

CHAPTER 1171
INDUSTRIAL LOAN GUARANTY FUND

H. F. 2513

AN ACT creating an industrial loan corporation thrift certificate guaranty fund, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. TITLE. This Act shall be known and may be cited as the "Iowa Industrial Loan Corporation Thrift Guaranty Act."

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. "Industrial loan corporation" means a corporation licensed under chapter five hundred thirty-six A (536A) of the Code.

2. "Auditor" means the auditor of state.

3. "Guaranty corporation" means the corporation created pursuant to section four (4) of this Act.

4. "Member" means an industrial loan corporation which is required by section five (5) of this Act to be a member of the guaranty corporation.

5. "Thrift certificates" means senior indebtedness issued to and in the hands of the general public, and includes thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness.

6. "Independent activity" means an activity other than one directed solely at increasing guarantee coverage under section seven (7) of this Act.

7. "Capital impairments", or "impaired capital" means the failure of a member to comply with the capital stock requirements of section five hundred thirty-six A point eight (536A.8) of the Code.

8. "Insolvency" means the inability of a member to pay its debts and obligations as they become due.

Sec. 3. NEW SECTION. PURPOSE. It is the purpose of the guaranty corporation to guarantee payment of thrift certificates issued by a member up to ten thousand dollars for each account, subject to the limitations of this Act.

Sec. 4. NEW SECTION. ESTABLISHMENT OF GUARANTY CORPORATION.

1. Within ninety days after the effective date of this Act, industrial loan corporations which are required by section five (5) of this Act to participate as members shall establish a corporation under chapter five hundred four A (504A) of the Code to operate under the name "Industrial Loan Thrift Guaranty Corporation of Iowa".

2. The guaranty corporation established under subsection one (1) of this section shall adopt a plan of organization and operation which may be amended from time to time. The guaranty corporation may promulgate regulations prescribing terms and conditions relative to the issuance of thrift

certificates by members, which shall not take effect until they have been submitted to and adopted by the auditor as rules pursuant to chapter seventeen A (17A) of the Code.

Sec. 5. NEW SECTION. PARTICIPATION--MEMBERSHIP ASSESSMENT.

1. Each industrial loan corporation which has issued and outstanding thrift certificates shall participate as a member in the guaranty corporation in accordance with this Act and with the bylaws established by the board of directors of the guaranty corporation. An industrial loan corporation which is required by this section to participate as a member shall pay a membership assessment, to be paid into the guarantee fund, in an amount determined according to the following schedule:

a. Two thousand five hundred dollars for a member which at any time has issued and outstanding thrift certificates in an amount of two hundred fifty thousand dollars or less.

b. Five thousand dollars for a member which at any time has issued and outstanding thrift certificates in an amount greater than two hundred fifty thousand dollars, but not more than one million dollars.

c. Ten thousand dollars for a member which at any time has issued and outstanding thrift certificates in an amount greater than one million dollars.

Each industrial loan corporation which has issued and outstanding thrift certificates as of the effective date of this Act shall pay the membership assessment to the guaranty corporation within thirty days after the date of its incorporation. Each industrial loan corporation which initially issues thrift certificates after the effective date of this Act shall pay the membership assessment within thirty days after the thrift certificates are issued. When the amount which has been paid by a member as the membership assessment becomes less than the amount which is required by this subsection, the member shall pay the deficiency within ninety days after the date when the deficiency arises.

2. An industrial loan company is exempt from participation as a member of the guaranty corporation so long as it does not have issued and outstanding thrift certificates. An industrial loan company which has issued and outstanding thrift certificates as of the effective date of this Act shall be exempt from participation as a member of the guaranty corporation if it files an undertaking with the auditor that it will not issue thrift certificates and that it will redeem existing thrift certificate obligations within ninety days after the effective date of this Act, and if it redeems existing thrift certificate obligations within the ninety-day period.

Sec. 6. NEW SECTION. RULES OF AUDITOR. The auditor shall adopt rules pursuant to chapter seventeen A (17A) of the Code which may be necessary or advisable to accomplish the purposes of this Act. Rules adopted by the auditor shall continue in force until either modified by subsequent rule or superseded by a plan submitted by the guaranty corporation and approved by the auditor.

Sec. 7. NEW SECTION. GUARANTEE OF THRIFT CERTIFICATES. Thrift certificates of a member of the guaranty corporation shall be guaranteed by the guaranty corporation as follows:

1. With respect to single ownership obligations in any one member:

a. Funds owned by an individual and invested in the manner set forth in this subsection shall be added together and guaranteed up to ten thousand dollars in the aggregate.

b. Individual accounts invested in one or more accounts in the individual's own name shall be guaranteed up to ten thousand dollars in the aggregate.

c. Funds owned by a principal and invested in one or more accounts in the name or names of agents or nominees shall be added to any individual accounts of the principal and guaranteed up to ten thousand dollars in the aggregate.

d. Accounts held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and invested in one or more accounts in the name of the guardian, custodian, or conservator shall be added to any individual accounts of the ward or minor and guaranteed up to ten thousand dollars in the aggregate.

2. With respect to testamentary accounts in any one member:

a. Funds owned by an individual and invested in a revocable trust account, tentative trust account, payable-on-death account, or similar account evidencing an intention that on his or her death the funds shall belong to a named beneficiary, shall be guaranteed up to ten thousand dollars in the aggregate as to each such named beneficiary, separately from any other accounts of the owner.

b. Accounts in any one member held by executors or administrators which are funds of a decedent held in the name of the decedent or in the name of the executor or administrator of the decedent's estate and invested in one or more accounts, shall be guaranteed up to ten thousand dollars in the aggregate, separately from the individual accounts of the beneficiaries of the estate or of the executor or administrator.

3. With respect to corporation or partnership accounts in any one member, accounts of a corporation or partnership which is engaged in an independent activity shall be guaranteed up to ten thousand dollars in the aggregate. For guarantee purposes an account of a corporation or partnership which is not engaged in an independent activity shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership and the interest of each person in the account shall be added to any other accounts individually owned by that person and guaranteed up to ten thousand dollars in the aggregate.

4. With respect to accounts of unincorporated associations, accounts in any one member which are accounts of an unincorporated association engaged in an independent activity shall be guaranteed up to ten thousand dollars in the aggregate. For guarantee purposes an account of an unincorporated association which is not engaged in an independent activity shall be deemed to be owned by the persons comprising the association and the interest of each owner in the account shall be added to any other accounts individually owned by that person and guaranteed up to ten thousand dollars in the aggregate.

5. With respect to joint accounts in any one member:

a. Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, or as tenants in common, shall be guaranteed separately from accounts individually owned by the co-owners.

b. A joint account shall be deemed to exist for purposes of guarantee of accounts only if each co-owner has personally executed an account signature card and possesses redemption rights.

c. An account owned jointly which does not qualify as a joint account for purposes of guarantee of accounts shall be treated as owned by the named persons as individuals, and the actual ownership interest of each such person in the account shall be added to any other accounts individually owned by that person and guaranteed up to ten thousand dollars in the aggregate.

d. All joint accounts owned by the same combination of individuals shall first be added together and guaranteed up to ten thousand dollars in the aggregate.

e. The interests of each co-owner in all joint accounts owned by different combinations of individuals shall then be added together and guaranteed up to ten thousand dollars in the aggregate.

6. Trust accounts in any one member which are trust interests for the same beneficiary invested in accounts established pursuant to valid trust arrangements created by the same settlor or grantor shall be added together and guaranteed up to ten thousand dollars in the aggregate, separately from other accounts of the trustee of the trust funds or the settlor or beneficiary of the trust arrangements.

Sec. 8. NEW SECTION. GUARANTEE FUND.

1. The guaranty corporation shall establish and maintain a guarantee fund which shall consist of the membership assessments under section five (5) of this Act, plus the assessments under subsections two (2) and three (3) of this section.

2. Beginning with the year in which this Act takes effect, the members of the guaranty corporation shall be subject to an assessment on May first of each year. The amount of the annual assessment is determined by the amount in the fund on December thirty-first of the prior year, net of any demands made by the auditor under section eleven (11) of this Act and remaining unpaid at such December thirty-first, as follows: If the net amount in the fund is less than the greater of two million dollars or two percent of the total thrift certificates of all members, the annual assessment for each member shall equal one-fourth of one percent of the member's thrift certificates which are outstanding on December thirty-first of the year prior to the levy; and if the net amount in the fund exceeds the greater of two million dollars or two percent of the aggregate thrift certificates of all members, no annual assessment shall be made.

3. If upon liquidation of a member the amount available in the guaranty fund is insufficient to pay up to ten thousand dollars for each thrift certificate obligation specified in section seven (7) of this Act, the auditor may make demand upon the guaranty corporation for advance payment of annual assessments to become due in such amounts as required to meet the deficiency, but not exceeding two times the maximum assessment that could

have been levied on each member on the prior May first as the annual assessment if the net amount in the fund the preceding December thirty-first had been less than the greater of two million dollars or two percent of the total thrift certificates of all members. Any amount prepaid by a member shall be credited against subsequent annual assessments, and the member shall pay the balance of the annual assessments thus due, if any, or shall be refunded any amount overpaid as a result of the advance assessment. At no time shall a member be required to be prepaid in excess of two years.

Sec. 9. NEW SECTION. NOTICE OF ASSESSMENT. The guaranty corporation shall send a written notice of assessment to each member assessed within ten days after the levy of an annual or advance assessment. The amount assessed shall be paid to the guaranty corporation by the member not later than thirty days following the date the notice of assessment is mailed.

Sec. 10. NEW SECTION. DEFAULTED ASSESSMENTS--ACTIONS TO ENFORCE. In the event a member fails to pay when due the membership assessment, or a deficiency in the membership assessment, or an annual or advance assessment, the guaranty corporation shall report the default in writing to the auditor within two business days after the default, and shall within thirty days after the default bring an action in law or in equity to enforce payment. If the guaranty corporation does not bring an action within the time specified, the auditor may bring an action to enforce payment. The auditor also may revoke the right of a member to issue thrift certificates when the member is in default in paying assessments when due.

Sec. 11. NEW SECTION. PAYMENTS FROM GUARANTEE FUND--DEFICIENCIES.

1. When the property and business of a member has been liquidated or is in the process of liquidation by the auditor and the proceeds of liquidation are insufficient to pay up to ten thousand dollars for each thrift certificate obligation specified in section seven (7) of this Act, the guaranty corporation shall pay each deficiency at the direction of and in amounts as specified by the auditor, and within one hundred twenty days from the date the auditor makes demand for payment. If the total funds available from the guaranty corporation at the time of demand are insufficient to pay in full the amounts required by section seven (7) of this Act, the amount paid toward each obligation shall be reduced ratably in proportion to the amount by which the fund is deficient. Thereafter further payments shall be made in accordance with the directions of the auditor and as additional funds are paid into the guarantee fund from assessments and income accrued on them. When the thrift certificate obligations are paid, the account of each member of the guaranty corporation shall be reduced by an amount which is of the same relation to the total amount paid as the account balance of the member is to the sum of account balances of all members. The guaranty corporation has a claim against a member which has been liquidated or which is in the process of liquidation and the assets of the member for any thrift certificate obligations paid under this section.

2. The auditor shall not direct the guaranty corporation to pay in one calendar year any thrift certificate obligations that exceed in the aggregate the total amount in the fund after allowance for all amounts to be added to the fund during the year by assessment as provided in this Act.

Sec. 12. NEW SECTION. AUDITOR MAY MANAGE CORPORATION. Whenever it appears to the auditor that the guaranty corporation has violated its articles of incorporation or a law of this state; has not paid amounts as directed by the auditor of state pursuant to section eleven (11) of this Act, has invested its funds in violation of section fourteen (14) of this Act, has not levied assessments as required by sections five (5), eight (8) and nine (9) of this Act, has not diligently prosecuted an action to enforce payment as required by section ten (10) of this Act, has violated a provision of this Act, or has neglected or refused to submit its books, papers, and affairs for the inspection of an examiner, the auditor may issue and serve upon the guaranty corporation a notice containing a statement of the facts constituting the alleged violation or violations and fixing a time and place at which a hearing will be held to determine whether the auditor should take possession of the property and business of the guaranty corporation and retain possession until the guaranty corporation satisfies the auditor that it will operate in conformity with the provisions of this Act. During the time the auditor has possession of the guaranty corporation, the auditor shall perform the duties and carry out the obligations of the guaranty corporation.

Sec. 13. NEW SECTION. JUDICIAL REVIEW. Actions of the auditor under section twelve (12) of this Act shall be subject to judicial review under the provisions of chapter seventeen A (17A) of the Code. The district court for Polk county has exclusive jurisdiction of judicial review proceedings under this section.

Sec. 14. NEW SECTION. INVESTMENTS OF GUARANTEE FUND.

1. The guaranty corporation may invest its funds only as provided by rules promulgated by the auditor. The auditor shall promulgate rules which are reasonably necessary for the purpose of preserving reasonable liquidity of the guarantee fund.

2. Income from investments shall be recorded in an income account and shall be used to defray expenses of administration. Income from investments that exceeds an amount determined by the board of directors to be adequate to provide for current expenses may be credited to members' accounts. Each member's account shall receive credit ratably, based on member account balances. Income received by the guaranty corporation, whether or not credited to members' accounts, shall be subject to a demand of the auditor made under section eleven (11) of this Act, except as to that portion reserved by the board of directors for expenses of administration during the calendar year.

3. Expenses of administration that exceed income from investments at the end of the fiscal year of the guarantee*corporation shall be charged to members' accounts. Each member's account shall be charged ratably based on member account balances for the amount of the excess of expenses over income.

Sec. 15. NEW SECTION. POWER OF AUDITOR--MANAGEMENT OF MEMBER.

1. In addition to other remedies provided in this Act, the auditor may take over the management of the property and business of a member for reasonable cause, including but not limited to fraud, impairment of capital, violation of this Act, or revocation of a member's industrial loan license

*According to enrolled Act

for any of the reasons stated in section five hundred thirty-six A point eighteen (536A.18) of the Code.

2. Actions of the auditor under subsection one (1) of this section shall be subject to judicial review under the provisions of chapter seventeen A (17A) of the Code. The aggrieved member may institute proceedings for judicial review in the county in which its principal place of business is located.

3. Upon assuming management of the property and business of a member under this section, the auditor may operate and direct the affairs of the member in its regular course of business, collect amounts due to the member, and do other acts necessary to conduct the affairs of the member and to conserve or protect its assets, property and business.

4. The auditor shall thereafter manage the property and business of the member until such time as he or she may relinquish to the member the management thereof, upon such conditions as the auditor may prescribe, or until the affairs of the member be finally dissolved as provided in section five hundred thirty-six A point nineteen (536A.19) of the Code.

Sec. 16. NEW SECTION. LIQUIDATION OF MEMBER--AUDITOR AS RECEIVER. If when managing a member under section fifteen (15) of this Act the auditor concludes that the member is insolvent or should be dissolved for any other reason enumerated in section fifteen (15), subsection one (1), of this Act, the auditor shall petition the district court for the county in which the principal place of business of the member is located to appoint a receiver for the member. Upon the petition of the auditor under this section, or in any other case where appointment of a receiver for a member is sought by any person, the district court may appoint the auditor as receiver of the member, to serve without bond. The attorney general shall represent the auditor in all proceedings connected with the receivership.

Sec. 17. NEW SECTION. NOTICE TO GUARANTY CORPORATION. The auditor of state shall give prompt notice to the guaranty corporation when for any cause the auditor takes possession of the property and business of a member to manage its affairs, and shall give further prompt notice when he or she determines to liquidate the property and business of a member.

Sec. 18. NEW SECTION. REGULATION. The operation of the guaranty corporation shall at all times be subject to the supervision of the auditor. The auditor may at any time investigate the affairs and examine the books, accounts, records, and files of the guaranty corporation. The auditor shall have free access to the offices, books, accounts, papers, records, files, safes, and vaults of the guaranty corporation.

The corporation shall pay to the auditor such fees as may be established by the auditor by rule under chapter seventeen A (17A) of the Code for the recovery of administrative costs and expenses incurred in the discharge of the duties imposed upon the auditor by this Act. Recoverable costs and expenses shall include, but not be limited to costs and expenses for salaries, expenses and travel for employees, and additional office facilities, supplies and equipment required in the administration of this Act. The fees shall include an annual fee to cover the ordinary annual expenses of the auditor in the administration of this Act and such special

fees as may be necessary for the recovery of extraordinary expenses. Rules of the auditor shall specify when the fees are to be paid by the corporation, and shall provide for the giving of notice of fees which are to become due. Failure to pay a required fee within ten days after the due date shall subject the corporation to an additional fee equal to five percent of the amount assessed for each day the payment is delinquent.

Sec. 19. NEW SECTION. APPEAL TO AUDITOR. A member aggrieved by an action or decision of the guaranty corporation may appeal to the auditor within thirty days from the action or decision.

Sec. 20. NEW SECTION. NONTRANSFERABILITY OF MEMBERSHIPS. Memberships in the guaranty corporation are nontransferable, and the guaranty corporation and memberships in the guaranty corporation are exempt from the provisions of chapter five hundred two (502) of the Code.

Sec. 21. NEW SECTION. ADVERTISEMENTS.

1. The guaranty corporation shall not cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner, a statement or representation with regard to its plan of operation without first obtaining the written approval of the auditor.

2. All advertising by a member with regard to its membership in the guaranty corporation shall include the following statement: "Thrift certificates are protected up to a maximum of ten thousand dollars by the Industrial Loan Thrift Guaranty Corporation of Iowa, a private corporation, regulated by the state of Iowa; however thrift certificates are not guaranteed by the state of Iowa."

3. All advertising of members with regard to thrift certificates shall comply with such reasonably necessary rules as the guaranty corporation may adopt to prevent the use of false, misleading or deceptive advertising practices.

Sec. 22. NEW SECTION. LIST OF COMPANIES--REPORTS.

1. In order to permit the guaranty corporation to fulfill its obligations under this Act, and notwithstanding the provisions of sections five hundred thirty-six A point fifteen (536A.15) and five hundred thirty-seven point two thousand three hundred four (537.2304) of the Code to the contrary, the auditor shall furnish to the guaranty corporation a list of all industrial loan corporations which have outstanding thrift certificate obligations; and the auditor shall promptly furnish to the guaranty corporation one copy of all reports of each of these industrial loan corporations filed with the auditor, excluding examination reports and responses to examinations.

2. Each member, annually and within ninety days of the close of its fiscal year, shall file with the guaranty corporation and the auditor a report of an audit performed in accordance with generally accepted auditing standards and certified by a certified public accountant licensed to practice in the state of Iowa.

3. The guaranty corporation may submit reports and make recommendations to the auditor regarding the affairs or financial condition of a member. In addition, the guaranty corporation shall have the authority to select and direct an independent certified public accountant licensed to practice in the state of Iowa to audit the financial condition of a member, the report of

which shall be provided only to the board of directors of the guaranty corporation and the auditor. The member shall allow access to the records and other information requested by the guaranty corporation during the audit. The cost and expenses of the audit or examination shall be paid by the guaranty corporation. These reports, actions, and recommendations shall be kept confidential.

4. There shall be no liability on the part of, and no cause of action of any manner shall arise against, the guaranty corporation or its members, directors, officers, employees or agents, or the auditor for actions or statements made by them respecting reports or recommendations made under the authority of this section.

Sec. 23. NEW SECTION. EXEMPTIONS.

1. Securities of an industrial loan company issued in a transaction which is an exempt transaction within the meaning of section five hundred two point two hundred three (502.203), subsection nine (9), of the Code are not thrift certificates, and shall bear a statement that they are not guaranteed by the Iowa industrial loan corporation thrift guaranty Act.

2. The guaranty corporation is not an insurance corporation and is not transacting insurance business. The organization, operation and liquidation of the guaranty corporation are exempt from title twenty (XX) of the Code.

Sec. 24. NEW SECTION. SUBORDINATED DEBT. Subordinated debt of a member shall not be construed as thrift certificates and securities representing subordinated debt shall bear a statement that they are not guaranteed by the Iowa industrial loan corporation thrift guaranty Act. At the time of issue subordinated debt shall not exceed two times the total amount of capital, surplus, and undivided profits of the member.

Sec. 25. CAPITAL IMPAIRMENT.

1. The guarantees provided in this Act do not apply to the obligations of an industrial loan corporation, the capital of which is impaired on the effective date of this Act until such time as the capital impairment is eliminated.

2. For purposes of subsection one (1) of this section, an audit performed by a certified public accountant licensed to practice in the state of Iowa for an industrial loan licensee's fiscal year immediately preceding the effective date of this Act shall be conclusive as to whether the capital of the industrial loan corporation is impaired on the effective date of this Act.

Sec. 26. NEW SECTION. STATEMENT OF CONDITION. Each member shall by April thirtieth of each year prepare a statement of its condition as of the close of the preceding calendar year. Each member shall make copies of its statement of condition available to the general public at each of its places of business. The auditor by rule may prescribe minimum content of the statement of condition.

Sec. 27. NEW SECTION. LIABILITIES. The state of Iowa is not liable for any actions or omissions of the auditor in administering the Iowa industrial loan corporation thrift guaranty Act. Members of the guaranty corporation shall be liable for losses incurred as a result of such actions or omissions. The guaranty corporation shall defend the auditor of state and employees of

the auditor against any action commenced against any of them individually as a result of acts or omissions arising from the administration of the Act, and shall indemnify and hold them harmless for any losses caused by such acts or omissions.

Sec. 28. Section five hundred two point two hundred two (502.202), Code 1979, as amended by Acts of the Sixty-eighth General Assembly, 1979 Session, chapter one hundred twenty (120), sections five (5) and six (6), is amended by adding the following new subsection:

NEW SUBSECTION. Any security representing a thrift certificate of an industrial loan company which is a member of the industrial loan thrift guaranty corporation of Iowa.

Sec. 29. LEGISLATIVE INTENT. Because of the increase in the issuance by industrial loan corporations of thrift certificates, these being essential to the well-being and prosperity of the state and the inhabitants of it, it is the intent of the general assembly to provide by this Act for an adequate guarantee of thrift certificates issued by industrial loan corporations.

Sec. 30. This Act shall take effect January first following its enactment.

Approved May 22, 1980

CHAPTER 1172

TITLE TO REAL PROPERTY LIMITATION OF ACTION

S. F. 2279

AN ACT relating to the dates for limitations of actions on title to real property.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section five hundred fifty-eight point five (558.5), Code 1979, is amended to read as follows:

558.5 CONTRACT FOR DEED--PRESUMPTION OF ABANDONMENT. When the record shows that a contract or bond for a deed has been given prior to January 1, 1950 1970, and the record discloses no performance of the same and that more than ten years have elapsed since the contract by its terms was to be performed, ~~such~~ the contract shall be deemed abandoned and of no effect and the land shall be freed from any lien or defect on account of ~~such~~ the contract.

Sec. 2. Section six hundred fourteen point fourteen (614.14), Code 1979, is amended to read as follows:

614.14 RECOVERY BY ~~ESTATE-OR~~ BENEFICIARY OF TRUST. In all cases where ~~any~~ a deed of trust or declaration of trust has been executed and the real estate affected ~~thereby~~ by the deed or declaration has been conveyed by the trustee or the surviving spouse or heirs of ~~said~~ the trustee and ~~such~~ the