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HOUSE BILL 03-1257

BY REPRESENTATIVE(S) Marshall, Boyd, Coleman, Decker, Madden, Stengel, and Williams T.;  
also SENATOR(S) Lamborn.

CONCERNING A NONSUBSTANTIVE RECODIFICATION OF COLORADO'S  
BANKING LAWS.

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

**SECTION 1. Repeal of provisions being relocated in this act.**  
Articles 1 to 10, 11, 20, 22, 23, and 25 of title 11, Colorado Revised Statutes, are repealed.

**SECTION 2. Repeal of provisions not being relocated in this act.**  
11-1-104, 11-6-110, 11-6-111, 11-22-613 to 11-22-616, and 11-23-101, Colorado Revised Statutes, are repealed.

**SECTION 3.** Title 11, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW ARTICLES CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

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

**ARTICLE 101**  
**General Provisions**

PART 1  
SHORT TITLE AND POLICY

**11-101-101. [Formerly 11-1-101] Short title.** Articles ~~1 to 11 and 22 and 23~~ 101 TO 109 AND ARTICLE 10.5 of this title shall be known and may be cited as the "Colorado Banking Code". ~~of 1957~~. A reference to the code means the COLORADO BANKING Code as amended from time to time.

**11-101-102. [Formerly 11-1-101.5] 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.

PART 2  
EFFECT ON EXISTING BANKS

**11-101-201. [Formerly 11-1-103] Effect on existing banks.** The charters of the state banks organized and existing prior to July 1, ~~1957~~ 2003, under the laws of this state shall continue in full force and effect. All such state banks, and, to the extent applicable, all national banks doing business in this state on or after July 1, ~~1957~~ 2003, shall, from that date, be subject to the provisions of this article. Any such state bank, by filing an application under this code for an amendment of its charter or for a merger, consolidation, 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.

### PART 3 APPLICATION

**11-101-301. [Formerly 11-1-105] Application of code.** (1) The provisions of this code shall govern the incorporation, organization, corporate functions, merger, consolidation, 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 the provisions of articles ~~1 to 11~~ 10.5 AND 101 TO 107 of this title only apply to industrial banks and trust companies organized and operating under the provisions of articles ~~22 and 23~~ 108 AND 109 of this title when specifically provided in ~~said~~ articles ~~1 to 11, 22, or 23~~ 10.5 AND 101 TO 109 of this title, and articles ~~22 and 23~~ 108 AND 109 of this title shall otherwise govern exclusively industrial banks and 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.

**11-101-302. [Formerly 11-1-106] 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.

#### PART 4 DEFINITIONS

**11-101-401. [Formerly 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] 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.

(~~1~~) (3) "Action", in the sense of a judicial proceeding, ~~includes~~ MEANS A recoupment, counterclaim, ~~third party claims, cross-claims~~ THIRD-PARTY CLAIM, CROSS-CLAIM, setoff, suit in equity, arbitration, and any other ~~proceedings~~ PROCEEDING in which rights are determined.

(~~1~~) (4) "Affiliate financial institution" means any bank, industrial bank, or savings and loan association ~~which~~ THAT has its principal place of business in Colorado and ~~which~~ THAT is controlled by a financial institution.

(~~2~~) (5) "Bank" means a state bank (other than an industrial bank) or bank and trust company, chartered by this state or a 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 ~~1 to 11~~ 10.5 AND 101 TO 109 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. The singular "bank"

includes the plural "banks".

(2) (6) "Bank holding company" means any company ~~which~~ THAT has direct or indirect control over any ~~bank~~ BANKING INSTITUTION.

(4) (7) "BANKING board" means the banking board WITHIN THE DIVISION ESTABLISHED PURSUANT TO SECTION 11-102-103.

(b) (8) "Banking institution" means any institution organized or chartered under this code or under chapter 2 of Title 12 of the United States Code, but does not include a credit card national bank.

(3) (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.

(2) (10) "Branch" means any branch bank, branch office, branch agency, additional office, or ~~any~~ branch place of business of a financial institution located in this state at which deposits are received, or checks ARE paid, or money IS lent, or trust powers ARE exercised.

(+) (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 ~~which~~ THAT is controlled by a bank holding company ~~which~~ THAT controls a Colorado bank or Colorado trust company; or

(b) Any company ~~which~~ THAT is controlled by or ~~which~~ THAT controls a Colorado bank or Colorado trust company.

(3) (13) "Colorado bank" means a bank having its principal place of business in Colorado.

(4) (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 ~~subsequent to~~ 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.

(4.5) (15) "Colorado financial institution" means a financial institution having its principal place of business in Colorado.

(3) (16) "Colorado trust company" means:

(a) A national banking association ~~which~~ 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 ~~which~~ 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 ~~23~~ 109 of this title, which trust company has its principal office in Colorado.

(3) (17) "Commissioner" means the state bank commissioner appointed and serving pursuant to section ~~11-2-101(2)~~ 11-102-101(2), who shall be the commissioner of banking referred to in articles ~~11 to 11~~ 101 TO 109 of this title.

(6) (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 ~~or detached facility~~ and through which account holders and Colorado banks may engage in banking transactions by means of either the instant transmission (on-line) 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 ~~or its detached facility~~ shall be a communications facility if such device is utilized by the account holders of other Colorado banks.

~~(4)~~ (19) "Community" means a city, town, or incorporated village of this state, or a trade area in this state in unincorporated territory.

~~(5)~~ (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.

~~(2)~~ (21) "Constituent bank" means a party to a merger.

~~(5)~~ (22) "Continuing bank" means a merging bank the charter of which becomes the charter of the resulting bank.

~~(5)~~ (23) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (b) AND (c) OF THIS SUBSECTION (23), A COMPANY WITH "control" means:

~~(a)~~ (I) A company ~~which~~ 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

~~(b)~~ (II) A company ~~which~~ THAT controls in any manner the election of a majority of the directors, managers, or trustees of another company.

~~(6)~~ (b) FOR THE PURPOSE OF PART 2 OF ARTICLE 104 OF THIS TITLE, "control" means that:

~~(a)~~ (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

~~(b)~~ (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.

~~(d)~~ (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.

~~(3)~~ (24) "Converted bank" means the same bank after the conversion.

~~(6)~~ (25) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

~~(7)~~ (26) "Court" means a court of competent jurisdiction.

~~(e)~~ (27) "Credit card national bank" means an institution ~~which~~ THAT is organized or chartered as a national bank under chapter 2 of Title 12 of the United States Code, ~~which~~ THAT engages only in credit card operations, and ~~which~~ 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).

~~(6.5)~~ (28) "De novo branch" means a branch of a financial institution ~~which~~ 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.

~~(6.7)~~ (29) "Deposit production office" means an office or branch used primarily for the purpose of deposit production.

~~(4)~~ (30) "Depositor" means a person delivering property or documents to a lessor for safekeeping.

~~(8)~~ (31) "Division" means the division of banking of this state created by this code.

~~(9)~~ (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.

~~(7)~~ (33) "Federal bank holding company act" means the federal "Bank Holding Company Act of 1956", Public Law 84-511, 12 U.S.C. sec. 1841, et seq., as amended.

~~(10)~~ (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.

~~(6)~~ (35) "Fiduciary business" means estate and trust administration, conservatorship, agency, escrow, and custodian business and any other fiduciary business.

~~(7.1)~~ (36) "Financial institution" means any bank, bank holding company, industrial bank, industrial bank holding company, savings and loan association, federal savings bank, or thrift holding company.

~~(7.3)~~ (37) (a) "Foreign bank" means any bank, including any commercial bank, merchant bank, or other institution that engages in banking activities ~~which~~ THAT are usual in connection with the business of banking in the nations where such institution is organized or operating, other than a bank ~~which~~ THAT is organized under the laws of a state of the United States or a national bank ~~which~~ THAT maintains its head office in a state of the United States.

(b) As used in this subsection ~~(7.3)~~ (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.

~~(11)~~ (38) "Good faith" means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized.

~~(7.5)~~ (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.

~~(7)~~ (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.

~~(13)~~ (41) "Item" means any instrument for the payment of money

even though not negotiable, but does not include money.

~~(2)~~ (42) "Lessee" means a person contracting with a lessor for the use of a safe deposit box.

~~(3)~~ (43) "Lessor" means a bank, as defined in ~~section 11-1-102 (2)~~ SUBSECTION (5) OF THIS SECTION, or subsidiary thereof, including any company operating pursuant to section ~~11-9-102~~ 11-105-501, or any other person or persons renting or maintaining safe deposit facilities. "Lessor" ~~includes any company organized and operating on July 1, 1957, under the jurisdiction of the division solely for the purpose of leasing safe deposit facilities.~~ "Lessor" does not include any financial institutions regulated by article 22, 23, 30, or 46 of this title or a credit union chartered under the laws of the United States.

~~(14)~~ (44) "Merger" includes consolidation.

~~(15)~~ (45) "Merging bank" means a party to a merger.

~~(16)~~ (46) "National bank" means a national banking association.

~~(17)~~ (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.

~~(8)~~ (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 are held.

~~(18)~~ (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 ~~regulations~~ RULES of general application.

~~(9)~~ (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.

~~(10)~~ (51) "Out-of-state bank holding company" means a registered bank holding company the operations of which are principally conducted outside of Colorado.

~~(19)~~ (52) "Person" means an individual, corporation, partnership, joint venture, trust estate, unincorporated association, or any other legal or commercial entity.

~~(14)~~ (53) "Registered bank holding company" means a bank holding company registered with the federal reserve board pursuant to the federal "Bank Holding Company Act".

~~(20)~~ (54) "Resulting bank" means the combined banks and trust companies carrying on business upon completion of a merger.

~~(7)~~ (55) "Retailer" means a person primarily engaged in the business of selling or leasing goods or services to consumers.

~~(8)~~ (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.

~~(4)~~ (57) "Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor.

~~(21)~~ (58) "State bank" means a bank (other than an industrial bank), or bank and trust company, chartered by this state.

~~(8)~~ (59) "Successor" means a company ~~which~~ THAT replaces the transferor as fiduciary for all or part of the fiduciary business of the transferor.

~~(9)~~ (60) "Transferor" means a company ~~which~~ THAT is replaced as fiduciary by a successor for all or part of ~~the~~ ITS fiduciary business. ~~of the transferor.~~

## **ARTICLE 102**

### **Division of Banking**

PART 1  
COMMISSIONER AND BANKING BOARD

**11-102-101. [Formerly 11-2-101] 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) to (9) Repealed.~~

~~(10)~~ (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 July 1, 2004.

**11-102-102. [Formerly 11-2-106] Powers of commissioner.** (1) The commissioner shall be the administrative head of the division, ~~and~~ 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 ~~bank~~ 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 ~~which~~ 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 ~~which~~ 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 ~~term~~ 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.

~~(13) Repealed.~~

**11-102-103. [Formerly 11-2-102] Banking board.** (1) (a) There is hereby established in the division a banking board, which shall consist of eight 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 four members who during their tenure are, and shall remain, executive officers of state banks, ~~and~~ EACH OF WHOM shall have not less than five years' practical experience as an active executive officer of a bank.

~~(a.1)~~ (b) There shall be one member who during his or her tenure is, and shall remain, the executive officer of an industrial bank.

~~(a.2)~~ (c) There shall be one member who during his or her tenure is, and shall remain, the executive officer of a trust company.

~~(b)~~ (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.

~~(c)~~ (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.

~~(d)~~ (4) Of the eight members appointed under ~~this~~ subsection (2) OF THIS SECTION, not more than four shall be of the same major political party. At all times, at least one member shall reside west of the continental divide.

~~(3)~~ (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. ~~Appointments made to take effect on January 1, 1983, shall be made in accordance with section 24-1-135, C.R.S. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter, except as provided in subsection (9) of this section,~~ 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 ~~which~~ 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 ~~his~~ 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.

~~(4)~~ (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 registrations 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)~~ (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.

~~(6) (a) Repealed.~~

~~(b) (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.

~~(7) (9)~~ THE DIVISION SHALL PROVIDE such clerical, technical, and legal assistance as the BANKING board may require. ~~shall be provided by the division.~~

~~(8) (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.

~~(9)~~ On July 1, 1989, the terms of office of the members of the banking board serving immediately prior to such date shall continue, except as necessary to comply with the requirements of subsection (2) of this section. The governor shall appoint members to the board, to fill the vacancies so created. Such appointments shall be subject to confirmation by the senate at the next meeting thereof. Of the members appointed to take office pursuant to this subsection (9), three shall be appointed to serve until July 1, 1989, and four shall be appointed to serve until July 1, 1991. Appointments to fill vacancies created to comply with the requirements of subsection (2) of this section shall take effect July 1, 1989, for the remainder of the term so vacated. Thereafter the term of office of each member shall be four years.

~~(10) (11)~~ The BANKING board shall elect a ~~chairman~~ CHAIRPERSON from among its members to serve for a term not exceeding two years, as determined by the BANKING board. No ~~chairman~~ CHAIRPERSON shall be eligible to serve as such for more than two successive terms. In addition to the amounts received pursuant to subsection ~~(4) (6)~~ of this section, the

~~chairman~~ 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.

~~(H)~~ (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.

**11-102-104. [Formerly 11-2-103] Powers 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 ~~and regulations~~ 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 ~~and regulations~~ as may be necessary for the enforcement and execution of the provisions of the "Money Order Act", article 52 of title 12, C.R.S.; 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 ~~sections 11-6.4-103 and 11-6.4-104~~ 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 for detached facilities;~~

~~(e)~~ (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 ~~and regulations~~ of the banking board promulgated pursuant to subsection (1) of this section consistent with the policies set forth in section ~~11-1-101.5~~ 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 ~~and regulations~~ of the banking board.

(6) The banking board has the power to affirm, modify, reverse, vacate, or stay the enforcement of any order ~~of~~ OR ruling made by a hearing officer acting pursuant to section ~~11-2-103.6 (1)~~ 11-102-201 or the bank 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 ~~or a regulation~~ issued pursuant to this code or to cease engaging in any unsound banking practice, to impose civil money penalties pursuant to section ~~11-2-117~~ 11-102-503, to suspend or remove a director or officer pursuant to section ~~11-2-119~~ 11-102-505, and to take such other enforcement action as is authorized by sections ~~11-2-120 to 11-2-122~~ 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 ~~and regulation~~ 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 ~~11-2-121~~ 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.

**11-102-105. [Formerly 11-2-103.5 and 11-2-107] Roles and authority of banking board and commissioner - rules - exercise of powers.**

~~(1) to (3) Repealed.~~

~~(4)~~ (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.

~~(5) Repealed.~~

(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 ~~11-1-101.5~~ 11-101-102.

PART 2  
PROCEEDINGS

**11-102-201. [Formerly 11-2-103.6] 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 ~~which~~ THAT have been timely protested pursuant to the rules ~~and regulations~~ 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 ~~in writing his~~ WRITTEN findings and recommendations based ~~thereon~~ ON THE HEARING and shall certify ~~the same~~ 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 ~~thereof~~ 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.

**11-102-202. [Formerly 11-2-104] 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.

**11-102-203. [Formerly 11-2-104.5] Effect of good faith reliance on orders or rules of banking board.** No person who in good faith relies on any order OR rule ~~or regulation~~ 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. ~~or regulation.~~

**11-102-204. [Formerly 11-2-105] 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 ~~11-3-110~~ 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 ~~it~~ 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.

### PART 3 RECORDS, REPORTING, AND INFORMATION

**11-102-301. [Formerly 11-2-108] 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.

~~(1.1)~~ (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 ~~which~~ 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 ~~which~~ THAT they serve.

~~(1.2)~~ (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 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 ~~his~~ THE COMMISSIONER'S representative to examine ~~them~~ 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 ~~them~~ THE RECORDS on ~~his~~ 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 ~~(1.2)~~ (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 ~~thereof~~ 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.

~~(b)~~ (f) For purposes of this subsection ~~(1.2)~~ (3):

(I) "Affiliated entity" or "affiliate" means an entity in control of 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 ~~11-2-109~~(4) 11-102-303 for acquiring control of a state bank.

~~(2)~~ (4) If the commissioner deems it necessary, ~~he~~ 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 ~~(2)~~ (4) shall not apply when such stock is held in a fiduciary capacity by the bank.

~~(3)~~ (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 ~~said~~ THE state bank, and, if the directors of ~~said~~ 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.

**11-102-302. [Formerly 11-2-109] 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 ~~which~~ THAT may be prescribed by ~~such~~ 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 ~~day past to be~~ DATE specified by ~~said~~ THE banking board. ~~in writing.~~

(2) Said reports shall be transmitted to the banking board within thirty days after its request. ~~therefor.~~

(3) The banking board has power to call for special reports from any particular state bank if, in ~~its~~ THE BANKING BOARD'S judgment, the ~~same~~ SPECIAL REPORTS are necessary to ESTABLISH a full and complete knowledge of ~~its~~ THE STATE BANK'S condition. No such special report, nor any summary ~~thereof~~ 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 ~~which~~ 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 ~~11-2-103 (11)~~ 11-102-104 (11). The banking board, for valid reasons and good cause, may waive such penalty.

**11-102-303. [Formerly 11-2-109] Bank reports to banking board - requirements for acquiring control.** ~~(4) (a)~~ (1) As used in this ~~subsection (4)~~ SECTION, unless the context otherwise requires:

~~(F)~~ (a) "Person" means an individual, a corporation, a partnership, a trust, or any other legal entity.

~~(H)~~ (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.

~~(b)~~ (2) A person shall be deemed to have acquired control of a state bank if, as a result of acquisition, such person:

~~(F)~~ (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;

~~(H)~~ (b) Controls in any manner the election of a majority of the directors thereof; or

~~(H)~~ (c) Exercises a controlling influence over the management or policies thereof.

~~(c)~~ ~~(F)~~ (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 ~~paragraph (d) of this subsection (4) OF THIS SECTION~~ paragraph (d) OF THIS SECTION, a person shall be prohibited from making such an acquisition.

~~(H)~~ (b) An application required by ~~subparagraph (1) of this paragraph (c) PARAGRAPH (a) OF THIS SUBSECTION (3)~~ PARAGRAPH (a) OF THIS SUBSECTION (3) shall contain the following information to the extent that it is known by the person making the application:

~~(A)~~ (I) The number of shares involved;

~~(B)~~ (II) The name of each seller or transferor;

~~(C)~~ (III) The name of each purchaser or transferee;

~~(D)~~ (IV) The name of each beneficial owner if the share or shares are registered in another name;

~~(E)~~ (V) The purchase price;

~~(F)~~ (VI) Detailed information concerning any loans made in connection with the acquisition;

~~(G)~~ (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;

~~(H)~~ (VIII) Biographical and financial information concerning each purchaser, controlling person, or person in control of a controlling person participating in the proposed acquisition; and

~~(I)~~ (IX) The name of each controlling person and each person in control of a controlling person participating in the proposed acquisition.

~~(d)~~~~(f)~~ (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:

~~(A)~~ (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;

~~(B)~~ (II) That the interests of the public generally will not be jeopardized by the proposed acquisition; and

~~(C)~~ (III) That the person proposing to acquire control has satisfied the requirements of subsections ~~(4) and (5)~~ (1) TO (7) of this section and the other provisions of articles ~~1 to 11~~ 101 TO 109 of this title.

~~(H)~~ (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, ~~regulation~~, 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 ~~may~~ SHALL not approve any such change of control.

~~(e)~~ (5) This ~~subsection (4)~~ SECTION shall not apply to the acquisition of:

~~(H)~~ (a) Voting proxies acquired in the normal course of business as a result of a proxy solicitation in conjunction with a stockholders' meeting;

~~(H)~~ (b) Stock held in a fiduciary capacity unless the acquiring person has sole discretionary authority to exercise voting rights with respect thereto;

~~(H)~~ (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;

~~(V)~~ (d) Stock acquired by an underwriter in good faith and without any intent to evade the purpose of this ~~subsection (4)~~ SECTION if the shares are held only for such reasonable period of time as will permit the sale thereof OF THE SHARES; or

~~(V)~~ (e) Pro rata stock dividends.

~~(f)~~ (6) If the BANKING board has not acted upon a completed application within sixty days ~~of~~ AFTER receipt thereof, unless extended for an additional thirty days by the banking board, such application shall be considered approved.

~~(5)~~ (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 ~~subsection (4)~~ of this section and shall submit its recommendations and comments to the appropriate federal regulatory authority in a timely manner.

~~(6)~~ (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. ~~and regulations.~~ 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 ~~(6)~~ (8) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, ~~and regulation;~~ which PENALTY shall not exceed twenty-five dollars per day, and such ~~penalties~~ PENALTY shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

~~(7)~~ (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 ~~(6)~~ (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 ~~(7)~~ (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 ~~(7)~~ (9) shall be required to pay a penalty in an amount set by the banking board by rule, ~~and regulation~~, which PENALTY shall not exceed twenty-five dollars per day, and such ~~penalties~~ PENALTY shall be deposited in the general fund. The banking board, for valid reasons and good cause, may waive such penalty.

**11-102-304. [Formerly 11-2-110] 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.

**11-102-305. [Formerly 11-2-111] Records.** (1) Information from the records of the division shall be revealed only to members of the banking board, except insofar as ~~the same~~ DISCLOSURE may be rendered necessary by law; except that 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 and except that the commissioner may exchange information as to the condition of banks with the United States comptroller of the currency, banking departments of other states, the federal reserve system and its examiners, and the federal deposit insurance corporation and its examiners. Notwithstanding any other provision of articles ~~† to ††~~ 101 TO 109 of this title to the contrary, the commissioner, ~~his~~ 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 ~~which~~ THAT is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, or the federal reserve system or the disclosure of which has been specifically authorized by the board of directors of the financial institution to which such information relates.

(2) Reports of examinations made by the division shall be retained by ~~it~~ 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 ~~which~~ 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.

**11-102-306. [Formerly 11-2-111.5] Information confidential.**

The banking board, the bank 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 ~~the same~~ DISCLOSURE may be rendered necessary by law. 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 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 regulatory agencies of other states, 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, 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 as to 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. In addition, the BANKING board, the commissioner, and their respective designees may exchange information obtained by the BANKING board as to 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. 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. Notwithstanding any other provision of this article to the contrary, the bank 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 ~~which~~ THAT is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, or the federal reserve system and disclose information ~~which~~ THAT has been specifically authorized by the board of directors of the bank to which such information relates. Nothing in this section shall be construed to authorize the board of directors of a bank to waive any privileges ~~which~~ THAT belong solely to the banking board, the division, or its employees.

**11-102-307. [Formerly 11-2-112] 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.

**11-102-308. [Formerly 11-2-113] 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 ~~which~~ 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 ~~regulations~~ 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 ~~regulations~~ RULES may be amended or repealed. Prior to issuing any such ~~regulation~~ 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 ~~regulations~~ 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 ~~which~~ 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 ~~thereof~~ 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 ~~regulations~~ ANY RULE promulgated thereunder, the provisions of this section shall apply to all banks doing business in this state.

#### PART 4 ASSESSMENTS AND FEES

**11-102-401. [Formerly 11-2-114] Assessments.** (1) The banking board shall annually establish fees and assessments pursuant to section ~~11-2-103(11)~~ 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~~ 2003, and for each

fiscal year thereafter, the banking board shall establish its ~~annual~~ 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.

~~(3) In addition to each assessment established pursuant to subsections (1) and (2) of this section, for each fiscal year beginning July 1, 1992, and ending June 30, 1994, and for the period ending January 31, 1995, the banking board shall collect a semiannual repayment of the fiscal year 1991-1992 general fund advance to the division of banking in an amount equal to one-sixth of the amount of the banking board's assessment that would have been collected in September 1992.~~

**11-102-402. [Formerly 11-2-114.1] Administrative fees.**

~~(1) Repealed.~~

~~(2) (1) The banking board shall assess filing fees to banks and bank holding companies outside of Colorado which THAT are seeking to acquire a bank or bank holding company in Colorado in such amount as determined to be sufficient to reimburse the state for the cost of administration of sections ~~11-6.4-103 (8) and (9) and 11-6.4-104~~ 11-104-202 (8) AND (9) AND 11-104-203 and the requirements thereof.~~

~~(3) (2) No moneys collected pursuant to this section shall be expended except upon appropriation by the general assembly.~~

**11-102-403. [Formerly 11-2-114.5] 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.

PART 5

CONFLICTS OF INTEREST, PENALTIES,  
REMOVAL, SUSPENSION, ENFORCEMENT

**11-102-501. [Formerly 11-2-115] 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 ~~11-2-102(2)(a)~~ 11-102-103 (2) (a), from being executive officers in banks and from receiving bona fide compensation as such officers.

**11-102-502. [Formerly 11-2-116] 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.

**11-102-503. [Formerly 11-2-117] 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 ~~11-2-103(7)~~ 11-102-104 (7); and

(B) Any state bank ~~which~~ 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 ~~or regulation~~ 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 ~~11-2-114~~ 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 ~~which~~ 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, ~~which~~ 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.

**11-102-504. [Formerly 11-2-118] 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.

**11-102-505. [Formerly 11-2-119] 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 ~~him~~ SUCH PERSON from office whenever the banking board determines:

(a) That any such person has committed any violation of this code, rule and regulation OF THE BANKING BOARD, or cease and desist order of the banking board ~~which~~ THAT has become final; ~~or~~ has engaged or participated in any unsafe or unsound practice in connection with a bank; ~~or~~ has committed or engaged in any act, omission, or practice ~~which~~ THAT constitutes a breach of ~~his~~ 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 ~~11-2-109(6)~~ 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, ~~or~~ practice, ~~or~~ breach of fiduciary duty, or offense; or

(II) That such person has received financial gain by reason of such violation, ~~or~~ practice, ~~or~~ breach of fiduciary duty, ~~or~~ offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one ~~which~~ 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 ~~which~~ THAT results in substantial financial loss or other damage, has evidenced either ~~his~~ personal dishonesty or a willful or continuing disregard for such state bank's safety and soundness, and, in addition, has evidenced ~~his~~ unfitness to continue ~~his~~ 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 ~~his~~ THE PERSON'S further participation in any manner in the conduct of the affairs of the state bank.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit ~~his~~ 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, ~~he~~ 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.

**11-102-506. [Formerly 11-2-120] 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 ~~his~~ SUCH position, or who after receipt of an order of the banking board to cease and desist violates this code or a lawful rule ~~and regulation~~ 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 ~~11-2-119~~ 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.

**11-102-507. [Formerly 11-2-121] 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 ~~its or his~~ 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.

**11-102-508. [Formerly 11-2-122] Statements derogatory to state banks - penalty.** Any person who willfully makes, circulates, or transmits to another any false statement, written or oral, ~~which~~ THAT is directly or by inference derogatory to the financial condition of any state bank and ~~which~~ THAT results in an extraordinary withdrawal of funds from such bank or ~~which~~ 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.

**ARTICLE 103**  
**Organization and Corporate Functions**

PART 1  
GENERAL CORPORATE POWERS

**11-103-101. [Formerly 11-3-101] 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 ~~11-3-102~~ 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, to 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 ~~regulations~~ RULES promulgated thereunder.

~~(2.5)~~ (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 ~~which~~ 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.

~~(3)~~ (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.

~~(4)~~ (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.

~~(5)~~ (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.

**11-103-102. [Formerly 11-3-102] Trust, fiduciary, and agency powers - when authorized.** In addition to its other powers, a state bank ~~which~~ 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 ~~which~~ 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, ~~and regulation~~, on such forms as may be prescribed by the banking board. No report filed pursuant to this section shall be required to be published.

## PART 2 CAPITAL REQUIREMENTS

**11-103-201. [Formerly 11-3-103] Capital.** The banking board shall establish by ~~rules and regulations~~ 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, ~~which~~ THAT may differ for specific purposes. In promulgating such rules, ~~and regulations~~, the banking board shall consider all relevant factors, including, without limitation, the policies set forth in section ~~11-1-101.5~~ 11-101-102 and relevant federal laws and ~~regulations~~ RULES. Each bank subject to this code shall at all times comply with the capital rules ~~and regulations~~ promulgated by the banking board.

**11-103-202. [Formerly 11-3-104] Inadequacy of capital - assessments.** (1) If the banking board has reason to believe that the capital of any bank is inadequate under the rules ~~and regulations~~ 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 ~~which~~ 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 ~~11-3-105~~ 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; ~~5 of this title~~; 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.

**11-103-203. [Formerly 11-3-105] 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 ~~next before~~ 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 ~~which~~ 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 ~~his~~ 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 ~~which~~ 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.

### PART 3 CHARTERING A STATE BANK

**11-103-301. [Formerly 11-3-106] Incorporators.** Five or more individual incorporators desiring to organize a state bank shall 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 ~~11-3-109~~ 11-103-303, 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. A majority of the incorporators shall be residents of the state and citizens of the United States. Each incorporator 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.

**11-103-302. [Formerly 11-3-107] Application fees.** Each application for charter shall be accompanied by a fee established by the banking board pursuant to section ~~11-2-103~~ (11) 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.

**11-103-303. [Formerly 11-3-109] 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) Its proposed articles of incorporation in duplicate, in such form as the banking board shall prescribe and as shall be 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 shall or shall not be 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.

(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 and the number of shares for which he OR SHE has subscribed; 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 to more than five percent of the capital stock; the amount to be borrowed and from whom borrowed on any stock issued to a subscriber to more than five percent of the capital stock; the address at which it is proposed that the state bank 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 ~~which~~ 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 shall 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 said documents to the

incorporators, calling attention to the defects therein. If such articles of incorporation and application are not so returned by the banking board within thirty days ~~of~~ 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 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. Such notice shall be in the form prescribed therefor by the banking board and shall include a statement that an application for a state banking charter has been filed, the date of such filing, the names and addresses of the incorporators thereof, 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 such completed application, in a newspaper of general circulation within the community in which such proposed bank is to be located.

**11-103-304. [Formerly 11-3-110] 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 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 ~~11-2-109 (4)~~ 11-102-302 (2), are consistent with their responsibilities and duties;

(d) That the proposed capital satisfies the standards and guidelines in the rules ~~and regulations~~ 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 shall have the burden of proving:

(I) That the proposed bank will serve a public need and advantage in the community or area of the community ~~which~~ THAT the bank will serve; and

(II) That the volume of business in the community or area of the community ~~which~~ THAT the proposed bank will serve is such that profitable operation of the bank may be reasonably projected.

~~(b) In the event of an application for a charter in a county with one existing bank which operates a detached facility pursuant to section 11-6-101 (1.5) or in a county without a chartered bank but with a detached facility established pursuant to section 11-6-101 (1.6), the board shall not consider the existence of such detached facility in its deliberations concerning the approval or denial of a charter; except that the board may consider data regarding such detached facility in determining public need.~~

~~(c)~~ (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 ~~within ten days of~~ 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 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. Such notice shall be in the form prescribed by the banking board and shall 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 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 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 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 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 application for charter shall be denied. The banking board may revoke a charter ~~which~~ THAT may have been granted 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 ~~has~~ HAVE been filed with the banking board two or more applications for charter for state banks to serve the same community, the banking board may hold a single hearing to consider such applications. The banking board may grant or deny a charter to ~~any~~ 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 shall 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 charter on another application or other applications heard at such single hearing.

(8) It shall be a criminal offense against this code for a proposed state bank to perform any act as a state bank other than to perfect its organization, obtain and equip a place of business, ~~and~~ OR otherwise prepare to do business as a state bank prior to receiving a charter.

(9) Unless otherwise provided by law to the contrary, articles of incorporation, amended articles of incorporation, or amendments to articles of incorporation shall be delivered and filed 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.

#### PART 4 SHARES AND DISTRIBUTIONS

**11-103-401. [Formerly 11-3-111] Subscription calls.** After a charter has been granted, the directors may call for the payment of the subscriptions in full within thirty days ~~from~~ AFTER the date of the notice ~~thereof~~ THAT THE CHARTER HAS BEEN GRANTED. No share shall be issued until the par value and the pro rata portion of the paid-in surplus specified in the charter have been paid in full in cash.

**11-103-402. [Formerly 11-3-112] First meetings of stockholders - director's oath - bylaws.** (1) After the capital and surplus have been fully paid in cash and before any business ~~shall be~~ 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 ~~he~~ 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.

**11-103-403. [Formerly 11-3-113] 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 ~~which~~ 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 ~~his~~ BY SUCH OWNER'S proxy, whether or not the owner of record has the beneficial interest therein. The bank may not vote shares ~~which~~ THAT it holds in any capacity other than as fiduciary.

(3) A stockholder authorized to vote may, by ~~his~~ 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 ~~of~~ 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.

**11-103-404. [Formerly 11-3-116] Waiver of notice - meeting or vote.** (1) When a notice is required to be given to stockholders ~~or 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, ~~whether~~ EITHER before or after the time stated therein, shall be deemed equivalent thereto.

(2) If the vote of stockholders ~~or 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 stockholders ~~or directors~~ may be dispensed with, if all of the stockholders ~~or directors~~ who would have been entitled to vote upon the action if such meeting were held ~~shall~~ consent in writing to such corporate action being taken.

(3) In the event that the action ~~which~~ 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 ~~or directors~~ 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.

**11-103-405. [Formerly 11-3-117] 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) Repealed.~~

~~(c)~~ (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 ~~11-3-101 (2) (h)~~ 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.

**11-103-406. [Formerly 11-3-118] 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 ~~and regulations~~ established by the banking board.

PART 5  
DIRECTORS AND OFFICERS

**11-103-501. [Formerly 11-3-114] 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 less 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, two-thirds shall be residents of this state, and a majority shall reside within one hundred miles of the place of business of the bank; except that, if the bank is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public, 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, or a contract executed for his THE OFFICER'S employment, 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 he THE OFFICER may have to damages for breach of contract of employment, unless he 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.

~~(7) Repealed.~~

**11-103-502. [Formerly 11-3-115] Directors' meetings - duties.**

(1) The board of directors of a state bank shall meet at least once each calendar month. The banking board, the commissioner, or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance. Any director who fails to attend meetings of such board of directors for three consecutive months shall automatically cease to be a director, unless his SUCH absence is satisfactorily explained to the banking board or the commissioner, who shall, in such event, notify the president of such bank of the approval thereof.

(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 which THAT exceeds in amount one percent of the capital of the corporation pursuant to the rules and regulations promulgated by the

banking board, and each loan, advance, discount, and overdraft ~~which~~ THAT makes the total obligations from one obligor exceed that amount;

(b) Each purchase or sale of a security ~~which~~ 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 ~~11-1-101.5~~ 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. ~~and regulations.~~ The banking board shall adopt ~~regulations~~ 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 ~~regulations~~ 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~~ PERIODS, in the form, and containing such information as the banking board may require in its rules. ~~and regulations.~~ 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, ~~and regulations,~~ 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 frames PERIODS, in the form, and containing such information as the banking board may require in its rules; ~~and regulations~~; and

(III) An annual internal examination of the bank is prepared by the internal examination staff of the controlling bank holding company ~~which shall be submitted~~ AND KEPT AVAILABLE FOR SUBMISSION to the banking board immediately upon ~~its~~ THE BANKING BOARD'S request.

~~(d) A bank or bank holding company whose fiscal year ended during the period from July 1, 1989, to June 7, 1990, shall be required to comply with the audit or directors' examination requirements of this section annually at intervals of not more than fifteen months and not necessarily as of its fiscal year end.~~

(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 shall be made, retained, or disposed of without the approval of a 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 ~~same~~ 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.

**11-103-503. [Identical to 11-103-404.] 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.

## PART 6 INDEMNIFICATION AND INSURANCE

**11-103-601. [Formerly 11-3-120] 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 ~~11-1-101.5~~ 11-101-102:

(I) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, ~~which~~ THAT provides insurance coverage to directors or officers, or both, of a bank but ~~which~~ THAT does not grant coverage or ~~which~~ 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 ~~in~~ 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 THIS article ~~5 of this title~~ shall be construed to contravene or modify the expressed public policy set forth in this subsection (4).

**11-103-602. [Formerly 11-3-121] 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.

**11-103-603. [Formerly 11-3-122] 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 ~~which~~ 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 ~~or regulation~~ issued pursuant thereto.

PART 7  
MERGER, CONSOLIDATION, CONVERSION,  
AND SALE OF ASSETS

**11-103-701. [Formerly 11-4-102] 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 shall be subject to, any limitation or requirements imposed by any law of the United States, which LAW shall also govern the rights of its dissenting shareholders.

(2) Nothing in the law of this state shall restrict the right of a state bank to merge with, or convert into, a resulting national bank. The action to be taken by a constituent state bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the applicable laws of the United States and not by the law of this state.

**11-103-702. [Formerly 11-4-103] 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.

**11-103-703. [Formerly 11-4-104] 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.

(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;

(b) The agreement provides for adequate capital as established by the banking board in its rules; ~~and regulations;~~

(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.

**11-103-704. [Formerly 11-4-105] 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 ~~which~~ THAT are voted against the approval of the plan.

(3) The owners of shares ~~which~~ 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 ~~which~~ 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.

**11-103-705. [Formerly 11-4-106] Effective date of merger - certificate.** (1) A merger shall, unless a later date is specified in the agreement, become effective upon the filing with the banking board of the executed agreement, together with copies of the resolutions of the stockholders of each constituent bank approving it, certified by such 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) The banking board shall thereupon 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. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor 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.

**11-103-706. [Formerly 11-4-107] 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.

**11-103-707. [Formerly 11-4-108] 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) A national bank located in this state ~~which~~ THAT follows the procedure prescribed by federal law to convert into a state bank shall be granted a state charter if it meets the requirements for the incorporation of a state bank. 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.

(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.

**11-103-708. [Formerly 11-4-109] Nonconforming assets.** If a constituent bank has assets ~~which~~ THAT do not conform to the requirements of state law for the resulting bank, or if a converting national bank has assets ~~which~~ 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 ~~which~~ THAT are not permitted for the resulting or converted state bank, the banking board may permit a reasonable time to conform with state law.

**11-103-709. [Formerly 11-4-110] Sale of all assets of bank or department.** (1) Any state bank may sell to any other bank all, or substantially all, of the selling bank assets and business, or all, or substantially all, of the assets and business of any department 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 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 ~~him~~ 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, ~~he~~ 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 ~~11-10-106~~ 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.

## PART 8 LIQUIDATION, DISSOLUTION, AND REORGANIZATION

**11-103-801. [Formerly 11-5-101] 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 ~~of~~ 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.

**11-103-802. [Formerly 11-5-102] 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 ~~shall find~~ 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 ~~he~~ 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 ~~which~~ THAT is a member of the federal reserve system and shall notify the federal deposit insurance corporation of taking possession of any state bank ~~which~~ THAT is a member of the federal deposit insurance corporation.

(b) When the commissioner has taken possession of a state bank, ~~he~~ 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 ~~his~~ 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 ~~his~~ 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 ~~11-5-105~~ 11-103-805.

(b) If, in the opinion of the banking board, an emergency exists ~~which~~ 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 ~~11-5-105~~ 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, ~~which~~ 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 ~~which~~ 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.

**11-103-803. [Formerly 11-5-103] 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 ~~and regulations~~ 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.

**11-103-804. [Formerly 11-5-104] Liquidation by commissioner - procedure.** (1) In liquidating a state bank, the commissioner may exercise any power thereof, but ~~he~~ 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 ~~his~~ THE COMMISSIONER'S determinations in accordance with this code.

(2) Within six months ~~of~~ 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 ~~his~~ SUCH claim under this code;

(c) Prepare a schedule of ~~his~~ 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 ~~his~~ 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 ~~which~~ 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 ~~his~~ THE schedule, the commissioner may, from time to time, make partial distribution to the holders of claims ~~which~~ 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.

**11-103-805. [Formerly 11-5-105] 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 ~~11-5-102~~ 11-103-802.

(2) Pursuant to section ~~11-5-102~~ 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 ~~which~~ 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 in 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).

**11-103-806. [Formerly 11-5-106] 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.

**11-103-807. [Formerly 11-5-107] 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.

**11-103-808. [Formerly 11-5-108] 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.

**11-103-809. [Formerly 11-5-109] 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 ~~11-25-102(3)~~ 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 its principal place of business in this state and 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 such deposits of the closed bank as may be transferred to it. Such branch facility shall not be located at any other location if such other location is within three hundred feet of the boundary of the premises of another bank ~~or another bank's detached facility~~ 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) (Deleted by amendment, L. 92, p. 945, § 1, effective May 29, 1992.)~~

~~(5)(a) (Deleted by amendment, L. 92, p. 945, § 1, effective May 29, 1992.)~~

~~(b)~~ (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 ~~11-25-103~~ 11-105-602.

## ARTICLE 104 Holding Companies

### PART 1 HOLDING COMPANIES GENERALLY

**11-104-101. [Formerly 11-6.3-101 (2)] Prohibition on acquisition or control - limited service banking institutions.** ~~(2)~~ Notwithstanding any other provision of law, no bank holding company or ~~any~~ 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.

### PART 2 ACQUISITION OF CONTROL OF BANKS

## AND BANK HOLDING COMPANIES

### **11-104-201. [Formerly 11-6.4-101] 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 that it is in the best interests of the citizens of this state to declare that interstate branching in Colorado is prohibited prior to June 1997. The general assembly further finds and declares that de novo interstate branching in this state is expressly prohibited and that interstate branching through the acquisition of a branch of an insured financial institution without the acquisition of such financial institution ~~which~~ THAT has been in operation for at least five years at the time of acquisition is expressly prohibited.

**11-104-202. [Formerly 11-6.4-103] Acquisition of control of bank holding companies and banks by bank holding companies in different states - interstate banking and branching.** (1) ~~On and after January 1, 1991,~~ A Colorado bank holding company may acquire control of out-of-state bank holding companies and out-of-state banks; and, ~~on and after January 1, 1991,~~ 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 not acquire control of, or acquire all or substantially all of the assets of, a Colorado depository institution having its principal place of business in Colorado unless such depository institution has been in operation for at least five years at the time of the acquisition of control. An out-of-state bank holding company acquiring control of a Colorado bank holding company, industrial bank holding company, or thrift holding company may acquire control of any Colorado depository institution having its principal place of business in

Colorado controlled by the Colorado bank holding company, industrial bank holding company, or thrift holding company even though such depository institution has been in operation for less than five years.

(3) A Colorado bank holding company may acquire control of any Colorado bank by organizing or seeking to charter de novo a 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. ~~and regulation.~~

(6) ~~On and after June 1, 1997,~~ Interstate branching through the acquisition of a branch of an insured financial institution without the acquisition of such financial institution is expressly prohibited. De novo interstate branching is expressly prohibited. Deposit production offices are expressly prohibited.

(7) No bank holding company may acquire control of any financial institution ~~which~~ 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 ~~on or after June 1, 1997,~~ 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 regulatory agency concerning the acquisition or control of a Colorado financial institution, or concerning an interstate branch, ~~on or after June 1, 1997,~~ a bank or bank holding company shall file a copy of said application or notice with the banking board, which may submit advisory comments to the federal regulatory agency.

(10) No bank or bank holding company may conduct interstate branching in Colorado or acquire control, directly or indirectly, of any Colorado financial institution without first obtaining a certificate from the banking board certifying that such branch or acquisition complies with the provisions of this article. Such certificate shall accompany any advisory comments submitted by the banking board to the appropriate federal regulatory agency pursuant to subsection (9) of this section. If the banking board refuses to issue a certificate pursuant to this subsection (10), such refusal and the reasons therefor shall be submitted pursuant to subsection (9) of this section to the appropriate federal regulatory agency with advisory comments. The banking board shall act on any application or notice filed pursuant to subsection (9) of this section and shall issue or refuse to issue the certificate required by this subsection (10) within ninety days ~~of~~ AFTER the filing of any such application.

**11-104-203. [Formerly 11-6.4-104] Authority of banking board to enforce provisions of article.** (1) Any bank holding company controlling any other bank holding company or bank pursuant to the provisions of this code in this state shall, for purposes of enforcing the provisions of this article, be 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 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.

## **ARTICLE 105**

### **Banking Practices**

#### PART 1

#### GENERAL PROVISIONS

**11-105-101. [Formerly 11-6-101] Branch banks and practices prohibited.** (1) Any bank, upon application to and approval by the banking board, may operate one loan production office as defined by the banking board. ~~Any bank, upon application to and approval by the banking board, may also operate one detached facility only if the detached facility is located within three thousand feet of the nearest point on the boundary of the premises of the bank's place of business and is not located within three hundred feet of the boundary of the premises of another bank or another bank's detached facility unless the other bank consents to a closer location. The banking board shall give written notice of every application to each bank located within a three-mile radius of the applicant bank and may, in its discretion, order a public hearing with respect thereto. Approval shall be granted by the banking board only upon a showing of need. Banking activities at such detached facility shall be restricted to receiving~~

~~deposits, issuing money orders, cashiers' checks, and travelers' checks or similar instruments, cashing checks or drafts, making change, receiving note payments, receiving or delivering cash and instruments and securities, and disbursing loan proceeds by machine.~~

~~(1.1)~~ (2) For purposes of this subsection ~~(1.1)~~ (2), "elementary school" means any public or private school with students in kindergarten through eighth grade. A bank ~~which~~ 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 ~~11-25-102~~ (2) 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.

~~(1.2)~~ (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.

~~(1.5) In the case of a county wherein there is only one chartered bank, that bank, upon application to and approval by the banking board, pursuant to subsection (1) of this section, may operate one detached facility, which shall be located within the county. In the event that a second bank charter is approved in a one-bank county in which such a detached facility has been approved, said detached facility may continue in operation or may be made operational only if the detached facility and approved second bank are located in different communities within the county.~~

~~(1.6) In the case of a county wherein there is no chartered bank, any bank having its principal place of business in a county contiguous to such county, upon application to and approval by the banking board, may operate one detached facility in such county wherein there is no chartered bank. In the event that a charter is approved for a bank in a county having no chartered bank, said detached facility may continue in operation or may be made operational only where the detached facility and approved bank are located in different communities within the county.~~

~~(1.7) Repealed.~~

~~(2)~~ (4) As authorized under section 10-2-601 (2), C.R.S., any bank

may, pursuant to federal law or under such rules ~~and regulations~~ as may be prescribed by the banking board and subject to ~~regulations~~ 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 ~~and regulations~~ 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 ~~(2)~~ (4), "bank" shall have the same meaning as set forth in section ~~11-1-102(2)~~ 11-101-401 (3).

~~(3)~~ (5) Except as provided in the federal "Gramm-Leach-Bliley Financial Modernization Act", Public Law 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.

~~(4)~~ (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.

~~(5)~~ (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 ~~which~~ THAT, to his OR HER knowledge, does not conform to the requirements prescribed by this code OR by the commissioner or the banking board.

~~(6)~~ (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.

**11-105-102. [Formerly 11-6-102] Accounts and interest.** (1) A state bank may maintain demand, savings, and time deposit accounts and any type of account ~~which~~ THAT a national bank may maintain.

(2) Savings deposits shall be repaid to the depositors under such ~~regulations~~ RULES as the board of directors of the state bank shall, from time to time, prescribe. Such ~~regulations~~ RULES shall be conspicuously exposed in some place accessible and visible in the business office of the state bank. No alterations ~~which~~ THAT may at any time be made in the rules ~~and regulations~~ 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 ~~regulation~~ RULE establish the maximum annual rate of interest ~~which~~ THAT a state bank may pay on any type of deposit or account. In the absence of such ~~regulation~~ RULE, a state bank shall be subject only to applicable federal law in the payment of interest.

**11-105-103. [Formerly 11-6-103] 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 ~~which~~ 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.

**11-105-104. [Formerly 11-6-104] 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 ~~his~~ 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 ~~regulations~~ RULES, not in conflict with section ~~11-6-101~~ 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.

**11-105-105. [Formerly 11-6-105] 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.

**11-105-106. [Formerly 11-6-106] 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, ~~which~~ 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 ~~his~~ SUCH DEPOSITOR'S address as shown on the books of the bank.

**11-105-107. [Formerly 11-6-107] 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 ~~him~~ 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.

**11-105-108. [Formerly 11-6-108] 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.

**11-105-109. [Formerly 11-6-109] 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 ~~which~~ 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 ~~which~~ 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 ~~which~~ 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 ~~which~~ 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 ~~which~~ 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 ~~which~~ 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 ~~which~~ 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.

**11-105-110. [Formerly 11-6-113] Disclosure of information pursuant to legal process.** Any bank, savings and loan association, industrial bank, credit union, or any agent or employee of such financial institutions ~~which~~ 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 shall not be held civilly or criminally liable for such disclosure, nor shall the financial institution be held liable to the customer or any other person for such disclosure.

## PART 2 ELECTRONIC FUNDS TRANSFERS

**11-105-201. [Formerly 11-6.5-101] Short title.** This ~~article~~ PART 2 shall be known and may be cited as the "Bank Electronic Funds Act".

**11-105-202. [Formerly 11-6.5-102] Legislative declaration.** The purposes of this ~~article~~ PART 2 are to authorize Colorado banks, notwithstanding the limitations imposed by section ~~11-6-101~~ 11-105-101, to engage in certain banking transactions with their account holders through communications facilities and to own, establish, control, and use such facilities under specified conditions and limitations and to authorize and regulate these activities through the police powers of this state for regulating the banking business and communications transmission facilities. This ~~article~~ PART 2 does not authorize a bank ~~which~~ THAT has its principal place of business outside this state to conduct banking business in this state.

**11-105-203. [Formerly 11-6.5-104] Conditions of authority.**  
(1) ~~(a) Effective January 1, 1978,~~ A Colorado bank may engage in banking transactions with its account holders through a communications facility and may own, establish, control, or use a communications facility under the authority of this ~~article~~ PART 2 only if all of the following conditions are met:

~~(I)~~ (a) The communications facility is available to any Colorado bank for the use of its account holders.

~~(II)~~ (b) Any Colorado bank whose account holders use the communications facility shall first have agreed with the person having control of the communications facility to meet necessary and reasonable technical standards and to pay charges for the use thereof; except that such standards and charges shall be fair, equitable, and nondiscriminatory among Colorado banks and such charges shall not exceed an equitable proportion of both the costs of establishing the communication facility, including provision for amortization of development costs and capital expenditures over a reasonable period of time, and the costs of operation and maintenance of the communications facility, plus a reasonable return on such costs, and shall be related to the services provided to the bank or its account holders.

~~(III) Repealed.~~

~~(IV)~~ (c) The communications facility and its operation meet all reasonable standards of privacy, communications integrity, and financial safety as may be imposed by rule ~~regulation~~, or order of the BANKING board; except that no rule ~~regulation~~, or order of the BANKING board shall be imposed on any communications facility owned or leased by a retailer

to the extent that such facility is used for nonbanking transactions.

~~(V) Repealed.~~

~~(VI)~~ (d) The use of the communications facility has not been halted, prevented, or terminated by order of the BANKING board.

~~(b)~~ (2) The provisions of ~~subparagraphs (I) to (III) of paragraph (a) of this PARAGRAPHS (a) AND (b) OF subsection (1) OF THIS SECTION~~ shall not apply to a communications facility located on the premises of a Colorado bank. ~~or its detached facility.~~ A Colorado bank having control of such a facility may, but is not required to, make the use thereof available to account holders of other Colorado banks.

~~(2) Repealed.~~

**11-105-204. [Formerly 11-6.5-105] Conditions for retailers.**

(1) Notwithstanding the provisions of section ~~11-6.5-104~~ 11-105-203, any agreement between a person owning or establishing a communications facility or utilizing a communications facility owned by another and the retailer at whose retail location the facility is operated shall be upon such commercially reasonable terms and conditions as the parties may agree. The parties to such agreement shall not discriminate in price with the intent to destroy or prevent competition in the offering of banking transactions through communications facilities, after making allowance for the differences, if any, in costs. A retailer at whose retail location one or more communications facilities are operated may limit by contract the types of banking transactions performed at each such facility, but, subject to the exceptions in this subsection (1), all such banking transactions, including those involving account overlines, that are performed at each such communications facility shall be made available upon request to all Colorado banks. Banking transactions, other than account overline transactions, that involve a seller or lender credit card or similar arrangement as defined in section 5-1-301 (24) and (43), C.R.S., are excepted from the availability requirement of this subsection (1).

(2) Notwithstanding the provisions of section ~~11-6.5-106~~ 11-105-205, a communications facility owned or leased by a retailer and operated at a retail location may be examined with respect to any banking transaction provided through that facility only to the same extent as if such transaction were being performed by a Colorado bank itself on its own

premises. Facts and information obtained from such examination shall be disclosed only to the retailer at whose retail location the facility is operated and to the examinee Colorado bank, or as otherwise provided by law.

(3) A retailer at whose retail location a communications facility is established and maintained may also utilize such facility to perform internal business functions of such retailer.

(4) A retailer may limit the number of communications facilities located at a retail location.

**11-105-205. [Formerly 11-6.5-106] Powers of the banking board.**

(1) The BANKING board shall have the authority to make rules ~~and regulations~~ and to issue orders, including cease and desist orders, and issue subpoenas, necessary or incident to the provisions and intent of this ~~article~~ PART 2, to examine periodically communications facilities and the use thereof by Colorado banks, to require periodic reports from Colorado banks pertaining to the communications facilities used by their account holders, and to prescribe the form of notices and reports. The BANKING board shall also hear and decide disputes ~~which~~ THAT may arise with respect to access, technical standards, and charges for the use of communications facilities. If the BANKING board determines that any communications facility or the operation or use thereof is not in compliance with this ~~article~~ PART 2 and rules ~~and regulations~~ issued by the BANKING board under this ~~article~~ PART 2 and if such deficiency is not corrected pursuant to order of the BANKING board, the BANKING board shall order that a Colorado bank's operation or use of the communications facility be prevented, halted, or terminated. The BANKING board shall also hear and decide complaints by a Colorado bank ~~which~~ THAT allege that it is precluded from effective use of any communications facility by reason of imposition of technical standards or charges in the process of transmitting and routing electronic messages between the communications facility and the Colorado bank or its data processing agent, which standards and charges are alleged to be discriminatory, unfair, or inequitable among Colorado banks. If the BANKING board so finds, it shall order use of the communications facility by Colorado banks prevented, halted, or terminated.

~~(2) Repealed.~~

~~(3)~~ (2) Nothing contained in this section shall authorize the BANKING board to impose any rule ~~regulation~~, or order on a retailer who

establishes and operates a communications facility or to regulate the conduct of business functions of such retailer.

**11-105-206. [Formerly 11-6.5-107] Jurisdiction of the district court.** The district court in and for the county in which one or more communications facilities are located shall hear and decide complaints and disputes and shall issue such orders as the BANKING board is authorized to do in any case where the BANKING board does not have jurisdiction over a party. Such district court shall also review orders of the BANKING board on petition by an aggrieved person in the manner prescribed in section ~~11-2-105~~ 11-102-204.

**11-105-207. [Formerly 11-6.5-108] Fees.** The banking board shall annually establish fees and assessments for the administration of this ~~article~~ PART 2 pursuant to section ~~11-2-103 (11)~~ 11-102-104 (11).

**11-105-208. [Formerly 11-6.5-109] 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 ~~which~~ 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 ~~he~~ 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 ~~regulations~~ RULES designed to prevent violation of this provision.

**11-105-209. [Formerly 11-6.5-110] Permissive sharing among dissimilar institutions.** A Colorado bank having control of a communications facility may, but is not required to, make the use thereof available to savings and loan associations, credit unions, and industrial banks located in this state. Any such use shall be on a fair and reasonable contractual basis. Any savings and loan association, credit union, or industrial bank, having been denied use of a communications facility on arbitrary and capricious grounds, may seek review of such denied use by the BANKING board. Nothing in this ~~article~~ PART 2 shall authorize any person to engage in any type of banking transactions not otherwise permitted by applicable law.

**11-105-210. [Formerly 11-6.5-111] No operation by bank employees.** No communications facility located separate and apart from a Colorado bank ~~or detached facility~~ shall be operated by an employee or agent of any Colorado bank, 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 Colorado bank shall be stationed at any communications facility located separate and apart from a Colorado bank ~~or detached facility~~ 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.

### PART 3 RESERVES, LOANS, AND INVESTMENTS

**11-105-301. [Formerly 11-7-101] Reserves against deposits.** State banks ~~which~~ 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 ~~regulation~~ RULE impose reserve requirements ~~which~~ THAT it deems prudent and sound on said banks or on state banks not subject to reserve provisions of the "Federal Reserve Act".

**11-105-302. [Formerly 11-7-102] 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 ~~and regulations~~ promulgated by the banking board or otherwise permitted by this code. In promulgating such rules ~~and regulations~~ the banking board shall consider all relevant factors, including without limitation the policies set forth in section ~~11-1-101.5~~ 11-101-102.

**11-105-303. [Formerly 11-7-103] 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 ~~and regulations~~ 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.

**11-105-304. [Formerly 11-7-106] Bank investments - customers' orders.** (1) In addition to other investments, expressly authorized by this code or the rules ~~and regulations~~ promulgated by the banking board, a state bank may purchase:

(a) Obligations ~~which~~ THAT satisfy the requirements of this code or the rules ~~and regulations~~ 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 ~~and regulations~~ promulgated by the banking board in the stock of a corporation exclusively engaged in trust business and incorporated as a trust company under the "Colorado Trust Company Act", but every such investment shall be subject to prior approval of the banking board.

~~(3) Repealed.~~

~~(4)~~ (3) A state bank's investment in the stock of a safe deposit company is governed by section ~~11-9-102~~ 11-105-501.

~~(5)~~ (4) A state bank may purchase or sell without recourse any security, including corporate stock, upon the order of a customer and for ~~his~~ SUCH CUSTOMER'S account.

~~(6)~~ (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 ~~and regulations~~ 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.

~~(7)~~ (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 ~~and regulations~~ 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 ~~and regulations~~ of the banking board.

~~(8)~~ (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 ~~which~~ 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 ~~and regulations~~ promulgated by the banking board.

~~(9)~~ (8) A state bank may invest an amount not exceeding ten percent of its capital as defined in the rules ~~and regulations~~ promulgated by the banking board in the stock of any bank or bank holding company ~~which~~ 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.

~~(10)~~ (9) (a) Notwithstanding the provisions of section ~~11-6-101(2)~~ 11-105-102 (2), a state bank may directly engage in activities ~~which~~ 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 ~~11-8-101~~ 11-105-401 may, at the bank's option, be included in investments authorized in this subsection ~~(10)~~ (9) and thereby be removed from the restrictions of section ~~11-8-101~~ 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 ~~11-8-101(1)(d)~~ 11-105-401 (1) (d). The total of all investments made by a state bank pursuant to the authority of this subsection ~~(10)~~ (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 ~~(10)~~ (9), shall not exceed ten percent of its total assets. The authority provided in this subsection ~~(10)~~ (9) is in addition to investment in fixed assets of the bank pursuant to section ~~11-8-102~~ 11-105-402.

(b) Upon finding that such restrictions are necessary according to the criteria set forth in section ~~11-2-107~~ 11-102-105 and the policies set forth in section ~~11-1-101.5~~ 11-101-102, the banking board may adopt rules ~~and regulations which~~ THAT restrict the total investments of a state bank under this subsection ~~(10)~~ (9) to a percentage less than ten percent of the bank's total assets. Nothing in this subsection ~~(10)~~ (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 ~~which~~ THAT intends to initiate a program of investments under the authority of this subsection ~~(10)~~ (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 ~~(10)~~ (9).

~~(11)~~ (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 ~~which~~ 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.

**11-105-305. [Formerly 11-7-107] Acceptances - letters of credit.**

(1) A state bank may accept:

(a) A draft ~~which~~ 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 ~~which~~ 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.

PART 4  
PROPERTY, SALES, BORROWING,  
AND SIGNATURE GUARANTY

**11-105-401. [Formerly 11-8-101] 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) ~~(f)~~ 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 ~~and regulations~~ of the state banking board; except that, for purposes of this paragraph (d), an appraisal, as defined in section 12-61-702 (1), C.R.S., by an appraiser certified, licensed, or registered pursuant to section 12-61-708, C.R.S., shall not be required on properties initially valued pursuant to this paragraph (d) at one hundred 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.

~~(H) Repeated:~~

**11-105-402. [Formerly 11-8-102] 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 ~~and regulations~~ 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 ~~which~~ THAT may be rented to others.

~~(2) Repealed.~~

~~(3) (2) The rate of depreciation of property so acquired may be prescribed by the banking board.~~

**11-105-403. [Formerly 11-8-103] Sale of assets.** A state bank 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 shall be governed by section ~~11-4-110~~ 11-103-709.

**11-105-404. [Formerly 11-8-105] 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 when 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;

(d) Otherwise comply with the provisions of this code.

**11-105-405. [Formerly 11-8-106] 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 ~~his~~ 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 ~~his~~ 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) ~~(b)~~ of this section.

## PART 5 SAFE DEPOSIT AND SAFEKEEPING FACILITIES

**11-105-501. [Formerly 11-9-102] Safe deposit boxes - leasing and subsidiary company.** (1) Subject to such ~~regulations~~ RULES as the banking board may prescribe, a bank, company, other person or persons defined as a lessor in this ~~article~~ PART 5, 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.

**11-105-502. [Formerly 11-9-103] 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.

**11-105-503. [Formerly 11-9-104] 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 ~~him~~ SUCH MINOR to the same effect as if dealing with a person of full legal capacity, unless and until ~~his~~ THE MINOR'S guardian or conservator files with the lessor a certified copy of the order of a Colorado court having jurisdiction appointing ~~him~~ SUCH GUARDIAN OR CONSERVATOR and directs otherwise.

**11-105-504. [Formerly 11-9-105] 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 ~~11-9-101~~ 11-101-401.

**11-105-505. [Formerly 11-9-106] 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 ~~which~~ THAT identifies ~~him~~ 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.

**11-105-506. [Formerly 11-9-107] Annual fees.** Every lessor, except a bank as defined in section ~~11-1-102~~(2) 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.

PART 6  
FINANCIAL INSTITUTIONS, OPERATION OF BRANCHES,  
ORGANIZATIONAL AND OPERATIONAL EQUALITY

**11-105-601. [Formerly 11-25-101] 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 ~~which~~ THAT will promote the safety and soundness of financial institutions for the benefit of the public, ~~which will~~ improve efficiency for the economic operation of those financial institutions, and ~~will~~ ensure that the state of Colorado, by its appropriate action, will continue its control of those financial institutions within its jurisdiction.

(2) In order to provide equality among financial institutions, the banking board and the financial services board shall monitor and require reports on the activities of each financial institution conducting business at a location in Colorado.

**11-105-602. [Formerly 11-25-103] Financial institutions - branches allowed - conversion of financial institutions to branches - acquisitions.** (1) ~~(a) On and after August 1, 1991, Any financial institution may convert any affiliate financial institution to a branch. pursuant to the following schedules and limitations:~~

<b>Commencing</b>	<b>Percentage of Affiliates</b>
<del>August 1, 1991</del>	<del>60%</del>
<del>July 1, 1992</del>	<del>80%</del>
<del>July 1, 1993 and thereafter</del>	<del>100%</del>

~~(b) Such percentages and minimum numbers are cumulative, and the failure to convert in any year will nevertheless allow the conversion in any~~

~~subsequent year up to the cumulative total. In calculating the maximum number of affiliates which may be converted according to the percentage limitations, a fractional number shall be reduced to the next lower whole number, but not less than one.~~

~~(2) The number of affiliate financial institutions shall be determined as of April 1, 1991, including all affiliate financial institutions controlled by any financial institution which are chartered, open, in organization, or conditionally or preliminarily approved by the appropriate regulatory entity as of such date and if on or after April 1, 1991, a financial institution acquires another financial institution, the financial institution acquired and the number of affiliated institutions so acquired shall be transferred to the acquiring financial institution for purposes of calculating the maximum number of branches according to the percentage limitations set forth in paragraph (a) of subsection (1) of this section.~~

~~(3) (2) Notwithstanding subsection (2) of this section, Any financial institution which THAT has its principal place of business in Colorado may acquire any other financial institution existing on such date for conversion to a branch or branches. without regard to the percentage and numerical limitations set forth in paragraph (a) of subsection (1) of this section. For purposes of this subsection (3), a financial institution existing on April 1, 1991, includes the charter issued to a failed industrial bank by the state of Colorado, if acquired separately from any other assets of that failed industrial bank so long as those assets have not been finally liquidated and subject to rules and regulations promulgated and adopted by the banking board. The location of any financial institution acquired pursuant to this subsection (3) may be changed pursuant to law.~~

~~(4) Except as provided in subsections (7) and (8) of this section, no de novo branch of any financial institution shall be established or operated on or after August 1, 1991, nor shall any de novo financial institution charter approved or conditionally or preliminarily approved after April 1, 1991, be converted to a branch of any financial institution.~~

~~(5) Any detached facility in existence on April 1, 1991, may continue to be operated as a detached facility of a financial institution or as a detached facility in connection with the operations of a branch which previously had been the bank operating such detached facility. For purposes of meeting the location requirements set forth in section 11-6-101 (1), the distance requirements shall be complied with if measured either~~

from the financial institution or a branch thereof which previously had been the bank operating such detached facility. No detached facility in existence on April 1, 1991, shall be taken into account for purposes of calculating the maximum number of branches according to the percentage limitations set forth in paragraph (a) of subsection (1) of this section.

~~(6) Any branch in existence on April 1, 1991, may continue to be operated as a branch of a financial institution and no such branch shall be taken into account for purposes of calculating the maximum number of branches according to the percentage limitations set forth in paragraph (a) of subsection (1) of this section.~~

~~(7)(a)(I) Notwithstanding any other provision of this title, any bank or industrial bank upon application to and approval by the banking board or any savings and loan association upon application to and approval by the state commissioner of financial services may establish a de novo branch in any economically depressed community or economically depressed area of a community in this state where the proposed branch will serve a public need and advantage within such community or area of such community, and where the volume of business in such community or area of such community which the proposed branch will serve is such that profitable operation of the bank, industrial bank, or savings and loan association and the proposed branch may be reasonably projected.~~

~~(II) Not more than a total of ten de novo branches may be approved pursuant to this subsection (7).~~

~~(b) The bank, industrial bank, or savings and loan association establishing such a branch must have its principal place of business located in the county in which such community or area of such community is situated or in a county in this state contiguous to such county.~~

~~(c) The banking board or the state commissioner of financial services, within three months after the filing of an application for such a branch shall hold a public hearing to consider the application; except that the banking board or the state commissioner of financial services, for valid reason and good cause may postpone such hearing. If the banking board or the state commissioner of financial services has given written notice pursuant to paragraph (e) of this subsection (7) of a hearing on any application for such branch and the board or commissioner has received from those persons to whom notice of the application has been given no~~

~~written protest against such application within five days of the hearing, the board or commissioner may grant such application without a hearing, if the applicant has met the burden of proof prescribed in paragraph (f) of this subsection (7).~~

~~(d) On hearing, the banking board or the state commissioner of financial services may admit in evidence the application for such branch and any other relevant information. The applicant and all others receiving notice are also entitled to be heard and to introduce testimony at such hearing, as well as such others as the banking board or the state commissioner of financial services may determine.~~

~~(e) The banking board or the state commissioner of financial services shall give notice of the hearing on such application at least thirty days in advance of the hearing date fixed by registered or certified mail to the applicant, to each bank and industrial bank, if the applicant is a bank or industrial bank, or to each savings and loan association, if the applicant is a savings and loan association, and to any branch of any of the foregoing located within a three-mile radius of the location of the proposed branch and to such other persons as the board or the commissioner may designate. The banking board or the state commissioner of financial services 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 branch is to be located. Such notice shall be in the form prescribed by the banking board or the state commissioner of financial services and shall include the name of the applicant, the location of such proposed branch, and the date, time, and place of the hearing.~~

~~(f) The applicant shall have the burden of proving:~~

~~(I) That the proposed branch will be established in a community or area of a community in this state where the proposed branch will serve a public need and advantage within such community or area of such community;~~

~~(H) That the volume of business in such community or area of such community which the proposed branch will serve is such that profitable operation of the bank, industrial bank, or savings and loan association and the proposed branch may be reasonably projected; and~~

~~(HH) That such community or area of such community is economically depressed.~~

~~(g) An "economically depressed" community or area of a community is defined as a community or area of such community which meets at least two of the following three criteria:~~

~~(f) An unemployment rate of at least twenty-five percent above the state average for the most recent period of twelve consecutive months for which data are available from the department of labor and employment;~~

~~(H) A per capita income less than seventy-five percent of the state average for the most recent period for which data are available from the United States census bureau or the department of local affairs;~~

~~(HH) Assessed value of commercial and residential real property in the community or area of a community of less than seventy-five percent of comparable commercial and residential real property of the county or city and county where located, as determined by the records of the county assessor.~~

~~(h) Any municipality with a population not exceeding two thousand, as determined by the latest federal census, where there is no bank, industrial bank, savings and loan association, federal savings bank, or any branch thereof, shall be deemed an economically depressed community.~~

~~(i) A public need and advantage may be proven in this subsection (7) if an applicant proves that the granting of authority to operate the proposed branch will, among other things:~~

~~(f) Enhance the quality or quantity of services of banks, industrial banks, and savings and loan associations available to the public in the community or area of the community which the branch will serve; or~~

~~(H) Enhance the convenience of existing customers of the applicant.~~

~~(j) If within a forty-five day period there has been filed with the banking board or the state commissioner of financial services two or more applications to establish a branch in the same community or same area of the community, the board or the commissioner may hold a single hearing to consider such applications. The banking board or the state commissioner~~

~~of financial services may grant the application of not more than one applicant and may do so without regard to the priority in time of filing applications. The determination of the banking board or state commissioner of financial services to deny an application which might otherwise qualify under this subsection (7) shall be based upon a finding that the public need for financial services in the community or area of such community in which the proposed branch will be located will be best served by such denial and by the granting of another application.~~

~~(k) Within sixty days following the date of the conclusion of the hearing, the banking board or the state commissioner of financial services shall issue a written order granting the application for such branch if the banking board or the state commissioner of financial services finds that the requirements of paragraphs (a) and (b) of this subsection (7) have been met and that the applicant has met the burden of proof prescribed in paragraph (f) of this subsection (7).~~

~~(l) Nothing in this article or any other article of this title shall authorize interstate branching prior to June 1, 1997.~~

~~(8) (3) (a) Notwithstanding any other provision of this title, on and after January 1, 1993, Any bank which THAT has its principal place of business in this state or any industrial bank which THAT has its principal place of business in this state, upon thirty days' prior written notice to the banking board, or any savings and loan association which 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 branch BRANCHES anywhere in this state.~~

~~(b) On and after January 1, 1997, any such bank, industrial bank, or savings and loan association may, upon thirty days' written notice to the board or commissioner, establish one or more de novo branches anywhere in this state.~~

~~(c) (b) On and after January 1, 1997, Any such bank, industrial bank, or savings and loan association which has had its charter approved or conditionally or preliminarily approved on or after April 1, 1991, may, upon thirty days' written notice to the BANKING board or commissioner, be converted to a branch of any bank, industrial bank, or savings and loan association.~~

~~(d)~~ (c) The BANKING board and the commissioner shall adopt policies and procedures by ~~regulation~~ RULE no more restrictive than federal regulatory policies and procedures relative to application and approval of branches to be established under this subsection ~~(8)~~ (3).

~~(9) If any financial institution has, on or after June 1, 1991, established a branch in any county having a population of less than thirty thousand, as determined by the latest federal census, which is located within the market area of any other financial institution which has its principal place of business in such county, then such latter financial institution, if it has no other branch, may establish one de novo branch within that county.~~

**11-105-603. [Formerly 11-25-104] Financial institutions - common powers and limitations.** ~~(1) Nothing in this article shall be construed to authorize the conversion of a detached facility to a branch of any financial institution.~~

~~(2)~~(1) Any acquisition of a branch from another financial institution shall be subject to the percentage limitation set forth in subsection ~~(7)~~ (5) of this section. Such an acquisition by a financial institution ~~which~~ THAT has its principal place of business in Colorado is expressly authorized, and the location of such branch may be changed pursuant to law.

~~(3) Any acquisition of a branch from another financial institution in connection with the acquisition of such financial institution shall be subject to any percentage limitation set forth in subsection (7) of this section. Such an acquisition by a financial institution which has its principal place of business in Colorado is expressly authorized, and the location of such branch may be changed pursuant to law.~~

~~(4)~~ (2) Nothing in this ~~article~~ PART 6 shall be construed to apply to a branch facility operating under an emergency grant pursuant to section ~~11-5-109 or 11-22-611~~ 11-103-809 OR 11-108-611; 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 ~~article~~ PART 6.

~~(5)~~ (3) Nothing in this ~~article or in article 6.4~~ PART 6 OR PART 2 OF ARTICLE 104 of this title shall be construed to prevent the acquisition of any financial institution in this state by any other financial institution the

principal operations of which are located in this state; however, any conversion of all or any part thereof to a branch shall be in accordance with the provisions of this ~~article~~ PART 6.

~~(6)~~ (4) If any financial institution converts any affiliate financial institution to a branch pursuant to the provisions of this ~~article~~ 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", of 1957, by any rules ~~and regulations~~ of the banking board, or by the commissioner.

~~(7)~~ (5) Notwithstanding any other provision of this ~~article~~ PART 6, no financial institution ~~which~~ 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 ~~which~~ THAT are federally insured. For the purpose of this subsection ~~(7)~~ (5), deposits shall be determined based upon the public reports most recently filed with the appropriate federal regulatory agency.

**11-105-604. [Formerly 11-25-105] 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 ~~this section~~ 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.

**11-105-605. [Formerly 11-25-106] Rule-making by banking board and state commissioner of financial services.** (1) The banking board shall promulgate and adopt such rules ~~and regulations~~ as are

necessary to accomplish the purposes of this ~~article~~ PART 6.

(2) The state commissioner of financial services shall promulgate and adopt such rules ~~and regulations~~ as are necessary to accomplish the purposes of this ~~article~~ PART 6.

(3) The banking board and the state commissioner of financial services shall coordinate their rule-making ~~which~~ THAT implements the provisions of this ~~article~~ PART 6 so that the procedures and time periods are the same for each type of financial institution to make application for a branch thereunder.

**11-105-606. [Formerly 11-25-107] 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.

## **ARTICLE 106**

### **Fiduciary Business**

**11-106-101. [Formerly 11-10-101] 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.

**11-106-102. [Formerly 11-10-102] Investment power.** A bank acting as fiduciary shall have the same investment powers as an individual fiduciary under like circumstances.

**11-106-103. [Formerly 11-10-103] 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.

**11-106-104. [Formerly 11-10-104] Agency powers.** In addition to its other powers, any bank ~~which~~ 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.

**11-106-105. [Formerly 11-10-106] 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 ~~which~~ 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 ~~which~~ 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).

**11-106-106. [Formerly 11-10-107] 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 ~~which~~ 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.

## **ARTICLE 107**

### **Criminal Offenses**

**11-107-101. [Formerly 11-11-101] 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 ~~which~~ THAT is the name of a bank.

**11-107-102. [Formerly 11-11-102] 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.

**11-107-103. [Formerly 11-11-103] 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.

**11-107-104. [Formerly 11-11-104] 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 ~~11-6-101~~(3) 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 ~~he~~ 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.

**11-107-105. [Formerly 11-11-105] 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.

**11-107-106. [Formerly 11-11-106] 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 ~~11-3-121~~ 11-103-602.

**11-107-107. [Formerly 11-11-107] 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.

**11-107-108. [Formerly 11-11-108] 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 he THE DEFENDANT could and should have known such facts in the proper performance of his OR HER duty.

**11-107-109. [Formerly 11-20-117] Unlawful acts or failure to perform - penalty.** Any person who willfully or knowingly fails to perform any act required, and as required by section ~~11-2-106 (10)~~ or ~~11-2-115~~ 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.

**11-107-110. [Formerly 11-11-109] 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 ~~he~~ SUCH PERSON is acting for a bank, or uses an artificial or corporate name ~~which~~ 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.

**11-107-111. [Formerly 11-11-110] 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.

## **ARTICLE 108 Industrial Banks**

### **PART 1 GENERAL PROVISIONS**

**11-108-101. [Formerly 11-22-101] Definitions.** As used in this article, unless the context otherwise requires:

(1) "Bank" or "industrial bank" means an industrial bank incorporated under the provisions of section ~~11-22-101.2~~ 11-108-102.

~~(1.5)~~ (2) "Banking board" ~~means the banking board created in section 11-2-102~~ SHALL HAVE THE SAME MEANING AS IN SECTION 11-101-401 (7).

~~(2)~~ (3) "Commissioner" means the state bank commissioner.

~~(3) "Guaranty corporation" means the industrial bank savings guaranty corporation of Colorado.~~

(4) "Member" means a bank required by this article to be a member of the ~~guaranty corporation~~ FEDERAL DEPOSIT INSURANCE CORPORATION and shall include "new member" except where the term "new member" is used in the same section or subsection.

(5) "New member" means a member ~~which~~ THAT had no outstanding savings obligations as of the last day of the calendar year preceding the year in which an assessment is made and ~~which~~ THAT has not filed with the commissioner an undertaking not to issue savings obligations.

(6) "Primary service area" means the smallest geographical area from which it is anticipated that the proposed industrial bank will draw seventy-five percent of its individual, partnership, and corporate deposits.

(7) "Savings obligations" means savings deposits of any type including contracts, agreements, certificates of deposit, however evidenced, and savings accounts and unpaid interest accrued thereon.

**11-108-102. [Formerly 11-22-101.1] Applicability of powers of banking board and bank commissioner to industrial banks.** The powers, duties, and functions of the banking board and the commissioner contained in article 2 102 of this title and the declaration of policy contained in section ~~11-1-101.5~~ 11-101-102 shall apply to the provisions of this article.

**11-108-103. [Formerly 11-22-115.6] 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 enforcement of this article.

## PART 2 POWERS

**11-108-201. [Formerly 11-22-106] Powers - general corporate - loans and investments - rules of banking board.** (1) Every industrial bank duly organized and chartered under the provisions of this article has the powers granted general business corporations by the laws of the state of Colorado to the extent the same are not inconsistent with or contrary to

this article, including such special powers provided in this article, without the necessity of such powers or special powers being specifically recited or set out in the articles of incorporation of said industrial bank or any amendments thereto.

(2) No industrial bank shall be authorized to engage in any business or activity except as may be authorized by this article.

(3) No stock shall be issued for any consideration other than cash, except stock dividends.

(4) An industrial 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 ~~and regulations~~ promulgated by the banking board or otherwise permitted by this article. In promulgating such rules ~~and regulations~~ the banking board shall consider all relevant factors, including without limitation the policies set forth in section ~~11-1-101.5~~ 11-101-102.

(5) In addition to the general corporate powers granted by this code, an industrial bank has the power, subject to the limitations and restrictions imposed by this code and the rules ~~and regulations~~ 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.

(6) As authorized pursuant to section 10-2-601 (2), C.R.S., an industrial bank 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, an industrial bank may receive such fees or commissions as may be agreed between the industrial bank and the insurance company.

(7) (a) It is unlawful for an industrial bank, or an officer, director, employee, or affiliate of an industrial bank, to:

(I) Engage in the business of issuing, floating, underwriting, distributing, or promoting the sale of stocks, bonds, or other securities; or

(II) Be an officer, trustee, director, employee, stockholder, or partner of any person engaged principally in ~~such~~ A business DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

(b) Nothing in paragraph (a) of this subsection (7) shall include securities issued or guaranteed as to principal and interest by:

(I) The United States or any agency of the United States;

(II) A state or territory of the United States; or

(III) A subdivision, instrumentality, or public authority organized under the laws of such state or territory pursuant to an interstate compact between two or more states.

**11-108-202. [Formerly 11-22-107] Special powers.** (1) Every industrial bank, in addition to the powers granted by this article or the rules ~~and regulations~~ promulgated by the banking board, has all of the following powers:

(a) The right to purchase and carry obligations of, or fully guaranteed by, the United States or a state of the United States; obligations of a corporation chartered by the United States or a state of the United States doing business in the United States; obligations of an authority organized under state law, under an interstate compact, or by substantially identical legislation adopted by two or more states if any such authority is approved for investment by the rules ~~and regulations~~ of the banking board; 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 investment, located in any state of the United States; general obligations of a territory of the United States, or a political subdivision or instrumentality of a state or territory of the United States; obligations ~~which~~ THAT the general assembly of Colorado designates from time to time as legal investments for public funds; notes, secured or unsecured; mortgages; contracts; acceptances; bills of exchange; or trust receipts. All assets and funds of an industrial bank shall at all times be maintained within the United States and in legal investments within the United States as recited in this paragraph (a); but, with the written consent of the banking board, industrial banks may purchase and carry other types of assets but shall only be permitted to make such investments as are permitted by law to fiduciaries.

(b) The right to lend money upon the security of the character and earning capacity of the borrower, comakers, personal chattels, real property, or any other property, or a combination of the foregoing;

(c) If a member in good standing of the ~~guaranty corporation~~ FEDERAL DEPOSIT INSURANCE CORPORATION, the right to issue certificates of deposit, contracts, or agreements under any descriptive name and receive savings deposits ~~which~~ THAT may bear such interest as their terms may provide. ~~except that industrial banks need not be members of the guaranty corporation if they are members of the federal deposit insurance corporation.~~ Industrial banks may pay interest on savings deposits, certificates of deposit, contracts, or agreements at a rate, without regard to compounding, not to exceed one-half percent per annum greater than the rates of interest ~~which~~ THAT any national or state bank, savings and loan association, or building and loan association in the state is permitted by law to pay on the same type of savings deposit, certificate of deposit, contract, or agreement, whichever is greater. If any national or state bank, savings and loan association, or building and loan association is not limited by applicable law or ~~regulation~~ RULE with regard to the rate of interest on any type of savings deposit, certificate of deposit, contract, or agreement, banks shall also not be limited in the same manner. Such certificates of deposit, contracts, or agreements shall be issued with a maturity of not less than seven days and shall be sold at not less than par.

~~(d) Repeated.~~

~~(e)~~ (d) The right to issue, with the prior approval of the banking board based upon the facts and circumstances of each case, capital notes, debentures, or evidences of indebtedness ~~which~~ THAT will not be covered by a guaranty and may be included as a part of the capital and surplus and ~~which~~ THAT:

(I) Have a maturity of not less than five years;

(II) Will be paid by the bank at or prior to maturity in part or in whole only upon written permission of the banking board and are at all times and in all respects wholly subject, subordinate, junior, and inferior to all senior debts of the bank with respect to right of payment;

(III) Provide that the holder of the note by its acceptance thereof must agree that the payment of the principal and interest of the note is

expressly subordinated to the prior payment of the principal and interest on all existing and future obligations of the bank to its savings depositors and certificate holders; and

(IV) Contain a provision in the note that no amount shall be paid by the bank as principal or interest unless the capital of the bank, as defined in rules ~~and regulations~~ of the banking board, increases over its capital as of the date of the execution of the note by not less than the amount of such principal or interest payment.

~~(f)~~ (e) The right to invest not more than ten percent of its assets in personal property leases to the same extent and in the same manner as allowed national or other state banks; except that an industrial bank shall not invest in any lease in excess of fifteen percent of its capital, as defined in rules ~~and regulations~~ of the banking board, less any inadequacy of capital to any person, association, partnership, or corporation and except that an industrial bank may exceed the limit established by this paragraph ~~(f)~~ (e) subsequent to investing in the lease if such excess is necessary to protect the lease.

~~(g)~~ (f) The right to broker first mortgage loans.

**11-108-203. [Formerly 11-22-107.5] Trust, fiduciary, and agency powers - when.** In addition to its other powers, an industrial bank that is authorized by its charter to exercise trust powers, upon proper qualification under this article, 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 industrial 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, ~~and regulation~~, on such forms as may be prescribed by the banking board. No report filed pursuant to this section shall be required to be published.

**11-108-204. [Formerly 11-22-108] Forbidden powers.** (1) No industrial bank has power to do any of the following:

(a) To accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

~~(b) and (c) Repealed.~~

~~(d)~~ (b) To engage in, or acquire any interest in, any business except as permitted by this article.

(2) In calculating the obligations of a single obligor ~~or the obligations of a specified class for the purposes of paragraph (b) of subsection (1) of this section,~~ there shall be included:

(a) In the case of obligations of a partnership or association, the obligations of each general partner or each member of the association;

(b) In the case of obligations of a general partner or a member of an association, the obligations of the partnership or association;

(c) In the case of obligations of a corporation, the obligations of any subsidiaries in which it owns, directly or indirectly, a majority of the outstanding voting stock;

(d) In the case of obligations of a corporation, the amount of a loan made to any other person to the extent that the proceeds of such loan, directly or indirectly, are to be loaned to the corporation; or used for the acquisition from the corporation of any securities issued by the corporation, other than securities acquired by an underwriter for public offering; or transferred to the corporation without fair and adequate consideration. The discharge of an equivalent amount of debt previously incurred in good faith for value shall be deemed fair and adequate consideration.

### PART 3 CHARTERS

**11-108-301. [Formerly 11-22-101.2] Incorporation.** Three or more persons desiring to form a bank, as permitted in this article, may incorporate such bank, and said bank may be chartered by the banking board to engage in the business of a bank upon compliance with the provisions of this article.

**11-108-302. [Formerly 11-22-102] Charter - application - fee - issuance procedure - change in location.** (1) The incorporators of a proposed industrial bank shall submit to the banking board an application

for an industrial bank charter and in support thereof shall submit the following:

(a) An application for a charter in such form as may be prescribed by the banking board by rule, ~~and regulation~~, including the following: The name, address, and business affiliation of each director and proposed officer and the name and address of any and all other industrial banks with which each director and proposed officer may be affiliated as a director, officer, or stockholder; the name, address, and business affiliation of each subscriber to stock and the amount of stock subscribed for; the address at which it is proposed the industrial bank will maintain its place of business or, if such address is not known, the area within a radius of one-half mile in which the bank is to be located; a designation of the primary service area it proposes to serve; and such other information as the banking board may reasonably require to enable it to determine whether such charter should be issued;

(b) Proposed articles of incorporation, containing: The name of the proposed industrial bank; the city or county in which it is to be located; the amount of capital; the number and par value of the shares authorized; the number of directors; a statement whether cumulative voting will be permitted for directors; preemptive rights, if any, of stockholders; its term of existence; and such other proper provisions as may be approved by the banking board to govern the affairs and business of the proposed industrial bank, including such provisions required by law for the incorporation of ordinary corporations. The name of the industrial bank need not comply with the requirements of part 6 of article 90 of title 7, C.R.S. Only one class of par value stock of not less than ten dollars per share shall be authorized, but the foregoing shall not affect industrial banks chartered prior to July 1, 1965, having other classes of stock or other par value than recited in this article. The articles of incorporation shall not contain any provisions authorizing such proposed industrial bank to engage in any business or activity except as may be authorized by this article.

(c) Bylaws of the proposed industrial bank;

(d) An application fee established by the banking board pursuant to section ~~11-2-103 (11)~~ 11-102-103 (12). The fee may be refunded to the incorporators by the banking board if the application for charter is withdrawn by the incorporators prior to the date set for public hearing. The applicants shall also submit evidence satisfactory to the banking board that

the stock, in an amount not less than the minimum required by section ~~11-22-105~~ 11-108-305, has been fully subscribed and paid in and that the subscribing stockholders have, in addition thereto, deposited an estimated amount to cover organizational expense.

~~(1.5) Repealed.~~

(2) (a) Within sixty days ~~of~~ AFTER the submission of an application, the banking board shall determine whether the application is complete or whether deficiencies exist in the application and shall notify the applicant of such finding and shall specify any deficiencies ~~which~~ THAT have been found to exist. In the event that the application is not completed in accordance with this section and the rules of the banking board within ninety days ~~of~~ AFTER the submission date, the application shall be deemed withdrawn and the application fee forfeited.

(b) After the application has been properly completed within the required ninety-day period, the hearing required by this section shall be held and a decision rendered by the banking board on the charter application at least thirty days prior to any hearing on any later filed application for a bank proposing to serve any portion of the same primary service area.

(c) The banking board, upon determining that the application is complete, shall fix a time and place for a hearing upon such application not less than thirty days nor more than ninety days after such determination or not less than thirty days nor more than ninety days after the banking board renders a decision on an earlier filed application to serve a portion of the same primary service area. At least thirty days prior to the hearing, the banking board shall notify the applicants thereof and mail notices of the hearing upon such application to each industrial bank doing business in the primary service area to be served by the applicant and to such other persons and organizations as the banking board may select. If any person or organization objects to the application, such person or organization may file with the banking board a written objection within twenty days after receipt of the notice of hearing. At such hearing, applicants, persons notified by this subsection (2), and other persons interested may appear and offer testimony in support of, or in opposition to, such application, and such testimony shall be transcribed. The banking board may continue the hearing from time to time for the purpose of taking additional testimony.

(d) Notwithstanding any other provision of this section, if the BANKING board has given notice pursuant to paragraph (c) of this subsection (2) 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 ~~of~~ PRIOR TO 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.

(3) (a) Upon the receipt of the instruments recited in subsection (1) of this section, the banking board shall investigate the facts and the application and, after a hearing, shall grant the charter if it finds that:

(I) Allowing the applicants to engage in such business will serve the public need and advantage in the primary service area in which the business of the applicants is to be conducted; and that the volume of business in the primary service area ~~which~~ THAT the applicants propose to serve, attributable to industrial banking, is such that profitable operation of the industrial bank may reasonably be projected;

(II) The experience, financial responsibility, character, and general fitness of the proposed officers, directors, stockholders, and persons in control of the industrial bank, as defined in section ~~11-22-101~~ (1) 11-108-101 (1), are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully and within the purposes of this article. In making a determination under the provisions of this subparagraph (II), the banking board shall be governed by the provisions of section 24-5-101, C.R.S.; and

(III) The articles of incorporation and bylaws are in compliance with law and any ~~regulations~~ RULES of the banking board and its proposed capital satisfies the standards and guidelines in the rules ~~and regulations~~ promulgated by the banking board.

(b) The applicants shall have the burden of proving the matters set forth in paragraph (a) of this subsection (3).

(4) Such charter shall not be issued until: The articles of incorporation, duly approved by the banking board, have been filed by the incorporators with the secretary of state of Colorado and with the banking board; the proposed capital satisfies the standards and guidelines in the rules ~~and regulations~~ promulgated by the banking board; and the

organization of said industrial bank, including adoption of the bylaws, election of members to the board, and the election of its officers have been duly completed.

(5) The banking board shall grant or deny an application for a charter within thirty days after conclusion of the hearings thereon. Within ten days after the entry of an order denying or granting an application, the banking board shall give written notice thereof and the BANKING board's reasons therefor to the applicants and to such industrial banks or other persons who appeared at the hearing in opposition to the granting of such application. The banking board shall make execution of its order to grant a charter contingent upon the proposed industrial bank's making a bona fide application for, and receiving membership in, the federal deposit insurance corporation or the federal reserve system.

(6) The proposed incorporators, or any industrial bank, or other persons aggrieved by the order of denial or granting of the application may seek a review thereof in any district court of Colorado within thirty days after written notice of the issuance of said order. The court may affirm the order of the banking board, or may reverse or modify the same, or direct the banking board to take any action deemed proper if it finds that the banking board abused its discretion or exceeded its jurisdiction. Review by appeal may be prosecuted from the final judgment of the district court as provided by law and the Colorado appellate rules in the same manner as appeals are taken from judgments of the district court in civil actions.

(7) (a) If a bank chartered under the provisions of this article desires to move from the location for which the charter was granted, the bank shall submit to the banking board in such form as the banking board may prescribe an application for change of location. The application for change of location shall include the following: The new address at which the bank proposes to maintain its place of business; a designation of the primary service area it proposes to serve; evidence satisfactory to the banking board that the requirements of section ~~11-22-105~~ 11-108-305(1) relating to the proposed new location have been met; and such other information as the banking board may reasonably require to enable it to determine whether the application for change of location should be granted.

(b) If the proposed new location of the bank is over five hundred feet from the location for which the charter was granted, then, within thirty days following the submission of an application for change of location, the

bank shall give notice to the public of the proposed new location by publishing, at least twice in a newspaper of general circulation in the primary service area that such bank serves, a notice identifying the present location of the bank and the proposed new location. If the proposed new location of the bank is five hundred feet or less from the location for which the charter was granted, no such public notice shall be required under this paragraph (b), and the banking board shall grant or deny the application for a change of location within sixty days after submission by the applicant.

(c) If the proposed new location of the bank is more than five hundred feet from and within a radius of one-half mile of the location for which the charter was granted, the banking board shall mail notice of such application for change of location within thirty days following submission of the application to each bank doing business in the primary service area to be served by the applicant. If no bank which received notice of the application objects in writing to the banking board within thirty days ~~of~~ AFTER mailing of such notice, the banking board may grant or deny the application, without a hearing, based upon the merits of the application, but such application shall be granted only if the provisions of section ~~11-22-105~~ (1) 11-108-305 (1) relating to the proposed new location have been met. If any bank receiving notice does object in writing and requests a hearing on the application, the banking board shall determine if a hearing is advisable, and, if it finds it advisable the banking board shall mail a notice of such hearing to ~~the guaranty corporation and~~ to each bank doing business in the primary service area to be served.

(d) If the proposed new location of the bank is more than one-half mile from the location for which the charter was granted, the banking board shall give notice within thirty days following submission of the application to each bank doing business in the primary service area to be served by the applicant ~~to the guaranty corporation~~, and to such other persons and organizations as the banking board determines. If no bank, person, or organization receiving notice of the application objects in writing to the banking board within thirty days ~~of~~ AFTER mailing of such notice, the banking board may grant or deny the application, with or without a hearing, at its discretion, based on the merits of the application, but such application shall be granted only if the provisions of section ~~11-22-105~~ (1) 11-108-305 (1) relating to the proposed new location have been met. If any bank, person, or organization receiving notice does object in writing and requests a hearing on the application, the banking board shall hold a hearing on the application, and the banking board shall mail a notice of such hearing to all

persons and organizations who were mailed notice of application to change location.

(e) Any hearing held under the provisions of this subsection (7) shall be held within ninety days following the date of mailing of the notice of hearing. At such hearing, the applicant, persons, or organizations notified pursuant to this subsection (7), and other persons interested may appear and offer testimony in support of, or in opposition to, the application for change of location, and such testimony shall be transcribed.

(f) The banking board shall grant or deny an application for change of location within ninety days ~~of~~ AFTER the conclusion of any hearing held on the application or, if no hearing is held, within ninety days ~~of~~ AFTER the receipt of the application.

**11-108-303. [Formerly 11-22-103] Amendment - where filed.** In the event of an amendment to the certificate of incorporation of any industrial bank, certificates setting forth such amendment shall be executed in duplicate and filed in the offices of the secretary of state and the banking board.

**11-108-304. [Formerly 11-22-104] Certificate approving amendment.** If the banking board is satisfied that such amendment has been legally made, and that it in no way impairs the financial standing of said industrial bank, it shall issue to the industrial bank a certificate approving the amendment and authorizing the bank to conduct business pursuant thereto, and no such authority of amendment shall be effective until so approved by the banking board.

**11-108-305. [Formerly 11-22-105] Capital structure - inadequacy.** (1) The banking board shall establish by rules ~~and regulations~~ the capital standards and guidelines, the methods for measuring capital, and the definitions of "capital", "capital adequacy", "capital inadequacy", and other related terms for industrial banks subject to this article, which may differ for specific purposes. In promulgating such rules, ~~and regulations~~, the banking board shall consider all relevant factors, including without limitation the policies set forth in section ~~11-1-101.5~~ 11-101-102 and relevant federal laws and regulations. Each industrial bank subject to this article shall at all times comply with the capital rules ~~and regulations~~ promulgated by the banking board.

(2) The board of directors of an industrial 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 ~~and regulations~~ established by the banking board.

(3) If the banking board has reason to believe that the capital of any industrial bank is inadequate under the rules ~~and regulations~~ 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 industrial 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 (3). 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 bank may offer the shares of the defaulting stockholders for sale at public auction or private sale at a price ~~which~~ 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 ~~11-3-105~~ 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 6 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. 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.

(4) Any industrial bank upon application to and approval by the banking board, may operate one loan production office as defined by the banking board. ~~Any industrial bank, upon application to and approval by the banking board, may also operate one detached facility. Such facility shall be located within three thousand feet of the nearest point on the boundary of the premises of the bank's place of business but cannot be located within three hundred feet of the boundary of the premises of another industrial bank, state bank, or national bank or any of such other banks'~~

~~detached facility, unless such other bank consents to a closer location. The banking board shall give written notice of an application for a detached facility to each industrial bank and each state or national bank located within a three-mile radius of the applicant bank and, at its discretion, the banking board may order a public hearing with respect to the application. Approval shall be granted by the board only upon a showing of need. Banking activities at detached facilities shall be restricted to receiving deposits, issuing money orders or drafts, cashing checks or drafts, making change, receiving note payments, receiving or delivering cash, instruments, and securities, and disbursing loan proceeds by machine. Any other facility, agency, or paying or receiving station operated by any bank or agent shall constitute a branch within the meaning of this subsection (4). Notwithstanding the limitations of this subsection (4), an industrial bank is authorized to engage in such deposit and loan activities as are expressly authorized by this article through a communications facility, as defined in section 11-48-103.~~

~~(5) Repealed.~~

**11-108-306. [Formerly 11-22-111] Assessments.** (1) The banking board shall annually establish fees and assessments pursuant to section ~~11-2-103(11)~~ 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.

~~(3) In addition to each assessment established pursuant to subsections (1) and (2) of this section, for each fiscal year beginning July 1, 1992, and ending June 30, 1994, and for the period ending January 31, 1995, the banking board shall collect a semiannual repayment of the fiscal year 1991-1992 general fund advance to the division of banking in an amount equal to one-sixth of the amount of the banking board's assessment that would have been collected in September 1992.~~

#### PART 4 RECORDS, REPORTING, AND INFORMATION

**11-108-401. [Formerly 11-22-109] Subject to corporation laws - powers of banking board - examinations by commissioner - reports by industrial banks.** (1) Industrial banks shall be subject to and governed by the laws relating to general business corporations, except where inconsistent with the provisions of this article, but, in addition thereto, the commissioner shall examine the books and records of every industrial bank as often as deemed advisable and to the extent required by the banking board. The cost of the examination shall be borne by the industrial bank at the rate provided for in section ~~11-22-111~~ 11-108-306.

~~(1.1)~~ (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 an industrial bank or any electronic data processing centers ~~which~~ THAT serve an industrial 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 industrial bank ~~which~~ THAT they serve.

~~(1.2)~~ (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 an industrial bank and any affiliated entities of the controlling shareholder for the purpose of determining the safety and soundness of the industrial bank. 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 ~~his~~ 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 ~~his~~ 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 hundred dollars for each day any such refusal continues. In lieu of any examination required by this subsection ~~(1.2)~~ (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 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 ~~(1.2)~~ (3):

(I) "Affiliated entity" or "affiliate" means an entity in control of a controlling shareholder.

(II) "Controlling shareholder" means a shareholder in control of an industrial bank.

(III) "In control of" means that an entity or shareholder meets the same criteria for acquiring control as are set forth in section ~~11-2-109~~ (4) 11-102-303 for acquiring control of a state bank.

~~(2) Repealed.~~

~~(2.1)~~ (4) Any person who becomes a director, executive officer, or other person who, directly or indirectly, is responsible for the management, control, or operations of an industrial bank shall within ninety days thereafter file a report with the banking board containing: A statement describing any civil or criminal offenses involving fraud, dishonesty, moral turpitude, bribery, perjury, larceny, theft, robbery, extortion, forgery, counterfeiting, embezzlement, misappropriation of property, or conspiracy to commit any of such offenses, or an offense 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, ~~and regulations~~. 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 ~~(2.1)~~ (4) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, ~~and regulation~~, 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.

~~(2.2)~~ (5) If any industrial bank changes any executive officer, director, or other person who, directly or indirectly, is responsible for the management, control, or operations of the bank, such changes shall be promptly reported to the banking board, and the 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 ~~(2.1)~~ (4) of this section. No civil liability shall arise for any industrial bank, its directors, executive officers, employees, or agents, or other persons due to compliance with the requirements of this subsection ~~(2.2)~~ (5). 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 bank. The information shall be treated as confidential under this article. Any industrial bank that fails to comply with this section shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, ~~and regulation~~, 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.

~~(3)~~ (6) An industrial bank shall not permit other businesses to be carried on at its place of business except as permitted by this article, unless such businesses were carried on at the place of business of the bank prior to July 1, 1965. A bank shall identify other businesses carried on at its place of business by conspicuous signs placed in or upon the exterior of and adjacent to the principal entrance of its place of business.

~~(4)~~ (7) (a) Industrial banks ~~which~~ THAT are subject to reserve provisions of the "Federal Reserve Act", as amended, shall maintain such reserves against deposits as may be required by the "Federal Reserve Act", as amended, but in addition thereto the banking board may by ~~regulation~~ RULE impose reserve requirements ~~which~~ THAT it deems prudent and sound on said industrial banks. The banking board may also impose reserve requirements by ~~regulation~~ RULE on industrial banks not subject to reserve provisions of the "Federal Reserve Act", as amended.

(b) In addition to the reserve against deposit liability, a bank shall maintain a reserve against bad debts as required by law and the banking board.

~~(5)~~ (8) In addition to other powers conferred by this article, the banking board has power to:

(a) Regulate the procedure and practice at hearings;

(b) Implement by order and ~~regulation~~ RULE any provision of this article and obtain restraining orders and injunctions to prevent violation of, and enforce compliance with, the provisions of this article and the orders and ~~regulations~~ RULES issued thereunder. In the exercise of such power to make orders and ~~regulations~~ RULES to implement the provisions of this article, the banking board shall act, consistent with the policies expressed in section ~~11-1-101.5~~ 11-101-102, in the interests of promoting and maintaining a sound industrial banking system, the security of deposits and depositors, and the protection of other customers.

(c) Restrict the withdrawal of deposits from any industrial bank or the payment of any certificate of deposit, contract, or agreement when the banking board determines that the capital of such industrial bank is inadequate pursuant to the provisions of section ~~11-22-115 (1) (a)~~ 11-108-501 (1) (a);

(d) Order any person or industrial bank to cease violating a provision of this article, or a lawful ~~regulation~~ RULE issued thereunder, or to cease engaging in unsound business practices. A copy of such order shall be mailed to each director of the industrial bank involved.

(e) Require the board of directors of industrial banks to:

(I) (A) Cause an annual audit of the industrial 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. ~~and regulations.~~ The banking board shall adopt ~~regulations~~ 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 ~~regulations~~ RULES shall also establish the scope of such director's examinations, which shall include safeguards to ~~insure~~ ENSURE 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.

~~and regulations.~~ 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.

(B) If an industrial bank is owned or controlled by a bank holding company, the requirement of sub-subparagraph (A) of this subparagraph (I) may be fulfilled if: As required by the banking board and its rules, ~~and regulations~~, the controlling bank holding company is audited or examined in a directors' examination annually at intervals of not more than fifteen months and the industrial bank is included in the annual audit or directors' examination of the bank holding company by that firm; 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 regulations~~; and an annual internal examination of the industrial bank 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.

~~(H) Repealed.~~

~~(HH)~~ (II) Cause the financial statements of the industrial 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 ~~11-1-101.5~~ 11-101-102;

~~(IV) and (V) Repealed.~~

~~(VI)~~ (III) File, record, or otherwise make effective any lien or other interests in property;

~~(VII)~~ (IV) Obtain a financial statement from a person with present or prospective liability to the industrial bank to the extent that the industrial bank can do so;

(f) (I) After notice and hearing, suspend any officer or director for fraud, embezzlement, or failure to comply with any provision of this article or any valid order or ~~regulation~~ RULE of the banking board.

(II) With respect to any action pursuant to this section, ten days'

notice, by certified mail, return receipt requested, and 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 of hearing, but shall promptly afford a subsequent hearing upon application to rescind the action taken.

(g) Order any industrial bank to cease making loans if the banking board determines that the reserves against savings obligations as required in subsection ~~(4)~~ (7) of this section, are deficient, or are not in compliance with this article, or are otherwise inadequate, or order any industrial bank to cease taking savings obligations if the banking board determines that the capital of such bank are inadequate.

~~(6)~~ (9) The banking board has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject relating to a duty imposed upon, or a power vested in, the BANKING board.

~~(7) Repealed.~~

~~(8)~~ (10) Any industrial bank aggrieved and directly affected by an order or ~~regulation~~ RULE of the banking board issued under this article may seek a review in the district court of Colorado in and for the county in which the industrial bank is located, within thirty days after receipt of written notice of the issuance of said order or ~~regulation~~ RULE. The filing of such a petition for review shall not, of itself, stay enforcement of an order or ~~regulation~~ 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~~ THE BANKING board to take any action deemed proper.

~~(9) Repealed.~~

~~(10)~~ (11) (a) A bank shall not, without the written consent of the banking board,

~~(I) and (II) Repealed.~~

~~(III)~~ purchase real estate or any interest therein or make substantial improvements thereon; except that an industrial bank shall not be prohibited

from purchasing or otherwise acquiring real estate or any interest therein pursuant to section ~~11-22-119~~ 11-108-704.

(b) Any consent given by the banking board under the provisions of paragraph (a) of this subsection ~~(10)~~ (11) shall not constitute any determination by the banking board as to the value of any real estate or the improvements thereon.

~~(11)~~ (12) No industrial bank shall advertise, display, distribute, or broadcast, or cause or permit to be advertised, displayed, distributed, or broadcasted, in any manner whatsoever, false, misleading, or deceptive statements or representations with regard to the charges for, or terms of, loans, or with reference to its savings deposits or certificates of deposit. The banking board has the power to require that all advertisements of any industrial bank be stated fully and clearly and in such manner as the banking board may deem necessary to prevent misunderstanding thereof by prospective borrowers, depositors, or purchasers of certificates of deposit.

~~(12)~~ (13) The provisions of article 52 of title 12, C.R.S., known as the "Money Order Act", shall not be applicable to industrial banks, nor shall industrial banks be required to comply therewith.

~~(13)~~ (14) No person who in good faith relies on any order OR rule ~~or regulation~~ 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. ~~or regulation.~~

~~(14)~~ (15) The banking board, the bank commissioner, and all deputies and employees of the division of banking shall not divulge any information acquired by them in the discharge of their duties except insofar as the same may be rendered necessary by law. The banking board, the commissioner, and their designees may exchange such information with the United States comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the executive director of the department of regulatory agencies, the division of savings and loan, and banking regulatory agencies of other states. In addition, the BANKING board, the commissioner, and their designees may exchange information as to possible violations of the federal "Employee Retirement Income Security Act of 1974", as amended, with the federal department of labor or the executive director of the department of regulatory agencies. The executive director of the department of regulatory

agencies and the state commissioner of savings and loan associations 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. Notwithstanding any provision of this article to the contrary, the bank 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 ~~which~~ THAT is publicly available from the federal deposit insurance corporation, the United States comptroller of the currency, or the federal reserve system and disclose information ~~which~~ THAT has been specifically authorized by the board of directors of the bank to which such information relates.

~~(15)~~ (16) Any person who willfully makes, circulates, or transmits to another any false statement, written or oral, ~~which~~ THAT is directly or by inference derogatory to the financial condition of any industrial bank and ~~which~~ THAT results in an extraordinary withdrawal of funds from such bank or ~~which~~ 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.

**11-108-402. [Formerly 11-22-109.5] Requirements for acquiring control of industrial banks - definitions.** (1) As used in this section, unless the context otherwise requires:

~~(b)~~ (a) "Controlling person" means a person who is in control of an industrial bank or would be in control of an industrial bank after a proposed acquisition.

~~(a)~~ (b) "Person" means an individual, a corporation, a partnership, a trust, or any other legal entity.

(2) A person shall be deemed to have acquired control of an industrial 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 industrial 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 available to inform the commissioner of the effect of the transaction upon the control of the industrial 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 industrial 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 this section and the other provisions of articles ~~1 to 11~~ 101 TO 104, PARTS 1 TO 5 OF ARTICLE 105, AND ARTICLES 106 AND 107 of this title and this article.

(b) The general assembly declares that the acquisition of control of or of any ownership interest in industrial 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, ~~regulation~~, 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 an industrial bank is owned or controlled by such a country, the banking board may 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 thereof; or

(e) Pro rata stock dividends.

(6) If the BANKING board has not acted upon a completed application within sixty days of 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 industrial 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.

**11-108-403. [Formerly 11-22-109.6] Industrial banks reports on condition and income to commissioner.** (1) Every industrial bank shall make and file with the commissioner not less than three reports during each calendar year according to the form ~~which~~ THAT may be prescribed by ~~him~~ THE COMMISSIONER, 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 industrial bank at the close of business on the day past to be specified by said commissioner in writing.

(2) Said reports shall be transmitted to the commissioner within thirty days after the request therefor.

(3) The commissioner has power to call for special reports from any particular industrial bank if, in ~~his~~ THE COMMISSIONER'S judgment, the same 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 industrial banks. Every industrial bank ~~which~~ 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 ~~11-2-103(11)~~ 11-102-104 (11) for each day's delay. The commissioner, for valid reasons and good cause, may waive such penalty.

**11-108-404. [Formerly 11-22-110] Industrial bank converted to state bank.** (1) Any industrial bank organized under the laws of this state may apply to the banking board, in such form and with such exhibits as it shall prescribe, to be converted into a state bank. Proposed amended articles of incorporation shall accompany the application.

(2) Upon receipt of such application and proposed amended articles of incorporation, the banking board shall proceed to process and hear such application and grant or deny a charter in the same manner and upon the same standards as prescribed in section ~~11-3-110~~ 11-103-304, relating to the granting or denying of a charter.

(3) In the event of a denial of an application for conversion, the applicant has the right of review and appeal in the manner and form provided in section ~~11-22-102(6)~~ 11-108-302 (6).

(4) Upon a charter being granted, the industrial bank shall file amended articles of incorporation and also certified copies of the resolution passed by the board of directors and stockholders representing not less than two-thirds of the capital stock of such bank authorizing such conversion. The resolutions of the stockholders shall declare that the officers have been authorized and required to file amended articles of incorporation and to take all steps necessary or proper to convert the industrial bank into a state bank. Upon the filing of the amended articles of incorporation, the banking board shall issue a charter to the industrial bank authorizing it to commence business in the same form as is issued to a state bank. The officers, after executing the amended articles of incorporation, have the power to execute all other papers and perform all other acts as may be required in connection with the conversion of the industrial bank.

(5) Upon the filing of the amended articles of incorporation, such bank and all of its stockholders, officers, and employees have the same rights, powers, and privileges and shall be subject to the same duties, liabilities, and obligations in all respects as are applicable to state banks originally organized as such under the laws of this state. The shares of stock of any such bank may continue to be for the same amount each as they were before the conversion, and the directors and officers of such bank may continue until others are elected or appointed.

(6) Upon the filing of the amended articles of incorporation, all of the property of the industrial bank, including all of its right, title, and interest therein as to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value then existing, belonging to it or ~~which~~ THAT would inure to it, shall be vested, immediately by act of law and without conveyance or transfer and without any further act or deed, in and be the property of the state bank, which shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the industrial bank. The bank converted under this part † 4, in every respect, shall be subject to the provisions of the law pertaining to state banks and shall be deemed to have a continuation of the entity and of the identity of the industrial bank, and all the rights, obligations, and relations of the industrial bank to or in respect to any person, creditor, or depositor shall remain unimpaired.

(7) If necessary, the banking board, for a period not to exceed one year ~~from~~ AFTER the date of the issuance of the charter to commence business, subject to such condition as it may prescribe, may permit the converted bank to continue and carry, at a value determined by the banking board, such of the assets of the converted bank as do not conform to the legal requirements relative to assets required and held by state banks.

(8) Any industrial bank organized under this article has the power to purchase and hold, for the purpose of becoming a member of a federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such bank pursuant to the "Federal Reserve Act", and acts amending such act; to become a member of such federal reserve bank and to have and exercise all powers, not in conflict with the laws of this state, ~~which~~ THAT are conferred upon any such member by the "Federal Reserve Act", and acts amending such act. Such industrial bank and its directors, officers, and stockholders shall continue to be subject to all liabilities and

duties imposed upon them by any law of the state and to all provisions of this article.

(9) Any industrial bank organized under this article has power to obtain federal deposit insurance or other deposit insurance and to assume and discharge such obligations to the federal deposit insurance corporation or other insurance corporations as may be necessary or required for the purpose of maintaining deposit insurance in such corporations.

PART 5  
DIRECTORS, PENALTIES, REMOVAL,  
SUSPENSION, AND ENFORCEMENT

**11-108-501. [Formerly 11-22-115] Unsound business practices.**

(1) For the purposes of this article, an unsound business practice includes, but is not limited to, the following:

(a) The conducting of any business by a bank while the capital of any such bank is inadequate under rules ~~and regulations~~ of the banking board. The capital of a bank shall be deemed inadequate if the capital is less than the requirements set by the banking board pursuant to the provisions of section ~~11-22-105~~ 11-108-305.

(b) The violation by a bank of its articles of incorporation, of any provision of this article or any ~~regulation~~ RULE promulgated pursuant thereto, or of any other law or ~~regulation~~ RULE of this state ~~which~~ THAT may impair the financial soundness of the bank;

(c) The conducting by a bank of its business in an unsafe or unauthorized manner;

(d) The refusal by a bank to submit its books, papers, and affairs for reasonable inspection by any representative of the division of banking; ~~or of the guaranty corporation;~~

(e) The refusal by any officer, director, employee, or agent of any bank to be examined under oath regarding the condition of such bank;

(f) The suspension by a bank of the payment of its obligations;

(g) The operation of a bank in a manner ~~which~~ THAT significantly

impairs the condition of the bank or otherwise materially affects the interests of its depositors;

(h) The failure to maintain adequate reserves for losses;

(i) The payment of management or other fees to any person, firm, corporation, or other entity for services rendered in an amount not justified by the actual services rendered;

(j) The payment by a bank of dividends if such payment results in an inadequacy of capital as defined in paragraph (a) of this subsection (1). In making such a determination, the adequacy of loss reserves maintained by the bank shall be taken into consideration.

(k) The repayment of any capital notes, debentures, or evidences of indebtedness ~~which~~ THAT have been included as part of the capital of a bank, without the express prior written consent of the banking board;

(l) The extension of credit to any officer, director, or principal shareholder of a bank, or any related interest of that person, unless the extension of credit:

(I) (A) Is made on substantially the same terms including interest rates, maturity, and collateral as those prevailing at the time for comparable transactions by a bank with other persons; or

(B) Is made pursuant to a benefit or compensation program that is widely available to employees of the bank and does not give preference to any insider; and

(II) Does not involve more than the normal risk of repayment or present other unfavorable features.

~~(HH) Repealed.~~

~~(m) Repealed.~~

**11-108-502. [Formerly 11-22-115.1] 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 ~~11-22-109 (5) (d)~~ 11-108-401 (8) (d); and

(B) Any industrial bank ~~which~~ THAT, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such industrial bank who, violates or knowingly permits any person to violate any of the provisions of this article or any rule ~~or regulation~~ promulgated pursuant to this article, or engages or participates in any unsafe or unsound practice in connection with an industrial bank. The civil money penalty shall not exceed one thousand dollars per day for each day such violation continues. This provision shall include, but need 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 ~~which~~ 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 need not be 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.

(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 an industrial bank, 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.

**11-108-503. [Formerly 11-22-115.2] No indemnification or insurance against civil money penalties.** Notwithstanding any other provision of law, no industrial bank shall indemnify or insure any executive officer, director, employee, agent, or person participating in the conduct of affairs of such industrial bank against civil money penalties.

**11-108-504. [Formerly 11-22-115.3] 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 an industrial bank with a written notice of its intention to remove ~~him~~ SUCH PERSON from office whenever the banking board determines:

(a) That any such person has committed any violation of this article, rule, ~~and regulation~~, or cease and desist order of the banking board, ~~which~~ THAT has become final, or has engaged or participated in any unsafe or unsound practice in connection with an industrial bank, or has committed or engaged in any act, omission, or practice ~~which~~ THAT constitutes a breach of ~~his~~ SUCH PERSON'S fiduciary duty to the industrial bank; and

(b) (I) That the industrial 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 or practice or breach of fiduciary duty or offense; or

(II) That such person has received financial gain by reason of such violation or practice or breach of fiduciary duty or offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one ~~which~~ 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 an industrial bank, by conduct or practice with respect to another industrial bank or business institution ~~which~~ THAT results in substantial financial loss or other damage, has evidenced either ~~his~~ personal dishonesty or a willful or continuing disregard for ~~its~~ THE BANK'S safety and soundness and, in addition, has evidenced ~~his~~ unfitness to continue his OR HER relationship with the industrial 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 his OR HER further participation in any manner in the conduct of the affairs of the industrial bank.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit ~~his~~ SUCH PERSON'S participation in the conduct of the affairs of an industrial bank shall contain a statement of the facts constituting grounds ~~therefor~~ 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~~ 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 industrial 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~~ IN THE ORDER. 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.

**11-108-505. [Formerly 11-22-115.4] 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 an industrial bank who becomes ineligible to hold ~~his~~ SUCH PERSON'S position, or who after receipt of an order of the banking board to cease and desist violates this article or a lawful rule ~~and regulation~~ or order issued thereunder, or who is dishonest, or who is reckless or grossly incompetent in the conduct of business of an industrial bank, or who may be subject to removal under section ~~11-22-115.3~~ 11-108-504. 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 industrial 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 industrial 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 hearing shall be provided to the industrial 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 hearing, upon application to rescind the action taken.

**11-108-506. [Formerly 11-22-115.5] 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 ~~his~~ 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 industrial bank or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of the industrial bank.

**11-108-507. [Formerly 11-22-116] Director and officer insurance and fidelity bonds - legislative declaration.** (1) If any director or officer of a bank knowingly engages in any unsafe or unsound business practice or knowingly violates, in conducting the business of the bank, a law or rule or regulation or any condition imposed in writing by the banking board or commissioner, every director or officer participating in or knowingly assenting to such violation shall be held liable in ~~his~~ SUCH PERSON'S individual capacity for all damages ~~which~~ THAT the bank, its shareholders, ~~the guaranty corporation,~~ or any other person shall have sustained in consequence of such violation.

(2) If the banking board deems any officer of any bank to be dishonest, to be engaging in an unsafe or unsound business practice, or to be incompetent, it shall report in writing the facts regarding such officer to the board of directors or owners of said bank, and, if the directors or owners of said bank fail or refuse to take action on such report within ten days, the commissioner, if he OR SHE deems it advisable, may send a copy of such report to the surety on the bonds of said officer.

(3) For the purposes of this section, "officer" means any person or entity that has the power to direct or cause the direction of the management and policies of the bank, other than in the capacity of a director, through the ownership of voting stock, by contract, or otherwise, and regardless of whether ~~he~~ SUCH PERSON has an official title, whether ~~his~~ SUCH PERSON'S title contains a designation of assistant, and whether ~~he~~ SUCH PERSON is serving without salary or other compensation.

(4) In the event of liquidation of a bank, the banking board may prosecute an action under this section to collect damages from such director or officer on behalf of such bank in any court of competent jurisdiction.

(5) (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 article, including the provisions of section ~~11-1-101.5~~ 11-101-102:

(I) Any insurance policy, form, contract, endorsement, or certificate ~~which~~ THAT provides insurance coverage to directors or officers, or both, of an industrial bank but ~~which~~ THAT does not grant coverage or ~~which~~ 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 industrial bank, 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 that provides for termination of such bond upon the taking over of the industrial bank by a receiver or other liquidator or by state or federal officials.

(b) No provision of part 6 of this article shall be construed to contravene or modify the expressed public policy set forth in this subsection (5).

## PART 6 LIQUIDATION AND DISSOLUTION

**11-108-601. [Formerly 11-22-601] Voluntary liquidation and dissolution.** (1) With the approval of the banking board, a 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 of the bank at a meeting called for that purpose and that the capital of the bank is adequate and such 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 ~~of~~ 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 bank. The notice shall be posted conspicuously on the premises of the bank and shall be published in such a manner as the banking board may require. With each notice, the bank shall send a statement of the amount shown in the records of the bank 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 bank before a specified date not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice.

(c) 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.

(d) 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 before, 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.

(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~~ THE TREASURER'S successors shall hold such money in trust for a period of six years, unless the ~~same~~ MONEY shall be sooner paid out to the beneficial owner thereof. Any money remaining in ~~said~~ THE fund six years after the ~~same~~ 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 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 article for involuntary liquidations.

(5) 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.

**11-108-602. [Formerly 11-22-602] Involuntary liquidation by banking board - reorganization.** (1) Except as otherwise provided in this article, only the banking board may take possession of a bank if it finds, after a hearing before the banking board, that: The bank's capital is inadequate; the bank is committing or has committed an unsound business practice as defined in section ~~11-22-115~~ 11-108-501; the bank is unable to

continue normal operations; or the control of the bank 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 bank will be honestly and efficiently managed.

(2) (a) The banking board shall take possession of a bank 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 such possession shall be deemed to commence. A copy of the notice shall be filed in the district court of the county in which the bank is located. The banking board shall notify the federal reserve bank of the district of its taking possession of any bank ~~which~~ THAT is a member of the federal reserve system and shall notify the federal deposit insurance corporation of its taking possession of any bank ~~which~~ THAT is a member of the federal deposit insurance corporation.

(b) When the banking board has taken possession of a bank, it 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 bank has been taken, 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 appoint a bank receiver pursuant to section ~~11-22-613~~ 11-108-612, to terminate its possession by restoring the bank to its board of directors and stockholders upon conditions prescribed by the banking board, and to reopen a closed bank or liquidate the bank in accordance with this article. As soon as practicable after taking possession, the banking board 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 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.

(d) If, in the opinion of the banking board, an emergency exists

~~which~~ THAT may result in serious losses to the depositors, it may take possession of an industrial bank 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) (a) For the purposes of the article, a bank shall be deemed to be closed when the banking board has closed the bank for business for the purpose of liquidation. Unless the banking board tenders to the federal deposit insurance corporation the appointment as liquidator under section ~~11-22-606~~ 11-108-606 and except as otherwise provided in paragraphs (b) and (c) of this subsection (3), the banking board shall mail notice of its intent to liquidate the bank to the directors, stockholders, and depositors at their addresses as shown on the records of the bank, and the banking board shall proceed to liquidate the bank. With each notice to the depositors, the banking board shall send a statement of the amount shown in the records of the bank to be the claim for each depositor. If the amount of a depositor's claim differs from the amount stated in the notice to be due, the depositor's claim must be filed with the banking board before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice. The banking board may appoint a liquidator to conduct the liquidation of the affairs of any bank. The liquidator shall perform all of the duties required of the banking board under this article and shall make such periodic reports as the banking board shall require. ~~If the bank is a member of the guaranty corporation, the banking board may offer the position of liquidator first to the guaranty corporation, which may decline in its 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 bank. If a liquidator is appointed, and is other than ~~the guaranty corporation~~, the federal deposit insurance corporation or an employee of the division of banking, 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, which 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 bank. Suit may be maintained on such bond by any person injured by a breach of the conditions thereof.

(b) Any notice sent to a depositor pursuant to paragraph (a) of this subsection (3) may contain any additional information or forms as deemed appropriate by the banking board. ~~or the guaranty corporation.~~ The banking board shall not be required to send a notice to a depositor pursuant to paragraph (a) of this subsection (3) if no address is shown in the records of the bank.

(c) If the amount shown in the records of the bank to be the claim of a depositor is less than ten dollars, no notices shall be required under this part 6. The banking board ~~or the guaranty corporation~~ may satisfy such claim by mailing the full amount of the claim to the address shown in the records of the bank. If no such address is shown in the records of the bank, the unclaimed funds or property shall be held for disposition pursuant to section ~~11-22-604 (10); except that any unclaimed funds representing funds of the guaranty corporation shall be held for disposition pursuant to section 11-22-501 (1) (b)~~ 11-108-604.

(4) No judgment, lien, or attachment shall be executed upon any asset of the bank while it is in the possession of the banking board. Upon the election of the banking board, 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 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 banks;

(b) Any transfer of an asset of the bank made after or in contemplation of its capital inadequacy, with intent to effect or ~~which~~ THAT results in a preference, shall be voided.

(5) With the approval of the court in which notice of possession has been filed, the banking board may borrow money in the name of the bank and may pledge its assets as security for the loan.

(6) All necessary and reasonable expenses of the banking board's possession of a bank and of its liquidation shall be paid from the assets thereof.

**11-108-603. [Formerly 11-22-603] Injunctions - appeals.**

(1) Whenever the banking board has taken possession of a bank and the bank deems itself aggrieved thereby, such bank, 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 bank or may enjoin the banking board from further liquidation proceedings and direct the banking board to surrender possession of the bank.

(2) An appeal may be taken by the banking board or by the bank 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 bank, a bond shall be given as required by the Colorado rules of civil procedure.

**11-108-604. [Formerly 11-22-604] Liquidation by banking board - procedure.** (1) In liquidating a bank, the banking board may exercise any power thereof and shall have the duty to collect all assets, debts, and claims belonging to the bank. Unless the banking board 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 banking board shall not:

(a) Sell any asset of the bank having a value in excess of one thousand dollars;

(b) Compromise or release any claim if the amount to be compromised or released exceeds one thousand dollars;

(c) Make any payment on any claim, other than a claim upon an obligation incurred by the banking board, before preparing and filing a schedule of its determinations in accordance with this article.

(2) Within six months ~~of~~ AFTER the commencement of liquidation, the banking board may, by its election, terminate any executory contract for services or advertising to which the bank is a party or any obligation of the bank as a lessee. A lessor who receives at least sixty days' notice of the banking board'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 national banks.

(4) Except as otherwise provided in subsection ~~(4.5)~~ (5) of this section, as soon after the commencement of liquidation as is practicable, the banking board shall send notice of the liquidation to each known creditor and bailor of property held by the bank at the address shown in the records of the bank. 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 bank is located. With each notice, the banking board shall send a statement of the amount shown in the records of the bank to be the claim of the creditor or bailor. The notice shall demand that property held by the bank as bailee be withdrawn by the person entitled thereto and that the claim of creditor, if the amount claimed differs from the amount stated in the notice to be due, be filed with the banking board before a specified date, not earlier than sixty days thereafter, in accordance with the procedure prescribed in the notice. The notice may contain any additional information or forms deemed appropriate by the banking board. ~~or the guaranty corporation.~~ The banking board shall not be required to send a notice pursuant to this subsection (4) to a creditor or bailor if no address is shown in the records of the bank.

~~(4.5)~~ (5) If the amount shown in the records of the bank to be the claim of a creditor or bailor of property held by the bank is less than ten dollars, no notice shall be required under this part 6. The banking board ~~or the guaranty corporation~~ may satisfy such claim by mailing the full amount of the claim to the address shown in the records of the bank. If no address is shown in the records of the bank, the unclaimed funds or property shall be held for disposition pursuant to subsection ~~(10)~~ (11) of this section.

~~(5)~~ (6) Any unclaimed property held by the bank as bailee and certified inventories thereof shall be held by the banking board for six years unless sooner claimed by the person entitled thereto. After six years the banking board 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)~~ (11) of this section.

~~(6)~~ (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 banking board shall:

(a) Reject any claim if the banking board determines the invalidity thereof;

(b) Determine the amount, if any, owing to each known creditor or depositor and the priority class of ~~his~~ SUCH claim under this article;

(c) Prepare a schedule of the banking board'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 bank 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 banking board will file its 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)~~ (8) Within twenty days after the filing of the banking board's schedule, ~~the guaranty corporation or~~ any creditor, depositor, or stockholder may file an objection to any determination made ~~which~~ 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 banking board 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 its schedule, the banking board may, from time to time, make partial distribution to the holders of claims ~~which~~ 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 banking board shall make final distribution.

~~(8)~~ (9) (a) The following claims shall have priority in the order specified: Obligations incurred by the banking board; wages and salaries of officers and employees earned during the three-month period preceding the banking board's possession in an amount not exceeding five thousand

dollars for any one person; fees and assessments due to the banking board; claims of the federal reserve as a secured creditor to the extent of the value of its collateral; amounts ~~which~~ THAT the federal deposit insurance corporation shall be entitled to receive on account of its subrogation to the claims of depositors; ~~amounts which the guaranty corporation shall be entitled to receive on account of its subrogation to the claims of depositors; (except that, such amounts shall be paid only when the liquidated assets of the bank exceed the total amount of claims with higher priority as defined in this subsection (8) and the total amount of savings obligations guaranteed under section 11-22-305);~~ 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, with interest at the legal rate, the banking board shall pay claims otherwise proper ~~which~~ 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)~~ (10) Any assets remaining after all claims have been paid shall be distributed to the stockholders in accordance with their respective interests.

~~(10)~~ (11) Unclaimed funds remaining after final distribution has been made by the banking board shall be retained for six years by the banking board 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~~ THE TREASURER'S successors shall hold such money in trust for a period of six years, unless the ~~same~~ MONEY 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~~ THE fund six years after the ~~same~~ 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 therein to recover the same shall be forever barred.

~~(11)~~ (12) When the final distribution of the proceeds of liquidation have been made in accordance with this article, the banking board shall file an account with the court in which notice of possession was filed. Upon approval thereof, the banking board shall be relieved of liability in

connection with the liquidation and shall cancel the charter.

**11-108-605. [Formerly 11-22-605] Sale of bank stock.** After failure of the stockholders of a bank whose capital is inadequate to cure such inadequacy pursuant to section ~~11-22-105~~ 11-108-305, the banking board, at its discretion and at any time before or after taking possession of the bank, may offer the stock of the bank for sale at public auction or at private sale at a price not less than the amount required to cure the capital inadequacy and to cover the cost of sale. Any excess over this minimum amount plus the expenses of the banking board shall be paid to the prior owners.

**11-108-606. [Formerly 11-22-606] Federal deposit insurance corporation 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 bank, the deposits of which are to any extent insured by said corporation or its successor and which bank shall have been closed on account of inability to meet the demands of its depositors or for any other lawful cause.

(2) In the event of such closing, the banking board may tender to said corporation or its successor the appointment as liquidator of such bank.

(3) Upon being notified in writing of the acceptance of such an appointment, the commissioner shall forthwith 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 the filing of such certificate, 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.

(4) If the federal deposit insurance 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 bank, its depositors, and other creditors.

**11-108-607. [Formerly 11-22-607] Assets sold or pledged as security.** (1) With respect to any bank 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 bank 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 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 bank may be sold to the federal deposit insurance corporation by the banking board or by the liquidator with the permission of the banking board.

(2) The provisions of this section shall not be construed to limit the power of any bank, the banking board, or the liquidators to pledge or sell assets in accordance with any existing law.

**11-108-608. [Formerly 11-22-608] Enforcement of directors' liability.** Among its other powers, the federal deposit insurance corporation or its successor, 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 bank.

**11-108-609. [Formerly 11-22-609] Application of deposits.** (1) Deposits of all persons indebted to a bank in the possession of the banking board, whether such indebtedness is due or to become due, shall be applied by the banking board on account of such indebtedness; except that no stockholder shall set off against his OR HER stockholder's liability any claim he OR SHE may have as a depositor in or creditor of any bank in the possession of the banking board.

(2) ~~The guaranty corporation;~~ The banking board and any bank ~~which~~ THAT may assume the liability for savings obligations of a bank in the possession of the banking board need not honor and shall not be liable for any agreement between the bank in the possession of the banking board

and any other party relating to any savings obligation which agreement is not disclosed on the records of the bank. Neither the ~~guaranty corporation nor any~~ assuming bank nor any bank to which a savings obligation is transferred shall be required to recognize as the owner of any portion of a savings obligation any claimant whose name or interest is not disclosed on the records of the bank of which the banking board has taken possession.

**11-108-610. [Formerly 11-22-610] Emergency grant of new charter.** (1) In addition to powers regarding liquidation, the banking board, in the interest of protecting the public and the depositors of a bank, may issue a new bank charter to qualified individuals for the same location as the bank in its possession, contingent upon the new bank assuming full liability for such savings obligations of the bank in its possession as may be transferred to such new bank. 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.

(2) The banking board may sell the right to assume the outstanding savings obligations of a bank in its possession along with such other assets and under such terms and conditions as it deems advisable. ~~In such event the guaranty corporation, to the extent it has not already done so and with the approval of the banking board, may agree to fund to the assuming bank an amount not to exceed the total savings obligations which are guaranteed in the bank in possession of the banking board as determined by section 11-22-305. Thereafter, the guaranty corporation may make claim against the proceeds of the liquidation pursuant to section 11-22-501 (4). The guaranty corporation may require the depositor to accept a new account at the newly chartered bank within a reasonable time period in view of the claim procedure and may impose such other reasonable requirements as it deems necessary to protect its interests.~~

**11-108-611. [Formerly 11-22-611] Emergency grant of branch facility.** (1) (a) In addition to powers regarding liquidation, the banking board may issue a grant of authority to a financial institution, as defined in section ~~11-25-102 (3)~~ 11-101-401 (36), which has its principal place of business in this state, to operate a branch at the same location as a closed industrial bank.

(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 article.

~~(2) (Deleted by amendment, L. 92, p. 946, § 2, effective May 29, 1992.)~~

~~(3)(a) (Deleted by amendment, L. 92, p. 946, § 2, effective May 29, 1992.)~~

~~(b)~~(2) 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 ~~11-25-103~~ 11-105-602.

## PART 7 BANKING PRACTICES

**11-108-701. [Formerly 11-22-112] Saturday closing - notice - effect.** Any industrial bank, by brief notation on its front door, may 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. 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 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 industrial 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 which 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.

**11-108-702. [Formerly 11-22-113] Limitations on secured**

**borrowing.** (1) Unless authorized by the banking board, no bank shall borrow money upon a secured basis by a pledge or assignment of its notes, mortgages, contracts, or other assets unless it shall retain notes, mortgages, contracts, or other assets ~~which~~ THAT are not pledged or assigned in an aggregate amount, without taking into account unearned charges, of not less than the total amount of its savings deposits, certificates of deposit, contracts, or agreements permitted by section ~~11-22-107(1)(c)~~ 11-108-202 (1) (c). In the event that any industrial bank should create or incur any such secured indebtedness within the limitations as provided by this section, every financial statement or report of such industrial bank published, issued, or distributed shall indicate clearly therein the extent to which its assets are encumbered.

(2) If liquidation of a bank occurs, any secured indebtedness shall be paid from assets remaining after depositors, other prior claims, and the expenses of liquidation have been paid.

(3) The limitations of this section on secured indebtedness shall not apply to a bank borrowing money upon a secured basis from a federal reserve bank.

(4) For the purposes of this section, "borrowing money upon a secured basis" shall include, but not be limited to, the sale, pledge, or assignment of its notes, mortgages, contracts, or other assets whereby the bank remains or may become liable or partially liable for any indebtedness evidenced by such notes, mortgages, contracts, or other assets.

**11-108-703. [Formerly 11-22-701] Federal deposit insurance corporation membership required.** ~~(1) On and after July 1, 1989, No industrial bank may accept or hold savings obligations unless its savings obligations are insured by the federal deposit insurance corporation.~~

~~(2) Members shall apply to the federal deposit insurance corporation or the federal reserve system for membership not later than September 1, 1987. If any member does not apply for membership in the federal deposit insurance corporation or the federal reserve system by September 1, 1987, it shall not accept any savings obligations with a maturity date after July 1, 1989.~~

~~(3) Upon written application to the banking board submitted on or~~

~~before May 1, 1989, showing good cause, the banking board may grant to any member an extension of time, not to exceed twelve months, to obtain membership in the federal deposit insurance corporation or the federal reserve system. A copy of such application shall be provided to the guaranty corporation by the member at the time of filing such application with the banking board.~~

~~(4) Each member shall immediately give notice to the banking board and the guaranty corporation when it has applied for membership in the federal deposit insurance corporation or the federal reserve system and, thereafter, shall give bimonthly reports on the status of its membership application to the banking board and the guaranty corporation until final disposition of the application is made.~~

~~(5) Any member that is not a member of the federal deposit insurance corporation or the federal reserve system on July 1, 1989, shall, except when an extension is granted by the banking board, immediately return all savings obligations to its depositors without an early withdrawal penalty.~~

**11-108-704. [Formerly 11-22-119] Acquisition of property to satisfy indebtedness.** (1) An industrial 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, and such property shall be held subject to the following limitations:

(a) Real estate may be used in the banking business, subject to the conditions prescribed by this article for property purchased for such use, or may be leased. 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 five years or such longer period as the banking board may allow.

(b) Other property, the acquisition of which is not otherwise authorized by this article, shall be sold within six months or such longer period as the banking board may allow.

(c) The property shall be entered on the books at not more than cost or fair market value, whichever is less. Except as otherwise provided, 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 ~~and regulations~~ of the state banking board; except that, for purposes of this paragraph (c), an appraisal, as defined in section 12-61-702 (1), C.R.S., by an appraiser certified, licensed, or registered pursuant to section 12-61-708, C.R.S., shall not be required on properties initially valued pursuant to this paragraph (c) at one hundred 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.

## PART 8 CRIMINAL OFFENSES AND VIOLATIONS

**11-108-801. [Formerly 11-22-114] Criminal offenses.** (1) It shall be a criminal offense for any officer, director, employee, or agent of any industrial bank to:

(a) Receive, take, or authorize the receipt or taking of any savings obligation with knowledge that such industrial bank is insolvent or after receipt of any notice or order issued by the banking board directing said industrial bank to cease taking savings obligations;

(b) Issue or cause to be issued, or to authorize or direct the issuance of, any certificate of deposit, contract, or agreement under any descriptive name, under the provisions of section ~~11-22-107(1)(c)~~ 11-108-202 (1) (c), with knowledge that such industrial bank is insolvent or after receipt of any order or notice from the banking board, ordering said industrial bank to cease issuing any such certificate of deposit, contract, or agreement;

(c) Make or issue, or authorize or direct the making or issuing of, any certificate of deposit, contract, or agreement authorized by section ~~11-22-107(1)(c)~~ 11-108-202 (1) (c) at any place whatsoever other than its banking premises;

(d) With intent to deceive, withhold, or secrete information, fail to record any transaction made by said industrial bank upon the books and records of said industrial banks by the close of the third business day, exclusive of Sundays and holidays, from the consummation or completion of any such transaction;

(e) Make investments of industrial bank funds other than those

permitted by this article;

(f) With intent to deceive, make any false or misleading statement or entry in any book, account, report, or statement of the industrial bank, or fail to make an entry in any book, account, report, or statement of the industrial bank affecting its operations, assets, or liabilities;

(g) Cause, authorize, or permit any industrial bank to sell, assign, or transfer any of its assets with knowledge that such industrial bank is insolvent, or in contemplation of insolvency, with the intent of preferring any creditor or to prevent the application of such assets to the payment of its debts;

(h) Receive or accept, or authorize the receipt or acceptance by and on behalf of said industrial bank, of any false, bogus, or fictitious notes or other evidence of indebtedness, knowing the same to be false, bogus, or fictitious.

(2) Any person responsible for any act or omission expressly declared in subsection (1) of this section to be a criminal offense commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

(3) It is a criminal offense for any officer, director, shareholder, or employee of a bank to directly or indirectly embezzle, abstract, or misapply, or cause to be embezzled, abstracted, or misapplied, any of the funds, securities, or other property of, or under the control of, such bank with the intent to deceive, injure, or defraud any person. If the amount of funds, securities, or other property embezzled, abstracted, or misapplied is less than five thousand dollars in total, a person commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S. If the amount of funds, securities, or other property embezzled, abstracted, or misapplied is five thousand dollars or more in total, a person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S. Any person found guilty of a criminal offense under this subsection (3) shall be required to make restitution or repayment of any funds, securities, or other property embezzled, abstracted, or misapplied.

**11-108-802. [Formerly 11-22-117] Certain violations.** Any person willfully or knowingly violating any of the provisions of this article for which no other punishment is provided commits a class 1 misdemeanor

and shall be punished as provided in section 18-1.3-501, C.R.S.

**11-108-803. [Formerly 11-22-118] Prosecutions.** Whenever the banking board determines that a violation of the provisions of this article constitutes a criminal offense, it shall notify the district attorney for the district in which the bank involved in the violation is located. The district attorney shall prosecute the party or parties alleged to have committed the violation within sixty days following the date the banking board notifies ~~him~~ THE DISTRICT ATTORNEY of such violation. Upon failure or refusal of the district attorney to prosecute under this section, it shall be the duty of the attorney general to prosecute such violation.

## **ARTICLE 109 Trust Companies**

### **PART 1 GENERAL PROVISIONS**

**11-109-101. [Formerly 11-23-102] 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" ~~means the banking board created in section 11-2-102~~ 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 commissioner 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 ~~11-23-103~~ 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, 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.

**11-109-102. [Formerly 11-23-102.3] 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 such person, firm, association, or corporation has been authorized to transact business as a regulated financial institution unless such person, firm, association, or corporation is organized under the "Colorado Banking Code", ~~of 1957~~, articles ~~1 to 11 and 22 and 23~~ 101 TO 109 AND ARTICLE 10.5 of this title, ~~the "Colorado Trust Company Act", article 23 of this title~~, article 70 of this title, or the national banking laws and is authorized to use the words "trust" or "trust company" as part of its name.

(2) The provisions of subsection (1) of this section shall not apply to state banks with trust powers, national banking associations located in Colorado that have trust powers, and trust companies incorporated in Colorado.

**11-109-103. [Formerly 11-23-102.5] 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 ~~2~~ 102 of this title and the declaration of policy contained in

section ~~11-1-101.5~~ 11-101-102 shall apply to the provisions of this article.

**11-109-104. [Formerly 11-23-117] 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 ~~regulation~~ 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 ~~regulations~~ RULES issued thereunder. In the exercise of the power to make orders and issue ~~regulations~~ 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) Repealed.~~

~~(d)~~ (c) Order any person or a trust company to cease violating any provision of this article or any ~~regulation~~ RULE and to mail a copy of the order to the person or trust company and to each director of the trust company;

~~(e)~~ (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 ~~regulation~~ RULE;

~~(f)~~ (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;

~~(g)~~ (f) Require that each trust company maintain such insurance and bonds as necessary and appropriate;

~~(h)~~ (g) Approve amendments to a trust company's articles of incorporation;

~~(i)~~ (h) Approve or disapprove a change of location;

~~(j)~~ (i) Approve or disapprove any merger or other corporate reorganization;

~~(k) Repealed.~~

~~(j)~~ (j) Require a trust company holding fiduciary funds pursuant to section ~~11-23-113~~ 11-109-906 to collateralize such funds as are in excess of federally insured amounts in accordance with the rules ~~and regulations~~ adopted by the banking board;

~~(m)~~ (k) Require that a trust company that is accepting deposits pursuant to section ~~11-23-103(1)~~~~(d)~~ 11-109-201 (1) (d) limit the aggregate amount of such deposits.

~~(1.1)~~ (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 ~~(1.1)~~ (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 ~~(1.1)~~ (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 ~~11-23-122~~ 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.

~~(1.2)~~ (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.

~~(1.3)~~ (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.

~~(1.4)~~ (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.

~~(2)~~ (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.

~~(3)~~ (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 ~~which~~ THAT serve a trust company, without regard to the location of the electronic data processing center; shall make and file in ~~his~~ 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 ~~which~~ THAT they serve.

~~(4)~~ (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 ~~his~~ 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 ~~his~~ 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 ~~(4)~~ (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 ~~(4)~~ (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 ~~11-2-109 (4)~~ 11-102-303 for acquiring control of a state bank.

**11-109-105. [Formerly 11-23-125] 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.

## PART 2 POWERS

**11-109-201. [Formerly 11-23-103] 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 ~~11-6-102(3)~~ 11-105-102 (3), subject to the restrictions of section ~~11-23-103.5~~ 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 ~~11-23-114~~ 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.

**11-109-202. [Formerly 11-23-103.2] 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 ~~11-23-109~~ 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 commissioner notice of its intent to open an office at least sixty days before opening such office for business.

**11-109-203. [Formerly 11-23-103.3] 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.

**11-109-204. [Formerly 11-23-103.5] Federal deposit insurance required.** (1) No trust company may accept or hold savings deposits, time deposits, or certificates of deposit pursuant to section ~~11-23-103(1)(d)~~ 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.

**11-109-205. [Formerly 11-23-103.7] 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).

### PART 3 CHARTERS

**11-109-301. [Formerly 11-23-104] 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 ~~11-23-108~~ 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.

**11-109-302. [Formerly 11-23-105] Application fee.** Each application for charter shall be accompanied by an application fee established by the banking board pursuant to section ~~11-2-103 (11)~~ 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.

**11-109-303. [Formerly 11-23-105.5] Assessments.** (1) The banking board shall annually establish fees and assessments pursuant to section ~~11-2-103 (11)~~ 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.

~~(3) In addition to each assessment established pursuant to subsections (1) and (2) of this section, for each fiscal year beginning July 1, 1992, and ending June 30, 1994, and for the period ending January 31, 1995, the banking board shall collect a semiannual repayment of the fiscal year 1991-1992 general fund advance to the division of banking in an amount equal to one-sixth of the amount of the banking board's assessment that would have been collected in September 1992.~~

**11-109-304. [Formerly 11-23-106] Capital.** (1) The banking

board shall establish by rules ~~and regulations~~ 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, ~~and regulations~~, the banking board shall consider all relevant factors, including without limitation the policies set forth in section ~~11-1-101.5~~ 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 ~~and regulations~~ promulgated by the banking board.

**11-109-305. [Formerly 11-23-108] 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, ~~and regulations~~, 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.

**11-109-306. [Formerly 11-23-109] 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 ~~11-23-115~~ 11-109-401, are consistent with their responsibilities and duties;

(d) That the proposed capital satisfies the standards and guidelines in the rules ~~and regulations~~ 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 ~~of~~ 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.

~~(2.5)~~ (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 of 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.

~~(3)~~ (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.

~~(4)~~ (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.

~~(5)~~ (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.

#### PART 4 RECORDS, REPORTING, AND INFORMATION

**11-109-401. [Formerly 11-23-115] 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) "Person" means an individual, a corporation, a partnership, a trust, or any other legal entity.~~

~~(e)~~ (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, ~~regulation~~, 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 of 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.

**11-109-402. [Formerly 11-23-118] 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 ~~11-1-101.5~~ 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. ~~and regulations.~~ The banking board shall adopt ~~regulations~~ 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 ~~regulations~~ 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. ~~and regulations~~. 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, ~~and regulations~~, 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 regulations~~; 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.

~~(3.5)~~ (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 ~~which~~ 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 ~~day past to be~~ DATE specified by ~~said~~ THE commissioner. ~~in writing.~~

(b) ~~Said~~ 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 ~~bank~~ if, in ~~his~~ THE COMMISSIONER'S judgment, ~~the same~~ 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 ~~which~~ 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 ~~11-2-103-(11)~~ 11-102-104 for each day's delay. The commissioner, for valid reasons and good cause, may waive such penalty.

~~(4)~~ (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. ~~and regulations.~~ 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 ~~(4)~~ (5) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, ~~and regulation,~~ 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.

~~(5)~~ (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 ~~(4)~~ (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 ~~(5)~~ (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 ~~(5)~~ (6) shall be required by the banking board to pay a penalty in an amount set by the banking board by rule, ~~and regulation~~, 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.

## PART 5 DIRECTORS

### **11-109-501. [Formerly 11-23-116] 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 ~~his~~ 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 ~~and regulations~~ established by the banking board.

**11-109-502. [Formerly 11-23-117.5] 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 ~~11-1-101.5~~ 11-101-102:

(a) Any insurance policy, form, contract, endorsement, or certificate in effect or issued on or after April 30, 1993, ~~which~~ THAT provides insurance coverage to directors or officers, or both, of a trust company but ~~which~~ THAT does not grant coverage or ~~which~~ 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.

PART 6  
OFFENSES, PENALTIES, REMOVAL, SUSPENSION,  
AND ENFORCEMENT

**11-109-601. [Formerly 11-23-119] 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 ~~its~~ A business unless ~~it~~ 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.

**11-109-602. [Formerly 11-23-119.1] 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 ~~11-23-117 (1) (d)~~ 11-109-104 (1) (c); and

(B) Any trust company ~~which~~ 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 ~~or regulation~~ 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 ~~which~~ 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, ~~which~~ 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.

**11-109-603. [Formerly 11-23-119.2] 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.

**11-109-604. [Formerly 11-23-119.3] 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 ~~and regulation~~ OF THE BANKING BOARD, or A cease and desist order of the banking board ~~which~~ THAT has become final; ~~or~~ 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 ~~which~~ THAT constitutes a breach of ~~his~~ 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, ~~or~~ practice, ~~or~~ breach of fiduciary duty, or offense; or

(III) That such violation is one involving personal dishonesty on the part of such person or one ~~which~~ 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 ~~which~~ THAT results in substantial financial loss or other damage, has evidenced either ~~his~~ personal dishonesty or a willful or continuing disregard for ~~its~~ THE TRUST COMPANY'S safety and soundness, and, in addition, has evidenced ~~his~~ unfitness to continue his OR HER relationship with the trust company, the banking board may serve upon such person a written notice of its intention to remove him OR HER from office or to prohibit ~~his~~ SUCH PERSON'S further participation in any manner in the conduct of the affairs of the trust company.

(3) A notice of intention to remove a director, executive officer, or other person from office or to prohibit ~~his~~ SUCH PERSON'S participation in the conduct of the affairs of a trust company shall contain a statement of the facts constituting grounds ~~therefor~~ 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.

**11-109-605. [Formerly 11-23-119.4] 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 ~~and regulation~~ 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 ~~11-23-119.3~~ 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) ~~With respect to any action pursuant to this section,~~ Ten days' notice, by certified mail, return receipt requested, and hearing shall be provided to ~~the~~ 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.

**11-109-606. [Formerly 11-23-119.5] 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 his 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.

**11-109-607. [Formerly 11-23-119.6] 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.

#### PART 7

#### LIQUIDATION, DISSOLUTION, AND EMERGENCY CHARTERS

**11-109-701. [Formerly 11-23-121] 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 ~~which~~ THAT it has undertaken or ~~which~~ 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 ~~of~~ 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 same shall be~~ MONEY IS sooner paid out to the beneficial owner. ~~thereof~~. Any money remaining in ~~said~~ THE fund six years after ~~the same~~ 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 ~~the same~~ 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.

**11-109-702. [Formerly 11-23-122] 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 guaranty corporation~~ or the federal deposit insurance corporation of taking possession of any trust company ~~which~~ 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 ~~which~~ 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 guaranty corporation~~ or the federal deposit insurance corporation, the banking board may offer the position of liquidator to ~~the guaranty corporation~~ or 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. ~~If a liquidator is appointed and is other than the guaranty corporation,~~ 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, ~~which~~ 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 ~~which~~ 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.

**11-109-703. [Formerly 11-23-122.1] 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.

**11-109-704. [Formerly 11-23-124] Liquidation by commissioner - procedure.** (1) In liquidating a trust company, the commissioner may exercise any power ~~thereof~~ 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 ~~of~~ AFTER the commencement of liquidation, the commissioner may, by ~~his~~ 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 ~~thereto~~ 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 ~~he~~ THE COMMISSIONER determines the invalidity thereof;

(b) Determine the amount, if any, owing to each known creditor or depositor and the priority class of ~~his~~ SUCH claim under this article;

(c) Prepare a schedule of ~~his~~ 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 ~~his~~ 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 guaranty corporation~~, the federal deposit insurance corporation or any creditor, depositor, or stockholder may file an objection to any determination made ~~which~~ 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 ~~his~~ THE schedule, the commissioner may, from time to time, make partial distribution to the holders of claims ~~which~~ 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 ~~which the guaranty corporation or~~ THAT the federal deposit insurance corporation ~~shall be~~ 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 ~~which~~ 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 ~~same~~ MONEY 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~~ THE fund six years after ~~the same~~ 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 ~~therein~~ OF SUCH MONEY to recover the ~~same~~ MONEY shall be forever barred.

(11) When the final distribution of the proceeds of liquidation have 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.

## PART 8 APPEALS

**11-109-801. [Formerly 11-23-120] Appeals procedure.** Any trust company aggrieved and directly affected by an order or ~~regulation~~ 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 ~~said~~ SUCH order or ~~regulation~~ RULE. The filing of such a petition for review shall not, of itself, stay enforcement of an order or ~~regulation~~ 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 ~~regulation~~ RULE of the banking board, notwithstanding a subsequent decision by a court invalidating the order or ~~regulation~~ RULE.

**11-109-802. [Formerly 11-23-123] 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.

## PART 9 TRUST PRACTICES

### **11-109-901. [Formerly 11-23-109.5] Reserves against deposits.**

Trust companies ~~which~~ 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 ~~regulation~~ RULE impose reserve requirements ~~which~~ 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, ~~and regulations~~, the banking board shall consider all relevant factors, including without limitation, the factors set forth in section ~~11-1-101.5~~ 11-101-102.

**11-109-902. [Formerly 11-23-110] Investments.** (1) In addition to other investments expressly authorized by this article or the rules ~~and regulations~~ promulgated by the banking board, a trust company may purchase:

(a) Obligations ~~which~~ THAT satisfy the requirements of this article or the rules ~~and regulations~~ 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 ~~and regulations~~ 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 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 and regulations 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 and regulations of the banking board.

~~(3.5)~~ (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.

~~(4)~~ (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 ~~which~~ 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 and regulations promulgated by the banking board.

~~(5)~~ (6) A trust company may invest an amount not exceeding ten percent of its capital as defined in the rules and regulations promulgated by the banking board in the stock of any bank or bank holding company ~~which~~ 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.

~~(6)~~ (7) (a) A trust company may directly engage in activities ~~which~~ 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 ~~(6)~~ (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 ~~11-1-101.5~~ 11-101-102, the banking board may adopt rules ~~and regulations which~~ THAT restrict the total investments of a trust company under this subsection ~~(6)~~ (7) to a percentage less than ten percent of the trust company's capital. Nothing in this subsection ~~(6)~~ (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 ~~which~~ THAT intends to initiate a program of investments under the authority of this subsection ~~(6)~~ (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 ~~(6)~~ (7).

**11-109-903. [Formerly 11-23-110.5] 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 ~~11-10-105, 11-10-106, and 11-10-107~~ 11-101-401, 11-106-105, AND 11-106-106.

**11-109-904. [Formerly 11-23-111] 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.

**11-109-905. [Formerly 11-23-112] Separation of fiduciary funds.**

A trust company shall keep fiduciary funds and investments separate and apart from its own assets. ~~and~~ All investments made as a fiduciary shall be so designated so that fiduciary funds may be clearly identified.

**11-109-906. [Formerly 11-23-113] Funds awaiting investment or distribution.** Funds held by a trust company in a fiduciary capacity ~~which~~ 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 ~~11-23-103 (1) (d)~~ 11-109-201 (1) (d).

**11-109-907. [Formerly 11-23-114] 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.

**SECTION 4.** 10-2-601 (2) (d), Colorado Revised Statutes, is amended to read:

**10-2-601. Financial institutions may sell insurance - where - regulation.** (2) No financial institution or employee thereof shall be licensed or admitted, directly or indirectly, to sell insurance in this state; except that:

(d) Any financial institution, or any subsidiary, affiliate, or employee thereof, may be permitted to own an insurance company authorized to sell, and that insurance company's employees may be licensed

to sell, insurance to guarantee the payment of any amounts due in connection with any securities or obligations described in section 11-57-101, C.R.S.; except that no financial institution, or any subsidiary or affiliate subject to the supervision of the banking board created in section ~~11-2-102~~ 11-102-103, C.R.S., shall own such an insurance company without the consent of the banking board, and no financial institution subject to the supervision of the financial services board created in section 11-44-101.6, C.R.S., shall own such an insurance company without the consent of the financial services board, and no financial institution shall invest more than ten percent of its capital and surplus in such an insurance company.

**SECTION 5.** 11-10.5-103 (3), Colorado Revised Statutes, is amended to read:

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

(3) "Banking board" means the banking board established by section ~~11-2-102~~ 11-102-103.

**SECTION 6.** 11-10.5-110 (2), Colorado Revised Statutes, is amended to read:

**11-10.5-110. Procedures when event of default occurs.** (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 ~~11-5-104~~ 11-103-804.

**SECTION 7.** 11-30-104 (1) (m), Colorado Revised Statutes, is amended to read:

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

(m) Make loans to, or permit the assumption of loans by, officers or

employees of the division who are members of the credit union, notwithstanding the provisions of section ~~11-2-115~~ 11-102-501;

**SECTION 8.** 11-37.5-103 (2), (5), and (6), Colorado Revised Statutes, are amended to read:

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

(2) "Board" means the banking board created in section ~~11-2-102~~ 11-102-103.

(5) "Charter" means a certificate, issued substantially in accordance with sections ~~11-3-109 and 11-3-110~~ 11-103-303 AND 11-103-304, authorizing an institution to conduct business in Colorado as a foreign capital depository.

(6) "Commissioner" means the state bank commissioner appointed and serving pursuant to section ~~11-2-101(2)~~ 11-102-101 (2).

**SECTION 9.** 11-37.5-109 (1) (b), Colorado Revised Statutes, is amended to read:

**11-37.5-109. Charter eligibility and application requirements.**

(1) In order to lawfully conduct business in Colorado as a foreign capital depository, a person intending to own or operate a depository shall:

(b) Make and file articles of incorporation containing information of all types specified in section ~~11-3-109(1)(a)~~ 11-103-303 (1) (a), except for those types of information specifically excluded by the board by rule;

**SECTION 10.** 11-37.5-122 (2) and (5), Colorado Revised Statutes, are amended to read:

**11-37.5-122. Dissolution - closing.** (2) The department may close a depository and take possession of the books, records, and assets of the depository and hold them until the depository is authorized by the board to resume business or until it is liquidated in accordance with article 5 103 of this title.

(5) Voluntary dissolution of a depository shall comply with the provisions of section ~~11-5-101~~ 11-103-801.

**SECTION 11.** The introductory portion to 11-37.5-124 (2) (b), Colorado Revised Statutes, is amended to read:

**11-37.5-124. Depository services - restrictions and prohibitions.**

(2) A depository shall not:

(b) Engage in lending or any other services requiring advance application to and approval by the board under section ~~11-6-101~~ 11-105-101, except:

**SECTION 12.** 11-41-120, Colorado Revised Statutes, is amended to read:

**11-41-120. Branches.** Subject to the provisions of article ~~25~~ 105 of this title, no association shall open, maintain, or conduct a branch without first applying for and obtaining from the commissioner a license for such branch. The application for such license shall be in such form as the commissioner requires and shall include an itemized statement of the estimated receipts and expenditures of such association in connection with such branch for the first year, or such longer period as the commissioner in his OR HER discretion requires, and a showing that the public convenience and advantage will be promoted by the operation of a branch. Such application shall be accompanied by a fee in the amount established by the commissioner. If satisfied that the operation of a branch is in the interest of the association and that the public convenience and advantage will be promoted by the operation, the commissioner shall issue its license; otherwise such license shall be refused.

**SECTION 13.** 11-48-101, Colorado Revised Statutes, is amended to read:

**11-48-101. Applicability.** This article shall be applicable to any savings and loan association organized under the provisions of article 41 of this title or under federal law and having its principal office in this state, any credit union organized under the provisions of article 30 of this title or federal law and having its principal office in this state, and any industrial bank incorporated under the provisions of article ~~22~~ 108 of this title and

having its principal office in this state. As used in this article, "financial institution" means any such savings and loan association, credit union, or industrial bank.

**SECTION 14.** 12-52-103 (1) and (1.5), Colorado Revised Statutes, are amended to read:

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

(1) "Banking board" means the banking board created in section ~~11-2-102~~ 11-102-103, C.R.S.

(1.5) "Commissioner" means the state bank commissioner appointed and serving pursuant to section ~~11-2-101(2)~~ 11-102-101 (2), C.R.S.

**SECTION 15.** 12-52-103.5, Colorado Revised Statutes, is amended to read:

**12-52-103.5. Applicability of powers of banking board and bank commissioner to money orders.** The powers, duties, and functions of the banking board and the commissioner contained in article ~~2~~ 102 of title 11, C.R.S., and the declaration of policy contained in section ~~11-1-101.5~~ 11-101-102, C.R.S., shall apply to the provisions of this article.

**SECTION 16.** 12-52-109 (1), Colorado Revised Statutes, is amended to read:

**12-52-109. 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 ~~11-2-103(11)~~ 11-102-104 (11), C.R.S. 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 such date.

**SECTION 17.** 12-52-110 (1) (a) and (2) (c), Colorado Revised Statutes, are amended to read:

**12-52-110. Examination - fee - financial statements and reports to commissioner.** (1) (a) The commissioner shall examine the books and records of every licensee as often as deemed advisable and to the extent required by the banking board; shall make and file in the office of the commissioner a correct report in detail disclosing the results of such examination; and shall mail a copy of such report to the licensee examined. If the licensee's records are located outside this state, the licensee shall, at the option of such licensee, either make them available to the commissioner at a convenient location within this state or pay the reasonable and necessary expenses for the commissioner or the commissioner's representative to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on behalf of the commissioner. For such examination, the commissioner shall charge a fee in an amount set by the banking board pursuant to section ~~11-2-103(11)~~ 11-102-104(11), C.R.S. If any licensee refuses to permit the commissioner to make an examination, such licensee shall be subject to such penalty as the commissioner may assess, not in excess of one hundred dollars for each day any such refusal shall continue.

(2) (c) If any licensee fails to submit any statement or report to the commissioner as required by this subsection (2), such licensee shall pay to the commissioner a penalty assessment in an amount not to exceed twenty-five dollars for each additional day of delinquency as set by the banking board pursuant to section ~~11-2-103(11)~~ 11-102-104(11), C.R.S.; except that, if in the opinion of the banking board the delay is excusable for good cause shown, no assessment shall be paid.

**SECTION 18.** 13-4-102 (2) (b), Colorado Revised Statutes, is amended to read:

**13-4-102. Jurisdiction.** (2) The court of appeals shall have initial jurisdiction to:

(b) Review orders of the banking board granting or denying charters for new state banks, as provided in article 2 102 of title 11, C.R.S.;

**SECTION 19.** 16-5-401 (4.5) (r), (4.5) (s), (4.5) (t), and (4.5) (u), Colorado Revised Statutes, are amended to read:

**16-5-401. Limitation for commencing criminal proceedings and juvenile delinquency proceedings.** (4.5) The period within which a prosecution must be commenced shall begin to run upon discovery of the criminal act or the delinquent act for:

(r) Unlawful concealment of transactions, pursuant to section ~~11-11-105~~ 11-107-105, C.R.S.;

(s) Embezzlement or misapplication of funds, pursuant to section ~~11-11-107~~ 11-107-107, C.R.S.;

(t) Unlawful acts or omissions relating to financial institutions, pursuant to section ~~11-11-108~~ 11-107-108, C.R.S.;

(u) Criminal offenses relating to industrial banks, pursuant to section ~~11-22-114~~ (3) 11-108-801 (3), C.R.S.; and

**SECTION 20.** 24-1-122 (2) (d), Colorado Revised Statutes, is amended to read:

**24-1-122. Department of regulatory agencies - creation.** (2) The department of regulatory agencies shall consist of the following divisions:

(d) Division of banking, the head of which shall be the state bank commissioner. The banking board, created by article 2 102 of title 11, C.R.S., and its powers, duties, and functions are transferred by a **type 1** transfer to the department of regulatory agencies and allocated to the division of banking. ~~The office of state bank commissioner, created by article 20 of title 11, C.R.S., is transferred by a **type 2** transfer to the department of regulatory agencies and allocated to the division of banking.~~

**SECTION 21.** 24-34-104 (34) (b), Colorado Revised Statutes, is amended to read:

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

(b) The division of banking, created by article 2 102 of title 11, C.R.S.;

**SECTION 22.** 24-52-103 (1), Colorado Revised Statutes, is amended to read:

**24-52-103. Deferred compensation - investment.**

(1) Notwithstanding any other provision of law, the administrator may invest, or permit plan participants to invest, the moneys held pursuant to a plan established or administered pursuant to this article in any legitimate investment, including but not limited to investment programs of any bank, as defined in section ~~11-1-102(2)~~ 11-101-401 (5), C.R.S., or savings and loan association, as defined in section 11-40-103, C.R.S., life insurance contracts, deferred annuities, equity products, government bonds, real estate investment trusts, or other investment products. The administrator shall not invest, ~~or~~ NOR permit plan participants to invest, such moneys in any investment plan unless the plan is offered by a person authorized to do business in this state or by a person who irrevocably agrees to be subject to the jurisdiction of the state and federal courts in Colorado with respect to the investment plan and irrevocably appoints the Colorado secretary of state as its agent for service of process, and unless the plan is subject to applicable state and federal regulations.

**SECTION 23.** 24-72-204 (3.5) (c) (VII), Colorado Revised Statutes, is amended to read:

**24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.** (3.5) (c) The custodian of any records described in paragraph (a) of this subsection (3.5) which concern an individual who has made a request of confidentiality pursuant to this subsection (3.5) and paid any required processing fee shall deny the right of inspection of the individual's address contained in such records on the ground that disclosure would be contrary to the public interest; except that such custodian shall allow the inspection of such records by such individual, by any person authorized in writing by such individual, and by any individual employed by one of the following entities who makes a request to the custodian to inspect such records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to the authorized purpose of the employing entity:

(VII) A bank as defined in section ~~11-1-102(2)~~ 11-101-401 (5), C.R.S., an industrial bank as defined in section ~~11-22-101(1)~~ 11-108-101 (1), C.R.S., a trust company as defined in section ~~11-23-102(11)~~

11-109-101 (11), C.R.S., a credit union as defined in section 11-30-101 (1), C.R.S., a domestic savings and loan association as defined in section 11-40-102 (5), C.R.S., a foreign savings and loan association as defined in section 11-40-102 (8), C.R.S., or a broker-dealer as defined in section 11-51-201 (2), C.R.S.;

**SECTION 24.** 26-3.1-205 (4), Colorado Revised Statutes, is amended to read:

**26-3.1-205. Investigations of financial exploitation.**

(4) Notwithstanding any provision of section 24-72-204, C.R.S., or section ~~11-6-113~~ 11-105-110, C.R.S., or any other applicable law, concerning the confidentiality of financial records, to the contrary, agencies investigating the financial exploitation of an at-risk adult shall be permitted to inspect all records of the at-risk adult on whose behalf the investigation is being conducted, including the at-risk adult's financial records, upon written consent of the at-risk adult.

**SECTION 25.** 38-38-101 (1.5) (a) and (1.5) (b), Colorado Revised Statutes, are amended to read:

**38-38-101. Owner of evidence of debt may elect to foreclose - notice - record of sale - withdrawal.** (1.5) The following entities may elect to file with the public trustee a copy of the original evidence of debt in lieu of the original and the certification required by paragraph (b) of subsection (1) of this section:

(a) A bank, as defined in section ~~11-1-102 (2)~~ 11-101-401 (5), C.R.S.;

(b) An industrial bank, as defined in section ~~11-22-101 (1)~~ 11-108-101 (1), C.R.S.;

**SECTION 26.** 38-39-102 (3) (a), (3.5) (b) (I), and (3.5) (b) (II), Colorado Revised Statutes, are amended to read:

**38-39-102. When liens of deeds of trust shall be released.**

(3) With respect to either subsection (1) or (2) of this section, if such original evidence of debt cannot be produced, the public trustee may accept one of the following in lieu thereof:

(a) An indemnification agreement accompanied by a certified copy of an authorizing resolution passed by the board of directors of a bank, as defined in section ~~11-1-102(2)~~ 11-101-401 (5), C.R.S., an industrial bank, as provided for in article ~~22~~ 108 of title 11, C.R.S., a savings and loan association licensed to do business in Colorado, a federal housing administration approved mortgagee, or a federally chartered credit union operating in Colorado or a state-chartered credit union, as defined in section 11-30-101, C.R.S., or an indemnification agreement ~~which~~ THAT has been duly authorized by any agency of the federal government or by any federally created corporation ~~which~~ THAT originates, guarantees, or purchases loans indemnifying the public trustee against claims for issuing a release under this subsection (3) made within the time period described in subsection (7) of this section, which indemnification agreement is satisfactory to the public trustee;

(3.5) (b) Only the following financial institutions shall be entitled to submit a certification pursuant to paragraph (a) of this subsection (3.5):

(I) A bank, as defined in section ~~11-1-102(2)~~ 11-101-401 (5), C.R.S.;

(II) An industrial bank, as defined in section ~~11-22-101(1)~~ 11-108-101 (1), C.R.S.;

**SECTION 27. Harmonization of relocated statutes.** Pursuant to sections 2-4-301 and 2-5-103, Colorado Revised Statutes, the revisor of statutes shall renumber the statutory sections of any other bill enacted during the first regular session of the sixty-fourth general assembly that amends any provision being relocated by this act and shall harmonize amendments made to said sections with those contained in this act.

**SECTION 28. Effective date.** This act shall take effect July 1, 2003.

**SECTION 29. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Lola Spradley  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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John Andrews  
PRESIDENT OF  
THE SENATE

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Judith Rodrigue  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Mona Heustis  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Owens  
GOVERNOR OF THE STATE OF COLORADO