

## CHAPTER 1141

### REGULATION OF FINANCIAL INSTITUTIONS AND REAL PROPERTY TRANSACTIONS

H.F. 2484

**AN ACT** relating to the regulation of financial and real property institutions and assets including banks, credit unions, real property loan lenders, and real property financial liability.

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

#### DIVISION I DIVISION OF BANKING

Section 1. Section 8A.412, subsection 19, Code Supplement 2003, is amended to read as follows:

19. The superintendent ~~and the deputy superintendent~~ of the banking division of the department of commerce, all members of the state banking ~~board~~ council, and all employees of the banking division.

Sec. 2. Section 524.201, subsection 1, Code 2003, is amended to read as follows:

1. The governor shall appoint, subject to confirmation by the senate, a superintendent of banking. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office, and a person shall not be appointed who has not had at least five years' experience as an executive officer in a bank ~~or in the regulation or examination of banks~~.

Sec. 3. Section 524.203, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

524.203 SUPERINTENDENT — VACANCY.

If the office of superintendent shall become vacant, the governor may appoint an acting superintendent to complete the unexpired term until an appointment is made as provided in section 524.201.

Sec. 4. Section 524.204, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

524.204 DEPUTY SUPERINTENDENT OF BANKING.

The superintendent may appoint an employee of the division of banking as deputy to perform the duties of the superintendent during the absence or inability of the superintendent to act. Any deputy so appointed shall be removable at the pleasure of the superintendent.

Sec. 5. Section 524.205, Code 2003, is amended to read as follows:

524.205 STATE BANKING ~~BOARD~~ COUNCIL.

1. The state banking ~~board~~ council shall be composed ~~consist~~ of the superintendent, who shall be an ex officio ~~nonvoting~~ member and chairperson, and six other members, appointed by the governor, who shall be ~~chosen~~ appointed, where practical, from various ~~sections~~ parts of the state. Provided, however, that in no event shall more than five members of such ~~board~~ council be engaged in the business of banking in any executive capacity. ~~In case of a vacancy in the state banking board, other than one resulting from a vacancy in the office of the superintendent, the governor shall appoint a new member to fill such vacancy for the unexpired term.~~

2. The ~~regular term~~ terms of office of each member ~~for members of the state banking council~~, other than the superintendent, shall be contemporaneous with the regular term of office of the superintendent as defined in subsection 2 of section 524.201, and each such member shall hold office for such term and until the member's successor shall have been appointed

four-year staggered terms. Each member shall hold office for the term for which the member is appointed or until a successor is appointed.

3. A member of the state banking ~~board~~ council, other than the superintendent, shall not receive a salary but is entitled to reimbursement for actual expenses incurred by the member in connection with the member's duties. Each member of the ~~board~~ council may also be eligible to receive compensation as provided in section 7E.6.

4. The state banking ~~board~~ council shall act ~~with the superintendent~~ in an advisory capacity concerning all matters submitted to the council by the superintendent pertaining to the conduct of the administration of the provisions of this chapter and shall perform such other duties as are specifically provided for by the laws of this state.

5. The state banking ~~board~~ council shall meet at least once each month calendar quarter on such date and at such place as the ~~state banking board~~ council may ~~designate~~ decide, and shall meet at such other times as the ~~board~~ may ~~deem~~ be deemed necessary, ~~or when called by the chairperson of the board, or any two members thereof by the superintendent or a majority of the council members.~~

Sec. 6. Section 524.207, subsection 1, Code Supplement 2003, is amended to read as follows:

1. All expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking ~~board~~ council by the laws of this state shall be paid from fees provided by this state and appropriated by the general assembly from the general fund of the state. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and other moneys shall be deposited into the general fund of the state. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent ~~approved~~ recommended by the state banking ~~board~~ council.

Sec. 7. Section 524.208, Code 2003, is amended to read as follows:

524.208 ASSISTANTS, EXAMINERS, AND OTHER EMPLOYEES.

The superintendent may appoint ~~assistants, examiners, and other employees~~ as the superintendent deems necessary to the proper discharge of the duties imposed upon the superintendent by the laws of this state. Pay plans shall be established for employees, other than clerical, who examine the accounts and affairs of state banks and who examine the accounts and affairs of other persons, subject to supervision and regulation by the superintendent, which are substantially equivalent to those paid by the ~~Federal Deposit Insurance Corporation~~ federal deposit insurance corporation and other federal supervisory agencies in this area of the United States.

Sec. 8. Section 524.209, Code Supplement 2003, is amended to read as follows:

524.209 EXPENSES.

The superintendent, ~~deputy superintendent, assistants, examiners, and other employees~~ of the banking division shall be entitled to receive reimbursement for expenses incurred in the performance of their duties. The superintendent, and when specifically authorized by the superintendent, ~~the deputy superintendent, assistants, examiners and other employees~~ of the banking division, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties, and such expenses shall be paid by the treasurer of state on warrants drawn by the director of the department of administrative services.

Sec. 9. Section 524.210, Code 2003, is amended to read as follows:

524.210 INSURANCE AND SURETY BONDS.

The superintendent shall acquire good and sufficient bond in a company authorized to do

business in this state insuring the faithful performance of ~~the deputy superintendent, assistants,~~ examiners, and all other employees of the banking division and insuring against any liability which may accrue in the case of the loss of any property of a state bank, of a customer of a state bank or of any other person, in the course of any examination, investigation, or other function required or allowed by the laws of this state. The superintendent shall be bonded in accordance with the provisions of chapter 64.

Sec. 10. Section 524.211, subsections 1, 2, 3, 4, 5, and 7, Code 2003, are amended to read as follows:

1. The superintendent, ~~deputy superintendent, an assistant to the superintendent, a bank examination analyst, general counsel, or an examiner~~ examiners, and other employees assigned to the bank bureau of the banking division ~~is~~ are prohibited from obtaining a loan of money or property from a state-chartered bank or any person or entity affiliated with a state-chartered bank.

2. The superintendent, ~~deputy superintendent, finance company bureau chief,~~ general counsel, ~~and all examiners, and other employees~~ assigned to the finance company bureau of the banking division are prohibited from obtaining a loan of money or property from a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or a person or entity affiliated with such licensee.

3. The superintendent, ~~deputy superintendent, an assistant to the superintendent, a bank examination analyst, finance company bureau chief, general counsel, or an examiner~~ examiners, and other employees of the banking division, who ~~has~~ have credit relations with a person or entity licensed or registered pursuant to chapter 535B or 536C, ~~is~~ are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee or registrant.

4. ~~An assistant to the superintendent, a bank examination analyst, or an examiner~~ Examiners and other employees assigned to the bank bureau of the banking division who ~~has~~ have credit relations with a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or with a person or entity affiliated with such licensee, ~~is~~ are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee.

5. An employee of the banking division, other than the superintendent or a member of the state banking board council, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

7. The superintendent, ~~deputy superintendent, or any assistant or examiner~~ examiners, or other employees who ~~is~~ are convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

Sec. 11. Section 524.212, Code Supplement 2003, is amended to read as follows:

524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY INFORMATION.

The superintendent, ~~deputy superintendent, assistant to the superintendent, examiner~~ members of the state banking council, general counsel, examiners, or other employee employees of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533C, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533C, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsections 1, 2, 3, and 5.

Sec. 12. Section 524.214, subsection 1, Code 2003, is amended to read as follows:

1. The superintendent, ~~the deputy superintendent,~~ and upon the approval of the superinten-

dent, any ~~assistant or examiner or other employees of the banking division~~ shall have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter.

Sec. 13. Section 524.215, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The superintendent, ~~deputy superintendent, assistants, or members of the state banking council, examiners, or other employees of the banking division~~ shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, and the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person shall not be offered in evidence in any court or subject to subpoena by any party except, where relevant:

Sec. 14. Section 524.216, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The superintendent shall make a report in writing annually to the governor in the manner and within the time required by chapter 7A. ~~A copy of the report shall be furnished by the superintendent to each state bank.~~

Sec. 15. Section 524.217, subsection 1, paragraph a, Code 2003, is amended to read as follows:

a. Make or cause to be made an examination of every state bank and trust company whenever in the superintendent's judgment such examination is necessary or advisable, but in no event less frequently than once during each two-year period by either the banking division or the appropriate federal banking agency. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe.

Sec. 16. Section 524.218, Code 2003, is amended to read as follows:

524.218 REGULATION AND EXAMINATION OF SERVICES.

A state bank ~~may shall~~ not cause to be performed, by contract or otherwise, any bank services, of a type referred to in section 524.804, for itself or any affiliate, whether on or off its premises, unless ~~assurances satisfactory to the superintendent are furnished to the superintendent by both the state bank and the person performing such services that the performance thereof~~ the person performing such services will be subject to supervision, regulation, and examination by the superintendent to the same extent as if such services were being performed by the state bank itself on its own premises.

Sec. 17. Section 524.219, Code 2003, is amended to read as follows:

524.219 FEES.

1. A state bank subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent fees, established by the ~~state banking board~~ superintendent, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but are not limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

2. The fees for examination of any affiliate of a state bank as provided for in section 524.1105, and the examinations provided for in section 524.217, subsection 1, paragraphs "c" and "d", shall be established by the ~~state banking board~~ superintendent, based on the time required for the examination and the administrative costs and expenses incurred in the

discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but not be limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

~~Upon completion of each examination required or allowed by this chapter, the examiner in charge of the examination shall render a bill for the fees, in duplicate, and shall deliver one copy of the bill to the state bank and one copy to the superintendent.~~

3. Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state bank or any affiliate of a state bank to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

Sec. 18. Section 524.310, subsection 1, Code 2003, is amended to read as follows:

1. The name of a state bank originally incorporated after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity. A national bank or federal savings bank shall not use the word "state" in its legally chartered name.

Sec. 19. Section 524.405, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A state bank, ~~with the approval of the superintendent,~~ may increase its capital structure or effect an allocation of amounts within its capital structure, by the use of any of the following methods:

Sec. 20. NEW SECTION. 524.607A ACTION WITHOUT MEETING.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this chapter at a board of directors' meeting may be taken without a meeting if the action is consented to by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

3. A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Sec. 21. Section 524.610, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The shareholders of a state bank shall fix the reasonable compensation of directors for their services as members of the board of directors. Subject to ~~the approval of the superintendent~~ and approval by the shareholders at an annual or special meeting called for that purpose, the shareholders of a state bank may adopt a pension or profit sharing plan, or both, or other plan of deferred compensation for directors, to which a state bank may contribute.

Sec. 22. Section 524.703, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Subject to ~~the approval of the superintendent,~~ and approval by the shareholders at an annual or special meeting called for the purpose, the board of directors of a state bank may adopt a pension or profit-sharing plan, or both, or other plan of deferred compensation, for both officers and employees, to which the state bank may contribute.

Sec. 23. Section 524.802, subsection 5, Code 2003, is amended to read as follows:

5. Act as agent for a depository institution affiliate ~~to the same extent that a national bank can act as an agent for a depository institution under the provisions of section 18 of the Federal Deposit Insurance Act, 12 U.S.C. § 1828.~~

Sec. 24. Section 524.903, subsections 2 and 3, Code 2003, are amended to read as follows:

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers thirty percent of the state bank's aggregate capital. ~~The superintendent may authorize a state bank to accept drafts in an amount not exceeding at any time in the aggregate for all drawers sixty percent of the state bank's aggregate capital, but the aggregate of acceptance growing out of domestic transactions shall in no event exceed thirty percent of aggregate capital.~~

3. A state bank, ~~with the prior approval of the superintendent,~~ may accept drafts, having not more than three months after sight to run, drawn upon it by banks or bankers in foreign countries, or in dependencies or insular possessions of the United States, for the purpose of furnishing dollar exchange as required by the usages of trade where the drafts are drawn in an aggregate amount which shall not at any time exceed for all such acceptance on behalf of a single bank or banker seven and one-half percent of the state bank's aggregate capital, and for all such acceptances, thirty percent of the state bank's aggregate capital.

Sec. 25. Section 524.904, subsection 7, paragraph a, Code 2003, is amended to read as follows:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank, ~~and provided that such amounts receive the prior approval of the superintendent.~~

Sec. 26. Section 524.1201, subsection 3, Code 2003, is amended to read as follows:

3. Notwithstanding any of the other provisions of this section, original loan documentation and trust recordkeeping functions may be located at an any authorized bank office or at any other location approved by the superintendent.

Sec. 27. Section 524.1303, subsection 3, Code 2003, is amended to read as follows:

3. Within thirty days after the application for dissolution involving a provision of acquisition of the state bank's assets and assumption of its liabilities by another state bank is accepted for processing, the dissolving bank shall publish ~~once each week for two consecutive weeks~~ a notice of the proposed transaction. ~~The notice shall be published~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the dissolving bank has its principal place of business, and in the municipal corporation or unincorporated area in which the acquiring state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county or counties, or in a county adjoining the county or counties, in which the dissolving bank and the acquiring bank have their principal place of business. The notice shall be on forms provided by the superintendent, and proof of publication of the notice shall be delivered to the superintendent within fourteen days.

Sec. 28. Section 524.1402, subsection 4, Code 2003, is amended to read as follows:

4. If a proposed merger will result in a state bank, within thirty days after the application for merger is accepted for processing, the parties to the plan shall publish, ~~once each week for two consecutive weeks,~~ a notice of the proposed transaction. ~~The notices shall be published~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which each party to the plan has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of business. The notice shall be on forms prescribed by the superintendent and shall set forth the names of the parties to the plan and the resulting state bank, the location and post office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, and the purpose or purposes of the resulting state bank. Proof of publication of the notice shall be delivered to the superintendent within fourteen days.

Sec. 29. Section 524.1412, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Within thirty days after the application for conversion has been accepted for processing, the national bank or federal savings association shall publish a notice of the delivery of the articles of conversion to the superintendent ~~once each week for two successive weeks~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank or federal savings association has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank or federal savings association has its principal place of business. Proof of publication of the notice shall be delivered to the superintendent within fourteen days. The notice shall set forth all of the following:

Sec. 30. Section 524.1416, subsection 2, Code 2003, is amended to read as follows:

2. A state bank which converts into a national bank or federal savings association shall notify the superintendent of the proposed conversion, provide such evidence of the adoption of the plan as the superintendent may request, notify the superintendent of any abandonment or disapproval of the plan, file with the superintendent and with the secretary of state a certificate of the approval of the conversion by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, and the date upon which such conversion is to become effective. A state bank that converts into a national bank or federal savings association shall comply with the provisions of section 524.310, subsection 1.

Sec. 31. Section 524.1611, subsection 1, Code 2003, is amended to read as follows:

1. Any person violating the provisions of ~~subsection 1~~ of section 524.211, subsection 1, shall be guilty of a fraudulent practice, and shall be subject to a further fine of a sum equal to the amount of the value of the property given or received or the money so loaned or borrowed. ~~The deputy superintendent, an assistant or examiner~~ An employee of the division of banking convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

Sec. 32. Section 546.3, Code 2003, is amended to read as follows:

546.3 BANKING DIVISION.

The banking division shall regulate and supervise banks under chapter 524, regulated loan companies under chapter 536, and industrial loan companies under chapter 536A, and shall perform other duties assigned to the division by law. The division is headed by the superintendent of banking who is appointed pursuant to section 524.201. ~~The state banking board council shall perform duties~~ render advice within the division ~~as prescribed by law when requested by the superintendent.~~

Sec. 33. STATE BANKING COUNCIL — INITIAL FOUR-YEAR TERMS. The governor shall appoint members to the state banking council for terms beginning on May 1, 2005, as follows: One member shall be appointed for a one-year term, one member shall be appointed for a two-year term, two members shall be appointed for three-year terms, and two members shall be appointed for four-year terms.

Sec. 34. Section 68B.35, Code Supplement 2003, and sections 536.13, 536.23, and 536.28, Code 2003, are amended by striking from the sections the words “state banking board” and “banking board” and “board” when referring to the state banking board and inserting in lieu thereof the words “state banking council”.

Sec. 35. CODE EDITOR'S DIRECTIVE. The Code editor shall correct any references to the state banking council as the successor to the state banking board, including grammatical constructions, anywhere else in the Iowa Code, in any bills awaiting codification, and in any bills enacted by the Eightieth General Assembly, 2004 Regular Session.

DIVISION II  
CREDIT UNIONS

Sec. 36. Section 533.2, Code 2003, is amended to read as follows:

## 533.2 AMENDMENTS.

1. ~~The articles Articles of incorporation or the bylaws may be amended by a favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting.~~

2. ~~Bylaws may also be amended by a any of the following methods:~~

~~a. The favorable vote of a majority of the members of the board, or by present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting.~~

~~b. The favorable vote of a majority of the members of the board.~~

~~c. By a majority vote of members voting by mailed or electronic ballot, according to procedures specified by rule of the superintendent requiring at least twenty days' notice to all members, mailed ballots ensuring the confidentiality of voters, announcement to members of the results of the vote, and preservation of the ballots for a reasonable period of time according to procedures specified by rule of the superintendent, requiring at least twenty days' notice to all members. All amendments must be approved by the superintendent before they become effective. An announcement shall be made to members of the results of the vote. Ballots shall be preserved for a reasonable period of time following the vote.~~

~~d. A combination of procedures as specified in paragraphs "a" and "c", whereby members are allowed to vote either in person at a meeting or by mailed or electronic ballot, according to procedures specified by rule of the superintendent. If the proposed amendment receives a favorable majority of the total votes cast in person and by mailed ballot, the bylaws shall be amended.~~

Sec. 37. Section 533.4, subsection 5, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. Any permissible investment for federal credit unions, provided that this paragraph shall not permit a credit union to invest in a credit union service organization except as provided in paragraph "f".

Sec. 38. Section 533.4, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 28. Set off a member's accounts against any of the member's debts or liabilities owed the state credit union pursuant to an agreement entered into between the member and the credit union. The credit union shall also have a lien on the shares and deposits of a member for any sum due the credit union from the member or for any loan endorsed by the member.

Sec. 39. Section 533.6, subsection 2, Code 2003, is amended to read as follows:

2. The superintendent may make or cause to be made an examination of each credit union whenever the superintendent believes such examination is necessary or advisable, but in no event less frequently than once during each ~~eighteen-month~~ twenty-four-month period. A credit union designated as serving predominantly low-income members shall be reviewed during each examination to ensure that such credit union is continuing to meet the standards established by rule of the superintendent. Each credit union and all of its officers and agents shall give to the representatives of the superintendent free access to all books, papers, securities, records, and other sources of information under their control. A report of such examination shall be forwarded to the chairperson of each credit union within thirty days after the completion of the examination. Within thirty days of the receipt of this report, a meeting of the directors shall be called to consider matters contained in the report and the action taken shall be set forth in the minutes of the board. The superintendent may accept, in lieu of the examination of a credit union, an audit report conducted by a certified public accounting firm



selected from a list of firms previously approved by the superintendent. The cost of the audit shall be paid by the credit union.

Sec. 40. Section 533.8, Code 2003, is amended to read as follows:

533.8 ELECTIONS.

1. At the organization meeting there shall be elected a board of directors of not less than nine members to hold office for such terms as the bylaws provide and until successors are elected and qualify.

2. At each annual meeting there shall be elected one member to fill each position vacated by reason of expiring terms or other causes.

3. Pursuant to rules adopted by the superintendent, state credit unions may allow members to vote on the election of directors via electronic means including, but not limited to, the internet or telephone.

4. A record of the names and addresses of the directors, officers and committee persons shall be filed with the superintendent within ten days following each election.

5. A state credit union wishing to maintain a board of directors of less than nine members may apply to the superintendent for permission to reduce the required number of directors to no fewer than seven members. An application to reduce the required number of directors under this subsection must demonstrate both of the following:

a. The application is necessitated by a hardship or other special circumstance.

b. The lesser number of directors is in the best interest of the credit union and its members.

Sec. 41. Section 533.9, Code 2003, is amended to read as follows:

533.9 DIRECTORS AND OFFICERS.

1. Within five days following the organization meeting and each annual meeting, the directors shall elect from their own number a chairperson of the board, a vice chairperson, a secretary, and a chief financial officer whose title shall be designated by the board of directors.

2. The board shall appoint a credit committee of not less than three members, and an auditing committee of not less than three members, and may also appoint alternate members of the credit committee.

3. Only a member of the board of directors or a member of the credit union may be appointed to the credit committee or to the auditing committee.

4. The board may appoint an executive committee to act on its behalf when designated for that purpose.

5. The duties and responsibilities of a director and of the board of directors have general shall include, but are not limited to, all of the following:

a. General management of the affairs of the state credit union including, but not limited to, the power to fix,

b. Setting the amount of the surety bond which that shall be required of all officers and employees handling money.

c. Periodic review of the original records of the state credit union, or comprehensive summaries prepared by the officers of the credit union, pertaining to loans, security interests, and investments.

d. Review of the adequacy of the state credit union's internal controls.

e. Periodic review of utilization of security measures.

f. Establishing education and training programs to ensure that the directors possess adequate knowledge to manage the affairs of the state credit union.

6. a. Directors of a state credit union shall discharge the duties of their position in good faith and with that diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

b. The directors have a continuing responsibility to assure themselves that the state credit union is being managed according to law and that the practices and policies adopted by the board are being implemented.

7. Unless the bylaws provide otherwise, the board of directors may permit any and all

directors to participate in all except one meeting per year of the board of directors through the use of any means of communication by which all directors participating in the meeting may simultaneously hear each other and communicate during the meeting. A director participating in a meeting by this means is deemed to be present at the meeting.

8. a. A director, committee member, officer, or employee of a state credit union shall not directly or indirectly participate in either the deliberation upon or the determination of any matter in which the director, committee member, officer, or employee has a direct or indirect interest.

b. For the purposes of this subsection, an interest may include, but is not limited to, a pecuniary or familial interest.

Sec. 42. Section 533.12, subsection 1, Code 2003, is amended to read as follows:

1. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. ~~The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member.~~ A credit union may charge an entrance fee as may be provided by the bylaws.

Sec. 43. Section 533.19, Code 2003, is amended to read as follows:

533.19 EXPULSION — WITHDRAWAL.

1. The board of directors may expel any member who has failed to do either of the following:

a. Carry out the member's obligations to the state credit union.

b. Comply with the state credit union's bylaws or policies.

2. A member may be expelled by a majority vote of the board of directors at a regular or special meeting of the board.

a. The An expelled member may request a hearing before the membership of the credit union. A meeting of the membership shall be held within sixty days of the member's request.

b. The membership may, by majority vote at the membership meeting, reinstate the expelled member upon terms and conditions prescribed by it.

3. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required as provided in this section.

4. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, after deducting all amounts due from the member to the credit union and an amount as necessary to honor outstanding share drafts drawn against accounts of the member, be paid to the member.

5. Upon expulsion or withdrawal of a member from a credit union, or at any other time, the credit union may require sixty days' notice of intention to withdraw shares and thirty days' notice of intention to withdraw deposits, except that a credit union shall not at any time require notice of withdrawal with respect to funds which are subject to withdrawal by share drafts.

6. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

Sec. 44. NEW SECTION. 533.19A SUSPENSION OR RESTRICTION OF SERVICES.

1. A state credit union may suspend or deny certain services to members who have performed any of the following actions:

a. Caused a loss to the state credit union.

b. Violated the membership agreement or any policy adopted by the board.

c. Been physically or verbally abusive to state credit union members or staff.

2. Members with suspended services may maintain a share account and continue to vote at annual and special meetings.

Sec. 45. Section 533.38, Code 2003, is amended by adding the following new subsection: NEW SUBSECTION. 12. Establish one or more capital accounts in the same manner as if it were a federal credit union.

DIVISION III  
BANKS AS LIMITED LIABILITY COMPANIES

Sec. 46. Section 422.11, Code 2003, is amended to read as follows:  
422.11 FRANCHISE TAX CREDIT.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code, or is a member of a financial institution organized as a limited liability company under chapter 524 that is taxed as a partnership for federal income tax purposes, shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution and subtracting the credits allowed under section 422.12. This recomputed tax shall be subtracted from the amount of tax computed under this division after the deduction for credits allowed under section 422.12. The resulting amount, which shall not exceed the taxpayer's pro rata share of the franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

Sec. 47. Section 524.103, subsections 6, 8, 17, 20, 30, 31, and 33, Code 2003, are amended to read as follows:

6. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger. "Articles of incorporation" also means the original or restated articles of organization and all amendments including articles of merger if a state bank is organized as a limited liability company under this chapter.

8. "Bank" means a corporation or limited liability company organized under this chapter or 12 U.S.C. § 21.

17. "Control" means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

a. Owns, controls, or has the power to vote fifty percent or more of any class of voting securities or membership interests of another person.

b. Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

c. Has the power to exercise a controlling influence over the management or policies of another person.

20. "Executive officer" means a person who participates or has authority to participate, other than in the capacity of a director or manager, in major policymaking functions of a state bank, whether or not the officer has an official title, whether or not such a title designates the officer as an assistant, or whether or not the officer is serving without salary or other compensation. The chief executive officer, chairperson of the board, the president, every vice president, and the cashier of a state bank are deemed to be executive officers, unless such an officer is excluded, by resolution of the board of directors of a state bank or by the bylaws of the state bank, from participation, other than in the capacity of a director, in major policymaking functions of the state bank, and the officer does not actually participate in the major policymaking functions. All officers who serve on a board of directors are deemed to be executive officers, except as provided for in section 524.701, subsection 3.

30. "Shareholder" means one who is a holder of record of shares in a state bank. If a state bank is organized as a limited liability company under this chapter, "shareholder" means any member of the limited liability company.

31. "Shares" means the units into which the proprietary interests in a state bank are divided, including any membership interests of a state bank organized as a limited liability company under this chapter.

33. "State bank" means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the

laws of this state and doing business as such on January 1, 1970, or organized as a limited liability company under this chapter.

Sec. 48. Section 524.103, Code 2003, is amended by adding the following new subsections:  
NEW SUBSECTION. 9A. "Board of directors" means the board of directors of a state bank as provided in section 524.601. For state banks organized as a limited liability company under this chapter, "board of directors" means a board of directors or board of managers as designated by the limited liability company in its articles of organization or operating agreement.

NEW SUBSECTION. 18A. "Director" means a member of the board of directors and includes a manager of a state bank organized as a limited liability company under this chapter.

NEW SUBSECTION. 23A. "Manager" means a person designated by the members to manage a state bank organized as a limited liability company under this chapter as provided in the articles of organization or an operating agreement and may include a member of the board of directors.

NEW SUBSECTION. 23B. "Member" means a person with a membership interest in a state bank organized as a limited liability company under this chapter.

NEW SUBSECTION. 23C. "Membership interest" means a member's share of the profits and losses, the right to receive distributions of assets, and any right to vote or participate in management, of a state bank organized as a limited liability company under this chapter.

Sec. 49. Section 524.301, Code 2003, is amended to read as follows:

**524.301 INCORPORATORS — ORGANIZERS.**

A state bank may be incorporated or organized as a limited liability company under this chapter by one or more individuals eighteen years of age or older, a majority of whom shall be residents of this state and citizens of the United States.

Sec. 50. NEW SECTION. **524.302A ARTICLES OF INCORPORATION — LIMITED LIABILITY COMPANY.**

1. The articles of incorporation of a state bank organized as a limited liability company under this chapter shall be in the form prescribed by the superintendent, and shall set forth all of the following:

a. The name of the state bank, that it is organized for the purpose of conducting the business of banking, and that it is organized under the provisions of this chapter.

b. The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office.

c. The location of the state bank's proposed principal office of the limited liability company, which may be the same as the registered office, but need not be within this state.

d. The duration of the state bank, which shall be perpetual.

e. The aggregate number of common and preferred shares which the state bank shall have authority to issue and the par value of such shares. If such shares are to be divided into classes or series, the number of shares of each class or series and a statement of the par value of the shares of each class or series.

f. The number of managers constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until successors are elected and qualify. A statement that the exclusive authority to manage the state bank is vested in a board of directors that is elected or appointed by the members, that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities as, a board of directors of a state bank chartered as a corporation under this chapter.

g. A provision that the articles of incorporation, operating agreement, or other organizational documents of the state bank shall not require the consent of any other owner in order for an owner to transfer membership interests in the state bank, including voting rights.

2. The articles of incorporation may set forth any or all of the following:

a. Provisions not inconsistent with law regarding management of the business and regulation of the affairs of the state bank.

b. Any provision required or permitted by this chapter to be set forth in the operating agreement.

3. The articles of incorporation need not set forth any of the organizational powers enumerated in this chapter.

Sec. 51. Section 524.303, Code 2003, is amended to read as follows:

524.303 APPLICATION FOR APPROVAL.

The incorporators or organizers shall make an application to the superintendent for approval of a proposed state bank in the manner prescribed by the superintendent and shall deliver to the superintendent, together with such application:

1. The articles of incorporation.
2. Applicable fees, payable to the secretary of state as specified in section 490.122 or 490A.124, for the filing and recording of the articles of incorporation.

Sec. 52. Section 524.304, subsection 1, Code 2003, is amended to read as follows:

1. The incorporators or organizers of a state bank shall, within thirty days of the acceptance of the application for processing, publish notice of the proposed incorporation or organization once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation which is proposed as the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the proposed state bank is to have its principal place of business. The notice shall set forth all of the following:

- a. The name of the proposed state bank.
- b. A statement that it is to be incorporated or organized under this chapter.
- c. The purpose or purposes of the state bank.
- d. The names and addresses of the incorporators or organizers and of the members of the initial board of directors or board of directors as they appear, or will appear, in the articles of incorporation.
- e. The date the application was accepted for processing.
- f. If the incorporation or organization of the state bank has been approved by the superintendent under section 524.305, subsection 8, the name and address of the bank with which the state bank will have merged, or the assets of which the state bank will have acquired or the condition of which in some other way provided a purpose for the incorporation or organization.

Sec. 53. Section 524.305, subsection 1, paragraph d, Code 2003, is amended to read as follows:

d. The character and fitness of the incorporators or organizers and of the members of the initial board of directors are such as to command the confidence of the community and to warrant the belief that the business of the proposed state bank will be honestly and efficiently conducted.

Sec. 54. Section 524.305, subsections 6, 7, and 9, Code 2003, are amended to read as follows:

6. If the superintendent approves the application, the superintendent shall notify the incorporators or organizers, and such other persons who requested in writing that they be notified, of the approval. If the superintendent disapproves the application, the superintendent shall notify the incorporators or organizers of the action and the reason for the decision.

7. The actions of the superintendent shall be subject to judicial review in accordance with chapter 17A. The court may award damages to the incorporators or organizers if it finds that review is sought frivolously or in bad faith.

9. As a condition of receiving the decision of the superintendent with respect to the application the incorporators or organizers shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

Sec. 55. Section 524.306, Code 2003, is amended to read as follows:

524.306 INCORPORATION OR ORGANIZATION OF STATE BANK.

1. Unless a delayed effective date or time is specified, the corporate or organizational existence of a state bank begins when the articles of incorporation, with the superintendent's approval indicated on the articles of incorporation, are filed with the secretary of state. The secretary of state shall record the articles of incorporation and forward a copy of them to the county recorder of the county in which the state bank is to have its principal place of business.

2. The secretary of state's acknowledgment of filing of the articles of incorporation is conclusive proof that the incorporators or organizers satisfied all conditions precedent to incorporation or organization, except in a proceeding instituted by the superintendent to cancel or revoke the incorporation or involuntarily dissolve the corporation or organization.

Sec. 56. Section 524.307, Code 2003, is amended to read as follows:

524.307 INITIAL ORGANIZATION OF STATE BANK.

Upon incorporation, or organization as a limited liability company, of the state bank, the initial board of directors shall hold an organizational meeting within this state, at the call of a majority of the directors, to complete the organization of the state bank by electing officers, adopting bylaws, if any are to be adopted, and conducting any other business properly brought before the board at the meeting.

Sec. 57. Section 524.308, subsection 2, Code 2003, is amended to read as follows:

2. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection 1, the directors, managers, and officers who willfully authorized or participated in the action are severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business.

Sec. 58. Section 524.310, Code 2003, is amended to read as follows:

524.310 NAME OF STATE BANK.

1. The name of a state bank originally incorporated or organized after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate or organizational name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.314.

3. If a state bank existing and operating on January 1, 1970, causes its corporate or organizational name to be changed, the name as changed shall comply with subsection 1 of this section.

4. a. A person may reserve the exclusive use of a corporate or organizational name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate or organizational name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

b. The owner of a reserved corporate or organizational name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Sec. 59. Section 524.312, subsections 1 and 5, Code 2003, are amended to read as follows:

1. A state bank originally incorporated or organized pursuant to this chapter shall have its principal place of business within the city limits of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the city limits of a municipal corporation, may renew its

corporate or organizational existence pursuant to section 524.314 without regard to this section and may also operate as a bank or convert to and operate as a bank office when acquired by or merged into another state bank and approved by the superintendent.

5. A state bank approved under the provisions of section 524.305, subsection 8, shall not commence its business at any location other than within a municipal corporation or unincorporated area in which was located the principal place of business or an office of the bank the condition of which was the basis for the superintendent authorizing incorporation or organization of the new state bank.

Sec. 60. Section 524.313, Code 2003, is amended to read as follows:

524.313 BYLAWS.

A state bank may adopt bylaws. The power to adopt, amend, or repeal bylaws or adopt new bylaws is vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the state bank not inconsistent with law or the articles of incorporation. For a state bank organized as a limited liability company under this chapter, "bylaws" means the operating agreement of the state bank.

Sec. 61. NEW SECTION. 524.315 STATE BANKS AS LIMITED LIABILITY COMPANIES.

1. A state bank organized as a limited liability company under this chapter shall also be subject to chapter 490A, the Iowa limited liability company Act. If a provision of the Iowa limited liability company Act conflicts with a provision of this chapter or any rule of the superintendent adopted pursuant to this chapter, the provisions of this chapter or rule of the superintendent shall control.

2. The superintendent shall possess the exclusive authority to regulate a state bank organized as a limited liability company under this chapter.

3. The superintendent may adopt rules to ensure that a state bank organized as a limited liability company under this chapter is operating in a safe and sound manner and is subject to the superintendent's authority in the same manner as a state bank organized as a corporation.

Sec. 62. Section 524.401, subsections 2, 3, and 4, Code 2003, are amended to read as follows:

2. The minimum capital structure of a state bank incorporated after July 1, 1995, or organized after July 1, 2004, pursuant to the provisions of this chapter shall not be less than the amount required by the federal deposit insurance corporation, or its successor, or a greater amount which the superintendent may deem necessary in view of the deposit potential of the state bank and current banking standards relating to total capital requirements.

3. A state bank incorporated on or after July 1, 1995, or organized after July 1, 2004, pursuant to this chapter, prior to receiving authorization to do business from the superintendent, shall establish paid-in surplus and undivided profits as required by the superintendent.

4. A state bank originally incorporated or organized pursuant to this chapter shall establish, prior to receiving authorization to do business from the superintendent, paid-in surplus and undivided profits as required by the superintendent.

Sec. 63. Section 524.525, Code 2003, is amended to read as follows:

524.525 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION OR ORGANIZATION.

1. A subscription for shares entered into before incorporation or organization of the state bank is irrevocable for six months unless the subscription agreement provides a longer or shorter period, or all subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation or organization of the state bank unless the subscrip-

tion agreement specifies the terms. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation or organization of the state bank are fully paid and nonassessable when the state bank receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation or organization of the state bank, the state bank may do either of the following:

- a. Collect the amount owed as any other debt.
- b. Unless the subscription agreement provides otherwise, the state bank may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the state bank sends written demand for payment to the subscriber.

Sec. 64. Section 524.528, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. There is no preemptive right with respect to any of the following:

(1) Shares issued as compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation or organization.

Sec. 65. Section 524.801, subsection 1, Code 2003, is amended to read as follows:

1. To sue and be sued, complain and defend, in its corporate or organizational name.

Sec. 66. Section 524.801, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere in this chapter, or as a limitation on the purposes for which a state bank may be incorporated or organized.

Sec. 67. Section 524.1301, Code 2003, is amended to read as follows:

524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS, OR INITIAL DIRECTORS.

A majority of the incorporators, organizers, or initial directors of a state bank that has not issued shares or has not commenced business may dissolve the state bank by delivering articles of dissolution to the superintendent, together with the applicable filing and recording fees, for filing with the secretary of state that set forth all of the following:

1. The name of the state bank.
2. The date of its incorporation or organization.
3. Either of the following:
  - a. That the state bank has not issued any shares.
  - b. That the state bank has not commenced business.
4. That no debt of the state bank remains unpaid.
5. If shares were issued, that the net assets of the state bank remaining after the payment of all necessary expenses have been distributed to the shareholders.
6. That a majority of the incorporators, organizers, or initial directors authorized the dissolution.

Sec. 68. Section 524.1302, Code 2003, is amended to read as follows:

524.1302 INVOLUNTARY DISSOLUTION PRIOR TO COMMENCEMENT OF BUSINESS. Prior to the issuance of an authorization to do business, the superintendent may cause the



dissolution of a state bank if there exists any reason why it should not have been incorporated or organized under this chapter or if an authorization to do business has not been issued within one year after the date of its incorporation or organization, or such longer time as the superintendent may allow for satisfaction of conditions precedent to its issuance. After giving the state bank adequate notice and an opportunity for hearing, the superintendent shall certify the applicable facts by the filing of a statement with the secretary of state, who shall thereafter issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the secretary of state, the corporate or organizational existence of the state bank shall cease.

Sec. 69. Section 524.1309, Code 2003, is amended to read as follows:

524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

In lieu of the dissolution procedure prescribed in sections 524.1303 to 524.1306, a state bank may cease to carry on the business of banking and, after compliance with this section, continue as a corporation subject to chapter 490; or if the state bank is organized as a limited liability company under this chapter, continue as a limited liability company subject to chapter 490A.

1. A state bank ~~which~~ that has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on such proposal, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan providing for the cessation of banking business and the payment of its liabilities.

2. The application to the superintendent for approval of a plan described in subsection 1 ~~of this section~~ shall be treated by the superintendent in the same manner as an application for approval of a plan of dissolution under ~~subsection 2 of section 524.1303~~, subsection 2, and shall be subject to ~~subsection 3 of section 524.1303~~, subsection 3.

3. Immediately upon adoption and approval of a plan to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, the state bank shall deliver to the superintendent a plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, which shall be signed by two of its duly authorized officers and shall contain the name of the state bank, the post office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan and the number of shares voted for or against the plan, respectively, the nature of the business to be conducted by the corporation under chapter 490, or by the limited liability company subject to chapter 490A, and the general nature of the assets to be held by the corporation or company.

4. Upon approval of the plan by the superintendent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits and carry on the banking business except insofar as may be necessary for it to complete the settlement of its affairs as a state bank in accordance with subsection 5.

5. The board of directors has full power to complete the settlement of the affairs of the state bank. Within thirty days after approval by the superintendent of the plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, the state bank shall give notice of its intent to persons identified in section 524.1305, subsection 4, in the manner provided for in that subsection. In completing the settlement of its affairs as a state bank the state bank shall also follow the procedure prescribed in section 524.1305, subsections 4, 5, and 6.

6. Upon completion of all the requirements of this section, the state bank shall deliver to the superintendent articles of intent to be subject to chapter 490 or 490A, together with the applicable filing and recording fees, which shall set forth that the state bank has complied with this section, that it has ceased to carry on the business of banking, and the information required

by section 490.202 relative to the contents of articles of incorporation under chapter 490, or article of organization under chapter 490A. If the superintendent finds that the state bank has complied with this section and that the articles of intent to be subject to chapter 490 or 490A satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed and recorded in the office of the county recorder.

7. Upon the filing of the articles of intent to be subject to chapter 490 or 490A, the state bank shall cease to be a state bank subject to this chapter, and shall cease to have the powers of a state bank subject to this chapter and shall become a corporation subject to chapter 490 or a limited liability company subject to chapter 490A. The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to chapter 490 or 490A, and send the certificate to the corporation or limited liability company or its representative. The articles of intent to be subject to chapter 490 or 490A shall be the articles of incorporation of the corporation or a limited liability company. The provisions of chapter 490 or 490A becoming applicable to a corporation or limited liability company formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under this chapter prior to the filing with the secretary of state of the articles of intent to be subject to chapter 490 or 490A.

8. A shareholder of a state bank who objects to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, is entitled to appraisal rights provided for in chapter 490, division XIII, or in chapter 490A, subchapter VII.

9. A state bank, at any time prior to the approval of the articles of intent to become subject to chapter 490 or 490A, may revoke the proceedings in the manner prescribed by section 524.1306.

Sec. 70. Section 524.1405, subsection 2, paragraph f, Code 2003, is amended to read as follows:

f. The shares of each party to the merger that are to be converted into shares, obligations, or other securities of the surviving party or any other corporation or limited liability company or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under section 524.1406.

Sec. 71. Section 524.1408, Code 2003, is amended to read as follows:

524.1408 MERGER OF CORPORATION OR LIMITED LIABILITY COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

A state bank owning at least ninety percent of the outstanding shares, of each class, of another corporation or limited liability company which it is authorized to own under this chapter, may merge the other corporation or limited liability company into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation or limited liability company. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation or holders of membership interests in the subsidiary limited company, and prepare and execute articles of merger in the manner provided for in section 490.1105. The articles of merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent approves of the proposed merger and if the superintendent finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the certificate to the state bank and a copy of it to the superintendent.

Sec. 72. Section 524.1802, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. gg. "Incorporated in any state" means a limited liability company

organized as a state bank under this chapter and a limited liability company organized as a state bank under the laws of any state as defined in 12 U.S.C. § 1813(a)(3).

Sec. 73. Section 524.2001, Code 2003, is amended to read as follows:

524.2001 APPLICABILITY OF OTHER CHAPTERS.

Chapters 490, ~~490A~~, 491, 492, and 493 do not apply to banks except as provided by this chapter.

#### DIVISION IV REAL PROPERTY LOANS

Sec. 74. Section 535.8, subsection 2, paragraph b, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller.

~~PARAGRAPH DIVIDED.~~ Collection ~~The collection~~ of any ~~cost costs~~ other than as expressly permitted by this lettered paragraph "b" is prohibited. ~~However, additional costs incurred in connection with a loan under this paragraph "b", if bona fide and reasonable, may be collected by a state-chartered financial institution licensed under chapter 524, 533, or 534, to the extent permitted under applicable federal law as determined by the office of the comptroller of the currency of the United States department of treasury, the national credit union association, or the office of thrift supervision of the United States department of treasury. Such costs shall apply only to the same type of state chartered entity as the federally chartered entity affected and shall apply to and may be collected by an insurer organized under chapter 508 or 515, or otherwise authorized to conduct the business of insurance in this state.<sup>1</sup>~~

~~Nothing in this section shall be construed to change the prohibition against the sale of title insurance or sale of insurance against loss or damage by reason of defective title or encumbrances as provided in section 515.48, subsection 10.~~

#### DIVISION V REAL PROPERTY FINANCIAL LIABILITY

Sec. 75. NEW SECTION. 455B.751 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Acquired" means purchased, leased, obtained by inheritance or descent and distribution, or obtained by foreclosure sale under chapter 654, nonjudicial voluntary foreclosure under section 654.18, deed in lieu of foreclosure under section 654.19, foreclosure without redemption under section 654.20, or nonjudicial foreclosure of nonagriculture mortgages under chapter 655A.

2. "Hazardous substance" means the same as defined in section 455B.381 or 455B.411.

3. "Hazardous waste" means the same as defined in section 455B.411.

4. "Potentially responsible party" means a person whose acts or omissions were a proximate cause of the contamination of the acquired property, or a person whose negligent acts or omissions are a proximate cause of injury or damages resulting from exposure to such contamination. Injury or damages to persons or property arising by reason of contamination that migrates from the acquired property shall not be deemed to be caused by an act or omission of the person that acquired the property, except to the extent that the act or omission of such person exacerbated the release of such contamination.

5. "Regulated substance" means the same as defined in section 455B.471.

6. "Response action" means any action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release of hazardous substances, hazardous waste, or regulated substances to protect the public health, safety, or the environment.

7. "Third party" means any person other than a person that holds indicia of title to property as identified in section 455B.752, subsection 1, or that has acquired property as identified in section 455B.752, subsection 2.

<sup>1</sup> See chapter 1175, §262 herein

8. "Third-party liability" means any liability or obligation, other than contractual obligations that specifically waive all or part of the immunity provided by section 455B.752, arising out of or resulting from contamination of property by a hazardous substance, hazardous waste, or a regulated substance, including without limitation, claims for illness, personal injury, death, consequential damages, exemplary damages, lost profits, trespass, loss of use of property, loss of rental value, reduction in property value, property damages, or statutory or common law nuisance.

Sec. 76. NEW SECTION. 455B.752 IMMUNITY FROM THIRD-PARTY LIABILITY.

A person that holds indicia of ownership of property contaminated by a hazardous substance, hazardous waste, or regulated substance, and that satisfies all of the conditions provided in section 455B.381, subsection 7, paragraphs "a", "b", and "c", or section 455B.471, subsection 6, paragraph "b", subparagraphs (1), (2), and (3), or a person that has acquired property contaminated by a hazardous substance, hazardous waste, or regulated substance, shall not be liable to any third party for any third-party liability arising from such contamination provided that all of the following apply:

1. The person does not knowingly cause or permit a new or additional hazardous substance, hazardous waste, or regulated substance to arise on or from the acquired property that injures a third party or contaminates property owned or leased by a third party.
2. The person is not a potentially responsible party or affiliated with any potentially responsible party by reason of any of the following:
  - a. Any direct or indirect familial relationship.
  - b. Any contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the property is conveyed or financed or by a contract for the sale of goods or services.
  - c. A reorganization of a business entity that is or was a potentially responsible party.

Sec. 77. NEW SECTION. 455B.753 ACCESS TO PROPERTY.

A person that holds indicia of title to property or a person that has acquired property as identified in section 455B.752, shall provide reasonable access to the acquired property to any potentially responsible party or to any authorized regulatory authority for the purpose of investigating or evaluating any contamination, planning, or preparing a remedial plan for any abatement of the contamination, and for any required remediation.

Sec. 78. NEW SECTION. 455B.754 LEGAL RESPONSIBILITY.

This division shall not be interpreted to affect the legal responsibility to the state to conduct response actions under any applicable state law. This division shall not be interpreted to affect or provide immunity from any criminal liability.

Sec. 79. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 6, 2004