

(P. 947) 3/31/94 Referred from Regular Session
to Commerce

FILED MAR 4 1994

SENATE FILE 2286
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2200)

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

A BILL FOR

1 An Act relating to delayed deposit services businesses and
2 providing penalties.

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

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S.F. 2286

1 Section 1. NEW SECTION. 533D.1 TITLE.

2 This chapter shall be known and may be cited as the
3 "Delayed Deposit Services Licensing Act".

4 Sec. 2. NEW SECTION. 533D.2 DEFINITIONS.

5 For purposes of this chapter, unless the context otherwise
6 requires:

7 1. "Check" means a check, draft, share draft, or other
8 instrument for the payment of money.

9 2. "Delayed deposit services business" means a person who
10 for a fee does either of the following:

11 a. Accepts a check dated subsequent to the date it was
12 written.

13 b. Accepts a check dated on the date it was written and
14 holds the check for a period of time prior to deposit or
15 presentment pursuant to an agreement with, or any
16 representation made to, the maker of the check, whether
17 express or implied.

18 3. "Licensee" means a person licensed to operate a delayed
19 deposit services business pursuant to this chapter.

20 4. "Person" means an individual, group of individuals,
21 partnership, association, corporation, or any other business
22 unit or legal entity.

23 5. "Superintendent" means the superintendent of banking.

24 Sec. 3. NEW SECTION. 533D.3 LICENSE REQUIRED --
25 APPLICATION PROCESS -- DISPLAY.

26 1. A person shall not operate a delayed deposit services
27 business in this state unless the person is licensed by the
28 superintendent as provided in this chapter.

29 2. An applicant for a license shall submit an application,
30 under oath, to the superintendent on forms prescribed by the
31 superintendent. The forms shall contain such information as
32 the superintendent may prescribe.

33 3. The application required by this section shall be
34 submitted with both of the following:

35 a. An application fee in an amount prescribed by rule

1 adopted by the superintendent.

2 b. A surety bond executed by a surety company authorized
3 to do business in this state in the sum of twenty-five
4 thousand dollars, which bond shall be continuous in nature
5 until canceled by the surety. A surety shall provide at least
6 thirty days' notice in writing to the licensee and to the
7 superintendent indicating the surety's intent to cancel the
8 bond and the effective date of the cancellation. The surety
9 bond shall be for the benefit of the citizens of this state
10 and shall be conditioned upon the licensee's willingness to
11 comply with this chapter, the faithful performance by the
12 licensee of the duties and obligations pertaining to the
13 delayed deposit services business so licensed, and the prompt
14 payment of any judgment recovered against the licensee. The
15 bond shall be renewed and refiled annually on or before May 1
16 of each year or the licensee shall, within thirty days
17 thereafter, cease doing business.

18 4. The superintendent shall issue a license to an
19 applicant if the superintendent finds all of the following:

20 a. The experience, character, and general fitness of the
21 applicant and its officers, directors, shareholders, partners,
22 or members are such as to warrant a finding that the applicant
23 will conduct the delayed deposit services business honestly,
24 fairly, and efficiently.

25 b. The applicant and its officers, directors,
26 shareholders, partners, or members have not been convicted of
27 a felony in this state, or convicted of a crime in another
28 jurisdiction which would be a felony in this state, involving
29 moral turpitude.

30 c. The applicant is financially responsible and will
31 conduct the delayed deposit services business pursuant to this
32 chapter.

33 d. The applicant has unencumbered assets of at least
34 twenty-five thousand dollars available for operating the
35 delayed deposit services business.

1 5. The superintendent shall approve or deny an application
2 for a license by written order not more than ninety days after
3 the filing of a substantially complete application. Failure
4 of the superintendent to act on a substantially complete
5 application within ninety days is deemed to be an approval of
6 the application. An order of the superintendent issued
7 pursuant to this section may be appealed pursuant to chapter
8 17A.

9 6. A license issued pursuant to this chapter shall be
10 conspicuously posted at the licensee's place of business. A
11 license shall remain in effect until the next succeeding May
12 1, unless earlier suspended or revoked by the superintendent.
13 A license shall be renewed annually by filing with the
14 superintendent an application for renewal containing such
15 information as the superintendent may require to indicate any
16 material change in the information contained in the original
17 application or succeeding renewal applications and a renewal
18 fee of one hundred dollars.

19 Sec. 4. NEW SECTION. 533D.4 SURRENDER OF LICENSE.

20 A licensee may surrender a delayed deposit services license
21 by delivering to the superintendent written notice that the
22 license is surrendered. The surrender does not affect the
23 licensee's civil or criminal liability for acts committed
24 prior to such surrender, the liability of the surety on the
25 bond, or entitle such licensee to a return of any part of the
26 annual license fee. The superintendent may establish
27 procedures for the disposition of the books, accounts, and
28 records of the licensee and may require such action as deemed
29 necessary for the protection of the makers of checks which are
30 outstanding at the time of surrender of the license.

31 Sec. 5. NEW SECTION. 533D.5 CHANGE IN CIRCUMSTANCES --
32 NOTIFICATION OF SUPERINTENDENT.

33 A licensee is to notify the superintendent in writing
34 within thirty days of the occurrence of a material development
35 affecting the licensee, including, but not limited to, any of

1 the following:

2 1. Filing for bankruptcy or reorganization.

3 2. Reorganization of the business.

4 3. Commencement of license revocation proceedings by any
5 other state or jurisdiction.

6 4. The filing of a criminal indictment or complaint
7 against the licensee or any of the licensee's officers,
8 directors, shareholders, partners, members, employees, or
9 agents.

10 5. A felony conviction against the licensee or any of the
11 licensee's officers, directors, shareholders, partners,
12 members, employees, or agents.

13 Sec. 6. NEW SECTION. 533D.6 CONTINUED OPERATION AFTER
14 CHANGE IN OWNERSHIP -- APPROVAL OF SUPERINTENDENT REQUIRED.

15 1. The prior written approval of the superintendent is
16 required for the continued operation of a delayed deposit
17 services business whenever a change in control of a licensee
18 is proposed. Control in the case of a corporation means
19 direct or indirect ownership, or the right to control, ten
20 percent or more of the voting shares of the corporation, or
21 the ability of a person to elect a majority of the directors
22 or otherwise effect a change in policy. Control in the case
23 of any other entity means any change in the principals of the
24 organization, whether active or passive. The superintendent
25 may require information deemed necessary to determine whether
26 a new application is required. Costs incurred by the
27 superintendent in investigating a change of control request
28 shall be paid by the person requesting such approval.

29 2. A license issued pursuant to this chapter is not
30 transferable or assignable.

31 Sec. 7. NEW SECTION. 533D.7 PRINCIPAL PLACE OF BUSINESS
32 -- BRANCH OFFICES AUTHORIZED.

33 1. Except as provided in subsection 2, a licensee may
34 operate a delayed deposit services business only at an office
35 designated as its principal place of business in the

1 application. The licensee shall maintain its books, accounts,
2 and records at its designated principal place of business. A
3 licensee may change the location of its designated principal
4 place of business with the prior written approval of the
5 superintendent. The superintendent shall establish forms and
6 procedures for determining whether the change of location
7 should be approved.

8 2. A licensee may operate branch offices only in the same
9 county in which the licensee's designated principal place of
10 business is located. The licensee may establish a branch
11 office or change the location of a branch office with the
12 prior written approval of the superintendent. The
13 superintendent shall establish forms and procedures for
14 determining whether the location of a branch office should be
15 approved.

16 3. A fee of one hundred fifty dollars shall be paid to the
17 superintendent for each request made pursuant to subsection 1
18 or 2.

19 Sec. 8. NEW SECTION. 533D.8 OTHER BUSINESS OPERATIONS AT
20 SAME SITE -- RESTRICTIONS.

21 A licensee may operate a delayed deposit services business
22 at a location where any other business is operated or in
23 association or conjunction with any other business with the
24 written approval of the superintendent and consistent with
25 both of the following requirements:

26 1. The books, accounts, and records of the delayed deposit
27 services business are kept and maintained separate and apart
28 from the books, accounts, and records of the other business.

29 2. The other business is not of a type which would tend to
30 enable the concealment of acts engaged in to evade the
31 requirements of this chapter. If the superintendent
32 determines upon investigation that the other business is of a
33 type which would conceal such acts the superintendent shall
34 order the licensee to cease the operation of the delayed
35 deposit services business at the location.

1 Sec. 9. NEW SECTION. 533D.9 FEE RESTRICTION -- REQUIRED
2 DISCLOSURE.

3 1. A licensee shall not charge a fee in excess of fifteen
4 dollars per one hundred dollars on the face amount of a check
5 for services provided by the licensee, or pro rata for any
6 portion of one hundred dollars face value.

7 2. A licensee shall give to the maker of the check, at the
8 time any delayed deposit service transaction is made, or if
9 there are two or more makers, to one of them, notice written
10 in clear, understandable language disclosing all of the
11 following:

12 a. The fee to be charged for the transaction.

13 b. The date on which the check will be deposited or
14 presented for negotiation.

15 c. Any penalty, not to exceed fifteen dollars, which the
16 licensee will charge if the check is not negotiable on the
17 date agreed upon.

18 3. In addition to the notice required by subsection 2,
19 every licensee shall conspicuously display a schedule of all
20 fees, charges, and penalties for all services provided by the
21 licensee. The notice shall be posted at the office and every
22 branch office of the licensee.

23 Sec. 10. NEW SECTION. 533D.10 PROHIBITED ACTS BY
24 LICENSEE.

25 1. A licensee shall not do any of the following:

26 a. Hold from any one maker more than two checks at any one
27 time.

28 b. Hold from any one maker a check or checks in an
29 aggregate face amount of more than five hundred dollars at any
30 one time.

31 c. Hold or agree to hold a check for more than thirty-one
32 days.

33 d. Require the maker to receive payment by a method which
34 causes the maker to pay additional or further fees and charges
35 to the licensee or another person.

1 e. Accept a check as repayment, refinancing, or any other
2 consolidation of a check or checks held by the same licensee.

3 2. For purposes of this section, "licensee" includes a
4 person related to the licensee by common ownership or control,
5 a person in whom the licensee has any financial interest, or
6 any employee or agent of the licensee.

7 Sec. 11. NEW SECTION. 533D.11 EXAMINATION OF RECORDS BY
8 SUPERINTENDENT.

9 The superintendent shall examine the books, accounts, and
10 records of each licensee annually. The costs of the
11 superintendent incurred in an examination shall be paid by the
12 licensee.

13 The superintendent may examine or investigate complaints or
14 reports concerning alleged violations of this chapter or any
15 rule adopted or order issued by the superintendent. The
16 superintendent may order the actual cost of the examination or
17 investigation to be paid by the person who is the subject of
18 the examination or investigation, whether or not the alleged
19 violator is licensed.

20 Sec. 12. NEW SECTION. 533D.12 SUSPENSION OR REVOCATION
21 OF LICENSE.

22 1. The superintendent may, after notice and hearing
23 pursuant to chapter 17A, suspend or revoke any license issued
24 pursuant to this chapter upon the finding of any of the
25 following:

26 a. A licensee or any of its officers, directors, partners,
27 or members has knowingly violated this chapter or any rule
28 adopted or order issued by the superintendent.

29 b. A licensee has failed to pay a license fee required
30 under this chapter.

31 c. A fact or condition existing which, if it had existed
32 at the time of the original application for such license,
33 would have resulted in the denial of the superintendent to
34 issue such license.

35 d. A licensee has abandoned its place of business for a

1 period of sixty days or more.

2 2. Notice of the time and place of the hearing provided
3 for in this section shall be given no less than ten days prior
4 to the date of the hearing.

5 Sec. 13. NEW SECTION. 533D.13 CEASE AND DESIST ORDER --
6 INJUNCTION.

7 If the superintendent believes that any person has engaged
8 in or is about to engage in an act or practice constituting a
9 violation of this chapter or any rule adopted or order issued
10 by the superintendent, the superintendent may do either of the
11 following:

12 1. Issue and serve on the person a cease and desist order.
13 Upon entry of a cease and desist order the superintendent
14 shall promptly notify in writing all persons to whom the order
15 is directed that it has been entered and the reasons for the
16 order. Any person to whom the order is directed may request
17 in writing a hearing within fifteen business days after the
18 date of the issuance of the order. Upon receipt of such
19 written request, the matter shall be set for hearing within
20 fifteen business days of such receipt by the superintendent,
21 unless the person requesting the hearing consents to a later
22 date. If a hearing is not requested within fifteen business
23 days and none is ordered by the superintendent, the order of
24 the superintendent shall automatically become final and remain
25 in effect until modified or vacated by the superintendent. If
26 a hearing is requested or ordered, the superintendent, after
27 notice and hearing, shall issue written findings of fact and
28 conclusions of law and shall affirm, vacate, or modify the
29 order.

30 The superintendent may vacate or modify an order if the
31 superintendent finds that the conditions which caused its
32 entry have changed or that it is otherwise in the public
33 interest to do so. Any person aggrieved by a final order of
34 the superintendent may appeal the order as provided in chapter
35 17A.

1 2. Initiate an action in the district court to enjoin such
2 acts or practices and to enforce compliance with this chapter.
3 Upon a proper showing a permanent or temporary injunction,
4 restraining order, or writ of mandamus shall be granted or a
5 receiver or conservator may be appointed to oversee the
6 person's assets. The superintendent shall not be required to
7 post a bond.

8 Sec. 14. NEW SECTION. 533D.14 ADMINISTRATIVE PENALTY.

9 1. If the superintendent finds, after notice and hearing
10 as provided in this chapter, that a person has violated this
11 chapter, a rule adopted pursuant to this chapter, or an order
12 of the superintendent, the superintendent may order such
13 person to pay an administrative fine of not more than five
14 thousand dollars for each violation, in addition to the costs
15 of investigation.

16 2. If a person fails to pay an administrative fine and the
17 costs of investigation ordered pursuant to subsection 1, a
18 lien in the amount of such fine and costs may be imposed upon
19 all assets and property of the person in this state and may be
20 recovered in a civil action by the superintendent. Failure of
21 the person to pay such fine and costs constitutes a separate
22 violation of this chapter.

23 Sec. 15. NEW SECTION. 533D.15 CRIMINAL VIOLATION --
24 OPERATION OF BUSINESS WITHOUT LICENSE.

25 A person required to be licensed under this chapter who
26 operates a delayed deposit services business in this state
27 without first obtaining a license under this chapter or while
28 such license is suspended or revoked by the superintendent is
29 guilty of a serious misdemeanor.

30 Sec. 16. NEW SECTION. 533D.16 APPLICABILITY.

31 This chapter does not apply to a bank incorporated under
32 the provisions of any state or federal law, a savings and loan
33 association incorporated under the provisions of any state or
34 federal law, a credit union organized under the provisions of
35 any state or federal law, a corporation licensed as an

1 industrial loan company under chapter 536A, or an affiliate of
2 a bank, savings and loan association, credit union, or
3 industrial loan company.

4 EXPLANATION

5 This bill establishes a new chapter 533D which defines and
6 regulates delayed deposit services businesses.

7 Section 533D.1 establishes the title of the chapter.

8 Section 533D.2 defines terms used in the new chapter.

9 Section 533D.3 prohibits a person from operating a delayed
10 deposit services business unless licensed by the
11 superintendent. The person must submit an application to the
12 superintendent with an application fee as established by the
13 superintendent by rule. Additionally, the applicant must
14 submit a surety bond in the sum of \$25,000 executed by a
15 surety company authorized to do business in this state. A
16 license issued pursuant to this chapter is to be conspicuously
17 posted at the licensee's place of business.

18 Section 533D.4 provides that a license may be surrendered
19 to the superintendent. The surrender of the license does not
20 affect the civil or criminal liability of the licensee or the
21 surety for acts committed prior to the surrender.

22 Section 533D.5 requires that a licensee must notify the
23 superintendent of the occurrence of a material development
24 affecting the licensee including, but not limited to, filing
25 for bankruptcy or reorganization, reorganization of the
26 business, commencement of a license revocation proceeding in
27 another state, filing of a criminal indictment or complaint
28 against the licensee or any of the licensee's officers,
29 directors, shareholders, partners, members, employees, or
30 agents, or a felony conviction against the licensee or any of
31 the licensee's officers, directors, shareholders, partners,
32 members, employees, or agents.

33 Section 533D.6 provides that the written approval of the
34 superintendent is required for the continued operation of a
35 delayed deposit services business whenever a change in control

1 of the licensee occurs. The section provides that a license
2 issued pursuant to this chapter is not transferable.

3 Section 533D.7 provides that a licensee may operate a
4 delayed deposit services business only at an office designated
5 as its principal place of business, except that with the
6 superintendent's approval, the licensee may operate a branch
7 office in the same county in which the licensee's principal
8 place of business is located.

9 Section 533D.8 provides that a licensee may operate another
10 business at the location of the delayed deposit services
11 business with the written permission of the superintendent.

12 Section 533D.9 prohibits the licensee from charging a fee
13 in excess of \$15 per \$100 face value of the check, or pro rata
14 for any portion of \$100 face value.

15 Section 533D.10 prohibits the licensee from engaging in
16 certain acts related to the business.

17 Section 533D.11 provides that the superintendent is to
18 examine the books, accounts, and records of the licensee
19 annually. The costs of the examination are to be paid by the
20 licensee being examined.

21 Section 533D.12 provides that the superintendent may
22 suspend or revoke a license issued under this chapter after
23 notice and hearing upon a finding of a violation of this
24 chapter by a licensee, failure by a licensee to pay a required
25 fee, the existence of a fact or condition which would have
26 resulted in the denial of a license if the fact or condition
27 existed at the time of the original application, or the
28 licensee has abandoned its place of business for a period of
29 60 days or more.

30 Section 533D.13 grants the superintendent the authority to
31 issue a cease and desist order, and to seek an injunction to
32 prevent acts constituting violations of this chapter.

33 Section 533D.14 provides for an administrative penalty to
34 be assessed by the superintendent as a result of a violation
35 of this chapter.

1 Section 533D.15 provides that a person who operates a
2 delayed deposit services business without a license commits a
3 serious misdemeanor.

4 Section 533D.16 provides that this chapter does not apply
5 to a bank incorporated under the provisions of any state or
6 federal law, any savings and loan association incorporated
7 under the provisions of any state or federal law, a credit
8 union organized under the provisions of any state or federal
9 law, a corporation licensed as an industrial loan company
10 under chapter 536A, or an affiliate of a bank, savings and
11 loan association, credit union, or industrial loan company.

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SENATE FILE 2286

S-5171

1 Amend Senate File 2286 as follows:

2 1. Page 1, lines 18 and 19 by striking the words
3 "a delayed deposit services business".

4 2. Page 2, lines 28 and 29 by striking the words
5 ", involving moral turpitude".

6 3. Page 2, line 32, by inserting after the word
7 "chapter" the following: ", as well as all other
8 applicable laws".

9 4. Page 3, by striking lines 1 through 8 and
10 inserting the following:

11 "5. The superintendent shall approve or deny an
12 application for a license by written order not more
13 than ninety days after the filing of an application.
14 An order of the superintendent issued pursuant to this
15 section may be appealed pursuant to chapter 17A."

16 5. Page 4, line 4, by inserting after the word
17 "revocation" the following: "or any other civil or
18 criminal".

19 6. Page 5, by inserting after line 35 the
20 following:

21 "3. The superintendent may order the licensee to
22 cease operations of the business if it fails to obtain
23 written approval of the superintendent before
24 operating a business in association or conjunction
25 with services provided under this chapter."

26 7. Page 6, by striking lines 4 and 5 and
27 inserting the following: "dollars on the first one
28 hundred dollars on the face amount of a check or more
29 than ten dollars on subsequent one hundred dollar
30 increments on the face amount of the check for
31 services provided by the licensee, or pro rata for
32 any".

33 8. Page 6, by striking lines 15 through 17 and
34 inserting the following:

35 "c. Any penalty allowed under section 534.3507,
36 subsection 5, which the licensee will charge if the
37 check is not negotiable on the date agreed upon."

38 9. Page 6, line 21, by inserting after the word
39 "licensee" the following: "authorized by this
40 section".

41 10. Page 7, by striking lines 1 and 2, and
42 inserting the following:

43 "e. Repay, refinance, or otherwise consolidate a
44 postdated check transaction with the proceeds of
45 another postdated check transaction made by the same
46 licensee.

47 f. Receive any other charges or fees in addition
48 to the fees listed in section 533D.9, subsections 1
49 and 2."

50 11. Page 7, line 27, by striking the word

S-5171

S-5171

Page 2

1 "knowingly".

2 12. Page 8, by inserting after line 1 the
3 following:

4 "e. A licensee fails to pay an administrative
5 penalty and the cost of investigation as ordered by
6 the superintendent."

7 13. Page 8, by striking lines 10 through 12 and
8 inserting the following: "by the superintendent, the
9 superintendent may issue and serve on the person a
10 cease and desist order."

11 14. Page 9, by striking lines 1 through 7 and
12 inserting the following:

13 "If it appears that a person has engaged in or is
14 engaging in an act or practice in violation of this
15 chapter, the attorney general may initiate an action
16 in the district court to enjoin such acts or practices
17 and to enforce compliance with this chapter. Upon a
18 showing of a violation of this chapter, a permanent or
19 temporary injunction, restraining order, or writ of
20 mandamus shall be granted or a receiver or conservator
21 may be appointed to oversee the person's assets. The
22 attorney general shall not be required to post a
23 bond."

24 15. Page 10, by inserting after line 3 the
25 following:

26 "Sec. _____. Section 537.7102, subsection 3, Code
27 1993, is amended to read as follows:

28 3. "Debt" means an actual or alleged obligation
29 arising out of a consumer credit transaction, consumer
30 rental purchase agreement, or a transaction which
31 would have been a consumer credit transaction either
32 if a finance charge was made, if the obligation was
33 not payable in installments, if a lease was for a term
34 of four months or less, or if a lease was of an
35 interest in land. A debt includes a check as defined
36 in section 554.3104 given in a transaction in
37 connection with a consumer rental purchase agreement,
38 in a transaction which was a consumer credit sale or
39 in a transaction which would have been a consumer
40 credit sale if credit was granted and if a finance
41 charge was made, or in a transaction regulated under
42 chapter 533D."

43 16. By renumbering as necessary.

By WILLIAM D. PALMER

S-5171 FILED MARCH 14, 1994

SENATE FILE 2286

S-5174

1 Amend Senate File 2286 as follows:

2 1. Page 2, by striking lines 15 through 17 and
3 inserting the following: "surety's liability under
4 this chapter is limited to the amount of the bond
5 regardless of the number of years the bond is in
6 effect."

By WILLIAM D. PALMER

S-5174 FILED MARCH 14, 1994

SENATE FILE 2286

S-5278

1 Amend Senate File 2286 as follows:

2 1. Title page, line 1, by inserting after the
3 word "Act" the following: ", otherwise known as the
4 official Iowa loan shark Act of 1994,".

By AL STURGEON

S-5278 FILED MARCH 22, 1994

Palmer - Chair
Gronstad
Redfern

SSB-2200
Commerce
New
2286

SENATE FILE
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY CHAIRPERSON
DELUHERY)

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

A BILL FOR

1 An Act relating to delayed deposit services businesses and
2 providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 533D.1 TITLE.

2 This chapter shall be known and may be cited as the
3 "Delayed Deposit Services Licensing Act".

4 Sec. 2. NEW SECTION. 533D.2 DEFINITIONS.

5 For purposes of this chapter, unless the context otherwise
6 requires:

7 1. "Check" means a check, draft, share draft, or other
8 instrument for the payment of money.

9 2. "Delayed deposit services business" means a person who
10 for a fee does either of the following:

11 a. Accepts a check dated subsequent to the date it was
12 written.

13 b. Accepts a check dated on the date it was written and
14 holds the check for a period of time prior to deposit or
15 presentment pursuant to an agreement with, or any
16 representation made to, the maker of the check, whether
17 express or implied.

18 3. "Licensee" means a person licensed to operate a delayed
19 deposit services business pursuant to this chapter.

20 4. "Person" means an individual, group of individuals,
21 partnership, association, corporation, or any other business
22 unit or legal entity.

23 5. "Superintendent" means the superintendent of banking.

24 Sec. 3. NEW SECTION. 533D.3 LICENSE REQUIRED --
25 APPLICATION PROCESS -- DISPLAY.

26 1. A person shall not operate a delayed deposit services
27 business in this state unless the person is licensed by the
28 superintendent as provided in this chapter.

29 2. An applicant for a license shall submit an application,
30 under oath, to the superintendent on forms prescribed by the
31 superintendent. The forms shall contain such information as
32 the superintendent may prescribe.

33 3. The application required by this section shall be
34 submitted with both of the following:

35 a. An application fee in an amount prescribed by rule

1 adopted by the superintendent.

2 b. A surety bond executed by a surety company authorized
3 to do business in this state in the sum of twenty-five
4 thousand dollars, which bond shall be continuous in nature
5 until canceled by the surety. A surety shall provide at least
6 thirty days' notice in writing to the licensee and to the
7 superintendent indicating the surety's intent to cancel the
8 bond and the effective date of the cancellation. The surety
9 bond shall be for the benefit of the citizens of this state
10 and shall be conditioned upon the licensee's willingness to
11 comply with this chapter, the faithful performance by the
12 licensee of the duties and obligations pertaining to the
13 delayed deposit services business so licensed, and the prompt
14 payment of any judgment recovered against the licensee. The
15 bond shall be renewed and refiled annually on or before May 1
16 of each year or the licensee shall, within thirty days
17 thereafter, cease doing business.

18 4. The superintendent shall issue a license to an
19 applicant if the superintendent finds all of the following:

20 a. The experience, character, and general fitness of the
21 applicant and its officers, directors, shareholders, partners,
22 or members are such as to warrant a finding that the applicant
23 will conduct the delayed deposit services business honestly,
24 fairly, and efficiently.

25 b. The applicant and its officers, directors,
26 shareholders, partners, or members have not been convicted of
27 a felony in this state, or convicted of a crime in another
28 jurisdiction which would be a felony in this state, involving
29 moral turpitude.

30 c. The applicant is financially responsible and will
31 conduct the delayed deposit services business pursuant to this
32 chapter.

33 d. The applicant has unencumbered assets of at least
34 twenty-five thousand dollars available for operating the
35 delayed deposit services business.

1 5. The superintendent shall approve or deny an application
2 for a license by written order not more than ninety days after
3 the filing of a substantially complete application. Failure
4 of the superintendent to act on a substantially complete
5 application within ninety days is deemed to be an approval of
6 the application. An order of the superintendent issued
7 pursuant to this section may be appealed pursuant to chapter
8 17A.

9 6. A license issued pursuant to this chapter shall be
10 conspicuously posted at the licensee's place of business. A
11 license shall remain in effect until the next succeeding May
12 1, unless earlier suspended or revoked by the superintendent.
13 A license shall be renewed annually by filing with the
14 superintendent an application for renewal containing such
15 information as the superintendent may require to indicate any
16 material change in the information contained in the original
17 application or succeeding renewal applications and a renewal
18 fee of one hundred dollars.

19 Sec. 4. NEW SECTION. 533D.4 SURRENDER OF LICENSE.

20 A licensee may surrender a delayed deposit services license
21 by delivering to the superintendent written notice that the
22 license is surrendered. The surrender does not affect the
23 licensee's civil or criminal liability for acts committed
24 prior to such surrender, the liability of the surety on the
25 bond, or entitle such licensee to a return of any part of the
26 annual license fee. The superintendent may establish
27 procedures for the disposition of the books, accounts, and
28 records of the licensee and may require such action as deemed
29 necessary for the protection of the makers of checks which are
30 outstanding at the time of surrender of the license.

31 Sec. 5. NEW SECTION. 533D.5 CHANGE IN CIRCUMSTANCES --
32 NOTIFICATION OF SUPERINTENDENT.

33 A licensee is to notify the superintendent in writing
34 within thirty days of the occurrence of a material development
35 affecting the licensee, including, but not limited to, any of

1 the following:

2 1. Filing for bankruptcy or reorganization.

3 2. Reorganization of the business.

4 3. Commencement of license revocation proceedings by any
5 other state or jurisdiction.

6 4. The filing of a criminal indictment or complaint
7 against the licensee or any of the licensee's officers,
8 directors, shareholders, partners, members, employees, or
9 agents.

10 5. A felony conviction against the licensee or any of the
11 licensee's officers, directors, shareholders, partners,
12 members, employees, or agents.

13 Sec. 6. NEW SECTION. 533D.6 CONTINUED OPERATION AFTER
14 CHANGE IN OWNERSHIP -- APPROVAL OF SUPERINTENDENT REQUIRED.

15 1. The prior written approval of the superintendent is
16 required for the continued operation of a delayed deposit
17 services business whenever a change in control of a licensee
18 is proposed. Control in the case of a corporation means
19 direct or indirect ownership, or the right to control, ten
20 percent or more of the voting shares of the corporation, or
21 the ability of a person to elect a majority of the directors
22 or otherwise effect a change in policy. Control in the case
23 of any other entity means any change in the principals of the
24 organization, whether active or passive. The superintendent
25 may require information deemed necessary to determine whether
26 a new application is required. Costs incurred by the
27 superintendent in investigating a change of control request
28 shall be paid by the person requesting such approval.

29 2. A license issued pursuant to this chapter is not
30 transferable or assignable.

31 Sec. 7. NEW SECTION. 533D.7 PRINCIPAL PLACE OF BUSINESS
32 --BRANCH OFFICES AUTHORIZED.

33 1. Except as provided in subsection 2, a licensee may
34 operate a delayed deposit services business only at an office
35 designated as its principal place of business in the

1 application. The licensee shall maintain its books, accounts,
2 and records at its designated principal place of business. A
3 licensee may change the location of its designated principal
4 place of business with the prior written approval of the
5 superintendent. The superintendent shall establish forms and
6 procedures for determining whether the change of location
7 should be approved.

8 2. A licensee may operate branch offices only in the same
9 county in which the licensee's designated principal place of
10 business is located. The licensee may establish a branch
11 office or change the location of a branch office with the
12 prior written approval of the superintendent. The
13 superintendent shall establish forms and procedures for
14 determining whether the location of a branch office should be
15 approved.

16 3. A fee of one hundred fifty dollars shall be paid to the
17 superintendent for each request made pursuant to subsection 1
18 or 2.

19 Sec. 8. NEW SECTION. 533D.8 OTHER BUSINESS OPERATIONS AT
20 SAME SITE -- RESTRICTIONS.

21 A licensee may operate a delayed deposit services business
22 at a location where any other business is operated or in
23 association or conjunction with any other business with the
24 written approval of the superintendent and consistent with
25 both of the following requirements:

26 1. The books, accounts, and records of the delayed deposit
27 services business are kept and maintained separate and apart
28 from the books, accounts, and records of the other business.

29 2. The other business is not of a type which would tend to
30 enable the concealment of acts engaged in to evade the
31 requirements of this chapter. If the superintendent
32 determines upon investigation that the other business is of a
33 type which would conceal such acts the superintendent shall
34 order the licensee to cease the operation of the delayed
35 deposit services business at the location.

1 Sec. 9. NEW SECTION. 533D.9 FEE RESTRICTION -- REQUIRED
2 DISCLOSURE.

3 1. A licensee shall not charge a fee in excess of twenty-
4 two dollars and fifty cents per one hundred dollars on the
5 face amount of a check for services provided by the licensee,
6 or pro rata for any portion of one hundred dollars face value.

7 2. A licensee shall give to the maker of the check, at the
8 time any delayed deposit service transaction is made, or if
9 there are two or more makers, to one of them, notice written
10 in clear, understandable language disclosing all of the
11 following:

12 a. The fee to be charged for the transaction.

13 b. The date on which the check will be deposited or
14 presented for negotiation.

15 c. Any penalty, not to exceed fifteen dollars, which the
16 licensee will charge if the check is not negotiable on the
17 date agreed upon.

18 3. In addition to the notice required by subsection 2,
19 every licensee shall conspicuously display a schedule of all
20 fees, charges, and penalties for all services provided by the
21 licensee. The notice shall be posted at the office and every
22 branch office of the licensee.

23 Sec. 10. NEW SECTION. 533D.10 PROHIBITED ACTS BY
24 LICENSEE.

25 1. A licensee shall not do any of the following:

26 a. Hold from any one maker more than two checks at any one
27 time.

28 b. Hold from any one maker a check or checks in an
29 aggregate face amount of more than five hundred dollars at any
30 one time.

31 c. Hold or agree to hold a check for more than thirty-one
32 days.

33 d. Require the maker to receive payment by a method which
34 causes the maker to pay additional or further fees and charges
35 to the licensee or another person.

1 e. Accept a check as repayment, refinancing, or any other
2 consolidation of a check or checks held by the same licensee.

3 2. For purposes of this section, "licensee" includes a
4 person related to the licensee by common ownership or control,
5 a person in whom the licensee has any financial interest, or
6 any employee or agent of the licensee.

7 Sec. 11. NEW SECTION. 533D.11 EXAMINATION OF RECORDS BY
8 SUPERINTENDENT.

9 The superintendent shall examine the books, accounts, and
10 records of each licensee annually. The costs of the
11 superintendent incurred in an examination shall be paid by the
12 licensee.

13 The superintendent may examine or investigate complaints or
14 reports concerning alleged violations of this chapter or any
15 rule adopted or order issued by the superintendent. The
16 superintendent may order the actual cost of the examination or
17 investigation to be paid by the person who is the subject of
18 the examination or investigation, whether or not the alleged
19 violator is licensed.

20 Sec. 12. NEW SECTION. 533D.12 SUSPENSION OR REVOCATION
21 OF LICENSE.

22 1. The superintendent may, after notice and hearing
23 pursuant to chapter 17A, suspend or revoke any license issued
24 pursuant to this chapter upon the finding of any of the
25 following:

26 a. A licensee or any of its officers, directors, partners,
27 or members has knowingly violated this chapter or any rule
28 adopted or order issued by the superintendent.

29 b. A licensee has failed to pay a license fee required
30 under this chapter.

31 c. A fact or condition existing which, if it had existed
32 at the time of the original application for such license,
33 would have resulted in the denial of the superintendent to
34 issue such license.

35 d. A licensee has abandoned its place of business for a

1 period of sixty days or more.

2 2. Notice of the time and place of the hearing provided
3 for in this section shall be given no less than ten days prior
4 to the date of the hearing.

5 Sec. 13. NEW SECTION. 533D.13 CEASE AND DESIST ORDER --
6 INJUNCTION.

7 If the superintendent believes that any person has engaged
8 in or is about to engage in an act or practice constituting a
9 violation of this chapter or any rule adopted or order issued
10 by the superintendent, the superintendent may do either of the
11 following:

12 1. Issue and serve on the person a cease and desist order.
13 Upon entry of a cease and desist order the superintendent
14 shall promptly notify in writing all persons to whom the order
15 is directed that it has been entered and the reasons for the
16 order. Any person to whom the order is directed may request
17 in writing a hearing within fifteen business days after the
18 date of the issuance of the order. Upon receipt of such
19 written request, the matter shall be set for hearing within
20 fifteen business days of such receipt by the superintendent,
21 unless the person requesting the hearing consents to a later
22 date. If a hearing is not requested within fifteen business
23 days and none is ordered by the superintendent, the order of
24 the superintendent shall automatically become final and remain
25 in effect until modified or vacated by the superintendent. If
26 a hearing is requested or ordered, the superintendent, after
27 notice and hearing, shall issue written findings of fact and
28 conclusions of law and shall affirm, vacate, or modify the
29 order.

30 The superintendent may vacate or modify an order if the
31 superintendent finds that the conditions which caused its
32 entry have changed or that it is otherwise in the public
33 interest to do so. Any person aggrieved by a final order of
34 the superintendent may appeal the order as provided in chapter
35 17A.

1 2. Initiate an action in the district court to enjoin such
2 acts or practices and to enforce compliance with this chapter.
3 Upon a proper showing a permanent or temporary injunction,
4 restraining order, or writ of mandamus shall be granted or a
5 receiver or conservator may be appointed to oversee the
6 person's assets. The superintendent shall not be required to
7 post a bond.

8 Sec. 14. NEW SECTION. 533D.14 ADMINISTRATIVE PENALTY.

9 1. If the superintendent finds, after notice and hearing
10 as provided in this chapter, that a person has violated this
11 chapter, a rule adopted pursuant to this chapter, or an order
12 of the superintendent, the superintendent may order such
13 person to pay an administrative fine of not more than five
14 thousand dollars for each violation, in addition to the costs
15 of investigation.

16 2. If a person fails to pay an administrative fine and the
17 costs of investigation ordered pursuant to subsection 1, a
18 lien in the amount of such fine and costs may be imposed upon
19 all assets and property of the person in this state and may be
20 recovered in a civil action by the superintendent. Failure of
21 the person to pay such fine and costs constitutes a separate
22 violation of this chapter.

23 Sec. 15. NEW SECTION. 533D.15 CRIMINAL VIOLATION --
24 OPERATION OF BUSINESS WITHOUT LICENSE.

25 A person required to be licensed under this chapter who
26 operates a delayed deposit services business in this state
27 without first obtaining a license under this chapter or while
28 such license is suspended or revoked by the superintendent is
29 guilty of a serious misdemeanor.

30 Sec. 16. NEW SECTION. 533D.16 APPLICABILITY.

31 This chapter does not apply to a bank incorporated under
32 the provisions of any state or federal law, a savings and loan
33 association incorporated under the provisions of any state or
34 federal law, a credit union organized under the provisions of
35 any state or federal law, a corporation licensed as an

1 industrial loan company under chapter 536A, or an affiliate of
2 a bank, savings and loan association, credit union, or
3 industrial loan company.

4 EXPLANATION

5 This bill establishes a new chapter 533D which defines and
6 regulates delayed deposit services businesses.

7 Section 533D.1 establishes the title of the chapter.

8 Section 533D.2 defines terms used in the new chapter.

9 Section 533D.3 prohibits a person from operating a delayed
10 deposit services business unless licensed by the
11 superintendent. The person must submit an application to the
12 superintendent with an application fee as established by the
13 superintendent by rule. Additionally, the applicant must
14 submit a surety bond in the sum of \$25,000 executed by a
15 surety company authorized to do business in this state. A
16 license issued pursuant to this chapter is to be conspicuously
17 posted at the licensee's place of business.

18 Section 533D.4 provides that a license may be surrendered
19 to the superintendent. The surrender of the license does not
20 affect the civil or criminal liability of the licensee or the
21 surety for acts committed prior to the surrender.

22 Section 533D.5 requires that a licensee must notify the
23 superintendent of the occurrence of a material development
24 affecting the licensee including, but not limited to, filing
25 for bankruptcy or reorganization, reorganization of the
26 business, commencement of a license revocation proceeding in
27 another state, filing of a criminal indictment or complaint
28 against the licensee or any of the licensee's officers,
29 directors, shareholders, partners, members, employees, or
30 agents, or a felony conviction against the licensee or any of
31 the licensee's officers, directors, shareholders, partners,
32 members, employees, or agents.

33 Section 533D.6 provides that the written approval of the
34 superintendent is required for the continued operation of a
35 delayed deposit services business whenever a change in control

1 of the licensee occurs. The section provides that a license
2 issued pursuant to this chapter is not transferable.

3 Section 533D.7 provides that a licensee may operate a
4 delayed deposit services business only at an office designated
5 as its principal place of business, except that with the
6 superintendent's approval, the licensee may operate a branch
7 office in the same county in which the licensee's principal
8 place of business is located.

9 Section 533D.8 provides that a licensee may operate another
10 business at the location of the delayed deposit services
11 business with the written permission of the superintendent.

12 Section 533D.9 prohibits the licensee from charging a fee
13 in excess of \$22.50 per \$100 face value of the check, or pro
14 rata for any portion of \$100 face value.

15 Section 533D.10 prohibits the licensee from engaging in
16 certain acts related to the business.

17 Section 533D.11 provides that the superintendent is to
18 examine the books, accounts, and records of the licensee
19 annually. The costs of the examination are to be paid by the
20 licensee being examined.

21 Section 533D.12 provides that the superintendent may
22 suspend or revoke a license issued under this chapter after
23 notice and hearing upon a finding of a violation of this
24 chapter by a licensee, failure by a licensee to pay a required
25 fee, the existence of a fact or condition which would have
26 resulted in the denial of a license if the fact or condition
27 existed at the time of the original application, or the
28 licensee has abandoned its place of business for a period of
29 60 days or more.

30 Section 533D.13 grants the superintendent the authority to
31 issue a cease and desist order, and to seek an injunction to
32 prevent acts constituting violations of this chapter.

33 Section 533D.14 provides for an administrative penalty to
34 be assessed by the superintendent as a result of a violation
35 of this chapter.

1 Section 533D.15 provides that a person who operates a
2 delayed deposit services business without a license commits a
3 serious misdemeanor.

4 Section 533D.16 provides that this chapter does not apply
5 to a bank incorporated under the provisions of any state or
6 federal law, any savings and loan association incorporated
7 under the provisions of any state or federal law, a credit
8 union organized under the provisions of any state or federal
9 law, a corporation licensed as an industrial loan company
10 under chapter 536A, or an affiliate of a bank, savings and
11 loan association, credit union, or industrial loan company.

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