

CHAPTER 1042REGULATION OF DEBT MANAGEMENT, MORTGAGE,
DELAYED DEPOSIT, AND LOAN SERVICES PROVIDERS

S.F. 2353

AN ACT relating to debt management, mortgage bankers and brokers, delayed deposit services, regulated loans, and industrial loans, and providing for fees and penalties.

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

DIVISION I
DEBT MANAGEMENT

Section 1. Section 533A.1, Code 2005, is amended to read as follows:

533A.1 DEFINITIONS.

As used in this chapter:

1. “Allowable cost” means an actual, identifiable third-party expense incurred by the licensee on behalf of a specific debtor, such as postage and long distance telephone charges, that may be itemized and charged against the debtor for payment.

2. “Creditor” means a person for whose benefit moneys are being collected and distributed by licensees.

3. “Debt management” means the planning and management of the financial affairs of a debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to the debtor’s creditors in payment or partial payment of the debtor’s obligations for a fee.

4. “Debtor” means any natural person.

5. “Donation” means money given by the debtor to a licensee as a gift for debt management and outside of the debt management contract.

6. “Fee” means the moneys paid by the debtor to the licensee as payment for debt management and shall not include money paid to the licensee or held by the licensee for distribution to a creditor, allowable costs, a distribution to the debtor as a refund, or a donation.

7. “Gratuitous debt-management service” means debt management without charging a fee.

8. “Licensee” means any individual, partnership, unincorporated association, agency or corporation person licensed under this chapter.

9. “Natural person” means an individual who is not an association, joint venture, or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any group of individuals or business entities, however organized.

10. “Office” means each location by street number, building number, city, and state where any person engages in debt management.

11. “Person” means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

12. “Superintendent” means the superintendent of banking.

Sec. 2. Section 533A.2, Code 2005, is amended to read as follows:

533A.2 LICENSES REQUIRED — EXCEPTIONS.

1. No individual, partnership, unincorporated association, agency or corporation shall not engage in the business of debt management in this state without a license therefor as provided for in this chapter, except that the unless exempt under subsection 2. A person engages in the business of debt management in this state if the person solicits to provide, or enters into a contract with one or more debtors to provide debt management to a debtor who resides in this state.

2. The following persons, including employees of such persons, shall not be required to be licensed when engaged in the regular course of their respective businesses and professions:

- a. Attorneys at law.
- b. Banks, savings and loan associations, credit unions, mortgage bankers and mortgage brokers licensed or registered under chapter 535B, insurance companies and similar fiduciaries, regulated loan companies licensed under chapter 536, and industrial loan companies licensed under chapter 536A, authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function.
- c. Abstract companies, while performing an escrow function.
- d. Employees of licensees under this chapter.
- e. Judicial officers or others acting under court orders.
- f. Nonprofit religious, fraternal or ~~co-operative~~ cooperative organizations, ~~including credit unions~~, offering to debtors gratuitous debt-management service.
- g. Those persons, ~~associations, or corporations~~ whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

~~2.~~ 3. The application for ~~such a~~ license shall be in ~~writing, under oath, and in~~ the form prescribed by the superintendent. The application shall contain all of the following:

- a. ~~The name of the applicant; date of incorporation, if incorporated, and the~~
- b. If the applicant is not a natural person, the type of business entity of the applicant and the date the entity was organized.
- c. ~~The address where the business is to be conducted; and similar, including~~ information as to any branch office of the applicant; ~~the~~
- d. ~~The name and resident address of the applicant's owner or partners, or, if a corporation, association, or agency, of the members, shareholders, directors, trustees, principal officers, managers, and agents, and such other pertinent information as the superintendent may require. If the applicant is a partnership, a copy of the certificate of assumed name or articles of partnership shall be filed with the application. If the applicant is not a corporation natural person, a copy of the articles of incorporation legal documents creating the applicant shall be filed with the application.~~
- e. Other pertinent information as the superintendent may require, including a credit report.

~~3.~~ 4. Each application shall be accompanied by a bond to be approved by the superintendent ~~to in favor of the people of the state of Iowa in the penal sum of ten twenty-five thousand dollars for each office, providing, however, the superintendent may require such bond to be raised to a maximum sum of twenty-five thousand dollars, and conditioned that the obligor will not violate any law pertaining to such business and upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents for the purpose of indemnifying debtors for loss resulting from conduct prohibited by this chapter. The aggregate liability of the surety to all debtors doing business with the office for which the bond is filed shall, in no event, exceed the penal sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said the cancellation. No individual, partnership, unincorporated association, agency or corporation~~ A person shall not engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

4. 5. Each applicant shall furnish with the application a copy of the contract the applicant proposes to use between the applicant and the debtor, which shall contain a schedule of fees to be charged the debtor for the applicant's services.

~~5.~~ 6. At the time of making ~~such the~~ application the applicant shall pay to the superintendent the sum of two hundred fifty dollars as a license fee for each of the applicant's offices and an investigation fee in the sum of one hundred dollars. A separate application shall be made for each office maintained by the applicant.

Sec. 3. Section 533A.3, Code 2005, is amended to read as follows:

533A.3 INVESTIGATION — HEARING.

1. Upon the filing of each application and the payment of such ~~the~~ fees, the superintendent shall ~~fix a date and a time for a hearing upon such application, and shall make~~ conduct an investigation of the facts concerning the application and the requirements provided ~~for~~ in subsection 3 of ~~this section~~.

2. The superintendent shall grant or deny each application for a license within sixty days from the ~~filing thereof with date that the application and~~ the required fee are filed and paid, unless the period is extended by written agreement between the applicant and the superintendent.

3. ~~a.~~ The superintendent shall find the ~~enter an order granting the application, and issue and deliver a license to the applicant if the superintendent finds that both of the following are satisfied:~~

a. ~~The~~ experience, financial responsibility, character, and general fitness of the applicant is ~~such~~ sufficient as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this chapter, ~~and that the~~.

b. ~~The~~ applicant, ~~or if the applicant is an unincorporated association, agency or partnership, then the individuals involved, or if the applicant is a corporation then the officers and directors thereof, have~~ has not been convicted of or pled guilty to a felony or a an indictable misdemeanor ~~involving moral turpitude for financial gain, or have~~ has not had a record of having defaulted in payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, ~~the superintendent shall thereupon enter an order granting such application and forthwith issue and deliver a license to the applicant. The superintendent may require as part of the application a credit report and other information.~~

If the applicant is not a natural person, this subsection shall apply to the owners, partners, members, shareholders, officers, directors, and managers of the applicant.

b. ~~4.~~ If the applicant has, at the time of the application, a license for an office located within ten statute miles of the location of the office named in the application, ~~no~~ a license shall not be issued unless the superintendent finds that public convenience will be served by the issuance of ~~such~~ the license.

e. ~~5.~~ No ~~A~~ license shall not be transferable or assignable.

4. ~~6.~~ If the superintendent finds the applicant not qualified ~~by~~ under subsection 3 of ~~this section~~, the superintendent shall enter an order denying ~~such~~ the application and ~~forthwith~~ notify the applicant of the denial, returning the license fee. Within fifteen days after the entry of such order, the superintendent shall prepare written findings and shall ~~forthwith~~ deliver a copy thereof to the applicant.

Sec. 4. Section 533A.5, Code 2005, is amended to read as follows:

533A.5 RENEWAL.

1. ~~Each~~ To continue in the business of debt management, each licensee shall apply on or before ~~July June 1~~ may make application to the superintendent for renewal of its license. ~~The superintendent may assess a late fee of ten dollars per day for applications submitted and accepted for processing after June 1.~~

2. The renewal application shall be on the form prescribed by the superintendent and shall be accompanied by a fee of ~~one~~ two hundred ~~fifty~~ dollars, ~~together with a bond as in the case of an original application.~~ A separate renewal application shall be made for each office maintained by the applicant.

Sec. 5. NEW SECTION. 533A.5A CHANGE IN CONTROL — NAME OR ADDRESS.

1. The prior written approval of the superintendent is required whenever a change in the control of a licensee is proposed. For purposes of this section, "control" in the case of a corporation means direct or indirect ownership, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors

or otherwise effect a change in policy. "Control" in the case of any other entity means the principals of the organization whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. When requesting approval, the person shall submit a fee of one hundred dollars to the superintendent.

2. A licensee shall notify the superintendent and submit a fee of twenty-five dollars per license to the superintendent thirty days in advance of the effective date of any of the following:
 - a. A change in the name of the licensee.
 - b. A change in the address where the business is conducted.

Sec. 6. Section 533A.7, subsection 1, paragraph a, Code 2005, is amended to read as follows:

- a. Conviction of a felony or of a an indictable misdemeanor involving moral turpitude for financial gain.

Sec. 7. Section 533A.9, Code 2005, is amended to read as follows:
533A.9 FEE AGREED IN ADVANCE.

The fee of the licensee charged to the debtor shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall also be clearly stated herein in the contract. The fee of the licensee charged to the debtor shall not exceed fifteen percent of any payment made by the debtor and distributed to the creditors pursuant to the contract. In case of total payment of the contract before the contract period has expired, the licensee shall be entitled only to a fee of no more than three percent of such the final payment.

Sec. 8. NEW SECTION. 533A.9A DONATIONS.

A donation shall not be charged to a debtor or creditor, deducted from a payment to a creditor, deducted from the debtor's account, or from payments made to the licensee pursuant to the debt management contract. If a licensee requests a donation from a debtor, the licensee must clearly indicate that any donation is voluntary and not a condition or requirement for providing debt management.

Sec. 9. Section 533A.10, Code 2005, is amended to read as follows:
533A.10 EXAMINATION OF LICENSEE.

1. The superintendent may examine the condition and affairs of said a licensee. In connection with any examination, the superintendent may examine on oath any licensee, and any director, officer, employee, customer, creditor, or stockholder of a licensee concerning the affairs and business of the licensee. The superintendent shall ascertain whether the licensee transacts its business in the manner prescribed by the law and the applicable rules and regulations issued thereunder. The licensee shall pay the cost of the examination as determined by the superintendent, which fee shall not exceed the sum of one hundred dollars per day of examination based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of the administrative expenses in the operation of the banking division attributable to the finance bureau, as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall automatically suspend the license until the fee is paid subject the licensee to a late fee of up to five percent per day of the amount of the examination fee for each day the payment is delinquent.

2. In the investigation of alleged violations of this chapter, the superintendent may compel the attendance of any person or the production of any books, accounts, records and files used therein, and may examine under oath all persons in attendance pursuant thereto.

~~The superintendent is authorized to make and promulgate as prescribed by law regulations necessary to carry out the purposes of this chapter.~~

Sec. 10. NEW SECTION. 533A.12 RULES.

The superintendent may adopt administrative rules pursuant to chapter 17A to administer and enforce the provisions of this chapter.

Sec. 11. Section 533A.13, Code 2005, is amended to read as follows:

533A.13 LICENSE MANDATORY TO BUSINESS.

It shall be unlawful for ~~an individual, partnership, unincorporated association, agency or corporation~~ a person to engage in the business of debt management without first obtaining a license as required by this chapter. Any ~~individual, partnership, unincorporated association, agency, corporation or any other group of individuals, however organized,~~ person or any owner, partner, member, officer, director, employee, agent, or representative thereof who shall willfully or knowingly engage in the business of debt management without the license required by this chapter, shall be guilty of a serious misdemeanor.

DIVISION II
MORTGAGE BANKERS AND BROKERS

Sec. 12. Section 535B.1, subsection 2, Code Supplement 2005, is amended to read as follows:

2. ~~5A.~~ “First mortgage “Mortgage loan” means a loan of money secured by a first lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior mortgage loan, and a refinancing of a prior mortgage loan.

Sec. 13. Section 535B.1, subsection 4, Code 2005, as amended by 2005 Iowa Acts, chapter 83, section 2, is amended to read as follows:

4. “Mortgage banker” means a person who does one or more of the following:

a. Makes at least four ~~first~~ mortgage loans on residential real property located in this state in a calendar year.

b. Originates at least four ~~first~~ mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.

c. Services at least four ~~first~~ mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen ~~first~~ mortgage loans on residential real estate within the state and who does not sell or transfer ~~first~~ mortgage loans, is exempt from this paragraph if that person is otherwise exempt from the provisions of this chapter.

“Mortgage banker” does not include a person whose job responsibilities on behalf of a licensee or individual registrant are to process mortgage loans, are solely clerical in nature, or otherwise do not involve direct contact with loan applicants.

Sec. 14. Section 535B.1, subsection 5, Code 2005, as amended by 2005 Iowa Acts, chapter 83, section 3, is amended to read as follows:

5. “Mortgage broker” means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four ~~first~~ mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year. “Mortgage broker” does not include a person whose job responsibilities on behalf of a licensee or individual registrant are to process mortgage loans, are solely clerical in nature, or otherwise do not involve direct contact with loan applicants.

Sec. 15. Section 535B.4, subsection 7, Code 2005, is amended to read as follows:

7. Applications for renewals of licenses and individual registrations under this chapter must be filed with the administrator before June 1 of the year of expiration and on forms prescribed by the administrator. A renewal application must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, and four hundred dollars for a license to transact business as a mortgage banker. The fee to renew an individual registration shall be the fee determined pursuant to 2005 Iowa Acts, chapter 83, section 6. The ad-

ministrator may assess a late fee of ten dollars per day for applications or registrations accepted for processing after June 1.

Sec. 16. Section 535B.4, Code 2005, is amended by adding the following new subsection:
NEW SUBSECTION. 8. A licensee shall not conduct business under any other name than that given in the license. A fictitious name may be used, but a licensee shall conduct business only under one name at a time. However, the administrator may issue more than one license to the same person to conduct business under different names at the same time upon compliance for each such additional license with all of the provisions of this chapter governing an original issuance of a license.

Sec. 17. Section 535B.4A, subsection 2, as enacted by 2005 Iowa Acts, chapter 83, section 6, is amended to read as follows:

2. An individual registrant who registers pursuant to this section for the first time shall submit to a national criminal background history check through the federal bureau of investigation prior to being registered. The administrator may submit the registrant's fingerprints to the federal bureau of investigation by the department of public safety through the state criminal history repository for the purpose of a national criminal history check. The results of a criminal history check conducted pursuant to this subsection shall not be considered a public record under chapter 22. The administrator shall collect fees necessary to cover the costs associated with criminal ~~background~~ history checks conducted pursuant to this section.

Sec. 18. NEW SECTION. 535B.6A NOTICE AND APPROVAL REQUIRED.

1. A licensee shall submit a notice of name change and a twenty-five dollar fee for each license to the administrator thirty days prior to changing the name of the licensee.

2. The prior written approval is required whenever a change in control of a licensee or registrant is proposed. For purposes of this section, "control" means as defined in section 524.103. The administrator may require the licensee to provide any information deemed necessary by the administrator to determine whether a new application is required. At the time of requesting the approval, the licensee or registrant requesting the change of control shall pay to the administrator a fee of one hundred dollars.

Sec. 19. Section 535B.7, Code 2005, is amended to read as follows:

~~535B.7 SUSPENSION OR REVOCATION OF LICENSE~~ DISCIPLINARY ACTION.

1. The administrator may, pursuant to chapter 17A, ~~suspend or revoke any license issued pursuant to this chapter~~ take disciplinary action against a licensee or individual registrant if the administrator finds any of the following:

a. The licensee or individual registrant has violated a provision of this chapter or a rule adopted under this chapter or any other state or federal law applicable to the conduct of its business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, if it had existed at the time of the original application for the license or individual registration, would have warranted the administrator to refuse originally to issue the license or individual registration.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee or individual registrant has violated an order of the administrator.

2. The administrator may impose one or more of the following disciplinary actions against a licensee or individual registrant:

a. Revoke a license or individual registration.

b. Suspend a license or individual registration until further order of the administrator or for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee or individual registrant behavior.

~~2.~~ 3. The administrator may order an emergency suspension of a licensee's license or an individual's registration pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee or individual registrant by restricted certified mail. Upon issuance of the suspension order, the licensee or individual registrant must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

Except as provided in this section, a license or individual registration shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

~~3.~~ 4. A licensee may surrender a license and an individual registrant may surrender an individual registration by delivering to the administrator written notice of surrender, but a surrender does not affect the licensee's or individual registrant's civil or criminal liability for acts committed before the surrender.

~~4.~~ 5. A revocation, suspension, or surrender of a license or individual registration does not impair or affect the obligation of a preexisting lawful contract between the licensee or individual registrant and any person, including a mortgagor.

Sec. 20. Section 535B.9, subsection 1, Code 2005, as amended by 2005 Iowa Acts, chapter 83, section 7, is amended to read as follows:

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state, together with evidence of whether the applicant is seeking to transact business as a mortgage broker or as a mortgage banker. The bond shall be in the amount of twenty-five ~~twenty-five~~ fifty thousand dollars for an applicant seeking to transact business solely as a mortgage broker, or fifty thousand dollars for an applicant seeking to ~~transact business as a mortgage banker~~. The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the mortgage broker or mortgage banker and to the administrator indicating the surety's intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

Sec. 21. Section 535B.10, Code Supplement 2005, is amended to read as follows:
535B.10 INVESTIGATIONS AND EXAMINATIONS.

1. Within one hundred twenty days after the end of a mortgage banker licensee's fiscal year, the mortgage banker licensee shall file financial statements which are certified audited by an independent certified public accounting firm.

~~2. For the purposes of discovering violations of this chapter or any related rules adopted under this chapter or for securing information lawfully required under this chapter, the administrator may at any time and as often as the administrator deems necessary, investigate the business and examine the books, accounts, records, and files used by a licensee or individual registrant. However, if the financial statement required by subsection 1 shows that the licensee satisfies the minimum net worth requirement necessary to be an approved mortgagee by the United States department of housing and urban development pursuant to its guidelines, as amended, the licensee is not subject to an investigation or examination as described in this subsection.~~

~~3. Notwithstanding subsection 2, all licensees are subject to limited examination by the administrator to investigate complaints or alleged violations about the licensee made to the administrator. Such investigation or examination by the administrator shall be restricted to acquiring information from the licensee relevant to the alleged violations.~~

~~4.~~ 3. In conducting any examination under this section, the administrator may rely on current reports made by the licensee which have been prepared for the following federal agencies or federally related entities:

- a. United States department of housing and urban development.

- b. Federal housing administration.
- c. Federal national mortgage association.
- d. Government national mortgage association.
- e. Federal home loan mortgage corporation.
- f. Veterans administration.

5. ~~4.~~ With respect to mortgage lenders or mortgage bankers who are specifically exempted from this chapter but are subject to sections 535B.11, 535B.12, and 535B.13, the powers of examination and investigation concerning compliance with sections 535B.11, 535B.12, and 535B.13 shall be exercised by the official or agency to whose supervision the exempted person is subject. If the administrator receives a complaint or other information concerning noncompliance with this chapter by an exempted person, the administrator shall inform the official or agency having supervisory authority over that person.

~~6.~~ 5. a. The licensee shall pay the cost of the examination or investigation as determined by the administrator based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the administrator, incurred in the discharge of duties imposed upon the administrator by this chapter.

b. The total charge for an examination or investigation shall be paid by the licensee to the administrator within thirty days after the administrator has requested payment. The administrator may by rule provide for a charge for late payment of the fee. The amount of the fee shall be based on the actual costs of the examination as determined by the administrator. Examination reports and correspondence regarding these reports Failure to pay the charge within thirty days shall subject the licensee to a late fee of up to five percent of the amount of the examination or investigation charge for each day the payment is delinquent.

6. a. All papers, documents, examination reports, and other writings relating to the supervision of licensees and registrants shall be kept confidential except as provided in this subsection, notwithstanding chapter 22.

b. The administrator may furnish information relating to the supervision of licensees and registrants to the federal agencies or federally related entities listed in subsection 3, the federal deposit insurance corporation, the federal reserve system, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, the federal home loan bank, and financial institution regulatory authorities of other states, or to any official or supervising examiner of such regulatory authorities.

c. The administrator may release summary complaint information regarding a particular licensee so long as the information does not specifically identify the complainant.

d. The administrator may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information.

e. The administrator may prepare and circulate reports provided by law.

f. The administrator may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the administrator.

g. The administrator may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

Sec. 22. Section 535B.11, subsection 6, Code 2005, is amended to read as follows:

6. If a person in connection with a first mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty calendar days of the borrower's request made by certified mail return receipt requested in connection with a proposed sale of the property, then the borrower may authorize the preparation of a new abstract of title to the property and the person failing to deliver the original abstract shall pay to the borrower the reasonable costs of preparation. If the borrower brings an action against the person failing to deliver to recover such ~~the~~ payment and in the action recovers the payment, then the borrower shall also be entitled to recover attorney fees and court costs incurred in the action.

Sec. 23. Section 535B.11, subsection 7, unnumbered paragraph 1, Code 2005, is amended to read as follows:

When the servicing of a first mortgage loan is transferred, sold, purchased, or accepted by a licensee or registrant, the licensee or registrant who is transferring or selling the servicing shall issue to the mortgagor, within ~~five business~~ fifteen calendar days prior to the effective date of the transfer, a notice which shall include at a minimum:

Sec. 24. NEW SECTION. 535B.17 POWERS AND DUTIES OF THE ADMINISTRATOR — WAIVER AUTHORITY.

In addition to any other duties imposed upon the administrator by law, the administrator may participate in a multistate automated licensing system for mortgage bankers, mortgage brokers, and individual registrants. For this purpose, the administrator may establish by rule or order new requirements as necessary, including but not limited to requirements that license applicants and individual registrants submit to fingerprinting, criminal history checks, and pay fees therefor.

DIVISION III DELAYED DEPOSIT SERVICES

Sec. 25. Section 533D.3, subsection 2, Code 2005, is amended to read as follows:

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

Sec. 26. Section 533D.3, subsection 3, paragraph a, Code 2005, is amended to read as follows:

a. An application fee ~~in an amount prescribed by rule adopted by the superintendent of one hundred dollars.~~

Sec. 27. Section 533D.3, subsection 6, Code 2005, is amended to read as follows:

6. a. A license issued pursuant to this chapter shall be conspicuously posted at the licensee's place of business. A license shall remain in effect until the next succeeding May 1, unless earlier suspended or revoked by the superintendent.

b. A license shall be renewed annually by filing with the superintendent on or before April 1 an application for renewal containing such information as the superintendent may require to indicate any material change in the information contained in the original application or succeeding renewal applications and a renewal fee of ~~one~~ two hundred fifty dollars.

c. The superintendent may assess a late fee of ten dollars per day for applications submitted and accepted for processing after April 1.

Sec. 28. Section 533D.6, subsection 1, Code 2005, is amended to read as follows:

1. The prior written approval of the superintendent is required for the continued operation of a delayed deposit services business whenever a change in control of a licensee is proposed. The person requesting such approval shall pay to the superintendent a fee of one hundred dollars. Control in the case of a corporation means direct or indirect ownership, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. Costs incurred by the superintendent in investigating a change of control request shall be paid by the person requesting such approval.

Sec. 29. Section 533D.7, subsection 3, Code 2005, is amended to read as follows:

3. A fee of ~~one hundred fifty~~ twenty-five dollars shall be paid to the superintendent for each

request made pursuant to subsection 1 or 2 for a change of location. For each new branch of-fice established, a fee of two hundred fifty dollars shall be paid to the superintendent.

Sec. 30. NEW SECTION. 533D.7A NOTICE OF NAME CHANGE.

A licensee shall notify the superintendent thirty days in advance of the effective date of a change in the name of the licensee. With the notice of change, the licensee shall submit a fee of twenty-five dollars per license to the superintendent.

Sec. 31. Section 533D.9, subsection 2, Code 2005, is amended to read as follows:

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

a. The fee to be charged for the transaction.

b. The annual percentage rate on the first hundred dollars on the face amount of the check which the fee represents, and the annual percentage rate on subsequent one hundred dollar increments which the fee represents, if different as computed pursuant to the federal Truth in Lending Act.

c. The date on which the check will be deposited or presented for negotiation.

d. Any penalty, not to exceed fifteen dollars, which the licensee will charge if the check is not negotiable on the date agreed upon. A penalty to be charged pursuant to this section shall only be collected by the licensee once on a check no matter how long the check remains unpaid. A penalty to be charged pursuant to this section is a licensee's exclusive remedy and if a licensee charges a penalty pursuant to this section no other penalties under this chapter or any other provision apply.

Sec. 32. Section 533D.11, Code 2005, is amended to read as follows:

533D.11 EXAMINATION OF RECORDS BY SUPERINTENDENT.

1. The superintendent shall examine the books, accounts, and records of each licensee annually. The costs of the superintendent incurred in an examination shall be paid by the licensee at least once a year and as needed to secure information required pursuant to this chapter and to determine whether any violations of this chapter have occurred. The licensee shall pay the cost of the examination.

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

3. The superintendent shall determine the cost of the examination or investigation based upon the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter.

4. Failure to pay the examination or investigation fee within thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of up to five percent of the amount of the examination or investigation fee for each day the payment is delinquent.

5. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information so long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superinten-

dent. The superintendent may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

DIVISION IV
REGULATED LOANS

Sec. 33. Section 536.2, Code 2005, is amended to read as follows:

536.2 APPLICATION — FEES.

1. Application ~~An application~~ for such a license shall be in writing, under oath, and in the form prescribed by the superintendent, and shall contain the all of the following:

a. The name and the address, (both of the residence and place of business), of the applicant, and if, If the applicant is not a copartnership or association natural person, the application shall include the name and address of every member thereof, and if a corporation, of each officer and director thereof; also the, director, officer, manager, and trustee of the applicant.

b. The county and municipality with street and number, if any, of the place where the business of making loans under the provisions of this chapter is to be conducted, and such further

c. Other relevant information as the superintendent may require.

2. Such ~~The~~ applicant at the time of making ~~such~~ the application shall pay to the superintendent the sum of ~~fifty one hundred~~ dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and the sum of one hundred dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as a fee for investigating the application and the additional sum of one hundred twenty-five dollars if the liquid assets of the applicant are not in excess of twenty thousand dollars, and two hundred fifty dollars if the liquid assets of the applicant are in excess of twenty thousand dollars, as an annual license fee.

3. Every applicant shall also prove, in form satisfactory to the superintendent, that the applicant has available for the operation of such business at the place of business specified in the application, liquid assets of at least five thousand dollars, or that the applicant has at least the said amount actually in use in the conduct of such business at such place of business.

Sec. 34. Section 536.7, Code 2005, is amended to read as follows:

536.7 SEPARATE LICENSE — CHANGE OF NAME OR PLACE OF BUSINESS.

1. Not more than Only one place of business where such loans are made shall be maintained under ~~the same a~~ license, ~~but, However,~~ the superintendent may issue more than one license to the same licensee upon compliance, for each such additional license, with all the provisions of this chapter governing an original issuance of a license.

~~Whenever a licensee shall change such place of business to another location the licensee shall at once give written notice thereof to the superintendent who shall attach to the license in writing the superintendent's record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new place of business.~~

2. A licensee shall notify the superintendent and submit a fee of twenty-five dollars per license to the superintendent thirty days in advance of the effective date of any of the following:

a. A change in the name of the licensee.

b. A change in the address of the location where the business is conducted.

Sec. 35. NEW SECTION. 536.7A CHANGE IN CONTROL — APPROVAL.

The prior written approval of the superintendent is required whenever a change in control of the licensee is proposed. For purposes of this section, "control" means control as defined in section 524.103. The superintendent may require information deemed necessary to determine whether a new application is required. When requesting approval, the person shall submit a fee of one hundred dollars to the superintendent.

Sec. 36. Section 536.8, Code 2005, is amended to read as follows:

536.8 ANNUAL FEE — PAYMENT — NEW BOND.

Every licensee shall annually, on or before ~~the fifteenth day of each December 1,~~ submit a

renewal application on forms prescribed by the superintendent and pay to the superintendent the sum as provided in section 536.2 as an annual license fee for the next succeeding calendar year and shall at the same time file with the superintendent a new bond or renewal of the old bond in the same amount and of the same character as required by section 536.3. The superintendent may assess a late fee of ten dollars per day, per license for renewal applications received after December 1.

Sec. 37. Section 536.10, Code 2005, is amended to read as follows:

536.10 EXAMINATION OF BUSINESS — FEE.

1. For the purpose of discovering violations of this chapter or securing information lawfully required by the superintendent hereunder, the superintendent may at any time, either personally or by an individual or individuals duly designated by the superintendent designee, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business described in section 536.1, whether such person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the

a. The superintendent and the superintendent's duly designated representatives designee shall have and be given free access to the place of business, books, accounts, papers, records, files, safes, and vaults of all such persons examined.

b. The superintendent and all individuals duly designated by the superintendent the designee shall have authority to require the attendance of and to examine under oath all individuals whomsoever whose testimony the superintendent may require relative to such the loans or such the business.

2. The superintendent shall make an examination of the affairs, place of business, and records of each licensed place of business at least once each year.

3. A licensee subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent an examination fee, based on the actual cost of the operation of the regulated loan bureau of the banking division of the department of commerce, and the proportionate share of administrative expenses in the operation of the banking division attributable to the regulated loan bureau as determined by the superintendent of banking. The fee shall apply equally to all licenses and shall not be changed more frequently than annually and when changed, A fee change shall be effective on January 1 of the year following the year in which the change is approved.

4. Upon completion of each examination required or allowed by this chapter, the examiner shall render a bill for such fee, in triplicate, and shall deliver one copy of the bill for the examination to the licensee and two copies to the superintendent. Failure to pay the fee to the superintendent within ten thirty days after the date of the close of each such the examination shall subject the licensee to an additional fee of five percent of the amount of such the fee for each day the payment is delinquent.

5. Except as otherwise provided by this chapter, all papers, documents, examination reports, and other writing relating to the supervision of licensees are not public records and are not subject to disclosure under chapter 22. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information so long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent. The superintendent may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

Sec. 38. Section 536.13, Code Supplement 2005, is amended to read as follows:

536.13 ~~BANKING COUNCIL SUPERINTENDENT~~ — REPORT — CLASSIFICATION — RULES — PENALTY — CONSUMER CREDIT CODE.

1. The ~~state banking council superintendent~~ may investigate the conditions and find the facts with reference to the business of making regulated loans, as described in section 536.1 and after making the investigation, report in writing its findings to the next regular session of the general assembly, and upon the basis of the facts:

a. Classify regulated loans by a rule according to a system of differentiation which will reasonably distinguish the classes of loans for the purposes of this chapter.

b. Determine and fix by a rule the maximum rate of interest or charges upon each class of regulated loans which will induce efficiently managed commercial capital to enter the business in sufficient amounts to make available adequate credit facilities to individuals. The maximum rate of interest or charge shall be stated by the ~~council superintendent~~ as an annual percentage rate calculated according to the actuarial method and applied to the unpaid balances of the amount financed.

2. Except as provided in subsection 7, the ~~council superintendent~~ may redetermine and re-fix by rule, in accordance with subsection 1, any maximum rate of interest or charges previously fixed by it, but the changed maximum rates shall not affect pre-existing loan contracts lawfully entered into between a licensee and a borrower. All rules which the ~~council superintendent~~ may make respecting rates of interest or charges shall state the effective date of the rules, which shall not be earlier than thirty days after notice to each licensee by mailing the notice to each licensed place of business.

3. Before fixing any classification of regulated loans or any maximum rate of interest or charges, or changing a classification or rate under authority of this section, the ~~council superintendent~~ shall give reasonable notice of ~~its~~ ~~the superintendent's~~ intention to consider doing so to all licensees and a reasonable opportunity to be heard and to introduce evidence with respect to the change or classification.

4. Beginning July 4, 1965, and until such time as a different rate is fixed by the ~~council superintendent~~, the maximum rate of interest or charges upon the class or classes of regulated loans is ~~three as follows~~:

a. ~~Three~~ percent per month on any part of the unpaid principal balance of the loan not exceeding one hundred fifty dollars ~~and two~~.

b. ~~Two~~ percent per month on any part of the loan in excess of one hundred fifty dollars, but not exceeding three hundred dollars, ~~and one~~.

c. ~~One~~ and one-half percent per month on any part of the unpaid principal balance of the loan in excess of three hundred dollars, but not exceeding seven hundred dollars, ~~and one~~.

d. ~~One~~ percent per month on any part of the unpaid principal balance of the loan in excess of seven hundred dollars.

5. A licensee under this chapter may lend any sum of money not exceeding twenty-five thousand dollars in amount and may charge, contract for, and receive on the loan interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the ~~council superintendent~~ under authority of this section or pursuant to subsection 7 for those amounts in excess of ten thousand dollars.

6. If any interest or charge on a loan regulated by this chapter in excess of those permitted by this chapter is charged, contracted for, or received, the contract of loan is void as to interest and charges and the licensee has no right to collect or receive any interest or charges. In addition, the licensee shall forfeit the right to collect the lesser of two thousand dollars of principal of the loan or the total amount of the principal of the loan.

7. a. The ~~council superintendent~~ may establish the maximum rate of interest or charges as permitted under this chapter for those loans ~~whose~~ ~~with an~~ unpaid principal balance is ~~of~~ ten thousand dollars or less. For those loans ~~whose~~ ~~with an~~ unpaid principal balance is ~~is~~ over ten thousand dollars, the maximum rate of interest or charges which a licensee may charge shall be the greater of the rate permitted by chapter 535 or the rate authorized for supervised financial organizations by chapter 537.

b. The Iowa consumer credit code, chapter 537, applies to a consumer loan in which the licensee participates or engages, and a violation of the Iowa consumer credit code, chapter 537, is a violation of this chapter.

c. Article 2, parts 3, 5, and 6 of chapter 537, and article 3 of chapter 537, sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305, and 537.3306 apply to any credit transaction, as defined in section 537.1301 in which a licensee participates or engages, and any violation of those parts or sections is a violation of this chapter. For the purpose of applying the Iowa consumer credit code, chapter 537, to those credit transactions, "consumer loan" includes a loan for a business purpose.

d. A provision of the Iowa consumer credit code, chapter 537, applicable to loans regulated by this chapter supersedes a conflicting provision of this chapter.

Sec. 39. Section 536.16, subsection 1, Code 2005, is amended to read as follows:

1. Section 536.2 to the extent it ~~requires payment of an annual license fee in excess of two hundred fifty dollars and~~ requires a person to prove the person has any dollar amount of liquid assets or the use of any dollar amount in the conduct of the person's business at the licensed place of business.

Sec. 40. Section 536.23, Code 2005, is amended to read as follows:

536.23 JUDICIAL REVIEW.

Judicial review of the actions of the superintendent ~~or the state banking council~~ may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

Sec. 41. Section 536.28, subsection 3, Code Supplement 2005, is amended by striking the subsection.

Sec. 42. Section 536.25, Code 2005, is repealed.

DIVISION V INDUSTRIAL LOANS

Sec. 43. Section 536A.7, Code 2005, is amended to read as follows:

536A.7 APPLICATION FOR LICENSE.

1. ~~Applications~~ The application for licenses ~~a license~~ to engage in the business of operating an industrial loan ~~companies~~ company shall be ~~in writing on such forms in the form~~ as may be prescribed by the superintendent. The application shall give all of the following information:

a. ~~The~~ name of the corporation, ~~the~~

b. The location where the business is to be conducted, including the street address of the place of business, ~~the~~

c. ~~The~~ names and addresses of the officers and directors of the corporation ~~and such other~~

d. Other relevant information as the superintendent shall require.

2. At the time of making ~~such~~ the application the applicant shall pay to the superintendent the sum of ~~fifty one hundred~~ dollars to cover the cost of the investigation of the applicant. The applicant shall also pay to the superintendent the sum of two hundred fifty dollars as an annual license fee for the period ending December 31 ~~next~~ following the application; ~~provided that if the license is granted after June 30 in any year, the license fee for the remainder of that year shall be one hundred twenty-five dollars and any license fee paid by the applicant in excess of that amount shall be refunded by the superintendent.~~

Sec. 44. Section 536A.12, Code 2005, is amended to read as follows:

536A.12 CONTINUING LICENSE — ANNUAL FEE — CHANGE OF LOCATION — CHANGE OF CONTROL.

1. Each ~~such~~ license remains in full force and effect until surrendered, revoked, or suspended, or until there is a change of control ~~on or after January 1, 1996.~~

~~2.~~ A licensee, on or before the second day of January ~~December 1~~, shall pay to the superintendent the sum of two hundred fifty dollars as an annual license fee for the succeeding calendar year. The licensee shall submit the annual license fee with a renewal application in the form prescribed by the superintendent. The superintendent may assess a late fee of ten dollars per day per license for applications received after December 1.

~~3.~~ When a licensee changes its name or place of business from one location to another in the same city, it shall at once give written notice to the superintendent who shall attach to the license in writing the superintendent's record of the change and the date of the change, which is authority for the operation of the business under that license at the new place of business the licensee shall notify the superintendent thirty days in advance of the effective date of the change. A licensee shall pay a fee of twenty-five dollars per license to the superintendent with the notification of change.

~~2.~~ ~~4. a.~~ A person who proposes to purchase or otherwise acquire, directly or indirectly, any of the outstanding shares of an industrial loan company which would result in a change of control of the industrial loan company, shall first apply in writing to the superintendent for a certificate of approval for the proposed change of control.

b. At the time of making the application, the applicant shall pay to the superintendent one hundred dollars to cover the cost of the investigation of the applicant.

c. The superintendent shall grant the certificate if the superintendent is satisfied that of both of the following:

(1) The person who proposes to obtain control of the industrial loan company is qualified by character, experience, and financial responsibility to control and operate the industrial loan company in a sound and legal manner, and that the

(2) The interests of the thrift certificate holders, creditors, and shareholders of the industrial loan company, and of the public generally, shall will not be jeopardized by the proposed change of control.

d. If a board member of the industrial loan company has reason to believe any of the requirements of this subsection have not been complied with met, the board member shall promptly report the facts in writing such facts to the superintendent.

e. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control of the industrial loan company, or to effect a change in the control of the industrial loan company, such the doubt shall be resolved in favor of reporting the facts to the superintendent.

~~3.~~ ~~5. a.~~ For purposes of this section, "control" means control as defined in section 524.103. However, a change of control does not occur when a majority shareholder of an industrial loan company transfers the shareholder's shares of the industrial loan company to a revocable trust, so long as the transferor retains the power to revoke the trust and take possession of ~~such~~ the shares.

b. Notwithstanding the provisions of paragraph "a", a change of control is deemed to occur two years after the death of the majority shareholder, whether the shareholder's shares of the industrial loan company are held in a revocable trust or otherwise.

Sec. 45. Section 536A.15, Code 2005, is amended to read as follows:

536A.15 EXAMINATION OF LICENSEES.

1. The superintendent or the superintendent's ~~duly authorized representative~~ designee shall, at least once each year without previous notice, examine the books, accounts, and records of each licensee engaged in the industrial loan business as defined by this chapter. A licensee issuing senior debt to the general public shall be audited at the expense of the licensee by a certified public accountant licensed to practice in the state of Iowa. A licensee not issuing senior debt to the general public may provide an audited statement of the licensee's parent corporation which includes the Iowa licensee. After receiving such an audit or audited statement, the superintendent may make further examination of the licensee as the superintendent deems necessary. A record of each examination shall be kept in the superintendent's office. ~~The examinations and reports, and other information connected with them, shall be kept confidential in the office of the superintendent and shall not be subject to publication or disclosure to others except as in this chapter provided.~~

2. Except as otherwise provided by this chapter, all papers, documents, examination reports, and other writing relating to the supervision of licensees are not public records and are not subject to disclosure under chapter 22. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information so long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent. The superintendent may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

3. Any evidence of criminal acts committed by officers, directors, or employees of an industrial loan company shall be reported by the superintendent to the proper authorities.

4. The licensee shall be charged and shall pay the actual costs of the examination as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent incurred in the discharge of the duties imposed upon the superintendent by this chapter. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of five percent of the amount of the examination fee for each day the payment is delinquent.

Sec. 46. Section 536A.25, subsections 1 and 3, Code 2005, are amended to read as follows:

1. a. An industrial loan company licensed under this chapter that sells debt instruments to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness shall not make a loan of money or property to or guarantee the obligations of its directors or officers; or loan to any borrower, other than a subsidiary or affiliated corporation, more than twenty percent of its total capital, surplus, and undivided profits.

b. A licensee shall not make a loan under any other name or at any other place of business than that named in the license.

3. Investments by an industrial loan company licensed under this chapter that sells debt instruments to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness are subject to the provisions of section 524.901 as applied to state banks.

Sec. 47. Section 536A.30, Code 2005, is amended to read as follows:

536A.30 NONRESIDENT LICENSEES — FACE-TO-FACE SOLICITATION.

Notwithstanding other provisions of this chapter to the contrary, a person ~~which~~ that neither has an office physically located in this state nor engages in face-to-face solicitation in this state, if authorized by another state to make loans in that state at a rate of finance charge in excess of the rate provided in chapter 535, shall not be subject to the following provisions of this chapter:

~~1. Section 536A.7, to the extent it requires payment of an annual license fee in excess of two hundred fifty dollars.~~

~~2. Section 536A.8.~~

~~3. 2. Section 536A.10, subsections 2, 3, and 4.~~

~~4. Section 536A.12, to the extent it requires a licensee to pay an annual license fee which, when combined with that required in section 536A.7, is in excess of two hundred fifty dollars.~~

~~5. 3. Section 536A.15, to the extent it requires the superintendent to make an examination and audit of the books, accounts and records of the licensee on a periodic basis.~~