

1977

Amending 11-2-109 (2) and (3), 11-3-109 (3), 11-3-110 (3) , (4), (5), and (6), 11-3-117 (5), 11-6-101 (1), and 11-7-102 (1), and Enacting 11-6-101 (1.5) and (1.6), Colorado Revised Statutes 1973, Concerning Banking

Colorado General Assembly

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CHAPTER 115

FINANCIAL INSTITUTIONS

BANKING

SENATE BILL NO. 207. BY SENATORS McCormick, Hatcher, and Kadlecsek; also REPRESENTATIVES Hamlin, Barnhill, DeMoulin, Gustafson, Herzberger, Kirscht, Neale, and Valdez.

AN ACT

AMENDING 11-2-109 (2) AND (3); 11-3-109 (3); 11-3-110 (3), (4), (5), AND (6); 11-3-117 (5), 11-6-101 (1); AND 11-7-102 (1), AND ENACTING 11-6-101 (1.5) AND (1.6), COLORADO REVISED STATUTES 1973, CONCERNING BANKING.

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

Section 1. 11-2-109 (2) and (3), Colorado Revised Statutes 1973, are amended to read:

11-2-109. Bank reports to commissioner. (2) Said reports shall be transmitted to the commissioner within ~~ten~~ THIRTY days after his request therefor, and the substance thereof shall be published within ten days by the state bank, in such form as may be prescribed by the commissioner, in a newspaper of general circulation printed in the city or town where such bank is located. If there is no newspaper of general circulation printed in said city or town, then publication shall be in the newspaper of general circulation published nearest thereto. Proof of such publication shall be filed with the commissioner within ten days ~~from~~ AFTER the date of such publication, in such form as he may prescribe.

(3) The commissioner has power to call for special reports from any particular state bank if, in his 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 state banks. Every state bank which fails to comply with this section shall pay to the commissioner a penalty of twenty-five dollars for each day's delay. THE COMMISSIONER, FOR VALID REASONS AND GOOD CAUSE, MAY WAIVE SUCH PENALTY.

Section 2. 11-3-109 (3), Colorado Revised Statutes 1973, is amended to read:

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

11-3-109. Application for charter. (3) Not more than forty days after the date upon which the application and all required documents are properly filed with the commissioner, the commissioner shall mail notice of such filing by registered or certified mail to each bank doing business in the community in which the proposed bank is to be located; to such additional banks as may be doing business within a three-mile radius of the location of the proposed bank, and to such other persons or banks as the commissioner or 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 commissioner shall also cause such notice to be published, at least one time, not more than forty days after the date of filing such application in a newspaper of general circulation within the community in which such proposed bank is to be located.

Section 3. 11-3-110 (3), Colorado Revised Statutes 1973, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

11-3-110. Procedure for granting or denying charter. (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 commissioner, 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 the bank will serve; and

(II) That the volume of business in the community or area of the community which 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.

Section 4. 11-3-110 (4), (5), and (6), Colorado Revised Statutes 1973, are amended to read:

11-3-110. Procedure for granting or denying charter. (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 commissioner 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 board, by registered or certified mail, to the applicant, to each bank doing business in the community in which

the proposed bank is to be located, to such additional banks as may be doing business within a three-mile radius of the location of the proposed bank, and to such other persons or banks as the commissioner or 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 stockholders 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 that the application and proposed articles of incorporation or amended articles of incorporation are available for inspection in the office of the commissioner. The commissioner 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 may have been granted in any case where the proposed bank has not exercised its charter and opened for business within six months from AFTER the date of the order to grant the charter.

Section 5. 11-3-117 (5), Colorado Revised Statutes 1973, is amended to read:

11-3-117. Amendment of articles — change of location — authorized but unissued stock. (5) Except as otherwise specified in subsection (4) of this section, the commissioner shall present the application for amendment to the banking board. In making its determination thereon, the BANKING board shall consider whether the public convenience 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.

Section 6. 11-6-101 (1), Colorado Revised Statutes 1973, as amended, is amended, and the said 11-6-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS; to read:

11-6-101. Branch banks and practices prohibited — facilities defined.

(1) Every bank shall be conducted at a single place of business, and no branch thereof shall be maintained elsewhere; but any bank, upon application to and approval by the banking board, may 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. ~~In the case of a county wherein there is only one chartered bank, that bank, upon application to and approval by the banking board, may operate one detached facility only if the detached facility is located within that county.~~ 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. 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.

Section 7. 11-7-102 (1), Colorado Revised Statutes 1973, is amended to read:

11-7-102. Loans — personal — secured and unsecured. (1) A state bank may lend on the personal obligation of the borrower; except that no bank shall loan to any officer thereof in an amount greater than five TEN thousand dollars. Such loans shall be made only with the approval of a majority of the board of directors entered of record in the minutes of the board. No bank shall loan any officer, director, or employee any funds held in trust, or in any other fiduciary capacity. Any loan to a director in excess of ten percent of the capital stock and surplus of the bank shall be made only with

the approval of a majority of the board of directors, exclusive of the borrower, entered of record in the minutes of the board.

Section 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1977