligation was issued or entered into;

(d) A description of the project financed or refinanced with the proceeds of the stimulus obligation;

(e) The principal amount, interest rates or method for determining the interest rates, and maturity dates for the stimulus obligation and a schedule showing all scheduled payments on the stimulus obligation;

(f) The person or persons to which the stimulus obligation was sold;

(g) The terms on which the stimulus obligation was sold, including but not limited to any premium or discount at which the stimulus obligation was sold and any redemption or tender provisions applicable to the stimulus obligation;

(h) A description of any credit or liquidity enhancement or credit or liquidity support for the stimulus obligation and the amounts paid or to be paid for the enhancement or support;

(i) A description of any interest rate exchange agreement, interest rate cap agreement, or other similar agreement entered into in connection with the stimulus obligation;

(j) A copy of form 8038, 8038G, or other similar form that is filed with the federal internal revenue service in connection with the stimulus obligation; and

(k) A copy of the official statement, offering document, or other similar document prepared in connection with the sale of the stimulus obligation.

(2) The failure of a public entity to comply with subsection (1) of this section shall not adversely affect the validity of the stimulus obligation issued or entered into, but no public entity that has failed to comply with said subsection (1) with respect to a stimulus obligation shall be authorized to issue or enter into any other stimulus obligation until the entity that allocated or reallocated to the public entity the volume cap that authorized the public entity to issue or enter into the stimulus obligation has certified in writing that the public entity is in compliance with said subsection (1).

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2213, § 1, effective June 2. **L. 2012:** IP(1) amended, (HB 12-1315), ch. 224, p. 958, § 3, effective July 1.

11-59.7-112. No limitation on powers. The powers conferred by this article are in addition to and supplemental to and not in substitution for the powers conferred by any other law, and nothing in this article shall be interpreted to limit the powers of any public entity under

any other law. If any provision of this article is inconsistent with any provision of any other law, the provisions of this article shall control.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2214, § 1, effective June 2.

11-59.7-113. Executive orders authorized. This article was enacted in order to authorize public entities to take full advantage of financing opportunities available under the federal recovery and reinvestment act shortly after the enactment of the act and without detailed guidance from the executive branch of the federal government or courts regarding the proper interpretation of the act. If, based on additional information regarding the proper interpretation of the federal recovery and reinvestment act or amendments to the act, the governor determines that any provision of this article is not authorized by or is inconsistent with federal law or regulations or that additional legal authority is needed to authorize public entities to take full advantage of financing opportunities available under the act, the governor is expressly authorized to issue one or more executive orders that stops the operation or implementation of the unauthorized or inconsistent provision or provides the necessary additional legal authority.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2214, § 1, effective June 2.

Cross references: For the federal recovery and reinvestment act, see the "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5.

11-59.7-113.5. Specified tax credit bonds. A public entity may elect pursuant to the internal revenue code to treat any stimulus obligation as a specified tax credit bond. Any volume cap allocated to a public entity for stimulus obligations of the same type as a stimulus obligation for which such an election has been made shall apply to the stimulus obligation.

Source: L. 2010: Entire section added, (SB 10-200), ch. 234, p. 1028, § 3, effective May 18.

11-59.7-114. Applicability. This article shall apply only to stimulus obligations issued or entered into pursuant to the federal recovery and reinvestment act on or before the date the authority to issue or enter into stimulus obligations of such type expires under the federal recovery and reinvestment act.

Source: L. 2009: Entire article added, (HB 09-1346), ch. 402, p. 2214, § 1, effective June 2.

Cross references: For the federal recovery and reinvestment act, see the "American Recovery and Reinvestment Act of 2009", Pub.L. 111-5.

U.S. AGENCY OBLIGATIONS

ARTICLE 60

U.S. Agency Obligations

11-60-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Bank for cooperatives" means the corporation known as the central bank for cooperatives and any bank for cooperatives organized and chartered by the governor of the farm credit administration pursuant to the "Farm Credit Act of 1933", as amended.

(2) "Debenture" means an instrument evidencing an obligation issued by a federal intermediate credit bank pursuant to the "Federal Farm Loan Act", as amended, or by a bank for cooperatives pursuant to the "Farm Credit Act of 1933", as amended, and includes consolidated debentures issued by federal intermediate credit banks acting together or banks for cooperatives acting together.

(3) "Federal intermediate credit bank" means any federal intermediate credit bank chartered by the farm credit administration pursuant to the "Federal Farm Loan Act", as amended.

(4) "Funds" includes but is not limited to any moneys or deposits, or any fiduciary, sinking, insurance, investment, retirement, compensation, pension, estate, trust, or other funds, public or private.

(4.5) "Person" means any individual, corporation, business trust, estate, trust, partnership, association, or legal entity other than a public body or officer.

(5) "Public bodies or officers" includes but is not limited to the state of Colorado and any of its institutions, agencies, counties, municipalities, districts, and any political subdivision, department, agency, or instrumentality thereof, and any political or public corporation, board, commission, or officer.

Source: L. 57: p. 520, § 1. **CRS 53:** § 83-3-1. **C.R.S. 1963:** § 83-3-1. **L. 89:** (4.5) added, p. 1107, § 8, effective July 1.

Cross references: For the "Farm Credit Act of 1933", see Pub.L. 73-75, codified at 12 U.S.C. sec. 1131 et seq.; the "Federal Farm Loan Act", referenced in this section, was repealed in 1971 by the "Farm Credit Act of 1971", which also provided that references to the Farm Loan Act "shall be deemed to refer to the comparable provisions" of the "Farm Credit Act of 1971", Pub.L. 92-181, codified at 12 U.S.C. sec. 2001 et seq.

11-60-102. Debentures - legal investments - federal intermediate credit banks - bank for cooperatives. It is lawful, notwithstanding any restrictions on investments contained in any of the laws of this state, for any bank, trust company, savings bank, savings and loan association, insurance company, credit union, or person, including but not limited to those doing business under any banking, insurance, deposit, fiduciary, or investment laws of the United States or any of the states thereof, to invest any funds in its, his, or their custody, control, or possession in any debentures or other similar obligations issued by a federal intermediate credit bank or by a bank for cooperatives and to use any such debentures as security for public deposits or any other fund in their custody, control, or possession.

Source: L. 57: p. 521, § 2. **CRS 53:** § 83-3-2. **C.R.S. 1963:** § 83-3-2. **L. 89:** Entire section amended, p. 1107, § 9, effective July 1.

11-60-103. Lawful investments - international banks. It is lawful, notwithstanding any restrictions on investments contained in any of the laws of this state, for any bank, trust company, savings bank, savings and loan association, insurance company, credit union, or person, including but not limited to those doing business under any banking, insurance, deposit, fiduciary, or investment laws of the United States or of any of the states thereof, to invest any funds in its, his, or their custody, control, or possession in the obligations of the international bank for reconstruction and development, the inter-American development bank, the Asian development bank, or the African development bank.

Source: L. 57: p. 521, § 3. **CRS 53:** § 83-3-3. **C.R.S. 1963:** § 83-3-3. **L. 67:** p. 564, § 1. **L. 69:** p. 690, § 1. **L. 88:** Entire section amended, p. 462, § 1, effective July 1. **L. 89:** Entire section amended, p. 1107, § 10, effective July 1.

11-60-104. Article controlling. Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article are controlling; but nothing in this article shall be construed as modifying part 3 of article 1 of title 15, C.R.S.

Source: L. 57: p. 521, § 5. **CRS 53:** § 83-3-4. **C.R.S. 1963:** § 83-3-4.

ARTICLE 61

Legal Tender

11-61-101. Gold and silver coin a legal tender. The gold and silver coin issued by the government of the United States shall be a legal tender for the payment of all debts contracted on or after April 5, 1893, between the citizens of this state. The same shall be received in payment of all debts due to the citizens of this state and in satisfaction of all taxes levied by the authority of the laws of this state.

Source: L. 1893: p. 306, § 1. **R.S. 08:** § 3941. **C.L.** § 3817. **CSA:** C. 98, § 1. **CRS 53:** § 83-2-1. **C.R.S. 1963:** § 83-2-1.

HOSPITAL AND HEALTH CARE TRUSTS

ARTICLE 70

Hospital and Health Care Trusts

11-70-101. Trust agreements among a group or association of physicians, dentists, or health care institutions authorized. (1) There is hereby authorized the establishment, maintenance, administration, and operation of any trust, established by agreement of any group or association of physicians, dentists, or health care institutions, properly licensed by the state of

Colorado, as grantor, with such physicians, dentists, or health care institutions as beneficiaries, for the purpose of insuring against loss by the payment of compensation under the Colorado workers' compensation law and general public liability claims based upon acts or omissions of such physicians, dentists, or health care institutions, including, without limitation, claims based upon malpractice. Such group or association of physicians, dentists, or health care institutions may, by trust agreement among themselves and a trustee or trustees of their selection, specify the terms, conditions, and provisions of such a trust.

(2) Upon approval of the executive director of the department of labor and employment and if the terms of the trust agreement so authorize, the following entities may be included as participants in or members of a trust created pursuant to subsection (1) of this section:

(a) Organizations or associations in which licensed health care institutions are qualified members;

(b) Entities which own or operate otherwise qualified licensed health care institutions under this article; or

(c) Residential, retirement, or personal care facilities, whether or not such facilities are required to be licensed by this state.

Source: L. 77: Entire article added, p. 594, § 1, effective July 1. **L. 86:** Entire section amended, p. 604, § 1, effective April 3. **L. 90:** Entire section amended, p. 563, § 29, effective July 1. **L. 91:** Entire section amended, p. 654, § 1, effective March 29.

11-70-102. Title to property of trusts - liability of trust and trustees. The trustees of trusts established pursuant to this article shall hold the legal title to all property at any time belonging to the trusts. They shall have control over such property, as well as the control and management of the business and affairs of the trust. Liability to third persons for any act, omission, or obligation of a trustee of a trust, when acting in such capacity, shall extend to the whole of the trust estate, or so much thereof as may be necessary to discharge such obligation, but no trustee shall be personally liable for any such act, omission, or obligation. The trustees shall have such powers as to the investment of the trust estate as may be set out in the declaration of trust, without regard to the type of investments to which trustees generally are restricted by the provisions of part 8 of article 1 of title 15, C.R.S., nor shall such trustees be subject to the provisions of title 10, C.R.S., concerning the regulation of insurance; except that the trustees shall report any malpractice claim against a licensed practitioner that is settled or in which judgment is rendered against the insured to the Colorado medical board, which board shall provide statistical data concerning such claims to the commissioner of insurance. Without limiting the generality of the foregoing, the trustees shall have any powers, whether conferred upon them by the agreement of trust or otherwise, to perform all acts necessary or desirable to the conduct of the business of a public liability insurer.

Source: L. 77: Entire article added, p. 594, § 1, effective July 1. **L. 85:** Entire section amended, p. 517, § 1, effective July 1. **L. 2010:** Entire section amended, (HB 10-1260), ch. 403, p. 1978, § 51, effective July 1.

11-70-103. Obligation of participating physicians, dentists, and hospitals limited. No physician, dentist, or hospital which is a participant in such a trust, as grantor, member,

beneficiary, or otherwise, shall be liable or obligated to the trust, to the trustee, to any grantor, member, or beneficiary, to any creditor of the trust, or to any other person by virtue of its participation other than for the payment of its full agreed contribution to the trust in accordance with the trust agreement. Without limiting the generality of the foregoing, no participating physician, dentist, or hospital shall incur any other liability of any nature whatever because of or arising out of its participation in such a trust.

Source: L. 77: Entire article added, p. 595, § 1, effective July 1. **L. 86:** Entire section amended, p. 604, § 2, effective April 3.

11-70-104. Application of article. All of the provisions of this article shall apply to, and shall confer all rights, privileges, exemptions, and immunities upon, any trust established for the purposes contemplated by this article and the grantors, members, beneficiaries, participants, and trustees thereof, whether such trust was established before or on or after July 1, 1977.

Source: L. 77: Entire article added, p. 595, § 1, effective July 1.

11-70-105. Insurance. The coverage provided by a trust established pursuant to this article shall be deemed insurance for the purposes of any requirements relating to proof of financial responsibility.

Source: L. 77: Entire article added, p. 595, § 1, effective July 1.

11-70-106. Certificate of membership. Certification of membership in a trust established pursuant to this article shall meet the certification requirements of any hospital-medical liability requirements.

Source: L. 77: Entire article added, p. 595, § 1, effective July 1.

11-70-107. Workers' compensation. The coverage provided by a trust established pursuant to this article shall be deemed insurance meeting the requirements of article 44 of title 8, C.R.S., to secure the payment of compensation under the Colorado workers' compensation law, and such trust, upon obtaining approval of the executive director of the department of labor and employment, may act as its own insurance carrier, as provided in section 8-44-201, C.R.S.

Source: L. 77: Entire article added, p. 595, § 1, effective July 1. **L. 86:** Entire section amended, p. 498, § 114, effective July 1. **L. 90:** Entire section amended, p. 563, § 30, effective July 1.

COMPLIANCE REVIEW DOCUMENTS

ARTICLE 71

Confidentiality of Compliance
Review Documents

11-71-101. Legislative declaration. The general assembly hereby finds, determines, and declares that compliance review committees are essential to the operation and performance of financial institutions and that the public will benefit from incentives to identify and remedy compliance issues. To this end, the general assembly declares that compliance review information prepared for or created by a compliance review committee shall be confidential and that persons performing such functions shall be granted qualified immunity.

Source: L. 95: Entire article added, p. 210, § 1, effective April 13.

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

(1) "Compliance review committee" means:

(a) An audit committee, loan review committee, or compliance committee appointed by the board of directors of a depository institution, as defined in subsection (3) of this section; or

(b) Any other person who is not an employee or director who acts in an investigatory capacity at the direction of a compliance review committee.

(2) "Compliance review documents" means documents exclusively prepared for or created by a compliance review committee.

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

(I) A person organized, chartered, doing business, or holding an authorization charter under the laws of this state or the United States to receive deposits, which person is supervised or examined for the protection of depositors by an official or agency of a state or the United States. "Deposits" includes deposits in savings, share, certificate, or other deposit accounts.

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

(b) "Depository institution" does not include an insurance company or other organization primarily engaged in the business of insurance.

(4) "Loan review committee" means a person or group of persons who, on behalf of a depository institution, reviews loans held by such institution for the purpose of assessing the credit quality of the loans, compliance with the institution's loan policies, and compliance with applicable laws and regulations.

(5) "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other legal entity.

Source: L. 95: Entire article added, p. 210, § 1, effective April 13. **L. 2004:** (3)(a)(II) amended, p. 325, § 15, effective April 7; (3)(a)(II) amended, p. 1191, § 23, effective August 4.

11-71-103. Applicability of article - confidentiality of compliance review committee documents - definition. (1) This article applies to a compliance review committee the functions of which are to evaluate and seek to improve:

(a) Loan underwriting standards;

(b) Asset quality;

(c) Compliance with federal or state statutory or regulatory requirements;

(d) Financial reporting to federal or state regulatory agencies; or

(e) (I) The ability of electronic computing devices and any other computers, software programs, databases, network information systems, firmware, microprocessors, internal time

clocks, hardware, or any other device used to interpret, produce, calculate, compute, generate, compare, account for, or sequence a date from, into, or between the years 1999 and 2000.

(II) For purposes of this paragraph (e), "electronic computing device" means any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that:

(A) Is used to capture, store, manipulate, or process data; or

(B) Controls, monitors, or assists in the operation of physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function, including but not limited to vehicles, vessels, buildings, structures, facilities, elevators, medical equipment, traffic signals, and factory machinery.

(f) Repealed.

(2) (a) (I) Except as provided in subsection (3) of this section, compliance review documents, including those which have been delivered to a federal or state governmental agency, are confidential and not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee.

(II) Notwithstanding any provision to the contrary, this article shall not be construed to limit the discovery or admissibility in any civil action of documents that are not compliance review documents, including, but not limited to, books, records, loan documents, applications, and appraisals, and other documents otherwise prepared or maintained in the ordinary course of business.

(b) No person shall testify in a civil proceeding concerning such person's participation in the collection, evaluation, reporting, or use of compliance review documents or about the contents of compliance review documents. Such testimony, if offered, is inadmissible in evidence.

(3) Subsection (2) of this section shall not limit the ability of a governmental agency to examine, obtain, or use compliance review documents. Such compliance review documents shall remain confidential and not discoverable or admissible in evidence in any civil action by other than a governmental agency.

Source: L. 95: Entire article added, p. 211, § 1, effective April 13. **L. 99:** (1)(c) amended and (1)(e) and (1)(f) added, p. 215, § 2, effective July 1. **L. 2011:** (1)(f)(I) and (1)(f)(II)(B) repealed, (HB 11-1303), ch. 264, p. 1149, § 7, effective August 10. **L. 2013:** (1)(e) amended and (1)(f) repealed, (HB 13-1300), ch. 316, p. 1667, § 16, effective August 7.

BANKS

Colorado Banking Code

ARTICLE 101

General Provisions

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For bank deposits and collections, see article 4 of title 4; for limitation of this code with reference to corporations, see § 11-107-111; for the "Unclaimed Property Act", see article 13 of title 38.

Law reviews: For article, "Commercial and Corporate Law", which discusses recent Tenth Circuit decisions dealing with banking, see 64 Den. U.L. Rev. 184 (1987); for a discussion of recent Tenth Circuit decisions dealing with banking, see 66 Den. U.L. Rev. 681 (1989); for article "Arbitrating Lender Liability Claims", see 18 Colo. Law. 879 (1989); for a discussion of recent Tenth Circuit decisions dealing with banking and finance law, see 67 Den. U. L. Rev. 629 (1990).

PART 1

SHORT TITLE AND POLICY

11-101-101. Short title. Articles 101 to 109 and article 10.5 of this title shall be known and may be cited as the "Colorado Banking Code". A reference to the code means the Colorado Banking Code as amended from time to time.

Source: L. 2003: Entire article added with relocations, p. 1051, § 3, effective July 1.

Editor's note: This section is similar to former § 11-1-101 as it existed prior to 2003.

11-101-102. Declaration of policy. (1) It is hereby declared to be the policy of the state of Colorado that, to protect the public interest, the business of all state banks be supervised and regulated in such manner as to:

(a) Preserve and promote:

(I) Sound and constructive competition among financial services institutions;

(II) A dual federal and state banking system;

(III) The security of deposits;

(IV) The safe and sound conduct of the business of state banks; and

(V) A statewide safe and sound banking system;

(b) Seek:

(I) Regulatory coordination and cooperation; and

(II) Regulatory parity among financial services institutions; and

(c) Encourage diversity in financial products and services.

Source: L. 2003: Entire article added with relocations, p. 1051, § 3, effective July 1.

Editor's note: This section is similar to former § 11-1-101.5 as it existed prior to 2003.

PART 2

EFFECT ON EXISTING BANKS

11-101-201. Effect on existing banks. The charters of the state banks organized and existing prior to July 1, 2013, under the laws of this state continue in full force and effect. All such state banks, and, to the extent applicable, all banks chartered under the laws of another state and all national banks doing business in this state on or after July 1, 2013, are, from that date, subject to this article. Any such state bank, by filing an application under this code for an amendment of its charter or for a merger, consolidation, purchase and assumption, or sale of all, or substantially all, of its assets, or the assets of any department of such bank, shall be deemed to have expressly recognized that it is so subject.

Source: L. 2003: Entire article added with relocations, p. 1052, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1464, § 6, effective July 1.

Editor's note: This section is similar to former § 11-1-103 as it existed prior to 2003.

PART 3

APPLICATION

11-101-301. Application of code. (1) This code governs the incorporation, organization, corporate functions, merger, consolidation, purchase and assumption, sale of assets, liquidation, dissolution, and reorganization procedures of corporations operating as banks (whether or not, as a part of and in conjunction with such operations, they engage in the trust or safe deposit business) in the state of Colorado; but articles 10.5 and 101 to 107 of this title only apply to trust companies organized and operating under article 109 of this title when specifically provided in articles 10.5 and 101 to 109 of this title, and article 109 of this title otherwise governs exclusively trust companies.

(2) (a) (I) The regulation of banking is a matter of statewide concern, and in order to maintain a uniform statewide system of banking and bank regulatory policy in Colorado, the regulation by a political subdivision of deposits, lending, or other services or products provided by banks in accordance with applicable state or federal law shall be prohibited except to the extent expressly permitted under article 10.5 of this title.

(II) Nothing in this subsection (2) shall preclude a political subdivision from enacting and enforcing laws or rules of general applicability concerning public health, safety, or welfare.

(b) For the purposes of this section, "political subdivision" means and includes every county, city and county, city, town, school district, special district, and housing authority within the state.

Source: L. 2003: Entire article added with relocations, p. 1052, § 3, effective July 1. **L. 2013:** (1) amended, (SB 13-154), ch. 282, p. 1472, § 32, effective July 1.

Editor's note: This section is similar to former § 11-1-105 as it existed prior to 2003.

11-101-302. No private right of action. Except as expressly provided in this code, no person, other than the banking board, shall have the right to bring or maintain any private action, at law or in equity, for a violation of or enforcement of this code.

Source: L. 2003: Entire article added with relocations, p. 1053, § 3, effective July 1.

Editor's note: This section is similar to former § 11-1-106 as it existed prior to 2003.

PART 4

DEFINITIONS

11-101-401. Definitions. As used in this code, unless the context otherwise requires:

(1) "Account holder" means a person having an established demand, savings, or loan account at a Colorado bank.

(2) "Account overline" means a banking transaction pursuant to which an account holder debits his existing demand or savings account even though such debit may create or extend a negative balance to be covered by an extension of credit, or would create a negative balance but for an extension of credit to such account by the Colorado bank.

(3) "Action", in the sense of a judicial proceeding, means a recoupment, counterclaim, third-party claim, cross-claim, setoff, suit in equity, arbitration, and any other proceeding in which rights are determined.

(3.5) "Affiliate" means any company that directly or indirectly controls, is controlled by, or is under common control with another company.

(4) "Affiliate financial institution" means any bank or savings and loan association that has its principal place of business in Colorado and that is controlled by a financial institution.

(5) "Bank" or "banking institution" means a state bank or bank with trust powers chartered by this state or another state, a national bank, or a national bank with trust powers, but does not include a credit card national bank; except that, for the purpose of part 2 of article 104 of this title, "bank" means any bank organized or chartered under articles 101 to 107 of this title, any bank organized or chartered as a bank under the laws of any other jurisdiction, or any bank organized or chartered under chapter 2 of title 12 of the United States Code.

(6) "Bank holding company" means any company that has direct or indirect control over any banking institution.

(7) "Banking board" means the banking board within the division established pursuant to section 11-102-103.

(8) Repealed.

(9) "Banking transactions" means cash withdrawals, deposits, account transfers, payments from bank accounts, disbursements under a preauthorized credit agreement, and loan payments initiated by an account holder at a communications facility and accessing his or her account at a Colorado bank.

(10) "Branch" means any branch bank, branch office, branch agency, additional office, or branch place of business situated in Colorado or another state of a financial institution located in this or another state at which deposits are received, checks are paid, and money is lent and trust powers may be exercised, if approved by its chartering authority.

(11) "Capital and surplus" or "capital stock and unimpaired surplus fund" means paid-in capital stock plus surplus, undivided profits, subordinated notes and debentures, reserves for contingencies and other capital reserves, and the reserve for possible loan losses.

(12) "Colorado affiliate", with respect to a Colorado bank or Colorado trust company, means:

(a) Any company that is controlled by a bank holding company that controls a Colorado bank or Colorado trust company; or

(b) Any company that is controlled by or that controls a Colorado bank or Colorado trust company.

(13) "Colorado bank" means a bank having its principal place of business in Colorado.

(14) "Colorado bank holding company" means a registered bank holding company the operations of which are principally conducted in Colorado. "Colorado bank holding company" does not include an out-of-state bank holding company that acquires control of one or more Colorado bank holding companies or Colorado banks, whether or not its operations are principally conducted in Colorado after such acquisition, or any Colorado bank holding company the control of which or as to which a majority nonvoting equity interest is first acquired by an out-of-state bank holding company on or after July 1, 1988.

(15) "Colorado financial institution" means a financial institution having its principal place of business in Colorado.

(16) "Colorado trust company" means:

(a) A national banking association that has its principal office in Colorado and to which the comptroller of the currency has issued a certificate authorizing the commencement of business and that is required by said comptroller to limit its operations to those of a trust company and any activities related thereto; or

(b) A trust company organized under article 109 of this title, which trust company has its principal office in Colorado.

(16.5) "Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.

(17) "Commissioner" means the state bank commissioner appointed and serving pursuant to section 11-102-101 (2), who shall be the commissioner of banking referred to in articles 101 to 109 of this title.

(18) "Communications facility" means an attended or unattended electronic information processing device, other than an ordinary telephone instrument, located in this state separate and apart from a Colorado bank and through which account holders and Colorado banks may engage in banking transactions by means of either the instant transmission (online) of electronic impulses to and from the Colorado bank or its data processing agent or the recording of electronic impulses or other indicia of a banking transaction for delayed transmission (off-line) to a Colorado bank or its data processing agent. Such a device located on the premises of a Colorado bank shall be a communications facility if such device is utilized by the account holders of other Colorado banks.

(19) "Community" means a city, town, or incorporated village of this state, or a trade area in this state in unincorporated territory.

(20) "Company" means any corporation, partnership, business trust, association, or similar organization; except that, for the purpose of article 106 of this title, "company" means a bank or trust company that is authorized by the division of banking or the comptroller of the currency to conduct fiduciary business in Colorado.

(21) "Constituent bank" means a party to a merger.

(22) "Continuing bank" means a merging bank the charter of which becomes the charter of the resulting bank.

(23) (a) Except as otherwise provided in paragraphs (b) and (c) of this subsection (23), a company with "control" means:

(I) A company that, either directly, indirectly, or acting through one or more persons, owns, controls, or has the power to vote twenty-five percent or more of the voting securities of another company; or

(II) A company that controls in any manner the election of a majority of the directors, managers, or trustees of another company.

(b) For the purpose of part 2 of article 104 of this title, "control" means that:

(I) A company, either directly, indirectly, or acting through one or more persons, owns, controls, or has power to vote twenty-five percent or more of the voting securities of a bank holding company or of a bank; or

(II) A company controls in any manner the election of a majority of the directors, managers, or trustees of a bank holding company or of a bank.

(c) For the purpose of section 11-104-101, "control" means that:

(I) Any company directly or indirectly or acting through one or more persons owns, controls, or has power to vote twenty-five percent or more of the voting securities of the banking institution; or

(II) The company controls in any manner the election of a majority of the directors, managers, or trustees of the banking institution.

(24) "Converted bank" means the same bank after the conversion.

(25) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(26) "Court" means a court of competent jurisdiction.

(27) "Credit card national bank" means an institution that is organized or chartered as a national bank under chapter 2 of title 12 of the United States Code, that engages only in credit card operations, and that qualifies for exception from the definition of a "bank" under section 2 (c)(2)(F) of the federal "Bank Holding Company Act of 1956", Public Law 84-511, 12 U.S.C. sec. 1841 (c)(2)(F).

(27.5) "De novo bank" means a newly incorporated and chartered federally insured bank.

(28) "De novo branch" means a branch of a financial institution that:

(a) Is originally established by the financial institution as a branch; and

(b) Does not become a branch of such financial institution as a result of:

(I) The acquisition by the financial institution of a depository institution or a branch of a depository institution; or

(II) The conversion, merger, or consolidation of any such institution or branch.

(29) "Deposit production office" means an office or branch used primarily for the purpose of deposit production.

(30) "Depositor" means:

(a) A person or company that places money in a bank account; and

(b) A person delivering property or documents to a lessor for safekeeping.

(31) "Division" means the division of banking of this state created by this code.

(32) "Executive officer", when referring to a bank, means a person who participates or has authority to participate, other than in the capacity of a director, in major policy-making

functions of the bank, whether or not the officer has an official title, the title designates the officer as an assistant, or the officer is serving without salary or other compensation. "Executive officer" includes the chairman of the board of directors and the president, every vice-president, and the cashier of a bank, unless any such officer is excluded by resolution of the board of directors or by the bylaws of the bank from participation, other than in the capacity of a director, in major policy-making functions of the bank and such officer does not actually participate therein.

(33) "Federal bank holding company act" means the federal "Bank Holding Company Act of 1956", Pub.L. 84-511, 12 U.S.C. sec. 1841 et seq., as amended.

(34) "Fiduciary" means original or successor trustee of an expressed or implied trust, including but not limited to a resulting or constructive trust, special administrator, executor, administrator, administrator c.t.a., guardian, guardian-trustee or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust acting alone or with others.

(35) "Fiduciary business" means estate and trust administration, conservatorship, agency, escrow, and custodian business and any other fiduciary business.

(36) "Financial institution" means any bank, bank holding company, savings and loan association, federal savings bank, or thrift holding company.

(37) (a) "Foreign bank" means any bank, including any commercial bank, merchant bank, or other institution that engages in banking activities that are usual in connection with the business of banking in the nations where such institution is organized or operating, other than a bank that is organized under the laws of a state of the United States or a national bank that maintains its head office in a state of the United States.

(b) As used in this subsection (37), "foreign nation" means any nation other than the United States, including any subdivision, territory, trust territory, dependency, or possession of any such nation. "Foreign nation" includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States.

(38) "Good faith" means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized.

(39) "Home state" means:

(a) In the case of a national bank, the state in which the main office of the bank is located; and

(b) In the case of a state bank, the state in which the bank is chartered.

(40) "Interested party" means, with respect to the fiduciary business of a transferor for which a successor is substituted:

(a) Each person who is readily identifiable as a beneficiary or devisee because of such person's receipt of statements of account;

(b) A parent, custodian, conservator, or guardian who receives statements of account on behalf of a minor beneficiary or devisee;

(c) Each cofiduciary;

(d) Each surviving settlor of a trust;

(e) Each issuer of a security for which the transferor acts as a fiduciary;

(f) The plan sponsor for every employee benefit plan;

(g) The principal of every agency account; and

(h) The guardian or conservator of the person under guardianship.

(40.5) "Investment discretionary authority" means, with respect to an account, the sole or shared authority, whether or not that authority is exercised, to determine which securities or other assets to purchase or sell on behalf of the account. An institution that delegates its authority over investments and an institution that receives delegated authority over investments both have investment discretion.

(41) "Item" means any instrument for the payment of money even though not negotiable, but does not include money.

(42) "Lessee" means a person contracting with a lessor for the use of a safe deposit box.

(43) "Lessor" means a bank or subsidiary thereof that rents or maintains safe deposit facilities. "Lessor" does not include a financial institution regulated by article 30, 46, or 109 of this title or a credit union chartered under the laws of the United States.

(44) "Merger" includes consolidation.

(45) "Merging bank" means a party to a merger.

(46) "National bank" means a national banking association.

(47) "Officer", when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant trust officer, assistant vice-president, assistant treasurer, assistant cashier, assistant comptroller, assistant secretary, auditor, or any person who performs the duties appropriate to those offices.

(48) The state where "operations are principally conducted" means that state where the largest percentage of the aggregate deposits of all bank subsidiaries of the bank holding company is held.

(49) "Order" means all or any part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, by the commissioner or the banking board of any matter other than the making of rules of general application.

(50) "Out-of-state bank" means a bank the home state of which is another state. The term "out-of-state bank" includes a foreign bank.

(51) "Out-of-state bank holding company" means a registered bank holding company the operations of which are principally conducted outside of Colorado.

(52) "Person" means an individual, corporation, partnership, joint venture, trust estate, unincorporated association, or any other legal or commercial entity.

(53) "Registered bank holding company" means a bank holding company registered with the federal reserve board pursuant to the federal "Bank Holding Company Act".

(54) "Resulting bank" means the combined banks and trust companies carrying on business upon completion of a merger.

(55) "Retailer" means a person primarily engaged in the business of selling or leasing goods or services to consumers.

(56) "Retail location" means a location where the primary business is selling or leasing goods or services to consumers. The term includes only that portion of the building or structure in which such goods or services are offered for sale or lease, but it does not include a wholesale or manufacturing business.

(57) "Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor.

(58) "State bank" means a bank or bank with trust powers chartered by this state.

(59) "Successor" means a company that replaces the transferor as fiduciary for all or part of the fiduciary business of the transferor.

(60) "Transferor" means a company that is replaced as fiduciary by a successor for all or part of its fiduciary business.

Source: L. 2003: Entire article added with relocations, p. 1054, § 3, effective July 1. **L. 2004:** (43) amended, p. 1192, § 24, effective August 4. **L. 2007:** (3.5) and (16.5) added, p. 117, § 1, effective March 16. **L. 2009:** (10) and (43) amended, (HB 09-1053), ch. 159, p. 688, § 6, effective August 5. **L. 2013:** (4), (5), (10), (30), (36), (43), and (58) amended, (8) repealed, and (27.5) and (40.5) added, (SB 13-154), ch. 282, p. 1472, § 33, effective July 1.

Editor's note: This section is similar to former §§ 11-1-102, 11-4-101, 11-6.3-101 (1), 11-6.4-102, 11-6.5-103, 11-7-100.3, 11-9-101, 11-25-102, and 11-10-105 as they existed prior to 2003.

ARTICLE 102

Division of Banking

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 1

COMMISSIONER AND BANKING BOARD

11-102-101. Division of banking - creation - subject to termination - repeal of article. (1) There is hereby created a division of banking within the department of regulatory agencies. The division shall be charged with functions provided by law. Whenever any law of this state refers to the banking department, said law shall be construed as referring to the division of banking.

(2) The administrative head of the division shall be the commissioner of banking, who shall be the state bank commissioner appointed and serving as provided by law, and the deputies and employees of the commissioner shall also be deputies and employees of the division of banking hereby created. The bank commissioner, at the time of his or her appointment, shall be experienced in the theory and practice of the business and regulation of financial services institutions under the jurisdiction of the banking board.

(3) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of banking created by this section.

(b) This article is repealed, effective September 1, 2024.

Source: L. 2003: Entire article added with relocations, p. 1059, § 3, effective July 1. **L. 2004:** (3)(b) amended, p. 322, § 1, effective April 7. **L. 2013:** (3)(b) amended, (SB 13-154), ch. 282, p. 1463, § 1, effective July 1.

Editor's note: This section is similar to former § 11-2-101 as it existed prior to 2003.

11-102-102. Powers of commissioner. (1) The commissioner shall be the administrative head of the division, shall set administrative policy therefor, and shall be responsible for the internal administration thereof, including personnel matters, records, reports, systems, and procedures.

(2) The commissioner shall be the appointing authority for employees of the division under the state personnel system.

(3) The commissioner shall be responsible for all examination and enforcement functions of the division of banking subject to the policy-making and rule-making authority of the banking board. In carrying out the responsibilities for examinations and enforcement, in addition to other powers conferred by this code and delegated by the banking board, the commissioner has the power to require a bank to:

(a) Comply with the standards that the banking board may prescribe for determining the value of various types of assets;

(b) Charge off the whole or any part of an asset that, at the time of the commissioner's action, could not lawfully be acquired;

(c) Write down an asset to its market value;

(d) File, record, or otherwise make effective liens and other interests in property;

(e) Obtain a financial statement from a person with present or prospective liability to the bank to the extent that the bank can do so;

(f) Obtain insurance against damage to real estate taken as security;

(g) Obtain title insurance for real estate taken as security;

(h) Maintain adequate insurance against such other risks as the commissioner or the banking board may determine to be necessary and appropriate for the protection of depositors and the public.

(4) The commissioner shall have primary responsibility for the preparation of the preliminary budget draft for the division for review and comment by the banking board prior to its submission to the department of regulatory agencies.

(5) The commissioner shall have the power to perform any acts and to make any decisions incidental to or necessary for carrying out any functions specified by this code or delegated by the banking board pursuant to this code.

(6) The commissioner has the power, subject to the approval of the banking board and subject to the laws and state constitution, to appoint a chief deputy commissioner and such other deputy commissioners as shall be necessary to efficiently perform the duties of the commissioner. All such officers and employees shall receive such compensation for their services as shall be fixed under general provisions of law relating to the compensation of state officers and employees.

(7) The commissioner, the deputies, and all other employees of the division shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by this code or by law. Willful violation of this oath is declared to be a criminal offense. The commissioner, all deputies, and all other employees of the division shall be subject to article 18 of title 24, C.R.S.

(8) The commissioner may delegate to any officer or employee of the division any of the commissioner's powers and may designate any officer or employee of the division to perform any of the commissioner's duties.

(9) The commissioner, and such other officers and employees handling money or securities in the course of their duties as the banking board may determine, shall be bonded in such amount as the banking board may fix. The cost thereof shall be charged as an expense of the division.

(10) The commissioner, all deputies, and all the employees, except special deputies and assistants employed in liquidating failed banks, shall devote their entire time and attention to the duties of their several positions and shall not, during their terms of service, receive any salary or compensation whatsoever from any bank.

(11) In the case of a vacancy in the office of the commissioner for any cause, and until such vacancy is filled, the chief deputy commissioner shall have and exercise all the powers and duties conferred by law or by the banking board upon the commissioner, with the same authority as if those powers and duties were exercised and performed by the commissioner. If there is no chief deputy at the time of such vacancy, a chief deputy shall be appointed.

(12) The commissioner shall have a seal of office containing the words "Commissioner of Banking of Colorado" in the form of a circle and the word "seal" within the circle.

Source: L. 2003: Entire article added with relocations, p. 1060, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-106 as it existed prior to 2003.

11-102-103. Banking board - repeal. (1) (a) There is hereby established in the division a banking board, which shall consist of nine members as further specified in this section.

(b) The members of the banking board serving on June 30, 2003, shall continue to serve until the expiration of their terms of office in accordance with the provisions of this section.

(2) (a) There shall be five members who during their tenure are, and shall remain, executive officers of state banks, each of whom shall have not less than five years' practical experience as an active executive officer of a bank. At least two of such members shall represent banks having less than one hundred fifty million dollars in total assets at the time of their appointment.

(b) There shall be one member who during his or her tenure is, and shall remain, an executive officer of a business licensed pursuant to article 110 of this title 11.

(c) There shall be one member who during his or her tenure is, and shall remain, the executive officer of a trust company.

(d) There shall also be two members to serve as public members of the banking board who shall have expertise in finance through their current experience in business, industry, agriculture, or education.

(3) No member of the banking board shall have any interest, direct or indirect, in a bank in which another member of the banking board has any such interest. Not more than one of the members shall be an executive officer or employee of any one bank holding company or affiliate thereof.

(4) Of the members appointed under subsection (2) of this section, at all times at least one shall reside west of the continental divide.

(5) Members shall be appointed by the governor, with the consent of a majority of the elected members of the senate at the next meeting thereof. The term of office of each member shall be four years. In the event of the death, resignation, nonresidency in the congressional district from which appointed, inability to act, or refusal to act of any member of the banking board, or the occurrence of any other event that disqualifies the member from serving the remainder of his or her term on the banking board, the governor within forty-five days thereafter, or in the event of the governor's failure to act, the banking board, shall make an interim appointment of a member to serve for the unexpired term on the banking board, subject to the approval of a majority of the elected members of the senate at the next meeting thereof. A member who moves out of the congressional district from which appointed shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. The governor may, after notice and hearing, remove a member for cause. Any banking board member who is absent from three consecutive banking board meetings is subject to immediate removal by the governor.

(6) Each member of the banking board shall receive the same per diem compensation and reimbursement of expenses as those provided for members of boards and commissions in the division of professions and occupations pursuant to section 24-34-102 (13), C.R.S. Payment for all such expenses and allowances shall be made upon vouchers therefor, which shall be filed with the department of personnel.

(7) The banking board shall meet at least once in each calendar month. The chairman of the banking board may call additional meetings of the banking board upon at least seventy-two hours' notice to all members of the banking board and shall do so upon the request of two members. All members of the banking board shall be subject to immediate call in the event of an emergency. Four members of the banking board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present shall be the action of the banking board. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, one or more members may be authorized to conduct any hearing required under this code. In the event that less than a quorum of the banking board is present during the conduct of the hearing, at least a quorum of the banking board shall read the entire record before voting thereon. No member shall participate in a proceeding before the banking board when any corporation, partnership, or unincorporated association of which he or she is, or was at any time in the preceding twelve months, a director, officer, partner, employee, member, or stockholder is a party to such proceedings. A member may disqualify himself or herself from participating in a proceeding for any other cause deemed by him or her to be sufficient.

(8) A quorum may be established by means of a conference telephone call, which shall be recorded in the banking board's minutes. Upon the affirmative vote of a majority of those present at any meeting at which a quorum is present, the banking board may hold an executive session to consider certain matters required by statute to be kept confidential under this code. Any agenda and the minutes of executive sessions shall be kept confidential by the banking board.

(9) The division shall provide such clerical, technical, and legal assistance as the banking board may require.

(10) The members of the banking board shall, before entering upon the discharge of their duties, in addition to any oath required by the state constitution, take and subscribe an oath to

keep secret all information acquired by them in the discharge of their duties, except as may be otherwise required by law. Willful violation of this oath shall be a criminal offense.

(11) The banking board shall elect a chairperson from among its members to serve for a term not exceeding two years, as determined by the banking board. No chairperson shall be eligible to serve as such for more than two successive terms. In addition to the amounts received pursuant to subsection (6) of this section, the chairperson shall receive per diem compensation and reimbursement of expenses in the amounts provided by section 24-34-102 (13), C.R.S., for each day spent in attending to the duties of the banking board.

(12) The banking board may enter into contracts with temporary employees and for the provision of such other services as it may deem necessary in accordance with section 13 of article XII of the state constitution.

(13) This section is repealed, effective September 1, 2024.

Source: L. 2003: Entire article added with relocations, p. 1062, § 3, effective July 1. **L. 2004:** (1)(a), (2)(a), and (4) amended and (13) added, p. 21, §§ 3, 1, effective March 3. **L. 2009:** (2)(b) amended, (HB 09-1053), ch. 159, p. 687, § 3, effective August 5. **L. 2013:** (13) amended, (SB 13-154), ch. 282, p. 1463, § 2, effective July 1. **L. 2017:** (2)(b) amended, (SB 17-226), ch. 159, p. 589, § 5, effective August 9.

Editor's note: This section is similar to former § 11-2-102 as it existed prior to 2003.

11-102-104. Powers and duties of banking board. (1) The banking board is the policy-making and rule-making authority for the division of banking and has the power to:

(a) Make, modify, reverse, and vacate rules for the proper enforcement and administration of this code and the "Public Deposit Protection Act", article 10.5 of this title;

(b) Make, promulgate, alter, amend, or revise reasonable rules as may be necessary for the enforcement and execution of the "Money Transmitters Act", article 110 of this title 11; and

(c) Regulate procedure and practice of the banking board.

(2) In addition to any other powers conferred on it by this code, the banking board has the power to:

(a) Make all final decisions with respect to ownership including, but not limited to:

(I) Chartering and conversions;

(II) Mergers;

(III) Acquisitions; and

(IV) Change of control;

(b) Make all final decisions with respect to certification pursuant to section 11-104-202;

(c) Make all final decisions with respect to the taking of possession, liquidation, or reorganization of banks and the emergency grant of new charters and branch facilities;

(d) Make all final decisions with respect to requests to exercise trust, fiduciary, and agency powers.

(3) The banking board has the power to prohibit the taking of deposits or to restrict the withdrawal of deposits, or both, from any one or more state banks when the banking board finds that extraordinary circumstances make such a restriction necessary for the proper protection of depositors in the affected state bank.

(4) The banking board has the power to authorize state banks under circumstances in which state banks are not given authority under this code to act without the approval of the banking board; to participate in any public agency created after July 1, 1957, under the laws of this state or the United States, the purpose of which is to afford advantages or safeguards to banks or depositors; and to authorize compliance with all requirements and conditions imposed upon such participants.

(5) The banking board has the power to authorize such banks to engage in any banking activity in which state banks could engage were they operating as national banks at the time such authority is granted, so long as such activity is not prohibited elsewhere in this code and to the extent permissible under rules of the banking board promulgated pursuant to subsection (1) of this section consistent with the policies set forth in section 11-101-102, or under any other provision of this code. State banks may engage in interstate branching to the same extent as if they were operating as national banks so long as such activity is in accordance with the rules of the banking board.

(5.5) (a) The banking board has the power to issue a state bank charter to a limited liability company, as that term is defined in section 7-80-102, C.R.S., so long as the limited liability company meets the requirements of this code. In the event of a conflict between the requirements of the provisions of this code and the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., a state bank organized as a limited liability company shall be subject to the requirements of this code.

(b) Repealed.

(c) The banking board has the power to issue a trust company charter to a limited liability company, as that term is defined in section 7-80-102, C.R.S., so long as the limited liability company meets the requirements of article 109 of this title. In the event of a conflict between the requirements of article 109 of this title and the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., a trust company organized as a limited liability company is subject to the requirements of article 109 of this title.

(d) The banking board shall promulgate rules to effectuate the provisions of this subsection (5.5).

(6) The banking board has the power to affirm, modify, reverse, vacate, or stay the enforcement of any order or ruling made by a hearing officer acting pursuant to section 11-102-201 or the commissioner acting pursuant to authority delegated by the banking board.

(7) The banking board has the power to order any person to cease violating a provision of this code or a rule issued pursuant to this code or to cease engaging in any unsound banking practice, to impose civil money penalties pursuant to section 11-102-503, to suspend or remove a director or officer pursuant to section 11-102-505, and to take such other enforcement action as is authorized by sections 11-102-506 to 11-102-508 and any other provision of this code.

(8) With respect to any action pursuant to subsection (3) or (7) of this section, ten days' notice by certified mail, return receipt requested, and the opportunity for a hearing shall be provided to the bank, the directors of the bank, and any person ordered to cease violating provisions of this code pursuant to subsection (7) of this section in advance of any action taken by the banking board. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action without notice or hearing but shall promptly afford a subsequent opportunity for hearing upon application by the bank or directors of the bank to rescind the action taken. With respect to any

authorization requested pursuant to subsection (4) or (5) of this section, the banking board may, on its own motion, or shall if requested by the applicant, hold a hearing on such request.

(9) The banking board has the power to issue a declaratory order with respect to the applicability of this code or a rule issued by the banking board to any person, property, or state of facts under this code.

(10) The banking board has the power to review and comment on the preliminary budget draft for the division prior to its submission to the department of regulatory agencies.

(11) The banking board shall annually establish such fees and assessments and the percentages thereof as are necessary to generate the moneys appropriated by the general assembly for the division.

(12) The banking board has the power to comment on who shall be the bank commissioner and to recommend the termination of the commissioner for cause. The banking board's comments and recommendations shall be given to the appropriate office or officer of the state having appointment or termination powers with regard to the commissioner.

(13) The banking board has the power to perform any acts and make any decisions incidental to or necessary for carrying out its functions as set forth in this code.

(14) The banking board shall not delegate to the commissioner any of its powers under subsections (1) to (12) of this section except informal enforcement powers arising under section 11-102-507, which powers shall be delegable pursuant to subsection (15) of this section.

(15) Except as provided in subsection (14) of this section, the banking board may, in its discretion, delegate to the commissioner any of its powers, duties, and functions; except that all powers under this code vest in the banking board unless delegated to the commissioner by statute.

(16) The banking board may, in its discretion, require the commissioner to report to the banking board periodically with respect to any powers delegated pursuant to subsection (15) of this section.

(17) The banking board shall have a seal of office containing the words "Banking Board of Colorado" in the form of a circle and the word "seal" within the circle.

(18) Repealed.

Source: L. 2003: Entire article added with relocations, p. 1064, § 3, effective July 1; (5.5) added, p. 1745, § 1, effective July 1. **L. 2007:** (6) amended, p. 596, § 3, effective July 1. **L. 2008:** (18) added, p. 1500, § 2, effective May 28. **L. 2009:** (6) amended, (HB 09-1053), ch. 159, p. 688, § 5, effective August 5. **L. 2013:** (1)(b) and (5.5)(c) amended and (5.5)(b) and (18) repealed, (SB 13-154), ch. 282, p. 1473, § 34, effective July 1. **L. 2017:** (1)(b) amended, (SB 17-226), ch. 159, p. 589, § 6, effective August 9.

Editor's note: (1) This section is similar to former § 11-2-103 as it existed prior to 2003.

(2) Section 11-2-103 (5.5) as enacted by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated to this section as subsection (5.5).

11-102-105. Roles and authority of banking board and commissioner - rules - exercise of powers. (1) All rules of the commissioner lawfully adopted prior to April 15, 1988, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

(2) The banking board and the commissioner in the exercise of their powers pursuant to this code shall be guided by and shall act in a manner consistent with the policies of the state of Colorado with respect to state banks as set forth in section 11-101-102.

Source: L. 2003: Entire article added with relocations, p. 1066, § 3, effective July 1.

Editor's note: This section is similar to former §§ 11-2-103.5 and 11-2-107 as they existed prior to 2003.

11-102-106. Nontraditional mortgages - consumer protections - rules - incorporation of federal interagency guidance. The banking board shall adopt rules governing the marketing of nontraditional mortgages by banking institutions. In adopting such rules, the board shall incorporate appropriate provisions of section 1098 of the federal "Dodd-Frank Wall Street Reform and Consumer Protection Act", amending 12 U.S.C. sec. 2601 et seq., and applicable regulations.

Source: L. 2007: Entire section added, p. 1745, § 1, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1475, § 35, effective July 1.

PART 2

PROCEEDINGS

11-102-201. Hearing officers - powers - procedure - order final. (1) The banking board has the power to designate a person to act as a hearing officer to conduct any public hearing authorized or required by this code except in the case of charter applications that have been timely protested pursuant to the rules of the banking board. The banking board may determine the qualifications required for a person to be designated pursuant to this subsection (1) based upon the education and experience required for the particular hearing. Such person may, but need not be, an administrative law judge serving pursuant to section 24-30-1003, C.R.S.

(2) Any such hearing officer shall have the powers of a hearing officer prescribed in section 24-4-105, C.R.S.

(3) After the conclusion of a hearing, the hearing officer shall prepare written findings and recommendations based on the hearing and shall certify such findings and recommendations to the banking board and to each party. If the banking board does not affirm, modify, reverse, remand for further findings, or vacate such written recommendations within sixty days after receipt of the recommendations, the same shall be deemed the determination and order of the banking board. The banking board may extend such sixty-day period by no more than thirty additional days.

Source: L. 2003: Entire article added with relocations, p. 1067, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-103.6 as it existed prior to 2003.

11-102-202. Subpoenas - witnesses - production of records. (1) The commissioner, or the banking board, has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath, and examine any person under oath in connection with any subject relating to a duty imposed upon, or a power vested in, the commissioner or the banking board.

(2) In case of a refusal of any person to comply with a lawful subpoena or order of the commissioner or of the banking board issued pursuant to this section, upon proper petition by the commissioner or the banking board to the district court, the court shall require compliance therewith, and further refusal shall be punishable as contempt of court.

Source: L. 2003: Entire article added with relocations, p. 1067, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-104 as it existed prior to 2003.

11-102-203. Effect of good faith reliance on orders or rules of banking board. No person who in good faith relies on any order or rule of the banking board shall be subjected to any civil or criminal liability for any act or omission to act, notwithstanding a subsequent decision by a court invalidating any such order or rule.

Source: L. 2003: Entire article added with relocations, p. 1067, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-104.5 as it existed prior to 2003.

11-102-203.5. Independent administrative review of material supervisory determinations - rules. (1) The banking board shall establish by rule an independent administrative appeals process to address an adverse material supervisory determination that affects a state bank. For purposes of this section, a "material supervisory determination" means:

(a) An examination rating, including composite scores, information technology, and trust department ratings;

(b) A determination relating to the adequacy of loan loss reserve provisions;

(c) A disputed asset classification exceeding ten percent of the state bank's total capital;

(d) A determination relating to violations of law or regulation; and

(e) Any other determination that may have an effect on a state bank's capital, earnings, operating flexibility, or capital category for prompt corrective action purposes, or may otherwise affect the nature and level of supervisory oversight accorded the state bank.

(2) In promulgating the rule provided for in this section, the banking board shall apply the following criteria, considerations, and policies:

(a) The initial appeal shall be heard by one or more people selected by the banking board who did not participate in and does not report to anyone who made the material supervisory determination under review;

(b) The banking board shall establish safeguards to protect from retaliation a state bank that files an appeal;

(c) All appeals shall be in writing, on forms approved by the banking board, and approved by the appellant's governing principal or a majority of principals;

(d) All appeals shall be heard within ninety days after filing and decided within one hundred eighty days after filing;

(e) The banking board shall classify the state banks that are eligible to appeal;

(f) The banking board shall encourage informal resolution procedures;

(g) The banking board shall encourage coordination with other state and federal regulatory authorities; and

(h) To the extent that federal guidelines are consistent with this section, the banking board shall model the rule provided for in this section on relevant federal guidelines.

(3) Notwithstanding any other provision of this section, an appeal of an adverse material supervisory determination shall not affect, delay, or impede any formal or informal supervisory or enforcement action in progress.

Source: L. 2004: Entire section added, p. 22, § 4, effective March 3.

11-102-204. Court review. (1) Any person aggrieved and directly affected by an order of the banking board issued under this code may seek a review in the district court in and for the county in which the bank is located, or proposed bank is to be located, within thirty days after receipt of written notice of the issuance of said order; except that any person aggrieved or directly affected by an order of the banking board pursuant to section 11-103-304 granting or denying a charter for a new state bank may seek a review in the court of appeals and not the district court. Such review in the court of appeals shall be in accordance with section 24-4-106 (11), C.R.S. The validity of an order may be tested only by such a review and may not be placed in issue in an action to enforce it. The filing of such a petition for review shall not, of itself, stay enforcement of an order, but the court may order a stay upon such terms as it deems proper.

(2) The court may affirm the order of the banking board or may direct the banking board to take any action deemed proper. It may reverse or modify the order of the banking board if the order was issued pursuant to an unconstitutional statutory provision, was in excess of statutory authority, was issued upon unlawful procedure, or is not supported by substantial evidence in the record.

Source: L. 2003: Entire article added with relocations, p. 1067, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-105 as it existed prior to 2003.

PART 3

RECORDS, REPORTING, AND INFORMATION

11-102-301. Examinations and examiner's reports. (1) The commissioner shall examine the books and records of every state bank as often as deemed advisable and to the extent required by the banking board, shall make and file in his or her office a correct report in detail disclosing the results of such examination, and shall mail a copy of such report to the bank examined.

(2) The commissioner shall examine, as often as deemed advisable and to the extent required by the banking board, any electronic data processing centers of a state bank or any

electronic data processing centers that serve a state bank, without regard to the location of the electronic data processing center; shall make and file in his or her office a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the data processing centers examined and the state bank that they serve.

(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.

(b) If the controlling shareholder or affiliate's records are located outside this state, the controlling shareholder or affiliate shall 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 the records at the place where they are located.

(c) The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on the commissioner's behalf.

(d) If a controlling shareholder or affiliate refuses to permit the commissioner to make an examination, the banking board may fine such controlling shareholder or affiliate an amount not to exceed one thousand dollars for each day any such refusal continues.

(e) In lieu of any examination required by this subsection (3), the commissioner may accept an audit for the previous fiscal year prepared by an independent certified public accountant, independent registered accountant, or other independent qualified person. If the commissioner accepts an audit prepared by such independent person, no costs of the audit shall be borne by the commissioner and all costs of such audit shall remain the obligation of the controlling shareholder or affiliate.

(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.

(II) "Controlling shareholder" means a shareholder in control of a state bank.

(III) "In control of" means that an entity or shareholder meets the same criteria for acquiring control as is set forth in section 11-102-303 for acquiring control of a state bank.

(4) If the commissioner deems necessary, the commissioner may examine any corporation the majority of the stock of which is owned by a state bank or which corporation is found by the banking board to be controlled by a state bank, but the provisions of this subsection (4) shall not apply when such stock is held in a fiduciary capacity by the bank.

(5) If the banking board finds any officer, director, or employee of any state bank to be dishonest, reckless, incompetent, or acting in violation of this code, it shall, in writing, report the facts regarding such officer, director, or employee to the board of directors of the state bank, and, if the directors of the state bank fail or refuse to take action on such report within ten days, the banking board may, if it deems it advisable, send a copy of such report to the surety on the bond of said officer.

Source: L. 2003: Entire article added with relocations, p. 1068, § 3, effective July 1. **L. 2004:** (3)(a) and (3)(f)(I) amended, p. 323, § 4, effective April 7.

Editor's note: This section is similar to former § 11-2-108 as it existed prior to 2003.

11-102-302. Bank reports to banking board - generally. (1) Every state bank shall make and file with the banking board not less than three reports during each calendar year according to the form that may be prescribed by the banking board, verified by the oath of either the president, the vice-president, the cashier, or the secretary and attested by the signature of three or more of the directors. Each such report shall exhibit in detail, as may be required by the banking board, the resources and liabilities of the state bank at the close of business on the date specified by the banking board.

(2) Said reports shall be transmitted to the banking board within thirty days after its request.

(3) The banking board has power to call for special reports from any particular state bank if, in the banking board's judgment, the special reports are necessary to establish a full and complete knowledge of the state bank's condition. No such special report, nor any summary of a special report, shall be required to be published. The reports required by, and filed pursuant to, this section shall be in lieu of all others required by law from state banks. Every state bank that fails to comply with this section shall pay to the banking board a penalty in an amount set by the banking board pursuant to section 11-102-104 (11). The banking board, for valid reasons and good cause, may waive such penalty.

Source: L. 2003: Entire article added with relocations, p. 1069, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-109 as it existed prior to 2003.

11-102-303. Bank reports to banking board - requirements for acquiring control. (1) As used in this section, unless the context otherwise requires:

(a) "Person" means an individual, a corporation, a partnership, a trust, or any other legal entity.

(b) "Controlling person" means a person who is in control of a state bank or would be in control of a state bank after a proposed acquisition.

(2) A person shall be deemed to have acquired control of a state bank if, as a result of acquisition, such person:

(a) Directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing twenty-five percent or more of the outstanding voting stock thereof;

(b) Controls in any manner the election of a majority of the directors thereof; or

(c) Exercises a controlling influence over the management or policies thereof.

(3) (a) Whenever a person proposes to acquire control of any state bank, such person shall first make application to the banking board for approval. Without approval from the banking board pursuant to subsection (4) of this section, a person shall be prohibited from making such an acquisition.

(b) An application required by paragraph (a) of this subsection (3) shall contain the following information to the extent that it is known by the person making the application:

(I) The number of shares involved;

(II) The name of each seller or transferor;

(III) The name of each purchaser or transferee;

(IV) The name of each beneficial owner if the share or shares are registered in another name;

(V) The purchase price;

(VI) Detailed information concerning any loans made in connection with the acquisition;

(VII) Such other information concerning the transaction as may be required by the banking board regarding the effect of the transaction upon the control of the state bank involved;

(VIII) Biographical and financial information concerning each purchaser, controlling person, or person in control of a controlling person participating in the proposed acquisition; and

(IX) The name of each controlling person and each person in control of a controlling person participating in the proposed acquisition.

(4) (a) After receipt of an application, the commissioner shall make an investigation, and the banking board shall approve the change of control only after the banking board has determined:

(I) That the person proposing to acquire control is qualified by character, experience, and financial responsibility to control the state bank in a legal and proper manner;

(II) That the interests of the public generally will not be jeopardized by the proposed acquisition; and

(III) That the person proposing to acquire control has satisfied the requirements of subsections (1) to (7) of this section and the other provisions of articles 101 to 109 of this title.

(b) The general assembly declares that the acquisition of control of, or of any ownership interest in, state banks by persons owned or controlled by a country with which it has been determined to be against the national interest to trade without export controls for national security purposes by the president of the United States or another appropriate agency of the federal government as directed by the president pursuant to the "Export Administration Act of 1979", 50 U.S.C. Appendix sec. 2401 et seq., the "International Emergency Economic Powers Act", 50 U.S.C. sec. 1701 et seq., or any rule, order, or decision promulgated in connection therewith, is against the public interest. If the application or the commissioner's investigation indicates that any person seeking to have control of or any ownership interest in a state bank is owned or controlled by such a country, the banking board shall not approve any such change of control.

(5) This section shall not apply to the acquisition of:

(a) Voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting, in whole or in part, a debt contracted in good faith or stock acquired through testate or intestate succession or bona fide gift, if the acquirer advises the banking board of such acquisition within thirty days after the acquisition and provides any information required or requested by the banking board or commissioner;

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale of the shares; or

(e) Pro rata stock dividends.

(6) If the banking board has not acted upon a completed application within sixty days after receipt thereof, unless extended for an additional thirty days by the banking board, such application shall be considered approved.

(7) Whenever any person proposes to acquire control of any state bank and is required by the "Change in Bank Control Act of 1978" (section 7 (j) of the "Federal Deposit Insurance Act", 12 U.S.C. 1817 (j)), as such act may be amended from time to time, to give the appropriate federal banking agency prior written notice of such proposed acquisition, a copy of such notice with supporting information shall be given concurrently to the banking board for information. The banking board may use such information in evaluating applications submitted pursuant to this section and shall submit its recommendations and comments to the appropriate federal regulatory authority in a timely manner.

(8) Any person who becomes a director, executive officer, or other person who, directly or indirectly, is responsible for the management, control, or operations of a state bank shall within ninety days thereafter file a report with the banking board containing: A statement describing any civil or criminal offenses affecting such person's qualification to serve in such capacity with respect to which such person has been found guilty or liable by any federal or state court or federal or state regulatory agency; such biographical information as the banking board requires; and such other information as the banking board requires pursuant to its rules. If any statement contained in such report subsequently becomes inaccurate or misleading in any way, such person shall file an amended report within thirty days after the date on which the statement in the report first becomes inaccurate or misleading. Any person who fails to comply with this subsection (8) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which penalty shall not exceed twenty-five dollars per day, and such penalty shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

(9) If any state bank changes any executive officer, director, or other person who, directly or indirectly, is responsible for the management, control, or operations of the state bank, such changes shall be promptly reported to the banking board, and the state bank shall provide such information concerning such person as may be requested by the banking board on such forms as the banking board may require, including information about the reasons for termination from any prior employment and whether such person was charged or convicted of any civil or criminal offenses enumerated in subsection (8) of this section. No civil liability shall arise for any state bank, its directors, executive officers, employees, or agents, or other persons due to compliance with the requirements of this subsection (9). The purpose of such information is to inform the banking board of the qualifications of such person as they may affect the safety and soundness of the state bank. The information shall be treated as confidential under this code. Any bank that fails to comply with this subsection (9) shall be required to pay a penalty in an amount set by the banking board by rule, which penalty shall not exceed twenty-five dollars per day, and such penalty shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

Source: L. 2003: Entire article added with relocations, p. 1070, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-109 as it existed prior to 2003.

11-102-304. Commissioner's annual report - publications. For each calendar year, the commissioner shall compile and publish an annual report in such form and containing such information as the commissioner may determine necessary to reasonably summarize the operations of the division during such year.

Source: L. 2003: Entire article added with relocations, p. 1073, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-110 as it existed prior to 2003.

11-102-305. Records. (1) (a) Information from the records of the division shall be revealed only to members of the banking board, except as follows:

(I) Information may be disclosed if such disclosure is rendered necessary by law.

(II) Any party entitled to appear in a hearing on an application for bank charter shall have access to the applicant's proposed articles or amended articles of incorporation, application for charter, and proposed bylaws.

(III) Subject to subsection (1.5) of this section, the commissioner may exchange information as to the condition of banks or trust companies with the United States comptroller of the currency, bank or financial institution regulatory departments of other states, the federal reserve system and its examiners, the federal deposit insurance corporation and its examiners, and the consumer financial protection bureau and its examiners.

(IV) Subject to subsection (1.5) of this section, the commissioner may exchange information obtained from money transmitters with the United States secretary of the treasury, the secretary's designees, the United States attorney general, the attorney general's designee, or other state or United States territorial regulatory agencies pertaining to the condition of money transmitters or compliance with federal money laundering and other financial crimes laws, including, but not limited to, the "Bank Secrecy Act", the "Right to Financial Privacy Act of 1978", the "Money Laundering Control Act of 1986", and the "Annunzio-Wylie Anti-Money Laundering Act".

(V) The commissioner may exchange information as provided by part 2 of article 110 of this title 11.

(b) Notwithstanding any other provision of articles 101 to 109 of this title to the contrary, the commissioner, the commissioner's deputies, and the members of the banking board may disclose any information in the records of the division or acquired by them in the discharge of their duties that is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, the federal reserve system, or the consumer financial protection bureau or the disclosure of which has been specifically authorized by the board of directors of the financial institution to which such information relates.

(1.5) The commissioner shall not exchange information with any other governmental agency unless the commissioner is reasonably satisfied that the agency is obligated by law or contract to:

(a) Share with the division similar information it may have in its possession; and

(b) Maintain the confidentiality of any exchanged information under conditions that are no less restrictive than those imposed by law upon the division.

(2) Reports of examinations made by the division shall be retained by the division for seven years.

(3) Upon request and upon payment of such reasonable charges as the commissioner shall prescribe, the commissioner shall furnish to any person a certified copy of any document on file with the division that is a public record. Such certified copy shall be admissible in evidence in lieu of the original and shall constitute prima facie evidence of the contents of the original.

(4) The division or the commissioner may inform a licensing agency within the department of regulatory agencies of possible misconduct by a person or entity licensed by said agency, notwithstanding that the division or commissioner learned of the alleged misconduct while discharging their duties under the code. The division and the commissioner may give the licensing agency records or information in their possession relating to the licensee's alleged misconduct.

Source: L. 2003: Entire article added with relocations, p. 1073, § 3, effective July 1. **L. 2007:** (1) amended, p. 354, § 1, effective April 2. **L. 2008:** (4) added, p. 181, § 3, effective August 5. **L. 2010:** (1)(a)(IV) amended and (1)(a)(V) added, (HB 10-1114), ch. 192, p. 823, § 1, effective July 1. **L. 2013:** (1)(a)(III) and (1)(b) amended, (SB 13-154), ch. 282, p. 1476, § 36, effective July 1. **L. 2017:** (1)(a)(III) and (1)(a)(IV) amended and (1.5) added, (HB 17-1218), ch. 156, p. 534, § 1, effective August 9; (1)(a)(V) amended, (SB 17-226), ch. 159, p. 589, § 7, effective August 9.

Editor's note: (1) This section is similar to former § 11-2-111 as it existed prior to 2003.

(2) Section 3 of chapter 156 (HB 17-1218), Session Laws of Colorado 2017, provides that the act changing this section applies to conduct occurring on or after August 9, 2017.

Cross references: For the "Bank Secrecy Act", see Pub.L. 91-508, codified at 31 U.S.C. § 5311 et seq.; for the "Money Laundering Control Act of 1986", see Title I, subtitle H, §§ 1351-1367 of Pub.L. 99-570; for the "Annunzio-Wylie Anti-Money Laundering Act", see Title XV of Pub.L. 102-550.

11-102-306. Information confidential. (1) The banking board, the commissioner, and all deputies and employees of the division shall not divulge any information acquired by them in the discharge of their duties except insofar as disclosure may be rendered necessary or authorized by law, including section 11-102-305 (4).

(2) The banking board, the commissioner, and their designees may exchange information with the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the consumer financial protection bureau, the federal home loan bank in which an institution is a member or is making an application to become a member, the executive director of the department of regulatory agencies, the division of financial services, and banking or financial institution regulatory agencies of other states or United States territories, subject to any confidentiality agreement entered into between the banking board or the commissioner and the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the consumer financial protection bureau, regulatory agencies of other states or United States territories, or the federal home loan bank in which an institution is a member or is making an

application to become a member. In addition, the banking board, the commissioner, and their designees may exchange information obtained by the banking board relating to:

(a) Possible violations of the federal "Employee Retirement Income Security Act of 1974", 29 U.S.C. sec. 1001 et seq., with the federal department of labor or the executive director of the department of regulatory agencies;

(b) Possible criminal violations of federal law relating to the activities of a federally insured institution with the federal bureau of investigation or the executive director of the department of regulatory agencies; and

(c) The activities of money transmitters pertaining to compliance with federal money laundering and other financial crimes laws, including the "Bank Secrecy Act", the "Right to Financial Privacy Act of 1978", the "Money Laundering Control Act of 1986", and the "Annunzio-Wylie Anti-Money Laundering Act", with the United States secretary of the treasury or the secretary's designees.

(3) The executive director of the department of regulatory agencies and the state commissioner of financial services and their deputies shall, before entering upon the discharge of their duties specified in this section, in addition to an oath required by the state constitution, take and subscribe an oath to keep secret all information acquired by them in the discharge of such duties, except as may otherwise be required by law. Willful violation of this oath shall be a criminal offense.

(4) Notwithstanding any other provision of this article to the contrary, the commissioner, the deputies, and the members of the banking board may disclose any information in the records of the division of banking or acquired by them within the discharge of their duties that is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, the federal reserve system, or the consumer financial protection bureau and disclose information that has been specifically authorized by the board of directors of the bank to which such information relates. Nothing in this section authorizes the board of directors of a bank to waive any privileges that belong solely to the banking board, the division, or its employees.

Source: L. 2003: Entire article added with relocations, p. 1073, § 3, effective July 1. **L. 2007:** Entire section amended, p. 355, § 2, effective April 2; entire section amended, p. 596, § 7, effective July 1. **L. 2008:** (1) amended, p. 181, § 4, effective August 5. **L. 2013:** IP(2), (2)(c), and (4) amended, (SB 13-154), ch. 282, p. 1476, § 37, effective July 1. **L. 2017:** IP(2) amended, (HB 17-1218), ch. 156, p. 535, § 2, effective August 9.

Editor's note: (1) This section is similar to former § 11-2-111.5 as it existed prior to 2003.

(2) Amendments to this section by Senate Bill 07-101 and House Bill 07-1035 were harmonized.

(3) Section 3 of chapter 156 (HB 17-1218), Session Laws of Colorado 2017, provides that the act changing this section applies to conduct occurring on or after August 9, 2017.

Cross references: For the "Bank Secrecy Act", see Pub.L. 91-508, codified at 31 U.S.C. § 5311 et seq.; for the "Right to Financial Privacy Act of 1978", see Title XI of Pub.L. 95-630, codified at 12 U.S.C. § 3401 et seq.; for the "Money Laundering Control Act of 1986", see Title

I, subtitle H, §§ 1351-1367 of Pub.L. 99-570; for the "Annunzio-Wylie Anti-Money Laundering Act", see Title XV of Pub.L. 102-550.

11-102-307. Access to records. The commissioner shall have access to any record of the division relating to state banks, and the appointive members of the banking board shall have such access upon the affirmative vote of a majority of the members of the banking board.

Source: L. 2003: Entire article added with relocations, p. 1074, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-112 as it existed prior to 2003.

11-102-308. Bank records - preservation - reproduction. (1) Every state bank shall retain its business records for such periods as are prescribed by or in accordance with the terms of this section.

(2) Each state bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger (or the record kept by the bank in lieu thereof), its daily statements of condition, and all records that the banking board shall, in accordance with the terms of this section, require to be retained permanently.

(3) All other state bank records shall be retained for such periods as the banking board shall, in accordance with the terms of this section, prescribe.

(4) The banking board shall from time to time issue rules classifying all records kept by state banks and prescribing the period for which records of each class shall be retained. Such periods may be permanent or for a term of years. Such rules may be amended or repealed. Prior to issuing any such rule, the banking board shall consider:

(a) Actions and administrative proceedings in which the production of bank records might be necessary or desirable;

(b) State and federal statutes of limitation applicable to such actions or proceedings;

(c) The availability of information contained in bank records from other sources;

(d) Such other matters as the banking board deems pertinent in order that its rules will require banks to retain their records for such periods as are commensurate with the interests of bank customers and shareholders and of the people of this state in having bank records available.

(5) Any state bank may dispose of any record that has been retained for the period prescribed, in accordance with the terms of this section for retention of records of its class, and shall, after it has disposed of a record, thereafter be under no duty to produce such record in any action or proceeding.

(6) In lieu of retention of the original records, any state bank may cause any of its records and records at any time in its custody, including those held by it as a fiduciary, to be photographed or otherwise reproduced in permanent form. Any such photograph or reproduction shall have the same force and effect as the original and be admitted in evidence equally with the original.

(7) To the extent that they are not in contravention of any statute of the United States or any rule promulgated thereunder, the provisions of this section shall apply to all banks doing business in this state.

Source: L. 2003: Entire article added with relocations, p. 1074, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-113 as it existed prior to 2003.

PART 4

ASSESSMENTS AND FEES

11-102-401. Assessments. (1) The banking board shall annually establish fees and assessments pursuant to section 11-102-104 (11). Assessments may be made more frequently than annually at the discretion of the banking board.

(2) For the fiscal year beginning July 1, 2003, and for each fiscal year thereafter, the banking board shall establish an assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division of banking for each such fiscal year.

Source: L. 2003: Entire article added with relocations, p. 1075, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-114 as it existed prior to 2003.

11-102-402. Administrative fees. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1075, § 3, effective July 1. **L. 2013:** Entire section repealed, (SB 13-154), ch. 282, p. 1477, § 38, effective July 1.

Editor's note: Prior to its repeal, this section was similar to former § 11-2-114.1 as it existed prior to 2003.

11-102-403. Division of banking cash fund - creation. All fees and assessments collected by the banking board shall be transmitted to the state treasurer, who shall credit the same to the division of banking cash fund, which fund is hereby created in the state treasury. All moneys in the fund shall be subject to appropriation by the general assembly for the direct and indirect costs of the activities of the banking board and the division. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

Source: L. 2003: Entire article added with relocations, p. 1076, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-114.5 as it existed prior to 2003.

PART 5

CONFLICTS OF INTEREST, PENALTIES,
REMOVAL, SUSPENSION, ENFORCEMENT

11-102-501. Banking interests of officers and employees. No officer or employee of the division shall be an officer, director, attorney, owner, or shareholder in any bank, or, except as provided in this article, receive, directly or indirectly, any payment or gratuity from any such bank, or be indebted to any bank or other institution over which the division has supervisory control. Willful violation of this section is declared to be a criminal offense. This section shall not prohibit being a depositor or the lessee of a safe deposit box on the same terms as are available to the public generally, or being indebted to a bank: Upon a mortgage loan upon the mortgagor's own home, or upon an installment debt transferred to a bank in the regular course of business by a seller of consumer goods including automobiles purchased by the officer or employee. Further, this section shall not prohibit the four banker members of the banking board, provided for in section 11-102-103 (2)(a), from being executive officers in banks and from receiving bona fide compensation as such officers.

Source: L. 2003: Entire article added with relocations, p. 1076, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-115 as it existed prior to 2003.

11-102-502. Exemption from liability - when. No member of the banking board or officer or employee of the division shall be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his or her office.

Source: L. 2003: Entire article added with relocations, p. 1076, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-116 as it existed prior to 2003.

11-102-503. Assessment of civil money penalties by banking board. (1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease-and-desist order issued by the banking board pursuant to section 11-102-104 (7); and

(B) Any state bank that, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank who, violates or knowingly permits any person to violate any of the provisions of this code or any rule promulgated pursuant to this code, or engages or participates in any unsafe or unsound practice in connection with a bank. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under section 11-102-401; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement that contains materially false or misleading information.

(II) The banking board may, in extraordinary circumstances, at its option, and upon waiver of the right to a public hearing by a respondent, close to the public any hearing concerning an assessment of a civil money penalty, an order of suspension or removal from office, an order to cease and desist from any unlawful or unsafe and unsound practices, or any

other formal enforcement action by the banking board. Such extraordinary circumstances occur when specific concern arises about prompt withdrawal of moneys from or the safety and soundness of the institution.

(b) For the purposes of this section, a violation shall include, but is not limited to, any action, by any person alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty shall constitute a final order for purposes of judicial review pursuant to section 24-4-106, C.R.S.

(3) The banking board shall have authority to determine the amount of any civil money penalty assessed against any executive officer, director, employee, agent, or other person participating in the affairs of a bank, except as expressly limited by this code. In determining the amount of the civil money penalty to be assessed, the banking board shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, the nature and extent of any past violations, and such other matters as the banking board may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed remains in violation.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the banking board; except that the banking board may, in its discretion, compromise, modify, or set aside any civil money penalty. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the general fund.

Source: L. 2003: Entire article added with relocations, p. 1076, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-117 as it existed prior to 2003.

11-102-504. No indemnification or insurance against civil money penalties. Notwithstanding any other provision of law, no state bank shall indemnify or insure any executive officer, director, employee, agent, or person participating in the conduct of affairs of such bank against civil money penalties.

Source: L. 2003: Entire article added with relocations, p. 1078, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-118 as it existed prior to 2003.

11-102-505. Removal of director, officer, or other person. (1) The banking board may serve any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank with a written notice of its intention to remove such person from office whenever the banking board determines:

(a) That any such person has committed any violation of this code, rule of the banking board, or cease-and-desist order of the banking board that has become final; has engaged or

participated in any unsafe or unsound practice in connection with a bank; has committed or engaged in any act, omission, or practice that constitutes a breach of fiduciary duty to the state bank; or has been found liable for or guilty of any of the civil or criminal offenses enumerated in section 11-102-303 (8); and

(b) (I) That the state bank has suffered or probably will suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation, practice, breach of fiduciary duty, or offense; or

(II) That such person has received financial gain by reason of such violation, practice, breach of fiduciary duty, offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one that demonstrates a willful or continuing disregard for the safety or soundness of the state bank.

(2) Whenever the banking board determines that an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a state bank, by conduct or practice with respect to another bank or business institution that results in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for such state bank's safety and soundness, and, in addition, has evidenced unfitness to continue such person's relationship with the state bank, the banking board may serve upon such person a written notice of its intention to remove him or her from office or to prohibit the person's further participation in any manner in the conduct of the affairs of any Colorado state-chartered bank or trust company.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit such person's participation in the conduct of the affairs of a state bank shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing shall be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the banking board at the request of such director or executive officer or other person, and for good cause shown. Unless such director, executive officer, or other person appears at the hearing in person or by a duly authorized representative, such person shall be deemed to have consented to the issuance of an order of removal or prohibition as specified in the notice issued pursuant to subsection (1) or (2) of this section. In the event of such consent or, if, upon the record made at any such hearing, the banking board finds that any of the grounds specified in such notice have been established, the banking board may issue such orders of suspension or removal from office as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, executive officer, or other person concerned except in the case of an order issued upon consent, which shall become effective at the time specified therein. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the banking board or a reviewing court.

Source: L. 2003: Entire article added with relocations, p. 1078, § 3, effective July 1. **L. 2013:** (2) amended, (SB 13-154), ch. 282, p. 1477, § 39, effective July 1.

Editor's note: This section is similar to former § 11-2-119 as it existed prior to 2003.

11-102-506. Suspension of director, officer, or other person. (1) The banking board may suspend an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a state bank who becomes ineligible to hold such position, or who after receipt of an order of the banking board to cease and desist violates this code or a lawful rule or order issued pursuant thereto, or who is dishonest, or who is reckless or grossly incompetent in the conduct of banking business, or who may be subject to removal under section 11-102-505. It shall be a criminal offense for any such person, after receipt of a suspension order, to perform any duty or exercise any power of any state bank until the banking board vacates such suspension order. A suspension order shall specify the grounds thereof. A copy of the order shall be sent to the bank concerned and to each member of its board of directors.

(2) With respect to any action pursuant to this section, ten days' notice, by certified mail, return receipt requested, and an opportunity for hearing shall be provided to the bank affected, in advance of any action taken by the banking board. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action, without notice or hearing, but shall promptly afford a subsequent opportunity for hearing, upon application to rescind the action taken.

Source: L. 2003: Entire article added with relocations, p. 1079, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-120 as it existed prior to 2003.

11-102-507. Informal enforcement authority. The banking board, or the commissioner if so authorized by the banking board, shall have authority to initiate informal actions to enforce the provisions of this code. In this regard the banking board or the commissioner may, in the banking board's or the commissioner's discretion, enter into written agreements such as a memorandum of understanding with, or an informal commitment letter from, or strongly worded letter of reprimand to any bank or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank.

Source: L. 2003: Entire article added with relocations, p. 1079, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-121 as it existed prior to 2003.

11-102-508. Statements derogatory to state banks - penalty. Any person who willfully makes, circulates, or transmits to another any false statement, written or oral, that is directly or by inference derogatory to the financial condition of any state bank and that results in an extraordinary withdrawal of funds from such bank or that results in impairing public confidence in such bank and any person who shall counsel, aid, procure, or induce another to start, transmit, or circulate any such statement knowing the statement to be false commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 2003: Entire article added with relocations, p. 1079, § 3, effective July 1.

Editor's note: This section is similar to former § 11-2-122 as it existed prior to 2003.

ARTICLE 103

Organization and
Corporate Functions

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 1

GENERAL CORPORATE POWERS

11-103-101. General corporate powers. (1) A state bank may be organized to exercise the powers provided in this code.

(2) Subject to the provisions of section 11-103-102, a state bank organized under the laws of this state shall, without specific mention thereof in its charter, have all the powers conferred by this code and the following additional general corporate powers:

(a) To continue perpetually as a corporation;

(b) To make contracts;

(c) To sue and be sued, complain, and defend in its corporate name;

(d) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced;

(e) To make, alter, amend, and repeal bylaws, not inconsistent with its charter or with law, for the administration and regulation of the affairs of the corporation;

(f) To elect, appoint, or remove officers and agents of the bank and to define their duties and fix their compensation;

(g) To adopt and operate reasonable bonus, profit-sharing, and pension plans for officers and employees;

(h) To grant, subject to approval of the banking board, and by vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders, options to purchase, sell, or enter into agreements to sell shares of its capital stock to its employees, whether or not such transactions qualify for special tax treatment under the "Internal Revenue Code", as amended, and rules promulgated thereunder.

(3) A state bank, organized under the laws of this state, if so provided in its charter, has the general corporate power to eliminate or limit the personal liability of a director to the corporation or to its stockholders for monetary damages for breach of fiduciary duty as a director; except that such provision shall not eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for: Any breach of the director's duty of loyalty to the corporation or its stockholders, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director to the corporation or to its shareholders for monetary damages for any act or omission occurring prior to the date when such provision becomes effective.

(4) A state bank, organized under the laws of this state, without specific mention in its charter, shall also have the power, in addition to all other powers, to make contributions to, or for the use or benefit of, the following:

(a) The United States, any state, territory, or political subdivision thereof, the District of Columbia, or any possession of the United States for exclusively public purposes;

(b) A corporation, foundation, trust, community chest, or other organization created or organized in the United States, or in any state or territory, or the District of Columbia, or any possession of the United States, and organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, civic enterprise, or literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; or

(c) Other lawful expenditures, contributions, and donations to the extent authorized, approved, or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its articles of incorporation, its bylaws, or resolution duly adopted by its stockholders.

(5) A state bank organized under the laws of this state, without specific mention in its charter, shall also have the power to act as escrow agent.

(6) If the name of a state bank organized under the laws of this state contains the word "bank", said bank need not comply with the requirements of part 6 of article 90 of title 7, C.R.S.

(7) No state bank shall commit itself, either directly or indirectly, to undertake the responsibility for the tax liability of its shareholders or members.

Source: L. 2003: Entire article added with relocations, p. 1080, § 3, effective July 1; (7) added, p. 1747, § 3, effective July 1.

Editor's note: (1) This section is similar to former § 11-3-101 as it existed prior to 2003.

(2) Subsection (7) was originally numbered as § 11-3-101 (6), and the amendments to it in House Bill 03-1106 were harmonized with House Bill 03-1257 and relocated to this section.

11-103-102. Trust, fiduciary, and agency powers - when authorized. In addition to its other powers, a state bank that is authorized by its charter to exercise trust powers, upon proper qualification under this code, has the power to act as a fiduciary in any capacity. It may also act as registrar, transfer agent, fiscal agent, or attorney-in-fact and have the power to receive, manage, and apply sinking funds. Every state bank that is authorized by its charter to exercise trust powers pursuant to this section shall make and file with the commissioner an annual report of trust assets and such other reports as the banking board may require by rule, on such forms as may be prescribed by the banking board. No report filed pursuant to this section shall be required to be published.

Source: L. 2003: Entire article added with relocations, p. 1081, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-102 as it existed prior to 2003.

11-103-103. State bank organized as a limited liability company. (1) Pursuant to section 11-102-104 (5.5)(a), a state bank charter may be issued to a limited liability company that otherwise meets the requirements of this code.

(2) A state bank organized as a limited liability company shall not be required to exist in perpetuity; except that the articles of organization of such a state bank shall provide for a method to extend the existence of the state bank in the event that termination occurs. In addition, the articles of organization of such a state bank shall require that liquidation of the limited liability company conform with the requirements of this code.

(3) Upon approval of the banking board, a state bank organized as a limited liability company may be merged with or converted into another entity regardless of the form of the surviving entity, so long as the surviving entity satisfies the requirements of this code.

(4) Upon approval of the banking board, a state bank organized as a corporation may be merged with or converted into a limited liability company, so long as it satisfies the requirements of this code.

(5) (a) A state bank organized as a limited liability company shall have a written operating agreement containing any provisions for the affairs of the bank and the conduct of its business as may be agreed upon by the members and which provisions are consistent with this code and the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S.

(b) A copy of the written operating agreement shall be filed with the banking board prior to the granting of a charter to the state bank, and any amendments to the operating agreement shall be filed with and approved by the banking board prior to adoption.

(c) The banking board may promulgate rules establishing additional requirements relating to operating agreements to implement the provisions of this section.

(6) All distributions made by a state bank organized as a limited liability company to its members shall be subject to the requirements applicable to dividends issued by a state bank organized as a corporation under this code and the rules of the banking board.

(7) For purposes of implementing this section, the following definition constructions shall apply:

(a) Where this code refers to "articles of incorporation", that term shall be construed to apply to a limited liability company's articles of organization, as that term is defined in section 7-80-102 (1), C.R.S.;

(b) Where this code refers to "bylaws", that term shall be construed to apply to a limited liability company's operating agreement, as that term is defined in section 7-80-102 (11), C.R.S.;

(c) Where this code refers to "common stock" or "shares" of a state bank, such terms shall be construed to apply to a limited liability company's membership interests;

(d) Where this code refers to a "corporation", such term shall be construed to include a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., which limited liability company conforms to this section and the requirements established by the banking board pursuant to section 11-102-104 (5.5);

(e) Where this code refers to a "director" or a "board of directors" of a state bank, such terms shall be construed to apply to a manager or the managers of a limited liability company;

(f) Where this code refers to an "incorporator", such term shall be construed to apply to the organizers of a limited liability company;

(g) Where this code refers to a "shareholder" or a "stockholder" of a state bank, such terms shall be construed to apply to a member of a limited liability company.

Source: L. 2003: Entire section added, p. 1746, § 2, effective July 1.

Editor's note: Section 11-3-101.5 as enacted by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated as § 11-103-103.

PART 2

CAPITAL REQUIREMENTS

11-103-201. Capital. The banking board shall establish by rule the capital standards and guidelines, the methods for measuring capital, and the definitions of "capital", "capital adequacy", "capital inadequacy", and other related terms for banks subject to this code, that may differ for specific purposes. In promulgating such rules, the banking board shall consider all relevant factors, including, without limitation, the policies set forth in section 11-101-102 and relevant federal laws and rules. Each bank subject to this code shall at all times comply with the capital rules promulgated by the banking board.

Source: L. 2003: Entire article added with relocations, p. 1081, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-103 as it existed prior to 2003.

11-103-202. Inadequacy of capital - assessments. (1) If the banking board has reason to believe that the capital of any bank is inadequate under the rules of the banking board, the banking board may ascertain the facts and furnish the bank with a copy of its determination. If the banking board determines an inadequacy of capital based upon such determination, the commissioner, with the approval of the banking board, may direct the state bank to levy an assessment in a designated amount upon the holders of record of common stock to remedy an inadequacy of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of common stock, at their addresses, a copy of the order and a copy of this subsection (1). If an assessment is not paid within the time prescribed in the order or such shorter period as the directors decide, but not less than thirty days, the state bank may, within sixty days thereafter as the banking board may prescribe in its order, offer the shares of the defaulting stockholders for sale at public auction or private sale at a price that shall not be less than the amount of the assessment and the cost of the sale. Any excess shall be paid to the prior owners. Except under circumstances where section 11-103-203 applies, the method of collection provided in this section shall be the sole method of collecting assessments. If an assessment is not paid within ninety days after the date of the order to levy or at such other date as may be specified in the order, but in no event less than thirty days, the commissioner may, with the approval of the banking board, proceed pursuant to part 8 of this article; however, for good cause shown to the banking board by the affected bank, the banking board may extend the ninety-day limit.

(2) If the banking board determines that the capital or reserves of any bank are inadequate, the banking board may order the bank not to make new loans or discounts.

Source: L. 2003: Entire article added with relocations, p. 1082, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-104 as it existed prior to 2003.

11-103-203. Liability of shareholders. (1) The shareholders of every state bank shall be held individually responsible, equally and ratably, and not for another, for all contracts, debts, and engagements of said bank, to the extent of double the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares.

(2) The term "shareholder" shall apply not only to such persons as appear on the books of the bank as shareholders, but also to every owner of stock, legal or equitable, although the stock may stand on such books in the name of another person, but not to a person who holds the stock as collateral security for the payment of a debt.

(3) Any shareholder of any state bank who has transferred his or her shares or caused such transfer to appear on the books of the bank within sixty days immediately preceding the capital inadequacy of such bank, or who has made such transfer with knowledge of such impending capital inadequacy, shall be liable to the same extent that the transferee or subsequent transferee fails to meet such liability. This section shall not be construed to affect in any way any recourse that such shareholder might otherwise have against those in whose names such shares appear upon the books of the bank at the time of such capital inadequacy.

(4) If the capital of any state bank becomes inadequate, and its assets and affairs have been taken possession of by the banking board pursuant to this code, and the banking board is of the opinion that it will become necessary in the course of liquidation of such bank to resort to the liability of the shareholders as provided for in this section, in order to make good the contracts, debts, or engagements of such bank, it shall be lawful for the banking board to file in the office of the county clerk and recorder of any county in this state, wherein any real estate belonging to any shareholder of such bank is situated, a statement in writing to the effect that such person is a stockholder of such bank (naming it) and that such bank is in process of liquidation, and stating the number of shares held by such shareholder and their aggregate par value and the extent of such shareholder's liability under this code.

(5) Such statement shall be duly endorsed as filed by such county clerk and recorder, giving the date of filing, and shall be indexed with the name of the shareholder as grantor and the name of the bank as grantee, and shall be recorded as mortgages of real estate are required to be recorded, and from the date of filing of such statement the same shall be a lien upon any real estate of such shareholder located in such county.

(6) If such shareholder thereafter deposits with the banking board an amount of money equal to double the amount of the par value of his or her shares, to be held by the banking board as security for the shareholder's liability under this section, then the banking board shall execute and file with such county clerk and recorder a release of such lien and, upon completing the liquidation of such bank, shall return to such shareholder any excess of such deposit, if such shareholder's ultimate liability shall prove to be less than the amount so deposited with the banking board; and in all cases where the liability of the shareholder has been satisfied, either as the result of litigation or otherwise, such liens so filed shall be released by the banking board. The expense of filing and recording such liens and releases thereof shall be paid out of any assets of the bank in the possession of the banking board.

(7) The liability imposed by this section shall not extend to shareholders in any bank that has become a member of the federal deposit insurance corporation; but if any bank that has become a member of the federal deposit insurance corporation ceases to remain a member

thereof, the double liability mentioned in this section shall extend to the shareholders in any such bank as provided in this section.

(8) No stockholder of a state bank shall set off against his or her stockholder liability any claim he or she may have as a depositor in or creditor of any insolvent bank.

Source: L. 2003: Entire article added with relocations, p. 1082, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-105 as it existed prior to 2003.

PART 3

CHARTERING A STATE BANK

11-103-301. Incorporators. Five or more individual incorporators of a de novo bank or organizers of a converting bank desiring to organize or convert to a state bank must file with the banking board, in triplicate, an application for charter on the form prescribed therefor and together with all other documents required by section 11-103-303, all of which instruments shall be duly signed by each of the incorporators or organizers and sworn to before an officer authorized by the laws of this state to administer oaths. A majority of the incorporators must be residents of the state and citizens of the United States. Each incorporator of a de novo bank shall, prior to the filing of said application, subscribe and pay in full in cash for stock having a par value of not less than one percent of the minimum capital and paid-in surplus requirements.

Source: L. 2003: Entire article added with relocations, p. 1084, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1477, § 40, effective July 1.

Editor's note: This section is similar to former § 11-3-106 as it existed prior to 2003.

11-103-302. Application fees. Each application for charter shall be accompanied by a fee established by the banking board pursuant to section 11-102-104 (11). The fee may be refunded to the incorporators if the application for charter is withdrawn prior to the date set for public hearing.

Source: L. 2003: Entire article added with relocations, p. 1084, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-107 as it existed prior to 2003.

11-103-303. Application for de novo charter or charter conversion. (1) After the capital stock has been fully subscribed, the incorporators may apply to the banking board for a de novo bank charter. The incorporators or organizers of the converting bank must submit to the banking board the following:

(a) Its proposed articles of incorporation in duplicate, in such form as the banking board prescribes and as acceptable to the secretary of state for purposes of filing, containing the following information: The name of the state bank; whether the state bank is to exercise trust powers; the community in which it is to be located; the amount of capital, the number of shares

of each class, the relative preferences, powers, and the rights of each class, the par value of the shares of each class, and the amount of the paid-in surplus; a statement whether voting for directors is or is not cumulative, and the extent of the preemptive rights of stockholders; and such other proper provisions to govern the business and affairs of the state bank as may be desired by the incorporators or organizers.

(b) An application for a charter in such form and containing such information as the banking board requires, including but not limited to the following: The name, business and residence address, and business and professional affiliations of each director and executive officer; the name, residence, citizenship, and occupation of each subscriber or shareholder and the number of shares for which he or she has subscribed or owns directly or indirectly; the past and present connection with any bank, other than as a customer, on terms generally available to the public of each director and each subscriber or shareholder to more than five percent of the capital stock, including beneficial interests; the amount to be borrowed and from whom borrowed on any stock issued to a subscriber to or shareholder of more than five percent of the capital stock; the address at which the converting bank's main office and existing branches are located or the address at which the de novo state bank proposes to do business or, if such address is not known, the area within a radius of one-half mile in which the proposed bank is to be located and the community that it proposes to serve; a statement that all the proposed bylaws have been attached as an exhibit to the application; and such other information as the banking board may reasonably require to enable it to determine whether a charter should be issued. The proposed bylaws must be attached to the application as an exhibit.

(2) If the proposed articles of incorporation or application do not comply with the requirements of this code, and with the requirements of the banking board issued pursuant thereto, the banking board shall, within thirty days after the receipt thereof, return both of the documents to the incorporators or organizers, calling attention to the defects therein. If such articles of incorporation and application are not so returned by the banking board within thirty days after the receipt thereof, they shall be deemed to have been filed with the banking board as of the date received in its office; otherwise they shall be deemed filed as of the date the amended documents, with all defects corrected, are received in the commissioner's office.

(3) Not more than forty days after the date upon which the completed application for a de novo state bank charter and all required documents are properly filed with the banking board, the banking board shall mail notice of such filing by registered or certified mail to each bank within a three-mile radius of the location of the proposed bank and to such other persons or banks as the banking board may designate. The notice must be in the form prescribed therefor by the banking board and must include a statement that an application for a state banking charter has been filed, the date of the filing, the names and addresses of the incorporators, and the location of the proposed bank. The banking board shall also cause such notice to be published, at least one time, not more than forty days after the date of filing the completed application, in a newspaper of general circulation within the community in which the proposed bank is to be located.

Source: L. 2003: Entire article added with relocations, p. 1084, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1478, § 41, effective July 1.

Editor's note: This section is similar to former § 11-3-109 as it existed prior to 2003.

11-103-304. Procedure for granting or denying charter. (1) Within sixty days following the filing of the completed application for a de novo charter or conversion of an established bank, the commissioner shall make or cause to be made a careful investigation to determine that the following requirements have been met:

(a) That the applicant has proceeded in a lawful manner;

(b) That the name is not deceptively similar to that of another bank or otherwise misleading;

(c) That the persons who will serve as directors or officers, insofar as such persons are known, possess the qualifications and experience required under rules promulgated by the banking board and that the qualifications and financial status of the incorporators, directors, officers, and persons in control of the bank, as defined in section 11-102-302 (2), are consistent with their responsibilities and duties;

(d) That the proposed capital satisfies the standards and guidelines in the rules promulgated by the banking board;

(e) That the proposed or amended articles of incorporation and bylaws are appropriate or may be amended to be appropriate.

(2) If the commissioner determines that any of the requirements in subsection (1) of this section have not been met in any respect, he or she shall notify the applicant of such deficiencies and of corrective measures deemed appropriate. Within six months after the filing of an application for charter, and prior to the hearing prescribed in subsection (3) of this section, the commissioner shall report to the banking board that the applicant has met all of the requirements of subsection (1) of this section, if such be the case, or shall report which requirements have been met and which have not been met, together with the circumstances respecting such deficiencies. This report shall be introduced by the banking board into the record of the hearing on such application.

(3) (a) The banking board, within six months after the filing of an application for charter, and subject to subsection (7) of this section, shall hold a public hearing to consider the application; except that the banking board, for valid reasons and good cause, may postpone such hearing. At such hearing, the applicant for a de novo bank charter has the burden of proving:

(I) That the proposed bank will serve a public need and advantage in the community or area of the community that the bank will serve; and

(II) That the volume of business in the community or area of the community that the proposed bank will serve is such that profitable operation of the bank may be reasonably projected.

(b) Notwithstanding any other provision of this section, if the banking board has given notice pursuant to subsection (5) of this section of a hearing on any application for charter filed pursuant to this section and the banking board has received no written protests against such charter application on or before the tenth day preceding the date fixed for the hearing, the banking board may grant such charter without a hearing as otherwise required in this section if the applicants for such charter are known to the banking board.

(4) On hearing, the banking board may admit in evidence the application for charter and any other relevant information in the files of the division. The applicant and all others receiving notice by registered or certified mail under subsection (5) of this section are also entitled to be heard and to introduce testimony at such hearing, as well as such others as the banking board may determine to be necessary.

(5) The banking board shall give notice of the hearing on application for a de novo bank charter provided in subsection (3) of this section at least thirty days in advance of the hearing date fixed by the banking board, by registered or certified mail, to the applicant, to each bank within a three-mile radius of the location of the proposed bank, and to such other persons or banks as the banking board may designate. The notice must be in the form prescribed by the banking board and must include the names of the incorporators, the name of each stockholder subscribing to ten percent or more of the stock of the bank, the name and location of the proposed bank, the date, time, and place of the hearing, and a statement declaring that the application and proposed articles of incorporation or amended articles of incorporation are available for inspection in the office of the banking board. The banking board shall also cause such notice to be published at least one time not less than twenty days prior to the date fixed for such hearing in a newspaper of general circulation within the community in which the proposed bank is to be located.

(6) Within one hundred twenty days following the date of conclusion of the hearing, the banking board shall issue a written order requiring the commissioner to grant a charter if a majority of the banking board finds that the requirements of subsection (1) of this section have been met and that the applicant for a de novo bank charter has met the burden of proof prescribed in subsection (3) of this section. The banking board shall make execution of its order to grant a de novo bank charter contingent upon the proposed bank making a bona fide application for membership in the federal deposit insurance corporation or the federal reserve system. In applications where the directors or management has not been fully disclosed at the time of the hearing, the banking board may make execution of its order to grant a charter contingent upon its subsequent approval of the directors and management. If a majority of the banking board finds that the requirements of subsection (1) of this section or the burden of proof of subsection (3) of this section have not been met, the banking board shall deny the application for a de novo charter. The banking board may revoke a charter in any case where the proposed bank has not exercised its charter and opened for business within six months after the date of the order to grant the charter.

(7) If, within a ninety-day period, there have been filed with the banking board two or more applications for a de novo bank charter for state banks to serve the same community, the banking board may hold a single hearing to consider the applications. The banking board may grant or deny a de novo bank charter to one or more of the applicants without regard to the priority in time of filing applications. The determination of the banking board to deny a charter to an applicant who might otherwise qualify for a charter under subsections (1) and (3) of this section must be based upon a finding that the public need or advantage of the community or area of the community in which the proposed bank will be located will best be served by such denial and by the granting of a de novo bank charter on another application or other applications heard at such single hearing.

(8) It is a criminal offense under this code for a proposed de novo state bank to perform any act as a state bank other than to perfect its organization, obtain and equip a place of business, or otherwise prepare to do business as a state bank prior to receiving a charter.

(9) Unless otherwise provided by law to the contrary, the banking board must first approve the articles of incorporation, amended articles of incorporation, or amendments to articles of incorporation, which the applicant shall then deliver and file as follows:

(a) Duplicate originals shall be delivered to the secretary of state for filing in accordance with the general corporate laws of this state;

(b) A verified copy shall be filed in the office of the clerk and recorder for the county in which the state bank is located;

(c) A copy to which the commissioner shall affix the charter, or certificate of approval in the case of amendments, shall be delivered by the commissioner to the applicant.

Source: L. 2003: Entire article added with relocations, p. 1085, § 3, effective July 1. **L. 2013:** IP(1), IP(3)(a), (5), (6), (7), (8), and IP(9) amended, (SB 13-154), ch. 282, p. 1479, § 42, effective July 1.

Editor's note: This section is similar to former § 11-3-110 as it existed prior to 2003.

PART 4

SHARES AND DISTRIBUTIONS

11-103-401. Subscription calls. After a de novo charter has been granted, the directors may call for the payment of the subscriptions in full within thirty days after the date of the notice that the charter has been granted. The bank shall not issue any shares until the bank has paid in full, in cash, the par value and the pro rata portion of the paid-in surplus specified in the de novo charter.

Source: L. 2003: Entire article added with relocations, p. 1088, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1480, § 43, effective July 1.

Editor's note: This section is similar to former § 11-3-111 as it existed prior to 2003.

11-103-402. First meetings of stockholders - director's oath - bylaws. (1) After the capital and surplus have been fully paid in cash and before any business is transacted, the incorporators shall call a meeting of the stockholders, on at least ten days' notice, to elect directors and to adopt bylaws, and shall direct the call, on at least five days' notice, of the first meeting of directors for election of officers.

(2) Every director of a state bank shall take and subscribe to an oath before a disinterested notary public that the director will, insofar as the duty devolves upon him or her, diligently and honestly administer the affairs of the bank and that he or she will not knowingly violate nor willingly permit to be violated any provision of the law.

(3) Bylaws may be adopted and amended by a majority vote at a stockholders' meeting, but the bylaws may provide for adoption or amendment by the board of directors of any provisions other than those relating to the duties, term of office, remuneration, reimbursement, or indemnification of a director. Copies of all bylaws and amendments thereto shall be filed with the commissioner.

Source: L. 2003: Entire article added with relocations, p. 1088, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-112 as it existed prior to 2003.

11-103-403. Stockholders' meetings - voting trusts - preemptive right - transfer of stock. (1) A regular annual meeting of stockholders shall be held each year as the bylaws direct. A special meeting may be called at any time by the banking board or the commissioner, by not less than one-third of the directors, or by the holders of twenty-five percent of the outstanding voting shares. The regular annual meeting and special meetings of the stockholders shall be held at such place as may be designated in the bylaws. Notice shall be mailed at least ten days before a meeting to every person who is a stockholder of record twenty days before the date of the meeting or at such longer period as may be provided in the bylaws. Such notice shall be mailed to the stockholder's address on the records of the bank. No business shall be transacted at a special meeting that is not specified in the notice thereof or necessary or proper in connection with or incidental to the business specified. The holders of a majority of the outstanding voting shares, or their authorized representatives, shall constitute a quorum. In the absence of a quorum, a meeting may be adjourned from time to time without notice to the stockholders.

(2) Except on the election of directors, when cumulative voting is provided for in the charter, each share of common stock shall have one vote, which may be cast by the owner of record on the record date or by such owner's proxy, whether or not the owner of record has the beneficial interest therein. The bank may not vote shares that it holds in any capacity other than as fiduciary.

(3) A stockholder authorized to vote may, by means of a proxy executed in writing, appoint a representative to cast his or her vote. The banking board may promulgate rules governing proxies and the solicitation thereof.

(4) No shares deposited under a voting trust agreement shall be voted by the trustee unless the agreement has been approved by the banking board. Approval shall be withheld or, if previously granted, revoked if it appears that the existence of the trust would tend to reduce competition among lending institutions or to affect adversely the character or competence of the management or the bank's policies or operating procedures. In the absence of such approval, the record owner may vote his or her shares.

(5) Unless otherwise provided in the charter, if additional stock of a class is offered for sale, stockholders of record of the same class on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable, but shall terminate if not exercised within thirty days after the offer. If the right is not exercised, the stock shall not be offered for sale to others at a lower price, or on other more favorable terms, without the stockholders again being accorded a preemptive right to subscribe.

(6) No transfer of shares of stock shall be effective with respect to the bank until it has been entered upon the transfer books. The stock book shall be available for examination by a stockholder of the corporation at the principal place of business during its business hours.

Source: L. 2003: Entire article added with relocations, p. 1088, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-113 as it existed prior to 2003.

11-103-404. Waiver of notice - meeting or vote. (1) When a notice is required to be given to stockholders under this code, or the charter or bylaws of any state bank, a waiver thereof in writing, signed by the person entitled to said notice, either before or after the time stated therein, shall be deemed equivalent thereto.

(2) If the vote of stockholders at a meeting thereof is required or permitted to be taken in connection with any corporate action by any section of this code, the meeting and vote of stockholders may be dispensed with, if all of the stockholders who would have been entitled to vote upon the action if such meeting were held consent in writing to such corporate action being taken.

(3) In the event that the action that is consented to is such as would have required the filing of a certificate under any of the other sections of this code if such action had been voted upon by the stockholders at a meeting thereof, the certificate filed under such other section shall state that written consent has been given under this section, in lieu of stating that the stockholders have voted upon the corporate action in question, if such last mentioned statement is required thereby.

Source: L. 2003: Entire article added with relocations, p. 1089, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-116 as it existed prior to 2003.

11-103-405. Amendment of articles - change of location - authorized but unissued stock. (1) A state bank may apply to the banking board to amend its articles of incorporation or to change its location.

(2) An application for an amendment of the articles of incorporation to change the authorized capital and the number and par value of the shares, to acquire or abandon trust powers, or to change its location shall be authorized by the vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders. Any other application may be authorized by the vote of a majority of the outstanding voting stock voted at a meeting of the stockholders.

(3) Notice of the application shall be sent to such persons and organizations as the banking board may require.

(4) The banking board shall approve an application:

(a) To change the name of the corporation if the proposed name is not deceptive or misleading;

(b) To increase the total capital by increasing the amount of capital stock; but an amendment increasing the total capital shall not become effective until the banking board finds that the new capital has been fully paid in cash; except that amendments increasing the capital stock of the bank in the category of authorized but unissued stock shall be approved pursuant to the provisions of subsection (6) of this section.

(5) In making its determination thereon, the banking board shall consider whether the public need and advantage would be served by granting the application and shall be guided by the standards prescribed for the approval of an application for a charter, insofar as they are reasonably applicable. In making its determination upon an application for change of location, the banking board shall consider the need and advantage of both the community or area of the community in which the bank will be located and the community or area of the community from which the bank will be moved.

(6) A state bank, upon application to and approval by the banking board and by vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders, by an amendment of the articles of incorporation, may authorize an increase in the capital stock of the bank in the category of authorized but unissued stock. Such authorized but unissued stock may be issued from time to time to employees of the bank pursuant to stock option or stock purchase plans adopted in accordance with the provisions of section 11-103-101 (2)(h), or in exchange for convertible preferred stock or convertible capital debentures in accordance with the terms and provisions of such securities. Authorized but unissued stock may also be issued from time to time for such other purposes and considerations as may be approved by the board of directors of the state bank and the banking board.

Source: L. 2003: Entire article added with relocations, p. 1089, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-117 as it existed prior to 2003.

11-103-406. Dividends - when payable. The board of directors of a state bank may declare dividends from retained earnings and from other components of capital specifically approved by the banking board so long as the declaration is made in compliance with the rules established by the banking board.

Source: L. 2003: Entire article added with relocations, p. 1090, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-118 as it existed prior to 2003.

PART 5

DIRECTORS AND OFFICERS

11-103-501. Directors and officers. (1) The affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not fewer than three nor more than twenty-five, shall be as fixed by the bylaws, and the number so fixed shall be the board, regardless of vacancies. At least three-fourths of the directors shall be citizens of the United States, and a majority shall be residents of this state. A director need not own shares. No director may serve who has been convicted of fraud involving any financial institution or of a felony, but the banking board may waive this provision regarding a felony if it determines that the particular felony does not jeopardize the person's ability to act as a director. A director who is disqualified may be removed by the board of directors or by the banking board. No action taken by a director prior to his or her resignation or removal shall be subject to attack on the ground of his or her disqualification.

(2) Directors shall receive such reasonable compensation as the bylaws may prescribe and shall serve until their successors are elected and qualify.

(3) Directors shall be elected by the stockholders at the first meeting, and thereafter, at the annual meeting or at a special meeting called for the purpose. If the charter provides for cumulative voting, the votes of each share may be cast for one person or divided among two or

more, as the stockholder may choose. The person (to the number of directors to be elected) having the largest number of votes shall be elected.

(4) The term of office of directors shall be one year. Vacancies may be filled by vote of the board of directors until the next meeting of the stockholders.

(5) A director may be removed by the stockholders at a meeting. Where cumulative voting for directors is provided in the charter, no director shall be removed unless the votes cast against a motion for his or her removal are less than the total number of shares outstanding divided by the number of authorized directors, but all of the directors shall be removed if a majority of the outstanding shares approves a motion for the removal of all.

(6) The officers designated by the bylaws shall be elected by the board of directors. A member of the board of directors shall be elected president. No officer shall be elected for a period longer than one year. No person may be employed as an officer of a state bank who has been convicted of fraud involving any financial institution or of a felony, but the banking board may waive this provision regarding a felony if it determines that the particular felony does not jeopardize the person's ability to act as an officer. An officer may be removed by the board of directors at any time, but removal shall not prejudice any rights that the officer may have to damages for breach of contract of employment, unless the officer falsely answered any question or made any material misstatement of facts relating to any matter leading to or constituting any inducement to such employment.

Source: L. 2003: Entire article added with relocations, p. 1091, § 3, effective July 1. **L. 2014:** (1) and (6) amended, (HB 14-1274), ch. 110, p. 400, § 2, effective August 6.

Editor's note: This section is similar to former § 11-3-114 as it existed prior to 2003.

Cross references: For the legislative declaration in HB 14-1274, see section 1 of chapter 110, Session Laws of Colorado 2014.

11-103-502. Directors' meetings - duties. (1) The board of directors of a state bank shall meet at least once each calendar quarter, unless the banking board directs that meetings be held on a more frequent basis, or a less frequent basis in the case of disaster or emergency. The banking board, the commissioner, or an executive officer may call a special meeting. A majority of the board of directors constitutes a quorum. The board shall keep minutes of each meeting, including a record of attendance. Any director who fails to attend meetings of the board of directors for three consecutive months automatically ceases to be a director, unless the absence is satisfactorily explained to the banking board or the commissioner, who shall, in that event, notify the president of the bank of the approval of the continuation of the director.

(2) The board of directors or the executive committee of the board shall review at least monthly the following transactions occurring since the last review:

(a) Each loan, advance, discount, overdraft, and purchase or sale of a security that exceeds in amount one percent of the capital of the corporation pursuant to the rules promulgated by the banking board, and each loan, advance, discount, and overdraft that makes the total obligations from one obligor exceed that amount;

(b) Each purchase or sale of a security that, together with the bank's other purchases and sales in the security during the preceding two months, involves such amount.

(3) (a) The board of directors shall cause the financial statements of the state bank to be prepared in accordance with generally accepted accounting principles consistently applied, except as the banking board may otherwise provide in order to establish regulatory and competitive parity and pursuant to the policies expressed in section 11-101-102.

(b) The board of directors shall cause an audit of the state bank to be completed by an accounting firm composed of certified public accountants or a directors' examination by a public accountant or any other independent person or persons as determined by the banking board at least annually but at intervals of not more than fifteen months, as may be required by the banking board or its rules. The banking board shall adopt rules regarding the qualifications of such public accountant and other independent person or persons, who shall assume the responsibility for due care in such director's examinations. The banking board's rules shall also establish the scope of such directors' examinations, which shall include safeguards to insure that such examinations adequately describe the financial condition of the financial institution. The banking board may require an audit to be completed by an accounting firm composed of certified public accountants under certain circumstances. A report of the audit or directors' examination and any related management letters and documents shall be completed and submitted to the banking board within the time periods, in the form, and containing such information as the banking board may require in its rules. Such report of the audit or directors' examination and any related management letters and documents shall be reviewed by the directors at the next meeting of the board of directors.

(c) If a bank is owned or controlled by a bank holding company, the requirement of paragraph (b) of this subsection (3) may be fulfilled if:

(I) As required by the banking board and its rules, the controlling bank holding company is audited or examined in a directors' examination annually at intervals of not more than fifteen months and the bank is included in the annual audit or directors' examination of the bank holding company by that firm;

(II) A report of the audit or directors' examination for the controlling bank holding company and any related management letters and documents is completed and submitted to the banking board within the time periods, in the form, and containing such information as the banking board may require in its rules; and

(III) An annual internal examination of the bank is prepared by the internal examination staff of the controlling bank holding company and kept available for submission to the banking board immediately upon the banking board's request.

(4) A state bank authorized to exercise trust powers shall not accept, or voluntarily relinquish, a fiduciary account without the approval or ratification of the board of directors, or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptances or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No such investment of any account for which the bank has investment discretionary authority shall be made, retained, or disposed of without the approval of a board-approved committee as to which the bank has investment or review responsibility. At least once in every calendar year, the

committee shall review the records of each fiduciary account as to which the bank has investment or review responsibility and shall determine the current value, safety, and suitability of the investments and whether the investments should be modified or retained. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions considered and all action taken since the previous meeting of the board. The board of directors shall establish the policies and procedures necessary for the proper exercise of fiduciary powers by the state bank and in accordance with any rule established by the banking board.

Source: L. 2003: Entire article added with relocations, p. 1092, § 3, effective July 1. **L. 2013:** (4) amended, (SB 13-154), ch. 282, p. 1481, § 44, effective July 1. **L. 2016:** (1) amended, (SB 16-126), ch. 159, p. 503, § 1, effective August 10.

Editor's note: This section is similar to former § 11-3-115 as it existed prior to 2003.

11-103-503. Waiver of notice - meeting or vote. (1) When a notice is required to be given to directors under this code, or the charter or bylaws of any state bank, a waiver thereof in writing, signed by the person entitled to said notice, either before or after the time stated therein, shall be deemed equivalent thereto.

(2) If the vote of directors at a meeting thereof is required or permitted to be taken in connection with any corporate action by any section of this code, the meeting and vote of directors may be dispensed with, if all of the directors who would have been entitled to vote upon the action if such meeting were held consent in writing to such corporate action being taken.

(3) In the event that the action that is consented to is such as would have required the filing of a certificate under any of the other sections of this code if such action had been voted upon by the directors at a meeting thereof, the certificate filed under such other section shall state that written consent has been given under this section.

Source: L. 2003: Entire article added with relocations, p. 1093, § 3, effective July 1.

PART 6

INDEMNIFICATION AND INSURANCE

11-103-601. Director and officer insurance and fidelity bonds - legislative declaration. (1) The directors of a state bank shall require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent, or criminal conduct by them acting independently or in collusion or combination with any person. Such bonds may be in individual, schedule, or blanket form, and the premiums therefor shall be paid by the bank.

(2) The said directors shall also require suitable insurance protection to the bank against burglary, robbery, theft, and other insurable hazard to which the bank may be exposed in the operations of its business on the premises or elsewhere.

(3) The directors shall be responsible for prescribing, at least once in each calendar year, the amount or penal sum of the bonds and policies specified in this section and the sureties or underwriters thereon after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors.

(4) (a) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in this code, including the provisions of section 11-101-102:

(I) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, that provides insurance coverage to directors or officers, or both, of a bank but that does not grant coverage or that excludes coverage for claims made by any depository insurance organization or any other state or federal corporation, organization, or entity acting as receiver, conservator, or liquidator of such bank, whether in its own name or on behalf of any other person or entity; or

(II) Any fidelity bond, financial institution bond, or depository institution bond in effect or issued on or after April 30, 1993, that provides for termination of such bond upon the taking over of the bank by a receiver or other liquidator or by state or federal officials.

(b) No provision of part 8 of this article shall be construed to contravene or modify the expressed public policy set forth in this subsection (4).

Source: L. 2003: Entire article added with relocations, p. 1094, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-120 as it existed prior to 2003.

11-103-602. Indemnification and personal liability of directors, officers, employees, and agents. The state bank shall have the same powers, rights, and obligations and shall be subject to the same limitations as apply to corporations for profit as set forth in article 109 of title 7, C.R.S. State bank directors, officers, employees, and agents shall have the same rights as directors, officers, employees, and agents, respectively, of corporations for profit as set forth in article 109 of title 7, C.R.S. State bank directors and officers shall have the benefit of the same limitations on personal liability for any injury to person or property arising out of a tort as set forth in section 7-108-402 (2), C.R.S., for directors and officers, respectively, of corporations for profit. Any reference in said sections to shareholders shall be construed to refer to stockholders for the purposes of this section.

Source: L. 2003: Entire article added with relocations, p. 1095, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-121 as it existed prior to 2003.

11-103-603. Deposit insurance - membership in federal reserve system - federal national mortgage association. (1) A state bank is authorized to do any act necessary to obtain insurance of its deposits by the United States or any agency thereof and to acquire and hold membership in the federal reserve system or to take advantage of any other act or resolution of congress that may be enacted to aid, regulate, or safeguard state banks and their depositors, including any amendments of the same or any substitutions thereof. It may also subscribe for and

acquire any stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2) A state bank that is a member of the federal reserve system, or of the federal deposit insurance corporation, or of both may make payments to the federal national mortgage association, a constituent agency of the national housing and home finance agency, of nonrefundable capital contributions, receive stock evidencing such capital contributions and hold and dispose thereof, contract with said association, and incur the expenses and otherwise comply with the then lawful regulations and requirements issued by said association from time to time to the extent a national bank in like circumstances is authorized by any act or resolution by the United States congress or by any lawful rule issued pursuant thereto.

Source: L. 2003: Entire article added with relocations, p. 1095, § 3, effective July 1.

Editor's note: This section is similar to former § 11-3-122 as it existed prior to 2003.

PART 7

MERGER, CONSOLIDATION, CONVERSION,
AND SALE OF ASSETS

11-103-701. Merger or conversion. (1) Upon approval of the banking board, banks may be merged with, or converted into, a resulting state bank as prescribed in this article; except that the action by a constituent national bank shall be taken in the manner prescribed by, and is subject to, any limitation or requirements imposed by any law of the United States, which law also governs the rights of its dissenting shareholders. Further, the action by a constituent bank chartered in another state shall be taken in the manner prescribed by, and is subject to, any limitation or requirements imposed by any law of the chartering state, which law also governs the rights of its dissenting shareholders.

(2) Nothing in the law of this state restricts the right of a state bank to merge with, or convert into, a resulting national bank or bank chartered by another state. The action to be taken by a constituent state bank and its rights and liabilities and those of its shareholders are the same as those prescribed for national banks at the time of the action by the applicable laws of the United States or the other chartering state and not by the law of this state.

Source: L. 2003: Entire article added with relocations, p. 1095, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1464, § 7, effective July 1.

Editor's note: This section is similar to former § 11-4-102 as it existed prior to 2003.

11-103-702. Approval of merger by directors. (1) Where there is to be a resulting state bank, the board of directors of each constituent state bank shall, by a majority of the entire board, approve a merger agreement, which agreement shall contain:

(a) The name of each constituent bank and the location of each office;

(b) With respect to the resulting bank, the name and the location of each proposed office; the name and residence of each director to serve until the next annual meeting of the stockholders; the name and residence of each officer; the amount of capital, the number of shares, and the par value of each share; whether preferred stock is to be issued and the amount, terms, and preferences; the amendments to the charter and bylaws;

(c) The terms for the exchange of shares of the constituent banks for those of the resulting bank;

(d) A statement that the agreement is subject to approval by the banking board and by the stockholders of each constituent bank;

(e) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting shareholders of constituent banks;

(f) Such other provisions as the banking board requires to enable it to discharge its duties with respect to the merger.

Source: L. 2003: Entire article added with relocations, p. 1096, § 3, effective July 1.

Editor's note: This section is similar to former § 11-4-103 as it existed prior to 2003.

11-103-703. Approval by banking board. (1) After approval by the board of directors of each constituent bank, the merger agreement shall be submitted to the banking board for approval, together with certified copies of the authorizing resolutions of the several boards of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any constituent national bank or bank chartered by another state.

(2) Without approval by the banking board, no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of the constituent bank at the time of the last examination by a state or national bank examiner before the effective date of the merger.

(3) Within thirty days after receipt by the banking board of the papers specified in subsection (1) of this section, the banking board shall approve or disapprove the merger agreement. The banking board shall approve the agreement if it appears that:

(a) The resulting state bank meets all the requirements of state law as to the formation of a new state bank or conversion of an existing bank;

(b) The agreement provides for adequate capital as established by the banking board in its rules;

(c) The agreement is fair;

(d) The merger is not contrary to the public interest.

(4) If the banking board disapproves an agreement, it shall state its objections and give an opportunity to the constituent banks to amend the merger agreement to obviate such objection.

(5) Where the resulting state bank is not to exercise trust powers, the banking board shall not approve a merger until satisfied that adequate provision has been made for successors to fiduciary positions held by constituent banks.

Source: L. 2003: Entire article added with relocations, p. 1096, § 3, effective July 1. **L. 2013:** (1) and (3)(a) amended, (SB 13-154), ch. 282, p. 1464, § 8, effective July 1.

Editor's note: This section is similar to former § 11-4-104 as it existed prior to 2003.

11-103-704. Approval by stockholders - rights of dissenters. (1) To be effective, a merger must be approved by the stockholders of each constituent state bank by a vote of two-thirds of the outstanding voting stock, at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments set forth in the merger agreement.

(2) The notice of the meeting of stockholders shall state that dissenting stockholders will be entitled to payment of the value of only those shares that are voted against the approval of the plan.

(3) The owners of shares that were voted against the approval of the merger shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting state bank at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of such shares shall be determined as of the date of the shareholders' meeting approving the merger by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares involved, one by the board of directors of the resulting state bank, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the commissioner shall cause an appraisal to be made.

(4) The expenses of appraisal shall be paid by the resulting state bank.

(5) The resulting state bank may fix an amount that it considers to be not more than the fair market value of the shares of a constituent bank at the time of the stockholders' meeting approving the merger, which it will pay dissenting shareholders of that constituent bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state bank.

Source: L. 2003: Entire article added with relocations, p. 1097, § 3, effective July 1.

Editor's note: This section is similar to former § 11-4-105 as it existed prior to 2003.

11-103-705. Effective date of merger - certificate. (1) Unless a later date is specified in the agreement, a merger becomes effective upon the approval by the banking board of the executed agreement, together with copies of the resolutions of the stockholders of each constituent bank approving it, certified by the bank's president or a vice-president and a secretary. The charters of the constituent banks, other than the resulting bank, shall thereupon be deemed surrendered.

(2) After approval of the agreement, the banking board shall issue to the resulting bank a certificate of merger, setting forth the name of each constituent bank and the name of the resulting state bank. The certificate is conclusive evidence of the merger and of the correctness of all proceedings for the merger in all courts and places and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the constituent banks is held.

Source: L. 2003: Entire article added with relocations, p. 1097, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1481, § 45, effective July 1.

Editor's note: This section is similar to former § 11-4-106 as it existed prior to 2003.

11-103-706. Continuation of corporate entity. (1) The resulting state bank shall be considered the same business and corporate entity as each constituent bank with all of the rights, powers, and duties of each constituent bank, except as limited by the charter and bylaws of the resulting state bank.

(2) The resulting state bank has the right to use the name of any constituent bank whenever it can do any act under such name more conveniently.

(3) Any reference to any constituent bank in any writing, whether executed or taking effect before or after the merger, shall be deemed a reference to the resulting state bank if not inconsistent with the other provisions of such writing.

Source: L. 2003: Entire article added with relocations, p. 1098, § 3, effective July 1.

Editor's note: This section is similar to former § 11-4-107 as it existed prior to 2003.

11-103-707. Conversion from state bank to national and vice versa. (1) Nothing in the law of this state shall restrict the right of a state bank to convert into a national bank upon compliance with the laws of the United States, and, upon completion of such conversion, it shall surrender its charter as a state bank.

(2) The board shall grant a state charter to a national bank located in this state that follows the procedure prescribed by federal law to convert into a state bank if it meets the requirements established by the banking board in its rules. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified to the extent made necessary by the difference between an ordinary incorporation and a conversion as established by the banking board in its rules. The converting bank shall cause to be published a notice of the conversion once a week for three successive weeks in a newspaper of general circulation in the county in which the converting bank has its principal office. The converting bank shall file proof of the publication with the division.

(3) The converted bank shall be considered the same business and corporate entity as the converting bank with all of the rights, powers, and duties of the converting bank except as limited by the charter and bylaws of the resulting bank. It may use the name of the converting bank whenever it can do any act under such name more conveniently.

(4) Any reference to the converting bank in any writing, whether executed or taking effect before or after the conversion, shall be deemed a reference to the converted bank if not inconsistent with the other provisions of such writing.

Source: L. 2003: Entire article added with relocations, p. 1098, § 3, effective July 1. **L. 2013:** (2) amended, (SB 13-154), ch. 282, p. 1481, § 46, effective July 1.

Editor's note: This section is similar to former § 11-4-108 as it existed prior to 2003.

11-103-708. Nonconforming assets. If a constituent bank has assets that do not conform to the requirements of state law for the resulting bank, or if a converting national bank has assets that do not conform to the requirements of a state law for the converted state bank, or if, in either case, there are business activities that are not permitted for the resulting or converted state bank, the banking board may permit a reasonable time to conform with state law.

Source: L. 2003: Entire article added with relocations, p. 1098, § 3, effective July 1.

Editor's note: This section is similar to former § 11-4-109 as it existed prior to 2003.

11-103-709. Sale of all assets of bank, branch, or department. (1) Any state bank may sell to any other bank all, or substantially all, of the selling bank's assets and business, or all, or substantially all, of the assets and business of any department or branch of the selling bank.

(2) Any state bank may, upon assuming the liabilities relating thereto, purchase all, or substantially all, of the assets and business of another bank, or all, or substantially all, of the assets and business of any department or branch of another bank.

(3) The agreement of purchase and sale shall be authorized and approved by the banking board and by the vote of a majority of the stockholders of the purchasing and selling banks at meetings called for the purpose in like manner as meetings to approve mergers are called, and filed with the commissioner, accompanied by evidence of such stockholders' approval in like manner as agreements of merger are filed. After such approval is given by the stockholders, a notice of such sale shall be published once a week for three successive weeks in a newspaper of general circulation in the county in which the selling bank has its principal office. Proof of such publication shall be filed with the division.

(4) Notwithstanding any term of the agreement, or of his or her contract of deposit, any depositor whose business is thus sold has the right, upon payment of any indebtedness owing by the depositor to the bank, to withdraw his or her deposit in full on demand after such sale unless, by dealing with the purchasing bank with knowledge of the purchase, the depositor ratifies the transfer.

(5) The agreement of sale may provide for the transfer to the purchasing bank of all fiduciary positions held by the selling bank pursuant to section 11-106-105.

(6) No right against, or obligation of, the selling bank, in respect of the assets or business sold, shall be released or impaired by the sale until one year from the last date of publication of the notice, pursuant to subsection (3) of this section, but, after the expiration of such year, no action shall be brought against the selling bank on account of any deposit, obligation, trust, or asset transferred to or liability assumed by the purchasing bank.

Source: L. 2003: Entire article added with relocations, p. 1099, § 3, effective July 1. **L. 2013:** (1) and (2) amended, (SB 13-154), ch. 282, p. 1465, § 9, effective July 1.

Editor's note: This section is similar to former § 11-4-110 as it existed prior to 2003.

PART 8

LIQUIDATION, DISSOLUTION, AND REORGANIZATION

11-103-801. Voluntary liquidation and dissolution. (1) With the approval of the banking board, a state bank may liquidate and dissolve. The banking board shall grant such approval if it appears that the proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock at a meeting called for that purpose and that the capital of the state bank is adequate and such state bank has sufficient liquid assets to pay off depositors and creditors immediately.

(2) (a) Upon approval by the banking board, the bank shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation, and shall proceed to pay its depositors and creditors and to wind up its affairs.

(b) Within thirty days after the approval, a notice of liquidation shall be sent by mail to each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box, and bailor of property at the address of such person as shown on the books of the bank. The notice shall be posted conspicuously on the premises of the bank and shall be given such publication as the banking board may require. The bank shall send with each notice a statement of the amount shown on the books to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee or in a safe deposit box be withdrawn by the person entitled thereto and that claims of depositors and creditors, if the amount claimed differs from that stated in the notice to be due, be filed with the bank before a specified date not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(c) As soon after approval as may be practicable, the state bank shall resign all fiduciary positions and take such action as may be necessary to settle its fiduciary accounts.

(d) Safe deposit boxes, the contents of which have not been removed within thirty days after demand, shall be opened. Sealed packages containing the contents of such box, with a certificate of inventory of contents, together with any other unclaimed property held by the bank as bailee and certified inventories thereof shall be transferred to the banking board, which shall retain them for six years unless sooner claimed by the person entitled to them. After six years the banking board shall sell or otherwise appropriately dispose of the property. The proceeds of any sale shall be transferred to the state treasurer as abandoned funds.

(e) The approval of an application for liquidation shall not impair any right of a depositor or creditor to payment in full, and all lawful claims of creditors and depositors shall promptly be paid. The unearned portion of the rental of a safe deposit box shall be returned to the lessee.

(f) Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before all claims of depositors and creditors have been paid or, in the case of any disputed claim, the bank has transmitted to the banking board a sum adequate to meet any liability that may be judicially determined and any funds payable to a depositor or creditor and unclaimed have been transmitted to the banking board.

(3) Any unclaimed distribution to a stockholder or depositor shall be held until ninety days after the final distribution and then transmitted to the banking board. Such unclaimed funds shall be held by the banking board for six years and, unless sooner claimed by the person entitled

thereto, shall be transferred to the treasury of the county in which the bank is located. The county treasurer and his successors shall hold such money in trust for a period of six years, unless the same shall be sooner paid out to the beneficial owner thereof or a suit is instituted to recover such money or a portion thereof. Any money remaining in said fund six years after the same is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the former beneficial owners therein to recover the same shall be forever barred.

(4) If the banking board finds that the assets will be insufficient for the full discharge of all obligations, or that completion of the liquidation has been unduly delayed, it may take possession and complete the liquidation in the manner provided in this code for involuntary liquidations.

(5) The banking board may require reports of the progress of liquidation. If it is satisfied that the liquidation has been properly completed, it shall cancel the charter and enter an order of dissolution.

Source: L. 2003: Entire article added with relocations, p. 1099, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-101 as it existed prior to 2003.

11-103-802. Involuntary liquidation by banking board - reorganization. (1) (a) Except as otherwise provided in this code, only the banking board may take possession of a state bank if, after a hearing before the banking board, the banking board finds: The bank's capital is inadequate or it is otherwise in an unsound condition; the bank's business is being conducted in an unlawful or unsound manner; the bank is unable to continue normal operations; examination of the bank has been obstructed or impeded; or control of the bank has been assumed by any person or persons convicted of fraud or a felony in this state or any other jurisdiction, or by any partnership, association, or corporation controlled, directly or indirectly, by any person so convicted, unless the banking board determines that such person has been duly rehabilitated or otherwise that the bank will be honestly and efficiently managed.

(b) Notice of hearing shall be mailed by first class mail to the bank and the directors of the bank no less than ten days prior to the hearing. Any proceedings conducted pursuant to this subsection (1) shall be exempt from any provision of law requiring that proceedings of the banking board be conducted publicly.

(2) (a) The commissioner, upon order of the banking board, shall take possession by posting upon the premises a notice reciting that the commissioner is assuming possession pursuant to this code and the time, not earlier than the posting of the notice, when his or her possession shall be deemed to commence. A copy of the notice shall be filed in the district court in and for the county in which the bank is located. The commissioner shall notify the federal reserve bank of the district of taking possession of any state bank that is a member of the federal reserve system and shall notify the federal deposit insurance corporation of taking possession of any state bank that is a member of the federal deposit insurance corporation.

(b) When the commissioner has taken possession of a state bank, the commissioner shall be vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business; to stop or to limit the payment of its obligations; to employ any necessary assistants, including legal counsel; to execute any instrument in the name

of the bank; to commence, defend, and conduct in its name any action or proceeding to which it may be a party; to terminate such possession by restoring the bank to its board of directors; and to reorganize or liquidate the bank in accordance with this code. As soon as practicable after taking possession, the commissioner shall make an inventory of the assets and file a copy thereof with the court in which the notice of possession was filed.

(c) When the commissioner is in possession and while the commissioner's possession continues, there shall be a postponement, until six months after such taking, of the date upon which any period of limitation fixed by statute or agreement would otherwise expire on a claim or right of action of the bank, or upon which a review must be taken, or a pleading, or other document must be filed, by the bank in any pending action or proceeding.

(3) (a) If the banking board determines, after hearing before the banking board, to liquidate the state bank, it shall give notice of its determination by posting upon the premises a notice reciting that the determination has been made to liquidate the bank. A copy of the notice shall be filed in the district court in and for the county in which the bank is located. The commissioner, upon order of the banking board, shall tender to the federal deposit insurance corporation or its successor the appointment as liquidator under section 11-103-805.

(b) If, in the opinion of the banking board, an emergency exists that may result in serious losses to the depositors, it may take possession of a state bank and may immediately appoint the federal deposit insurance corporation or its successor as liquidator in accordance with section 11-103-805 without notice of a hearing. Notice of the banking board's emergency determination shall be posted and filed in the same manner as prescribed in paragraph (a) of this subsection (3). Within ten days after the banking board's emergency determination, the bank or the directors of the bank may file an application with the banking board to rescind its determination. The filing of an application shall not act as a stay of the banking board's action pursuant to this subsection (3). The banking board shall grant the application if it finds that its action was unauthorized and shall rescind its action taking possession and restore the bank to its board of directors. If no application is filed within ten days after the banking board's emergency determination, all action taken by the banking board shall be final.

(c) Notice of hearing shall be mailed by first class mail to the bank and the directors of the bank no less than ten days prior to the hearing. Any proceeding conducted pursuant to this subsection (3) shall be exempt from any provision of law requiring that proceedings of the banking board be conducted publicly.

(d) If the federal deposit insurance corporation or its successor does not accept the tender of appointment as liquidator, the banking board as liquidator shall proceed to liquidate the institution, upon first providing a bond executed by some surety company authorized to do business in this state, running to the people of the state of Colorado, that meets with the approval of the banking board, for the faithful discharge of its duties in connection with such liquidation and the accounting for all moneys coming into its hands. The cost of such bond shall be paid from the assets of the bank. Suit may be maintained on such bond by any person injured by a breach of conditions thereof.

(e) If the commissioner determines to reorganize the state bank or if the banking board, after staying its liquidation, orders such reorganization, the commissioner, after according a hearing to all interested persons, shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who shall not receive payment of his or her claim in full under the plan, together with notice that, unless within fifteen days the plan is

disapproved in writing by persons holding one-third or more of the aggregate amount of such claims, the commissioner will proceed to effect the reorganization. A department, agency, or political subdivision of this state holding a claim that will not be paid in full is authorized to participate as any other creditor.

(4) No judgment, lien, or attachment shall be executed upon any asset of the state bank while it is in the possession of the banking board. Upon the election of the banking board, in connection with a liquidation or reorganization:

(a) Any lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the state bank during the banking board's possession, or within four months prior to commencement thereof, shall be vacated and voided, except liens created by the banking board while in possession and further excepting liens or security interests obtained by the federal reserve bank;

(b) Any transfer of an asset of the state bank made after or in contemplation of its insolvency, with intent to effect a preference, shall be voided.

(5) With the approval of the banking board, the commissioner may borrow money in the name of the state bank and may pledge its assets as security for the loan.

(6) All necessary and reasonable expenses of the commissioner's possession of a state bank and of its reorganization or liquidation shall be defrayed from the assets thereof.

Source: L. 2003: Entire article added with relocations, p. 1101, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-102 as it existed prior to 2003.

11-103-803. Reorganization plan. (1) A plan of reorganization shall not be prescribed under this code unless:

(a) The plan is feasible and fair to all classes of depositors, creditors, and stockholders;

(b) The aggregate face amount of the interest accorded to any class of depositors, creditors, or stockholders under the plan does not exceed the value of the assets upon liquidation, less the full amount of the claims of all prior classes, subject to any fair adjustment for new capital that any class will pay in under the plan;

(c) The plan provides for the issuance of capital stock and, if necessary, debentures and other securities and instruments in an amount that will comply with the rules promulgated by the banking board;

(d) Any exchange of new common stock for obligations or stock of the bank will be effected in inverse order to the priorities in liquidation of the classes that will retain an interest in the bank and upon terms that fairly adjust any change in the relative interests of the respective classes that will be produced by the exchange;

(e) The plan assures the removal of any director, officer, or employee responsible for any unsound or unlawful action or the existence of an unsound condition;

(f) Any merger or consolidation provided by the plan conforms to the requirements of this code.

(2) If, in the course of reorganization, supervening conditions render the plan unfair or its execution impractical, the commissioner, upon approval of the banking board, may modify the plan or liquidate the institution. Any such action shall be taken by order of the banking board upon appropriate notice.

Source: L. 2003: Entire article added with relocations, p. 1103, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-103 as it existed prior to 2003.

11-103-804. Liquidation by commissioner - procedure. (1) In liquidating a state bank, the commissioner may exercise any power thereof, but the commissioner shall not, without the approval of the court in which notice of possession has been filed:

(a) Sell any asset of the bank having a value in excess of five hundred dollars;

(b) Compromise or release any claim if the amount of the claim exceeds five hundred dollars, exclusive of interest;

(c) Make any payment on any claim, other than a claim upon an obligation incurred by the commissioner, before preparing and filing a schedule of the commissioner's determinations in accordance with this code.

(2) Within six months after the commencement of liquidation, the commissioner may, by his or her election, terminate any executory contract for services or advertising to which the state bank is a party, or any obligation of the bank as a lessee. A lessor who receives at least sixty days' notice of the commissioner's election to terminate the lease shall have no claim for rent, other than rent accrued to the date of termination, nor for damages for such termination.

(3) As soon after the commencement of liquidation as is practicable, the commissioner shall take the necessary steps to terminate all fiduciary positions held by the state bank and take such action as may be necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts.

(4) The right of any agency of the United States insuring deposits to be subrogated to the rights of depositors upon payment of their claims shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payments to depositors of national banks.

(5) As soon after the commencement of liquidation as is practicable, the commissioner shall send notice of the liquidation to each known depositor, creditor, and lessee of a safe deposit box and bailor of property held by the bank at the address shown on the books of the institution. The notice shall also be published in a newspaper of general circulation in the county in which the institution is located once a week for three successive weeks. The commissioner shall send with each notice a statement of the amount shown on the books of the institution to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailee, or in a safe deposit box, be withdrawn by the person entitled thereto and the claim of a depositor or creditor, if the amount claimed differs from that stated in the notice to be due, be filed with the commissioner before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(6) Safe deposit boxes, the contents of which have not been removed before the date specified, shall be opened by the commissioner. Sealed packages containing the contents of such box, with a certificate of inventory of contents, together with any unclaimed property held by the bank as bailee and certified inventories thereof, shall be held by the commissioner for six years unless sooner claimed by the person entitled thereto. After six years the commissioner may sell or otherwise appropriately dispose of the property. The proceeds of a sale shall be transferred and disposed of in accordance with the provisions of subsection (11) of this section.

(7) Within six months after the last day specified in the notice for the filing of claims, or within such longer period as may be allowed by the court in which notice of possession has been filed, the commissioner shall:

(a) Reject any claim if he or she doubts the validity thereof;

(b) Determine the amount, if any, owing to each known creditor or depositor and the priority class of such claim under this code;

(c) Prepare a schedule of the commissioner's determinations for filing in the court in which notice of possession was filed;

(d) Notify each person whose claim has not been allowed in full and publish once a week for three successive weeks, in a newspaper of general circulation in the county in which the institution is located, a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty days thereafter, when the commissioner will file the schedule in court.

(8) Within twenty days after the filing of the commissioner's schedule, any creditor, depositor, or stockholder may file an objection to any determination made that adversely affects such objector. Any objections so filed shall be heard and determined by the court upon such notice to the commissioner and interested claimants as the court may prescribe. If the objection is sustained, the court shall direct an appropriate modification of the schedule. After filing the schedule, the commissioner may, from time to time, make partial distribution to the holders of claims that are undisputed or have been allowed by the court if a proper reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the commissioner shall make final distribution.

(9) (a) On liquidation of a state bank, after payment of federal deposit insurance, claims for payment have the following priority:

(I) Obligations incurred by the commissioner, fees and assessments due to the division, and expenses of liquidation, all of which may be covered by a proper reserve of funds;

(II) Claims of depositors having an approved claim against the general liquidating account of the bank;

(III) Claims of general creditors having an approved claim against the general liquidating account of the bank;

(IV) Claims otherwise proper that were not filed within the time prescribed by this code;

(V) Approved claims of subordinate creditors; and

(VI) Claims of stockholders of the bank.

(b) On liquidation of a state bank, after payment of federal deposit insurance, claims by governmental units for payment of uninsured deposits collateralized pursuant to the "Public Deposit Protection Act of 1975", article 10.5 of this title, shall be governed by the provisions of said article. Claims by governmental units for payment of uninsured deposits not collateralized pursuant to article 10.5 of this title shall have the same priority assigned to depositors under subparagraph (II) of paragraph (a) of this subsection (9).

(10) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

(11) Unclaimed funds remaining after completion of the liquidation shall be retained for six years by the commissioner unless sooner claimed by the owner. At the expiration of such period, the remaining sum shall be transferred to the treasury of the county in which the bank is located. The county treasurer and his or her successors shall hold such money in trust for a

period of six years, unless the same is sooner paid out to the beneficial owner or owners thereof, or a suit is instituted to recover such money or a portion thereof. Any money remaining in said fund six years after the same is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the former beneficial owners therein to recover the same shall be forever barred.

(12) When the assets have been distributed in accordance with this code, the commissioner shall file an account with the court. Upon approval thereof, the commissioner shall be relieved of liability in connection with the liquidation, and shall cancel the charter.

Source: L. 2003: Entire article added with relocations, p. 1104, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-104 as it existed prior to 2003.

11-103-805. Federal deposit insurance corporation or successor as liquidator. (1) The federal deposit insurance corporation, created by section 12B of the "Federal Reserve Act", as amended, or its successor is authorized to act without bond as liquidator of any banking institution, the deposits in which are to any extent insured by said corporation or its successor pursuant to section 11-103-802.

(2) Pursuant to section 11-103-802, the commissioner, upon order of the banking board, shall tender to said corporation or its successor the appointment as liquidator of such banking institution.

(3) After being notified in writing of the acceptance of such an appointment, the commissioner shall file in the office of the clerk and recorder in the county in which the bank is situated a certificate evidencing the appointment of the federal deposit insurance corporation or its successor. Upon such an appointment, the possession of all the assets, business, and property of such bank of every kind and nature, wheresoever situated, shall be deemed transferred from such bank and the banking board to the federal deposit insurance corporation or its successor. Without the execution of any instruments of conveyance, assignment, transfer, or endorsement, the title to all such assets and property shall be vested in the federal deposit insurance corporation or its successor, and the banking board and the commissioner shall be forever thereafter relieved from all responsibility and liability in respect to the liquidation of such bank; except that the banking board may retain jurisdiction over and responsibility for liquidation of eligible collateral pledged pursuant to the "Public Deposit Protection Act", article 10.5 of this title, to secure public deposits not insured by the federal deposit insurance corporation or its successor.

(4) If the corporation or its successor accepts said appointment, it has all the powers and privileges provided by the laws of this state with respect to the liquidation of a banking institution, its depositors, and other creditors.

(5) (a) When a state bank is liquidated, after payment of federal deposit insurance, claims for payment shall have the following priority:

(I) Obligations incurred by the banking board, fees and assessments due to the division of banking, and expenses of liquidation, all of which may be covered by a proper reserve of funds;

(II) Claims of depositors having an approved claim against the general liquidating account of the bank;

(III) Claims of general creditors having an approved claim against the general liquidating account of the bank;

(IV) Claims otherwise proper that were not filed within the time prescribed by this code;

(V) Approved claims of subordinate creditors; and

(VI) Claims of stockholders of the bank.

(b) When a state bank is liquidated, after payment of federal deposit insurance, claims of official custodians of public funds for payment of uninsured public funds pursuant to the "Public Deposit Protection Act", article 10.5 of this title, shall be governed by the provisions of this subsection (5). In the event that the state bank holds collateral that is pledged for the safekeeping and protection of uninsured public funds on deposit pursuant to article 10.5 of this title, such collateral shall be considered to be held in trust on behalf of the official custodian, and the liquidator shall not use such collateral to pay any claim or liability other than that of the official custodian until all claims for uninsured public funds have been paid. In the event that such collateral is insufficient to pay all claims made by official custodians, the payment of such claims shall be made according to a pro rata formula. Claims by official custodians for payment of uninsured deposits not collateralized pursuant to article 10.5 of this title shall have the same priority as that assigned to depositors under subparagraph (II) of paragraph (a) of this subsection (5).

Source: L. 2003: Entire article added with relocations, p. 1106, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-105 as it existed prior to 2003.

Cross references: For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.

11-103-806. Assets sold or pledged as security. (1) With respect to any banking institution closed on account of inability to meet the demands of its depositors or by action of the banking board or by action of its directors or in the event of its capital inadequacy or suspension, the liquidator of such institution may borrow from the federal deposit insurance corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, but, if said corporation is acting as such liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Upon the order of a court of record of competent jurisdiction, all or any part of the assets of such institution may be sold.

(2) The provisions of this section shall not be construed to limit the power of any banking institution, the commissioner, or the liquidators to pledge or sell assets in accordance with any existing law.

Source: L. 2003: Entire article added with relocations, p. 1107, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-106 as it existed prior to 2003.

11-103-807. Enforcement of directors' liability. Among its other powers, the federal deposit insurance corporation, in the performance of its powers and duties as such liquidator, has the right and power, upon the order of a court of record of competent jurisdiction, to enforce the individual liability of the directors of any such banking institution.

Source: L. 2003: Entire article added with relocations, p. 1108, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-107 as it existed prior to 2003.

11-103-808. Emergency grant of new charter. In addition to powers regarding liquidation or reorganization, the banking board may, in the interest of protecting the public and the depositors of a closed state bank or national banking association with its principal office in this state, issue a new bank charter to qualified individuals for the same location as the closed bank, contingent upon the new bank assuming full liability for such deposits of the closed bank as may be transferred to it. Under such conditions, a new charter may be issued summarily without the publication of notice, without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this code.

Source: L. 2003: Entire article added with relocations, p. 1108, § 3, effective July 1.

Editor's note: This section is similar to former § 11-5-108 as it existed prior to 2003.

11-103-809. Emergency grant of branch facility - legislative declaration. (1) The general assembly hereby finds, determines, and declares that the economy of this state and its communities and the public interest will be better served by permitting financial institutions, as defined in section 11-101-401 (35), to operate at the same location as a closed bank.

(2) (a) In addition to powers regarding liquidation or reorganization, the banking board, in the interest of protecting the public and the depositors of a closed bank or national banking association with its principal place of business in this state, may issue an emergency grant of authority to another financial institution, which financial institution has acquired assets and liabilities of the closed bank, to operate a branch facility at the same location as the closed bank, or within a one-half mile radius of the location of the nearest point on the boundary of the premises of the closed bank's place of business, contingent upon the bank assuming full liability for the deposits of the closed bank as may be transferred to it. Such branch facility shall not be located at any other location if the other location is within three hundred feet of the boundary of the premises of another bank unless the other bank consents to a closer location.

(b) Under such conditions, the authority to operate the branch facility may be issued summarily without the publication of notice, without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this code.

(3) No financial institution may hold, acquire, control, or operate more than two branch facilities pursuant to this section; however, if the banking board determines that, because of this limitation, no qualified financial institution can bid on the assets and liabilities of the closed bank, the banking board may authorize and issue such an emergency grant to another financial institution, in excess of such limit, but in no event more than two additional branch facilities.

(4) Notwithstanding any other provision of this section, a branch facility operated pursuant to this section on or before August 1, 1991, may continue to operate in perpetuity as a branch without being subject to any percentage limitation on branches as set forth in section 11-105-602.

Source: L. 2003: Entire article added with relocations, p. 1108, § 3, effective July 1. **L. 2013:** (2)(a) amended, (SB 13-154), ch. 282, p. 1466, § 14, effective July 1.

Editor's note: This section is similar to former § 11-5-109 as it existed prior to 2003.

11-103-810. Preapproved shelf charter. The board may preapprove a shelf charter for a new bank to qualified individuals, contingent upon the new bank completing all specified requirements and purchasing the assets and assuming the liabilities of a bank in receivership as the federal deposit insurance corporation may determine, if the proposed bank has its principal place of business in Colorado and has assets and liabilities held in receivership by the federal deposit insurance corporation. The shelf charter may be preapproved and summarily issued without publication of a notice, without the holding of a public hearing, and without complying with all of the other provisions and procedures specified in this code. Upon federal deposit insurance corporation approval of the purchase and assumption by the new bank, the final charter approval may be granted, together with final approval of deposit insurance by the federal deposit insurance corporation. If the bid is not accepted by the federal deposit insurance corporation, the charter remains on the shelf for up to eighteen months. During that time, the charter may be used for other bids.

Source: L. 2009: Entire section added, (HB 09-1053), ch. 159, p. 688, § 4, effective August 5.

ARTICLE 104

Holding Companies

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 1

HOLDING COMPANIES GENERALLY

11-104-101. Prohibition on acquisition or control - limited service banking institutions. Notwithstanding any other provision of law, no bank holding company or other company may acquire or control any banking institution located in this state that does not both accept deposits that the depositor has a legal right to withdraw on demand and engage in the business of making commercial loans.

Source: L. 2003: Entire article added with relocations, p. 1109, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6.3-101 (2) as it existed prior to 2003.

PART 2

ACQUISITION OF CONTROL OF BANKS
AND BANK HOLDING COMPANIES

Law reviews: For article, "Interstate Banking Comes to Colorado", see 17 Colo. Law. 1089 (1988).

11-104-201. Legislative declaration. (1) The general assembly finds, determines, and declares that, in authorizing expansion of interstate banking to this state, primary consideration should be given to providing positive benefits for the people of this state; to affording protection to bank depositors in this state; to enhancing the opportunity of the people of this state to receive services provided by banks and bank holding companies; and to setting forth the standards under which out-of-state bank holding companies may acquire or control Colorado banks and bank holding companies.

(2) In order to comply with the considerations set forth in subsection (1) of this section with respect to interstate branch banking, the general assembly finds and declares that de novo interstate branching into or out of this state is expressly authorized on or after July 1, 2013, and that interstate branching through the acquisition of one or more branches of an insured financial institution in this state or another state is expressly authorized on or after July 1, 2013.

Source: L. 2003: Entire article added with relocations, p. 1109, § 3, effective July 1. **L. 2013:** (2) amended, (SB 13-154), ch. 282, p. 1465, § 10, effective July 1.

Editor's note: This section is similar to former § 11-6.4-101 as it existed prior to 2003.

11-104-202. Acquisition of control of bank holding companies and banks by bank holding companies in different states - interstate banking and branching - rules. (1) A Colorado bank holding company may acquire control of out-of-state bank holding companies and out-of-state banks; and, subject to the limitations of subsections (2) to (6) of this section, an out-of-state bank holding company may acquire control of Colorado financial institutions.

(2) An out-of-state bank holding company may, after July 1, 2013, acquire control of, merge with, or acquire all or substantially all of the assets of, a Colorado depository institution having its principal place of business in Colorado. An out-of-state bank holding company acquiring control of a Colorado bank holding company or thrift holding company may, after July 1, 2013, acquire control of or merge with any Colorado depository institution controlled by the Colorado bank holding company or thrift holding company.

(3) A bank holding company may acquire control of any Colorado bank by organizing or seeking to charter a de novo Colorado bank.

(4) A bank holding company may not acquire control of any financial institution if such acquisition of control will result, at the time of such acquisition, in the bank holding company controlling more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado, which are federally insured. For the purpose of this subsection (4), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency.

(5) A bank holding company may not acquire control of a Colorado financial institution unless, immediately before such acquisition, such bank holding company has such capital as the banking board may require by rule.

(6) Interstate branching through the acquisition of a branch of an insured financial institution without the acquisition of such financial institution is expressly authorized. De novo interstate branching is expressly authorized. Deposit production offices are expressly prohibited.

(7) No bank holding company may acquire control of any financial institution that controls a Colorado financial institution except in accordance with the provisions of this section and with prior approval of the federal reserve board under section 3(a) of the federal "Bank Holding Company Act", 12 U.S.C. sec. 1842(a).

(8) A bank or bank holding company that intends to acquire control of any Colorado financial institution or to conduct interstate branching in Colorado shall provide the banking board with the name or names under which it proposes to conduct the business of such bank, bank holding company, or branch. The bank or bank holding company shall not be eligible to conduct interstate branching or make any such acquisition if the proposed name is either:

(a) Identical to or deceptively similar to the name of any existing Colorado financial institution; except that this paragraph (a) shall not apply if the bank or bank holding company obtains express written consent of the affected existing Colorado financial institution; or

(b) Likely to cause the public to be confused, deceived, or mistaken.

(9) Concurrently with the filing of its application or notice with the appropriate federal or state regulatory agency concerning the acquisition, merger, or control of a Colorado financial institution, or concerning an interstate branch, a bank or bank holding company shall file a copy of the application or notice with the banking board, which may submit advisory comments to the appropriate federal or state regulatory agency.

(10) A bank or bank holding company shall not conduct interstate branching in Colorado, merge with, or acquire control, directly or indirectly, of any Colorado financial institution without first obtaining a certificate from the banking board certifying that such branch, merger, or acquisition complies with this article and the "Public Deposit Protection Act", article 10.5 of this title.

Source: L. 2003: Entire article added with relocations, p. 1110, § 3, effective July 1. **L. 2013:** (2), (3), (6), (9), and (10) amended, (SB13-154), ch. 282, pp. 1465, 1484, §§ 11, 53, effective July 1.

Editor's note: (1) This section is similar to former § 11-6.4-103 as it existed prior to 2003.

(2) Amendments to subsection (2) by sections 11 and 53 of Senate Bill 13-154 were harmonized.

11-104-203. Authority of banking board to enforce provisions of article. (1) Any bank holding company controlling any other bank holding company or bank pursuant to this code in this state is, for purposes of enforcing this article, subject to the jurisdiction of the banking board with respect to its operations and affairs in the state of Colorado. The banking board may utilize the applicable powers conferred by this code and the "Public Deposit Protection Act", article 10.5 of this title, to carry out the duties imposed by this section.

(2) The banking board shall have the authority to examine the records and affairs of any bank holding company filing an application to acquire control of a Colorado bank or Colorado bank holding company pursuant to this article. The banking board shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath, and examine any person under oath in connection with any subject relating to a duty imposed upon, or power vested in, the banking board pursuant to this section. In case of a refusal of any person to comply with a lawful subpoena or order of the banking board issued pursuant to this section, upon proper petition by the banking board to the district court, the court shall require compliance therewith, and further refusal shall be punishable as contempt of court.

(3) The banking board may, after notice and hearing pursuant to article 4 of title 24, C.R.S., order any person to cease and desist from violating any provision of this article.

(4) The banking board may, after notice and hearing pursuant to article 4 of title 24, C.R.S., order any bank holding company controlling any other bank holding company or any bank in this state in violation of the provisions of this article to divest its interest in any such bank holding company or bank.

Source: L. 2003: Entire article added with relocations, p. 1111, § 3, effective July 1. **L. 2013:** (1) amended, (SB 13-154), ch. 282, p. 1482, § 47, effective July 1.

Editor's note: This section is similar to former § 11-6.4-104 as it existed prior to 2003.

ARTICLE 105

Banking Practices

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

PART 1

GENERAL PROVISIONS

11-105-101. Branch banks and practices prohibited. (1) Any state bank or state bank chartered in another jurisdiction, upon application to and approval by the banking board, may operate one or more loan production offices as defined by the banking board.

(2) For purposes of this subsection (2), "elementary school" means any public or private school with students in kindergarten through eighth grade. A bank that both opens accounts and accepts students' deposits at elementary schools in conjunction with other educational programs presented by the bank is not engaged in branch banking as defined in section 11-101-401 (10). Any bank establishing a location in an elementary school pursuant to this section shall receive the prior approval of the banking board. Approval shall be granted if the program is predominantly educational.

(3) Any other facility, agency, or paying or receiving station operated by any bank or agent shall constitute a branch within the meaning of this section. Any facility authorized by the United States treasury department shall not be subject to the limitations of this section.

(4) As authorized under section 10-2-601 (2), C.R.S., any bank may, pursuant to federal law or under such rules as may be prescribed by the banking board and subject to rules promulgated by the commissioner of insurance concerning the sale of insurance by financial institutions as provided in section 10-2-601, C.R.S., as such laws and rules are applicable to the bank, depending upon whether such bank is a national bank or a state bank, act as the agent for any fire, life, or other insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For services so rendered, such bank may receive such fees or commissions as may be agreed upon between the bank and the insurance company for which it may act as agent. For purposes of this subsection (4), "bank" shall have the same meaning as set forth in section 11-101-401 (3).

(5) Except as provided in the federal "Gramm-Leach-Bliley Act", as amended, Pub.L. 106-102, 113 Stat. 1388, it is unlawful for a bank or an officer, director, employee, or affiliate of a bank to engage in the business of issuing, floating, underwriting, distributing, or promoting the sale of stocks, bonds, or other securities or to be an officer, trustee, director, employee, stockholder, or partner of any person engaged principally in any such business. Additional exceptions to this section shall be securities issued or guaranteed as to principal and interest by the United States or any agency thereof or by a state or territory of the United States or a subdivision, instrumentality, or public authority organized under the laws of such state or territory or pursuant to an interstate compact between two or more states.

(6) Except as expressly permitted in this code, a state bank shall not assume liability as an insurer, nor shall it become a guarantor or endorser of any security instrument or obligation in which, or with respect to which, it has no property interest.

(7) No officer, director, employee, or agent of a state bank shall maintain, or authorize the maintenance of, any account of the bank in a manner that, to his or her knowledge, does not conform to the requirements prescribed by this code or by the commissioner or the banking board.

(8) No officer, director, employee, or agent of a state bank shall obstruct, or endeavor to obstruct, a lawful examination of the institution by an officer or employee of the division.

Source: L. 2003: Entire article added with relocations, p. 1112, § 3, effective July 1. **L. 2004:** (1) amended, p. 323, § 5, effective April 7. **L. 2007:** (5) amended, p. 2021, § 14, effective June 1. **L. 2013:** (1) amended, (SB 13-154), ch. 282, p. 1466, § 12, effective July 1.

Editor's note: This section is similar to former § 11-6-101 as it existed prior to 2003.

11-105-102. Accounts and interest. (1) A state bank may maintain demand, savings, and time deposit accounts and any type of account that a national bank may maintain.

(2) Savings deposits shall be repaid to the depositors under such rules as the board of directors of the state bank shall, from time to time, prescribe. Such rules shall be conspicuously exposed in some place accessible and visible in the business office of the state bank. No alterations that may at any time be made in the rules shall in any manner affect the rights of a depositor within the contract period in respect to deposits made previous to such alteration.

(3) The banking board may by rule establish the maximum annual rate of interest that a state bank may pay on any type of deposit or account. In the absence of such rule, a state bank shall be subject only to applicable federal law in the payment of interest.

Source: L. 2003: Entire article added with relocations, p. 1113, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-102 as it existed prior to 2003.

11-105-103. Saturday closing - notice - effect. Any state bank or trust company, national banking association, or federal reserve bank may, by brief notation on its front door, fully dispense with, or restrict to such extent as it may determine, the hours within which it will be open for business on all, or less than all, Saturdays. However, the fact that a bank remains open for business on all, or less than all, Saturdays shall not make that day, or any part thereof, a banking day for the purposes of section 4-4-104 (a)(3), C.R.S., of the "Uniform Commercial Code". Any plan so adopted by any such organization may be changed by it from time to time in its discretion. Every Saturday on which any such state bank, national banking association, or federal reserve bank, in observance of such notation, is not open for business shall be, with respect to the particular organization, the equivalent of a legal holiday, as specified in section 24-11-101, C.R.S. Any act authorized, required, or permitted to be performed at, by, or with respect to such organization on a Saturday that is for it a holiday may be performed on the next succeeding business day, notwithstanding the provisions of any other law of this state to the contrary, and no liability or loss of right of any kind shall result from such delay. The provisions of this section shall not operate to invalidate or prohibit the doing on any Saturday of any such act by any person or organization referred to in this section.

Source: L. 2003: Entire article added with relocations, p. 1114, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-103 as it existed prior to 2003.

11-105-104. Minor or institutional deposits. (1) A bank may operate a deposit account for a minor with the same effect upon its liability as if the minor were of full age unless such minor's guardian or conservator files with the bank a certified copy of the order of a Colorado court having jurisdiction appointing him or her and directs otherwise.

(2) Subject to such rules, not in conflict with section 11-105-101, as the banking board may prescribe for the protection of depositors, a bank may contract with the proper authorities of any public or nonpublic elementary or secondary school or any public or charitable institution caring for minors for the participation by the bank in any school or institutional thrift or savings plan.

Source: L. 2003: Entire article added with relocations, p. 1114, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-104 as it existed prior to 2003.

11-105-105. Joint deposits - right of survivor. Except as to accounts, which are defined in and which shall be paid as provided in article 15 of title 15, C.R.S., when a bank deposit in any bank transacting business in this state is made in the names of two or more persons payable to them or to any of them, such deposit, or any part thereof or interest thereon, may be paid to any one of said persons whether the others are living or not, and the receipt or acquittance of the person so paid shall be valid and sufficient discharge to the paying bank from

all said persons and their heirs, executors, administrators, and assigns; such deposit shall be deemed, so far as the rights and liabilities of the bank are concerned, to be owned by said persons in joint tenancy with the right of survivorship, but the bank has the right of setoff against such deposit, to the extent thereof, to collect a debt owed to the bank by any joint depositor, which right shall not be affected by death.

Source: L. 2003: Entire article added with relocations, p. 1114, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-105 as it existed prior to 2003.

11-105-106. Final adjustment - statement of account. (1) When a statement of account has been rendered by a bank to a depositor and accompanied by vouchers, if any, that are the basis for debit entries in such account, or when the depositor's passbook or savings account book has been written up by the bank, showing the condition of the depositor's account, and delivered to such depositor with like accompaniment of vouchers, if any, such account shall, after the period of one year from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed. Such depositor shall thereafter be barred from questioning the correctness of such account for any cause.

(2) Nothing in this section shall be construed to relieve the depositor from the duty of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty.

(3) A statement of account may be rendered to a depositor by mailing such statement, with supporting vouchers, if any, to such depositor's address as shown on the books of the bank.

Source: L. 2003: Entire article added with relocations, p. 1115, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-106 as it existed prior to 2003.

11-105-107. Adverse claim deposits. (1) Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person, or to securities or other property deposited by any person with the bank, shall not be effectual to cause said bank to recognize said adverse claimant, unless said adverse claimant shall also either procure a restraining order, injunction, or other appropriate process against and served upon said bank from a court of competent jurisdiction in an action instituted by said adverse claimant wherein the person to whose credit the deposit stands or for whose account the securities or other property are held is made a party and served with summons or shall comply with subsection (2) of this section.

(2) Such adverse claimant, in lieu of a court order, shall execute to said bank, in form and amount and with sureties acceptable to it, a bond indemnifying said bank from all liability, loss, damage, costs, and expenses, whether on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank or on account of the delivery of said securities or other property to the adverse claimant or the refusal to comply with any order of the depositor of the securities or property held, as the case may be.

(3) This section shall not apply in any instance where the person to whose credit the deposit stands or for whose account the securities or other property is held, is a fiduciary designated as such by words indicating the deposit or other property is, or the securities are, held for the benefit of such adverse claimant, and the facts showing reasonable cause of belief on the part of said claimant that the fiduciary is about to misappropriate such deposit, securities, or other property are made to appear by the affidavit of such claimant.

Source: L. 2003: Entire article added with relocations, p. 1115, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-107 as it existed prior to 2003.

11-105-108. Transmitting money - foreign exchange. (1) A bank may accept money for transmission and may transmit money.

(2) A bank may buy and sell foreign exchange to the extent necessary to meet the needs of customers.

Source: L. 2003: Entire article added with relocations, p. 1116, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-108 as it existed prior to 2003.

11-105-109. Temporary closing of banks - when. (1) Any bank doing business in this state may remain closed on any day on which, by reason of an occasion of national mourning or rejoicing or national or local emergency affecting the community in which such bank is located, the governor shall by proclamation request the people of the state or of said community to close their places of business.

(2) If the banking board is of the opinion that an emergency exists affecting banks located in the state or in any part thereof, it may authorize banks located in the area affected by the emergency to close any or all of their offices, and it shall make public announcement of such authorization. In addition, if the banking board is of the opinion that an emergency exists that affects a particular bank or a particular office thereof, but not banks located in the area generally, it may authorize the particular bank or office so affected to close. As used in this subsection (2), the word "emergency" shall include any condition that may interfere with the conduct of the normal operations of, or the transportation of employees to or from, a bank or one or more offices thereof, or that poses an existing or imminent threat to the safety or security of bank personnel or property, including without limitation conditions arising by reason of fire, flood, windstorm, snowstorm, or other casualty, interruption of transportation or power facilities, war or other enemy action, riots, civil commotion, or other acts of lawlessness or violence.

(3) If the officers of a bank are of the opinion that conditions exist that pose an existing or imminent threat to the safety or security of bank personnel or property generally or at any one or more offices thereof, they may close the bank or the office affected by such threat, as the case may be, irrespective of whether the governor or the banking board has acted under this section. As used in this section, the word "officers" shall mean the person designated by the board of directors, board of trustees, or other governing body of a bank to act for the bank in carrying out the provisions of this section or, in the absence of any such designation or the officer so designated, the president or any other officer currently in charge of the operations of the bank or

of the office in question. A bank closing an office pursuant to this section shall give as prompt notice to the banking board of such action as conditions permit.

(4) Any bank or office thereof that is closed by action of the banking board under this section may remain closed until it declares that the emergency has ended. Any bank or office thereof that is closed by decision of the officers of the bank may remain closed until such officers determine that the threat has ended. In either event, any bank or office thereof may remain closed for such further time thereafter as may reasonably be required to reopen, but in any event not later than the normal time of opening on the next business day.

(5) Any day on which a bank remains closed and any day on which a bank or any one or more of its offices is closed during any part or all of its normal banking hours, by decision of the banking board or by decision of its officers, shall be, with respect to such bank, or if not all of its offices are closed, then with respect to those offices that are closed, the equivalent of a legal holiday, as specified in section 24-11-101, C.R.S., and any act authorized, required, or permitted to be performed at or by or with respect to such bank or such office, as the case may be, on such day may be performed on the next succeeding business day without any liability or loss of rights resulting from such delay.

Source: L. 2003: Entire article added with relocations, p. 1116, § 3, effective July 1.

Editor's note: This section is similar to former § 11-6-109 as it existed prior to 2003.

11-105-110. Disclosure of information pursuant to legal process. Any bank, savings and loan association, credit union, or any agent or employee of such financial institutions that makes a disclosure of records or information on the direction contained in a lawful notice, subpoena, written request, search warrant, grand jury subpoena, or other process issued by any governmental authority or by a court is not civilly or criminally liable for such disclosure, nor is the financial institution liable to the customer or any other person for such disclosure.

Source: L. 2003: Entire article added with relocations, p. 1117, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1484, § 54, effective July 1.

Editor's note: This section is similar to former § 11-6-113 as it existed prior to 2003.

11-105-111. Trust account - limited documentation required - certificate of trust. (1) For any transaction with any bank transacting business in this state by one or more persons expressly acting as a trustee or trustees for one or more other named person or persons pursuant to or purporting to be pursuant to a written trust agreement, a trustee may provide the bank with a certificate of trust to evidence the trust relationship. The certificate of trust must be a duly acknowledged affidavit or other written statement expressly made under penalty of perjury executed by any trustee and must include the following:

(a) A statement that the trust exists and the date the trust instrument was executed;

(b) The identity of the settlor;

(c) The identity and address of the current acting trustee;

(d) The powers of the trustee in the pending transaction;

(e) A statement whether the trust is revocable and the identity of any person holding the power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or fewer than all cotrustees are required in order to exercise the powers of the trustee;

(g) The name in which title to trust property may be taken; and

(h) Any other information that may be required by the bank, including an indemnification that is acceptable to the bank.

(2) If a bank decides to accept a certificate of trust pursuant to this section:

(a) For a transaction that consists of opening a deposit account, the bank may administer the account in accordance with the certificate of trust without requiring receipt of a copy of the written trust agreement; and

(b) For a transaction that consists of obtaining, guaranteeing, or encumbering trust property to secure a loan, or entering into any agreement with a bank, the trustee or trustees shall be conclusively presumed to have had the authority specified in the trust certificate for purposes of determining whether the trustees were acting within their authority in entering into, or causing the trust to enter into, a transaction, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(3) If a bank decides to accept a certificate of trust in opening a deposit account pursuant to this section, upon the death, resignation, or adjudication of incompetence of all named trustees and successor trustees noted on the certificate of trust, the bank may withhold disposition of any funds on deposit in the account until receipt of one of the following:

(a) An order by a court of competent jurisdiction directing the disposition of funds;

(b) A newly executed certificate of trust created pursuant to this section from a person acting or purporting to act as a newly appointed successor trustee under the same trust; or

(c) Other documentation that establishes to the satisfaction of the bank the manner in which the funds are to be administered or distributed.

(4) If a bank decides to accept a certificate of trust in opening a deposit account pursuant to this section, the bank shall not be liable for administering the account as provided by the certificate of trust, even if the certificate of trust is contrary to the terms of the written trust agreement, unless the bank has actual knowledge that the terms of the written trust agreement are contrary to the terms of the certificate of trust.

(5) Nothing in this section obligates a bank to enter into a transaction with a trustee who refuses to furnish the bank with a copy of a written trust agreement. In addition, nothing in this section shall be construed to prohibit a bank from requesting additional information in order to enter into a transaction with a trustee, including a request that the certificate of trust be executed by all trustees.

(6) Knowledge of the terms of a written trust agreement may not be inferred solely from the fact that a copy of all or part of a written trust agreement is held by the person relying upon the certification or affidavit.

Source: L. 2004: Entire section added, p. 453, § 1, effective July 1. **L. 2017:** Entire section amended, (HB 17-1157), ch. 77, p. 240, § 1, effective March 23.

11-105-112. Entity account - certificate of existence and authority - definitions. (1) For any deposit or loan account that is opened by one or more persons acting or purporting to act for or on behalf of an entity with any financial institution transacting business in this state, such person may provide the financial institution with a certificate to evidence the existence of the entity and the authority of such person to act for or on behalf of the entity with respect to the account. The certificate of existence and authority shall be an affidavit executed by such person and shall include the following, as applicable:

(a) The name and mailing address of the entity;

(b) The type of entity and the state, country, or other governmental authority under whose laws the entity was formed;

(c) The organization date of the entity;

(d) The name, mailing address, and office or other position held by the person executing the certificate; and

(e) A statement that the board of directors, managers, members, general partners, or other governing body of the entity opening the account has duly taken all action legally required to open the account in the name of the entity and the name, office, or other position of the person who has been duly authorized to engage in transactions with respect to the account, including any limitation that may exist upon the authority of such person to bind the entity and any other matters concerning the manner in which such person may deal with the account. If the deposit or loan is to be opened on behalf of an institution of higher education, the statement shall be accompanied by a resolution certified by the secretary of the governing board.

(2) If a financial institution accepts a certificate of existence and authority pursuant to this section, the financial institution may open and administer the account in accordance with the information set forth therein and shall not be liable for so doing even if any such information is inaccurate, unless the financial institution has actual knowledge of such inaccuracy or knowledge sufficient to cause a reasonably prudent person to doubt the accuracy of such information.

(3) Nothing in this section shall be construed to prohibit a financial institution from requesting additional information or requiring other agreements in order to establish a deposit or loan account for an entity, including without limitation a resolution, certificate of good standing, trade name registration, request for taxpayer identification number, entity agreements, or documents or parts thereof evidencing the existence of the entity or the authority of the person executing the certificate, and an indemnification that is acceptable to the financial institution.

(4) As used in this section, unless the context otherwise requires:

(a) "Entity" means any government or governmental subdivision or agency, and any domestic or foreign corporation, limited liability company, general partnership, limited partnership, limited partnership association, limited liability partnership, limited liability limited partnership, joint venture, cooperative, association, or other legal entity, whether operated for profit or not for profit.

(b) "Financial institution" means any federal or state chartered commercial bank, savings and loan association, savings bank, or credit union.

Source: L. 2007: Entire section added, p. 359, § 1, effective April 2. **L. 2013:** (4)(b) amended, (SB 13-154), ch. 282, p. 1484, § 55, effective July 1.

PART 2

ELECTRONIC FUNDS TRANSFERS

11-105-201. Short title. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1117, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 29, § 1, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-101 as it existed prior to 2003.

11-105-202. Legislative declaration. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1117, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 29, § 2, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-102 as it existed prior to 2003.

11-105-203. Conditions of authority. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1117, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 29, § 3, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-104 as it existed prior to 2003.

11-105-204. Conditions for retailers. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1118, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 30, § 4, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-105 as it existed prior to 2003.

11-105-205. Powers of the banking board. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1119, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 31, § 5, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-106 as it existed prior to 2003.

11-105-206. Jurisdiction of the district court. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1119, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 31, § 6, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-107 as it existed prior to 2003.

11-105-207. Fees. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1119, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 32, § 7, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-108 as it existed prior to 2003.

11-105-208. Consumer protection. (1) Every Colorado bank using a communications facility shall provide its account holders, at the time the facility is used, with a receipt or record of each banking transaction initiated at a facility. Such receipt or record shall be admissible as evidence in any legal action or proceeding and shall constitute prima facie proof of the banking transaction evidenced by such receipt or record. When a Colorado bank furnishes a statement of a demand, savings, or loan account to an account holder, such statement shall reflect each banking transaction affecting such account made by the account holder at a communications facility during the period covered by the statement.

(2) With respect to any card or other device issued to an account holder for use at a communications facility, any account holder whose card or device is lost or stolen and subsequently used by an unauthorized person shall only be liable for the lesser of fifty dollars or the amount of money, goods, or services obtained by the unauthorized use prior to notice to the Colorado bank that issued the card or device of the theft or loss. If the unauthorized use occurs through no fault of the account holder, no liability shall be imposed on the account holder.

(3) No account holder shall be held liable for any loss occurring as the result of any tampering or manipulation of a communications facility unless such account holder performs or authorizes such acts.

(4) Commercial banks shall continue to offer customers the right to use checking accounts. No bank shall make the use of such accounts burdensome with intent to discourage such use. The banking board shall issue rules designed to prevent violation of this provision.

(5) (a) No agreement to operate or share a communications facility may prohibit, limit, or restrict the right of the operator or owner of the communications facility to charge a customer conducting a transaction using an account from a foreign bank a usual and customary access fee or surcharge unless prohibited under state or federal law.

(b) Notwithstanding paragraph (a) of this subsection (5), nothing in this section may be construed to prohibit, limit, or otherwise restrict the right of the operator or owner of a communications facility from voluntarily entering into an agreement to participate in a surcharge-free network.

Source: L. 2003: Entire article added with relocations, p. 1119, § 3, effective July 1. **L. 2007:** (5) added, p. 605, § 1, effective August 3.

Editor's note: This section is similar to former § 11-6.5-109 as it existed prior to 2003.

11-105-209. Permissive sharing among dissimilar institutions. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1120, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 32, § 8, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-110 as it existed prior to 2003.

11-105-210. No operation by bank employees. (Repealed)

Source: L. 2003: Entire article added with relocations, p. 1120, § 3, effective July 1. **L. 2006:** Entire section repealed, p. 32, § 9, effective August 7.

Editor's note: Prior to its repeal, this section was similar to former § 11-6.5-111 as it existed prior to 2003.

PART 3

RESERVES, LOANS, AND INVESTMENTS

11-105-301. Reserves against deposits. State banks that are subject to reserve provisions of the "Federal Reserve Act" shall maintain such reserves against deposits as may be required by the "Federal Reserve Act", but, in addition thereto, the banking board may by rule impose reserve requirements that it deems prudent and sound on said banks or on state banks not subject to reserve provisions of the "Federal Reserve Act".

Source: L. 2003: Entire article added with relocations, p. 1120, § 3, effective July 1.

Editor's note: This section is similar to former § 11-7-101 as it existed prior to 2003.

Cross references: For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.

11-105-302. Loans, acceptances, investments, and letters of credit. A state bank may make such loans, secured or unsecured, accept such drafts, make such investments, and issue such letters of credit as shall be permissible pursuant to rules promulgated by the banking board or otherwise permitted by this code. In promulgating such rules the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102.

Source: L. 2003: Entire article added with relocations, p. 1121, § 3, effective July 1.

Editor's note: This section is similar to former § 11-7-102 as it existed prior to 2003.

11-105-303. Corporate powers - interest and charges. In addition to the general corporate powers granted by this code, a state bank has the power, subject to the limitations and restrictions imposed by this code and the rules of the banking board, to lend money either upon the security of real property or personal property, or otherwise; to charge, or to receive in advance, interest therefor; and to contract for a charge for a secured or unsecured installment loan.

Source: L. 2003: Entire article added with relocations, p. 1121, § 3, effective July 1.

Editor's note: This section is similar to former § 11-7-103 as it existed prior to 2003.

11-105-304. Bank investments - customers' orders. (1) In addition to other investments, expressly authorized by this code or the rules promulgated by the banking board, a state bank may purchase:

(a) Obligations that satisfy the requirements of this code or the rules promulgated by the banking board for loans;

(b) Obligations of, or fully guaranteed by, the United States, a state of the United States, or the Dominion of Canada;

(c) Obligations of the international bank for reconstruction and redevelopment;

(d) Farm loan bonds issued by any federal land bank organized pursuant to an act of congress approved July 17, 1916, entitled: "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes." and known as the "Federal Farm Loan Act", and acts amendatory thereto. Such farm loan bonds shall be accepted as security for all public deposits and in all cases where bonds are required by law to be deposited with any department or public official of this state, but this section shall not be so construed as to prohibit such moneys or deposits from being invested in such other securities provided for by law.

(e) General obligations of a territory of the United States, a province of the Dominion of Canada, a political subdivision or instrumentality of a state or territory of the United States;

(f) Obligations of a corporation chartered by the United States or a state thereof doing business in the United States; an authority organized under state law, an interstate compact, or by substantially identical legislation adopted by two or more states if any of the foregoing under this paragraph (f) are approved by the banking board for investment;

(g) Revenue obligations issued to provide, enlarge, or improve electric power, gas, water, and sewer facilities by any city or town having a population of not less than two thousand people at the time of the investment, located in any state in the United States or territories thereof;

(h) Such other obligations as the general assembly has designated or may from time to time designate as legal investments for public funds.

(2) A state bank may invest an amount not exceeding ten percent of its capital as defined in the rules promulgated by the banking board in the stock of a corporation exclusively engaged in trust business and incorporated as a trust company under article 109 of this title, but every such investment shall be subject to prior approval of the banking board.

(3) A state bank's investment in the stock of a safe deposit company is governed by section 11-105-501.

(4) A state bank may purchase or sell without recourse any security, including corporate stock, upon the order of a customer and for such customer's account.

(5) A state bank may, to the extent that banks subject to the laws of the federal government are permitted so to do and to the extent permitted by the rules of the banking board, purchase shares of stock in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the "Small Business Investment Act of 1958", and as amended, but in no event shall any state bank hold shares in small business investment companies in an amount aggregating more than three percent of the bank's capital and surplus.

(6) No limitation or prohibition otherwise imposed by any provision of state law relating to banks shall prevent a state bank from investing not more than ten percent of the bank's capital as defined in the rules promulgated by the banking board in a bank service corporation as defined in 12 U.S.C. 1861 to 1865, inclusive, and as amended, subject to the rights, powers, and limitations contained therein, and such investment by state banks is expressly authorized to the extent permitted by the rules of the banking board.

(7) Notwithstanding any restrictions upon investments in obligations, powers, or activities contained in this code, a state bank may invest in any obligation, exercise such powers, and engage in such activities that such bank could legally acquire, exercise, and engage in were it operating as a national bank at the time such investment was made, such powers were exercised, or such activities were engaged in, to the extent permitted by the rules promulgated by the banking board.

(8) A state bank may invest an amount not exceeding ten percent of its capital as defined in the rules promulgated by the banking board in the stock of any bank or bank holding company that provides services solely to depository institutions and their shareholders, directors, officers, and employees, wherein the ownership of stock of the bank or bank holding company, except for any stock required by law to be owned by directors of the bank or bank holding company, is restricted to banks or bank holding companies. The amount of stock owned by a state bank in any such bank or bank holding company shall not be in excess of five percent of the voting shares of such bank or bank holding company.

(9) (a) Notwithstanding the provisions of section 11-105-102 (2), a state bank may directly engage in activities that are primarily investments in real estate or may acquire and hold the voting stock of one or more corporations the activities of which are primarily investments in real estate. Such activities may include subdividing and developing real property and building residential housing or commercial improvements on such property and may also include owning, renting, leasing, managing, operating for income, or selling such property. Investments in real estate subject to section 11-105-401 may, at the bank's option, be included in investments authorized in this subsection (9) and thereby be removed from the restrictions of section 11-105-401. Such property shall be entered on the books at not more than cost or fair market value, whichever is less, but without any charge off as required under section 11-105-401 (1)(d). The total of all investments made by a state bank pursuant to the authority of this subsection (9), including any loans and guarantees made by the bank on such property or made to or for the benefit of corporations the stock of which it holds pursuant to the authority of this subsection (9), shall not exceed ten percent of its total assets. The authority provided in this subsection (9) is in addition to investment in fixed assets of the bank pursuant to section 11-105-402.

(b) Upon finding that such restrictions are necessary according to the criteria set forth in section 11-102-105 and the policies set forth in section 11-101-102, the banking board may adopt rules that restrict the total investments of a state bank under this subsection (9) to a percentage less than ten percent of the bank's total assets. Nothing in this subsection (9) shall authorize a state bank to contravene a lawful order of the banking board or commissioner with respect to investments by the state bank in real estate or corporations engaging in real estate activities. A state bank that intends to initiate a program of investments under the authority of this subsection (9) shall give sixty days' advance notice to the division of such intent; except that such notice may be waived in the banking board's discretion where such notice is impracticable or unnecessary. The state bank shall also notify the division within ten days after the commencement of the investment program. If similar notices are required by the bank's federal supervisory agency, the same form of notice may be used for purposes of notice under this subsection (9).

(10) A state bank may invest in the securities of, or other interests in, any open-end and closed-end management type investment company or investment trust registered under the federal "Investment Company Act of 1940", 15 U.S.C. section 80(a)-1 et seq., if the portfolio of such investment company or investment trust is limited to United States government obligations that are backed by the full faith and credit of the United States government and to repurchase agreements fully collateralized by such obligations and if any such investment company or investment trust actually takes delivery of such collateral, either directly or through an authorized custodian.

Source: L. 2003: Entire article added with relocations, p. 1121, § 3, effective July 1. **L. 2010:** (2) amended, (HB 10-1422), ch. 419, p. 2067, § 16, effective August 11.

Editor's note: This section is similar to former § 11-7-106 as it existed prior to 2003.

Cross references: The "Federal Farm Loan Act", referenced in this section, was repealed in 1971 by the "Farm Credit Act of 1971", which also provided that references to the "Farm Loan Act" shall be deemed to refer to the comparable provisions of the "Farm Credit Act of 1971", Pub.L. 92-181, codified at 12 U.S.C. § 2001 et seq.

11-105-305. Acceptances - letters of credit. (1) A state bank may accept:

(a) A draft that has not more than six months' sight to run, exclusive of days of grace, and is drawn to finance the purchase of goods with maturity in accordance with the original terms of purchase, or is secured by shipping documents transferring or securing title to goods, or by receipt of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable staples;

(b) A draft that has no more than three months' sight to run, exclusive of days of grace, and is drawn by a bank outside the continental limits of the United States for the purpose of furnishing dollar exchange for trade.

(2) A state bank may issue letters of credit, but, unless the authority conferred to draw upon the bank or its correspondents is limited to such drafts as a bank is authorized by this section to accept, the amount of the credit outstanding at any one time shall be deemed to be a loan to the person for whose account the credit was issued.

Source: L. 2003: Entire article added with relocations, p. 1124, § 3, effective July 1.

Editor's note: This section is similar to former § 11-7-107 as it existed prior to 2003.

PART 4

PROPERTY, SALES, BORROWING,
AND SIGNATURE GUARANTY

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:

(a) Stock shall be sold within six months or such additional period not exceeding eighteen months as the banking board may allow.

(b) Real estate may be used in the banking business, subject to the conditions prescribed by this code for property purchased for such use, or may be rented. Real estate may be put in such condition as will reasonably facilitate its sale. Unless used in the banking business, it shall be sold within fifteen years or such longer period as the banking board may allow.

(c) Other property, the acquisition of which is not otherwise authorized by this code, shall be sold within two years or such longer period as the banking board may allow.

(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 12-61-711, C.R.S., shall not be required on properties initially valued pursuant to this paragraph (d) at 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.

Source: L. 2003: Entire article added with relocations, p. 1124, § 3, effective July 1. **L. 2004:** (1)(d) amended, p. 323, § 6, effective April 7. **L. 2014:** (1)(d) amended, (SB 14-117), ch. 385, p. 1917, § 2, effective July 1.

Editor's note: This section is similar to former § 11-8-101 as it existed prior to 2003.

11-105-402. Banking property - acquisition. (1) A state bank may invest in fixed assets of the bank or the stock or obligations of any corporation holding such fixed assets or may make loans to or upon the security of the stock of any such corporation, but the aggregate of all such investments and loans shall not exceed one hundred percent of the bank's capital, as provided in the rules promulgated by the banking board; except that the banking board may

approve a larger investment upon application of the bank if the banking board deems the same prudent. As used in this subsection (1), "fixed assets" means real estate, leasehold improvements, fixtures, furniture, and equipment; "real estate" and "leasehold improvements" include land and buildings to be used in the transaction of the bank's business and any excess space that may be rented to others.

(2) The rate of depreciation of property so acquired may be prescribed by the banking board.

Source: L. 2003: Entire article added with relocations, p. 1125, § 3, effective July 1.

Editor's note: This section is similar to former § 11-8-102 as it existed prior to 2003.

11-105-403. Sale of assets. A bank chartered in this or another state may sell any asset in the ordinary course of business or, with the approval of the banking board, in any other circumstance. The sale of all, or substantially all, of the assets of a bank or of a department thereof is governed by section 11-103-709.

Source: L. 2003: Entire article added with relocations, p. 1125, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1466, § 13, effective July 1.

Editor's note: This section is similar to former § 11-8-103 as it existed prior to 2003.

11-105-404. Pledge of assets. (1) A state bank may pledge its assets to:

(a) Enable it to act as agent for the sale of obligations of the United States;

(b) Secure borrowed funds;

(c) Secure deposits if:

(I) The depositor is required to obtain such security by the laws of the United States, by the terms of any interstate compact, by the laws of any state, or by the order of a court of competent jurisdiction; or

(II) The state bank secures the deposit with a letter of credit issued or confirmed by a federal home loan bank; or

(d) Otherwise comply with the provisions of this code.

Source: L. 2003: Entire article added with relocations, p. 1125, § 3, effective July 1. **L. 2009:** (1)(c) amended, (HB 09-1053), ch. 159, p. 689, § 7, effective August 5.

Editor's note: This section is similar to former § 11-8-105 as it existed prior to 2003.

11-105-405. Signature guaranty. (1) A bank may become guarantor of the genuineness of a signature.

(2) A bank guaranteeing the signature of a person on any document warrants to any person relying on such guaranty only that:

(a) The signature is that of a person signing;

(b) The signer is the holder, or the signer has purported authority to sign in the name of the holder; except that, if the holder purports to act as a fiduciary, as "fiduciary" is defined either

in this code or in article 1 of title 15, C.R.S., or if the holder's name is signed by a person purporting to act on the holder's behalf as such a fiduciary, the bank warrants that such holder or such person so signing as such fiduciary is in fact the fiduciary he or she purports to be and warrants that the bank has no actual knowledge that such fiduciary is committing a breach of such fiduciary's obligation as such fiduciary in signing such document and that it has no knowledge of such facts that its action in guaranteeing the signature amounts to bad faith; and

(c) The signer has legal capacity to sign.

(3) A bank may disclaim in its guaranty all or any part of the obligations set forth in paragraph (b) of subsection (2) of this section.

Source: L. 2003: Entire article added with relocations, p. 1125, § 3, effective July 1.

Editor's note: This section is similar to former § 11-8-106 as it existed prior to 2003.

PART 5

SAFE DEPOSIT AND SAFEKEEPING FACILITIES

11-105-501. Safe deposit boxes - leasing and subsidiary company. (1) Subject to such rules as the banking board may prescribe, a bank may maintain and lease safe deposit boxes and may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

(2) A bank may own stock in a safe deposit company located in the same community in which the bank is doing business, not exceeding in aggregate cost fifteen percent of its capital and surplus, but at least ninety percent of the stock in such safe deposit company in which such stock is so owned must be owned by banks or trust companies.

Source: L. 2003: Entire article added with relocations, p. 1126, § 3, effective July 1. **L. 2009:** (1) amended, (HB 09-1053), ch. 159, p. 689, § 8, effective August 5.

Editor's note: This section is similar to former § 11-9-102 as it existed prior to 2003.

11-105-502. Access by fiduciaries. (1) Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(a) By any one or more of the persons acting as executors or administrators;

(b) By any one or more of the persons otherwise acting as fiduciaries, when authorized in writing, signed by all other persons so acting;

(c) By any agent authorized in writing, signed by all of the persons acting as fiduciaries.

Source: L. 2003: Entire article added with relocations, p. 1126, § 3, effective July 1.

Editor's note: This section is similar to former § 11-9-103 as it existed prior to 2003.

11-105-503. Lease to minor. A lessor may lease a safe deposit box to, or accept property for safekeeping from, a minor and, in connection therewith, deal with such minor to the same effect as if dealing with a person of full legal capacity, unless and until the minor's guardian or conservator files with the lessor a certified copy of the order of a Colorado court having jurisdiction appointing such guardian or conservator and directs otherwise.

Source: L. 2003: Entire article added with relocations, p. 1126, § 3, effective July 1.

Editor's note: This section is similar to former § 11-9-104 as it existed prior to 2003.

11-105-504. Death of lessee - procedure. The provisions of section 15-10-111, C.R.S., shall apply on the death of a lessee of a safe deposit box as defined in section 11-101-401.

Source: L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1.

Editor's note: This section is similar to former § 11-9-105 as it existed prior to 2003.

11-105-505. Adverse claims to safe deposit box. (1) An adverse claim to the contents of a safe deposit box is not sufficient reason to require the lessor to deny access to its lessee unless:

(a) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name that identifies the lessee with the name in which the safe deposit box is leased; or

(b) The safe deposit box is leased, or the property is held, in the name of a lessee with the addition of words indicating that the contents, or property, are held in a fiduciary capacity for a named beneficiary or beneficiaries, and the adverse claim is supported by a sworn written statement of facts disclosing that it is made by, or on behalf of, such a beneficiary and that there is reason to know that the fiduciary may misappropriate the trust property.

(2) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

(3) The lessor of a safe deposit box shall not be deemed to be in possession or control of the contents thereof for the purposes of section 13-54.5-103, C.R.S., or any other statute or rule pertaining to writs of garnishment.

Source: L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1. **L. 2009:** (3) added, (HB 09-1053), ch. 159, p. 689, § 9, effective August 5.

Editor's note: This section is similar to former § 11-9-106 as it existed prior to 2003.

11-105-506. Annual fees. Every lessor, except a bank as defined in section 11-101-401 (5) or subsidiary thereof, shall pay annually to the division of banking such fees as are determined by the banking board to be sufficient to defray the cost to the state of regulating such lessor.

Source: L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1.

Editor's note: This section is similar to former § 11-9-107 as it existed prior to 2003.

PART 6

FINANCIAL INSTITUTIONS, OPERATION OF BRANCHES, ORGANIZATIONAL AND OPERATIONAL EQUALITY

11-105-601. Legislative declaration. (1) The general assembly finds, determines, and declares that distinctions in function and services of various types of financial institutions have become so narrow that organizational and operational equality should be encouraged and facilitated in this state. It is the intent of the general assembly to enact legislation that will promote the safety and soundness of financial institutions for the benefit of the public, improve efficiency for the economic operation of those financial institutions, and ensure that the state of Colorado, by its appropriate action, will continue its control of those financial institutions within its jurisdiction.

(2) Repealed.

Source: L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1. **L. 2004:** (2) repealed, p. 147, § 44, effective July 1.

Editor's note: This section is similar to former § 11-25-101 as it existed prior to 2003.

11-105-602. Financial branches allowed - conversion of financial institutions to branches - acquisitions. (1) Any financial institution may convert any affiliate financial institution to a branch.

(2) Any financial institution, no matter the location of its principal place of business, may acquire any other financial institution for conversion to a branch or branches in this or another state.

(3) (a) Any bank, no matter the location of its principal place of business, upon thirty days' prior written notice to the banking board or the commissioner, may establish one or more de novo branches anywhere in this or another state.

(b) Any bank or savings and loan association may, upon thirty days' written notice to the banking board or commissioner, be converted to a branch of any bank or savings and loan association.

(b.5) (I) No financial institution may directly or indirectly establish or maintain or cause to be established or maintained its principal office, a loan production office, a deposit production office, an electronic communications device, or a branch in this state on or within one and one-half miles from premises or property owned, leased, or otherwise controlled, directly or indirectly, by an affiliate that engages in commercial activities.

(II) Repealed.

(c) The banking board and the financial services board shall adopt policies and procedures by rule no more restrictive than federal regulatory policies and procedures relative to notice of branches to be established under this subsection (3).

Source: L. 2003: Entire article added with relocations, p. 1127, § 3, effective July 1. **L. 2004:** (3)(c) amended, p. 147, § 45, effective July 1. **L. 2007:** (3)(b.5) added, p. 117, § 2, effective March 16; (3)(b.5)(II)(B) amended, p. 2021, § 15, effective June 1. **L. 2013:** (2), (3)(a), and (3)(b) amended and (3)(b.5)(II) repealed, (SB 13-154), ch. 282, pp. 1467, 1484, §§ 15, 56, effective July 1.

Editor's note: This section is similar to former § 11-25-103 as it existed prior to 2003.

11-105-603. Financial institutions - common powers and limitations. (1) Any acquisition of a branch from another financial institution is subject to the percentage limitation set forth in subsection (5) of this section. Such an acquisition by a financial institution is expressly authorized, and the location of such branch may be changed pursuant to law.

(2) Nothing in this part 6 applies to a branch facility operating under an emergency grant pursuant to section 11-103-809; however, such a branch facility may continue to operate in perpetuity as a branch without being subject to any percentage limitation on branches set forth in this part 6.

(3) Nothing in this part 6 or part 2 of article 104 of this title prevents the acquisition of any financial institution in this state by any other financial institution; however, any conversion of all or any part thereof to a branch must be in accordance with this part 6.

(4) If any financial institution converts any affiliate financial institution to a branch pursuant to the provisions of this part 6, such financial institution at the time of such conversion or immediately thereafter shall meet the capital standards for banks in Colorado as required by the "Colorado Banking Code", by any rules of the banking board, or by the commissioner.

(5) Notwithstanding any other provision of this part 6, no financial institution that acquires any other financial institution on or after August 1, 1991, may convert the acquired financial institution to a branch or branches if such conversion or conversions will result in the acquiring financial institution controlling more than twenty-five percent of the aggregate of all deposits in all banks, savings and loan associations, federal savings banks, and other financial institutions located in Colorado that are federally insured. For the purpose of this subsection (5), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency.

Source: L. 2003: Entire article added with relocations, p. 1132, § 3, effective July 1. **L. 2013:** (1), (2), and (3) amended, (SB 13-154), ch. 282, pp. 1467, 1485, §§ 16, 57, effective July 1.

Editor's note: This section is similar to former § 11-25-104 as it existed prior to 2003.

11-105-604. Subsidiary depository institutions as agent. (1) Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for an affiliate financial institution, as such authority is set forth in section 101(d) of the federal "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994". Notwithstanding any other provision of law, a bank acting as an agent in accordance with this subsection (1) for an affiliate financial institution shall not be considered to be a branch of the affiliate.

(2) Any contract entered into pursuant to section 11-25-105 as it existed prior to July 1, 1995, shall remain valid and in effect according to the terms of the contract and any subsequent agreement of the contracting financial institutions.

Source: L. 2003: Entire article added with relocations, p. 1132, § 3, effective July 1.

Editor's note: This section is similar to former § 11-25-105 as it existed prior to 2003.

Cross references: For the federal "Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994", see Pub.L. 103-328, codified at 12 U.S.C. § 1811 et seq.; for section 101(d) of the act, see 12 U.S.C. § 1828.

11-105-605. Rule-making by banking board and financial services board. (1) The banking board shall promulgate and adopt such rules as are necessary to accomplish the purposes of this part 6.

(2) The financial services board shall promulgate and adopt such rules as are necessary to accomplish the purposes of this part 6.

(3) The banking board and the financial services board shall coordinate their rule-making that implements the provisions of this part 6 so that the procedures and time periods are the same for each type of financial institution to give notice of a branch thereunder.

Source: L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1. **L. 2004:** (2) and (3) amended, p. 147, § 46, effective July 1.

Editor's note: This section is similar to former § 11-25-106 as it existed prior to 2003.

11-105-606. Notice of branch closing. No later than ninety days prior to the proposed date of any branch closing, the "notice of branch closing" required to be filed with the appropriate federal regulatory agency shall be filed with the banking board or the financial services board. The notice of branch closing shall include a detailed statement of the reasons for the decision to close the branch and statistical or other information in support of such reasons.

Source: L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1.

Editor's note: This section is similar to former § 11-25-107 as it existed prior to 2003.

ARTICLE 106

Fiduciary Business

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

11-106-101. Bank as fiduciary. It shall be unlawful for a state bank to act as fiduciary, other than as escrow agent, unless it is authorized by its charter or amendments thereto to exercise trust powers.

Source: L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1.

Editor's note: This section is similar to former § 11-10-101 as it existed prior to 2003.

11-106-102. Investment power. A bank acting as fiduciary shall have the same investment powers as an individual fiduciary under like circumstances.

Source: L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1.

Editor's note: This section is similar to former § 11-10-102 as it existed prior to 2003.

11-106-103. General fiduciary powers. Unless otherwise expressly provided by statute, a bank acting as a fiduciary shall have all of the rights, powers, privileges, and immunities and be subject to the same obligations and duties as an individual fiduciary under like circumstances.

Source: L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1.

Editor's note: This section is similar to former § 11-10-103 as it existed prior to 2003.

11-106-104. Agency powers. In addition to its other powers, any bank that is authorized to exercise fiduciary powers shall, upon proper qualification under this code, have the power to act as a fiduciary in any capacity. It may also act as registrar, transfer agent, or attorney-in-fact and have the power to receive, manage, and apply sinking funds.

Source: L. 2003: Entire article added with relocations, p. 1133, § 3, effective July 1.

Editor's note: This section is similar to former § 11-10-104 as it existed prior to 2003.

11-106-105. Substitution of Colorado bank or Colorado trust company. (1) In addition to the procedures initiated by an interested party concerning internal affairs of their trust under section 15-16-201, C.R.S., or procedures otherwise permitted by Colorado law, and unless a will, agreement, or trust instrument otherwise provides, a company may be substituted as fiduciary for all or a part of the fiduciary business of another company without court approval if:

(a) The successor is a Colorado affiliate of the transferor and the boards of directors of the transferor and successor both adopt resolutions to cause the successor to be substituted as fiduciary for all or part of the fiduciary business of the transferor;

(b) The transferor is discontinuing all or part of its fiduciary business and the boards of directors of the transferor and successor both adopt resolutions to cause the successor to be substituted as fiduciary for the fiduciary business of the transferor that is being discontinued; or

(c) There is a merger or consolidation of the transferor and the successor, with the successor being the surviving entity, and the boards of directors of the transferor and successor

both adopt resolutions to cause the successor to be substituted as fiduciary for all of the fiduciary business of the transferor.

(2) If the boards of directors adopt such resolutions as provided in subsection (1) of this section and comply with the notice and delivery provisions pursuant to subsection (3) of this section, the successor shall replace the transferor as fiduciary and shall be the successor fiduciary possessing all the rights, powers, and duties that were granted to or imposed on the transferor. Such rights, powers, and duties shall vest in the successor upon effectuation of the substitution, irrespective of the date on which the fiduciary relationship is established or of the date of any related written agreement establishing the fiduciary relationship or of the date of the death of any decedent whose estate is being so administered. Nothing in connection with a substitution affects a renunciation or revocation of any letters of administration or letters testamentary pertaining to a fiduciary relationship or a removal or resignation of the transferor as personal representative, trustee, custodian, or other fiduciary.

(3) At least thirty days prior to the effective date of the substitution, a certified copy of the resolutions of the boards of directors of the transferor and successor shall be delivered to the division of banking, and a written notice of such substitution shall be delivered to each interested party. Delivery will be deemed to have occurred upon the earlier of actual delivery or three days after depositing such resolutions or notification in the United States mails, certified mail with return receipt prepaid. The effective date of the substitution as fiduciary for all or part of the fiduciary business, as set forth in the resolutions, shall be the date provided in the resolutions, which shall not be earlier than thirty days after the date of delivery in accordance with this subsection (3). If the resolutions provide no effective date, the effective date shall be thirty days after the date of delivery in accordance with this subsection (3).

Source: L. 2003: Entire article added with relocations, p. 1134, § 3, effective July 1.

Editor's note: This section is similar to former § 11-10-106 as it existed prior to 2003.

11-106-106. Investment in securities. Notwithstanding any other law to the contrary and subject to the standard contained in sections 11-50-113 (2) and 15-1-304, C.R.S., a Colorado bank or trust company may invest and reinvest the assets that it maintains in its trust in the securities of any open-end or closed-end management investment company or investment trust registered under the federal "Investment Company Act of 1940", 15 U.S.C. sec. 80a1-64, as amended. A Colorado bank or trust company shall be allowed to make such investment even if it exercises investment discretion as a fiduciary, custodian, managing agent, or otherwise with respect to the investment and reinvestment of assets that it maintains in its trust department. The fact that a Colorado bank or trust company, or any affiliate thereof, is providing services to the investment company or trust as investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and receiving reasonable remuneration for the services, does not preclude such bank or trust company from investing in the securities of such investment company or trust.

Source: L. 2003: Entire article added with relocations, p. 1135, § 3, effective July 1.

Editor's note: This section is similar to former § 11-10-107 as it existed prior to 2003.

11-106-107. Funds awaiting investment or distribution. A bank's duties regarding the holding of uninvested or undistributed funds that are awaiting investment or distribution are governed by the "Colorado Uniform Prudent Investor Act", article 1.1 of title 15, C.R.S., the "Uniform Prudent Management of Institutional Funds Act", part 11 of article 1 of title 15, C.R.S., and applicable standards and requirements imposed by the federal deposit insurance corporation.

Source: L. 2013: Entire section added, (SB 13-154), ch. 282, p. 1467, § 17, effective July 1.

ARTICLE 107

Criminal Offenses

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

11-107-101. Unauthorized conduct of banking business. It is a criminal offense for any person not authorized to carry on a banking business under this code, falsely and with intent to defraud, to act as a bank or to represent that he or she is or is acting for a bank or to use an artificial or corporate name that is the name of a bank.

Source: L. 2003: Entire article added with relocations, p. 1135, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-101 as it existed prior to 2003.

11-107-102. Receipt of deposits while insolvent. It is a criminal offense if a state bank receives any deposit while insolvent, or an officer, director, or employee knows or, in the proper performance of his or her duty should know, of such insolvency and receives or authorizes the receipt of such deposit, or if such state bank or person has knowingly concealed or misstated material facts regarding the insolvency of the state bank from or to the banking board, commissioner, or division of banking.

Source: L. 2003: Entire article added with relocations, p. 1135, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-102 as it existed prior to 2003.

11-107-103. Unlawful service as officer or director. (1) It is a criminal offense for any person to serve as an officer or director of a state bank, or serve as commissioner, deputy commissioner, or employee of the division:

(a) Who has been convicted of an unpardoned offense constituting, in the jurisdiction in which the conviction was had, a violation of the banking laws, a felony involving moral turpitude, or a breach of trust;

(b) Who is indebted to the bank for more than thirty days upon a judgment that has become final.

Source: L. 2003: Entire article added with relocations, p. 1135, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-103 as it existed prior to 2003.

11-107-104. Unlawful gratuity, compensation, or transactions. (1) It is a criminal offense for an affiliate of a state bank or for an officer, director, or employee of a state bank or affiliate of a state bank:

(a) To solicit, accept, or agree to accept, directly or indirectly, from any person other than the institution, any gratuity, compensation, or other personal benefit for any action taken by the institution, or for endeavoring to procure any such action;

(b) To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of indebtedness issued by the institution.

(2) In this section and section 11-105-101 (5), the term "affiliate" of a state bank shall include:

(a) Any person who holds a majority of the stock of the bank or has been determined by the banking board to hold a controlling interest therein, any other corporation in which such person owns a majority of the stock, and any partnership in which such person has an interest;

(b) Any corporation in which the state bank or an officer, director, or employee thereof holds a majority of the stock and any partnership in which such person has an interest;

(c) Any corporation of which a majority of the directors are officers, directors, or employees of the state bank or of which officers, directors, trustees, or employees constitute a majority of the directors of the state bank.

Source: L. 2003: Entire article added with relocations, p. 1135, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-104 as it existed prior to 2003.

11-107-105. Unlawful concealment of transactions. (1) It is a criminal offense for an officer, director, employee, attorney, or agent of a state bank:

(a) To conceal, or endeavor to conceal, any transaction of the bank from any officer, director, or employee of the bank or any official or employee of the division to whom it should properly be disclosed;

(b) With intent to deceive, to make any false or misleading statement or entry, or omit any statement or entry that should be made in any book, account, report, or statement of the institution.

(2) No bank shall sell, assign, or transfer any of its assets when insolvent, or in contemplation of insolvency with the intent of preferring any credit, or preventing the application of such assets to the subrogation of its debts; nor shall any officer, director, or employee of any bank personally authorize or permit the same to be done.

Source: L. 2003: Entire article added with relocations, p. 1136, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-105 as it existed prior to 2003.

11-107-106. Unlawful payment of penalties and judgment against others. It is a criminal offense for a state bank to pay a fine, or penalty imposed by law upon any other person, or any judgment against such person, or to reimburse directly or indirectly any person by whom such fine, penalty, or judgment has been paid, except in settlement of its own liability or in connection with the acquisition of property against which such judgment is a lien or as provided in section 11-103-602.

Source: L. 2003: Entire article added with relocations, p. 1136, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-106 as it existed prior to 2003.

11-107-107. Embezzlement or misapplication of funds. It is a criminal offense for any officer, director, shareholder, or employee of any bank to directly or indirectly embezzle, abstract, or misapply, or cause to be embezzled, abstracted, or misapplied, any of the funds or securities or other property of or under the control of the bank with intent to deceive, injure, cheat, wrong, or defraud any person.

Source: L. 2003: Entire article added with relocations, p. 1136, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-107 as it existed prior to 2003.

11-107-108. Unlawful acts or omissions - penalties. (1) Any person responsible for an act or omission expressly declared to be a criminal offense by this code:

(a) Is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment;

(b) If the act or omission was intended to defraud, commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) An officer, director, employee, agent, or attorney of a state bank shall be criminally responsible for an act or omission of the institution declared to be a criminal offense by this code if, knowing that such act or omission is a criminal offense, he or she participates in authorizing, executing, ratifying, or concealing such act or in authorizing or ratifying such omission or, having a duty to take the required action, omits to do so.

(3) Unless otherwise provided in this code, it is no defense to a criminal prosecution under this code that the defendant did not know the facts establishing the criminal character of the act or omission charged, if the defendant could and should have known such facts in the proper performance of his or her duty.

Source: L. 2003: Entire article added with relocations, p. 1137, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-108 as it existed prior to 2003.

11-107-109. Unlawful acts or failure to perform - penalty. Any person who willfully or knowingly fails to perform any act required, and as required by section 11-102-102 (10) or

11-102-501, or who commits any act in violation of said sections commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 2003: Entire article added with relocations, p. 1137, § 3, effective July 1.

Editor's note: This section is similar to former § 11-20-117 as it existed prior to 2003.

11-107-110. Injunction. (1) If a violation of this code by a state bank or an officer, director, or employee thereof is threatened or impending and may cause substantial injury to the institution or to the depositors, creditors, or stockholders thereof, the district court in and for the county in which the bank is located may, upon the suit of the banking board, issue an injunction restraining such violation.

(2) If any person, not authorized to carry on a banking business under this code, falsely acts as a bank, or falsely represents that such person is acting for a bank, or uses an artificial or corporate name that is the name of a bank, the said district court may, upon the suit of the banking board, issue an injunction restraining such act.

Source: L. 2003: Entire article added with relocations, p. 1137, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-109 as it existed prior to 2003.

11-107-111. General corporation laws applicable. The provisions of articles 30 to 52, 101 to 117, and 121 to 137 of title 7, C.R.S., relating to corporations and nonprofit corporations shall, insofar as the same are not inconsistent with this code, govern corporations and nonprofit corporations operating under the provisions of this code.

Source: L. 2003: Entire article added with relocations, p. 1137, § 3, effective July 1.

Editor's note: This section is similar to former § 11-11-110 as it existed prior to 2003.

ARTICLE 108

Industrial Banks

11-108-101 to 11-108-803. (Repealed)

Source: L. 2013: Entire article repealed, (SB 13-154), ch. 282, p. 1464, § 4, effective July 1.

Editor's note: This article was added in 2003. For amendments to this article prior to its repeal in 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 109

Editor's note: This article was added with relocations in 2003. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For the "Unclaimed Property Act", see article 13 of title 38.

Law reviews: For article, "Applying the Colorado Trust Company Act to CPAs and Lawyers", see 30 Colo. Law. 59 (May 2001).

PART 1

GENERAL PROVISIONS

11-109-101. Definitions. As used in this article, unless the context otherwise requires:

(1) "Act as a fiduciary" or "acting as a fiduciary" means to:

(a) Accept or execute trusts, including to:

(I) Act as trustee under a written agreement;

(II) Receive money or other property in the capacity as trustee for investment in real or personal property;

(III) Act as trustee and perform the fiduciary duties committed or transferred to the trustee by order of a court of competent jurisdiction;

(IV) Act as personal representative or trustee of the estate of a deceased person; or

(V) Act as trustee for a minor or incapacitated person;

(b) Administer real or tangible personal property in any other fiduciary capacity; or

(c) Act pursuant to an order of a court of competent jurisdiction as personal representative, executor, or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(2) "Banking board" shall have the same meaning as defined in section 11-101-401 (7).

(3) "Commissioner" means the state bank commissioner.

(4) "Order" means all or any part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, by the banking board of any matter other than the making of rules of general application.

(5) "Person" means an individual, corporation, partnership, joint venture, unincorporated association, or any other legal or commercial entity.

(6) "Representative trust office" means an office at which a trust company has been authorized by the banking board to engage in a trust business other than acting as a fiduciary.

(7) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract, but may at any time be required by the trust company, to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit, and funds deposited to the credit of, or in which any beneficial interest is held by, a corporation, association, partnership, or other organization operated for profit do not exceed one hundred fifty thousand dollars per depositor at the trust company.

(8) "Time deposit" means a deposit that the depositor does not have a right to withdraw for a period of seven days or more from the date of deposit. A "time deposit" may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, statement, or otherwise.

(9) "Transaction account" means a deposit or account that the depositor or account holder may withdraw by check or by similar means for payment to third parties.

(10) "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service authorized pursuant to section 11-109-201, including acting as a fiduciary.

(11) "Trust company" means a corporation organized pursuant to and subject to regulation by the provisions of this article.

(12) "Trust institution" means a trust company, a federal or state chartered bank with trust powers, a state bank with trust powers chartered under the laws of another state, or a trust company chartered under the laws of another state.

(13) "Trust office" means an office, other than the principal office, at which a trust company is authorized by the banking board to engage in the trust business and to act as a fiduciary.

Source: L. 2003: Entire article added with relocations, p. 1175, § 3, effective July 1. **L. 2013:** (6) and (12) amended, (SB 13-154), ch. 282, p. 1482, § 48, effective July 1.

Editor's note: This section is similar to former § 11-23-102 as it existed prior to 2003.

11-109-102. Use of words "trust" or "trust company". (1) It is unlawful for any person, firm, association, or corporation to use or advertise the words "trust" or "trust company" in the conduct of its business in such a manner as is likely to cause the public to be confused, deceived, or mistaken that the person, firm, association, or corporation has been authorized to transact business as a regulated financial institution unless the person, firm, association, or corporation is organized under the "Colorado Banking Code", articles 101 to 109 of this title, article 70 of this title, the banking laws of another state, or the national banking laws and is authorized to use the words "trust" or "trust company" as part of its name.

(2) Subsection (1) of this section does not apply to trust institutions.

Source: L. 2003: Entire article added with relocations, p. 1177, § 3, effective July 1. **L. 2013:** Entire section amended, (SB 13-154), ch. 282, p. 1482, § 49, effective July 1.

Editor's note: This section is similar to former § 11-23-102.3 as it existed prior to 2003.

11-109-103. Applicability of powers of banking board and bank commissioner to trust companies. The powers, duties, and functions of the banking board and the commissioner contained in article 102 of this title and the declaration of policy contained in section 11-101-102 shall apply to the provisions of this article.

Source: L. 2003: Entire article added with relocations, p. 1177, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-102.5 as it existed prior to 2003.

11-109-104. Powers - banking board - commissioner. (1) In addition to the other powers conferred on the banking board by this article, the banking board shall have the power to:

(a) Implement by order and rule any provision of this article and to obtain restraining orders and injunctions to prevent violation of and to enforce compliance with the provisions of this article and the orders and rules issued thereunder. In the exercise of the power to make orders and issue rules, the banking board shall act in the interests of maintaining sound trust companies and the security of fiduciary funds.

(b) Regulate the procedure and the practice at hearings;

(c) Order any person or a trust company to cease violating any provision of this article or any rule and to mail a copy of the order to the person or trust company and to each director of the trust company;

(d) Suspend, after notice and hearing, any officer or director for fraud, theft, or failure to comply with the provisions of this article or with any valid order or rule;

(e) Subpoena witnesses, require the production of evidence, administer oaths, and examine any person under oath in connection with any matter relating to the powers and duties of the banking board;

(f) Require that each trust company maintain such insurance and bonds as necessary and appropriate;

(g) Approve amendments to a trust company's articles of incorporation;

(h) Approve or disapprove a change of location;

(i) Approve or disapprove any merger or other corporate reorganization;

(j) Require a trust company holding fiduciary funds pursuant to section 11-109-906 to collateralize such funds as are in excess of federally insured amounts in accordance with the rules adopted by the banking board;

(k) Require that a trust company that is accepting deposits pursuant to section 11-109-201 (1)(d) limit the aggregate amount of such deposits.

(2) If the banking board has reason to believe that the capital of any trust company is inadequate under the rules of the banking board, the banking board may ascertain the facts and furnish the trust company with a copy of its determination. If the banking board finds an inadequacy of capital based upon such determination, the commissioner, with the approval of the banking board, may direct the trust company to levy an assessment in a designated amount upon the holders of record of common stock to remedy the inadequacy of capital. Upon receipt of an order to levy an assessment, the directors shall cause to be sent to all holders of common stock, at their addresses, a copy of the order and a copy of this subsection (2). If an assessment is not paid within the time prescribed in the order or such shorter period as the directors decide, but not less than thirty days, the trust company may, within sixty days thereafter as the banking board may prescribe in its order, offer the shares of the defaulting stockholders for sale at public auction or private sale at a price that shall not be less than the amount of the assessment and the cost of the sale. Any excess shall be paid to the prior owners. The method of collection provided in this subsection (2) shall be the sole method of collecting assessments. If an assessment is not paid within ninety days after the date of the order to levy or at such other date as may be specified in the order, but in no event less than thirty days, the commissioner may, with the approval of the banking board, proceed pursuant to section 11-109-702. However, for good

cause shown to the banking board by the affected trust company, the banking board may extend the ninety-day limit.

(3) The term "shareholder" shall apply not only to such persons as appear on the books of the trust company as shareholders, but also to every owner of stock, legal or equitable, although the stock may stand on such books in the name of another person, but not to a person that holds the stock as collateral security for the payment of a debt.

(4) Any trust company shareholder that has transferred such shareholder's shares, caused such transfer to appear on the books of the trust company within sixty days before the capital inadequacy of such trust company, or that has made such transfer with knowledge of such impending capital inadequacy shall be liable to the same extent that the transferee or subsequent transferee fails to meet such liability. This section shall not be construed to affect in any way any recourse that such shareholder might otherwise have against those in whose names such shares appear upon the books of the trust company at the time of such capital inadequacy.

(5) No stockholder of a trust company shall set off against the stockholder's liability any claim such stockholder may have as a depositor in or creditor of any insolvent trust company.

(6) The commissioner shall examine the books and records of every trust company as often as deemed advisable and to the extent required by the banking board; shall make and file a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the trust company examined.

(7) The commissioner shall examine, as often as deemed advisable and to the extent required by the banking board, any electronic data processing centers of a trust company or any electronic data processing centers that serve a trust company, without regard to the location of the electronic data processing center; shall make and file in the commissioner's office a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the data processing centers examined and the trust company that they serve.

(8) (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 trust company and any affiliated entities of the controlling shareholder for the purpose of determining the safety and soundness of the trust company. If the controlling shareholder or affiliate's records are located outside this state, the controlling shareholder or affiliate shall 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 located. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the commissioner's behalf. If a controlling shareholder or affiliate refuses to permit the commissioner to make an examination, the banking board may fine such controlling shareholder or affiliate an amount not to exceed one thousand dollars for each day any such refusal continues. In lieu of any examination required by this subsection (8), the commissioner may accept an audit for the previous fiscal year prepared by an independent certified public accountant, independent registered accountant, or other independent qualified person. If the commissioner accepts an audit prepared by such independent person, no costs thereof shall be borne by the commissioner and all costs of such audit shall remain the obligation of the controlling shareholder or affiliate.

(b) For purposes of this subsection (8):

(I) "Affiliated entity" or "affiliate" means an entity in control of a controlling shareholder.

(II) "Controlling shareholder" means a shareholder in control of a trust company.

(III) "In control of" means that an entity or shareholder meets the same criteria for acquiring control as is set forth in section 11-102-303 for acquiring control of a state bank.

Source: L. 2003: Entire article added with relocations, p. 1177, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-117 as it existed prior to 2003.

11-109-105. No private right of action. Except as expressly provided in this article, no person, other than the banking board, shall have the right to bring or maintain any private action, at law or in equity, for a violation of or to enforce this article.

Source: L. 2003: Entire article added with relocations, p. 1180, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-125 as it existed prior to 2003.

PART 2

POWERS

11-109-201. Powers of trust companies. (1) A trust company shall be incorporated under and subject to the general corporation laws of this state not inconsistent with this article. The business activities of a trust company in this state shall be limited to the exercise of the power to:

(a) Act or be appointed by a court to act in like manner as an individual, an executor, a personal representative, a trustee, an administrator, a guardian, a conservator, an assignee, a custodian, a receiver, or a depository or in any other fiduciary capacity for any purposes permitted by law;

(b) Act as a transfer agent, a registrar, an escrow agent, or an attorney-in-fact and to receive, manage, and apply sinking funds;

(c) Maintain and rent safe deposit and safekeeping facilities;

(d) Receive and maintain savings deposits, time deposits, and certificates of deposit, and to pay interest thereon at the rates permitted state banks under section 11-105-102 (3), subject to the restrictions of section 11-109-204;

(e) Exercise the same investment powers as an individual fiduciary under like circumstances;

(f) Accept and execute any fiduciary business permitted by the laws of this state or any other state and the United States and to establish common trust funds as provided by article 24 of this title;

(g) Take oaths and execute affidavits by the oath or affidavit of the president, vice-presidents, secretary, assistant secretary, manager, trust officer, or assistant trust officer;

(h) Act as an investment adviser under any applicable law;

(i) Do and perform any other acts necessary or proper to exercise the powers enumerated in this section.

(2) Except for those powers specifically authorized in subsection (1) of this section and section 11-109-907, a trust company shall not have the power to conduct a banking business, receive and maintain transaction deposit accounts, nor use the word "bank" in its name.

(3) As authorized pursuant to section 10-2-601 (2), C.R.S., a trust company may, pursuant to federal law or under such rules as may be adopted by the banking board or the commissioner of insurance pursuant to section 10-2-601, C.R.S., act as the agent for any insurance company authorized to do business in this state by soliciting and selling insurance and collecting premiums on policies issued by such company. For such services, a trust company may receive such fees or commissions as may be agreed between the trust company and the insurance company.

Source: L. 2003: Entire article added with relocations, p. 1180, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-103 as it existed prior to 2003.

11-109-202. Offices of trust companies. (1) (a) Each trust company shall have and continuously maintain a principal office in this state.

(b) Each executive officer at the principal office is an agent of the trust company for service of process.

(c) A trust company may change its principal office to any location within this state by filing a written notice with the banking board. The written notice shall contain:

(I) The name of the trust company;

(II) The street address of its principal office before the change;

(III) The street address to which the principal office is to be changed; and

(IV) A copy of the resolution authorizing the change adopted by the board of directors of the trust company.

(d) The change of principal office shall take effect on the thirty-first day after the date the banking board receives the notice pursuant to paragraph (c) of this subsection (1), unless:

(I) The banking board establishes an earlier or later date; or

(II) Prior to such day the banking board notifies the trust company that the trust company shall establish, to the satisfaction of the banking board, that the relocation is consistent with the original determination made under section 11-109-306 for the establishment of a trust company at that location, in which event the change of principal office shall take effect when approved by the commissioner.

(2) A trust company may act as a fiduciary and engage in a trust business at each trust office as permitted by this article.

(3) A trust company may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this article.

(4) (a) A trust company may establish or acquire and maintain trust offices or representative trust offices anywhere in this state.

(b) (I) A trust company desiring to establish or acquire and maintain an additional office shall file a written notice with the banking board. The written notice shall contain the following:

(A) The name of the trust company;

(B) The location of the proposed additional office; and

(C) Information indicating whether the additional office will be a trust office or a representative trust office.

(II) The trust company shall also furnish a copy of the resolution authorizing the additional office adopted by the board of directors of the trust company and shall pay the filing fee, if any, prescribed by the banking board.

(c) The trust company may commence business at the additional office on the thirty-first day after the date the banking board receives the notice, unless the banking board specifies an earlier or later date.

(d) The thirty-day period of review may be extended by the banking board on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust company may establish the additional office only on prior written approval by the banking board.

(e) The banking board may deny approval of the additional office if the banking board finds that the trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that establishment of the proposed office would be contrary to the public interest.

(5) A trust company chartered by a state other than Colorado may establish and maintain a trust office or representative trust office anywhere in this state if the establishment and operation of such office is authorized expressly by rules promulgated by the banking board for that purpose. The out-of-state trust company must provide to the banking board notice of its intent to open an office at least sixty days before opening such office for business.

Source: L. 2003: Entire article added with relocations, p. 1181, § 3, effective July 1. **L. 2013:** (5) amended, (SB 13-154), ch. 282, p. 1483, § 50, effective July 1.

Editor's note: This section is similar to former § 11-23-103.2 as it existed prior to 2003.

11-109-203. Activities not requiring a charter. (1) Notwithstanding any other provision of this article to the contrary, a company does not engage in the trust business, or in any other business in a manner requiring a charter, under this article or in an unauthorized trust activity by:

(a) Acting in the scope of authority as an agent of a trust institution;

(b) Rendering a service customarily performed by an attorney or law firm in a manner approved and authorized by the Colorado supreme court;

(c) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(d) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the real estate commission pursuant to article 61 of title 12, C.R.S.;

(e) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor, or registered representative of an investment advisor, if the activity is regulated by the securities commissioner or the federal securities and exchange commission;

(f) Engaging in the sale and administration of an insurance product as an insurance company or agent licensed by the division of insurance to the extent that the activity is regulated by the division of insurance;

(g) Acting as trustee for a public, private, or independent institution of higher education or a university system, including an institution of higher education's or university system's affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to, or otherwise made available to such institution or system with respect to its educational or research purposes;

(h) Rendering services customarily performed by a certified public accountant in a manner authorized by article 2 of title 12, C.R.S.;

(i) If the company is a trust institution and is not otherwise prohibited from engaging in a trust business in this state:

(I) Marketing or soliciting in this state through the mails, telephone, any electronic means, or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(II) Delivering money or other intangible assets and receiving the money or other intangible assets from a client or other person in this state; or

(III) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

Source: L. 2003: Entire article added with relocations, p. 1182, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-103.3 as it existed prior to 2003.

11-109-204. Federal deposit insurance required. (1) No trust company may accept or hold savings deposits, time deposits, or certificates of deposit pursuant to section 11-109-201 (1)(d) unless such deposits are insured by the federal deposit insurance corporation or its successor.

(2) Each trust company shall immediately give notice to the banking board when it has applied to the federal deposit insurance corporation or its successor for deposit insurance and, thereafter, shall give bi-monthly reports on the status of its application for deposit insurance to the banking board until final disposition of the application is made.

Source: L. 2003: Entire article added with relocations, p. 1183, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-103.5 as it existed prior to 2003.

11-109-205. Transactions with affiliates. (1) Unless otherwise prohibited by law, a trust company and its affiliates may engage in any of the transactions described in subsection (2) of this section if such transactions are either:

(a) On terms and under circumstances, including credit standards, that are substantially the same, or at least as favorable to such trust company or its subsidiary, as those prevailing at the time for comparable transactions with or involving nonaffiliated companies; or

(b) In the absence of comparable transactions, on terms and under circumstances, including credit standards, that in good faith would be offered to, or would apply to, nonaffiliated companies.

(2) **Transactions covered.** Subsection (1) of this section shall apply to the following:

(a) A purchase of, or an investment in, securities issued by the affiliate;

(b) A purchase of assets, including assets subject to an agreement to repurchase, from the affiliate;

(c) The acceptance of securities issued by the affiliate as collateral security for a loan or extension of credit to any person or company;

(d) The sale of securities or other assets to an affiliate, including assets subject to an agreement to repurchase;

(e) The payment of money or the furnishing of services to an affiliate under contract, lease, or otherwise;

(f) Any transaction in which an affiliate acts as an agent or broker or receives a fee for its services for the trust company or for any other person; and

(g) Any transaction or series of transactions with a third party including those in which an affiliate has a financial interest in the third party or is a participant in such transaction or series of transactions.

(3) (a) A company or shareholder shall be deemed to have control over another company if such company or shareholder:

(I) Directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote twenty-five percent or more of any class of voting securities of the other company; or

(II) Controls in any manner the election of a majority of the directors or trustees of the other company.

(b) Notwithstanding any other provision of this section, no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity or if the company owning or controlling such shares is a business trust.

(4) The banking board may promulgate rules to exempt transactions or relationships from the requirements of this section if the banking board finds such exemptions are in the public interest and consistent with the purposes of this section.

(5) As used in this section, unless the context otherwise requires:

(a) (I) "Affiliate" with respect to a trust company means:

(A) Any company that controls the trust company and any other company that is controlled by the company that controls the trust company;

(B) Any company that is controlled, directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by trust or otherwise, the trust company or any company that controls the trust company;

(C) Any company in which a majority of its directors or trustees constitute a majority of the persons holding any such office with the trust company or any company that controls the trust company;

(D) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the trust company or any subsidiary or affiliate of the trust company; and

(E) Any investment company with respect to which a trust company or any affiliate thereof is an investment advisor as defined in 15 U.S.C. sec. 80a-2 (a)(20).

(II) "Affiliate" with respect to a trust company does not include:

(A) Any company that is a subsidiary of a trust company; and

(B) Any company engaged solely in holding the premises of the trust company.

(b) "Company" means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "trust company" and a "bank".

(c) "Securities" shall have the same meaning as set forth in section 11-51-201 (17).

Source: L. 2003: Entire article added with relocations, p. 1183, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-103.7 as it existed prior to 2003.

11-109-206. Trust company organized as a limited liability company. (1) Pursuant to section 11-102-104 (5.5)(c), a trust company charter may be issued to a limited liability company that otherwise meets the requirements of this article.

(2) A trust company organized as a limited liability company shall not be required to exist in perpetuity; except that the articles of organization of such a trust company shall provide for a method to extend the existence of the trust company in the event that termination occurs. In addition, the articles of organization of such a trust company shall require that liquidation of the limited liability company conform with the requirements of this code.

(3) Upon approval of the banking board, a trust company organized as a limited liability company may be merged with or converted into another entity regardless of the form of the surviving entity, so long as the surviving entity satisfies the requirements of this code.

(4) Upon approval of the banking board, a trust company organized as a corporation may be merged with or converted into a limited liability company, so long as it satisfies the requirements of this code.

(5) (a) A trust company organized as a limited liability company shall have a written operating agreement containing any provisions for the affairs of the trust company and the conduct of its business as may be agreed upon by the members and which provisions are consistent with this code and the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S.

(b) A copy of the written operating agreement shall be filed with the banking board prior to the granting of a charter to the trust company, and any amendments to the operating agreement shall be filed with and approved by the banking board prior to adoption.

(c) The banking board may promulgate rules establishing additional requirements relating to operating agreements to implement the provisions of this section.

(6) All distributions made by a trust company organized as a limited liability company to its members shall be subject to the requirements applicable to dividends issued by a trust company organized as a corporation under this code and the rules of the banking board.

(7) For purposes of implementing this section, the following definition constructions shall apply:

(a) Where this code refers to "articles of incorporation", that term shall be construed to apply to a limited liability company's articles of organization, as that term is defined in section 7-80-102 (1), C.R.S.;

(b) Where this code refers to "bylaws", that term shall be construed to apply to a limited liability company's operating agreement, as that term is defined in section 7-80-102 (11), C.R.S.;

(c) Where this code refers to "common stock" or "shares" of a trust company, such terms shall be construed to apply to a limited liability company's membership interests;

(d) Where this code refers to a "corporation", such term shall be construed to include a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, C.R.S., which limited liability company conforms to this section and the requirements established by the banking board pursuant to section 11-102-104 (5.5);

(e) Where this code refers to a "director" or a "board of directors" of a trust company, such terms shall be construed to apply to a manager or the managers of a limited liability company;

(f) Where this code refers to an "incorporator", such term shall be construed to apply to the organizers of a limited liability company;

(g) Where this code refers to a "shareholder" or a "stockholder" of a trust company, such terms shall be construed to apply to a member of a limited liability company.

Source: L. 2003: Entire section added, p. 1749, § 6, effective July 1.

Editor's note: Section 11-23-102.7 as enacted by House Bill 03-1106 was harmonized with House Bill 03-1257 and relocated as § 11-109-206.

PART 3

CHARTERS

11-109-301. Incorporators. Five or more individual incorporators desiring to organize a trust company shall file with the banking board an application for charter on the form prescribed by the banking board, together with all other documents required by section 11-109-305, all of which instruments shall be duly signed by each of the incorporators and sworn to before an officer authorized by the laws of this state to administer oaths.

Source: L. 2003: Entire article added with relocations, p. 1185, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-104 as it existed prior to 2003.

11-109-302. Application fee. Each application for charter shall be accompanied by an application fee established by the banking board pursuant to section 11-102-104 (11). The fee may be refunded to the incorporators if the application is withdrawn prior to the date set for public hearing.

Source: L. 2003: Entire article added with relocations, p. 1185, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-105 as it existed prior to 2003.

11-109-303. Assessments. (1) The banking board shall annually establish fees and assessments pursuant to section 11-102-104 (11). Assessments may be made more frequently than annually at the discretion of the banking board.

(2) For the fiscal year beginning July 1, 1992, and for each fiscal year thereafter, the banking board shall establish its annual assessment to be collected at least semiannually in such amounts as are sufficient to generate the moneys appropriated by the general assembly to the division of banking for each such fiscal year.

Source: L. 2003: Entire article added with relocations, p. 1186, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-105.5 as it existed prior to 2003.

11-109-304. Capital. (1) The banking board shall establish by rules the capital standards and guidelines, the methods for measuring capital, and the definitions of "capital", "capital adequacy", "capital inadequacy", and other related terms for trust companies subject to this article, which may differ for specific purposes. In promulgating such rules, the banking board shall consider all relevant factors, including without limitation the policies set forth in section 11-101-102 and relevant federal laws and regulations.

(2) Each trust company subject to this article shall at all times comply with the capital rules promulgated by the banking board.

Source: L. 2003: Entire article added with relocations, p. 1186, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-106 as it existed prior to 2003.

11-109-305. Application for charter. (1) After the capital stock has been fully subscribed, the incorporators shall make application to the banking board for a charter. The incorporators shall submit to the banking board the following:

(a) The proposed articles of incorporation in such form as the banking board, pursuant to rules, shall prescribe and as shall be acceptable to the secretary of state for purposes of filing;

(b) An application for a charter in such form and containing such information as the banking board may require.

(2) If the proposed articles of incorporation or application do not comply with the requirements of this article, and with the requirements of the banking board issued pursuant thereto, the banking board shall, within thirty days after the receipt thereof, return both of the said documents to the incorporators, calling attention to the defects therein.

Source: L. 2003: Entire article added with relocations, p. 1186, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-108 as it existed prior to 2003.

11-109-306. Procedure for granting or denying charter. (1) Within sixty days following the filing of the completed application for charter, the commissioner shall make or cause to be made a careful investigation to determine that the following requirements have been met:

(a) That the applicant has proceeded in a lawful manner;

(b) That the name is not deceptively similar to that of another trust company or otherwise misleading;

(c) That the persons who will serve as directors or officers, insofar as such persons are known, are qualified by character and experience and that the qualifications and financial status of the incorporators, directors, officers, and persons in control of the trust company, as defined in section 11-109-401, are consistent with their responsibilities and duties;

(d) That the proposed capital satisfies the standards and guidelines in the rules promulgated by the banking board;

(e) That the proposed or amended articles of incorporation and bylaws are appropriate or may be amended to be appropriate.

(2) Within ninety days after the filing of the application, the banking board shall conduct a public hearing to consider the application. At least thirty days prior to such hearing, the banking board shall give written notice thereof to all persons doing a trust business in the community in which the proposed trust company is to be located and to such other persons as it may designate. At such hearing, the applicants shall have the burden of proving that:

(a) The public convenience and advantage will be promoted by the establishment of the proposed trust company;

(b) Conditions in the locality in which the proposed trust company will transact business afford reasonable promise of successful operation;

(c) The trust company is being formed for no other purpose than the legitimate objects contemplated by this article;

(d) The applicants have complied with all of the applicable provisions of this article;

(e) The books and records of the proposed trust company will be maintained in Colorado and a substantial portion of the proposed trust company's operations will be conducted in Colorado.

(3) Notwithstanding any other provision of this section, if the banking board has given notice pursuant to subsection (2) of this section of a hearing on any application for charter filed pursuant to this section and the banking board has received no written protests against such charter application within ten days before the hearing, the banking board may grant such charter without a hearing as otherwise required in this section if the applicants for such charter are known to the banking board.

(4) Within thirty days after the date of the conclusion of the hearing, the banking board shall grant a charter to the applicants if the banking board determines that the requirements of subsections (1) and (2) of this section have been met.

(5) If the proposed trust company fails to open for business within six months after the date of granting the charter, the privilege of transacting business shall terminate. The banking board, for good cause and upon written application filed prior to the expiration of such six-month period, may extend the time within which the trust company may open for business.

(6) Unless otherwise provided by law to the contrary, articles of incorporation, amended articles of incorporation, or amendments to articles of incorporation shall be delivered to the secretary of state for filing in accordance with the general corporate laws of this state.

Source: L. 2003: Entire article added with relocations, p. 1187, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-109 as it existed prior to 2003.

PART 4

11-109-401. Acquisition of majority control over an existing trust company - definitions. (1) As used in this section, unless the context other requires:

(a) "Controlling person" means a person who is in control of a trust company or would be in control of a trust company after the proposed acquisition.

(b) A person shall be deemed to have acquired control of a trust company if as a result of acquisition such person:

(I) Directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing twenty-five percent or more of the outstanding voting stock thereof;

(II) Controls in any manner the election of a majority of the directors thereof; or

(III) Exercises a controlling influence over the management or policies thereof.

(2) (a) Whenever a person proposes to acquire control of any trust company, such person shall first make application to the banking board for approval. Without approval from the banking board pursuant to subsection (3) of this section, a person shall be prohibited from making such an acquisition.

(b) An application required by paragraph (a) of this subsection (2) shall contain the following information to the extent that it is known by the person making the application:

(I) The number of shares involved;

(II) The name of each seller or transferor;

(III) The name of each purchaser or transferee;

(IV) The name of each beneficial owner if the share or shares are registered in another name;

(V) The purchase price;

(VI) Detailed information concerning any loans made in connection with the acquisition;

(VII) Such other information concerning the transaction as may be required by the banking board regarding the effect of the transaction upon the control of the trust company involved;

(VIII) Biographical and financial information concerning each purchaser, controlling person, or person in control of a controlling person participating in the proposed acquisition; and

(IX) The name of each controlling person and each person in control of a controlling person participating in the proposed acquisition.

(3) (a) After receipt of an application, the banking board shall make an investigation, and the banking board shall approve the change of control only after the banking board has determined:

(I) That the person proposing to acquire control is qualified by character, experience, and financial responsibility to control the trust company in a legal and proper manner;

(II) That the interests of the public generally will not be jeopardized by the proposed acquisition; and

(III) That the person proposing to acquire control has satisfied the requirements of this section and the other provisions of this article.

(b) The general assembly declares that the acquisition of control of or of any ownership interest in trust companies by persons owned or controlled by a country with which it has been determined to be against the national interest to trade without export controls for national security purposes by the president of the United States or another appropriate agency of the

federal government as directed by the president pursuant to the "Export Administration Act of 1979", 50 U.S.C. Appendix sec. 2401 et seq., as amended, the "International Emergency Economic Powers Act", 50 U.S.C. sec. 1701 et seq., as amended, or any rule, order, or decision promulgated in connection therewith, is against the public interest. If the application or the banking board's investigation indicates that any person seeking to have control of or any ownership interest in a trust company is owned or controlled by such a country, the banking board may not approve any such change of control.

(4) This section shall not apply to the acquisition of:

(a) Voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

(b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

(c) Stock acquired in securing or collecting, in whole or in part, a debt contracted in good faith or stock acquired through testate or intestate succession or bona fide gift, if the acquirer advises the banking board of such acquisition within thirty days after the acquisition and provides any information required or requested by the banking board or commissioner;

(d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this section if the shares are held only for such reasonable period of time as will permit the sale thereof; or

(e) Pro rata stock dividends.

(5) If the banking board has not acted upon a completed application within sixty days after receipt thereof, the time may be extended for an additional thirty days by the banking board.

(6) Whenever any person proposes to acquire control of any trust company and is required by the "Change in Bank Control Act of 1978" (section 7 (j) of the "Federal Deposit Insurance Act", 12 U.S.C. 1817 (j)), as amended, to give the appropriate federal banking agency prior written notice of such proposed acquisition, a copy of such notice with supporting information shall be given concurrently to the banking board for information. The banking board may use such information in evaluating applications submitted pursuant to this section and shall submit its recommendation and comments to the appropriate federal regulatory authority in a timely manner.

Source: L. 2003: Entire article added with relocations, p. 1188, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-115 as it existed prior to 2003.

11-109-402. Reports to the banking board and to the commissioner. (1) The board of directors shall cause the financial statements of the trust company to be prepared in accordance with generally accepted accounting principles consistently applied, except as the banking board may otherwise provide in order to establish regulatory and competitive parity and pursuant to the policies expressed in section 11-101-102.

(2) The board of directors shall cause an annual audit of the trust company to be completed by an accounting firm composed of certified public accountants or a directors' examination by a public accountant or any other independent person or persons as determined by the banking board at least annually but at intervals of not more than fifteen months as may be

required by the banking board or its rules. The banking board shall adopt rules regarding the qualifications of such public accountant and other independent person or persons who shall assume the responsibility for due care in such directors' examinations. The banking board's rules shall also establish the scope of such directors' examinations, which shall include safeguards to insure that such examinations adequately describe the financial condition of the financial institution. The banking board may require an audit to be completed by an accounting firm composed of certified public accountants under certain circumstances. A report of the audit or directors' examination and any related management letters and documents shall be completed and submitted to the banking board within the time frames, in the form, and containing such information as the banking board may require in its rules. Such report of the audit or directors' examination and any related management letters and documents shall be reviewed by the directors at the next meeting of the board of directors.

(3) If a trust company is owned or controlled by a bank holding company, the requirement of subsection (2) of this section may be fulfilled if:

(a) As required by the banking board and its rules, the controlling bank holding company is audited or examined in a directors' examination annually at intervals of not more than fifteen months and the trust company is included in the annual audit or directors' examination of the bank holding company by that firm;

(b) A report of the audit or directors' examination for the controlling bank holding company, and any related management letters and documents, is completed and submitted to the banking board within the time frames, in the form, and containing such information as the banking board may require in its rules; and

(c) An annual internal examination of the trust company is prepared by the internal examination staff of the controlling bank holding company, which shall be submitted to the banking board immediately upon its request.

(4) (a) Every trust company shall make and file with the commissioner not less than three reports during each calendar year according to the form that may be prescribed by him, verified by the oath of either the president, the vice-president, the cashier, or the secretary and attested by the signature of three or more of the directors. Each such report shall exhibit in detail, as may be required by the commissioner, the resources and liabilities of the trust company at the close of business on the date specified by the commissioner.

(b) Such reports shall be transmitted to the commissioner within thirty days after the request therefor.

(c) The commissioner has power to call for special reports from any particular trust company if, in the commissioner's judgment, such reports are necessary to a full and complete knowledge of its condition. No such special report, nor any summary thereof, shall be required to be published. The reports required by, and filed pursuant to, this section shall be in lieu of all others required by law from trust companies. Every trust company that fails to comply with this section shall pay to the commissioner a penalty in an amount set by the banking board pursuant to section 11-102-104 for each day's delay. The commissioner, for valid reasons and good cause, may waive such penalty.

(5) Any person who becomes a director, executive officer, or other person who, directly or indirectly, is responsible for the management, control, or operations of a trust company shall within ninety days thereafter file a report with the banking board containing: A statement describing any civil or criminal offenses affecting such person's qualification to serve in such

capacity with respect to which such person has been found guilty or liable by any federal or state court or federal or state regulatory agency; such biographical information as the banking board shall require; and such other information as the banking board shall require pursuant to its rules. If any statement contained in such report subsequently becomes inaccurate or misleading in any way, such person shall file an amended report within thirty days after the date on which the statement in the report first becomes inaccurate or misleading. Any person who fails to comply with this subsection (5) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which shall not exceed twenty-five dollars per day, and such penalties shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

(6) If any trust company changes any executive officer, director, or other person who, directly or indirectly, is responsible for the management, control, or operations of the trust company, such changes shall be promptly reported to the banking board, and the trust company shall provide such information concerning such person as may be requested by the banking board on such forms as the banking board may require, including information about the reasons for termination from any prior employment and whether such person was charged or convicted of any civil or criminal offenses enumerated in subsection (5) of this section. No civil liability shall arise for any trust company, its directors, executive officers, employees, or agents, or any other persons due to compliance with the requirements of this subsection (6). The purpose of such information is to inform the banking board of the qualifications of such person as they may affect the safety and soundness of the trust company. The information shall be treated as confidential under this article. Any trust company that fails to comply with this subsection (6) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, which shall not exceed twenty-five dollars per day, and such penalties shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

Source: L. 2003: Entire article added with relocations, p. 1190, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-118 as it existed prior to 2003.

PART 5

DIRECTORS

11-109-501. Directors' meetings - duties. (1) The board of directors of a trust company shall meet at least quarterly. A special meeting of the board of directors may be called by the banking board. The board of directors shall maintain minutes of each meeting including the record of attendance. A director who fails to attend three consecutive meetings of the board of directors shall cease to be a director unless such absence is satisfactorily explained to the banking board.

(2) The board of directors shall establish the policies and procedures necessary for the proper exercise of fiduciary powers by the trust company. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of the trust company's powers as the board of directors may consider proper to assign to any director, officer, employee, or committee as it may designate.

(3) The board of directors of a trust company may declare dividends from retained earnings and from other components of capital specifically approved by the banking board so long as the declaration is made in compliance with the rules established by the banking board.

Source: L. 2003: Entire article added with relocations, p. 1192, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-116 as it existed prior to 2003.

11-109-502. Director and officer insurance and fidelity bonds - legislative declaration. (1) The general assembly hereby finds, determines, and declares that the following is enforceable and in conformity with the public policy of this state, as expressed in this article, including the provisions of section 11-101-102:

(a) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, that provides insurance coverage to directors or officers, or both, of a trust company but that does not grant coverage or that excludes coverage for claims made by any depository insurance organization or other state or federal corporation, organization, entity, or agency acting as receiver, conservator, or liquidator of such trust company, whether in its own name or in behalf of any other person or entity; or

(b) Any fidelity bond, financial institution bond, or depository institution bond in effect or issued on or after April 30, 1993, that provides for termination of such bond upon the taking over of any trust company by a receiver or other liquidator or by state or federal officials.

(2) No provision of this article shall be construed to contravene or modify the expressed public policy set forth in this section.

(3) The directors of a trust company shall:

(a) Require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds must provide for indemnity to the trust company on account of any losses sustained by it as the result of any dishonest, fraudulent, or criminal conduct by them acting independently or in collusion or combination with any person. The bonds may be in individual, schedule, or blanket form, and the trust company shall pay the premiums for the bonds.

(b) Require suitable insurance protection to the trust company against burglary, robbery, theft, and other insurable hazards to which the trust company may be exposed in the operations of its business on the premises or elsewhere; and

(c) Prescribe, at least once in each calendar year, the amount or penal sum of the bonds and policies specified in this section and the sureties or underwriters thereon after giving due and careful consideration to all known elements and factors constituting such risk or hazard. The directors shall record the action in the board's minutes.

Source: L. 2003: Entire article added with relocations, p. 1193, § 3, effective July 1. **L. 2013:** (3) added, (SB 13-154), ch. 282, p. 1483, § 51, effective July 1.

Editor's note: This section is similar to former § 11-23-117.5 as it existed prior to 2003.

PART 6

OFFENSES, PENALTIES, REMOVAL,
SUSPENSION, AND ENFORCEMENT

11-109-601. Penalty for noncompliance with the law. It is unlawful for any person to carry on or conduct in this state a trust company business, or to advertise or hold himself or herself out as being engaged in or doing a trust company business, or to use the word "trust" or words "trust company" in connection with a business unless such person has complied with the provisions of this article or other laws of this state specifically authorizing a fiduciary or trust business. Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

Source: L. 2003: Entire article added with relocations, p. 1193, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-119 as it existed prior to 2003.

11-109-602. Assessment of civil money penalties by banking board. (1) (a) (I) After notice and a hearing as provided in article 4 of title 24, C.R.S., and after making a determination that no other appropriate governmental agency has taken similar action against such person for the same act or practice, the banking board may assess against and collect a civil penalty from:

(A) Any person who has violated any final cease-and-desist order issued by the banking board pursuant to section 11-109-104 (1)(c); and

(B) Any trust company that, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such trust company who, violates or knowingly permits any person to violate any of the provisions of this article or any rule promulgated pursuant to this article, or engages or participates in any unsafe or unsound practice in connection with a trust company. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but not be limited to, the following violations: Making, or causing to be made, delinquent payment of assessments under this section; submitting, or causing to be submitted, delinquent reports, including but not limited to call reports; or knowingly submitting, or causing to be submitted, to the banking board any report or statement that contains materially false or misleading information.

(II) The banking board may, at its option and upon waiver of the right to a public hearing by a respondent, close to the public any hearing concerning an assessment of a civil money penalty, an order of suspension or removal from office, an order to cease and desist from any unlawful or unsafe and unsound practices, or any other formal enforcement action by the banking board.

(b) For the purposes of this section, a violation shall include, but is not limited to, any action, by any person alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.

(2) Civil money penalties shall be assessed by written notice of assessment of a civil money penalty served upon the person to be assessed. The notice of assessment of a civil money penalty shall state the amount of the penalty, the period for payment, the legal authority for the

assessment, and the matters of fact or law constituting the grounds for assessment. The notice of assessment of a civil money penalty shall constitute a final order for purposes of judicial review pursuant to section 24-4-106, C.R.S.

(3) The banking board shall have authority to determine the amount of any civil money penalty assessed against any executive officer, director, employee, agent, or other person participating in the affairs of a trust company, except as expressly limited by this article. In determining the amount of the civil money penalty to be assessed, the banking board shall consider the good faith of the person assessed, the gravity of the violation, any previous violations by the person assessed, the nature and extent of any past violations, and such other matters as the banking board may deem appropriate; except that the civil money penalty shall be not more than one thousand dollars per day for each day the person assessed remains in violation.

(4) Civil money penalties assessed pursuant to this section shall be due and payable and collected within thirty days after the notice of assessment of a civil money penalty is issued by the banking board; except that the banking board may, in its discretion, compromise, modify, or set aside any civil money penalty. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

Source: L. 2003: Entire article added with relocations, p. 1193, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-119.1 as it existed prior to 2003.

11-109-603. No indemnification or insurance against civil money penalties. Notwithstanding any other provision of law, no trust company shall indemnify or insure any executive officer, director, employee, agent, or person participating in the conduct of affairs of such trust company against civil money penalties.

Source: L. 2003: Entire article added with relocations, p. 1194, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-119.2 as it existed prior to 2003.

11-109-604. Removal of director, officer, or other person. (1) The banking board may serve any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a trust company with a written notice of its intention to remove him or her from office whenever the banking board determines:

(a) That any such person has committed any violation of this article, a rule of the banking board, or a cease-and-desist order of the banking board that has become final; has engaged or participated in any unsafe or unsound practice in connection with a trust company; or has committed or engaged in any act, omission, or practice that constitutes a breach of fiduciary duty to the trust company; and

(b) (I) That the trust company has suffered or probably will suffer substantial financial loss or other damage or that the interests of its customers could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty or offense; or

(II) That such person has received financial gain by reason of such violation, practice, breach of fiduciary duty, or offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one that demonstrates a willful or continuing disregard for the safety or soundness of the trust company.

(2) Whenever the banking board determines that an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a trust company, by conduct or practice with respect to another trust company or business institution that results in substantial financial loss or other damage, has evidenced either personal dishonesty or a willful or continuing disregard for the trust company's safety and soundness, and, in addition, has evidenced unfitness to continue his or her relationship with the trust company, the banking board may serve upon the person a written notice of its intention to remove him or her from office or to prohibit such person's further participation in any manner in the conduct of the affairs of any Colorado state-chartered trust company or bank.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit such person's participation in the conduct of the affairs of a trust company shall contain a statement of the facts constituting grounds for removal and shall fix a time and place at which a hearing shall be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the banking board at the request of such director or executive officer or other person, and for good cause shown. Unless such director, executive officer, or other person appears at the hearing in person or by a duly authorized representative, he or she shall be deemed to have consented to the issuance of an order of removal or prohibition as specified in the notice issued pursuant to subsection (1) or (2) of this section. In the event of such consent or, if, upon the record made at any such hearing, the banking board finds that any of the grounds specified in such notice have been established, the banking board may issue such orders of suspension or removal from office as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such trust company and the director, executive officer, or other person concerned except in the case of an order issued upon consent, which shall become effective at the time specified therein. Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the banking board or a reviewing court.

Source: L. 2003: Entire article added with relocations, p. 1194, § 3, effective July 1. **L. 2013:** (2) amended, (SB 13-154), ch. 282, p. 1483, § 52, effective July 1.

Editor's note: This section is similar to former § 11-23-119.3 as it existed prior to 2003.

11-109-605. Suspension of director, officer, or other person. (1) The banking board may suspend an executive officer, director, employee, agent, or other person participating in the conduct of the affairs of a trust company who becomes ineligible to hold his or her position, or who after receipt of an order of the banking board to cease and desist violates this article or a lawful rule or order issued thereunder, or who is dishonest, or who is reckless or grossly incompetent in the conduct of trust business, or who may be subject to removal under section 11-109-604. It shall be a criminal offense for any such person, after receipt of a suspension order, to perform any duty or exercise any power of any trust company until the banking board vacates

such suspension order. A suspension order shall specify the grounds thereof. A copy of the order shall be sent to the trust company concerned and to each member of its board of directors.

(2) Ten days' notice, by certified mail, return receipt requested, and hearing shall be provided to any trust company affected by an action of the banking board in advance of any action taken by the banking board pursuant to this section. In cases found by the banking board to involve extraordinary circumstances requiring immediate action, the banking board may take such action, without notice or hearing, but shall promptly afford a subsequent hearing, upon application to rescind the action taken.

Source: L. 2003: Entire article added with relocations, p. 1196, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-119.4 as it existed prior to 2003.

11-109-606. Informal enforcement authority. The banking board, or the commissioner if so authorized by the banking board, shall have authority to initiate informal actions to enforce the provisions of this article. In this regard the banking board or the commissioner may, in its or the commissioner's discretion, enter into written agreements such as a memorandum of understanding with, or an informal commitment letter from, or a strongly worded letter of reprimand to any trust company or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of the trust company.

Source: L. 2003: Entire article added with relocations, p. 1196, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-119.5 as it existed prior to 2003.

11-109-607. Receipt of deposits while insolvent. It is a criminal offense if a trust company receives any deposit while insolvent, or an officer, director, or employee knows or, in the proper performance of his or her duty should know, of such insolvency and receives or authorizes the receipt of such deposit, and if such trust company or person has knowingly concealed or misstated material facts regarding the insolvency of the trust company from or to the banking board, commissioner, or division of banking.

Source: L. 2003: Entire article added with relocations, p. 1196, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-119.6 as it existed prior to 2003.

PART 7

LIQUIDATION, DISSOLUTION, AND EMERGENCY CHARTERS

11-109-701. Discontinuance of trust business - voluntary liquidation and dissolution. (1) A trust company may discontinue its trust business upon furnishing to the banking board satisfactory evidence of its release and discharge from all obligations and trusts that it has undertaken or that have been imposed by law. Thereupon, the banking board shall

cancel the charter, and such trust company shall not be permitted to use the word "trust" in its name or in connection with its business.

(2) (a) With the approval of the banking board, a trust company may liquidate and dissolve. The banking board shall grant such approval if it appears that the proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock of the trust company at a meeting called for that purpose and that the trust company is solvent and has sufficient liquid assets to pay off depositors and creditors immediately.

(b) (I) Upon approval by the banking board, the trust company shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation, and shall proceed to pay its depositors and creditors and to wind up its affairs.

(II) Within thirty days after the approval, a notice of liquidation shall be sent by mail to each depositor and creditor, at the address of such person as shown in the records of the trust company. The notice shall be posted conspicuously on the premises of the trust company and shall be published in such a manner as the banking board may require. With each notice, the trust company shall send a statement of the amount shown in the records of the trust company to be the claim of the depositor or creditor. The notice shall require that claims of depositors and creditors, if the amount claimed differs from the amount stated in the notice to be due, be filed with the trust company before a specified date not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(III) The approval of an application for liquidation shall not impair any right of a depositor or creditor to payment in full, and all lawful claims of creditors and depositors shall promptly be paid.

(IV) Any assets remaining after the discharge of all obligations shall be distributed to the stockholders in accordance with their respective interests. No such distribution shall be made before all claims of depositors and creditors have been paid or any funds payable to a depositor or creditor and unclaimed have been transmitted to the banking board, or, in the case of any disputed claim, the trust company has transmitted to the banking board a sum adequate to meet any liability that may be judicially determined.

(c) Any unclaimed distribution to a stockholder or depositor shall be held until ninety days after the final distribution and then transmitted to the banking board. Such unclaimed funds shall be held by the banking board for six years and, unless sooner claimed by the person entitled thereto, shall be transferred to the treasury of the county in which the trust company is located. The county treasurer and his successors shall hold such money in trust for a period of six years, unless the money is sooner paid out to the beneficial owner. Any money remaining in the fund six years after such money is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the beneficial owners therein to recover such money shall be forever barred.

(d) If the banking board finds that the assets will be insufficient for the full discharge of all obligations or that completion of the liquidation has been unduly delayed, the banking board may take possession and complete the liquidation in the manner provided in this article for involuntary liquidations.

(e) The banking board may require reports of the progress of liquidation. If the banking board is satisfied that the liquidation has been properly completed, it shall cancel the charter and enter an order of dissolution.

Source: L. 2003: Entire article added with relocations, p. 1196, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-121 as it existed prior to 2003.

11-109-702. Involuntary liquidation. (1) Except as otherwise provided in this article, only the banking board may take possession of a trust company if, after a hearing before the banking board, it finds: The trust company's capital is inadequate; the trust company's business is being conducted in an unlawful or unsound manner; the trust company is unable to continue normal operations; or the control of the trust company has been assumed by any person or persons convicted of fraud or a felony involving moral turpitude or financial dealings in this state or any other jurisdiction, or by any partnership, association, or corporation controlled, directly or indirectly, by any person so convicted, unless the banking board determines that such person has been duly rehabilitated or otherwise that the trust company will be honestly and efficiently managed.

(2) (a) The banking board shall take possession of a trust company by posting upon the premises a notice reciting that it is assuming possession pursuant to this article and the time, not earlier than the posting of the notice, when its possession shall be deemed to commence. A copy of the notice shall be filed in the district court of the county in which the trust company is located. The commissioner shall notify the federal deposit insurance corporation of taking possession of any trust company that is a member of such corporation.

(b) When the banking board has taken possession of a trust company, the commissioner shall be vested with the full and exclusive power of control, including the power to stop or to limit the payment of its obligations; to employ any necessary assistants, including legal counsel after possession of the trust company has been taken; to execute any instrument in the name of the trust company; to commence, defend, and conduct in its name any action or proceeding to which it may be a party; to terminate his or her possession by restoring the trust company to its board of directors and stockholders upon conditions prescribed by the banking board; and to reopen a closed trust company or liquidate the trust company in accordance with this article. As soon as practicable after the banking board takes possession, the commissioner shall make an inventory of the assets and file a copy thereof with the court in which the notice of possession was filed.

(c) For six months after the posting of the notice of possession and while the banking board's possession continues, there shall be a postponement of the date upon which any period of limitation fixed by statute or agreement would otherwise expire on a claim or right of action of the trust company, or upon which a review must be taken or a pleading or other document must be filed by the trust company in any pending action or proceeding.

(d) If, in the opinion of the banking board, an emergency exists that may result in serious losses to the customers, it may take possession of a trust company without a prior hearing. Within ten days after the banking board has taken possession, any interested person may file an application with the banking board for an order vacating such possession. The banking board shall grant the application if it finds its action was unauthorized.

(3) For the purposes of this article, a trust company shall be deemed to be closed when the banking board has closed the trust company for business for the purpose of liquidation. The banking board shall mail notice of its intent to liquidate the trust company to the directors, stockholders, and depositors at their addresses as shown on the records of the trust company, and

the commissioner shall proceed to liquidate the trust company. The banking board may appoint a liquidator to conduct the liquidation of the affairs of any trust company. The liquidator shall perform all of the duties required of the commissioner under this article and shall make such periodic reports as the banking board shall require. If the trust company is a member of the federal deposit insurance corporation, the banking board may offer the position of liquidator to the federal deposit insurance corporation, which may decline in their discretion. The liquidator may employ such other assistants and legal counsel at such reasonable compensation as the liquidator shall determine to be necessary. All expenses incident to the liquidation shall be paid out of the assets of the trust company. The liquidator and any assistants shall provide a bond executed by a surety company authorized to do business in this state, running to the people of the state of Colorado, that meets with the approval of the banking board, for the faithful discharge of their duties in connection with such liquidation and the accounting for all moneys coming into their hands. The cost of such bond shall be paid from the assets of the trust company. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof.

(4) No judgment, lien, or attachment shall be executed upon any asset of the trust company while it is in the possession of the banking board. Upon the election of the commissioner, in connection with a liquidation:

(a) Any nonconsensual lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the trust company during the banking board's possession, or within four months prior to commencement thereof, shall be vacated and voided, except liens created by the banking board while in possession;

(b) Any transfer of an asset of the trust company made after or in contemplation of its insolvency, with intent to effect or that results in a preference, shall be voided.

(5) With the approval of the court in which notice of possession has been filed, the commissioner may borrow money in the name of the trust company and may pledge its assets as security for the loan.

(6) All necessary and reasonable expenses of the banking board's possession of a trust company and of its liquidation shall be paid from the assets thereof.

Source: L. 2003: Entire article added with relocations, p. 1198, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-122 as it existed prior to 2003.

11-109-703. Emergency grant of new charter. In addition to powers regarding liquidation, the banking board may, in the interest of protecting the public and the depositors of a closed trust company with its principal office in this state, issue a new trust company charter to qualified individuals for the same location as the closed trust company, contingent upon the new trust company assuming full liability for such deposits of the closed trust company as may be transferred to it. Under such conditions, a new charter may be issued summarily without the publication of notice, without the holding of a public hearing, and without complying with any of the other provisions and procedures specified in this article.

Source: L. 2003: Entire article added with relocations, p. 1199, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-122.1 as it existed prior to 2003.

11-109-704. Liquidation by commissioner - procedure. (1) In liquidating a trust company, the commissioner may exercise any power of the trust company and shall have the duty to collect all assets, debts, and claims belonging to the trust company. Unless the commissioner obtains the approval of the court in which notice of possession has been filed by petition setting forth the material facts and upon such notice to the officers, directors, or stockholders in such form as the court may require, the commissioner shall not:

(a) Sell any asset of the trust company having a value in excess of five hundred dollars;

(b) Compromise or release any claim if the amount of the claim exceeds five hundred dollars, exclusive of interest;

(c) Make any payment on any claim, other than a claim upon an obligation incurred by the commissioner, before preparing and filing a schedule of his or her determinations in accordance with this article.

(2) Within six months after the commencement of liquidation, the commissioner may, by election, terminate any executory contract for services or advertising to which the trust company is a party or any obligation of the trust company as a lessee. A lessor who receives at least sixty days' notice of the commissioner's election to terminate the lease shall have no claim for rent, other than rent accrued to the date of termination, nor for damages for such termination.

(3) The right of any agency of the United States insuring savings obligations to be subrogated to the rights of depositors upon payment of their claims shall not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payments to depositors of trust companies.

(4) As soon after the commencement of liquidation as is practicable, the commissioner shall send notice of the liquidation to each known depositor, creditor, and bailor of property held by the trust company at the address shown in the records of the trust company. The notice shall also be published once a week for three successive weeks, in a newspaper of general circulation in the city or county in which the trust company is located. With each notice, the commissioner shall send a statement of the amount shown in the records of the trust company to be the claim of the depositor, creditor, or bailor. The notice shall demand that property held by the trust company as bailee be withdrawn by the person entitled thereto and the claim of a depositor or creditor, if the amount claimed differs from the amount stated in the notice to be due, be filed with the commissioner before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(5) Any unclaimed property, including the contents of safe deposit boxes, held by the trust company as bailee and certified inventories thereof shall be held by the commissioner for six years unless sooner claimed by the person entitled to such property. After six years the commissioner may sell or otherwise appropriately dispose of the property. The proceeds of a sale shall be transferred and disposed of in accordance with the provisions of subsection (10) of this section.

(6) Within six months after the last day specified in the notice for the filing of claims, or within such longer period as may be allowed by the court in which notice of possession has been filed, the commissioner shall:

(a) Reject any claim if the commissioner determines the invalidity thereof;

(b) Determine the amount, if any, owing to each known creditor or depositor and the priority class of such claim under this article;

(c) Prepare a schedule of the commissioner's determinations for filing in the court in which notice of possession was filed;

(d) Notify each person whose claim has not been allowed in full and publish once a week for three successive weeks, in a newspaper of general circulation in the city or county in which the trust company is located, a notice of the time when and the place where the schedule of determinations will be available for inspection and the date, not sooner than thirty days thereafter, when the commissioner will file the schedule in court. If there is no newspaper of general circulation in such city or county, then publication shall be in the newspaper of general circulation published nearest thereto.

(7) Within twenty days after the filing of the commissioner's schedule, the federal deposit insurance corporation or any creditor, depositor, or stockholder may file an objection to any determination made that adversely affects or may adversely affect such objector. Any objections so filed shall be heard and determined by the court upon such notice to the commissioner and interested claimants as the court may prescribe. If the objection is sustained, the court shall direct an appropriate modification of the schedule. After filing the schedule, the commissioner may, from time to time, make partial distribution to the holders of claims that are undisputed or have been allowed by the court if a proper reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the commissioner shall make final distribution.

(8) (a) The following claims shall have priority in the order specified: Obligations incurred by the commissioner; wages and salaries of officers and employees earned during the three-month period preceding the commissioner's possession in an amount not exceeding five thousand dollars for any one person; fees and assessments due to the commissioner; amounts that the federal deposit insurance corporation are entitled to receive on account of their subrogation to the claims of depositors; all other claims for savings obligations; claims of secured creditors to the extent of the value of their collateral; and all other claims.

(b) After the payment of all other claims, the commissioner shall pay claims otherwise proper that were not filed within the time prescribed. If the sum available for any class is insufficient to provide payment in full, such sum shall be distributed to the claimants in the class pro rata.

(9) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

(10) Unclaimed funds remaining after final distribution has been made by the commissioner shall be retained for six years by the commissioner unless sooner claimed by the owner. At the expiration of such period, the remaining sum shall be transferred to the treasury of the county in which the trust company is located. The county treasurer and his or her successors shall hold such money in trust for a period of six years, unless the money is sooner paid out to the beneficial owner or owners or a suit is instituted to recover such money or a portion thereof. Any money remaining in the fund six years after such money is paid into the treasury of the county, for the recovery of which no action is pending, shall be transferred to the general fund of the county, and all rights of the former beneficial owners of such money to recover the money shall be forever barred.

(11) When the final distribution of the proceeds of liquidation has been made in accordance with this article, the commissioner shall file an account with the court in which

notice of possession was filed. Upon approval thereof, the commissioner shall be relieved of liability in connection with the liquidation and shall cancel the charter.

Source: L. 2003: Entire article added with relocations, p. 1200, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-124 as it existed prior to 2003.

PART 8

APPEALS

11-109-801. Appeals procedure. Any trust company aggrieved and directly affected by an order or rule of the banking board, issued under this article, may seek a review in the district court of this state in and for the county in which the trust company is located, within thirty days after receipt of written notice of the issuance of such order or rule. The filing of such a petition for review shall not, of itself, stay enforcement of an order or rule, but the court, upon a finding that irreparable injury would otherwise result, may order a stay upon such terms as it deems proper. The court may affirm the order of the banking board or may direct said banking board to take any action deemed proper. No person shall be subjected to any civil or criminal liability for any act or omission made in good faith reliance upon a then existing order or rule of the banking board, notwithstanding a subsequent decision by a court invalidating the order or rule.

Source: L. 2003: Entire article added with relocations, p. 1202, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-120 as it existed prior to 2003.

11-109-802. Injunctions - appeals. (1) Whenever the banking board has taken possession of a trust company and the trust company deems itself aggrieved thereby, such trust company, within ten days after such taking, may apply to the court in which notice of possession has been filed to enjoin further proceedings. After citing the banking board to show cause why further proceedings should not be enjoined and after a hearing, the court may dismiss the application of the trust company or may enjoin the banking board from further liquidation proceedings and direct the banking board to surrender possession of the trust company.

(2) An appeal may be taken by the banking board or by the trust company from the judgment of the court in the manner provided by law for appeals from judgments of the district court. An appeal from the judgment does not operate as a stay of judgment. If the appeal is taken by the banking board, no bond need be given, but if the appeal is taken by the trust company, a bond shall be given as required by the Colorado rules of civil procedure.

Source: L. 2003: Entire article added with relocations, p. 1202, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-123 as it existed prior to 2003.

PART 9

TRUST PRACTICES

11-109-901. Reserves against deposits. Trust companies that are subject to reserve provisions of the "Federal Reserve Act" shall maintain such reserves against deposits as may be required by the "Federal Reserve Act", but, in addition thereto, the banking board may by rule impose reserve requirements that it deems prudent and sound on trust companies, including trust companies not subject to reserve provisions of the "Federal Reserve Act". In promulgating these rules, the banking board shall consider all relevant factors, including without limitation, the factors set forth in section 11-101-102.

Source: L. 2003: Entire article added with relocations, p. 1203, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-109.5 as it existed prior to 2003.

Cross references: For the "Federal Reserve Act", see 12 U.S.C. § 221 et seq.

11-109-902. Investments. (1) In addition to other investments expressly authorized by this article or the rules promulgated by the banking board, a trust company may purchase:

(a) Obligations that satisfy the requirements of this article or the rules promulgated by the banking board for loans for state banks;

(b) Obligations of, or fully guaranteed by, the United States, a state of the United States, or the Dominion of Canada;

(c) Obligations of the international bank for reconstruction and redevelopment;

(d) Farm loan bonds issued by any federal land bank organized pursuant to an act of congress approved July 17, 1916, entitled: "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes." and known as the "Federal Farm Loan Act", and acts amendatory thereto. Such farm loan bonds shall be accepted as security for all public deposits and in all cases where bonds are required by law to be deposited with any department or public official of this state, but this section shall not be so construed as to prohibit such moneys or deposits from being invested in such other securities provided for by law.

(e) General obligations of a territory of the United States, a province of the Dominion of Canada, or a political subdivision or instrumentality of a state or territory of the United States;

(f) Obligations of a corporation chartered by the United States or a state thereof doing business in the United States; or an authority organized under state law, an interstate compact, or by substantially identical legislation adopted by two or more states if any of the foregoing under this paragraph (f) are approved by the banking board for investment;

(g) Revenue obligations issued to provide, enlarge, or improve electric power, gas, water and sewer facilities by any city or town having a population of not less than two thousand people at the time of the investment, located in any state in the United States or territories thereof;

(h) Such other obligations as the general assembly has designated or may from time to time designate as legal investments for public funds;

(i) The capital stock of other corporations, including the stock of a corporation regulated under the federal "Investment Company Act of 1940", as amended, 15 U.S.C. section 80a-1 et

seq., and the land or lands and building or buildings in which the business of the trust company is carried on, including its trust company offices, other property in the same building to rent as a source of income, and fixtures, and furniture, safe deposit vaults and boxes, and other personal property such as may be appropriate to carry on its business.

(2) A trust company may, to the extent that banks subject to the laws of the federal government are permitted so to do and to the extent permitted by the rules of the banking board, purchase shares of stock in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the "Small Business Investment Act of 1958", as amended, but in no event shall any trust company hold shares in small business investment companies in an amount aggregating more than three percent of the trust company's capital and surplus.

(3) No limitation or prohibition otherwise imposed by any provision of state law relating to trust companies shall prevent a trust company from investing not more than ten percent of the trust company's capital as defined in the rules promulgated by the banking board in a bank service corporation as defined in 12 U.S.C. 1861 to 1865, inclusive, and as amended, subject to the rights, powers, and limitations contained therein, and such investment by trust companies is expressly authorized to the extent permitted by the rules of the banking board.

(4) A trust company may acquire or retain an equity investment in a subsidiary of which the trust company is the majority owner, so long as the subsidiary is engaged in activities that are allowed pursuant to this article.

(5) Notwithstanding any restrictions upon investments in obligations, powers, or activities contained in this article, a trust company may invest in any obligation, exercise such powers, and engage in such activities that such trust company could legally acquire, exercise, and engage in were it operating as a national bank at the time such investment was made, such powers were exercised, or such activities were engaged in, to the extent permitted by the rules promulgated by the banking board.

(6) A trust company may invest an amount not exceeding ten percent of its capital as defined in the rules promulgated by the banking board in the stock of any bank or bank holding company that provides services solely to depository institutions and their shareholders, directors, officers, and employees, wherein the ownership of stock of the bank or bank holding company, except for any stock required by law to be owned by directors of the bank or bank holding company, is restricted to banks, trust companies, or bank holding companies. The amount of stock owned by a trust company in any such bank or bank holding company shall not be in excess of five percent of the voting shares of such bank or bank holding company.

(7) (a) A trust company may directly engage in activities that are primarily investments in real estate or may acquire and hold the voting stock of one or more corporations the activities of which are primarily investments in real estate. Such activities may include subdividing and developing real property and building residential housing or commercial improvements on such property and may also include owning, renting, leasing, managing, operating for income, or selling such property. Such property shall be entered on the books at not more than cost or fair market value, whichever is less. The total of all investments made by a trust company pursuant to the authority of this subsection (7) shall not exceed ten percent of its capital.

(b) Upon finding that such restrictions are necessary according to the criteria set forth in section 11-101-102, the banking board may adopt rules that restrict the total investments of a trust company under this subsection (7) to a percentage less than ten percent of the trust company's capital. Nothing in this subsection (7) shall authorize a trust company to contravene a

lawful order of the banking board or commissioner with respect to investments by the trust company in real estate or corporations engaging in real estate activities. A trust company that intends to initiate a program of investments under the authority of this subsection (7) shall give sixty days' advance notice to the division of banking of such intent; except that such notice may be waived in the banking board's discretion where such notice is impracticable or unnecessary. The trust company shall also notify the division within ten days after the commencement of the investment program. If similar notices are required by the trust company's federal supervisory agency, the same form of notice may be used for purposes of notice under this subsection (7).

Source: L. 2003: Entire article added with relocations, p. 1203, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-110 as it existed prior to 2003.

Cross references: The "Federal Farm Loan Act", referenced in this section, was repealed in 1971 by the "Farm Credit Act of 1971", which also provided that references to the "Farm Loan Act" shall be deemed to refer to the comparable provisions of the "Farm Credit Act of 1971", Pub.L. 92-181, codified at 12 U.S.C. § 2001 et seq.

11-109-903. Substitution of trust companies. Trust companies created under this article may participate in the transfer of trust assets in the case of a substitution of one fiduciary for another under the provisions of sections 11-101-401, 11-106-105, and 11-106-106.

Source: L. 2003: Entire article added with relocations, p. 1205, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-110.5 as it existed prior to 2003.

11-109-904. Laws governing individuals apply. A trust company in the exercise of its fiduciary powers shall be subject to the same duties, liabilities, and penalties as an individual fiduciary acting in like capacity.

Source: L. 2003: Entire article added with relocations, p. 1205, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-111 as it existed prior to 2003.

11-109-905. Separation of fiduciary funds. A trust company shall keep fiduciary funds and investments separate and apart from its own assets. All investments made as a fiduciary shall be so designated so that fiduciary funds may be clearly identified.

Source: L. 2003: Entire article added with relocations, p. 1205, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-112 as it existed prior to 2003.

11-109-906. Funds awaiting investment or distribution. Funds held by a trust company in a fiduciary capacity that are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the

account. Funds held in trust by a trust company awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in an account with the trust company as provided in section 11-109-201 (1)(d).

Source: L. 2003: Entire article added with relocations, p. 1205, § 3, effective July 1.

Editor's note: This section is similar to former § 11-23-113 as it existed prior to 2003.

11-109-907. Extensions of credit. (1) A trust company shall not make any loans or extensions of credit except as provided in subsection (2) of this section.

(2) A trust company may:

(a) Make a loan or extend credit to its officers, directors, and employees if such loan or credit is adequately secured and does not involve more than the normal risk of default or present other unfavorable features. Any loan or extension of credit in excess of twenty-five thousand dollars shall be subject to prior approval by the banking board.

(b) Establish with one or more broker-dealers margin accounts in its name as fiduciary or custodian for the benefit of the owners or beneficiaries of such accounts.

Source: L. 2003: Entire article added with relocations, p. 1206, § 3, effective July 1. **L. 2008:** Entire section amended, p. 1502, § 3, effective May 28. **L. 2013:** (1) and IP(2) amended, (SB 13-154), ch. 282, p. 1485, § 58, effective July 1.

Editor's note: This section is similar to former § 11-23-114 as it existed prior to 2003.

PART 10

PRIVATE FAMILY TRUST COMPANIES

11-109-1001 to 11-109-1007. (Repealed)

Source: L. 2013: Entire part repealed, (SB 13-154), ch. 282, p. 1464, § 5, effective July 1.

Editor's note: This part 10 was added in 2008 and was not amended prior to its repeal in 2013. For the text of this part 10 prior to 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

ARTICLE 110

Money Transmitters

Editor's note: This article 110 was added with relocations in 2017. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a

detailed comparison of this article 110, see the comparative tables located in the back of the index.

PART 1

GENERAL PROVISIONS

11-110-101. Short title. The short title of this article 110 is the "Money Transmitters Act".

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 575, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-101 as it existed prior to 2017.

11-110-102. Legislative declaration. It is declared to be the policy of this state that checks, drafts, money orders, or other instruments for the transmission or payment of credit or money are widely used by the people of this state as a process of settling accounts or debts and that sellers and issuers of the instruments receive, in the aggregate, large sums of money from the people of this state and it is therefore imperative that the integrity, experience, and financial responsibility and reliability of those engaged in the various types of businesses dealing in the instruments be above reproach. In order that the people of this state may be safeguarded from default in the payment of these instruments, it is necessary that proper regulatory authority be established through the banking board. Any person who sells or issues the instruments without complying with the provisions of this article 110 endangers the public interest.

Source: L. 2017: Entire section added with relocations, (SB 17-226), ch. 159, p. 575, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-102 as it existed prior to 2017.

11-110-103. Definitions. As used in this article 110, unless the context otherwise requires:

(1) "Banking board" or "board" means the banking board created in section 11-102-103.

(2) "Commissioner" means the state bank commissioner appointed and serving pursuant to section 11-102-101 (2).

(3) "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.

(4) "Engagement letter" means a letter that sets the scope and terms of an independent audit.

(5) "Exchange" means any check, draft, money order, or other instrument for the transmission or payment of money or credit. It does not mean money or currency of any nation.

(6) "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.

(7) "Issuing" means the act of drawing any instrument of exchange by a person who engages in the business of drawing the instruments as a service or for a fee or other consideration.

(8) "Licensee" means any person duly licensed by the banking board pursuant to the provisions of this article 110.

(9) "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.

(10) "Managing official" means a person who has significant oversight duties over a licensee or applicant as determined by the board.

(11) "Money transmission" means the sale or issuance of exchange or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including but not limited to payment instrument, wire, facsimile, or electronic transfer.

(12) "Outstanding payment instrument" means any exchange sold or issued by a licensee or any exchange issued by the licensee that has been sold by an agent of the licensee in the United States, that has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee.

(13) "Owner" means a person with an ownership interest in a licensee or applicant that is a sole proprietorship or partnership.

(14) "Person" means any natural person, firm, association, partnership, registered limited liability partnership, syndicate, joint stock company, unincorporated company or association, limited liability company, common law trust, or any corporation organized under the laws of the United States or of any state or territory of the United States or of any foreign country.

(15) "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.

(16) "Principal shareholder" means a person who has a significant ownership interest in a corporate licensee or applicant.

(17) "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.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 576, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-103 as it existed prior to 2017.

11-110-104. 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 this title 11 and the declaration of policy contained in section 11-101-102 shall apply to the provisions of this article 110. For the purposes of this section and section 11-102-104, the banking board shall have the same powers, duties, and functions concerning a violation of this article 110 or a rule issued pursuant to this article 110 as the board has concerning a violation of the "Colorado Banking Code", a statute, or a rule issued pursuant to that code.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 577, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-103.5 as it existed prior to 2017.

11-110-105. License required - investigations. (1) A person shall not engage in the business of money transmission without first procuring a license from the board; except that an agent, subagent, or representative of a licensee or an employee of an agent, subagent, or representative who acts on behalf of a licensee in the transmission of money by the licensee is not required to be licensed under this article 110.

(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.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 577, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-104 as it existed prior to 2017.

11-110-106. Exemptions. Nothing in this article 110 shall apply to: Departments or agencies of the United States of America, or to any state or municipal government, or to corporations organized under the general banking, savings and loan, or credit union laws of this state or of the United States, or to the receipt of money by an incorporated telegraph or cable company at any office or agency thereof for immediate transmission by telegraph or cable.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 578, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-105 as it existed prior to 2017.

11-110-107. 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:

(a) State the name of the applicant and the address of his or her principal office;

(b) Contain evidence that the applicant possesses qualifications and experience as required by the banking board pursuant to rule. If the applicant is a joint stock association, common law trust, unincorporated company or association, limited liability company, or corporation, the secretary or any assistant secretary thereof shall certify the name and address of each of the officers, directors, trustees, or other managing officials together with a designation of the office or offices held by each and evidence that each individual possesses the qualifications

and experience required by the banking board pursuant to rule and shall submit the certificate to the banking board with the application.

(c) State the date and place of incorporation;

(d) If the applicant has one or more branches, subsidiaries, affiliates, agents, or other locations at or through which the applicant proposes to engage in the business of issuing checks, drafts, money orders, or other instruments for the transmission or payment of money or credit, state the name and address of each such location;

(e) 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 the record check shall be borne by the applicant.

(f) Contain such other data, financial statements, and pertinent information as the banking board may require from time to time with respect to the applicant or its directors, trustees, officers, members, branches, subsidiaries, affiliates, or agents.

(2) Each application for a license shall be accompanied by financial statements of the applicant and a bond in the form and the amount specified in this article 110.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 578, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-106 as it existed prior to 2017.

11-110-108. Bond - condition - amount - rules. (1) (a) 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 the applicant is named as obligor, to be approved by the banking board, that 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 110 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 110 and will pay to the state and to any person all money that becomes due and owing to the state or to the person under the provisions of this article 110 because of any exchange sold or issued by the 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 ninety days' written notice to the banking board. The cancellation shall not affect any liability incurred or accrued prior to the termination of the 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.

(b) The banking board shall by rule establish financial standards by which to evaluate the financial condition or solvency of licensees and for the bond amount set under subsection (1)(a) of this section to be decreased to not less than two hundred fifty thousand dollars, following application by the licensee and an opportunity for hearing before the banking board, in such amounts as necessary up to the amount provided in subsection (1)(a) of this section to protect purchasers of exchange.

(c) The banking board shall by rule establish financial standards by which to evaluate the financial condition or solvency of licensees and for the bond amount to be increased above the amount provided in subsection (1)(a) of this section if the banking board determines, following notice to the licensee and an opportunity for hearing before the banking board, that the customers of the licensees are at undue risks, but in no case shall the total bond required of a licensee be greater than two million dollars. In promulgating the rules, the banking board shall utilize and adopt generally accepted accounting principles for the evaluation and determination of the financial condition of licensees.

(2) (a) In lieu of the surety bond required by subsection (1) of this section, the licensee may deposit with the board securities with a par value equal to the amount of the surety bond.

(b) Securities 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) The board shall hold the securities to secure the same obligations as would any surety bond required by this article 110. The licensee may exchange the securities so deposited from time to time for other securities that qualify under this subsection (2) upon written notification to, and written approval by, the commissioner. All of the securities are subject to sale and transfer, and the board may dispose of the proceeds only on the order of a court of competent jurisdiction. The licensee is entitled to receive the interest or dividends on the securities unless prohibited by a court of competent jurisdiction. The board may provide for custody of the securities by any qualified trust company or bank located in the state of Colorado. The depositing licensee shall pay the compensation of any person acting as custodian under this section.

(3) In addition to the bond required under subsection (1) of this section, the commissioner, pursuant to rules promulgated by the banking board, may require a licensee to possess investments having an aggregate market value at least equal to the amount of outstanding payment instruments issued or sold by the licensee. For the purposes of this subsection (3), permissible investments shall be:

(a) Cash;

(b) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by federally insured financial depository institutions;

(d) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality, or any political subdivision thereof;

(f) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures, or stock traded on any national securities exchange or on a national over-the-counter market;

(g) Such other investments as may be approved by the banking board.

(4) It is the intent of the general assembly that in applying the provisions of this section the purpose of the required bond and permissible investments is to protect the Colorado purchasers of exchange, and the amount of the bond and investments that are required of any licensee should not be more than is necessary to afford the protection given the financial condition of the licensee as determined under generally accepted accounting principles.

(5) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 579, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-107 as it existed prior to 2017.

11-110-109. 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 board finds that the applicant is of good moral character and financially responsible and can comply with this article 110, the board shall approve the application and notify the applicant in writing 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 paid the license fee, the board shall issue to the applicant a license to engage in the business of money transmission subject to this article 110.

(2) No license shall be issued to an applicant, if a natural person, unless he or she is over twenty-one years of age; or if a partnership or syndicate, unless each of the partners is over twenty-one years of age; or if a joint stock association, common law trust, unincorporated company or association, or corporation, unless each of the officers, directors, trustees, or other managing officials is over twenty-one years of age.

(3) If the board denies an application, the board shall, within thirty days thereafter, prepare and file in its office a written order of denial, which must contain the board's findings and reasons supporting the denial and, within ten days after filing the order, the board shall notify the applicant and send him or her a copy of 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) and if so requested the board shall hold a hearing as specified in section 24-4-105.

(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 110 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 110 or a rule promulgated or order issued under this article 110;

(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.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 581, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-108 as it existed prior to 2017.

11-110-110. Issuance of license - renewal - fee. (1) Before any license is issued, and annually thereafter on or before January 1 of each succeeding year, the applicant or licensee shall pay to the banking board a license fee in an amount set by the banking board pursuant to section 11-102-104 (11). For each license originally issued between July 1 and December 31 of any year, the applicant shall pay one-half the annual fee required in this section. Each license shall expire on January 1 unless the annual fee for the year has been paid prior to that date.

(2) Beginning July 1, 1977, before any license may be renewed, the licensee shall be required to provide the same amount of bond coverage or securities for deposit as an initial applicant under section 11-110-108.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 582, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-109 as it existed prior to 2017.

11-110-111. Examination - fee - financial statements and reports to commissioner - change in control. (1) (a) The commissioner may examine the books and records of a licensee 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 the examination; and shall mail a copy of the report to the licensee examined. If the licensee's records are located outside this state, the licensee shall, at the option of the 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 the examination, the commissioner shall charge a fee in an amount set by the banking board pursuant to section 11-102-104 (11). If any licensee refuses to permit the commissioner to make

an examination, the 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.

(b) In lieu of any examination required by this section to be made by the commissioner, the commissioner may accept the audit of an independent certified public accountant or an independent registered accountant, but the cost of the audit shall be borne by the licensee.

(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 fifty days following the close of the licensee's fiscal year. The 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 resulting from selling or issuing exchange under this article 110. The financial statements shall be accompanied by copies of the engagement and management letters issued by the independent auditor.

(b) Every licensee shall file with the commissioner:

(I) Not less than three reports during each calendar year according to the form prescribed by the commissioner. Each report 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 specified by 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.

(c) If any licensee fails to submit any statement or report to the commissioner as required by this subsection (2), the licensee shall pay to the commissioner a penalty of two hundred fifty dollars for each additional day of delinquency as set by the banking board pursuant to section 11-102-104 (11); except that, if in the opinion of the banking board the delay is excusable for good cause shown, no penalty shall be paid.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 582, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-110 as it existed prior to 2017.

11-110-112. Change in control - rule. (1) (a) Except as specified in subsection (1)(b) or (1)(c) of this section, 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) with the notice.

(b) The board, by rule or order, may exempt a person from any of the requirements of subsection (1)(a)(II) or (1)(a)(III) of this section 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.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 583, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-110.3 as it existed prior to 2017.

11-110-113. 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.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 584, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-110.5 as it existed prior to 2017.

11-110-114. Multiple locations. (1) Each licensee may conduct business at locations within this state the licensee may desire and through agents and subagents the licensee may from time to time appoint. Each licensee shall notify the board 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 accordingly. The notification and proof are due on the date on which the licensee's next report required under section 11-110-111 (2)(b) is due.

(2) Each licensee may, without violating section 5-2-212, notwithstanding whether or not a facility or mode only accepts credit cards, conduct business through physical and electronic facilities, including by telephone and internet, and may charge a different price for the provision of services based upon the type of facility or mode of services used in the transaction so long as the price for the service within a single such facility or mode is not greater for a credit card than for other forms of payment.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 584, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-111 as it existed prior to 2017.

11-110-115. Revocation or surrender of license. (1) The banking board may, upon ten days' notice served personally upon the licensee stating the contemplated action and the grounds therefor, hold a hearing at which the licensee shall have a reasonable opportunity to be heard, for the purpose of determining whether a license should be revoked.

(2) After the hearing the banking board may revoke any license issued under this article 110 if it finds that:

(a) The licensee has failed to maintain the required bond; or

(b) The licensee has failed to comply with any order, decision, or finding of the banking board or the commissioner made pursuant to this article 110; or

(c) The licensee has violated any provision of this article 110; or

(d) Facts exist that would have warranted the banking board's refusal to issue the original license; or

(e) The licensee is engaged in a business a substantial portion of which involves the processing, manufacture, or purchase and sale of commodities or articles of tangible personal property and the licensee has failed to maintain constantly a separate bank deposit account or accounts for the exclusive payment of exchange issued by the licensee; or

(f) The licensee has sold or issued exchange without receiving payment for the face value of the exchange prior to the time of the sale or issuance.

(3) A licensee may surrender any license by delivering to the banking board written notice that he or she surrenders the license, but the surrender shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender, or affect the liability on any bond, or entitle the licensee to a return of any part of any license fee.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 585, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-112 as it existed prior to 2017.

11-110-116. Rules. The banking board may make, promulgate, alter, amend, or revise reasonable rules as may be necessary for the enforcement and execution of this article 110.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 585, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-113 as it existed prior to 2017.

11-110-117. Review. Any person aggrieved and directly affected by an order of the banking board issued under this article 110 may seek a review in the district court of Colorado in and for the county in which the principal place of business of the licensee or applicant is located. The filing of such a petition for review shall not, of itself, stay enforcement of an order, but the court may order a stay upon such terms as it deems proper.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 585, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-114 as it existed prior to 2017.

11-110-118. Penalty for violations. Any person who violates any provision of this article 110 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars. Each such violation shall constitute a separate offense.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 585, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-115 as it existed prior to 2017.

11-110-119. 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 110, 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 110. In the 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 110. The district court may award to the board the costs and attorney fees incurred in enforcing this article 110.

(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 110.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 586, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-115.5 as it existed prior to 2017.

11-110-120. Notice - banking board - consumers. (1) The licensee or the licensee's agents or subagents shall give notice to the banking board, by certified mail, of any legal action which shall be brought against the licensee and of any judgment which shall be entered against the licensee, by any creditor or claimant, relating to selling or issuing exchange or transmitting money under this article 110, together with details sufficient to identify the action or judgment, within ten days after the commencement of any such action or notice to the licensee of entry of any such judgment. Within ten days after it pays any claim of judgment to any such creditor or such claimant, the corporate surety shall give notice to the banking board, by certified mail, of the payment, together with details sufficient to identify the claimant or creditor and the claim or judgment so paid.

(2) The licensee or the licensee's affiliates, agents, or subagents shall immediately give notice to the banking board, by certified mail, of any information in their possession with regard to money orders issued by them that have been returned to purchasers unpaid.

(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. The notice shall be created and furnished to the licensee by the commissioner.

(b) The notice shall be posted conspicuously in a well-lighted place visible to customers.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 586, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-116 as it existed prior to 2017.

11-110-121. Repeal of article - review of functions. (1) This article 110 is repealed, effective September 1, 2024.

(2) Prior to such repeal, the licensing functions of the commissioner and the banking board shall be reviewed as provided for in section 24-34-104.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 587, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-117 as it existed prior to 2017.

PART 2

MONEY TRANSMITTER AGENTS

11-110-201. Agent information - rules. (1) A money transmitter licensed pursuant to part 1 of this article 110 shall annually send the following information to the banking board on such form as it may prescribe:

(a) The name of each agent and the address and telephone number of each of the agent's offices that engage in the business of money transmission;

(b) The name, address, and telephone number of each of the owners of the agent holding more than a ten percent interest in the business if the agent is a partnership or an entity created pursuant to title 7;

(c) The services concerning money transmission that are offered by the agent and the locations where the services are offered;

(d) Such other pertinent information that the banking board may require concerning the agent or its directors, trustees, officers, members, branches, subsidiaries, affiliates, or agents as promulgated by rule.

(2) The banking board may promulgate rules necessary to implement this section.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 587, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-201 as it existed prior to 2017.

11-110-202. Applicability - definition. (1) This part 2 does not apply to an agent of a business licensed pursuant to part 1 of this article 110 to the extent that the agent is selling or adding additional money to stored value issued by the business.

(2) For purposes of this section, "stored value" means a card, code, or other device that is issued to a consumer in a specified dollar amount, which may or may not be increased in value, and is redeemable at a single merchant, an affiliated group of merchants, or multiple unaffiliated groups of merchants or usable at automated teller machines.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 587, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-202 as it existed prior to 2017.

11-110-203. Notice of laws - rules. (1) The banking board shall promulgate rules to create a form containing a notice of the contents of section 18-5-309 and other state and federal laws concerning money laundering.

(2) (a) An agent of a business licensed pursuant to part 1 of this article 110 shall require each employee who performs money transmission services to either:

(I) Understand and sign the form, created under subsection (1) of this section, affirming knowledge of the money laundering laws prior to the employee performing the services; or

(II) Receive training that covers the money laundering laws within thirty days before the employee performs the services.

(b) The agent shall maintain a record of each employee along with the signed notice or evidence of training in compliance with subsection (2)(a) of this section so long as the employee provides the services. The records may be maintained in an electronic or digital format that reproduces the signature on the documents by the agent.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 587, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-203 as it existed prior to 2017.

11-110-204. Records. The information sent to the banking board under section 11-110-201 and the records required by section 11-110-203 shall be open to any law enforcement officer acting within the scope and course of the officer's official duties.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 588, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-204 as it existed prior to 2017.

11-110-205. Agent requirements. (1) No money transmitter licensed pursuant to part 1 of this article 110 shall knowingly contract with an agent or owner of an agent holding more than a ten percent interest in the business who has been convicted of or pleaded guilty or nolo contendere to the offenses in article 5 of title 18; a felony in the selling or issuing of exchange or in money transmission; a felony involving a financial institution; or an equivalent crime outside Colorado.

(2) No agent of a money transmitter licensed pursuant to this article 110 shall knowingly employ a person to perform money transmission services who has been convicted of or pleaded guilty or nolo contendere to the offenses in article 5 of title 18; a felony in the selling or issuing of exchange or in money transmission; a felony involving a financial institution; or an equivalent crime outside Colorado.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 588, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-205 as it existed prior to 2017.

11-110-206. Violations. (1) A person who violates this part 2 commits a class 2 misdemeanor and, for the second or any subsequent offense, the person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501.

(2) A person who acts as an agent of an unlicensed person required to be licensed by part 1 of this article 110 knowing the unlicensed person does not hold the license commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501.

Source: L. 2017: Entire article added with relocations, (SB 17-226), ch. 159, p. 588, § 2, effective August 9.

Editor's note: This section is similar to former § 12-52-206 as it existed prior to 2017.