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SENATE FILE 44

By CURRAN, THORSEN, and NEU
(Shaw, Fisher of Greene,
and Drake)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of industrial loan companies
2 and the composition of the state banking board.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section five hundred twenty-four point two
2 hundred five (524.205), subsection one (1), Code 1971, is
3 amended as follows:

4 1. The state banking board shall be composed of the super-
5 intendent, who shall be ex officio a member and chairman and
6 who shall have the right to vote, and an executive or em-
7 ployee of an industrial loan company as defined by chapter
8 536A, and five ~~six~~ other members, appointed by the governor,
9 who shall be chosen from various sections of the state. Pro-
10 vided, however, that in no event shall more than five members
11 of such board be engaged in the business of banking in any
12 executive capacity. In case of a vacancy in the state banking
13 board, other than one resulting from a vacancy in the office
14 of the superintendent, the governor shall appoint a new member
15 to fill such vacancy for the unexpired term.

16 Sec. 2. Section five hundred thirty-six A point two
17 (536A.2), subsection four (4), Code 1971, is amended by striking
18 the subsection and inserting in lieu thereof the following:

19 4. "Superintendent" shall mean the superintendent of banking
20 or his designee.

21 Sec. 3. Section five hundred thirty-six A point three
22 (536A.3), Code 1971, is amended as follows:

23 536A.3 LICENSE. No corporation shall engage in the business
24 of operating an "Industrial Loan Company" in the state of Iowa
25 without first having obtained a license from the ~~auditor-of-the~~
26 ~~state-of-iowa~~ superintendent.

27 Sec. 4. Section five hundred thirty-six A point four
28 (536A.4), Code 1971, is amended as follows:

29 536A.4 LIMITATIONS. No license shall be issued to any indi-
30 vidual, partnership, nonprofit organization or unincorporated
31 association. Not more than one place of business where loans
32 are made shall be maintained under the same license but the
33 ~~auditor~~ superintendent may issue more than one license to the
34 same licensee upon compliance, for each ~~such~~ additional license,
35 with all the provisions of this chapter governing an original

1 issuance of a license.

2 Sec. 5. Section five hundred thirty-six A point six
3 (536A.6), Code 1971, is amended as follows:

4 536A.6 ADMINISTRATION. The ~~auditor-of-the-state-of-iowa~~
5 superintendent is hereby invested with the power, authority and
6 duty to supervise the operation of industrial loan companies
7 in the state of Iowa in accordance with the provisions of this
8 chapter.

9 Sec. 6. Section five hundred thirty-six A point seven
10 (536A.7), Code 1971, is amended as follows:

11 536A.7 APPLICATION FOR LICENSE. Applications for licenses
12 to engage in the business of operating industrial loan companies
13 shall be in writing on such forms as may be prescribed by the
14 ~~auditor~~ superintendent. The application shall give the name
15 of the corporation, the location where the business is to be
16 conducted, the street address of the place of business, the
17 names and addresses of the officers and directors of the corpora-
18 tion and such other relevant information as the ~~auditor~~ superin-
19 tendent shall require. At the time of making ~~such an~~ application
20 the applicant shall pay ~~to-the-auditor~~ the sum of fifty dollars
21 to cover the cost of the investigation of the applicant. The
22 applicant shall also pay ~~to-the-auditor~~ the sum of fifty dollars
23 as an annual license fee for the period ending December 31 next
24 following the application; provided that if the license is
25 granted after June 30 in any year, the license fee for the re-
26 mainder of that year shall be twenty-five dollars and any license
27 fee paid by the applicant in excess of that amount shall be re-
28 funded ~~by-the-auditor~~.

29 Sec. 7. Section five hundred thirty-six A point nine (536A.9),
30 Code 1971, is amended as follows:

31 536A.9 INVESTIGATION OF APPLICATION. Upon the filing of an
32 application for a license to engage in the business of operating
33 an industrial loan company, and upon payment of the investiga-
34 tion fee and license fee as required by section 536A.7, the
35 ~~auditor~~ superintendent shall cause an investigation to be made

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1 of the facts set forth in the application. If as the result of
2 his preliminary investigation the ~~auditor~~ superintendent deems
3 it proper, ~~the-auditor~~ he may hold a hearing at a time and place
4 designated by him for the purpose of completing his investiga-
5 tion.

6 Sec. 8. Section five hundred thirty-six A point ten (536A.10),
7 Code 1971, is amended as follows:

8 536A.10 ISSUANCE OF LICENSE. If the ~~auditor~~ superintendent
9 shall find:

10 1. That the financial responsibility, experience, character
11 and general fitness of the applicant and of the officers thereof
12 ~~are-such-as-to~~ command the confidence of the community, and ~~to~~
13 warrant the belief that the business will be operated honestly,
14 fairly and efficiently within the purpose of this chapter;

15 2. That a reasonable necessity exists for a new industrial
16 loan company in the community to be served;

17 3. That the applicant has available for the operation of
18 the business at the specified location paid-in capital and surplus
19 as required by section 536A.8; and

20 4. That the applicant is a corporation organized for pecuni-
21 ary profit under the laws of the state of Iowa.

22 The ~~auditor~~ superintendent shall approve the application and
23 issue to the applicant a license to engage in the industrial
24 loan business in accordance with the provisions of this chapter.
25 The ~~auditor~~ superintendent shall approve or deny an application
26 for a license within one hundred twenty days from the date of
27 the filing of ~~such~~ the application.

28 Sec. 9. Section five hundred thirty-six A point eleven
29 (536A.11), Code 1971, is amended as follows:

30 536A.11 DENIAL OF LICENSE. If the ~~auditor~~ superintendent
31 shall not approve the application, he shall prepare a written
32 denial of the application with a written finding of facts which
33 shall be sent by certified mail to the applicant. Within fif-
34 teen days after mailing of notice of the denial of its applica-
35 tion, the applicant may file with the ~~auditor~~ superintendent

1 a written demand for a hearing on the application. Upon ~~such~~
2 the demand being made, the ~~auditor~~ superintendent must within
3 thirty days hold a formal hearing at his office in Des Moines,
4 Iowa, notice of the time of which hearing shall be given by the
5 ~~auditor~~ superintendent to the applicant by mail within fifteen
6 days after the filing of the written demand by the applicant.
7 Notice of the time and place of hearing shall also be given
8 by the ~~auditor~~ superintendent to all corporations holding
9 licenses to engage in the industrial loan business in the county
10 where the applicant proposes to establish its business and notice
11 of said time and place of hearing shall be published pursuant
12 to section 618.14.

13 At the formal hearing after the original denial of the license
14 by the ~~auditor~~ superintendent the applicant shall be entitled
15 to present evidence in support of his application. The ~~auditor~~
16 superintendent shall then grant or deny the application for a
17 license within thirty days from the date of the formal hearing
18 and give notice to the applicant by a decision and finding of
19 facts in writing. If the application for a license is disap-
20 proved and a license is denied the ~~auditor~~ superintendent shall
21 refund the annual license fee which was required to be deposited
22 by section 536A.7 providing the cost of investigation does not
23 exceed the investigation fee. If the cost of investigation ex-
24 ceeds the investigation fee, the excess cost shall be deducted
25 from the license fee before any refund is made.

26 The decision and finding of facts of the auditor shall not
27 become final if any applicant within thirty days from issuance
28 of ~~such~~ the decision and finding of facts, shall appeal to the
29 district court of Polk county, Iowa. The district court shall
30 have power to enter ~~such~~ orders as justice shall require, and
31 shall set aside the decision of the ~~auditor~~ superintendent if
32 it is found that:

- 33 1. The ~~auditor~~ superintendent acted arbitrarily, capriciously
34 or in excess of his power.
- 35 2. The decision was obtained by fraud.

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1 3. The decision was contrary to law.

2 Sec. 10. Section five hundred thirty-six A point twelve
3 (536A.12), unnumbered paragraph one (1), Code 1971, is amended
4 as follows:

5 Each such license shall remain in full force and effect
6 until surrendered, revoked, or suspended. Every licensee shall,
7 on or before the second day of January, pay ~~to the auditor~~ the
8 sum of fifty dollars as an annual license fee for the succeeding
9 calendar year. When a licensee shall change its place of busi-
10 ness from one location to another in the same city or town it
11 shall at once give written notice thereof to the ~~auditor~~ super-
12 intendent who shall attach to the license in writing his record
13 of the change and the date thereof, which shall be authority for
14 the operation of ~~such~~ the business under ~~such~~ the license at
15 the new place of business.

16 Sec. 11. Section five hundred thirty-six A point thirteen
17 (536A.13), Code 1971, is amended as follows:

18 536A.13 BOOKS AND RECORDS. Each industrial loan company
19 shall keep such books, accounts and records as will enable
20 the ~~auditor~~ superintendent to determine whether or not the
21 licensee is complying with the provisions of this chapter. In-
22 dustrial loan companies shall not be required to preserve or keep
23 their records or files for a longer period than eleven years next
24 after the first day of January of the year following the time of
25 the making or filing of ~~such~~ the records or files.

26 Sec. 12. Section five hundred thirty-six A point fourteen
27 (536A.14), Code 1971, is amended as follows:

28 536A.14 ANNUAL REPORT. Each licensee shall annually on or
29 before the fifteenth day of March file with the ~~auditor~~ super-
30 intendent a report in writing showing the results of the opera-
31 tion of its industrial loan business for the previous calendar
32 year, which report shall contain:

33 1. A balance sheet showing all assets and liabilities as
34 of the thirty-first day of December next preceding.

35 2. An operating statement showing income, expenses and net

1 profit for the previous calendar year.

2 3. Such other relevant information as the ~~auditor~~ superin-
3 tendent shall reasonably require.

4 The report shall be verified under oath by the president and
5 secretary of the corporation. The ~~auditor~~ superintendent shall
6 make and publish annually an analysis and recapitulation of such
7 reports.

8 Sec. 13. Section five hundred thirty-six A point fifteen
9 (536A.15), Code 1971, is amended as follows:

10 536A.15 EXAMINATION OF LICENSEES. The ~~auditor-or-his-duly~~
11 ~~authorized-representative~~ superintendent shall, at least once
12 each year without previous notice, examine ~~and-audit~~ the books,
13 accounts and records of each licensee engaged in the industrial
14 loan business as defined by this chapter. Any licensee, in lieu
15 of such examination ~~and-audit~~ by the ~~auditor-or-his-duly-auther-~~
16 ~~ized-representative~~ superintendent, at the option of the ~~auditor~~
17 superintendent, may be ~~audited~~ examined at the expense of the
18 licensee by a certified public accountant licensed to practice
19 in the state of Iowa. After receiving ~~such-an-audit~~ the examina-
20 tion the ~~auditor~~ superintendent may make such further examination
21 of the licensee as he may deem necessary. A record of each
22 examination shall be kept in the ~~auditor's~~ superintendent's
23 office. ~~Such-examinations~~ Examinations and reports, and other
24 information connected therewith, shall be kept confidential in
25 the office of the ~~auditor~~ superintendent and shall not be
26 subject to publication or disclosure to others except as in this
27 chapter provided. Any evidence of criminal acts committed by
28 officers, directors or employees of any industrial loan associa-
29 tion shall be reported by the ~~auditor~~ superintendent to the
30 proper authorities. The licensee shall be charged and shall pay
31 the actual costs of the examination.

32 Sec. 14. Section five hundred thirty-six A point sixteen
33 (536A.16), Code 1971, is amended as follows:

34 536A.16 CEASE AND DESIST ORDERS. Whenever the ~~auditor~~
35 superintendent has reasonable cause to believe that any licensee

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1 is violating any provision of this chapter, he may, after
2 ten days' advance written notice, in addition to all actions
3 provided for in this chapter, and without prejudice thereto,
4 enter an order requiring such licensee to cease, desist and re-
5 frain from ~~such~~ the violation. After receipt of the advance
6 written notice as provided above, any licensee, within five
7 days from the receipt of ~~such~~ the notice may file with the
8 ~~auditor~~ superintendent a written demand for a hearing. Such
9 hearings shall promptly be held in the office of the ~~auditor~~
10 superintendent and no cease and desist order shall be issued
11 until after the hearing during which the licensee shall be
12 entitled to present evidence and the testimony of witnesses.

13 Sec. 15. Section five hundred thirty-six A point seventeen
14 (536A.17), Code 1971, is amended as follows:

15 536A.17 INJUNCTIONS. The ~~auditor~~ superintendent by counsel
16 of the attorney general may commence an action in any court of
17 competent jurisdiction, in the name of the state of Iowa as
18 plaintiff on the relation of ~~such-auditor~~ the superintendent
19 to restrain and enjoin any licensee from violating the provi-
20 sions of this chapter or to restrain and enjoin any person,
21 copartnership, firm or corporation from engaging in the business
22 of operating an industrial loan company without obtaining a
23 license as required by this chapter.

24 Sec. 16. Section five hundred thirty-six A point eighteen
25 (536A.18), unnumbered paragraph one (1) and subsection one (1)
26 of unnumbered paragraph three (3), Code 1971, are amended as
27 follows:

28 536A.18 REVOCATION OR SUSPENSION OF LICENSE. "The ~~auditor~~
29 superintendent, upon giving ten days' advance written notice
30 to the licensee by certified mail stating his contemplated
31 action and the grounds thereof, and after giving the licensee
32 an opportunity to be heard, may by order in writing suspend or
33 revoke any license issued under the provisions of this chapter,
34 if the ~~auditor~~ superintendent shall find:"

35 "1. The ~~auditor~~ superintendent acted arbitrarily, capri-

1 ciously or in excess of his power."

2 Sec. 17. Section five hundred thirty-six A point nineteen
3 (536A.19), Code 1971, is amended as follows:

4 536A.19 RECEIVERSHIP--LIQUIDATION. If the ~~auditer~~ shall
5 ~~revoke~~ superintendent revokes the license of any industrial
6 loan company he shall promptly report the revocation to the
7 attorney general of Iowa who may apply to the district court
8 of the county in which the licensee had conducted its business
9 for the appointment of a receiver to take possession of the
10 assets of the corporation for the purpose of liquidating its
11 affairs.

12 Sec. 18. Section five hundred thirty-six A point twenty-one
13 (536A.21), Code 1971, is amended as follows:

14 536A.21 OTHER BUSINESS IN SAME OFFICE. A licensee engaged
15 in the business of operating an industrial loan company under
16 the provisions of this chapter may not conduct its business
17 within any office, room, suite or place of business in which
18 any other business is engaged in or conducted, unless specifi-
19 cally authorized to do so in writing by the ~~auditer~~ superin-
20 tendent upon his finding that the character of the other busi-
21 ness is such that its operation by the licensee would not
22 facilitate evasions of this chapter or any other statute of the
23 state of Iowa relating to the making of loans.

24 Sec. 19. Section five hundred thirty-six A point twenty-
25 eight (536A.28), Code 1971, is amended as follows:

26 536A.28 RULES AND REGULATIONS. The ~~auditer~~ superintendent
27 is hereby authorized and empowered to make such reasonable
28 and relevant rules and regulations, not inconsistent herewith,
29 as may be necessary for the enforcement of the provisions of
30 this chapter.

31 EXPLANATION

32 This bill transfers the auditor's duties with regard to
33 industrial loan companies to the superintendent of banking.

34 It also provides that an executive or an employee of an
35 industrial loan company shall be a member of the state bank-

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1 ing board.

2 Governor's Economy Committee Report, Department of Banking,

3 recommendation #5 (modified).

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