Text of the

PROPOSED IOWA BANKING ACT OF 1969

(SENATE FILE 18)

With Explanatory Comments Following

Each Section of the Bill

(See Final Report of the Banking Laws Study Committee, Report of the Legislative Research Committee, submitted to the Sixty-third General Assembly)

Iowa Legislative Research Bureau

BANKING LAWS STUDY COMMITTEE
FINAL DRAFT PROPOSAL

A BILL FOR

An Act relating to establishment, management, operation, and regulation of state banks in Iowa, and to the state superintendent of banking, state banking board, and state banking department.

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

Division I

GENERAL PROVISIONS

Section 101. Short title. This Act shall be known and may be cited as the Iowa Banking Act of 1969.

Comment

This provision is self-explanatory.

Sec. 102. Statement of intent. The general assembly declares as its purpose in adopting this Act to provide for:

1. The safe and sound conduct of the business of banking.
2. The conservation of the assets of state banks.
3. The maintenance of public confidence in state banks.
4. The protection of the interests of depositors, creditors, shareholders and of the interest of the public in a sound and strong banking system.
5. The opportunity for state banks to be competitive with each other and with banks existing under the laws of other states and the United States.
6. The opportunity for state banks to effectively serve the convenience and banking needs of their depositors, borrowers and other customers and to participate in and promote the economic progress of Iowa and of the United States.
7. The opportunity for the management of a state bank to exercise its business judgment, in conducting the affairs of the state bank, to the extent compatible with, and subject to

the purposes of this Act.

8. The delegation to the superintendent of adequate rule-making power and administrative discretion, in order that the supervision and regulation of state banks may be flexible and readily responsive to changes in economic conditions and changes in banking and fiduciary practices.

9. The simplification and modernization of the law governing the business of banking and the exercise of certain fiduciary powers.

Comment

This section, which sets forth the basic policies underlying the statute, is new and has no counterpart in existing law. It articulates, as the primary criterion and principal justification for banking regulation, the need for safety and soundness of state banks in the interest not only of depositors but also of the public at large. This section also recognizes, in subsections 5 through 9, that there still remains a broad area in which the policies for banking legislation and regulation may create a progressive rather than restrictive atmosphere. The premises underlying such policies recognized by this statute are that contemporary banking is faced with, and should have the opportunity to meet, a high degree of competition from other banks and other financial organizations. The banking industry should also have freedom to adapt itself to changing and expanding requirements of the community in order that it may make its proper contribution to economic progress. It is also recognized that banking legislation should not be overly-detailed but should permit the supervisory authority to shape regulation, within statutory standards and guidelines, in order to meet changes in banking and economic conditions without repeated, detailed legislative amendment. This statute does not, therefore, depart from the traditional insistence on solvency and protection of the interest of depositors and of the public interest as the basis for banking laws but supplements that policy with other important considerations. It does not discard fundamental safeguards but

provides flexibility in the law by means of the regulatory process while preserving these safeguards. The objective is a simplified and modernized legal framework for maintaining a sound and vital banking system.

Sec. 103. Definitions. As used in this Act, unless the context otherwise requires, the term:

1. "Account" means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.

2. "Agreement for the payment of money" means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but not limited to, amounts payable on open book accounts receivable and executory contracts and rentals payable under leases of personal property.

3. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger.

4. "Assets" means all the property and rights of every kind of a state bank.

5. "Bank" means any person engaged in the business of banking, authorized by law to receive deposits and subject to supervision by banking authorities of the United States or of any state.

6. "Business of banking" means the business generally done by banks.

7. "Capital" means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

8. "Capital structure" means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section four hundred four (404) of this Act.

9. "Customer" means any person having an account with a

state bank. For the purpose of this Act, a government or governmental body or entity may be a customer.

10. "Evidence of indebtedness" means a note, draft or similar negotiable or nonnegotiable instrument.

11. "Fiduciary" means an executor, administrator, guardian, conservator, receiver, trustee or one acting in a similar capacity.

12. "Insolvent" means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business.

13. "Insured bank" means a state bank the deposits of which are insured in accordance with the provisions of the federal deposit insurance act.

14. "Municipal corporation" means an incorporated city or town.

15. "Person" means an individual, a corporation (domestic or foreign), a partnership, an association, a trust or a fiduciary.

16. "Private bank" means an individual, partnership or other unincorporated association engaged in the business of banking to the extent provided for and limited by sections seventeen hundred one (1701) and seventeen hundred two (1702) of this Act and which was lawfully engaged in the business of banking in this state prior to April 19, 1919.

17. "Shareholder" means one who is a holder of record of shares in a state bank.

18. "Shares" means the units into which the proprietary interests in a state bank are divided.

19. "State bank" means any bank incorporated pursuant to the provisions of this Act after the effective date thereof and any "state bank" or "savings bank" incorporated pursuant to the laws of this state and doing business as such upon the effective date of this Act.

20. "Surplus" means the aggregate of the amount originally paid in as required by subsection one (1) of section four hundred two (402) of this Act, any amounts transferred to surplus

pursuant to subsection two (2) of section four hundred two (402) and any amounts subsequently designated as such by action of the board of directors of the state bank.

21. "Superintendent" means the superintendent of banking of this state.

22. "Undivided profits" means the accumulated undistributed net profits of a state bank, including any residue from the fund established pursuant to section four hundred three (403) of this Act, after:

a. Payment or provision for payment of taxes and expenses of operations.

b. Transfers to reserves allocated to a particular asset or class of assets.

c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.

d. Transfers to surplus and capital.

e. Amounts declared as dividends to shareholders.

23. "Unincorporated area" means a village within which a state bank or national bank has its principal place of business.

Comment

This section is new and has no counterpart in existing law. A definitional section is deemed necessary to avoid, where possible, ambiguity with respect to the meaning of oft used words and phrases.

"Account" is given a broad meaning. It includes any form of deposit account as well as an obligation to the state bank for the payment of money.

The purpose of the definition of "agreement for the payment of money" is to cover credit transactions which are not in the form of evidences of indebtedness or investment securities.

The definition of "articles of incorporation" adopts section 496A.2(4) of the Iowa Business Corporation Act.

The word "bank" is given a broad meaning and includes national as well as banks subject to state supervisory authorities. The

word "bank", standing alone, does not include a private bank, provided for and limited by sections 1701 and 1702, as such private banks are not subject to the supervision of the superintendent, unless an election is made by it to be so regulated, in which case it will be treated as a state bank.

The word "customer" is given a broad meaning and includes any person having an account, as defined in subsection 1, with a state bank.

The word "person" is given the same broad definition as in section 496A.2(1) of the Iowa Business Corporation Act.

The word "shareholder" is given the same definition as in section 496A.2(7) of the Iowa Business Corporation Act.

The word "shares" is given the same definition as in section 496A.2(5) of the Iowa Business Corporation Act.

The definition of "state bank" is particularly important. As used in this Act, the phrase has reference to any bank formed after the effective date of this act and subject to its provisions, and any pre-existing bank subject to the laws of this state, whether denominated a state bank or a savings bank. This definition makes clear that the provisions of this act shall have equal application to banks formed subject to its provisions as well as to banks which were operating on the effective date of its enactment.

The term "unincorporated area" is defined in a manner that describes those geographical areas wherein a state bank or national bank may, under existing law, locate its principal place of business. See section 528.1. Although a state bank originally incorporated pursuant to this Act must have its principal place of business in a municipal corporation, existing law permits the location of a state bank in a "village". Since the validity of such banks is not affected by this Act and since some description of the location of the principal place of business of these state banks was necessary, the term "unincorporated area" as defined in section 103(23) has been used.

Sec. 104. Rules of construction. In the interpretation and construction of this Act:

1. Transactions or acts validly entered into or performed before the effective date of this Act and the rights, duties and interests flowing from them remain valid thereafter and may be completed or terminated according to their terms and as permitted by any statute repealed or amended by this Act, as though such repeal or amendment had not occurred.

2. All individuals who, upon the effective date of this Act, hold any office under a provision of law repealed by this Act, and which offices are continued by this Act shall continue to hold such offices according to their former tenure.

Comment

Subsection 1 is similar to the provision contained in the Uniform Commercial Code respecting previously entered into transactions. See section 554.10101.

Subsection 2 preserves existing rights relative to office holding, as explained therein.

Sec. 105. Effect on existing banks.

1. The corporate existence of a state bank existing and operating on the effective date of this Act shall not be affected by the enactment of this Act.

2. All state banks shall be subject to the provisions and requirements of this Act in every particular, and all national banks, now or hereafter doing business in this state, shall be subject to the provisions of this Act, to the extent applicable, from the effective date hereof.

Comment

Subsection 1 of this section preserves the corporate existence of a state bank operating at the time of the enactment of this statute.

Subsection 2 insures that all state banks will be subject to the provisions of this statute from the effective date of its enactment. Also, national banks shall be subject to this statute,

from the effective date of its enactment, to the extent that such banks are subject to the state law.

Sec. 106. Renewal of the corporate existence of an existing state bank.

1. The corporate existence of a state bank existing and operating on the effective date of this Act, which expires subsequent to the effective date of this Act, may be renewed prior to the expiration thereof, following the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon, at a meeting held for that purpose and called in the manner required by section five hundred nine (509) and by delivery to the superintendent of articles of incorporation in conformance with the provisions of section three hundred two (302) of this Act together with the applicable fees for the filing and recording of the articles of incorporation. If the superintendent finds that the articles of incorporation satisfy the requirements of this section, he shall deliver them to the secretary of state for filing and recording in his office. Following the receipt of the articles of incorporation, the secretary of state shall proceed in accordance with the provisions of section three hundred six (306) of this Act.

2. Sections three hundred three (303), three hundred four (304), three hundred five (305), three hundred seven (307), three hundred eight (308), and three hundred nine (309) of this Act shall not be applicable to a state bank existing and operating on the effective date of this Act which renews its corporate existence in accordance with subsection one (1) of this section.

3. The renewal of the corporate existence of a state bank pursuant to this section shall not affect any right accrued or established, or any liability or penalty incurred, under the laws of this state or of the United States, prior to the issuance of a certificate of incorporation by the secretary of state.

Comment

Subsection 1 of this section provides the procedure by which an existing state bank may renew its existence under the provisions of this statute. The articles of incorporation of all banks currently in existence, and subject to the laws of this state provide for limited duration with respect to corporate existence. See sections 526.3 and 527.3. A state bank originally organized pursuant to the provisions of this statute shall have perpetual duration. It is intended that existing state banks (and savings banks) may acquire with facility the perpetual duration bestowed upon state banks originally incorporated under this statute. Subsection 1 outlines the manner in which this may be accomplished. Renewal of corporate existence pursuant to this subsection may be accomplished at any time after the effective date of this statute as long as the corporate existence of the pre-existing state bank (or savings bank) has not expired.

Subsection 2 of this section makes it clear that the superintendent shall have no discretion with respect to the renewal of the corporate existence of an existing state bank (or savings bank) under subsection 1. Those provisions, sections 303 through 305 and 307 through 309, which relate to the original incorporation and organization of a state bank under this statute, shall have no applicability to a state bank (or savings bank) which renews its corporate existence as provided for in subsection 1. Subsection 3 insures that established rights will not be affected by the renewal process.

Sec. 107. Persons authorized to engage in banking business.

1. No person may lawfully engage in this state in the business of receiving money for deposit, transact the business of banking, or may lawfully establish in this state a place of business for such purpose, except a state bank which is subject to the provisions of this Act, a private bank to the extent provided for and limited by section seventeen hundred one (1701) and seventeen hundred two (1702) of this Act, and a national

bank authorized by the laws of the United States to engage in the business of receiving money for deposit.

2. No person doing business in this state shall use the words "bank" or "trust" or use any derivative, plural or compound of the words "bank", "banking", "banker" or "trust" in any manner which would tend to create the impression that such person is authorized to engage in the business of banking or to act in a fiduciary capacity, except a state bank authorized to do so by the provisions of this Act, or a national bank to the extent permitted by the laws of the United States, or, insofar as the word "bank" is concerned, a private bank to the extent provided for and limited by sections seventeen hundred one (1701) and seventeen hundred two (1702) of this Act, or, insofar as the word "trust" is concerned, an individual permissibly serving as a fiduciary in this state, pursuant to section six hundred thirty-three point sixty-three (633.63) of the Code, or, insofar as the words "trust" and "bank" are concerned, a nonresident corporate fiduciary permissibly serving as a fiduciary in this state pursuant to section six hundred thirty-three point sixty-four (633.64) of the Code.

Comment

Subsection 1 of this section is similar to section 528.50 of existing law. This section contains the general prohibition against the conduct of the business of banking by unauthorized persons. The penalty for willful violation of this section is contained in section 1603(1).

Subsection 2 of this section contains the prohibition against the unauthorized use of words, or derivatives thereof, if their use would tend to create the impression that the user is authorized to engage in the business of banking or exercise fiduciary powers. This subsection is analogous to existing law contained in sections 524.24 and 532.13.

Sec. 108. Applicability of safe deposit provisions. The provisions of sections eight hundred nine (809) through eight

hundred twelve (812), inclusive, of this Act, shall apply, to the extent applicable, to any person engaged in this state in the business of leasing safe deposit boxes for the storage of property.

Comment

This section continues the effect of existing law by explicitly providing that the provisions in this statute dealing with the conduct of the business of leasing safe-deposit boxes shall apply to any person, whether or not a state bank, which is engaged in such business.

Division II
DEPARTMENT OF BANKING

Sec. 201. Superintendent of banking.

1. The governor shall, within sixty days following the convening of the regular session of the general assembly in 1973, and each four years thereafter, appoint, with the approval of two-thirds of the members of the senate, a superintendent of banking. Such appointee shall be selected solely with regard to his qualification and fitness to discharge the duties of his office, and no person shall be appointed who has not had at least five years executive experience in a state bank in this state.

2. The superintendent shall have his office at the seat of government. His regular term of office shall be four years from the first day of July of the year of his appointment.

3. The superintendent shall receive a salary to be fixed by the state banking board. The superintendent shall be entitled to receive reimbursement for expenses incurred in the performance of his duties, subject to the provisions of section two hundred nine (209) of this Act.

Comment

Subsection 1 of this section adopts section 524.2 of existing law.

Subsection 2 of this section adopts section 524.1 of existing

law.

Subsection 3 of this section preserves the essence of existing law by providing that the salary of the superintendent shall be fixed by the State Banking Board. See section 524.7. The second sentence of subsection 3 of this section articulates the effect of existing law by providing that the superintendent shall be entitled to receive reimbursement for expenses incurred in the performance of his duties. See section 524.16 of existing law.

Sec. 202. Superintendent--removal or suspension. The governor may, by and with the consent of a majority of the senate during a session of the general assembly, remove the superintendent for malfeasance in office or for any cause that renders him ineligible to appointment, or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final.

When the general assembly is not in session the governor may suspend the superintendent so disqualified, and shall appoint another to fill the vacancy thus created, subject, however, to the approval or disapproval of a majority of the senate when next in session; and if the senate shall concur therein he shall be removed from the office. If the senate shall at the same session fail to concur or to act on the same, said suspension shall thereupon cease.

Comment

This section adopts sections 524.4 and 524.5 of existing law.

Sec. 203. Superintendent--vacancy. A vacancy in the office of superintendent that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes. Prior to the expiration of said thirty days the governor shall transmit to the senate for its confirmation an appointment for the unexpired portion of the regular term. Vacancies occurring during a session

of the general assembly shall be filled as regular appointments are made and before the end of said session, and for the unexpired portion of the regular term.

Comment

This section adopts section 524.3 of existing law.

Sec. 204. Deputy superintendent of banking.

1. The superintendent shall appoint a deputy superintendent of banking, who shall assist the superintendent in the performance of his office and who shall perform the duties of the superintendent during the absence or the inability of the superintendent, and as directed by him.

2. The deputy superintendent shall be removable at the pleasure of the superintendent. If the office of the superintendent becomes vacant, the deputy superintendent shall have all the powers and duties of the superintendent until a new superintendent is appointed by the governor in accordance with the provisions of this Act.

3. The deputy superintendent shall receive a salary to be fixed by the state banking board. The deputy superintendent shall be entitled to receive reimbursement for expenses incurred in the performance of his duties, subject to the provisions of section two hundred nine (209) of this Act.

Comment

Subsection 1 of this section preserves the effect of existing law. See section 524.6.

The first sentence of subsection 2 of this section preserves the effect of existing law. See section 524.6 (last sentence). The second sentence of subsection 2 is new and insures that the effective management of the Department of Banking will continue in the event that the office of the superintendent becomes vacant. Under existing law the status of the Department of Banking is uncertain in the event of such a vacancy and this provision seeks to remove that uncertainty.

The first sentence of subsection 3 of this section preserves

the effect of existing law. See section 524.7. The second sentence of this section preserves the effect of existing law by providing that the deputy superintendent shall be entitled to receive reimbursement for expenses. See section 524.16 of existing law.

Sec. 205. State banking board.

1. The state banking board shall be composed of the superintendent, who shall be ex officio a member and chairman, and four other members, appointed by the governor, who shall be chosen from various sections of the state. 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 of office of each member, other than the superintendent, shall be contemporaneous with the regular term of office of the superintendent as defined in subsection two (2) of section two hundred one (201) of this Act, and each such member shall hold his office for such term and until his successor shall have been appointed.

3. A member of the state banking board, other than the superintendent, shall receive no salary but shall be allowed and paid the sum of forty dollars per day for each day or any part thereof in which he is engaged in the performance of his duties together with reimbursement for actual and necessary expenses incurred by him in connection with such duties.

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

5. The state banking board shall meet each month on such date and at such place as the state banking board may designate, and shall meet at such other times as the board may deem neces-

sary, or when called by the chairman of the board, or any two members thereof.

Comment

Subsection 1 of this section preserves the effect of existing law. See sections 525.1 and 525.2. The phrase "so far as it is geographically practical to do so" from section 525.1 of existing law has been dropped as constituting surplusage. The requirement that there be a geographical distribution to the selection of the members of the board is sufficiently clear without the inclusion of that language.

Subsection 2 of this section adopts, with only minor changes in wording, section 525.3 of existing law.

Subsection 3 of this section preserves the essence of existing law. See sections 525.4 and 525.5. The per diem award to which a member of the Board is entitled has been increased from ten dollars to forty dollars per day.

Subsection 4 of this section preserves the essence of existing law. See section 525.8. Minor changes in wording have been made. The first sentence of section 525.8 of existing law has been deleted as unnecessary.

Subsection 5 of this section preserves the essence of existing law. See section 525.7. This subsection, unlike existing law, allows the State Banking Board to meet at a place other than the office of the superintendent.

Sec. 206. Department of banking. The department of banking shall be the office of the superintendent and shall consist of such employees as are necessary for the discharge of such duties and responsibilities as are imposed upon the superintendent by the laws of the state.

Comment

This section is new and has no counterpart in existing law. The intent is to supply a statutory description of the Department of Banking.

Sec. 207. Expenses of the department of banking. All expenses required in the discharge of the duties and responsibilities imposed upon the superintendent and the state banking board by the laws of this state shall be paid from fees provided by such laws. All such fees shall be payable to the superintendent. The superintendent shall pay all such fees and other money received by him to the treasurer of state within the time required by section twelve point ten (12.10) of the Code. The treasurer of state shall hold such funds in an account in the name of the superintendent for the payment of the expenses of the department of banking. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of his office to the extent approved by the state banking board. No transfers shall be made from the general fund of the state or any other fund for the payment of the expenses of the department of banking and no part of the funds held by the treasurer of state for the account of the superintendent shall be transferred to the general fund of the state or any other fund, except that such funds may be invested by the treasurer of state and the income derived from such investments may be credited to the general fund of the state.

The superintendent shall account for receipts and disbursements according to the separate duties imposed upon him by any provisions of the laws of this state and each separate duty shall be fiscally self-sustaining.

Comment

This section preserves the essence of existing law. See sections 524.16, 524.17 and 524.22. The statute makes clear that the fees received by the superintendent shall be the sole source from which payment may be made of the expenses incurred by the superintendent and the state banking board in the administration of the law. This section provides, as does existing law, that no amounts from the general fund shall be used to pay the expenses of the Department of Banking. The last clause of the last sentence of the first paragraph of this section provides that any interest derived

from the investment of the funds of the Department of Banking by the treasurer of state may be retained as part of the general fund. This aspect of the statute is new and is thought necessary to avoid complicated problems of accounting insofar as the management of the general fund is concerned. The second paragraph of this section is new and is intended to give statutory expression to current practice.

Sec. 208. Assistants, examiners and other employees. The superintendent may appoint such assistants, examiners and other employees as he may deem necessary to the proper discharge of the duties imposed upon him by the laws of this state. The merit system as established by chapter ninety-five (95), Acts of the Sixty-second General Assembly, shall apply to all employees of the department of banking, except the superintendent, deputy superintendent and one stenographer or secretary. The salary of such stenographer or secretary shall be fixed by the state banking board. Pay plans shall be established for employees subject to the merit system which are substantially equivalent to, and which shall remain substantially equivalent to, those established by the United States for persons holding similar positions and performing similar duties.

Comment

This section adopts the essence of existing law insofar as it enables the superintendent to appoint such employees as are necessary to adequately perform the functions of his office. Insofar as this section adopts an appropriate relationship with the merit system of personnel administration established by chapter 95 of the Acts of the 62nd General Assembly, it is new and has no counterpart in existing law. The provision that pay plans be established under the merit system which are substantially equivalent to those established by the federal government for corresponding positions, is analogous to and adopts the essence of existing law. See section 524.7.

Sec. 209. Expenses. The superintendent, deputy superintendent, assistants, examiners and other employees of the department of banking 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 department of banking, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties.

Comment

This section continues the effect of existing law by allowing employees of the office of the superintendent to receive reimbursement for expenses incurred by them in the performance of their duties. See section 524.16. The second sentence is designed to resolve a problem under existing law and to insure that employees of the superintendent may be re-imbursed for expenses incurred in attending meetings, schools and seminars when authorized by the superintendent. See section 524.16.

Sec. 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 department of banking 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 sixty-four (64) of the Code.

Comment

This section continues the effect of existing law insofar as it requires the superintendent to obtain a bond on behalf of his employees. See section 524.8. This section goes farther than

existing law by stating in detail the type of bond that is to be purchased on behalf of the employees of the superintendent. The second sentence of this section continues the effect of existing law by requiring that the superintendent be bonded in accordance with Chapter 64, as are other public officers.

Sec. 211. Prohibitions relating to superintendent, deputy superintendent, assistants and examiners.

1. No sum of money or property, as a gift or loan, or otherwise, shall be given or granted, directly or indirectly by a state bank, or by persons subject to chapters five hundred thirty-three (533), five hundred thirty-three B (533B), five hundred thirty-six (536), five hundred thirty-six A (536A) of the Code and chapter three hundred eighty (380), Acts of the Sixty-second General Assembly, or any affiliate of a state bank or of such persons, or any director, officer, employee, member, owner, or partner of a state bank or of such persons, to the superintendent, deputy superintendent, an assistant or examiner, nor shall the superintendent, deputy superintendent, an assistant or examiner receive from a state bank or from persons subject to chapters five hundred thirty-three (533), five hundred thirty-three B (533B), five hundred thirty-six (536), five hundred thirty-six A (536A) of the Code and chapter three hundred eighty (380), Acts of the Sixty-second General Assembly, or any affiliate of a state bank or of such persons, or any director, officer, employee, member, owner, or partner of a state bank or of such persons, any sum of money or any property as a gift or loan, or otherwise, either directly or indirectly.

2. The deputy superintendent, any assistant or examiner, shall not perform any services for, nor be a shareholder, member, partner, owner, director, officer or employee of any bank or private bank, or of persons subject to chapters five hundred thirty-three (533), five hundred thirty-three B (533B), five hundred thirty-six (536), five hundred thirty-six A (536A) of the Code or chapter three hundred eighty (380), Acts of the

Sixty-second General Assembly, or of any affiliate of any bank, private bank or of any such persons. A violation of this subsection shall constitute grounds for discharge or suspension from employment or for reduction in rank or grade.

3. For the purposes of this section and section two hundred twelve (212) of this Act, an affiliate of a person other than a state bank shall include any corporation, trust, estate, association or other similar organization:

a. Of which such person, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees or other individuals exercising similar functions.

b. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of such person who own or control either a majority of the shares of such person or more than fifty percent of the number of shares voted for the election of directors of such person at the preceding election or by trustees for the benefit of the shareholders of any such person.

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one such person.

d. Which owns or controls, directly or indirectly, either a majority of the voting shares of such person or more than fifty percent of the total number of shares voted for the election of directors of such person at the preceding election, or controls in any manner the election of a majority of the directors of such person, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of such person is held by trustees.

4. The deputy superintendent or any assistant or examiner who is convicted of theft, burglary, robbery, larceny or em-

bezzlement as a result of a violation of the laws of this state or of the United States while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking.

Comment

Subsection 1 of this section is new and has no counterpart in existing law. Insofar as this subsection makes it unlawful for the superintendent, deputy superintendent, any assistant, examiner or other employee of the department of banking to receive a loan or gift from a bank, it bears a strong analogy to federal law. See 18 U.S.C. 212 and 18 U.S.C. 213.

Subsection 2 of this section is a more prohibitive than existing law. See section 524.18. Again, insofar as this subsection denies examiners the right to perform services for a bank, a strong analogy to federal law exists. See 18 U.S.C. 1909. The superintendent is excluded from the scope of subsection 2.

Subsection 3 is designed to supply a definition of affiliate as used in this section and section 212.

Sec. 212. Prohibition against disclosure. An examiner shall not disclose to any person, other than the superintendent, deputy superintendent, and the person examined, the name of any shareholder, member, partner, owner of, or borrower from, or disclose the nature of the collateral for any loan by any state bank or persons subject to chapters five hundred thirty-three (533), five hundred thirty-three B (533B), five hundred thirty-six (536), five hundred thirty-six A (536A) of the Code and chapter three hundred eighty (380), Acts of the Sixty-second General Assembly, or any affiliate of any state bank or of any such persons, or any other information relating to the business of any state bank or of any such persons, or any affiliate of any state bank or of any such persons, except when ordered to do so by a court of competent jurisdiction and then only in those

instances referred to in subsections one (1), two (2), and three (3) of section two hundred fifteen (215) of this Act.

Comment

This section is analogous to existing law. See section 524.19. It is designed to prohibit the disclosure, outside the Department of Banking or to the person examined, of any information acquired by an examiner in the performance of his duty. See 18 U.S.C. 1906 of federal law.

Sec. 213. Duties and powers of superintendent. The superintendent shall have general control, supervision and regulation of all state banks and shall be charged with the administration and execution of the laws of this state relating to banks and banking and with such other duties and responsibilities as are imposed upon him by the laws of this state. The superintendent shall have power to adopt and promulgate such rules and regulations as in his opinion will be necessary to properly and effectively carry out and enforce the provisions of this Act.

Comment

This section preserves existing law by adopting the essence of section 524.10.

Sec. 214. Subpoena--contempt.

1. The superintendent, the deputy superintendent, and upon the approval of the superintendent, any assistant or examiner 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 Act.

2. Whenever any person subpoenaed pursuant to subsection one (1) of this section neglects or refuses to obey the terms of such subpoena, to produce books or papers or to give testi-

mony, as required, the superintendent may apply to the district court of Polk county for the enforcement of such subpoena or the issuance of an order compelling such compliance as the court may direct.

3. The refusal of any person to obey an order of the district court, issued pursuant to subsection two (2) of this section, without reasonable cause, shall be considered a contempt of that court.

Comment

Subsection 1 of this section continues the effect of existing law by allowing the superintendent to obtain testimony from others insofar as is necessary to the performance of his duties. See section 528.30. This subsection makes it clear that any employee other than the deputy superintendent must receive the approval of the superintendent prior to the issuance of a subpoena on behalf of the superintendent.

Subsection 2 of this section fills a void in existing law by establishing procedure for the enforcement of a subpoena issued pursuant to this section.

Subsection 3 of this section establishes the sanction for refusal to obey a subpoena when ordered to do so by the district court.

Sec. 215. Records of department of banking. All records of the department of banking shall be public records subject to the provisions of chapter one hundred six (106), Acts of the Sixty-second General Assembly, except that all papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

The superintendent, deputy superintendent, assistants or examiners 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, nor shall the records of the department of banking which relate specifically to the supervision and regulation of any such state bank or other such person be offered in evidence in any court or subject to subpoena by any party except, where relevant:

1. In such actions or proceedings as are brought by the superintendent.

2. In any matter in which an interested and proper party seeks review of a decision of the superintendent.

3. In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

Comment

This section adopts the spirit of existing law (section 524.19) by providing that records relating specifically to the regulatory functions of the superintendent shall not be public records and shall not be subject to examination by the public. Like existing law, such records shall not be offered in evidence unless the subject matter of the litigation relates to the administration or enforcement of law relating to the regulation of banks.

This section is intended to have a definite relationship with chapter 106 of the Acts of the 62nd General Assembly, relating to the right of citizens to examine public records. This latter legislation gives every citizen of this state, including the news media, the right to examine all public records, and to copy such records, unless another provision of the laws of this state limits such right. See section 2, chapter 106, Acts of the 62nd General Assembly. It is intended that all records of the superintendent other than those relating to his supervisory or regulatory function shall be public records subject to the provisions of chapter 106, Acts of the 62nd General Assembly.

Sec. 216. Annual report of superintendent. The superintendent shall make a report in writing annually to the governor

in the manner and within the time required by chapter seventeen (17) of the Code. A copy of the report shall be furnished by the superintendent to each state bank.

In addition to the matters required by chapter seventeen (17) of the Code, the annual report of the superintendent shall contain:

1. A summary of applications approved or denied by the superintendent pursuant to this Act since his last previous report.

2. A summary of the assets, liabilities and capital structure of all state banks as of June thirtieth of the year for which the report is made.

3. A statement of the receipts and disbursements of funds of the superintendent during the calendar year ending on the preceding December thirty-first and of the funds on hand on such December thirty-first.

4. Such other information as the superintendent may deem appropriate and advisable to fairly disclose the discharge of the duties imposed upon him by this Act.

Comment

This section continues the effect of existing law insofar as it requires the superintendent to issue an annual report. See section 524.21 and chapter 17 of the Code. This section does, however, add to existing law insofar as it gives statutory expression to specific matters which shall be included in the annual report of the superintendent.

Sec. 217. Examinations.

1. The superintendent shall have power to make or cause to be made an examination of every state bank whenever in his judgment such examination is necessary or advisable, but in no event less frequently than once during each eighteen-month period. During the course of each examination of a state bank, 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. The superintendent shall also have power to make or cause to be made such limited examinations at such times and with such frequency as he may deem necessary and advisable to determine the condition of any state bank and whether any person has violated any of the provisions of this Act.

2. The superintendent shall have power to make or cause to be made an examination of any corporation in which the state bank owns shares except corporations described in paragraphs a and b of subsection three (3) of section nine hundred one (901) of this Act. The superintendent shall also have power, upon application to and order of the district court of Polk county, to make or cause to be made an examination of any person having business transactions or a relationship with any state bank when such an examination is deemed necessary and advisable in order to determine whether the capital of the state bank is impaired or whether the safety of its deposits has been imperilled. The fee for any such examination shall be paid by the state bank.

3. To the extent necessary for the purpose of any examination provided for by this section and section eleven hundred five (1105) of this Act, the superintendent shall have the power to examine all relevant books, records, accounts and documents and to compel the production of the same in the manner prescribed by section two hundred fourteen (214) of this Act.

4. The superintendent may furnish to the federal deposit insurance corporation and the federal reserve system, or to any official or supervising examiner thereof, a copy of the report of any or all examinations made of any state bank and of any affiliate of a state bank when the state bank is a member of the federal reserve system or to the federal deposit insurance corporation when the deposits of the state bank are insured by the federal deposit insurance corporation.

5. A copy of the report of each examination of a state bank

shall be transmitted by the superintendent to the board of directors of the state bank except to the extent that the report of any such examination may be confidential to the superintendent, and each member of the board of directors shall furnish to the superintendent, on forms to be supplied by the superintendent, a statement that he has read the report of examination.

6. All reports of examinations, including any copies thereof, in the possession of any person other than the superintendent or employee of the department of banking, including any state bank or any agency to which any report of such examination may be furnished under subsection four (4) of this section, shall be confidential communications, shall not be subject to subpoena from such persons and shall not be published or made public by such persons.

7. The report of examination of any affiliate or of any person examined as provided for in subsection two (2) of this section shall not be transmitted by the superintendent to any such affiliate or person or to any state bank or to the board of directors of any state bank unless authorized or requested by such affiliate or person.

Comment

Subsection 1 of this section continues the effect of existing law insofar as it entitles the superintendent to cause to be made an examination of any state bank at such time as he deems that it is necessary. See section 528.25. The requirement that the superintendent examine every state bank at least once during each eighteen month period is new and has no counterpart in existing law. It does, however, adopt present practice. The second sentence of subsection 1, articulating the scope of the examination procedure, is new but simply gives statutory expression to current practice. The last sentence of subsection 1, entitling the superintendent to conduct limited examinations and perform other investigative functions, gives statutory expression to the effect of existing law and adopts current practice.

Subsection 2 of this section is new but gives statutory expression to current practice with respect to the examination of certain corporations in which banks are permitted to own shares. It was deemed advisable also to provide that the superintendent shall have the right to examine any person, whether or not a state bank, if such examination is necessary to determine the status of a state bank.

Subsection 3 simply insures the right to subpoena testimony and records, bestowed by section 214, shall apply in pursuance of the superintendent's right to examine the affairs of an affiliate of a state bank or other person doing business or otherwise having a relationship with a state bank.

Subsection 4 adopts existing law insofar as the superintendent may furnish copies of reports of examination to the Federal Deposit Insurance Corporation (see section 530.4) and appropriately expands existing law by adding the Federal Reserve System as a permissible recipient of reports of member banks.

Subsection 5 is new and has no counterpart in existing law. This subsection gives statutory expression to current practice.

Subsection 6 of this section is a more positive expression of the effect of existing law. See section 524.19. This subsection has the effect of providing that reports of examinations which are in the possession of parties other than the superintendent, including the state bank subject to examination, shall be confidential.

Subsection 7 of this section is new and has no counterpart in existing law.

Sec. 218. Regulation and examination of services.

1. A state bank may not cause to be performed, by contract or otherwise any bank services [of a type referred to in section eight hundred four (804) of this Act] for itself, 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 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.

2. Any contract, to which a state bank is a party, for the performance of bank services of a type referred to in section eight hundred four (804) of this Act, shall be approved by the superintendent prior to its execution.

Comment

This section is new and has no counterpart in existing law. It is based on the Bank Service Corporation Act, 12 U.S.C. subsections 861-865, and regulations thereunder, and is intended to give the superintendent powers of regulation and examination similar to those of the federal banking authorities under the federal law as respects bank service arrangements.

Sec. 219. Fees for examinations. A state bank, and any private bank subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent a fee, established by the state banking board, based on the assets of the state bank or private bank, the time required for the examination and the expenses incurred in the discharge of the duties imposed upon the superintendent by this Act. Such fee shall apply equally to all state banks and private banks subject to examination, and may not be changed more frequently than annually and when changed, shall be effective on January first of the year following the year in which the change was approved.

The fee for examination of any affiliate of a state bank as provided for in section eleven hundred five (1105) of this Act, and the examinations provided for in subsection two (2) of section two hundred seventeen (217) of this Act shall be established by the state banking board, based on the time required for the examination and the expenses incurred in the discharge of the duties imposed upon the superintendent by this Act.

Upon completion of each examination required or allowed by this Act, the examiner in charge of such examination shall render a bill for such fee, in duplicate, and shall deliver one copy thereof to the state bank or private bank and one copy to the superintendent. Failure to pay the amount of such fee to the superintendent within ten days after the date of the close of each such examination shall subject the state bank or private bank to an additional fee equal to five percent of the amount of such fee for each day the payment is delinquent.

Comment

The first paragraph of this section adopts existing law insofar as it requires a state bank (and any private bank subject to examination) to pay a fee to the superintendent for the examination. This section allows more flexibility in the determination of the fee by including such factors as the time required for the examination and the expenses incurred by the superintendent. See sections 524.15 and 528.31. The last sentence of the first paragraph of this section is new.

The second paragraph of this section makes clear that fees for examination of an entity other than a state bank shall be computed on a schedule approved by the State Banking Board.

The third paragraph of this section provides, as does existing law, for the submission of a bill to the state bank for the examination. The requirement, contained in existing law, that a copy of the bill be submitted to the treasurer of state, has been omitted. The imposition of a five percent delinquency charge for each day that the payment of the examination fee is not paid after it becomes due, adopts existing law. See section 524.23. The requirement contained in section 524.23 that the superintendent pay over examination fees to the treasurer of state is expressed in section 207 of this Act and in section 12.10 of the Code of Iowa.

Sec. 220. Reports to superintendent.

1. A state bank shall render a full, clear, and accurate statement of its condition to the superintendent, on forms to

be supplied by the superintendent, verified by the oath of an officer and attested by the signatures of at least three of the directors, or verified by the oath of two of its officers and attested by two of the directors. The superintendent may, in his discretion, use any form of statement of condition that is used by the federal deposit insurance corporation or the federal reserve system.

2. The statement shall be transmitted to the superintendent within ten days after the receipt of a request for the statement from the superintendent. A statement shall be called for by the superintendent at least three times each year.

3. Within twenty days after the date of the receipt of the request for a statement of condition, the state bank shall cause the statement to be published once in a newspaper of general circulation in the municipal corporation or unincorporated area in which the state bank 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 the state bank has its principal place of business. Proof of such publication, by affidavit of the publisher of the newspaper in which it was made, shall be delivered to the superintendent and shall be conclusive evidence of the fact.

4. The superintendent shall also have power to call for special reports from a state bank whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of its condition. Such reports shall be verified and attested in the same manner as required in subsection one (1) of this section.

Comment

Subsection 1 of this section adopts the effect of existing law by requiring a state bank to render a statement of condition. See section 528.22. The language in existing law (section 528.22) describing the content of the statement of condition has been omitted. The requirement that the state bank render a "full, clear and accurate statement of its condition" carries

with it the implication that such matters be included therein. As under existing law the superintendent is free to adopt a form of statement of condition used by the Federal Deposit Insurance Corporation or the Federal Reserve System.

Subsection 2 of this section adopts existing law insofar as it requires the transmittal of the statement of condition to the superintendent within ten days after the receipt of the request therefor. See section 528.23. The last sentence of this section, requiring the superintendent to call for a statement of condition at least three times each year preserves the essence of existing law. See section 528.25.

Subsection 3 of this section adopts existing law by requiring publication of the statement of condition. See section 528.26. The requirement that the statement of condition be published within twenty days after the receipt of the request therefor is new. The language describing the type of newspaper in which the publication is to be made is new and adopts the language used throughout this statute with respect to matters dealing with publication.

Subsection 4 of this section adopts existing law. See section 528.28.

Sec. 221. Preservation of bank records--statute of limitations.

1. A state bank shall not be required to preserve its records for a period longer than eleven years after the first day of January of the year following the time of the making or filing of such records, provided, however, that account records showing unpaid balances due to depositors shall not be destroyed. Film, photographic, photostatic, or other copies which accurately reproduce all lines and markings on the original may be kept in lieu of any such original record.

2. All causes of action, other than actions for relief on the grounds of fraud or mistake, against a state bank based upon a claim or claims inconsistent with an entry or entries

in a state bank record, made in the regular course of business, shall be deemed to have accrued, and shall accrue for the purpose of the statute of limitations one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of ten years from the date of such accrual.

3. The provisions of this section, insofar as applicable, shall apply to the records of a national bank.

Comment

This section preserves the essence of chapter 528A of existing law with relatively minor changes in wording. There is a change, however, in the content of subsection 2. As drafted it does not deal with the accrual of causes of action which are based upon fraud or mistake. The accrual of causes of action so founded shall be controlled by section 614.4 of the Code of Iowa.

Sec. 222. Meetings of the board of directors called by superintendent. Whenever the superintendent deems it necessary and advisable he may cause a meeting of the board of directors of a state bank to be held in such manner and at such time and place as he may direct. Any report of an examination required or allowed by this Act, any conclusions drawn therefrom by the superintendent, any recommendations made by him relative thereto and any other matters concerning the operation and condition of the state bank may be presented to the board of directors by the superintendent. The state bank shall cause the recommendations of the superintendent to be recorded in the minutes of the board of directors of the state bank.

Each member of the board of directors shall furnish to the superintendent a statement, on forms to be supplied by the superintendent, that he has read and is familiar with the recommendations of the superintendent.

Comment

This section is new and has no counterpart in existing law but gives statutory expression to current practice.

Sec. 223. Power of superintendent to issue orders. Whenever it shall appear to the superintendent that a state bank is engaging or has engaged, or the superintendent has reasonable cause to believe that the state bank is about to engage, in an unsafe or unsound practice in conducting the business of such state bank, or is violating or has violated, or the superintendent has reasonable cause to believe that the state bank is about to violate, any provision of this Act or of any regulation adopted pursuant to this Act, or any condition imposed in writing by the superintendent in connection with the approval of any matter required by this Act, or any written agreement entered into with the superintendent, the superintendent may issue and serve upon the state bank a notice containing a statement of the facts constituting the alleged violation or violations, or the unsafe or unsound practice or practices, and fixing a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should be issued to the state bank.

If the state bank fails to appear at the hearing it shall be deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at such hearing, the superintendent shall find that any violation or unsafe or unsound practice specified in the notice has been established, the superintendent may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may require the state bank and its directors, officers and employees to cease and desist from any such violation or practice and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

Any order issued pursuant to this section shall become effective upon service thereof on the state bank and shall remain effective except to such extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank

has its principal place of business.

The superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of any order pursuant to this section and such court shall have jurisdiction and power to order and require compliance therewith.

Comment

This section is new and represents a considerably expanded version of existing law. While existing law allows the superintendent to promulgate rules and regulations of general application (section 524.10), this section is intended to allow the superintendent to issue an order that has application with respect to a specific bank, if such bank is engaging in unlawful activities or is otherwise in an unsafe or unsound condition. Prior to the time that such order becomes effective, the state bank to which the order was issued is allowed a hearing during which it may present material relating to the alleged grievance. This section is thought necessary to allow the superintendent, in his regulatory capacity, to issue an order to a specific state bank. The right to issue orders designed to carry out his administrative responsibility must be considered an essential grant of authority to an effective regulator.

This section is deemed appropriate for another reason. Federal law provides (12 U.S.C. section 1818(m) that state supervisory authorities shall be notified of any intent by a federal supervisory agency to commence a proceeding calling for corrective action by a state bank. If the state supervisory authority does not effectuate corrective action, the federal agency shall proceed as provided by federal law. See 12 U.S.C. section 1818. To insure continuing effectiveness of the state authority in the regulatory realm this section endows the superintendent with the right to issue orders.

Sec. 224. Grounds for management of state bank by superintendent. The superintendent may take over the management of

the property and business of a state bank whenever it appears to him that:

1. The state bank has violated its articles of incorporation or any law of this state.

2. The capital of the state bank is impaired.

3. The state bank is conducting its business in an unsafe or unsound manner.

4. The state bank is in such condition that it is unsound, unsafe or inexpedient for it to transact business.

5. The state bank has suspended or refused payment of its deposits or other liabilities contrary to the terms thereof.

6. The state bank refuses to make its records available to the superintendent for examination or otherwise refuses to make available, through an officer or employee having knowledge thereof, information required by the superintendent for the proper discharge of the duties of his office.

7. The state bank neglects or refuses to observe any order of the superintendent made pursuant to the provisions of this Act, unless the enforcement of such order is stayed in a proceeding brought by the state bank.

8. The state bank has not transacted any business or performed any of the duties, contemplated by its authorization to do business, for a period of one year.

9. The state bank has failed to renew its corporate existence in the manner provided for in section one hundred six (106) within one hundred eighty days prior to the expiration thereof.

The superintendent shall thereafter manage the property and business of the state bank until such time as he may relinquish to the state bank the management thereof, upon such conditions as he may prescribe, or until its affairs be finally dissolved as provided in this Act.

Comment

This section continues the effect of existing law by allowing the superintendent to take over the management of the property

and business of a state bank. See section 528.90. This section is more detailed than existing law in that it clearly articulates the grounds upon which the superintendent may exercise his take-over authority. If the superintendent exercises the take-over authority granted by the statute, it is intended that he shall have the authority and power to manage the bank in its ordinary and regular affairs as if the take-over had not occurred.

Sec. 225. Application to enjoin action of superintendent.

1. Whenever a state bank deems itself aggrieved by an action of the superintendent taken pursuant to sections two hundred twenty-three (223) or two hundred twenty-four (224) of this Act, the state bank may apply to the district court of the county in which the state bank has its principal place of business to enjoin such action. The court, after citing the superintendent to show cause why such action should not be enjoined and after a hearing and a determination of the facts upon the merits, may dismiss such application or enjoin the superintendent from further action and direct him to surrender the management of the property and business to such state bank or to withdraw or modify any order issued by him.

2. An appeal from the judgment of the district court operates as a stay of the judgment. No bond need be given if the appeal be taken by the superintendent, but if the appeal be taken by the state bank a bond shall be given as required by rule three hundred thirty-seven (337), rules of civil procedure.

Comment

This section is new but probably states the effect of existing law.

Sec. 226. Management of state bank by superintendent. Upon taking over the management of the property and business of a state bank, the superintendent shall have the authority to operate and direct the affairs of the state bank in its regular course of business. He shall also have the authority to col-

lect such amounts due to the state bank and to do such other acts as are necessary or expedient to conduct the affairs of the state bank and conserve or protect its assets, property and business.

If upon taking over the management of the business and property of the state bank, the superintendent concludes that the state bank is insolvent or should be dissolved for any other reason enumerated in section two hundred twenty-four (224) of this Act, he may immediately, or at any time within three years, order that the state bank cease to carry on its business and proceed to dissolve the affairs of the state bank in accordance with the provisions of this Act. If the superintendent has not caused the state bank to cease to carry on its business within three years of taking over the management of the property and business of the state bank, he shall relinquish the management thereof to the state bank.

The superintendent may appoint one or more special deputies as his agent or agents, with powers specified in the certificate of appointment, to assist him in the duty of management, conservation or dissolution and distribution of the business and property of a state bank.

The superintendent, during the period of his management of the property and business of the state bank, and prior to such time as he may apply to the district court for appointment as receiver, may require that he be reimbursed by the state bank to the extent of the expenses incurred by him in connection with such management.

Comment

Insofar as this section allows the superintendent to carry on the business and affairs of the state bank in its regular course of business, it adopts the effect of existing law. See section 528.91. Like existing law, this section imposes a limitation on the time during which the superintendent may manage the affairs of the state bank. Compare section 528.90.

The last three paragraphs of this section adopt the effect

of existing law but in more elaborate form.

Division III
INCORPORATION

Sec. 301. Incorporators. A state bank may be incorporated under this Act by not less than five individuals over the age of twenty-one a majority of whom shall be citizens of this state and all of whom shall be citizens of the United States.

Comment

This section preserves the basic pattern of existing law. See sections 526.1 and 527.3. The requirement of at least five incorporators is preserved as is the provision that a majority thereof be citizens of this state, although the provision is expanded to require that incorporators also be United States citizens. The word "individual" is substituted for "adults," as representing more acceptable terminology to indicate the ineligibility of corporate incorporators.

Sec. 302. Articles of incorporation. The articles of incorporation of a state bank, in the form prescribed by the superintendent, shall set forth the following:

1. The name of the state bank, that it is incorporated for the purpose of conducting the business of banking, and that it is incorporated under the provisions of this Act.

2. The location of its proposed or existing principal place of business including the name of the county, municipal corporation or unincorporated area.

3. The duration of the state bank which shall be perpetual.

4. The aggregate number of 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, the number of shares of each class and a statement of the par value of the shares of each class.

5. If there is to be a preferred class, a statement of the preferences, voting rights, if any, limitations and relative

rights in respect of the shares of such class.

6. Any provision, permissible under section five hundred six (506) of this Act, limiting or denying the shareholders the pre-emptive right to acquire additional shares of the state bank.

7. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this Act is required or permitted to be set forth in the bylaws.

8. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

9. The name and address of each incorporator.

10. The specific and named day on which the annual meeting of shareholders shall be held.

11. Any provision not inconsistent with law or the purposes for which the state bank is organized, which the incorporators elect to set forth; or any provision limiting any of the powers enumerated in this Act.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act. The articles of incorporation shall be signed by all of the incorporators and acknowledged before an officer authorized to take acknowledgements of deeds.

Comment

This section follows closely section 496A.49 of the Iowa Business Corporation Act. Where necessary, however, that section has been changed to make it more relevant to banks.

This section relates only to the content of the articles of incorporation.

To bring uniformity to the form in which articles of incorporation are prepared, it has been provided that the articles of in-

corporation be submitted on forms prescribed by the superintendent of banking.

Subsection 3 provides that a state bank shall have perpetual duration. Existing law provides for a maximum of fifty years for the duration of a savings bank and twenty years with respect to a state bank.

Subsection 4 restates section 496A.49(4) but omits the language therein relating to no par stock. See section 501 relating to the authorized shares of a state bank.

Subsection 6 is a modification of section 496A.49(7). Section 506 provides that the preemptive rights of common shareholders shall not be limited or denied. This subsection provides for inclusion in the articles of incorporation any provision which has the effect of limiting or denying the preemptive rights of any shareholders, other than common shareholders, of a state bank.

Subsections 7, 8, 9, and 11 restate the language of sections 496A.49(8), 496A.49(10), 496A.49(11) and 496A.49(13), respectively.

Subsection 10 is new and is intended to insure that the date of the annual meeting shall be included in the articles of incorporation.

The requirement that the articles of incorporation be signed and acknowledged adopts existing law. The type of acknowledgment is made specific and has reference to the mode required by section 558.20 of the Iowa Code.

Sec. 303. Application for approval. The incorporators 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 four hundred ninety-six A point one hundred twenty-four (496A.124) of the Code, for the filing and record-

ing of the articles of incorporation.

Within thirty (30) days after delivery of the foregoing items, the incorporators shall also deliver to the superintendent proof of publication of the notice required by section three hundred four (304) of this Act by affidavit of the publisher of the newspaper in which it was made.

Comment

This section adds the new requirement that incorporators file with the superintendent an application for approval of the new state bank which must be accompanied by the articles of incorporation and supporting items. The application procedure, in the manner prescribed by the superintendent, provides a method whereby the superintendent may obtain information supplied by the articles of incorporation and may approve the articles of incorporation without finally determining whether to issue an authorization to do business.

Since the primary responsibility for approval of the articles of incorporation rests with the superintendent, this section provides for delivery of the articles directly to the superintendent for approval prior to filing and recording by the secretary of state and the county recorder. See sections 526.4 and 527.4.

As the superintendent will have possession of the articles of incorporation until they are subsequently filed by him with the secretary of state after his approval, the application should contain the appropriate filing fee for the articles of incorporation. See section 496A.124.

Sec. 304. Publication of notice. The incorporators of a state bank shall publish notice of their intention to deliver, or the delivery of, the articles of incorporation to the superintendent, 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 first publication of the notice shall appear prior to, or within seven days after, the date of delivery of the articles of incorporation to the superintendent and shall set forth:

1. The name of the proposed state bank.

2. A statement that it is to be incorporated under this Act.

3. The purpose or purposes of the state bank.

4. The names and addresses of the incorporators and of the members of the initial board of directors as they appear, or will appear, in the articles of incorporation.

5. The date of the delivery of the articles of incorporation to the superintendent.

Comment

Existing law provides for publication of the "notice of incorporation." See sections 526.5 and 527.4. While this "after-the-fact" notice to the public may serve some function, it fails in one vital respect. Since the decision relating to the organization of the state bank rests with the superintendent, it is in the period during which the superintendent has the matter under consideration that the public should be advised of the pendency of the application. While notice by publication has obvious deficiencies, this section does require an overt act on the part of the incorporators to notify the general public of the application. Through this it is hoped that an opportunity will be provided for those interested to present their views to the superintendent relative to the pending application. The statute defines with certainty the type of newspaper in which the notice is to be published and the time during which the notice is to appear.

Sec. 305. Approval by superintendent. Upon receipt of an application for approval of a state bank the superintendent shall conduct such investigation as he deems necessary to as-

certain whether:

1. The articles of incorporation and supporting items satisfy the requirements of this Act.

2. The convenience and needs of the public will be served by the proposed state bank.

3. The population density or other economic characteristics of the area primarily to be served by the proposed state bank afford reasonable promise of adequate support for the state bank.

4. The character and fitness of the incorporators 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.

5. The capital structure of the proposed state bank is adequate in relation to the amount of the anticipated business of the state bank and the safety of prospective depositors.

6. The proposed state bank will have sufficient personnel with adequate knowledge and experience to conduct the business of the state bank, and to administer fiduciary accounts, if the state bank is to be authorized to act in a fiduciary capacity.

Within one hundred eighty days after receipt of the application for approval together with the items referred to in subsections one (1) and two (2) of section three hundred three (303) of this Act, the superintendent shall make a determination whether to approve or disapprove the pending application on the basis of his investigation. Within ninety days after the second publication of the notice referred to in section three hundred four (304) of this Act any person opposing the pending application shall file written objections thereto with the superintendent. Following the expiration of the period referred to in the previous sentence and prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested persons, including

the incorporators, an opportunity for a stenographically reported hearing during which such persons shall be allowed to present evidence in support of, or in opposition to, the pending application. If the superintendent approves the pending application, he shall deliver the articles of incorporation, with his approval indicated thereon, to the secretary of state and notify the incorporators, and such other persons who requested in writing that they be notified, of such approval. If the superintendent disapproves the pending application he shall notify the incorporators of his action and the reason for his decision.

The decision of the superintendent shall be subject to review by the district court of Polk county upon petition by any interested person within thirty days after the superintendent notifies the incorporators of his decision. The decision of the superintendent shall be upheld unless unsupported by substantial evidence. In making this determination the court shall review the whole record or such portions thereof as may be placed in issue by any person. The court may award damages to the incorporators if it finds that review is sought frivolously and in bad faith.

Before receiving the decision of the superintendent with respect to the pending application the incorporators shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application.

Comment

The first portion of this section sets forth the factors to be taken into consideration by the superintendent in reaching a decision on the pending application. Existing law is silent in this area. It is deemed wise and fair to verbalize the considerations which are pertinent to reaching a conclusion with respect to a pending application.

The statute then provides for approval or disapproval of the pending application within a specific time. Only if approval is gained do the incorporators go through the incorporation procedure

with the secretary of state. A hearing is provided as part of the administrative process and is available to those opposed to approval as well as to those who are in favor of approval. To insure that an adequate record is preserved of the administrative process, a stenographic report of the hearing is required.

Judicial review of the action of the superintendent has been provided in lieu of the review authority vested in the executive council which is a part of existing law. See section 524.12. It is provided that venue for all such review proceedings shall lie in Polk County.

The statute does not provide for de novo review of the action of the superintendent. This is sound. If the reviewing court were to decide the matter based upon its independent judgment, the superintendent would be little more than a medium for the transmission of evidence to the court. It would destroy the value of adjudication by the superintendent, who is presumably better qualified to pass upon the existing question. The role of the court is, rather, to serve as a check on the administrative branch. The court has the function of checking, and not supplanting, the challenged administrative action. This can best be accomplished by the substantial evidence rule, i.e., the court will decide whether or not there was substantial evidence to support the administrative action. The decision of the district court would be subject to review by the Supreme Court as are all other final judgments.

To prevent parties from seeking a review in bad faith, and thus postponing the commencement of the state bank, a provision allowing the award of damages is included. Also, the superintendent is entitled to receive the expenses of his investigation prior to giving notice of his decision to the parties.

Sec. 306. Issuance of certificate of incorporation. The receipt of the approved articles of incorporation of a state bank by the secretary of state shall constitute filing thereof with that office. The secretary of state shall record the ar-

ticles of incorporation and forward a copy thereof to the county recorder of the county in which the state bank is to have its principal place of business who shall record same, all as required by section four hundred ninety-six A point fifty-three (496A.53) of the Code. The secretary of state upon the filing of such articles of incorporation shall issue a certificate of incorporation and send the same to the incorporators.

Comment

This section involves the next step of incorporation and is necessary because of the corporate status of a state bank. Provision is made for the recording of the articles of incorporation with the county recorder so as to bring this facet of incorporation into line with business corporations generally. See section 496A.50 of the Iowa Business Corporation Act. The last sentence of this section adopts the last sentence of section 496A.50. This entire section is analogous to existing law. See sections 526.4 and 527.4.

Sec. 307. Organizational meeting. After the issuance of the certificate of incorporation of a state bank, an organizational meeting of the board of directors named in the articles of incorporation shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, if any are to be adopted, electing officers and the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

Comment

This provision borrows heavily from section 496A.54 of the Iowa Business Corporation Act. "May" is changed to "shall", however, requiring that an organizational meeting be held. This section is analogous to existing law. See section 526.11.

Sec. 308. Effect of certificate of incorporation; issuance

of authorization to do business.

1. Upon the issuance of the certificate of incorporation of a state bank, the corporate existence shall begin, unless the certificate in conformity with a provision of the articles of incorporation provides that it shall begin on a stated day in the future, in which event the corporate existence shall without further action by either the incorporators or the secretary of state begin on the day so stated. Such certificate of incorporation shall be conclusive evidence of the fact that the state bank has been incorporated except as against the superintendent in a proceeding instituted by him to dissolve a state bank pursuant to section thirteen hundred two (1302) of this Act.

2. The state bank shall not accept deposits or transact any business except such business as is incident to commencement of business, or to the obtaining of subscriptions and payment for its shares until receipt of an authorization to do business from the superintendent. The superintendent shall issue an authorization to do business upon finding that the proposed state bank has complied with all the requirements of this Act precedent to commencing business and has submitted to the superintendent a statement under oath, in the manner designated by the superintendent, showing that the capital, surplus and undivided profits required by the superintendent in accordance with this Act have been fully paid in.

3. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection two (2) of this section, the directors and officers who willfully authorized or participated in such action shall be severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business.

Comment

Subsection 1 provides for the immediate corporate status of the approved state bank upon issuance of the certificate of in-

corporation. This is in accord with the treatment afforded corporations generally (section 496A.51) and is necessary lest its status be undetermined during the period prior to the issuance of the authorization to do business. The language of this proposal borrows heavily from section 496A.51 of the Iowa Business Corporation Act but relates the action of the superintendent to section 1302.

Subsection 2 continues the effect of existing law. See sections 526.6 and 527.5. Final approval to actually begin operation as a state bank will be given by the superintendent only after he is satisfied that all requirements, including capital requirements, have been satisfied.

Subsection 3 is new and has no counterpart in existing law.

Sec. 309. Publication of authorization to do business. A state bank shall cause to be published once within two weeks after the issuance by the superintendent of the authorization to do business, in a newspaper of general circulation published in the municipal corporation which is 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 state bank has its principal place of business, a notice which shall state:

1. The name of the state bank, the address of its principal place of business and the date of the issuance of the authorization to do business.

2. The names and addresses of the members of the initial board of directors as designated in the articles of incorporation.

3. That the shareholders shall not be personally liable for the debts and obligations of the state bank.

Proof of such publication, by affidavit of the publisher of the newspaper in which it was made, shall be filed with the secretary of state and with the superintendent, and shall be conclusive evidence of the fact.

Comment

This section requires the "after-the-fact" publication which is required by existing law. See sections 526.6 and 527.6. It appears proper to provide for notice to the public, by way of publication, that the bank has been approved and is now ready to do business. Analogous publication is required with respect to business corporations generally. See section 496A.52 of the Iowa Business Corporation Act. Since there is an added step in the banking area that does not exist as respects corporations generally, i.e., the issuance of an authorization to do business, it is this notice which should be the subject of publication. This publication will serve as notice to the public that the state bank has commenced operation.

Sec. 310. Name of state bank.

1. The name of a state bank originally incorporated after the effective date of this Act shall include the word "bank" and the word "state" or "trust" in its name. If a state bank uses the word "trust" in its name, it must be authorized under this Act to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on the effective date of this Act, to add to, modify or otherwise change its corporate name, either on the effective date of this Act or upon renewal of its corporate existence pursuant to section one hundred six (106).

3. If a state bank existing and operating on the effective date of this Act causes its corporate name to be changed, the name as changed shall comply with subsection one (1) of this section.

Comment

Subsection 1 relates to name content with respect to state banks originally incorporated after the effective date of the statute.

Subsection 2 makes it clear that no name change will be

required of any bank existing and operating on the effective date of this statute.

Subsection 3 provides, however, that if a preexisting state bank causes its name to be changed after the effective date of this statute, the name so adopted shall be such as would comply with subsection 1.

Sec. 311. Commission for organizing state banks. No person shall, directly or indirectly, receive or contract to receive any commission or bonus of any kind for organizing any state bank or for securing a subscription to the original capital of any state bank or to any increase thereof; provided that this section shall not be construed as prohibiting the payment of reasonable compensation for legal or accounting services in connection with organization.

Comment

This section adopts existing law but adds language allowing compensation for accounting as well as legal services in connection with organization. See section 528.74.

Sec. 312. Location of state bank.

1. Every state bank originally incorporated pursuant to the provisions of this Act shall have its principal place of business within the confines of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation pursuant to the provisions of sections three hundred sixty-two point eleven (362.11) to three hundred sixty-two point eighteen (362.18) of the Code, inclusive. A state bank existing and operating on the effective date of this Act, which does not have its principal place of business within the confines of a municipal corporation, shall be allowed to renew its corporate existence pursuant to the provisions of section one hundred six (106) of this Act without regard to this section.

2. A state bank may, with the prior written approval of

the superintendent, change the location of its principal place of business to a new location. A change of location shall be limited to another location in the same municipal corporation, to a location in a municipal corporation in the same county or to a municipal corporation in counties surrounding and contiguous to or touching or cornering on the county in which the state bank is located. If a state bank has its principal place of business in an unincorporated area, the superintendent may authorize a change of location of its principal place of business to a new location within the same unincorporated area as well as to any location referred to in the preceding sentence.

Comment

Subsection 1 is new and has no exact counterpart in existing law, but see section 528.1.

Subsection 2, also without exact counterpart in existing law, provides the machinery for the change of location of the principal place of business of a state bank. See section 1507 for procedure to be followed when the change requires an amendment to the articles of incorporation of the state bank.

Sec. 313. Bylaws. The initial bylaws, if any, of a state bank shall be adopted by its board of directors. The power to alter, amend or repeal bylaws or adopt new bylaws shall be 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.

Comment

This section adopts the first three sentences of section 496A.26 of the Iowa Business Corporation Act. It is intended, however, that the adoption of bylaws shall be optional and not mandatory. The adoption of the remainder of that section is not considered necessary.

Division IV
CAPITAL STRUCTURE

Sec. 401. Minimum capital.

1. The minimum capital of a state bank existing and operating on the effective date of this Act shall be:

a. The amount required by subsection two (2) of this section; or

b. Such lesser amount as the state bank had on the effective date of this Act but not less than the minimum amount required by law prior to such effective date.

2. The minimum capital of a state bank originally incorporated pursuant to the provisions of this Act shall not be less than one hundred thousand dollars or such higher 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.

Comment

This section abandons the population scale factor in determining capital requirements which is a part of existing law. See section 528.1. A great number of factors other than population should be taken into consideration in determining minimum capital.

It seems wise to preserve a distinction, insofar as capital requirements are concerned, between existing and new state banks. This distinction will have the effect of not causing unnecessary concern among existing state banks. Subsection 1(b) of this section makes provision for the continued application of a minimum amount which is less than the $100,000 figure suggested for new state banks when such state bank has a capital level less than that amount under existing law.

In practice it appears quite likely that the superintendent will judge that more is required than the $100,000 capital figure contained in subsection 2. In spite of the fact that capital adequacy is to be determined on an ad hoc basis, there exists a sufficient reason for giving statutory expression to a minimum capitalization level.

Sec. 402. Surplus.

1. A state bank originally incorporated pursuant to the provisions of this Act shall establish, prior to receiving an authorization to do business from the superintendent, a paid in surplus as required by the superintendent, in an amount not less than fifty percent of its capital.

2. If the surplus of a state bank is at any time less than the amount of its capital, the state bank shall, until surplus is equal to such amount, transfer to surplus an amount which is at least ten percent of the net profits of the state bank for the period since the end of the last fiscal year or for any shorter period since the last declaration of a dividend:

a. Prior to the declaration of any dividend, and

b. In any event, at the end of each fiscal year.

Comment

This section restates, and to a degree strengthens, existing law with respect to surplus. See sections 528.1 and 528.57. The requirement respecting initial surplus is increased to an amount equal to 50% of capital. The provision is further strengthened through the requirement in subsection 2 that surplus be annually increased, by transfers equal to 10% of net profits, until the amount of such surplus is at least equal to the amount of its capital. The suggested initial surplus requirement together with the mandatory and regular transfers in increase of the surplus requirement seem requisite to the preservation of the integrity of the banking system. While subsection 1 applies only to state banks originally incorporated pursuant to this Act, subsection 2 has application to state banks in existence prior to the effective date of this Act as well as to state banks subsequently formed.

Sec. 403. Undivided profits. A state bank originally incorporated pursuant to the provisions of this Act shall establish, prior to receiving an authorization to do business from the superintendent, a fund to be denominated undivided profits

in an amount to be determined by the superintendent, but in no event less than twenty percent of the capital required by subsection two (2) of section four hundred one (401) of this Act. The superintendent shall estimate the amount of initial expenses to be incurred by the state bank in determining the amount of the fund required by this section.

Comment

This section, analogous to existing law (section 528.1), provides for the existence of an undivided profits account from the moment of the inception of a state bank, in an amount which is relative to the size of the bank but which has a stated floor. The existence of this amount from the inception of a state bank has the advantage of preserving inviolate the capital and surplus accounts, leaving undivided profits as the stated source for the payment of initial expenses.

Sec. 404. Capital notes and debentures.

1. A state bank may, with the prior approval of the superintendent and the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon, issue capital notes or debentures. The amounts, maturities, rate of interest, relative rights with other creditors, and other terms and conditions shall be set forth on the face of the capital notes or debentures or in an attendant agreement, and all such terms and conditions shall be subject to the prior approval of the superintendent provided that all such capital notes and debentures shall be subordinated to the rights of other persons to the extent provided for in section thirteen hundred twelve (1312) of this Act. The aggregate amount of all capital notes and debentures issued and outstanding pursuant to this section shall not exceed, at any one time, the capital and surplus of the state bank.

2. A state bank shall not make any payment of principal on any capital notes or debentures without the prior approval of the superintendent nor shall any payment of principal and

interest be made on any such capital or debentures by a state bank when its capital is impaired or which would cause its capital to become impaired. Subject to the provisions of this section a state bank may issue capital notes or debentures with provision for installment or serial payment of capital notes or debentures according to an established schedule which shall be approved by the superintendent prior to issuance.

3. No state bank may issue capital notes or debentures within five years after it is originally authorized to do business.

Comment

This section is adoptive of recently passed legislation authorizing banks to issue capital notes or debentures. See chapter 378, Acts of the 62nd General Assembly. Several relatively minor changes have been made to adopt the syntax to that used throughout this statute. The substance of the language in subsection 1 has been changed to provide that the terms and conditions of the securities may appear in an attendant agreement rather than on the face of the security itself. Subsection 2 has been altered to require the approval of the superintendent in all situations involving payment of principal. This authority is parallel to authority granted to the Federal Deposit Insurance Corporation by federal law. See 18 U.S.C. 1828(i)(1). This subsection also contains a new provision providing for installment or serial payments of capital notes according to a schedule which shall be approved by the superintendent prior to issuance. The priority of payment on dissolution is controlled by section 1312.

Sec. 405. Increase or decrease of capital structure.

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

a. Sale of authorized but unissued shares.

b. Transfer of surplus or undivided profits to capital for authorized but unissued shares.

c. Transfer of undivided profits to surplus.

d. Authorization and issuance of common shares, preferred shares, or capital notes or debentures as provided in section four hundred four (404) of this Act.

2. Whenever it shall appear necessary to do so in the interest of the safety of the deposits of a state bank, the superintendent may require that the capital structure of the state bank be increased by either of the methods provided for in paragraphs a and d of subsection one (1) of this section.

3. Neither capital nor surplus shall be decreased except with the approval of the superintendent.

Comment

This section allows both the superintendent and the state bank to increase the capital and surplus of a state bank by the methods provided for therein. It is also provided that neither capital nor surplus shall be decreased except with the approval of the superintendent. The recognition that differences exist in risk exposure respecting various types of assets has long been recognized in determining capital adequacy. The quality of bank assets, the character of the management of the state bank and the economic prospects of the state bank must be taken into consideration in determining capital adequacy. The power to make determinations with respect to capital adequacy is thus delegated to the superintendent who can effect change as circumstances dictate.

Division V
SHARES, SHAREHOLDERS AND DIVIDENDS

Sec. 501. Authorized shares.

1. A state bank shall have the power to create and issue:

a. Common shares with par value, and

b. One or more classes of preferred shares, all of which shall be shares with par value and any and all of which may be voting or nonvoting and which may have such designations, preferences, limitations, and relative rights as shall be stated

in the articles of incorporation.

2. Without limiting the authority herein contained, a state bank, when so provided in its articles of incorporation, may issue preferred shares:

a. Subject to the right of the state bank to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

b. Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

c. Having preference over common shares or any other classes of preferred shares as to the payment of dividends.

d. Having preference in the assets of the state bank over common shares or any other class of preferred shares upon the voluntary or involuntary dissolution of the state bank.

e. Convertible into shares of common or into shares of preferred of another class except a class having prior or superior rights and preferences as to dividends or distribution of assets upon dissolution.

Unless the articles of incorporation or bylaws otherwise provide, the board of directors may, by resolution duly adopted and with the approval of the superintendent as provided in section four hundred five (405) of this Act, issue from time to time, in whole or in part, the shares authorized by the articles of incorporation.

Comment

This section draws upon section 496A.14 of the Iowa Business Corporation Act. Essential distinctions lie in the fact that this provision provides that all shares shall have a par value (although the requirement contained in existing law that par value be at a maximum of one hundred dollars has been removed) and that all common shares shall be voting on all matters. Preferred may or may not be voting according to the articles of incorporation. See sections 526.36, 527.7, 528.55 and 528.112 of existing law.

The concluding sentence of the section allows the state bank

to issue from time to time, with the approval of the superintendent, previously authorized shares. The enumerated right to issue authorized shares from time to time will not in any way harm the preservation of the capital structure level since the state bank cannot do business without satisfying initial requirements respecting paid-in capital. See section 308.

Sec. 502. Certificates representing shares. The shares of a state bank shall be represented by certificates signed by such officers, employees or agents as are authorized by the articles of incorporation or bylaws to sign. If no contrary provisions are made in the articles of incorporation or bylaws, such certificates shall be signed by the president or a vice-president and the cashier or an assistant cashier of the state bank, and may be sealed with the seal of the state bank or a facsimile thereof. The signatures of the president or vice-president and the cashier or an assistant cashier or other persons signing for the state bank upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the state bank itself or an employee of the state bank. In case any officer or other authorized person who has signed or whose facsimile signature has been placed upon such certificate for the state bank shall have ceased to be such officer or employee or agent before such certificate is issued, it may be issued by the state bank with the same effect as if he were such officer or employee or agent at the date of its issue. If a state bank is authorized to issue preferred shares, every certificate issued by the state bank shall set forth upon the face or back of the certificate, or shall state that the state bank will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of such preferred shares.

Each certificate representing shares shall state upon the face thereof:

1. That the state bank is organized under the laws of this state.

2. The name of the person to whom issued.

3. The number and class of shares which such certificate represents.

4. The par value of each share represented by such certificate.

No certificate shall be issued for any share until such share is fully paid.

Comment

This section which is new, draws on section 496A.22 of the Iowa Business Corporation Act. The language of section 496A.22 has been modified so as to be consistent with a situation (see section 501) whereunder only the preferred shares may possess relative rights, etc., inter se.

Sec. 503. Consideration for shares.

1. Except in the case of a distribution of shares authorized by section five hundred seventeen (517) of this Act or shares issued upon exchanges or conversion, common shares of a state bank may be issued only for cash in an amount which shall be at least:

a. In the case of the issuance of additional common shares of an existing state bank, equal to the sum of the capital represented by the common shares and the surplus of the state bank divided by the number of common shares previously issued.

b. In the case of the issuance of common shares of a proposed state bank, the amount required to equal the sum of the capital, to be represented by the common shares, the surplus and the undivided profits, required by the superintendent as a condition precedent to the issuance of an authorization to do business, divided by the number of shares to be issued.

2. Preferred shares of a state bank may be issued only for cash and for an amount not less than that determined by the superintendent.

Comment

Existing law has no language respecting minimum consideration for shares. Subsection 1, in setting forth minimum consideration for common shares, has the advantage of requiring that purchasers of additional shares make an equal contribution toward the purchase of his share of the surplus of the state bank represented by the newly issued shares. The minimum consideration level as respects the shares of a newly formed bank is even more definite with the purchaser being required to make a prorated contribution for his share of the undivided profits of the state bank.

Because of their character, it seems reasonable to provide that preferred shares shall in all events be issued for cash.

Sec. 504. Subscriptions for shares. A subscription for shares of a state bank to be incorporated pursuant to the provisions of this Act shall be irrevocable for a period of six months, or for such longer period as is provided for by the terms of the subscription agreement, unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after incorporation of a state bank, shall be paid in full at such time as shall be determined by the board of directors.

The call for payment by the board of directors on subscriptions shall be uniform as to all shares of the same class.

Comment

This section adopts, in a very similar language, section 496A.16 of the Iowa Business Corporation Act.

Sec. 505. Liability of shareholders and subscribers.

1. A holder of shares of a state bank shall be under no obligation to the state bank or its creditors with respect to such shares. A subscriber to shares of a state bank shall be under no obligation to the state bank or its creditors with

respect to such shares other than the obligation to pay the full consideration for such shares prior to their issuance.

2. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors or receiver shall not be personally liable to the state bank as a holder of or subscriber to shares of a state bank but the estate and funds in his hands shall be so liable.

3. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Comment

This section draws upon portions of section 496A.24 of the Iowa Business Corporation Act, except that a shareholder's liability and a subscriber's liability are clearly delineated in subsection 1. See section 528.128 of existing law. The second paragraph of 496A.24 has not been adopted as it relates to situations where the full consideration for shares has not been paid, the latter being a situation which will not arise under this statute.

Sec. 506. Shareholders pre-emptive rights. The pre-emptive right of a shareholder of common shares to acquire unissued common shares of a state bank or preferred shares and capital notes or debentures of a state bank which are convertible into common shares, shall not be limited or denied, except as provided in section five hundred twenty (520) of this Act. The pre-emptive right of holders of preferred shares to acquire unissued shares of a state bank may be limited or denied to the extent provided in the articles of incorporation or any amendment thereto. Any shares of a state bank purchased and acquired by such state bank, and held by it during the period permitted by this Act, shall not be entitled to pre-emptive rights.

Comment

This section has the effect of preserving inviolate the right of common shareholders to acquire their pro rata share of new

common issues or securities convertible into common. This right, existing at common law, could be limited or denied. The preemptive right of a holder of preferred shares can, however, be limited by the articles of incorporation. Absent a provision in the articles of incorporation it shall exist as at common law. This is similar to existing law. See section 528.127 (second to the last paragraph). This section makes clear, however, that when a state bank holds its own shares in the limited circumstances where possible under this statute (e.g., sections 507, 1406, and 1407) such shares shall not be entitled to preemption.

Sec. 507. Owning or loaning on its own shares. No state bank shall make any loan or extension of credit on the security of the shares of its own capital, or, except as provided in sections fourteen hundred six (1406) and fourteen hundred seventeen (1417) of this Act, be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and shares so purchased or acquired shall be sold at public or private sale within one year from the time of their purchase or acquisition, unless the time is extended by the superintendent. Any common shares of a state bank purchased or acquired by the state bank pursuant to this Act, and sold as directed by this Act, shall be subject to the minimum consideration requirements of subsection one (1) of section five hundred three (503) of this Act unless a lesser consideration is approved by the superintendent. Any preferred shares of a state bank purchased or acquired by the state bank pursuant to this Act, and sold as directed by this Act, shall be subject to the consideration requirements of subsection two (2) of section five hundred three (503) of this Act.

Comment

This section adopts existing law. See section 528.9. The prohibition against acquiring its own shares contained in this

section has no application to situations arising under sections 1406 and 1407; however, shares acquired under this section and sections 1406 and 1407 are subject to the minimum consideration requirements of section 503.

Sec. 508. Meetings of shareholders. Meetings of shareholders may be held at such place, within this state, as may be provided in the articles of incorporation or the bylaws, or as may be fixed from time to time in accordance with the provisions thereof. In the absence of any such provision, all meetings shall be held at the principal place of business of the state bank. An annual meeting of the shareholders shall be held on the specific and named day as shall be provided in the articles of incorporation. Failure to hold the annual meeting on the designated day shall not work a forfeiture or dissolution of the state bank. Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

Comment

This section draws upon section 496A.27 of the Iowa Business Corporation Act. The third sentence of 496A.27 has not been adopted in order to provide consistency with the requirement of this section that annual meetings of the shareholders shall be held on a specific day. See section 302(10).

Sec. 509. Notice of shareholder meetings--waiver of notice generally.

1. Written or printed notice stating the place, day and hour of a meeting of the shareholders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the cashier, or the

officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the state bank with postage thereon prepaid.

2. Whenever any notice is required to be given to any shareholder under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the state bank, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Comment

Subsection 1 adopts section 496A.28 of the Iowa Business Corporation Act. Subsection 2 provides for the waiver of notice generally in the manner provided for in the Iowa Business Corporation Act by section 496A.139.

Sec. 510. Closing of transfer books and fixing record date. The board of directors of a state bank shall cause adequate stock transfer books to be maintained. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a state bank may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors may fix, in advance, a date as the record date for any such determination of shareholders, such date in any

case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

Comment

This section adopts section 496A.29 of the Iowa Business Corporation Act. A sentence has been added to the beginning of this section requiring that a state bank maintain the transfer book that is the subject matter of the section.

Sec. 511. Voting list. The officer or agent having charge of the stock transfer books for shares of a state bank shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the principal place of business of the state bank and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books

or to vote at any meeting of shareholders. Failure to comply with the requirements of this section shall not affect the validity of action taken at such meeting.

Comment

This section adopts section 496A.30 of the Iowa Business Corporation Act.

Sec. 512. Quorum of shareholders. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the laws of this state or of the United States or by the articles of incorporation or bylaws.

Comment

This section adopts section 496A.31 of the Iowa Business Corporation Act but adds a reference in the last sentence to the possibility that the laws of the United States or of this state may require a greater number or voting by classes.

Sec. 513. Voting of shares. Each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any preferred class, may be limited or denied by the articles of incorporation.

Shares of a state bank purchased or acquired by such state bank pursuant to this Act shall not be voted at any meeting and shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-

in-fact. No proxy shall be valid after eleven months from the date of its execution.

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many individuals as there are directors to be elected and for whose election he has a right to vote.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Except as provided in the following sentence, shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

In an election of directors, a state bank may not vote its own shares held by it as sole trustee unless under the terms of the trust the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and unless such donor or beneficiary actually directs how such shares shall be voted, provided, however, that shares held in trust by a state bank pursuant to an instrument in effect prior to the effective date of this Act, under the terms of which the manner in which such shares shall be voted could not be determined by a donor or beneficiary of the trust, may be voted in an election of directors of a state bank upon petition filed by the state bank, to a court of competent jurisdiction, and the appointment by such court of an individual to determine the manner in which such shares shall be voted. When the shares of a state bank are held by such state bank and one or more persons as trustees, such shares may be voted by such other

person or persons as trustees, in the same manner as if he or they were the sole trustee. Whenever shares cannot be voted by reason of being held by a state bank as sole trustee, such shares shall be excluded in determining whether matters voted upon by the shareholders were adopted by the requisite number of shares.

Unless otherwise provided by the governing instrument, shares which are held jointly by any number of fiduciaries shall be voted in the manner determined by the majority of such fiduciaries (excluding a trustee ineligible by reason of the preceding paragraph) or if the fiduciaries are equally divided on the manner of voting, any court of competent jurisdiction may, upon petition filed by any of such fiduciaries or any beneficiary, appoint an additional person to act with such fiduciaries in determining the manner in which such shares shall be voted.

Unless otherwise provided by agreement, if persons holding shares jointly or as tenants in common are unable to agree upon the manner in which such shares shall be voted, the vote of such shares shall be divided among such persons in proportion to their interest.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of preferred shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited in escrow with irrevocable instruction and authority to pay the

redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

Comment

This section draws heavily upon section 496A.32 of the Iowa Business Corporation Act.

The second paragraph of section 496A.32 has been restated as the second paragraph of this section in a significantly altered manner as it deals with treasury shares which are not recognized under this statute. See section 507. The concluding phrase of the fourth paragraph of section 496A.32, which deals with cumulative voting, has been omitted. Cumulative voting is apparently not allowed under existing law (see section 526.18) and there appears to be sufficient reason for the maintenance of this policy.

The seventh paragraph of this section provides that a state bank shall not be allowed to vote its own shares which it holds as sole trustee in an election of directors unless certain circumstances exist. This paragraph adopts a similar provision applicable to national banks. See 12 U.S.C. section 61. This provision is considered necessary and reduces opportunities for self-dealing by management in situations where control could be perpetuated without actual beneficial ownership. This represents a change from existing law. See section 532.6. However, as respects instruments in effect prior to the adoption of this Act, the statute supplies machinery which will allow shares of a state bank held pursuant to such a trust to be voted.

Paragraphs eight and nine of this section are also not a part of the Iowa Business Corporation Act. They are added as being necessary, covering as they do situations which are fairly common.

Sec. 514. Voting trust. Any number of shareholders of a state bank may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed twenty

years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the state bank at its principal place of business, by delivery of a copy thereof to the superintendent and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the state bank shall be subject to examination for any proper purpose during usual business hours by a shareholder of the state bank, in person or by agent or attorney, or by any holder of a beneficial interest in the voting trust, in person or by agent or attorney.

This section shall not affect the validity of any agreement, relative to the voting of shares, in effect on the date of the enactment of this Act.

Comment

This section adopts section 496A.33 of the Iowa Business Corporation Act. The second sentence of this section has been changed slightly from the form in which it appears in section 496A.33. The second paragraph has been added to make it clear that the section has no effect upon existing voting agreements.

Sec. 515. Lists--filing with superintendent. Every state bank shall cause to be kept a full and correct list of the names and addresses of the officers, directors, and shareholders of the state bank, and the number of shares held by each. The list shall be subject to the inspection of all shareholders during usual business hours.

A copy of the list as of the date of the adjournment of each annual meeting of shareholders, in the form of an affidavit signed by the president or cashier of the state bank, shall be transmitted to the superintendent within ten days after such annual meeting.

Comment

This section incorporates the essential aspects of existing

law. See sections 528.47, 528.48 and 528.49 of existing law. Respecting that portion of this section which is derived from section 524.48 of existing law it will be noted that the right to inspect the list has been limited to shareholders, the extension of that right to "creditors" being abandoned as too broad. Concerning the language in the section which is derived from section 528.49 of existing law, it will be noted that the authentication of the list is to be obtained by means of an affidavit signed by the president or cashier. The language contained in the second sentence of section 528.49 of existing law, enabling the superintendent to obtain financial statements of shareholders, has been placed in subsection 4 of section 519.

Sec. 516. Dividends.

1. The board of directors of a state bank may, from time to time, declare, and the state bank may pay, dividends on its outstanding shares subject to the restrictions of this Act and to the restrictions, if any, in its articles of incorporation. Dividends may be declared and paid only out of undivided profits and may be paid in cash or property.

2. A dividend may not be declared or paid unless the transfer of net profits to surplus required by section four hundred two (402) of this Act, has been made prior to the declaration of the dividend.

Comment

This section authorizes the payment of dividends and makes clear that the source of such payments is to be undivided profits. See the definition of "undivided profits" contained in section 103(22). The surplus level is maintained through the stated relationship of this section with the mandatory transfers to surplus required by section 402.

Sec. 517. Distribution of shares of state bank.

1. The board of directors of a state bank may, subject to the provisions of section four hundred five (405) of this Act,

distribute pro rata to holders of common shares authorized but unissued common shares of the state bank.

2. No distribution may be made in authorized but unissued shares of the state bank unless:

a. There shall be transferred to capital an amount equal to the total par value of the shares distributed, and

b. Immediately after the distribution, the surplus of the state bank would be at least equal to fifty percent of its capital.

Comment

By this section, which is new and has no counterpart in existing law, share dividends are permitted but the scope thereof is limited to the distribution of common shares to common shareholders. As with cash dividends it is here provided that the distribution of common share dividends should not result in the impairment of the capital of the state bank. Consequently, it has been specifically provided that the surplus level will not be impaired below a specific point as a result of the common share distribution.

Sec. 518. Redemption of preferred shares.

1. By resolution of its board of directors and with the prior approval of the superintendent, a state bank may redeem preferred shares. Any preferred shares which are redeemable according to the terms of their issuance shall be redeemed only in accordance with such terms. Preferred shares which are redeemed shall be cancelled and shall not be reissued. Preferred shares which are not redeemable according to the terms of their issuance shall be redeemable only pro rata or by lot or by such other equitable method as may be selected by the board of directors.

2. When preferred shares are redeemed by a state bank, the redemption shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. The filing of the statement of cancellation shall

constitute an amendment to the articles of incorporation and shall reduce the number of preferred shares of the class so cancelled which the state bank is authorized to issue by the number so cancelled.

The statement of cancellation shall be executed by the state bank by its president or a vice-president and by its cashier or an assistant cashier, and acknowledged by one of the officers signing such statement, and shall set forth:

a. The name of the state bank and the effective date of its incorporation.

b. The number of preferred shares cancelled through redemption, itemized by classes.

c. The aggregate number of issued shares, itemized by classes, after giving effect to such cancellation.

d. The amount, expressed in dollars, of the stated capital of the state bank after giving effect to such cancellation.

e. The number of shares which the state bank has authority to issue, itemized by classes, after giving effect to such cancellation.

Such statement of cancellation, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if he finds the statement of cancellation satisfies the requirements of this section, deliver it to the secretary of state for filing and recording in his office and the same shall be filed and recorded in the office of the county recorder. The capital of the state bank shall be deemed reduced by the par value of the shares so cancelled upon the effective date of such redemption.

Comment

This section is new and permits the redemption of preferred shares with the prior approval of the superintendent. Subsection 2 is an appropriate adoption of section 496A.64 of the Iowa Business Corporation Act.

Sec. 519. Change of control--shares as security--reports.

1. Whenever a change occurs in the ownership of the outstanding shares of a state bank which will result in control or in a change in control of a state bank, the president or cashier shall promptly report in writing such facts to the superintendent upon obtaining knowledge thereof. As used in this section, the term control means the power, directly or indirectly, to elect the board of directors. If there is any doubt as to whether a change in the ownership of the outstanding shares is sufficient to result in control thereof, or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the superintendent.

2. Whenever twenty-five percent or more of the outstanding voting shares of a state bank is used as security for any transaction, the person or persons owning such shares shall promptly report such transaction to the superintendent in writing.

3. The reports required by subsections one (1) and two (2) of this section shall contain information (to the extent known by the person making the report) relative to the number of shares involved, the names of the sellers and purchasers (or transferors and transferees), the purchase price, the name of the borrower, the amount, source, and terms of the loan, or other transaction, the name of the bank issuing the shares used as security, and the number of shares used as security.

4. The superintendent may require, at such times as he deems appropriate, the submission of a financial statement from a shareholder or shareholders of a state bank possessing, directly or indirectly, control of such state bank.

Comment

This proposal is new and has no counterpart in existing state law. It seems wise to mandatorily provide for informing the superintendent of significant shifts in the control of a state bank. The regulatory context in which the industry operates makes it desirable for the superintendent to be aware of significant changes in ownership so that he may take whatever action he deems necessary to protect the public interest. Control is

defined for the purpose of this section. Subsection 2 requires a report to the superintendent when twenty-five percent or more of the outstanding shares of a state bank are used as security for any transaction. Subsection 3 of this section states the matter that is to be included in any report required by this section. The entire section (excluding subsection 4) is similar to 12 U.S.C. section 1817(j) of the Federal Deposit Insurance Act. Subsection 4 of this section adopts the essence of existing law. See section 528.49. It is intended that the penalty provided for in section 1604 shall have application to this section.

Sec. 520. Options for shares. A state bank may authorize the granting of options to officers and employees to purchase unissued, common shares of the state bank in accordance with a plan approved by the superintendent provided the following steps are taken:

1. The plan is submitted to a vote of the shareholders at an annual meeting or special meeting called for the purpose, the notice of the meeting contains a complete description of the plan, and the plan receives the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon.

2. The consideration per share shall be determined as of the date the options are granted and shall not be less than the sum of the capital represented by common shares and the surplus of the state bank divided by the number of common shares issued and outstanding on such date, but in no case less than an amount approved by the superintendent.

3. Options to purchase shares shall have a termination date and shall not be transferable by the holder of the option during his lifetime. In the event that the option is to survive the death of the holder of the option, the option shall terminate one year after the date of his death but may be exercised by his estate during that one year period.

4. Notice of the meeting shall describe the extent to which pre-emptive rights of shareholders are inapplicable to the issuance of shares under this section.

Upon approval by the shareholders the cashier shall reserve authorized but unissued shares for purposes of this section until the options are exercised or expire.

Upon approval by the shareholders as provided in subsection one (1) of this section, the provisions of section five hundred six (506) of this Act inconsistent with this section shall be inapplicable.

Comment

This section, which is new and has no counterpart in existing law, authorizes a state bank to grant to officers and employees options to purchase unissued common shares of a state bank. The section provides that all such plans for the granting of options shall be approved by the superintendent and the shareholders of the state bank. Although the statute provides for a minimum consideration to be paid upon the exercise of the option, the consideration shall in all cases be subject to the approval of the superintendent. Any option granted pursuant to this section shall be non-transferable by the holder thereof in an inter vivos transaction. The option may, however, if provided by its terms, be exercised by the estate of the holder within one year of his death.

Division VI
DIRECTORS

Sec. 601. Board of directors.

1. The business and affairs of a state bank shall be managed by a board of five or more directors over the age of twenty-one, a majority of whom shall be citizens of this state and all of whom shall be citizens of the United States. No person shall be eligible to serve as a director of any state bank unless he is the owner, in his own right, free of any lien and encumbrance, of common shares in the state bank of which he

is a director having a par value of not less than five hundred dollars.

2. The number of directors may be increased, or decreased to a number not less than five, by the shareholders at the annual meeting, or at a special meeting called for that purpose, but no decrease shall have the effect of shortening the term of an incumbent director.

Comment

Subsection 1 of this section preserves the essence of existing law. See sections 526.8 and 529.6. A Board of Directors with a minimum of five members and the requirement that each possess qualifying shares has been retained.

Subsection 2 of this section is similar to existing law by providing that shareholder approval is necessary to effect a change in the number of members of the Board of Directors. See sections 526.9 and 527.9.

Sec. 602. Board of directors--election. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting. Directors shall hold office for one year and until their successors have been elected and qualified, unless removed in accordance with provisions of section six hundred six (606) of this Act. When the shareholders increase the number of directors at an annual meeting or at a special meeting, they shall, at the same meeting or at a subsequent meeting, elect a director to fill each new directorship created.

Comment

This section retains existing law by providing for the election of directors at the annual meeting of shareholders. Each director so elected shall hold office for a period of one year or until such later time as his successor is elected and qualifies. As well as incorporating certain features of existing law, this section draws upon the last two sentences of section 496A.35

of the Iowa Business Corporation Act.

Sec. 603. Vacancies. Unless otherwise provided in the articles of incorporation, the bylaws, or by action of the shareholders, any vacancy occurring in the board of directors may be filled by the affirmative vote of the majority of the directors then in office, even if less than a quorum of the board of directors. A director so elected shall be elected for the unexpired term of his predecessor in office.

Comment

This section draws upon section 496A.37 of the Iowa Business Corporation Act. It provides, as does existing law, that vacancies occurring in the Board of Directors may be filled by the affirmative vote of a majority of the Board. See section 526.13. This section does not apply to vacancies occurring in the Board of Directors by reason of an increase in the number of directors. Vacancies thus occurring shall be filled in the manner provided for in the last sentence of section 602.

Sec. 604. Duties and responsibilities. The duties and responsibilities of a director or of the board of directors shall include, but are not limited to, the following:

1. Reasonably regular attendance at meetings of the board.

2. Employment of officer personnel, and determination of their compensation.

3. Periodic review of the original records of the state bank, or comprehensive summaries thereof prepared by the officers of the state bank, pertaining to loans, discounts, security interests and investments in bonds and securities.

4. Utilization of a method to insure the safety of the funds of depositors as provided for in section six hundred eight (608) of this Act.

5. Periodic review of the utilization of security measures for the protection of the state bank and the maintenance of reasonable insurance coverage.

Directors of a state bank shall discharge the duties of their position in good faith and with that diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. The directors shall have a continuing responsibility to assure themselves that the bank is being managed according to law and that the practices and policies adopted by the board are being implemented.

Comment

This section is new and has no counterpart in existing law. It seems appropriate to incorporate within the statute a broad statement of the duties and responsibilities which must be assumed by an individual who is a member of the Board of Directors of a state bank.

Sec. 605. Liability of directors in certain cases. In addition to any other liabilities imposed by law upon directors of a state bank:

1. Directors of a state bank who vote for or assent to the declaration of any dividend or other distribution of the assets of a state bank to its shareholders in willful or negligent violation of the provisions of this Act or of any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the state bank for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this Act or of the restrictions in the articles of incorporation.

2. The directors of a state bank who vote for or assent to any distribution of assets of a state bank to its shareholders during the dissolution of the state bank without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the state bank shall be jointly and severally liable to the state bank for the value of such assets which are distributed, to the extent that such

debts, obligations and liabilities of the state bank are not thereafter paid and discharged.

3. The directors of a state bank who, willfully or negligently, vote for or assent to any loan or extension of credit resulting in an obligation, as defined in subsection one (1) of section nine hundred four (904) of this Act, to such state bank in violation of the provisions of this Act, shall be jointly and severally liable to the state bank for the amount of any loss sustained as a result of such obligation.

4. The directors of a state bank who, willfully or negligently, vote for or assent to any investment of funds of the state bank in violation of the provisions of this Act shall be jointly and severally liable to the state bank for the amount of any loss sustained on such investment.

A director of a state bank who is present at a meeting of its board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the cashier of the state bank promptly after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subsections one (1), two (2), three (3), or four (4) of this section if he relied and acted in good faith upon information represented to him to be correct by an officer or officers of such state bank or stated in a written report by a certified public accountant or firm of such accountants. No director shall be deemed to be negligent within the meaning of this section if he in good faith exercised that diligence, care and skill which an ordinarily prudent man would exercise as a director under similar circumstances.

Any director against whom a claim shall be asserted under

or pursuant to this section for the payment of a dividend or other distribution of assets of a state bank and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of the provisions of this Act, in proportion to the amounts received by them respectively. Further, any director against whom a claim shall be asserted pursuant to this section for the payment of any liability imposed by this section shall be entitled to contribution from any director found to be similarly liable.

Whenever the superintendent deems it necessary he may require, after affording an opportunity for a hearing upon adequate notice, that a director or directors whom he reasonably believes to be liable to a state bank pursuant to subsections one (1), two (2), three (3), or four (4) of this section, to place in an escrow account in an insured bank located in this state, as directed by the superintendent, an amount sufficient to discharge any liability which may accrue pursuant to subsections one (1), two (2), three (3), or four (4) of this section. The amount so deposited shall be paid over to the state bank by the superintendent upon final determination of the amount of such liability. Any portion of the escrow account which is not necessary to meet such liability shall be repaid on a pro rata basis to the directors who contributed to the fund.

Any action seeking to impose liability under this section, other than liability for contribution, shall be commenced only within five years of the action complained of and not thereafter.

Comment

This section is new and has no counterpart in existing law. It draws heavily upon section 496A.44 of the Iowa Business Corporation Act.

Subsections 3 and 4 of this section are not a part of section 496A.44 but have been added to insure the liability when a director willfully or negligently votes for or assents to any prohibited

loan or investment. The second to the last paragraph of this section enables the superintendent to require the deposit of an amount sufficient to discharge any liability accruing under this section when he reasonably believes a director to be in violation thereof. Such a deposit may allow the state bank to obtain satisfaction of the imposed liability from the director.

Sec. 606. Removal of directors.

1. At a meeting of shareholders expressly called for that purpose, individual directors or the entire board of directors may be removed, with or without cause, by the affirmative vote of the holders of at least two-thirds of the shares entitled to vote at an election of directors. The vacancies created may be filled at the same meeting at which the removal proceedings take place.

2. When, in the opinion of the superintendent any director of a state bank shall have continued to violate any law relating to such state bank or shall have continued unsafe or unsound practices in conducting the business of such state bank, after having been warned by the superintendent to discontinue or correct such violations of law or such unsafe or unsound practices, the superintendent may cause notice to be served upon such director, to appear before the superintendent to show cause why he should not be removed from office. A copy of such notice shall be sent to each director of the state bank affected, by registered or certified mail. If, after granting the accused director a reasonable opportunity to be heard, the superintendent finds that the director continued to violate any law relating to such state bank or continued unsafe or unsound practices in conducting the business of such state bank after having been warned by the superintendent to discontinue or correct such violations of law or such unsafe or unsound practices, the superintendent, in his discretion, may order that such director be removed from office. A copy of the order shall be

served upon such director and upon the state bank of which he is a director at which time he shall cease to be a director of the state bank.

The decision of the superintendent shall be subject to review by the district court of Polk county upon petition by the removed director within thirty days after the superintendent notifies such director of his decision. The decision of the superintendent shall be upheld unless unsupported by substantial evidence. No action taken by a director prior to his removal shall be subject to attack on the ground of his disqualification.

Comment

Subsection 1 of this section is new but gives statutory expression to what was presumably permissible practice under existing law.

Subsection 2 allows the superintendent to affect removal of a director in certain unusual circumstances and is similar to existing state and federal law. See section 528.18 of the Iowa Code and 12 U.S.C. section 1818(e). The statute provides that the superintendent must notify the director of the unlawful practices in which he is engaging. If the director continues to engage in such practice, after having been warned by the superintendent, the superintendent may order that such director be removed from office. In all such instances the accused director shall be afforded a reasonable opportunity to be heard on the question of his dismissal prior to the issuance of a dismissal order by the superintendent. The action of the superintendent in this regard is subject to judicial review.

Sec. 607. Meetings--waiver of notice--quorum. The board of directors shall hold at least one meeting each calendar month. A special meeting may be called by the president, a vice-president, cashier or a director. Notice of a meeting shall be given to each director, either personally or by mail, at least two days in advance of the meeting. Notice shall not be required if

the articles of incorporation, bylaws, or a resolution of the board of directors provide for a regular monthly meeting date.

Attendance of a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Whenever any notice is required to be given to any director of a state bank under the provisions of this Act or under the provisions of the articles of incorporation or the bylaws of the state bank, a waiver thereof in writing, signed by the individual or individuals entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

A majority of the board of directors shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the laws of this state or of the United States, the articles of incorporation or the bylaws.

Comment

The first paragraph of this section preserves the requirement, contained in existing law, that the Board of Directors shall hold monthly meetings. See section 528.17. The remaining portion of the first paragraph is new and thought to be promotive of efficiency in the operation of the Board.

The second paragraph is drawn from section 496A.40 of the Iowa Business Corporation Act.

The third paragraph of this section, which provides machinery for the waiver of notice required to be given to any director, draws heavily upon section 496A.139 of the Iowa Business Corporation Act.

The fourth paragraph of this section preserves the basic

features of existing law (section 526.17) and, also, draws upon section 496A.38 of the Iowa Business Corporation Act.

Sec. 608. Examining by directors or auditing. In addition to any examination made by the superintendent or other supervisory agencies, the board of directors shall employ at least one of the methods described in this section.

1. An examining committee of not less than two members of the board of directors, who are not officers, shall examine the condition of the state bank at least once each six months, and submit a written report of each examination to the board of directors, who shall record the report in their minutes and deliver a copy of the report to the superintendent. The superintendent shall establish minimum standards for such examinations.

2. The board of directors may employ a certified public accountant or a firm of such accountants to perform certain auditing functions for a state bank during each year, according to generally accepted methods of accounting practice. The superintendent may establish minimum standards for such auditing functions. The report of the accountants shall be submitted to the board of directors, and a copy of the report shall be delivered to the superintendent.

3. The board of directors may establish an autonomous internal audit control system which shall be subject to approval of the superintendent. The individual directing the internal audit control system shall submit to the board of directors each quarter an interim report as to the degree of compliance with the internal audit control system and shall express an opinion as to the adequacy of the internal controls. A complete report shall be submitted annually to the board of directors, who shall record the report in their minutes and deliver a copy of the report to the superintendent.

Comment

This section expands existing law (sections 528.17 and 528.19) in that it articulates the methods which may be employed by the

directors in fulfilling their obligation to examine the condition of the state bank.

Sec. 609. Executive and other committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the state bank shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the state bank, recommending to the shareholders a voluntary dissolution of the state bank or a revocation thereof, or amending the bylaws of the state bank. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

Comment

This section adopts section 496A.39 of the Iowa Business Corporation Act.

Sec. 610. Compensation of directors. Subject to the approval of the superintendent, the shareholders of a state bank shall fix the compensation of directors for their services as members of the board of directors.

A director who is also a salaried officer or employee of the state bank of which he is a director shall receive no additional compensation as director. Directors may be reimbursed for reasonable expenses incurred in the performance of their duties.

Comment

This section is analogous to existing law. See sections 528.5 and 528.21. With the approval of the superintendent, the shareholders are to fix the compensation of directors. If an individual is both a director and a salaried officer or employee, he may receive no additional compensation for the services which he renders in his capacity as a director of the state bank. The statute provides, however, that an individual who is a non-salaried officer may receive compensation for his services as a director.

Sec. 611. Oath of directors. Each director of a state bank, before acting as a director, shall take an oath that he will diligently, faithfully and impartially perform the duties imposed upon him by law, that he will not knowingly violate or willingly permit a violation of any of the provisions of this Act, and that he meets the eligibility requirements of this Act.

The oath shall be signed by the director, acknowledged before an officer authorized to take acknowledgements of deeds, and delivered to the superintendent.

Comment

This section preserves relevant portions of existing law found in section 528.16. The mandatory statement in the oath that the director meets the eligibility requirements includes the required ownership of qualifying shares and that such be free from lien or encumbrance, thus making unnecessary specific reference to that aspect.

Sec. 612. Director dealing with state bank.

1. The total obligations, as defined in subsection one (1) of section nine hundred four (904) of this Act, of a director to a state bank of which he is a director shall not exceed twenty percent of the capital and surplus of the state bank except that the total obligations of a director to a state bank of

which he is a director shall not exceed forty percent of the capital and surplus of the state bank if the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of obligations described in subparagraphs one (1), two (2), and three (3) of paragraph a of subsection two (2) of section nine hundred four (904) of this Act. A majority of the board of directors, voting in the absence of the applying director, shall give its prior approval to any obligation, as defined in subsection one (1) of section nine hundred four (904) of this Act, of a director to the state bank of which he is a director. The form of such approval shall be specified by the superintendent, and a copy recorded in the minutes of the board of directors.

2. A director shall not be permitted to receive any loan or extension of credit or use any property of a state bank of which he is a director at a lower rate of interest or charge than the rate charged to other customers under similar circumstances.

3. A director shall not be paid a higher rate of interest on deposits by a state bank of which he is a director than the rate paid to any other customer under similar circumstances.

4. A director shall not purchase or lease any assets from or sell or lease any assets to a state bank of which he is a director except upon terms not less favorable to the state bank than those offered to or by other persons. All purchases or leases from and sales or leases to a director shall receive the prior approval of a majority of the board of directors voting in the absence of the interested director.

5. For the purpose of this section, and section seven hundred six (706) of this Act, any obligation, as defined in subsection one (1) of section nine hundred four (904) of this Act, of the spouse (other than a spouse who is separated from the director or officer under a decree of divorce or separate maintenance) or minor children of a director or officer to the state bank in which he is a director or officer shall be considered

an obligation of such director or officer.

Comment

Much of this section is new. This section makes a director subject to the general loan limitation imposed by section 904 except that a director is not afforded the additional privileges set forth in subparagraphs 4 and 5 of paragraph a. or those contained in paragraphs b., c. and d. of subsection 2 of such section. The requirement that the Board of Directors approve a loan to a director (in the absence of the applying director), adopts existing law. Section 528.6. This section anticipates that the superintendent will promulgate the form in which the Board of Directors is to approve a loan to a director. Existing law (section 528.6) sets out the form of the approval, insofar as loans to officers are concerned, in the statute.

Subsections 2, 3, 4 and 5 of this section are new.

Sec. 613. Prohibitions applicable to directors. No director of a state bank shall:

1. Receive anything of value for procuring, or attempting to procure, any loan or extension of credit resulting, or which would result, in an obligation, as defined in subsection one (1) of section nine hundred four (904) of this Act, to the state bank or for procuring, or attempting to procure, an investment by the state bank, of which he is a director.

2. Overdraw his deposit account in the state bank.

Comment

This section is new and has no counterpart in existing law. However, insofar as subsection 2 is concerned, see section 528.6.

Sec. 614. Honorary and advisory directors. The board of directors of a state bank may appoint an individual as an honorary director, director emeritus or member of an advisory board. An individual so appointed may not vote at any meeting of the board of directors nor be counted in determining a quorum and

shall not be charged with any responsibilities or be subject to any liabilities imposed upon directors by this Act.

Comment

This section is new and has no counterpart in existing law. It is designed to allow a state bank to appoint certain individuals to act as directors in an honorary capacity. Such individuals would not be subject to the restraints and obligations imposed upon directors generally by the statute.

Division VII
OFFICERS AND EMPLOYEES

Sec. 701. Officers and employees. A state bank shall have, as officers, a president, one vice president and a cashier. As additional officers the state bank may have a chairman, additional vice presidents, assistant vice presidents, assistant cashiers and other officers as may be prescribed by the articles of incorporation or the bylaws. Upon notice by the superintendent, an individual who performs active executive or official duties for a state bank may be treated as an officer for the purpose of this Act. A state bank may have a chairman of the board of directors and one vice president who, if they do not perform executive or official duties or receive a salary, need not be treated as officers for the purpose of this Act. All officers shall be elected by the board of directors. No more than two offices may be held by the same individual. All other individuals employed by a state bank, except directors who are not officers, shall be employees for the purpose of this Act. The president of a state bank shall be a member of the board of directors.

Comment

This section is a modification of existing law. See sections 526.7(4) and 526.12. Its purpose is to define more clearly those individuals who shall be treated as officers and, thus, subject to the conditions of the statute. The superintendent is given authority to treat an individual as an officer, for the purposes

of the statute, if he is performing the duties of an officer though not possessing the title. Certain individuals designated by the statute may be relieved of treatment as officers in certain circumstances. As under existing law, the officers shall be elected by the Board of Directors and the president shall be a member of the Board of Directors. In order to make the delineation between officers and employees clear, the statute provides that every individual employed by the state bank, who is not an officer as defined by this section, shall be an employee of the state bank.

Sec. 702. Officers--duties and liability.

1. All officers of a state bank shall have such authority and perform such duties in the management of the state bank as may be provided for in the articles of incorporation or the bylaws, or as may be determined by a resolution of the board of directors not inconsistent with the bylaws or the articles of incorporation.

2. If an officer willfully or negligently submits any incorrect information to a director or directors, and action by the board of directors contrary to the provisions of this Act, or of any restrictions in the articles of incorporation, is taken in reliance thereon, the officer shall be liable to the same extent as if he were a director voting for or assenting to such action, as provided in section six hundred five (605) of this Act. An officer shall also be liable to the extent of any loss sustained by the state bank as a result of his willful or negligent violation of any provision of this Act. The superintendent may require an officer or officers whom he reasonably believes to be liable to a state bank pursuant to this section, to place in a trust account an amount sufficient to discharge such liability in the manner provided for in section six hundred five (605) of this Act. No officer shall be deemed to be negligent within the meaning of this section if he exercised that diligence, care and skill which an ordinarily pru-

dent man would exercise as an officer under similar circumstances.

Comment

Subsection 1 of this section is new but simply states the effect of existing law.

Subsection 2 makes portions of section 605, dealing with the liability of directors, applicable insofar as the liability of officers is concerned. The first sentence of subsection 2 adopts the second to the last sentence of the third paragraph from the end of section 496A.44 of the Iowa Business Corporation Act. The remainder of the subsection renders an officer liable to the state bank in the same manner as a director is made liable by reason of section 605.

Sec. 703. Officers--employment and compensation. The board of directors may fix the tenure and provide for the reasonable compensation of officers. Upon approval by the board of directors, officers may be reimbursed for reasonable expenses incurred by them in behalf of the state bank.

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.

Comment

The first paragraph of this section is similar to existing law (sections 526.7 and 528.5) but makes clear that the Board of Directors shall fix the tenure and compensation for all officers. The second paragraph of this section is new and empowers a state bank to adopt a plan of deferred compensation, to which it may contribute, for the benefit of officers and employees. Such a plan must be approved by the shareholders and the superintendent.

Sec. 704. Employee--employment and compensation. Employees

of a state bank may be employed by the president or his representative who shall determine, subject to the approval of the board of directors, their compensation and tenure. Employees may be reimbursed for reasonable expenses incurred by them in behalf of the state bank, upon approval of a designated officer.

Comment

This section is new and has no counterpart in existing law and simply constitutes statutory expression of the effect of current law and practice.

Sec. 705. Bonds of officers and employees. The officers and employees of a state bank having the care, custody, or control of any funds or securities for any state bank shall give a good and sufficient bond in a company authorized to do business in this state indemnifying the state bank against losses, which may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by such officer or employee directly or through connivance with others, until all of his accounts with the state bank shall have been fully settled and satisfied. The amounts and sureties shall be subject to the approval of the board of directors. If the agent of a bonding company issuing a bond under this section is an officer or employee of the state bank upon which the bond was issued, the bond so issued shall contain a provision that the bonding company shall not use, either as a grounds for recission or as a defense to liability under the terms and conditions of the bond, the knowledge that the agent was so employed, whether or not he received any part of the premium for such bond as a commission.

Comment

This section draws heavily upon section 528.3 of existing law. The phrase in existing law, "or other criminal act," has been changed to read "or other unlawful act." This change has been made to remove the possibility that existing law might be in-

terpreted to require a criminal conviction before the state bank could receive indemnification pursuant to the bond.

The last sentence is new and is deemed necessary to cover situations which might not be precisely within the scope of Mechanicsville Trust and Savings Bank V. Hawkeye-Security Insurance Co., 158 N.W. 2d 89 (1968).

Sec. 706. Officer dealing with state bank.

1. An officer of a state bank may receive loans or extensions of credit from a state bank of which he is an officer, resulting in obligations as defined in subsection one (1) of section nine hundred four (904) of this Act, not exceeding thirty thousand dollars if, at the time such obligation is incurred, it is secured by a first lien on a dwelling which is expected, after the obligation is incurred, to be owned by the officer and used by him as his residence, and such other loans or extensions of credit which in aggregate do not at any one time exceed five thousand dollars provided however, a state bank shall not loan money or extend credit to an officer of such state bank, nor shall an officer of a state bank receive a loan or extension of credit from such state bank, exceeding the limitations imposed by this section or for a purpose other than that authorized by this section, and, provided further, such loans or extensions of credit shall not exceed an amount totalling more than twenty percent of the capital and surplus of the state bank and any such loan on real property shall comply with section nine hundred five (905) of this Act. A majority of the board of directors, voting in the absence of the applying officer, whether or not he is also a director, shall give its prior approval to any obligation of an officer to the state bank of which he is an officer. The form of approval shall be specified by the superintendent, and a copy recorded in the minutes of the board of directors.

2. The provisions of subsections two (2), three (3), and four (4) of section six hundred twelve (612) of this Act shall

apply to officers.

3. If an individual is a director and an officer, he shall be subject to the limitations of subsection one (1) of this section.

4. Whenever an officer of a state bank borrows from or otherwise becomes obligated to any person or persons other than the state bank of which he is an officer, in a total amount equal to or exceeding twenty five thousand dollars excluding such amounts as may be owing by him secured by a first lien on a dwelling which is used by him as his residence, the officer shall report in writing to the superintendent that he is so obligated. Upon the request of the superintendent, an officer of a state bank shall submit to the superintendent, a personal financial statement which shall show the names of all persons to whom the officer is obligated, the dates, terms, and amounts of each loan or other obligation, the security therefor, and the purpose for which the proceeds of such loans or other obligations have been or are to be used.

Comment

This section imposes a specific ceiling on the amount which may be loaned to an officer of a state bank, regardless of capital and surplus of the bank. The ceiling so adopted is similar in all respects, except one, to that adopted in 1967 by the Congress of the United States as an amendment to the Federal Reserve Act. See 12 U.S.C. section 375a. The thirty thousand dollar loan made on the security of the officer's dwelling and the five thousand dollar "other loan" limitation are a part of the federal legislation. The right to make additional loans to an officer of a state bank, up to ten thousand dollars, for educational purposes, has not been made a part of this statute. The remainder of subsection 1 is in accord with section 612(1), dealing with loans to directors.

Subsection 2 of this section incorporates the prohibitions made applicable to directors by subsections 2, 3 and 4 of section 612, and makes the same applicable to officers. Subsection

3 mandates that if an individual is both an officer and a director, he shall be subject to the more stringent loan requirements of this section.

Subsection 4 is new and has no counterpart in existing law. This section has its basis in federal law. See 12 U.S.C. 375a.

Sec. 707. Removal of officers.

1. Any officer may be removed by the board of directors whenever in its judgment the best interests of the state bank shall be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. Election of an officer shall not of itself create contract rights.

2. Subsection two (2) of section six hundred six (606) of this Act, providing for the removal of directors by the superintendent, shall have equal application to officers.

Comment

Subsection 1 of this section adopts section 496A.46 of the Iowa Business Corporation Act.

Subsection 2 of this section enables the superintendent to remove officers in the same manner as he may remove directors pursuant to section 606(2). See comment to that section.

Sec. 708. Report of change in officer personnel. A state bank shall promptly notify the superintendent of any change in the names of individuals holding the offices of chairman, president, vice-president, and cashier.

Comment

This section abridges existing law relative to the maintenance of the list of officers. See sections 528.47, 528.48 and 528.49 of existing law. See section 515 for that portion of existing law which deals with the maintenance of a list of shareholders. Existing law simply provides that a state bank shall annually transmit to the superintendent a list of officers. This section requires prompt notice to the superintendent of change in certain officer personnel when such change occurs.

Sec. 709. Duty to make records available to superintendent. The officers and employees of a state bank shall make all records of the state bank available to the superintendent for the purpose of examination or for any other reasonable purpose.

Comment

This section is new and has no direct counterpart in existing law.

Sec. 710. Prohibitions applicable to officers and employees. No officer or employee of a state bank shall:

1. Receive anything of value for procuring, or attempting to procure, any loan or extension of credit resulting, or which would result, in an obligation, as defined in subsection one (1) of section nine hundred four (904) of this Act, to the state bank or for procuring, or attempting to procure, an investment by the state bank, of which he is an officer or employee.

2. Overdraw his deposit account in the state bank.

3. Engage, directly or indirectly, in the sale of any kind of insurance, shares of stock, bonds or other securities, or real property, or procure or attempt to procure for a fee or other compensation, a loan or extension of credit for any person from a person other than the state bank of which he is an officer or employee, or act in any fiduciary capacity, unless authorized to do so by the board of directors of the state bank which shall also determine the manner in which the profits, fees, or other compensation derived therefrom shall be distributed.

Comment

Subsections 1 and 2 are new and are the same as section 614 which is applicable to directors. They are restated here for organizational reasons. Subsection 3 of this section is analogous to existing law. See section 528.86.

Division VIII

GENERAL BANKING POWERS

Sec. 801. General powers. A state bank, unless otherwise stated in its articles of incorporation, shall have power:

1. To have perpetual succession by its corporate name.

2. To sue and be sued, complain and defend, in its corporate name.

3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

4. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve and use real or personal property, or an interest therein, in connection with the exercise of any power granted in this Act.

5. To sell, convey, pledge, mortgage, grant a security interest, lease, exchange, transfer, and release from trust or mortgage or otherwise dispose of all or any part of real or personal property, or an interest therein, in connection with the exercise of any power granted in this Act.

6. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the state bank.

7. To make donations for the public welfare for religious, charitable, scientific or educational or community development purposes.

8. To indemnify any director, officer or employee, a former director, officer or employee of the state bank in the manner and in the instances authorized by subsections one (1), two (2), three (3), and four (4) of section two (2), chapter three hundred sixty-three (363), Acts of the Sixty-second General Assembly.

9. To elect officers or appoint agents of the state bank and define their duties and fix their compensation.

10. To cease its existence as a state bank in the manner provided for in this Act.

11. To have and exercise all powers necessary and proper to effect any or all of the purposes for which the state bank

is organized.

12. To contract indebtedness and incur liabilities to effect any or all of the purposes for which the state bank is organized, subject to the provisions of this Act.

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

Comment

This section is analogous to section 526.7 of existing law. In order to endow banking corporations with general powers analogous to those given business corporations generally, the technique here has been to adopt, where relevant, portions of 496A.4 of the Iowa Business Corporation Act.

Subsection 1 of this section adopts 496A.4(1) in modified form.

Subsection 2 adopts section 496A.4(2).

Subsection 3 adopts section 496A.4(3).

Subsection 4 adopts a limited version of section 496A.4(4). The power granted herein is more limited than that given to business corporations generally and is limited by the other provisions of this statute with respect to the ownership and possession of property.

Subsection 5 adopts a limited version of section 496A.4(5). The power granted herein is likewise limited by the other provisions of this statute.

Subsection 6 adopts section 496A.4(12).

Subsection 7 adopts a slightly expanded version of section 496A.4(13). Provision is made for the donation of amounts for "community development" purposes.

Subsection 8 adopts relevant portions of chapter 363 of the Acts of the 62nd General Assembly.

Subsection 9 adopts section 496A.4(11).

Subsection 10 adopts a modified version of section 496A.4(17).

Subsection 11 adopts section 496A.4(18).

Subsection 12 adopts a significantly modified version of section 496A.4(8).

Certain portions of section 496A.4 of the Iowa Business Corporation Act have not been adopted for the reason that they are inappropriate when applied to state banks.

Sec. 802. Additional powers related to conduct of business of a state bank. A state bank shall have in addition to other powers granted by this Act, and subject to the limitations and restrictions contained in this Act:

1. The power to become a member of a clearing house association.

2. The power to become a member of the federal reserve system, to hold shares of stock in a federal reserve bank, to take all actions incident to maintenance of such membership and to exercise all powers not inconsistent with the provisions of this Act conferred on member banks by the federal reserve system.

3. The power to become an insured bank pursuant to the federal deposit insurance act and to take all actions incident to maintenance of an insured status thereunder.

4. The power to act as agent of the United States or of any instrumentality or agency thereof for the sale or issue of bonds, notes or other obligations of the United States.

5. The power to buy and sell coin, currency and bullion.

6. All other powers incidental to the conduct of the business of banking.

Comment

Subsection 1 of this section is new but gives statutory expression to the effect of current law.

Subsection 2 adopts, in slightly different form, existing law. See section 528.67.

Subsection 3 adopts the effect of existing law. See section 530.2.

Subsection 4, 5 and 6 are new and give statutory expression to the effect of existing law.

Sec. 803. Business property of state bank.

1. A state bank shall have power to:

a. Acquire and hold, or lease as lessee, such personal property as is used, or is to be used, in its operations.

b. Subject to the prior approval of the superintendent, acquire and hold, or lease as lessee, only such real property as is used, or is to be used, wholly or substantially, in its operations or acquired for future use.

c. Subject to the prior approval of the superintendent, acquire and hold shares in a corporation engaged solely in holding or operating real property used wholly or substantially by a state bank in its operations or acquired for its future use and in a corporation organized solely for the purpose of providing data processing services, as such services are defined in the first sentence of section eight hundred four (804) of this Act.

d. Subject to the prior approval of the superintendent, invest in a bank service corporation as defined by, and in accordance with, the laws of the United States.

2. The book value of all real and personal property acquired and held pursuant to this section, of all alterations to buildings on real property owned or leased by a state bank, of all shares in corporations acquired pursuant to paragraphs c and d of subsection one (1) of this section, and of any and all obligations of such corporations to the state bank, shall not exceed twenty-five percent of the capital and surplus of the state bank or such larger amount as may be approved by the superintendent.

3. Any real property which is held by a state bank pursuant to this section and which it ceases to use for banking purposes, or is acquired for future use but not used within a reasonable period of time, shall be sold or disposed of by the state bank as directed by the superintendent.

Comment

Subsection 1 of this section is essentially new but has some

counterpart in existing law. See section 526.34. It has as its purpose a general grant of power to acquire certain specific types of business property. This subsection authorizes a state bank to own shares in three specific types of corporations. The data processing corporation referred to in paragraph (c) is a corporation performing such services but which may not be subject to 12 U.S.C. sections 1861 through 1865 dealing with "bank service corporations". The power to "invest" (which is the term used by the federal law) in a "bank service corporation", as defined in 12 U.S.C. section 1861, is given by this subsection.

Subsection 2 places a limitation on the relative value of business realty and personalty which may be owned or leased by a state bank. There is, however, discretionary authority vested in the superintendent to permit acquisition of such property in excess of the ceiling imposed.

Subsection 3 is new.

Sec. 804. Data processing services. A state bank which owns or leases equipment to perform such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or other clerical, bookkeeping, accounting, statistical, or other similar functions, may provide similarly related data processing services for others whether or not engaged in the business of banking. If a state bank holds shares in a corporation organized solely for the purpose of providing data processing services, pursuant to the authority granted by paragraph c of subsection one (1) of section eight hundred three (803) of this Act, other than a bank service corporation as defined by the laws of the United States, such corporation shall be authorized to perform services for the state bank owning such interest and for others, whether or not engaged in the business of banking.

Comment

This section is new and has no counterpart in existing law. The first sentence of this section allows a state bank which owns or leases data processing equipment in its own right, to use such equipment in providing services for others whether or not such other person is engaged in the business of banking. The second sentence of this section contains a similar provision in the event that the state bank possesses such equipment in the capacity of shareholder. This section has reference to a data processing corporation which is not a "bank service corporation" as defined in 12 U.S.C. section 1861. The right of a "bank service corporation" to perform services for non-stockholding banks is controlled by federal law. See 12 U.S.C. section 1863.

Sec. 805. Deposits.

1. A state bank may receive money for deposit and may provide, by resolution of the board of directors, for the payment of interest thereon in an amount not inconsistent with the provisions of subsection two (2) of this section and shall repay such deposit in accordance with the terms and conditions of its acceptance.

2. A state bank shall not, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit. The superintendent may from time to time limit by general regulation, applicable to all state banks, the rates of interest that may be paid by a state bank on time and savings deposits. The superintendent may prescribe different rate limitations for different classes of deposits, for deposits of different amounts or with different maturities, or subject to different conditions regarding withdrawal or repayment according to such reasonable basis as the superintendent may deem desirable in the public interest. The superintendent shall by regulation define what constitutes time, savings and demand deposits in a state bank. Such regulations shall prohibit any state bank from paying any time deposit before its maturity except upon such conditions

and in accordance with such regulations as may be prescribed by the superintendent and shall prohibit any state bank from waiving any requirement of notice before payment of any savings deposit except as to all savings deposits having the same requirement.

3. The terms and conditions attending an agreement to pay interest on deposits shall be furnished to each customer at the time of the acceptance by the state bank of the initial deposit. No change made in the terms and conditions attending an agreement to pay interest which adversely affects the interest of a depositor shall be retroactively effective. Savings account depositors and holders and payees of automatic renewal time certificates of deposit shall be given reasonable notice of any change in the terms and conditions attending an agreement to pay interest prior to the effective date thereof.

4. A state bank may make such charges for the handling or custody of deposits as may be fixed by its board of directors provided that a schedule of such charges shall be furnished to the customer at the acceptance by the state bank of the initial deposit. Any change in such charges shall be furnished to the customer within a reasonable amount of time before the effective date of such change.

5. A state bank shall not accept deposits or renew certificates of deposit when insolvent.

6. Except as provided in section eight hundred seven (807) of this Act, a state bank may receive deposits by or in the name of a minor and may deal with a minor with respect to a deposit account without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such deposit account shall be binding on the minor with the same effect as though an adult.

7. A state bank may receive deposits from a person acting as fiduciary or in an official capacity which shall be payable to such person in such capacity.

8. A state bank may receive deposits from a corporation, trust, estate, association or other similar organization which shall be payable to any person authorized by its board of directors or other persons exercising similar functions.

Comment

Subsections 1 and 2 of this section continue the effect of existing law in slightly different form. See sections 526.2, 526.23, 526.35, and 528.11.

Subsection 2 adopts certain language from federal law, relating to insured banks, regarding interest on demand deposits and the regulation of interest rates. See 12 U.S.C. section 1828(g).

Subsection 3 of this section adopts section 526.20 of existing law with some change.

Subsection 4 of this section is new and gives statutory expression to the effect of existing law.

Subsection 5 of this section adopts, in shortened form, existing law. See section 528.81.

Subsection 6 of this section adopts in slightly different form the essence of existing law. See section 526.37.

Subsection 7 of this section adopts relevant portions of section 526.37 of existing law.

Subsection 8 of this section is new and gives statutory expression to the effect of existing law.

Sec. 806. Deposit in the names of two or more individuals. When a deposit shall be made in any state bank in the names of two or more individuals, payable to any of such individuals, or payable to any of such individuals or to the survivors of them, such deposit, or any part thereof, or interest thereon, may be paid to any of such individuals whether the other be living or not, and the receipt or acquittance of the individual so paid shall be a valid and sufficient release and discharge to the state bank for any payment so made.

Comment

This section adopts section 528.64 of existing law in a

slightly modified form in that this section provides for accounts held in the names of two or more individuals.

Sec. 807. Payment of deposited funds. When any deposit shall be made by any individual in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the state bank, in the event of the death of the trustee, the same or any part thereof, together with interest thereon, may be paid to the individual for whom the deposit was made, or to his or her legal representatives; provided that the individual for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the consent of the legal representatives of said trustee.

Comment

This section adopts section 532.4 of existing law.

Sec. 808. Adverse claims to deposits.

1. A state bank shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or any claim of authority to exercise control over, a deposit account made by a person or persons other than:

a. The customer in whose name the account is held by the state bank.

b. An individual or group of individuals who are authorized to draw on or control the account pursuant to certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The deposit account records of a state bank shall be presumptive

evidence as to the identity of the customer on whose behalf the money is held and shall be deemed rebutted only upon the presentation of clear and convincing proof to the contrary.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, a deposit account, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process directed to the state bank, restraining any action with respect to the account until further order of such court or instructing the state bank to pay the balance of the account, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal by reason of such claim to honor any check or other order of anyone described in paragraphs a and b of subsection one (1) of this section.

Comment

This section is new and has no explicit counterpart in existing law. Under the language of subsection 1(b) the state bank will not have to recognize, for example, any authorized signer for a corporate account who is not designated in the corporate resolution or other evidence of authority, such as a power of attorney, on file with the state bank prior to a dispute among factions in the corporation. If one faction supplies a purported revocation of the resolution on file but another faction disputes the validity of the revocation, the state bank will be entitled to continue to rely on the last resolution received in regular form and without any known dispute as to the validity of its original adoption, in the absence of a court order or indemnity bond.

The timing of the notices to the state bank governs the application of this section. The state bank would be required,

for example, to recognize the authorized signers under a corporate resolution on file until it receives notice of revocation of it. If that notice is accompanied by a new resolution it would then be required to recognize the authorized signers under the second resolution. If it then received notice of a dispute as to the second resolution, it would be required at that point to recognize only the authorized signers under the first, undisputed resolution.

Subsection 2 of this section is intended to require litigants to have such claims determined judicially without involving the state bank in the dispute except to the extent that it must obey a specific court order or judicial process directed to the state bank.

Sec. 809. Authority to lease safe deposit boxes.

1. A state bank may lease safe deposit boxes for the storage of property on terms and conditions prescribed by it. Such terms and conditions shall not bind any customer to whom the state bank does not give notice thereof by delivery of a lease and agreement in writing containing such terms and conditions. A state bank may limit its liability provided such limitations are set forth in the lease and agreement in at least the same size and type as the other substantive provisions of the contract.

2. The lease and agreement of a safe deposit box may provide that evidence tending to prove that property was left in any such box upon the last entry by the customer or his authorized agent, and that the same or any part thereof was found missing upon subsequent entry, shall not be sufficient to raise a presumption that the same was lost by any negligence or wrongdoing for which such state bank is responsible, or put upon the state bank the burden of proof that such alleged loss was not the fault of the state bank.

3. A state bank may lease a safe deposit box to a minor. A state bank may deal with a minor with respect to a safe de-

posit lease and agreement without the consent of a parent, guardian or conservator and with the same effect as though the minor were an adult. Any action of the minor with respect to such safe deposit lease and agreement shall be binding on the minor with the same effect as though an adult.

4. A state bank which has on file a power of attorney of a customer covering a safe deposit lease and agreement, which has not been revoked by the customer, shall incur no liability as a result of continuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until it receives written notice of the death, or written notice of adjudication by a court of the incompetence of the customer and the appointment of a guardian or conservator.

Comment

Subsection 1 of this section continues the effect of existing law by allowing a state bank to lease safe-deposit boxes. See section 532.1(6). This section, and the ensuing sections (section 810 through 812), constitute a much more elaborate statutory scheme relative to those engaged in the business of leasing safe-deposit boxes than is present under existing law. The provision in existing law (section 528.65) to the effect that a corporation engaged in the business of leasing safe-deposit boxes may limit its liability for negligence is omitted as is the provision that the parties may stipulate that in no event shall the state bank engaging in such business be liable for the loss of money, jewelry or other articles accepted. In lieu thereof, the last sentence of subsection 1 states that liability may be limited to the extent set forth in the lease and agreement. Since it is doubtful that liability for negligence may be obviated by contract, the provision contained in subsection 1 seems more suitable and allows the agreement to reflect any permissible limitation upon the liability of the depository.

Subsection 2 adopts the last paragraph of section 528.65 of existing law.

Subsection 3, which is new, adopts the same policy with respect to safe-deposit boxes as is adopted with respect to deposits generally. See section 805(6).

Subsection 4 is new and has no counterpart in existing law.

Sec. 810. Search procedure on death. A state bank shall permit the person named in a court order for the purpose or, if no order has been served upon the state bank, the spouse, a parent, an adult descendant or a person named as executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent, or to examine any property delivered by a decedent for safekeeping, in the presence of an officer of the state bank. The state bank shall, if requested by such person, and upon their receipt therefor, deliver:

1. Any writing purported to be a will of the decedent to the court having jurisdiction of the decedent's estate.

2. Any writing purported to be a deed to a burial plot, or to give burial instructions, to the person making the request for a search.

3. Any document purported to be an insurance policy on the life of the decedent to the beneficiary named therein. A state bank shall prepare and keep a list of any contents delivered pursuant to this section describing the nature of the property and the individual to whom delivered, and place a copy of the list in the safe deposit box from which such contents were removed.

Comment

This section is new and has no counterpart in existing law. Insofar as subsection 1 is concerned it is intended that delivery of a writing purporting to be a will to an attorney authorized to practice in this state, and hence an officer of the court, will constitute delivery to the court.

Sec. 811. Adverse claims to property in safe deposit and

safekeeping.

1. A state bank shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or claim of authority to exercise control over, property held in safe deposit or property held for safekeeping pursuant to section eight hundred thirteen (813) of this Act made by a person or persons other than:

a. The customer in whose name the property is held by the state bank.

b. An individual or group of individuals who are authorized to have access to the safe deposit box, or to the property held for safekeeping, pursuant to a certified corporate resolution or other written arrangement with the customer, currently on file with the state bank, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other customer, of which the state bank has received notice and which is not the subject of a dispute known to the state bank as to its original validity. The safe deposit and safekeeping account records of a state bank shall be presumptive evidence as to the identity of the customer on whose behalf the money is held and shall be deemed rebutted only upon the presentation of clear and convincing proof to the contrary.

2. To require a state bank to recognize an adverse claim to, or adverse claim of authority to control, property held in safe deposit or for safekeeping, whoever makes the claim must either:

a. Obtain and serve on the state bank an appropriate court order or judicial process directed to the state bank, restraining any action with respect to the property until further order of such court or instructing the state bank to deliver the property, in whole or in part, as provided in the order or process; or

b. Deliver to the state bank a bond, in form and amount

and with sureties satisfactory to the state bank, indemnifying the state bank against any liability, loss or expense which it might incur because of its recognition of the adverse claim or because of its refusal to deliver the property to any person described in paragraphs a and b of subsection one (1) of this section.

Comment

This section, which is new and has no counterpart in existing law, is the same as section 808, relating to deposits generally. See comment to that section.

Sec. 812. Remedies and proceedings for non-payment of rent on safe deposit box.

1. A state bank shall have a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks thereon, and of any sale made pursuant to this section. If the rental of any safe deposit box is not paid within six months from the day it is due, at any time thereafter and while such rental remains unpaid, the state bank may mail a notice to the customer at his last known address as shown upon the records of the state bank, stating that if the amount due for such rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the contents thereof and hold the same for the account of the customer.

2. If the rental for the safe deposit box has not been paid after the expiration of the period specified in a notice mailed pursuant to subsection one (1) of this section, the state bank may, in the presence of two of its officers, cause the box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the state bank for the account of the customer.

3. If the contents are not claimed within two years after

their removal from the safe deposit box, the state bank may proceed to sell so much of the contents as is necessary to pay the past due rentals and the expense incurred in opening the safe deposit box, replacement of the locks thereon and the sale of the contents. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the state bank 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 state bank has its principal place of business. A copy of the notice so published shall be mailed to the customer at his last known address as shown upon the records of the state bank. The notice shall contain the name of the customer and need only describe the contents of the safe deposit box in general terms. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost thereof apportioned ratably among the several safe deposit box customers involved. At the time and place designated in said notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the state bank and the residue from any such sale shall be held by the state bank for the account of the customer or customers.

4. Notwithstanding any of the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection three (3) of this section, are listed on any established stock exchange in the United States, shall not be sold at public sale but may be sold through an established stock exchange. Upon the making of a sale of any such securities, an officer of the state bank shall execute and attach to the securities so sold an affidavit reciting facts showing that such securities were sold pursuant to this section and

that the state bank has complied with the provisions of this section. The affidavit shall constitute sufficient authority to any corporation whose shares are so sold or to any registrar or transfer agent of such corporation to cancel the certificates of shares so sold and to issue a new certificate or certificates representing such shares to the purchaser thereof, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser thereof.

5. The proceeds of any sale made pursuant to this section, after the payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section two (2) of chapter three hundred ninety-one (391), Acts of the Sixty-second General Assembly, and shall thereafter be handled in accordance with the provisions of that chapter.

Comment

This section is new and has no counterpart in existing law.

Sec. 813. Authority to receive property for safekeeping.

1. A state bank may accept property for safekeeping if, except in the case of night depositories, it issues a receipt therefor. A state bank accepting property for safekeeping shall purchase and maintain reasonable insurance coverage to insure against loss incurred in connection with the acceptance of property for safekeeping. Property held for safekeeping shall not be commingled with the property of the state bank or the property of others.

2. A state bank shall have a lien upon any property held for safekeeping for past due charges for safekeeping and for expenses incurred in any sale made pursuant to this subsection. If the charge for the safekeeping of property is not paid within six months from the day it is due, at any time thereafter and

while such charge remains unpaid, the state bank may mail a notice to the customer at his last known address as shown upon the records of the state bank, stating that if the amount due is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state bank will remove the property from safekeeping and hold the same for the account of the customer. After the expiration of the period specified in such notice, if the charge for safekeeping has not been paid, the state bank may remove the property from safekeeping, cause the property to be inventoried and hold the same for the account of the customer. If the property is not claimed within two years after its removal from safekeeping the state bank may proceed to sell so much thereof as is necessary to pay the charge which remains unpaid and the expense incurred in making the sale in the manner provided for in subsections three (3) and four (4) of section eight hundred twelve (812) of this Act. The proceeds of any sale made pursuant to this section, after payment of any amounts with respect to which the state bank has a lien, any property which was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state bank until such time as the property is presumed abandoned according to the provisions of section two (2) of chapter three hundred ninety-one (391), Acts of the Sixty-second General Assembly, and shall thereafter be handled in accordance with the provisions of that chapter.

Comment

This section is new and gives statutory expression to the effect of current law.

Sec. 814. Pledge of assets. Pursuant to a resolution of its board of directors, a state bank may pledge its assets for the following purposes, and for no other purposes:

1. To secure deposits when a customer is required to obtain such security by the laws of the United States, the laws of

the state of Iowa, by the terms of any interstate compact or by order of any court of competent jurisdiction.

2. To secure money borrowed by the state bank, provided that capital notes or debentures issued pursuant to section four hundred four (404) of this Act shall not in any event be secured by a pledge of assets or otherwise.

Comment

This section is analogous to existing law. See section 528.12. Existing law contains a prohibition upon the pledge of bank assets except to the extent authorized by the board of directors. This section states the power affirmatively in the situations referred to therein. This section has the advantage of stating explicitly those situations in which a pledge of assets is permissible and of specifically prohibiting a pledge in all other instances.

Sec. 815. Deposits by a state bank. A state bank may deposit its funds in a depository which is selected by, or in a manner authorized by, the directors of a state bank and which is authorized by law to receive deposits and is subject to supervision by banking authorities of the United States or of any state, and, with the prior approval of the superintendent, in any other depository.

Comment

This section is new and has the effect of giving statutory expression to the effect of current law.

Sec. 816. Cash reserve requirements.

1. A state bank which is a member of the federal reserve system shall maintain cash reserves in accordance with the requirements applicable to a member bank under the laws of the United States.

2. A state bank which is not a member of the federal reserve system shall maintain cash reserves against its deposits in amounts:

a. In the case of a state bank with its principal place

of business in a municipal corporation defined as a reserve city by the laws of the United States, not less than ten percent of its demand deposits except that the superintendent may on such basis as he may deem appropriate in view of the character of the business transacted by such state bank, make applicable the reserve requirement prescribed for banks not having their principal place of business in such a reserve city.

b. In the case of a state bank not having its principal place of business in a municipal corporation defined as a reserve city by the laws of the United States, not less than seven percent of its demand deposits.

c. In the case of any deposit other than a demand deposit, not less than three percent.

3. A state bank, except a state bank which is a member of the federal reserve system, shall determine the amount of its cash reserves required by this section in accordance with a formula prescribed by the superintendent by general regulation applicable to all such state banks.

4. The cash reserves required by this section of a state bank which is not a member of the federal reserve system shall consist of United States coin and currency on hand and funds on deposit in other banks, the deposits of which are insured by the federal deposit insurance corporation.

5. Whenever it shall appear necessary to do so in the interest of the depositors of a state bank, the superintendent may require that the state bank maintain reserves exceeding the amount required by this section consisting of such obligations of the United States as the superintendent shall prescribe.

Comment

Subsection 1 adopts the effect of existing law by requiring that member banks shall maintain reserves in accordance with the laws of the United States.

Subsection 2 adopts existing law (section 528.69) by establishing the same minimum percentages as are applicable to banks which are members of the Federal Reserve System. See 12 U.S.C. section

461.

Subsections 3, 4 and 5 are new. Subsection 5 permits the superintendent to require secondary reserve in excess of those generally provided in specific situations where he deems that it is necessary.

Sec. 817. Deficiency in cash reserves.

1. Whenever it appears that a state bank is not paying due regard to the maintenance of its cash reserves as required by subsection two (2) of section eight hundred sixteen (816) of this Act, the superintendent may require the state bank to submit periodic reports relating to its cash reserves at such intervals as the superintendent may deem necessary.

2. If a state bank fails to maintain the cash reserves required by section eight hundred sixteen (816) of this Act, the superintendent shall order the state bank to restore its cash reserves and if it fails to do so within a reasonable time, he may take over the management of the property and business of the state bank as provided for in sections two hundred twenty-four (224) and two hundred twenty-six (226) of this Act.

Comment

This section is new and has no counterpart in existing law.

Sec. 818. Indebtedness of state bank. A state bank may borrow money or otherwise contract indebtedness for necessary expenses in managing and transacting its business, to maintain proper cash reserves, and for other corporate purposes, provided, however, the superintendent may prohibit or place restrictions upon money borrowed or other indebtedness which would, in his judgment, constitute an unsafe or unsound practice in view of the condition and circumstances of the state bank. Nothing contained in this section shall limit the right of a state bank to issue capital notes or debentures pursuant and subject to the provisions of section four hundred four (404) of this Act.

Comment

This section adopts the essence of existing law. See section 528.14.

Sec. 819. Clearing checks at par. Checks drawn on a state bank shall be cleared at par by the state bank on which they are drawn. This section shall not be applicable where checks are received by a bank as special collection items.

Comment

This section adopts existing law. See section 528.63.

Sec. 820. Money received for transmission.

1. A state bank shall have power to receive money for transmission. Upon receiving money for transmission, a state bank shall give the customer a receipt setting forth the date of receipt of the money, the amount of the money in dollars and cents, and if the money is to be transmitted to a foreign country in the currency of such country, the amount of the money in such currency.

2. In an action by a customer against a state bank for recovery of money delivered for transmission, the burden of proof of delivery of the money in accordance with the instructions of the customer shall be on the state bank but an affidavit by an agent or depository of the state bank that the money was delivered in accordance with the instructions of the customer and a receipt for the money signed in the name of the recipient designated by the customer shall be prima facie evidence of the delivery of the money in accordance with the instructions of the customer.

Comment

This section is new and has no explicit counterpart in existing law.

Division IX

INVESTMENT AND LENDING POWERS

Sec. 901. Investments.

1. A state bank may invest without limitation for its own account in the following bonds or securities:

a. Obligations of the United States and bonds and securities with respect to which the payment of principal and interest is fully and unconditionally guaranteed by the United States.

b. Obligations issued by any or all of the federal land banks, any or all of the federal intermediate credit banks, any or all of the banks for cooperatives, and any or all of the federal home loan banks, organized under the laws of the United States.

c. Obligations issued by the federal national mortgage association, under the laws of the United States.

d. Any other bonds or securities which are the obligations of or the payment of principal and interest of which is fully and unconditionally guaranteed by a federal reserve bank or by any department, bureau, board, commission, agency or establishment of the United States, or any corporation owned directly or indirectly by the United States.

e. General obligations of the state of Iowa and of political subdivisions thereof.

2. A state bank may invest for its own account in other readily marketable bonds or securities, with investment characteristics as defined by the superintendent by general regulation applicable to all state banks, provided, however, that in no event shall the total amount of such bonds or securities of any one issuer or obligor exceed twenty percent of the capital and surplus of the state bank. No such bond or security shall be eligible for investment by a state bank within this subsection if such bond or security shall have been in default either as to principal or interest at any time within five years prior to the date of purchase.

3. A state bank shall not, directly or indirectly, invest for its own account in the shares of any corporation except:

a. Shares in a federal reserve bank.

b. Shares in the federal national mortgage association.

c. When approved by the superintendent, shares and obligations of a corporation engaged solely in making loans for agricultural purposes eligible to discount or sell loans to a federal intermediate credit bank, commonly known as an agricultural credit corporation, in amounts not to exceed twenty percent of the capital and surplus of the state bank.

d. Shares in a corporation which the state bank is authorized to acquire and hold pursuant to subsections two (2) and three (3) of section eight hundred three (803) of this Act.

e. Shares in an economic development corporation organized under chapter four hundred ninety-six B (496B) of the Code to the extent authorized by and subject to the limitations of such chapter.

f. When approved by the superintendent, shares of a small business investment company as defined by the laws of the United States, except that in no event shall any such state bank hold shares in small business investment companies in an amount aggregating more than two percent of its capital and surplus.

Comment

Subsection 1 continues the effect of present law by permitting a state bank to invest in certain bonds and securities. The limitations contained in existing law upon aggregate investments in obligations of agencies of the United States and those of the state of Iowa and its political subdivisions are withdrawn. See sections 526.25 and 528.15. This subsection expands the list of bonds and securities in which a state bank may invest without limitation by the inclusion of obligations of the federal home loan banks and obligations which are fully guaranteed as to principal and interest by the United States, by any federal reserve bank, by any department, bureau, board, commission, agency or establishment of the United States or by any corporation owned, directly or indirectly by the United States.

Subsection 2 preserves the effect of section 526.25(8) of

existing law. Although the aggregate limitation contained in existing law has been removed, a limitation is imposed by this section upon the amount of such obligations in which a state bank may invest with respect to any single issuer or obligor. This is a limitation which does not exist in present law except as may be provided for by regulation adopted by the superintendent pursuant to power granted for that purpose under section 526.25(8).

Subsection 3 preserves the effect of existing law. See sections 526.25(6) and 528.70. Paragraph (f) of this subsection is new and is similar to a provision contained in federal law relating to the investment power of national banks. See 15 U.S.C. 682(b).

Sec. 902. General lending powers of a state bank.

1. A state bank may, subject to any applicable restrictions under other provisions of this Act, loan money, extend credit and discount or purchase evidences of indebtedness and agreements for the payment of money.

2. Nothing in this Act shall be deemed to permit a state bank to purchase a vendor's or vendee's interest in a real property sales contract, provided, however, that a state bank may loan or extend credit on the security of such an interest.

Comment

Subsection 1 is new but gives statutory expression to the effect of current law and practice. State banks are given their general lending authority under this provision.

Subsection 2 resolves a problem existing under present law. Under both present law and the provisions of this Act, a state bank is prohibited from acquiring and holding title to real property except for its own use in the conduct of the business of banking and in the satisfaction of debts owing to it. This raises a question as to whether a state bank may be the purchaser or assignee of real estate contracts as a result of which, actual title to real property may ultimately rest in

the bank. This subsection expressly prohibits a state bank from acquiring real property contracts through the purchase of the vendor's interest or through assumption of the obligation of the vendee, but permits the taking of assignments of the vendor's or vendee's interest in such contracts even though the transaction could result in the taking of title to the property by the bank in the event of default by the vendor or vendee, or both, as the case may be depending upon the nature of the transaction. In such event, the real property so acquired would be subject to disposition by the state bank as provided for in section 910 of this Act.

Sec. 903. Purchase and sale of drafts and bills of exchange.

1. A state bank shall have power to accept drafts drawn upon it having not more than six months after sight to run, exclusive of days of grace:

a. Which grow out of transactions involving the importation or exportation of goods.

b. Which grow out of transactions involving the domestic shipment of goods, provided documents of title are attached thereto at the time of acceptance.

c. In which a security interest is perfected at the time of acceptance covering readily marketable staples.

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers fifty percent of its capital and surplus. The superintendent may authorize a state bank to accept drafts in an amount not exceeding at any time in the aggregate for all drawers one hundred percent of its capital and surplus but the aggregate of acceptance growing out of domestic transactions shall in no event exceed fifty percent of such capital and surplus.

3. A state bank may, with the prior approval of the superintendent, 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 ten percent of capital and surplus, and for all such acceptances, fifty percent of capital and surplus.

Comment

This section adopts the effect of existing law (sections 528.71, 528.72) and incorporates and adopts certain provisions of federal law relating to the acceptance of drafts or bills of exchange and the acceptance of drafts for furnishing dollar exchange (see 12 U.S.C. section 372, 373).

Sec. 904. Obligations of one customer.

1. For the purpose of this section:

a. The term "obligations" means the amounts for the payment of which a customer is obligated, whether directly or indirectly, primarily or secondarily, to a state bank as a result of the exercise by the state bank of the powers conferred by section nine hundred two (902) of this Act.

b. Obligations of a customer include obligations of others to a state bank arising out of loans made by such state bank for the benefit of such customer.

c. Obligations of a customer who is a partner include the obligations of a partnership or other unincorporated association for which obligations the customer is liable.

d. Obligations of a customer which is a partnership include the obligations of its partners who are liable for its obligations.

e. Obligations of a customer include the obligations of any and all corporations in which such customer owns or controls more than fifty percent of the shares entitled to vote.

f. Obligations of a customer which is a corporation include obligations of a person, who is also a customer, and who owns more than fifty percent of the shares entitled to vote of such

corporation.

g. Obligations of a customer which is a corporation include the obligations of any other corporation when a person owns more than fifty percent of the shares entitled to vote, of such corporations.

h. If the superintendent shall determine at any time that the interests of a group of more than one customer, or any combination thereof, are so interrelated that they should be considered as a unit for the purpose of applying the limitations of this section, the total obligations of that group of customers existing at any time shall be combined and deemed obligations of one customer. A state bank shall not be deemed to have violated this section solely by reason of the fact that the obligations of a group exceed the limitations of this section at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of the obligations of the group in the amount in excess of the limitations of this section within such reasonable time as shall be fixed by the superintendent.

2. The total obligations of any one customer to a state bank at any one time, secured and unsecured, shall not exceed twenty percent of the capital and surplus of the state bank except that:

a. The total obligations of any one customer to a state bank at any one time, shall not exceed forty percent of the capital and surplus of the state bank if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of any of the following or any combination of the following:

(1) Obligations in the form of notes or drafts, secured by nonnegotiable bills of lading, warehouse receipts or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring such goods is customary,

and when the market value of such goods is not at any time less than one hundred twenty percent of the face amount of such obligations.

(2) Obligations in the form of notes or drafts secured by nonnegotiable bills of lading, warehouse receipts or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of such goods is not at any time less than one hundred twenty percent of the face amount of such obligations.

(3) Obligations in the form of notes or drafts secured by bills of lading, bills of sale or security agreements covering feeder livestock when the proceeds of such obligations shall have been given as purchase money for all or part of the purchase price of such feeder livestock, but not to exceed the total purchase price thereof.

(4) Obligations of the customer as indorser, guarantor or accommodation party for others, other than obligations as indorser of chattel paper described in paragraph b of this subsection.

(5) Such other obligations to a state bank as may be prescribed by the superintendent by regulations of general application to all state banks, or

b. The total obligations of any one customer to a state bank at any one time shall not exceed sixty percent of the capital and surplus of the state bank if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank shall consist of obligations as indorser of negotiable chattel paper negotiated by indorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper indorsed without recourse subject to a repurchase agreement, or

c. The total obligations of any one customer to a state bank at any one time shall not exceed the sum of twenty percent of the capital and surplus and fifty percent of the capital

of the state bank, if at least all of the amount by which such obligations exceed twenty percent of the capital and surplus of a state bank shall consist of obligations secured by a first lien on farmland, or on single family or two family residences, subject to the provisions of section nine hundred five (905) of this Act, except that the amount so loaned shall not exceed fifty percent of the appraised value of such real property, or

d. The total obligations of any one customer, who is an individual, to a state bank at any one time shall not exceed forty percent of the capital and surplus of the state bank if all of the amount by which such obligations exceed twenty percent of the capital and surplus of the state bank consists of amounts owed by one or more corporations of which the customer owns or controls more than fifty percent of the shares entitled to vote, provided however, when this paragraph applies:

(1) The amounts owed by such customer shall not exceed twenty percent of the capital and surplus of the state bank.

(2) The amounts owed by any one or all of such corporations shall not exceed twenty percent of the capital and surplus of the state bank.

(3) The shares, assets and any liabilities of any such corporation shall not be included in the financial statement of such customer or otherwise relied upon as a basis for a loan to such customer.

(4) The assets of such customer shall not be relied upon as a basis for a loan to any such corporation.

For the purposes of this paragraph, the term "amounts owed" means the amounts for the payment of which such customer or any one or all such corporations are obligated, whether directly or indirectly, primarily or secondarily, to a state bank as a result of the exercise by the state bank of the powers conferred by section nine hundred two (902) of this Act, but determined without reference to paragraphs e, f and g of subsection one (1) of this section.

3. The total obligations of any one customer to a state bank at any one time for the purpose of applying the limitations of subsection two (2) of this section shall include:

a. The aggregate rentals payable by the customer under leases of personal property by the state bank as lessor, except obligations secured by a lease on property in situations described in the second sentence of paragraph h of subsection four (4) of this section.

b. Obligations secured by real estate pursuant to section nine hundred five (905) of this Act and installment obligations made pursuant to section nine hundred six (906) of this Act, except to the extent any such obligations are secured, guaranteed, insured or covered by unconditional commitments or agreements to purchase by the United States, veterans' administration, federal housing administration, small business administration, farmers home administration, a federal reserve bank, or other department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States.

c. Obligations of the customer by reason of acceptance by the state bank of drafts of a type not described in subsection one (1) of section nine hundred three (903) of this Act, to the extent that the state bank has acquired such acceptances.

d. Obligations of the customer consisting of bonds and securities in which the state bank has invested pursuant to subsection two (2) of section nine hundred one (901) of this Act.

e. Amounts invested by a state bank for its own account pursuant to paragraphs c and f of subsection three (3) of section nine hundred one (901) of this Act in the shares and obligations of a corporation which is a customer of the state bank.

f. Obligations of the customer as obligor pursuant to evidences of indebtedness and agreements for the payment of money acquired by purchase or discount by the state bank.

g. All other obligations of the customer of the state bank, not otherwise excluded by subsection four (4) of this section,

whether direct or indirect, primary or secondary, including overdrafts and liability for items paid by the state bank against uncollected deposits of the customer.

4. The total obligations of any one customer to a state bank at any one time for the purpose of applying the limitations of subsection two (2) of this section shall not include:

a. Obligations of such customer as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been indorsed by such customer with recourse or which have been accepted.

b. Obligations arising out of the discount of commercial paper actually owned by the customer negotiating the same and indorsed by the customer without recourse and which is not subject to repurchase by the customer.

c. Obligations drawn by the customer in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

d. Obligations in the form of acceptances of other banks of the kind described in subsection three (3) of section nine hundred three (903) of this Act.

e. Obligations of the customer by reason of acceptances by the state bank for the account of the customer pursuant to subsection one (1) of section nine hundred three (903) of this Act.

f. Obligations of the customer which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under subsection one (1) of section nine hundred one (901) of this Act.

g. Obligations of a customer which is a member bank of the federal reserve system to a state bank which is a member bank of the federal reserve system for federal reserve funds borrowed.

h. Obligations of a federal reserve bank or of the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or of any corporation

owned directly or indirectly by the United States, or obligations of a customer to the extent that such obligations are secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. An obligation of a customer secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States, or the state of Iowa, or any political subdivision thereof, is lessee and under the terms of which the aggregate rentals payable to the customer will be sufficient to satisfy the amount loaned shall be considered to be an obligation secured or guaranteed in the manner provided for in this paragraph.

Comment

This section constitutes a considerably more elaborate statutory format than is contained in existing law for determining the obligations of a single customer for the purposes of imposing the limitations on such obligations which are set forth in this section. See section 528.14 of existing law.

Subsection 1 sets forth the criteria by which a customer is charged with the obligations incurred by the customer and by other persons in which the customer is interested or with which the customer has a specific relationship. Paragraphs (a) and (b) include in the total obligations of the customer the amounts for which he may be secondarily liable as surety for others and amounts borrowed by others for his use or benefit. These provisions are new and have no counterpart in existing law but are substantially similar to certain provisions of federal law (12 U.S.C. 84) setting forth the limits of liability of a borrowing customer of a national bank. The provisions of paragraphs (c) and (d) relating to partners and partnerships remain the same as under existing law. See section

528.14. Paragraphs (e) and (f) provide that the total obligations of all corporations controlled by the same person must be combined with those of such person in applying the limitations of section 904. Paragraph (g) provides that the obligations of corporations controlled by the same person must be combined for the purposes of applying the limitations of this section even though such person is not obligated to the bank. Paragraphs (e) through (g) are new. Paragraph (f) has a counterpart in federal law (12 U.S.C. 84) relating to the operation of national banks. Paragraph (h) of this subsection vests in the superintendent the authority to treat a group of customers as a single unit for the purpose of determining loan limitations even though the preceding paragraphs are not applicable. If the superintendent exercises the power vested in him by paragraph (h), the state bank shall not be deemed to have violated the loan limitation provisions of this section; however, the superintendent shall have authority to compel the disposition of obligations to effect a reduction to a level applicable to a single customer.

Subsection 2 sets forth the general lending limitation at twenty percent of the capital and surplus of a state bank which remains the same as under existing law. See section 528.14. Under this subsection, the limitation on the total obligations of a single customer may be expanded to forty percent of the capital and surplus of the state bank if the amount by which the obligations of the customer exceeds 20% of the capital and surplus consists of obligations of the kinds described in paragraph (a). Subparagraphs (1) and (3) of paragraph (a) have their basis in existing law. See section 528.14. Subparagraphs (2) and (4) are new but are analogous to certain provisions of federal law (12 U.S.C. 84). With respect to the application of subparagraphs (1) through (4), the obligations of the customer must consist of the kind described in such subparagraphs only to the extent that the total obligations of the customer exceed 20% of the capital and surplus of the bank,

i.e., if 20% of the capital and surplus of a state bank is $20,000, the bank may loan to one customer as much as $20,000 whether secured or unsecured and without regard to purpose, plus an amount not to exceed another $20,000 if such additional amount shall consist of one or a combination of the kinds of obligations described in subparagraphs (1) through (4) of paragraph (a). Employing the kind of obligations described in subparagraph (3) as representing a typical example of credit extended by banks of this state, a state bank may lend as much as $20,000 to a farmer for machinery, feed, fertilizer, fuel, etc., plus another $20,000 for the purchase of feeder cattle, or, it may lend $10,000 for other purposes plus $30,000 for feeder cattle, or, it may lend as much as $40,000 for feeder cattle if the customer is not otherwise obligated to the bank. Using subparagraphs (3) and (4) as a further example, the state bank may lend to a single customer as much as $20,000 for any purpose plus $10,000 for feeder cattle plus another $10,000 on which the customer is obligated as surety, or, it may lend $5,000 for any purpose, $10,000 for feeder cattle and $25,000 on which the customer is obligated as surety. This paragraph represents a departure from existing law. See the second paragraph of section 528.14. Subparagraph (5) is new.

Paragraph (b) of subsection 2 of section 904 sets forth a second exception to the general limitation imposed by such subsection on the total obligations of a single customer to a state bank. Under this paragraph, the total obligations of a customer may be increased to 60% of the capital and surplus of the state bank, if the amount by which such obligations exceed 20% of the capital and surplus consists of chattel paper for which the customer is obligated to assure payment and the customer is not otherwise obligated to the state bank for other purposes in excess of 20% of its capital and surplus. Again using the example of the state bank having a general lending limitation of $20,000, such state bank may lend to an automobile or farm implement dealer up to $20,000 for any purpose such as for

floor planning inventory, and purchase chattel paper from such dealer in an amount totalling $40,000, or, it may lend $10,000 for other purposes and purchase chattel paper totalling $50,000, or, if such dealer customer is not otherwise obligated to the state bank, it may purchase chattel paper totalling an amount equivalent to 60% of its capital and surplus, i.e., $60,000 in the case of the example cited. Nothing contained in this paragraph prohibits a state bank from purchasing chattel paper on a non-recourse basis or places a limit on the amount of chattel paper which may be purchased on a non-recourse basis except as paragraph (f) of subsection 3 of section 904 limits the amount to which any single maker of chattel paper or other evidences of indebtedness or agreements for the payment of money, may become obligated to a state bank regardless of the obligation, if any, of the seller of the paper to assure payment of such paper. This paragraph is new but has its basis in federal law (12 U.S.C. 84). Present law imposes no limit on the amount of chattel paper which may be purchased by a state bank from a single customer or upon the amount to which a single maker of chattel paper or other evidences of debt may become obligated to a state bank as the result of the purchase of such paper by the bank.

Paragraph (c) provides a third alternative limitation on the obligations of a single customer to a state bank. Again, if the customer is not obligated to a state bank in excess of 20% of its capital and surplus, the customer may become obligated to the state bank for an additional amount equal to 50% of the capital of the state bank if at least the amount by which his total obligations exceeds 20% of the capital and surplus, is secured by a first lien on real property of a kind described in this paragraph, the amount secured by such real property does not exceed 50% of the appraised value of the property and the loan otherwise conforms with the provisions of section 905. Again using the example of the bank having a general lending limitation of $20,000, and assuming that it has capital of $50,000, the bank may lend to a single customer

up to $20,000 for any purpose plus an amount not to exceed $25,000 when such latter amount is secured by a first lien on real property appraised at not less than $50,000, or, it may lend $10,000 for any purpose plus $35,000 when such latter amount is secured by a first lien on real property appraised at not less than $70,000. This paragraph represents an adoption of present law. See section 528.14.

Paragraph (d) provides an exception to the provisions of paragraphs (e) through (g) of subsection 1 of section 904 in the case of a customer of a state bank who is an individual and who owns controlling shares in one or more corporations which are also borrowing customers of the state bank. At such times as both the individual and one or more of such corporations are indebted to a state bank in a total amount exceeding 20% of its capital and surplus under this paragraph, for this exception to be applicable the amount owing by the individual may not exceed 20% of the capital and surplus of the state bank and the amount owing by all corporations controlled by such individual may not exceed another 20% of the capital and surplus of the state bank. Additionally, at such times as the individual and one or more corporations controlled by the individual are indebted to a state bank in a total amount exceeding 20% of its capital and surplus under this paragraph, the extent that the next worth of the individual consists of shares owned in or of loans to any corporations controlled by him, must be disregarded in making a loan to such individual, and the shares, notes, leases or other liabilities and assets of any such corporations may not be pledged by the individual or such corporations as collateral for any loan to the individual. The individual may not pledge any personal assets as collateral to secure a loan to any corporation controlled by him or cosign, indorse, guarantee or otherwise act as surety for a loan to any such corporation subject to this paragraph. In the case of the bank having a general lending limitation of $20,000, the state bank may loan not to exceed $20,000 to the individual plus an amount not to

exceed another $20,000 to corporations controlled by the individual. If any such corporation is indebted to the state bank to the extent of $20,000, no other such corporation may be indebted to the state bank. If several such corporations are indebted to the state bank at the same time, the combined indebtedness of all such corporations may not exceed 20% of its capital and surplus, or in the case of the example cited, in an amount not to exceed $20,000. When the individual and corporations controlled by the individual are indebted to a state bank pursuant to this paragraph, they are precluded the privileges of paragraphs (a), (b) or (c) of this subsection. When the individual and corporations controlled by the individual are not obligated to a state bank pursuant to this paragraph, they shall be considered as a single customer subject to the limitations and privileges of paragraphs (a), (b) or (c) of this subsection. Further, at such times as the individual is not obligated to the state bank or the combined obligations of the individual and any and all corporations controlled by such individual do not exceed 20% of the capital and surplus of a state bank or the limitations of paragraphs (a), (b) or (c) of this subsection, the restrictions set forth in subparagraphs (3) and (4) of this paragraph shall not apply. This paragraph affords an additional lending privilege to an individual and corporations controlled by the individual when the purpose for which the money is borrowed or the collateral offered as security does not conform with the provisions of paragraphs (a), (b) or (c) of this subsection.

Each paragraph of subsection 2 of section 904 is a separate limitation and privilege and no customer may become obligated to a state bank at any given time under more than one of such paragraphs. In giving consideration to the provisions of subsection 2, reference must be made to subsections 3 and 4 of this section which set forth those obligations which are to be included and excluded in determining the total obligations of a single customer to a state bank under section 904.

Subsection 3 sets forth specifically those kinds of obligations

which are to be included in determining the total obligations of a single customer to a state bank for the purpose of applying the limitations of subsection 2. This subsection is more elaborate than but preserves the essence of existing law. See sections 528.14, 528.72 and 528.73 of existing law.

Subsection 4 represents an expansion of sections 528.14 and 528.15 of existing law and sets forth certain specific types of obligations which are not to be included in determining the total obligations of a single customer to a state bank for the purpose of applying the limitations of subsection 2.

Sec. 905. Loans on real property.

1. A state bank may make permanent loans or combined construction and permanent loans, secured by liens on residential real property housing more than two families, and on real property consisting of farmland, industrial, manufacturing and commercial properties including a leasehold in such properties. Any such loan may be made in an amount not to exceed seventy-five percent of the appraised value of the property offered as security and for a term not longer than twenty years, provided that the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than twenty years. In the case of a combined construction and permanent loan made pursuant to this subsection, the amount of the loan shall not exceed seventy-five percent of the value of the property upon completion of the construction.

2. A state bank may make permanent loans or combined construction and permanent loans, secured by liens on residential real property consisting of single family or two family residences in amounts not to exceed:

a. Eighty percent of the appraised value of the real property offered as security and for a term not longer than twenty-five years, provided that the loan is secured by an amortized

mortgage, deed of trust or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than twenty-five years.

b. Ninety percent of the appraised value of the real property offered as security and for a term not longer than thirty years, provided that the loan is secured by an amortized mortgage, deed of trust or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within the period ending on the date of its maturity and provided further, that at least twenty percent of the loan is insured by a financially responsible private mortgage insurance company authorized to do business in this state.

c. In the case of a combined construction and permanent loan made pursuant to this subsection, the amount of the loan shall not exceed eighty or ninety percent, as the case may be, of the value of the property upon completion of the construction.

3. A state bank may make loans secured by liens on real property for the purpose of:

a. Financing the construction of single family and two family residences if the maturity of such loans shall not exceed one year from the date thereof.

b. Financing the construction of industrial, manufacturing or commercial buildings or residences housing more than two families if the maturity of such loans shall not exceed two years from the date thereof and there is an unconditional commitment by a financially responsible permanent lender to advance the full amount of the loan of the state bank upon completion of the buildings.

c. Financing the acquisition and development of unimproved real property if the maturity of any such loan does not exceed three years from the date thereof and the amount of any such loan does not exceed one-half of the cost of the real property acquired for development plus one-half of the cost of develop-

ment exclusive of the cost of construction of buildings.

4. Any loan made pursuant to this section shall be subject to the following requirements:

a. The terms of any such loan, except a loan made pursuant to subsection three (3) of this section, shall require substantially equal payments of principal or principal and interest at successive intervals of not more than one year. In the case of any such loan which shall constitute a combined construction and permanent loan to finance farm buildings or single family and two family residences, the initial payment on the loan may be deferred for a period not to exceed one year from the date of the loan and, in the case of a combined construction and permanent loan to finance buildings or other improvements on industrial, manufacturing or commercial properties or residential properties housing more than two families, the initial payment on the loan may be deferred for a period not to exceed two years from the date of the loan.

b. The loan shall be evidenced by a bond, note or other obligation and secured by a lien in the form of a mortgage, deed of trust or other similar instrument.

c. The lien shall be a first lien, unless all prior liens are held by the state bank and the aggregate of all such loans by the state bank secured by liens on the real property satisfies all other requirements of this section pertaining to such loans, provided that, for the purpose of this paragraph a mortgage, deed of trust or other similar instrument shall not be deemed to be other than a first lien within the meaning of this paragraph by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner.

d. The value of the real property shall be determined by

averaging the appraisals of two qualified persons, selected in a manner authorized by the board of directors, who are familiar with real property values in the vicinity where the real property is located, and who inspect the real property and state its value to the best of their judgment in a written report to be retained by the state bank during the term of the loan.

e. Insurance against loss from fire on all buildings, which are included in the appraised value, and against other hazards, issued by insurers, acceptable to the state bank, authorized to do business where the real property is located, and in form and amount satisfactory to the state bank, shall be maintained during the term of the loan by or at the expense of the customer including the costs of any mortgage guaranty insurance required by the state bank except that the state bank may at its own expense maintain such insurance covering only its interest as lender.

f. The state bank shall obtain a written opinion by an attorney admitted to practice in Iowa stating that the mortgage, deed of trust or similar instrument is a first lien on the real property.

g. Real property securing loans under this section shall be located in this state or an adjoining state.

h. The customer shall pay all expenses in connection with the loan for preparation and examination of abstracts, opinions or title insurance, abstract certificates, and appraisal and recording fees.

i. The maturity date of a loan to a lessee on a leasehold shall occur prior to the expiration of two-thirds of the time from the inception of the lease to its expiration, including in such lease period the periods of time for which the lessee may exercise an option to renew but in no event shall the date of maturity be less than five years prior to such expiration date.

5. The restrictions and requirements of this section shall not apply to:

a. Loans guaranteed at least to the extent of twenty percent thereof, or for which a written commitment for such guarantee has been issued, by the veterans administration, under the laws of the United States.

b. Loans insured, or for which a written commitment to insure has been issued, by the federal housing administration under the laws of the United States.

c. Loans insured, or for which a written commitment to insure has been issued, by the farmers home administration under the laws of the United States.

d. Loans in which the small business administration participates, or has agreed in writing to participate, on an immediate or deferred basis under the laws of the United States.

e. Loans in connection with which a state bank takes a real property mortgage, deed of trust or other such instrument, as security but as to which it is relying for repayment:

(1) In the case of a loan made, with or without other security, for industrial, manufacturing, commercial or agricultural purposes, on the operations of the customer based primarily on the general credit of the customer and projection of his operations.

(2) On an unconditional commitment by a financially responsible person to advance the full amount of the loan or to provide funds for payment thereof, within a period not to exceed three years from the date of the loan.

(3) On a financially responsible lessee of the real property provided that the lease shall be assigned to the state bank and the lease by its terms shall be sufficient to amortize the entire principal of the loan within a period of not more than twenty years.

(4) On collateral other than the real property.

(5) On a guaranty or an agreement by a financially responsible person, other than a person engaged in the business of guaranteeing real property loans, to take over or purchase the loan in the event of default.

f. Bonds and securities secured entirely or in part by real property, but in which a state bank is authorized to invest for its own account under section nine hundred one (901) of this Act.

6. A state bank may make a loan secured by a lien on an apartment constituting a part of a condominium constructed or established pursuant to the provisions of chapter four hundred ninety-nine B (499B) of the Code, subject to the provisions of this section.

7. Any loan, evidence of indebtedness or agreement for the payment of money secured by real property which is purchased by a state bank shall conform to the provisions of this section.

8. Nothing contained in this section shall prevent any state bank from accepting real property as security, or from taking secondary liens on real property to secure debts previously contracted to it in good faith, or to further secure a loan if such loan is otherwise secured, or to secure loans made for improvements to the real property.

Comment

This section relating to loans secured by liens on real property represents an expanded version of section 526.25(5) of existing law.

Subsection 1 provides for the making of loans secured by liens on commercial and farm real property up to 75% of the value thereof for periods of not more than 20 years. The amount which may be loaned on such property remains the same as under present law. See section 526.25(5)(a). This subsection also provides for the making of combined construction and permanent loans with respect to which the initial payment may be deferred for a period of one or two years from the inception of the loan, depending upon the kind of property involved. (See paragraph (a) of subsection 4 of this section.) Subsection 1 also provides for the making of a loan secured by a leasehold on the kinds of property described therein,

the terms of which are further limited by paragraph (i) of subsection 4.

Paragraphs (a) and (b) of subsection 2 permit a state bank to lend up to 80% or 90% of the value of residential real property for periods of up to 25 years or 30 years. These provisions exceed the 75% and 20 year limitations of existing law but are substantially the same as privileges conferred upon national banks by federal law (12 U.S.C. 371) and rulings of the Comptroller of the Currency of the United States. Paragraph (c) of this subsection permits the making of combined construction and permanent loans with respect to which the initial payment may be deferred for a period of one year pursuant to paragraph (a) of subsection 4.

In the case of loans made pursuant to subsection 1 for periods of up to 20 years and those made pursuant to paragraph (a) of subsection 2 for periods of up to 25 years, such loans may call for maturities of less than 20 or 25 years and for "balloon" payments at such shorter maturities if the payments required during the period of the loan shall be sufficient to retire the entire principal amount of the loan within a period of not more than 20 or 25 years as the case may be with respect to the type of real property involved. In the case of loans made pursuant to paragraph (b) of subsection 2 for periods of up to 30 years, any such loan may call for a maturity of less than 30 years but the payments required during the period of the loan must be sufficient to retire the entire principal amount of the loan by such shorter maturity and no "balloon" payment may be called for at such shorter maturity.

Subsection 3 provides for the financing of construction and the acquisition and development of unimproved real property and for the securing of such loans by liens on the real property involved for specific periods without amortization and under specific conditions as set forth in this subsection. These provisions are new but have their basis in federal law (12 U.S.C. 371) relating to the powers of national banks.

No provision is contained in existing law for the making of loans secured by real property exceeding 50% of the value of such property without requiring amortization.

Subsection 4 sets forth the requirements which must be met in all situations involving a loan secured by real property. Most of the provisions of this subsection represent a modification of existing law. Paragraph (a) is new and defines amortization. Paragraph (c) is new to the extent that it defines what constitutes a first lien on real property but is similar to the definition of that term contained in section 511.8(9) of the Code of Iowa. Paragraph (g) represents a departure from present law to the extent that in addition to farm real property, commercial and residential property may be located in any adjoining state and drops the prohibition against the securing of loans by real property which is located west of the one hundreth meridan line. Paragraph (i) setting forth certain requirements in connection with a loan secured by a leasehold is also new. For certain analogous provisions of existing law, see sections 526.25(5), 526.30 and 526.31.

Subsection 5 sets forth those kinds of loans which are exempt from the restrictions and requirements of this section most of which relate to loans insured or guaranteed all or in part by agencies of the United States. See sections 526.25(5) and 528.15 of existing law. Paragraph (e) is new and permits the taking of real property as additional security when the state bank is relying primarily for payment on other collateral. Paragraph (f) is also new and solves a problem existing with respect to present law under which certain bonds or securities may be ineligible for purchase by a state bank when secured by a lien on real property due to the restrictions placed on the amount, maturity, amortization and location of the property securing the issue. See section 526.25(5).

Subsection 8 provides express statutory authority for the taking of secondary liens to secure loans made for improvements to real property when the first or prior liens may be held by another

lender and the loan may not be insured by the federal housing administration. The balance of this subsection merely gives statutory expression to current practice.

Sec. 906. Installment loans by state banks.

1. A state bank may contract for and receive on any loan which is evidenced by a written agreement for repayment in installments, a charge, which shall include interest, determined in accordance with either of the following methods:

a. At a rate not to exceed six dollars per annum upon each one hundred dollars actually loaned to the customer. In addition to the amount actually loaned, the charge may be included in the total amount of the loan. The terms of any loan for which a charge is made pursuant to this paragraph shall require substantially equal installments at successive intervals of not more than one year in amounts sufficient to amortize the entire loan, including charges, within a period of not more than five years provided, however, that the first installment may be deferred to not more than fifteen months from the date of the loan.

b. At a rate not to exceed one percent per month computed on unpaid principal balances. A state bank may receive such charge by crediting each installment whenever received, first to the charge at the monthly rate contracted for and the remainder to principal until the loan is fully paid, or the state bank may compute the total charge which would be earned at the monthly rate contracted for if the loan were repaid according to its terms and each installment were applied first to the charge and then to principal, and include such total charge in the total amount of the loan. The terms of any loan for which a charge is made pursuant to this paragraph shall require substantially equal installments at successive intervals of not more than one month in amounts sufficient to amortize the entire loan, including charges, within the period ending on the date of its maturity which shall not exceed five years pro-

vided, however, that installments may be deferred or omitted on a seasonal basis. If the total charge is included in the total amount of the loan as provided for in this paragraph, a first interval of not less than fifteen nor more than forty-five days may be treated as a monthly interval.

2. If the charge determined in accordance with subsection one (1) of this section is less than ten dollars, a state bank may contract and receive a charge of not more than ten dollars, which charge shall be in lieu of any charge determined in accordance with subsection one (1) of this section and shall not be subject to refund as required by subsection five (5) of this section.

3. No further amount shall be charged, contracted for or received, directly or indirectly, on or in connection with any loan subject to the provisions of this section, except fees paid for filing documents in public offices in connection with the loan, actual expenditures, including reasonable attorney's fees for proceedings to collect the loan, and the cost of a reasonable amount of insurance of the kind customarily required, but not in excess of standard insurance rates.

4. When an installment is not paid when due, a state bank may collect a single delinquency charge, in an amount not to exceed five percent of the installment, for each installment in arrears for a period of more than ten days, provided that the delinquency has not been caused by reason of acceleration or by reason of delinquency on a prior installment.

5. Any payment in cash made by a customer before maturity shall be accepted by the state bank. When full payment of a loan subject to the provisions of this section is made before maturity, whether by payment in cash, renewal or otherwise, or whenever the maturity of the loan is accelerated, the customer shall receive from the state bank at the time the loan is paid in full a refund of the unearned charge. The refund shall be so calculated that the customer will not have paid a charge for the loan at a greater rate when computed on actual

unpaid principal balances than the customer would have paid had the loan been permitted to run to its maturity, and in no event shall the customer be required to pay in excess of one percent per month interest on the actual unpaid principal balances. All such refunds shall be made in accordance with a uniform refund schedule calculated, prescribed and approved by the superintendent.

6. The total amount loaned to any one customer for which a charge is made pursuant to this section shall not, at any one time, exceed ten thousand dollars excluding charges permitted by this section. For any portion of one or more loans to one customer in excess of ten thousand dollars, the charge which the state bank may make shall be governed by law other than this section. No state bank shall have outstanding loans subject to this section in an aggregate amount exceeding twenty-five percent of its total assets.

7. The provisions of this section, nor insofar as loans described in paragraph b of this subsection are concerned, the provisions of any other section of the laws of this state, shall not apply to loans, evidence of indebtedness or agreements for the payment of money which:

a. Are secured by first liens on real property.

b. Are real property improvement loans insured, all or in part, by the federal housing administration under the laws of the United States.

c. Are the obligations of a customer which is a corporation.

d. Have been acquired by the state bank by purchase or discount from the person owning the same.

Comment

This section dealing with installment loans by state banks preserves existing law. See chapter 529 of the Iowa Code. Changes have been made in organization and wording to conform to the syntax used throughout the Act but the provisions of present law establishing rates, maturities and amounts of such

installment loans have not been changed.

Paragraphs (a) and (b) of subsection 1, which set forth the maximum rates which may be charged by a state bank on installment loans, also define what constitutes an installment loan according to the basis on which the charge is made by the state bank. This is an expansion of section 529.1 of existing law.

Subsection 2 enables a state bank to impose a minimum charge of not more than ten dollars which shall be in lieu of interest and any other charges permitted by section 906 except a charge made for delinquency. Such minimum charge is not subject to refund on any payment of the loan prior to its original maturity.

Subsection 4 of this section permits a state bank to impose a single delinquency charge at not more than five percent of an installment in arrears for more than ten days in the manner provided for in this subsection.

Subsection 7 exempts certain types of loans from the requirements and restrictions of the statute. For analogous provisions of existing law, see sections 528.14, 529.10 and 535.2.

Sec. 907. Participations. A state bank may purchase and may sell, subject to the provisions of sections nine hundred one (901), nine hundred four (904), nine hundred five (905), and nine hundred six (906) of this Act, and to such regulations as the superintendent may prescribe, participations in one or more evidences of indebtedness and agreements for the payment of money, and pools of bonds, securities, evidences of indebtedness and agreements for the payment of money.

Comment

This section is new and allows a state bank to purchase and sell participations in the manner stated therein.

Sec. 908. Direct leasing. A state bank shall have the power, subject to approval by the superintendent, to acquire, upon the specific request of and for the use of a customer, and lease, personal property pursuant to a binding arrangement for the

leasing of such property to the customer upon terms requiring payment to the state bank, during the minimum period of the lease, of rentals which in the aggregate will be at least equal to the total expenditures by the state bank for, and in connection with, the acquisition, ownership, maintenance and protection of the property.

Comment

This section adopts existing law in a slightly modified form. See chapter 377 of the Acts of the 62nd General Assembly.

Sec. 909. Loans and investments by officer. No loan or investment shall be made from the funds of any state bank, directly or indirectly, except by an officer of the state bank who is authorized to do so by the board of directors.

Comment

This section adopts existing law. See section 528.10.

Sec. 910. Property acquired to satisfy debts previously contracted. A state bank may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith. Property acquired pursuant to this section shall be held and disposed of subject to the following conditions and limitations:

1. Shares in a corporation and other personal property, the acquisition of which is not otherwise authorized by this Act, shall be sold or otherwise disposed of within six months unless the time is extended by the superintendent.

2. Real property purchased by a state bank at sales upon foreclosure of mortgages or deeds of trust owned by it, or acquired upon judgments or decrees obtained or rendered for debts due it, or such real property as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business, or such real property as it may obtain by redemption as a junior mortgagee or judgment creditor, shall be sold or otherwise disposed of by the state bank within one year after

title is vested in the state bank, unless the time is extended by the superintendent.

Comment

Subsection 1 of this section is new. Subsection 2 adopts existing law except that the period for disposing of real property acquired by the state bank has been reduced. See section 526.34.

Sec. 911. Letters of credit. A state bank shall have the power to issue, advise and confirm letters of credit authorizing a beneficiary thereof to draw on or demand payment of the state bank or its correspondent banks.

Comment

This section is new and gives statutory expression to the effect of current law in practice.

Sec. 912. Customer shall be free to obtain own insurance and loan. In any case in which any kind of insurance is required by the state bank as a condition for lending money or in connection with any other transaction, the customer shall be free to obtain such insurance from a source of his selection. In the case of a sale of shares of stock, bonds or other securities or real property by an officer or employee which is authorized by the board of directors of a state bank in the manner provided for in subsection three (3) of section seven hundred ten (710) of this Act, the purchaser shall be free to obtain any loan for the purchase thereof from a lender of his selection.

Comment

This section has its basis in section 529.6 of existing law relating to installment loans and has been expanded to encompass all cases in which insurance may be required by a state bank in connection with any loan. This section acts to prevent any officer or employee of a state bank who is also engaged in the sale of insurance or other property from requiring that insurance

used as collateral to a loan must be purchased from him, or in connection with the sale of other property, from requiring that any loan for the purchase of such property be obtained from the bank of which he is an officer or employee.

Division X
FIDUCIARY POWERS

Sec. 1001. Power to act as fiduciary. When approving a proposed state bank, or at any time subsequent thereto upon amendment of its articles of incorporation, the superintendent may authorize a state bank to act in a fiduciary capacity. In determining whether he shall authorize a state bank to act in a fiduciary capacity, the superintendent may consider any of the relevant criteria referred to in section three hundred five (305) of this Act, and other appropriate facts and circumstances. In any fiduciary capacity in which a state bank may act pursuant to this section, it shall have all the rights and duties which an individual has in such capacity under applicable law and under the terms upon which the state bank is designated to act in such capacity. In authorizing a state bank to act in a fiduciary capacity, the superintendent may limit such authorization to such capacities as he deems appropriate.

Comment

This section retains the effect of existing law by allowing state banks to act as a fiduciary, when authorized to do so by the superintendent. See section 532.1. The power to act as a fiduciary under this section includes, by reason of the definition in section 103(11) the capacity to act as executor, administrator, guardian, conservator, receiver, trustee or in any similar capacity. The power to act as a co-fiduciary with another individual is implicit in this section. This section also states the legal incidents of each of the capacities in which the state bank may act in terms broad enough to assure that the state bank will have the same legal position as an individual acting in each capacity. The rights and duties of

the state bank are made subject to the terms imposed by any will, deed, or trust, court order or other form of designation of the state bank. The phrase "applicable law" is used since there is no territorial limitation imposed by this section.

Sec. 1002. Actions required, permitted or prohibited in a fiduciary capacity. The following rules shall be applicable to a state bank acting in the capacity of fiduciary:

1. A state bank shall segregate from its assets all property held as fiduciary, other than items in the course of collection, and shall keep separate records of all such property for each account for which such property is held.

2. Funds of a fiduciary account may be deposited in the state bank which is acting as fiduciary, either as demand deposits, savings deposits or, for a period not exceeding one year, in single maturity time deposits.

3. A state bank may provide any oath or affidavit required of the state bank as fiduciary through an officer acting on behalf of the state bank.

4. A state bank shall not make a loan or extension of credit of any funds held as fiduciary, directly or indirectly, to or for the benefit of a director, officer or employee of the state bank or of an affiliate, a partnership or other unincorporated association of which such director, officer or employee is a partner or member, or a corporation in which such officer, director or employee has a controlling interest, except a loan specifically authorized by the terms upon which the state bank was designated as fiduciary.

5. Unless otherwise authorized by the instrument creating the relationship, court order or the laws of this state, a state bank, as fiduciary, shall not, directly or indirectly, sell any asset to the state bank for its own account, or to an officer, director or employee, nor purchase from the state bank, or an officer, director or employee, any asset or any security issued by the state bank except, in the case of a state bank:

a. Investments in which a state bank may invest without limitation pursuant to subsection one (1) of section nine hundred one (901) of this Act,

b. Assets purchased by the state bank pursuant to an agreement whereby the state bank is bound to sell, and the state bank as fiduciary is bound to buy, at a date not more than one year from the date of acquisition by the state bank, such assets at a price agreed upon at the time of acquisition by the state bank, or

c. Any asset sold to the state bank for its own account or purchased in a fiduciary capacity from the state bank with the prior approval of the superintendent.

Comment

Subsection 1 of this section retains the effect of existing law. See section 532.7.

Subsection 2 of this section is new and has no counterpart in existing law.

Subsection 3 of this section is new but probably states the effect of existing law.

Subsectuib 4 of this section is new and has no counterpart in existing law.

Subsection 5 of this section is new and has no counterpart in existing law. This subsection prohibits transactions between the state bank, as fiduciary, and an officer, director, or employee of the state bank and, except as stated therein, between the state bank as fiduciary and the state bank in its own account.

Sec. 1003. Removal of fiduciary powers. If the superintendent at any time concludes that a state bank authorized to act in a fiduciary capacity is managing its accounts in an unsafe or unsound manner, or in a manner in conflict with the provisions of this Act, and such state bank refuses to correct such practices upon notice to do so, the superintendent may forthwith direct that the state bank cease to act as a fiduciary and proceed to resign its fiduciary positions.

In such event the superintendent shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it is necessary and desirable that successor fiduciaries be appointed. Upon the filing of the petition the court shall enter an order requiring all persons interested in all such fiduciary accounts to designate and take all necessary measures to appoint a successor fiduciary within a time to be fixed by the order, or to show cause why a successor fiduciary should not be appointed by the court. The court shall also direct the state bank to mail a copy of the order to each living settlor and each person known by the state bank to have a beneficial interest in the fiduciary accounts with respect to which the state bank is fiduciary and with respect to which it is being asked to resign its position. Such notice shall be mailed to the last known address of each such settlor and person having a beneficial interest as shown by the records of the state bank. The court may also order publication of such order to the extent that it deems necessary to protect the interests of absent or remote beneficiaries.

In any fiduciary account where those interested therein fail to cause a successor fiduciary to be appointed prior to the time fixed in such order, the court shall appoint a successor fiduciary. A successor fiduciary appointed in accordance with the terms of this section shall succeed to all the rights, powers, titles, duties and responsibilities of the state bank, except that he shall not exercise powers given in the instrument creating the powers that by its express terms are personal to the fiduciary therein designated and except claims or liabilities arising out of the management of the fiduciary account prior to the date of the transfer.

Comment

This section is new and has no counterpart in existing law.

This section gives the superintendent authority to commence proceedings to effect withdrawal of the fiduciary authorization from a state bank when it appears that the state bank should no longer be permitted to exercise such powers. The section sets up machinery whereby the fiduciary accounts possessed by the state bank may be effectively transferred to a substitute fiduciary. This provision contemplates withdrawal of the entire fiduciary responsibility vested in a state bank and will not have applicability as respects single accounts.

Sec. 1004. Voluntary relinquishment of fiduciary capacity. A state bank desiring to surrender its authorization to act in a fiduciary capacity, in order to relieve itself of the necessity of complying with the requirements attendant to such capacity, shall file with the superintendent a certified copy of a resolution signifying such intent. In such event the state bank shall cause to be filed a petition in the district court in which the state bank has its principal place of business setting forth in general terms that the state bank is acting as fiduciary with respect to certain property and that it desires to cease its fiduciary function and resign its fiduciary positions. Upon the filing of the petition the relinquishment of fiduciary capacity and the appointment of a successor fiduciary or fiduciaries shall be handled in the same manner and with the same effect as provided for in section ten hundred three (1003) of this Act, dealing with the removal of fiduciary powers.

After compliance with this section the state bank shall proceed to amend its articles of incorporation, in accordance with the provisions of this Act, in a manner to indicate that it is no longer authorized to act in a fiduciary capacity. The superintendent shall approve the proposed amendment, in the manner provided for in this Act, if he is satisfied that the state bank has properly relieved itself of its fiduciary responsibilities.

Comment

This section retains the effect of existing law (section 532.9) although in a different and expanded form.

Sec. 1005. Trust companies on the effective date of this Act. Any trust company existing and operating on the effective date of this Act, and which was authorized to act only as a trust company, may continue to act only in a fiduciary capacity, according to the terms of its articles of incorporation, after the effective date of this Act, and shall be, insofar as applicable, subject to the provisions of this Act. Insofar as the use of the word "trust" is concerned, the provisions of subsection two (2) of section one hundred seven (107) of this Act shall not apply to a trust company subject to this section.

Comment

The formation of a trust company as a separate and distinct entity is prohibited under this statute. A state bank shall be authorized to exercise fiduciary powers to the extent provided for in section 1001. Only one trust company exists and operates at this time. The articles of incorporation of this trust company provides for a limited duration. This section has the effect of permitting the continued existence of the lone trust company and restricting its authorization to the exercise of fiduciary powers.

Division XI

AFFILIATES

Sec. 1101. Definitions. For the purposes of this Act, an "affiliate" of a state bank shall include any corporation, trust, estate, association, or other similar organization:

1. Of which a state bank, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising

similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions.

2. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of a state bank who own or control either a majority of the shares of such state bank or more than fifty percent of the number of shares voted for the election of directors of such state bank at the preceding election, or by trustees for the benefit of the shareholders of any such state bank.

3. Of which a majority of its directors, trustees, or other individuals exercising similar functions are directors of any one state bank.

4. Which owns or controls, directly or indirectly, either a majority of the voting shares of a state bank or more than fifty percent of the number of shares voted for the election of directors of a state bank at the preceding election, or controls in any manner the election of a majority of the directors of a state bank, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of a state bank is held by trustees.

5. Which is a bank holding company, as defined by the laws of the United States, of which a state bank is a subsidiary, and any other subsidiary, as defined by the laws of the United States, of a bank holding company.

Comment

This section is new but has its counterpart in federal law and represents an adoption of such law except for the addition of subsection 4. See 12 U.S.C. 221a(b).

Sec. 1102. Loans and other transactions with affiliates. No state bank shall make any loan or any extension of credit to, or purchase securities under repurchase agreement from, any of its affiliates, or invest any of its funds in the shares, bonds, capital securities, or other obligations of any such

affiliate, or accept the shares, bonds, capital securities, or other obligations of any such affiliate as collateral security for advances made to any customer, if the aggregate amount of such loans, extensions of credit, repurchase agreements, investments and advances against such collateral security will exceed:

1. In the case of any one such affiliate, ten percent of the capital and surplus of such state bank.

2. In the case of all such affiliates, twenty percent of the capital and surplus of such state bank.

Within the foregoing limitations, each loan or extension of credit of any kind or character to an affiliate shall be secured by collateral in the form of shares of stock, bonds, capital securities or other such obligations having a market value at the time of making the loan or extension of credit of at least twenty percent more than the amount of the loan or extension of credit, or of at least ten percent more than the amount of the loan or extension of credit if it is secured by obligations of any state, or of any political subdivision or agency thereof.

A loan or extension of credit to a director, officer, clerk or other employee or any representative of any such affiliate shall be deemed a loan to the affiliate to the extent that the proceeds of such loan are used for the benefit of, or transferred to, the affiliate.

The provisions of this section shall not apply to loans or extensions of credit fully secured by obligations of the United States, or the federal intermediate credit banks, or the federal land banks, or the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest. The provisions of this section shall likewise not apply to indebtedness of any affiliate for unpaid balances due a state bank on assets purchased from such bank.

For the purposes of this section, the term "extension of credit" and "extensions of credit" shall be deemed to include

any purchase of securities, other assets or obligations under repurchase agreement, and the discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse.

Comment

This section is also new but also has its counterpart in federal law and represents an adoption of such law with certain exceptions not believed to be applicable for the purposes of this Act. See 12 U.S.C. 371c.

Sec. 1103. Exceptions. The provisions of section eleven hundred two (1102) of this Act shall not apply to any affiliate:

1. Engaged solely in holding or operating real estate used wholly or substantially by the state bank in its operations or acquired for its future use.

2. Engaged solely in conducting a safe-deposit business or the business of an agricultural credit corporation eligible to discount loans with a federal intermediate credit bank.

3. Engaged solely in holding obligations of the United States, the federal intermediate credit banks, the federal land banks, the federal home loan banks, or obligations fully guaranteed by the United States as to principal and interest.

4. Where the affiliate relationship has arisen as a result of shares acquired in satisfaction of a bona fide debt contracted prior to the date of the creation of such relationship provided that such shares shall be sold at public or private sale within one year from the date of the creation of the relationship, unless the time is extended by the superintendent.

5. Where the affiliate relationship exists by reason of the ownership or control of any voting shares thereof by a state bank as executor, administrator, trustee, receiver, agent, depository, or in any other fiduciary capacity, except where such shares are held for the benefit of all or a majority of the shareholders of such state bank.

6. Which is a bank.

Comment

Again this section is new and represents an adoption of federal law to the extent applicable for the purposes of this Act. See 12 U.S.C. 371c.

Sec. 1104. Applicability of general loan limitations. Any loan or extension of credit to an affiliate, and any investment in the shares, bonds, capital securities or other obligations of an affiliate, excepted by the provisions of section eleven hundred two (1102) of this Act from the requirements of that section, shall continue to be subject to the other provisions of this Act applicable to loans or extensions of credit by a state bank and investments by a state bank in shares, bonds, capital securities, or other such obligations.

Comment

This section insures that loans to affiliates excepted from the provisions of section 1102 by that section shall continue to be subject to the general limitations imposed by this Act upon the obligations of one customer to a state bank.

Sec. 1105. Examination of affiliates and reports.

1. For the purpose of determining the condition of a state bank and information concerning the state bank, the superintendent shall have the power to make or cause to be made an examination of any affiliate to the same extent as he may examine a state bank under this Act.

2. If the superintendent has reasonable cause to believe that any corporation, trust, estate, association, or other similar organization is an affiliate, he may require the organization to furnish such information as may enable him to determine whether the organization is an affiliate.

Comment

Subsection 1 vests power in the superintendent of banking to make examinations of affiliates of state banks similar to

the powers resting in the Comptroller of the Currency of the United States, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation to conduct examinations of affiliates of National banks, state member banks of the Federal Reserve System and insured non-member banks. See 12 U.S.C. 338, 12 U.S.C. 481, and 12 U.S.C. 1828.

Subsection 2 is designed to insure that the superintendent will be able to determine if affiliate status exists.

Sec. 1106. Fees paid to an affiliate. In any case where an affiliate has a contract or arrangement for management, financial advice, consultation, or other services which involves payment for these services by a state bank to an affiliate, the superintendent shall have authority to determine whether or not such fees are reasonable in relation to the services performed, and if he determines they are unreasonable, to require that they be reduced to a reasonable amount or eliminated.

Comment

This section is new and has no counterpart in existing law and gives the superintendent authority to regulate fees paid by a state bank to any affiliate.

Division XII
OFFICES

Sec. 1201. General provision.

No bank shall open or maintain a branch bank. A state bank may, subject to approval and regulation of the superintendent:

1. Establish bank offices for the sole and only purpose of receiving deposits and paying checks and performing such other clerical and routine duties not inconsistent with this section, provided however, that a state bank shall not establish any bank office beyond those counties surrounding and contiguous to or touching or cornering on the county in which the state bank is located nor in a municipal corporation, or in an unincorporated area, in which there is already an estab-

lished state or national bank and provided further, that no bank office shall be continued after a state bank or national bank has actually commenced business, through the opening of its principal place of business, within the municipal corporation where the bank office is located.

2. Establish, for the convenience of its customers, not more than two parking lot offices for servicing accounts, for receiving and paying deposits, issuing and cashing checks, drafts, money orders and travelers checks, for the storage of supplies and noncurrent bank records, for safety deposits of customers and for the performance of such other clerical and routine duties not inconsistent with this section, provided however, that such parking lot offices shall be located within the same municipal corporation as the state bank, shall have adequate off-street parking area as determined by the superintendent, and may be for the service of both drive-up and pedestrian customers and provided further, that such a facility located in the proximity of the state bank may be found by the superintendent to be an integral part of the state bank operation, so as to permit the approval of two parking lot offices elsewhere. The state bank shall supervise the operation of the parking lot office but the executive and official business of the state bank shall not be transacted at the parking lot office, no current records shall be at a parking lot office, and all transactions of the parking lot office shall be immediately transmitted to the state bank.

3. Nothing in this section shall prohibit national banks the privilege of this section whenever they may be so authorized by federal law.

Comment

This section adopts existing law contained in section 528.51, including the amendment thereto made by Chapter 376 of the Acts of the 62nd General Assembly. Changes in wording, to conform to the syntax used throughout the statute, and in organization, have been made.

Sec. 1202. Change of location. Upon approval by the superintendent a state bank may change the location of a bank office or a parking lot office. No change shall be authorized by the superintendent to a location other than that specified in section twelve hundred one (1201) of this Act.

Comment

This section is new and has no counterpart in existing law. It is part of present practice, however, for the superintendent to approve a change in the location of a bank office or a parking lot office. This section merely constitutes statutory expression of that practice.

Sec. 1203. Cancellation of approval of offices. Whenever an examination by the superintendent or other supervisory agencies discloses that the operation of a bank office or parking lot office is being conducted in violation of section twelve hundred one (1201) of this Act, the superintendent may forthwith revoke the approval of the bank office or parking lot office.

Comment

This section constitutes a modification of existing law contained in section 528.53. Existing law calls for a forfeiture of the charter of the state bank, upon the suit of the attorney general, in the event of a violation of the provisions relating to the maintenance of bank offices. This section calls for a revocation of the approval of the bank office or parking lot office when it appears that such office is being maintained contrary to law. This sanction seems sufficient in situations where the violation by the state bank is not extremely severe. In those situations where the violation is especially severe the superintendent may proceed to take over the management of the property and business of the state bank under section 224 upon the ground that the state bank has violated the law of this state. In especially grievous situations this procedure may result in the dissolution of the state bank. Consequently, the

same remedy is available to the superintendent under this section as under existing law.

Division XIII

DISSOLUTION

Sec. 1301. Voluntary dissolution prior to commencement of business.

1. Subsequent to the issuance of the certificate of incorporation and prior to the issuance of the authorization to do business, a state bank which has not issued any shares may be voluntarily dissolved by its incorporators. In such case the articles of dissolution shall be prepared and filed in the manner provided in section four hundred ninety-six A point seventy-nine (496A.79) of the Code. The articles of dissolution shall be delivered to the superintendent, together with the applicable filing and recording fees, who shall deliver the same to the secretary of state for filing and recording in the office of the county recorder.

2. A state bank which has issued its shares, whether or not it has received an authorization to do business, but which has not commenced any business for which an authorization is required, may propose to dissolve by the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon. After obtaining the approval of the superintendent to dissolve under this section the state bank shall deliver to the superintendent articles of dissolution which shall be executed by two duly authorized officers and which shall contain the date of incorporation, a statement that it has not transacted any business for which an authorization to do business is required, a statement that all liabilities of the state bank have been paid or provided for, a statement that all amounts received on account of capital, surplus and undivided profits, less any part thereof disbursed for necessary expenses, have been returned to the persons entitled thereto, and the number of shares entitled to vote on the dissolution

and the number of shares voted for or against it respectively. If the superintendent finds that the articles of dissolution satisfy the requirements of this Act, he shall deliver them to the secretary of state, with his written approval, and notify the state bank of his action.

Comment

This section is new and has no counterpart in existing law. Subsection 1 of this section intends to provide a vehicle whereby a state bank which has not received an authorization to do business (pursuant to section 308) may be dissolved. In certain unusual situations it may develop that a state bank, although incorporated as evidenced by the prior issuance of the certificate of incorporation, will not be issued an authorization to do business. For example, it may result that the incorporators are unable to pay in the requisite amount of capital, surplus and undivided profits. In a situation of this nature it appears undesirable to allow for the continuation of the corporate entity which has not been authorized to perform the business for which it was incorporated. In a situation contemplated under subsection 1 the shares of the state bank have not been issued. Accordingly, it is appropriate that the incorporators of the state bank be the appropriate parties to effect the dissolution. Section 496A.79 of the Iowa Business Corporation Act describes the content and filing procedure with respect to articles of dissolution in situations of this sort which involve general business corporations. It is appropriate to adopt this procedure in similar situations affecting state banks. In order to provide the superintendent with information relative to the dissolution of a previously approved state bank the statute provides for the forwarding of the articles of dissolution to the superintendent prior to their delivery to the secretary of state.

Subsection 2 of this section deals with a situation which is analogous to that referred to in subsection 1. It provides a procedure for voluntary dissolution in situations where the state bank has issued its shares but has not commenced the busi-

ness of banking, even though it may have received an authorization to do business. Since the shares of the state bank have been issued in a situation to which this subsection applies, it is appropriate for the shareholders to approve the dissolution. The approval of the superintendent is necessary if a state bank is to seek dissolution under this subsection. The superintendent may withhold his approval if he finds that the state bank has done business for which an authorization is required and there are depositors or other customers of the state bank whose interests should be guarded by requiring the full scale dissolution procedure available under sections 1303 through 1308. As in subsection 1, the superintendent is a conduit through whom the articles of dissolution shall pass prior to delivery to the secretary of state. Unlike the situation in subsection 1, however, the approval of the superintendent is necessary to effect voluntary dissolution under subsection 2. It is contemplated that the secretary of state shall issue a certificate of dissolution (see section 1308) with respect to any dissolution accomplished under this section.

Sec. 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 under this Act or if an authorization to do business has not been issued within one year after the date of its incorporation, 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 existence of the state bank shall cease.

Comment

This section continues the policy of existing law although in a slightly different form. See section 524.14. This section intends to provide a vehicle whereby the superintendent may effect dissolution of a state bank which, although incorporated, has not satisfied the requirements precedent to the issuance of an authorization to do business within a reasonable time. If it appears that the state bank will not be able to satisfy those requirements, and that it will not seek voluntary dissolution pursuant to section 1301, the superintendent is given authority (as he is under existing law, section 524.14) to seek dissolution of the state bank. This section is also intended to encompass the rare situation in which a state bank should not have been incorporated in the first instance.

Sec. 1303. Voluntary dissolution after commencement of business.

1. A state bank which has commenced business may propose to voluntarily dissolve upon the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon, adopting a plan of dissolution involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank or national bank 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 of dissolution providing for full payment of its liabilities.

2. Upon receipt of an application for approval of a plan of dissolution the superintendent shall conduct such investigation as he may deem necessary to determine whether the plan adequately protects the interests of depositors, other creditors and shareholders and, if the plan involves an acquisition of assets and assumption of liabilities by another state bank, whether such acquisition and assumption would be consistent with adequate and sound banking and in the public interest, on the basis of factors substantially similar to those set forth

in paragraph d of subsection one (1) of section fourteen hundred three (1403) of this Act. Within ninety days after receipt of the application, the superintendent shall approve or disapprove the application on the basis of his investigation. Before receiving the decision of the superintendent with respect to the pending application, the applying state bank shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. Thereafter the superintendent shall give to the applying state bank written notice of his decision, and in the event of disapproval, a statement of the reasons for his decision. The decision of the superintendent shall be subject to review by the district court of Polk county upon petition by any interested party within thirty days after the superintendent notifies the applying bank of his decision. The decision of the superintendent shall be upheld unless unsupported by substantial evidence.

3. When a state bank has proposed to dissolve by adopting a plan of dissolution involving a provision for acquisition of its assets and assumption of its liabilities by another state bank, it shall publish a notice of the proposed transaction. The notice shall be published once each week for two successive weeks 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. Such publication of notice shall be made within thirty days after making application to the superintendent for approval of the plan of dissolution, and proof of publication of the notice shall be delivered to the superintendent. The notice shall set forth the name

of the dissolving state bank and of the acquiring state bank, the location and post office address of the principal place of business of the dissolving state bank and of the acquiring state bank and of each office to be maintained by the acquiring state bank and a brief statement of the nature of the proposed transaction. Prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested parties an opportunity for a stenographically reported hearing during which such parties shall be allowed to present evidence in support of, or in opposition to, the pending application. If the superintendent finds that he must act immediately on the pending application in order to protect the interests of depositors or the assets of the dissolving bank, he may proceed without requiring publication of the notice and without providing for the hearing referred to in this subsection.

Comment

This section is the first of several sections (1303 through 1308) which deal with the process of effecting a voluntary dissolution of a state bank after the state bank has commenced business as such. While these sections continue much of existing law, the scheme adopted is necessarily more elaborate.

Subsection 1 of this section continues the effect of existing law by providing that the shareholders may propose, upon the affirmative vote of three-fourths of the shares entitled to vote, to dissolve. See section 528.76. Subsection 1 of this section expands existing law by specifically covering a plan under which dissolution will be contingent upon the assumption of liabilities by another state bank or national bank with a provision for continuance of the business in the event the assumption is not effected. In view of the potential delay in obtaining the approval of the proper federal agency, this section deals specifically with a plan under which discontinuance of the business will occur only if the assumption is actually effected.

This provision and related provisions of this division are intended to make available a method of absorption of the business of a state bank through purchase of its assets and assumption of its liabilities, as a possible alternative to merger or consolidation which are described in Division XIV. In situations involving a purchase and assumption the corporate entity of the acquired bank will cease to exist. Therefore, it is appropriate to treat such a transaction as a dissolution of the acquired state bank. In situations involving a merger or consolidation the "acquired" state bank shall cease as a separate entity but will continue in the resulting state (or national) bank. See section 1405(2). Hence, the nature of a merger or consolidation is distinct from a purchase and assumption of the assets and liabilities of a state bank. The latter involves a dissolution of the acquired corporation and is more properly treated as such. Subsection 1 also includes, of course, situations in which the state bank contemplates a cessation of its business without a proposed assumption of liabilities by another state bank or national bank (or with such proposed assumption but with no provision for continuance of the business if such assumption is not effected).

Subsection 2 of this section is new and contains provisions for action by the superintendent similar to those contained in section 305 relating to the superintendent's approval of the organization of a new state bank and section 1403 relating to the superintendent's approval of a merger or consolidation. In a case involving an assumption of liabilities, the standards of section 1403(1) are incorporated by reference since the transaction is analogous to a merger or consolidation and hence the same criteria would be relevant. As under sections 304 and 1403, subsection 2 is explicit as respects the right to seek review of the action of the superintendent.

Subsection 3 of this section requires publication in situations where a plan of dissolution involves a plan for the purchase and assumption of the assets and liabilities by another

state bank of the dissolving state bank. This subsection applies only when the "buying" bank is a state bank. The statute contemplates publication in both the principal place of business of the dissolving state bank and the principal place of business of the acquiring state bank, since both areas would be affected by the plan. The statute requires publication of the notice within thirty days after making application to the superintendent for approval of the plan so as to allow objecting parties an opportunity to be heard prior to the superintendent's action. As in situations arising under sections 305 and 1403, interested parties are afforded an opportunity for a hearing. The last sentence of subsection 3 provides, however, that if the superintendent must act quickly in order to protect the depositors or the assets of the dissolving state bank (e.g., in granting quick approval to a purchase and assumption), he may dispense with the notice and hearing. In view of the fact that this may be the only way to adequately protect the interests involved, this provision is justified. Furthermore, similar notice required of any such transaction by federal law which involves an insured bank, is similarly waived if "the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the banks involved." 12 U.S.C. section 1828(c)(3).

Sec. 1304. Voluntary dissolution--statement of intent to dissolve.

1. Immediately upon the adoption and approval of a plan of dissolution under section thirteen hundred three (1303) of this Act (or if the plan provides for continuance of the business of the state bank unless a purchase of its assets and an assumption of its liabilities becomes effective, immediately after such purchase and assumption becomes effective), the state bank shall deliver to the superintendent a statement of intent to dissolve which shall be signed by two of its duly authorized officers and which 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 of dissolution and the number of shares voted for or against the plan, respectively.

2. If the statement of intent to dissolve satisfies the requirements of this section, the superintendent shall deliver the statement with his written approval to the secretary of state who shall issue to the state bank an approved copy of such statement. Upon the issuance of an approved copy of the statement of intent to dissolve, the state bank shall cease to accept deposits or carry on its business, except insofar as may be necessary for the proper winding up thereof in accordance with the approved plan, but its corporate existence shall continue until issuance of a certificate of dissolution pursuant to section thirteen hundred seven (1307) of this Act.

3. If the laws of the United States require approval by any federal agency, the superintendent shall withhold delivery of the approved statement of intent to dissolve until he receives notice of the decision of such agency. If the final approval of the agency is not given, the superintendent shall notify the applying state bank that the approval of the superintendent has been rescinded for that reason.

Comment

This section is new and has no counterpart in existing law. Subsection 1 of this section is similar to section 496A.80 of the Iowa Business Corporation Act.

Subsection 2 of this section is analogous to sections 496A.82 and 496A.83 of the Iowa Business Corporation Act. This section is intended to provide a method of formalizing, on the corporate records of this state, the election of the state bank to dissolve. It also has the effect of clarifying the status of the state bank during the winding up proceedings and specifies the point in time when the state bank shifts to that status.

There is a difference in the time for delivery to the superintendent of the intent to dissolve which is dependent upon

whether or not the plan provides for continuance of the business of the state bank unless its liabilities are assumed. This difference is in keeping with the reasons for distinguishing that type of plan from other plans of dissolution which are set forth in the comment to section 1303.

Since a transaction of this nature may require the approval of a federal agency (e.g., 12 U.S.C. section 1828(c), relating to acquisitions by insured banks), subsection 3 of this section provides that final approval of the superintendent shall hinge upon the requisite federal approval.

Sec. 1305. Voluntary dissolution proceedings--winding up.

1. The board of directors shall have full power to wind up and settle the affairs of a state bank in voluntary dissolution proceedings.

2. Within thirty days after the issuance by the secretary of state of an approved copy of the statement of intent to dissolve, the state bank shall give notice of its dissolution:

a. By mail to each depositor and creditor (except those as to whom the liability of the state bank has been assumed by another state bank or national bank pursuant to the plan), at their last address of record as shown upon the books of the bank, including a statement of the amount shown by the books of the state bank to be due to such depositor or creditor and a demand that any claim for a greater amount be filed with the state bank any time before a specified date at least ninety days after the date of the notice.

b. By mail to each lessee of a safe-deposit box and each customer for whom property is held in safekeeping (except those as to whom the liability of the state bank has been assumed by another state bank or national bank pursuant to the plan), at their last known address of record as shown upon the books of the state bank, including a demand that all property held in a safe-deposit box or held in safekeeping by the state bank be withdrawn by the person entitled thereto before a specified

date which is at least ninety days after the date of the notice.

c. By mail to each person, at his last known address as shown upon the books of the state bank, interested in funds held in a fiduciary account or other representative capacity.

d. By a conspicuous posting at each office of the state bank.

e. By such publication as the superintendent may prescribe.

3. As soon after the issuance of an approved statement of intent to dissolve as feasible, the state bank shall resign all fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

4. All known depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph a of subsection two (2) of this section. Unearned portions of rentals for safe-deposit boxes shall be rebated to the lessees thereof.

5. Safe-deposit boxes, the contents of which have not been removed by the owners after the date specified in the notice given under paragraph b of subsection two (2) of this section, shall be opened under the supervision of the superintendent and the contents placed in sealed packages which, together with unclaimed property held by the state bank in safekeeping, shall be transmitted to the treasurer of state. Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive such amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state, together with a statement giving the name of the person, if known, entitled to such amount, his last known address, the amount due such person, and such other information about such person as the treasurer of state may reasonably require. All property transmitted to the treasurer of state pursuant to this subsection shall be treated as abandoned, retained by the treasurer of state, and subject to claim, in the manner provided for in sections fourteen (14) through twenty-one (21) of chapter three hundred

ninety-one (391), Acts of the Sixty-second General Assembly. All amounts due creditors described in section four hundred ninety-six A point one hundred one (496A.101) of the Code shall be deposited with the treasurer of state in accordance with the provisions of that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in said section four hundred ninety-six A point one hundred one (496A.101).

6. Upon approval by the superintendent, assets remaining after the performance of all obligations of the state bank under subsections three (3), four (4), and five (5) of this section shall be distributed to its shareholders according to their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if, and to the extent, approved by the superintendent. All amounts due shareholders described in section four hundred ninety-six A point one hundred one (496A.101) of the Code shall be deposited with the treasurer of state in accordance with the provisions of that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in said section four hundred ninety-six A point one hundred one (496A.101).

7. During the course of dissolution proceedings the state bank shall make such reports as the superintendent may require, and shall continue to be subject to the provisions of this Act, including those relating to examination of state banks, until completion of the dissolution of the state bank.

8. If at any time during the course of dissolution proceedings the superintendent finds that the assets of the state bank will not be sufficient to discharge its obligations, he shall apply to the district court for appointment as receiver in the manner required by section thirteen hundred ten (1310) of this Act, and the dissolution shall thereafter be treated as an involuntary dissolution in accordance with the terms of that section and sections thirteen hundred eleven (1311) and thirteen

hundred twelve (1312) of this Act.

Comment

This section is new and has no counterpart in existing law. This section intends to describe several procedural aspects relating to the dissolution process.

Subsection 2 of this section is designed to provide notice to certain customers of the state bank of the proposed dissolution.

Subsection 5 provides that the unclaimed contents of safe-deposit boxes and amounts due to certain depositors shall be transferred to the treasurer of state and subject to the provisions of sections 14 through 21 of chapter 391 of the Acts of the Sixty-second General Assembly (Uniform Disposition of Unclaimed Property Act). This latter legislation will allow the rightful owner of the property to make a claim therefor at any time after its delivery to the treasurer of state. The language describing the type of deposits which are to be transmitted to the treasurer of state (second sentence of subsection 5) is drawn from section 496A.101. This subsection also provides that amounts due creditors described in section 496A.101 of the Iowa Business Corporation Act shall similarly be deposited with the treasurer of state. Unlike amounts due depositors, amounts due creditors described in section 496A.101 shall be subject to claim in the manner provided for in that section and not subject to the provisions of the Uniform Disposition of Unclaimed Property Act (Chapter 391, Acts of the 62nd General Assembly).

Subsection 6 provides for the distribution in dissolution of the remaining assets after satisfaction, by the state bank, of the obligations imposed upon it by subsections 3, 4 and 5 of this section. The third and fourth sentences of this subsection incorporate section 496A.101 of the Iowa Business Corporation Act with respect to shareholders who are unknown, under a disability and without representation or unable to be found.

Subsection 8 of this section provides a relationship with

those provisions dealing with involuntary dissolution, in the event that it becomes apparent that the state bank is insolvent. In such situations the entire dissolution process should be subject to the more rigid supervision provided for in such cases, even though the dissolution process was voluntarily commenced.

Sec. 1306. Revocation of voluntary dissolution proceedings.

1. A state bank may, at any time prior to the issuance of the approved copy of the statement of intent to dissolve by the secretary of state, revoke voluntary dissolution proceedings by consent of the shareholders in the manner provided for in section four hundred ninety-six A point eighty-five (496A.85) of the Code or by act of the state bank as provided for in section four hundred ninety-six A point eighty-six (496A.86) of the Code, except that the vote taken on the resolution referred to in subsection three (3) of section four hundred ninety-six A point eighty-six (496A.86) shall be adopted only upon the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon.

2. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the state bank, shall be delivered to the superintendent, together with the applicable filing and recording fee, who shall, if he finds that they satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

Comment

Subsection 1 of this section adopts sections 496A.85 and 496A.86 with respect to the revocation of voluntary dissolution proceedings once commenced. These sections are adopted in their entirety except for the fact that a vote of three-fourths of the shares entitled to vote, rather than a majority of the shareholders, will be required in situations involving revocation of voluntary dissolution proceedings by act of the state bank.

This change seemed appropriate since it appears wise to provide the same vote for the revocation of proceedings as for their initiation. See section 1303(1).

Subsection 2 of this section is analogous to section 496A.87 of the Iowa Business Corporation Act. As in other situations of this nature, the statute provides for the submission of the relevant documents to the superintendent for informational purposes. If the papers are in order, he will then deliver the documents to the secretary of state in the same manner as is provided for in situations involving general business corporations. See section 496A.87.

Sec. 1307. Articles of dissolution.

1. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the state bank have been paid or otherwise discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the state bank have been distributed to its shareholders, articles of dissolution shall be executed by the state bank by its president or a vice president and by its cashier or an assistant cashier, and verified by one of the officers signing such statement, which shall set forth:

a. The name of the state bank.

b. That the secretary of state has theretofore filed a statement of intent to dissolve the state bank, and the date on which such statement was filed.

c. That all debts, obligations and liabilities of the state bank have been paid or otherwise discharged or that adequate provision has been made therefor.

d. That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

e. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be en-

tered against it in any pending suit.

2. The articles of dissolution shall be delivered to the superintendent, together with the applicable filing and recording fee, who shall, if he finds that they satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

Comment

Subsection 1 of this section adopts section 496A.89 of the Iowa Business Corporation Act.

Subsection 2 of this section is analogous to the first paragraph of section 496A.90 of the Iowa Business Corporation Act. As in similar situations, the relevant documents are transmitted to the superintendent for informational purposes. If he finds the papers are in order, he will then deliver them to the secretary of state for filing in the same manner as is provided for with respect to business corporations generally.

Sec. 1308. Certificate of dissolution. The secretary of state upon filing the articles of dissolution shall issue a certificate of dissolution, and send the same to the representative of the dissolved state bank. Upon the issuance of such certificate of dissolution the existence of the state bank shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this Act.

Comment

This section adopts the second paragraph of section 496A.90 of the Iowa Business Corporation Act.

Sec. 1309. Becoming subject to chapter 496A. In lieu of the dissolution procedure prescribed in sections thirteen hundred three (1303) through thirteen hundred eight (1308) of this Act, a state bank may cease to carry on the business of banking and, after compliance with the provisions of this section,

continue as a corporation subject to the provisions of chapter four hundred ninety-six A (496A) of the Code.

1. A state bank which has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to the provisions of chapter four hundred ninety-six A (496A) upon the affirmative vote of the holders of at least three-fourths of the shares entitled to vote thereon, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank or national bank 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 one (1) of this section shall be treated by him in the same manner as an application for approval of a plan of dissolution under subsection two (2) of section thirteen hundred three (1303) of this Act, and shall be subject to the provisions of subsection three (3) of section thirteen hundred three (1303).

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 the provisions of chapter four hundred ninety-six A (496A), the state bank shall deliver to the superintendent a statement of its intent to cease to carry on the business of banking and become a corporation subject to the provisions of chapter four hundred ninety-six A (496A), 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 the provisions of chapter four

hundred ninety-six A (496A), and the general nature of the assets to be held by such corporation.

4. If the statement of intent to cease to carry on the business of banking and become a corporation subject to the provisions of chapter four hundred ninety-six A (496A) satisfies the requirements of this section, the superintendent shall deliver the statement with his written approval to the secretary of state who shall issue to the state bank an approved copy of such statement. Upon the issuance of an approved copy of the statement of intent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits or 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 five (5) of this section.

5. The board of directors shall have full power to complete the settlement of the affairs of the state bank. Within thirty days after the issuance of an approved copy of the statement of intent to cease to carry on the business of banking and become a corporation subject to the provisions of chapter four hundred ninety-six A (496A), the state bank shall give notice of its intent to persons described in subsection two (2) of section thirteen hundred five (1305) of this Act and 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 subsections three (3), four (4) and five (5) of section thirteen hundred five (1305).

6. Upon approval by the superintendent, assets remaining after the performance of all obligations described in this section, except those which the state bank wishes to retain when it becomes a corporation subject to the provisions of chapter four hundred ninety-six A (496A), shall be distributed to its shareholders according to their respective rights and preferences.

7. 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 four hundred ninety-six A (496A), together with the applicable filing and recording fees, which shall set forth that the state bank has complied with the provisions of this section, that it has ceased to carry on the business of banking, and the information required by section four hundred ninety-six A point forty-nine (496A.49) of the Code relative to the contents of articles of incorporation under chapter four hundred ninety-six A (496A). If the superintendent finds that the state bank has complied with the provisions of this section and that the articles of intent to be subject to chapter four hundred ninety-six A (496A) satisfy the requirements of this section, he shall deliver them to the secretary of state for filing and recording in his office, and the same shall be filed and recorded in the office of the county recorder.

8. Upon the filing of the articles of intent to be subject to chapter four hundred ninety-six A (496A), the state bank shall cease to be a state bank subject to the provisions of this Act, and shall cease to have the powers of a state bank subject to this Act and shall become a corporation subject to the provisions of chapter four hundred ninety-six A (496A). The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to the provisions of chapter four hundred ninety-six A (496A), and send the same to the corporation or its representative. The articles of intent to be subject to chapter four hundred ninety-six A (496A) shall be the articles of incorporation of the corporation. The provisions of chapter four hundred ninety-six A (496A) becoming applicable to a corporation formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under the provisions of this Act prior to the filing with the secretary of state of the articles of intent to be subject to chapter four hundred ninety-six A (496A).

9. A shareholder of a state bank who objects, in the manner prescribed by section four hundred ninety-six A point seventy-eight (496A.78) of the Code, 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 the provisions of chapter four hundred ninety-six A (496A), shall be entitled to the rights and remedies of a dissenting shareholder provided for in that section.

10. A state bank may, at any time prior to the issuance of the approved copy of the statement of intent to cease to carry on the business of banking and become a corporation subject to the provisions of chapter four hundred ninety-six A (496A), revoke such proceedings in the manner prescribed by section thirteen hundred six (1306) of this Act.

Comment

This section is new and has no counterpart in existing law. This section provides a vehicle whereby a state bank may seek an alternate dissolution route which has the effect of preserving in tact the corporate entity even though such corporation is no longer authorized to engage in the business of banking. A voluntary dissolution commenced and carried out according to the provisions of sections 1303 through 1308 will result in a complete disappearance of the corporate entity. Reasons may exist which make it desirable for the continuation of the corporation as an entity even though it no longer can engage in the business of banking. An entity so continuing would, of course, be properly subject to the provisions of Chapter 496A of the Code of Iowa. The relevance of the provisions applicable to state banks would cease. This section provides the procedural steps whereby it is possible for the corporation to continue as an entity and for Chapter 496A to replace the banking provisions as the controlling statute.

Sec. 1310. Involuntary dissolution after commencement of business--superintendent as receiver. In a situation in which

the superintendent has required, in accordance with the provisions of section two hundred twenty-six (226) of this Act, that the state bank cease to carry on its business, he shall apply to the district court for the county in which the state bank is located for appointment as receiver for the state bank. The district court shall appoint the superintendent as receiver unless the superintendent has tendered such appointment to the federal deposit insurance corporation as provided for in section thirteen hundred thirteen (1313) of this Act, in which case the district court shall appoint the federal deposit insurance corporation as receiver. The affairs of the state bank shall thereafter be under the direction of the district court, and the assets thereof shall be distributed in accordance with the provisions of section thirteen hundred twelve (1312) of this Act. All amounts due creditors and shareholders described in section four hundred ninety-six A point one hundred one (496A.101) of the Code shall be deposited with the treasurer of state in accordance with the provisions of that section. Such amounts shall be retained by the treasurer of state and subject to claim in the manner provided for in section four hundred ninety-six A point one hundred one (496A.101). Amounts due to depositors who are unknown, or who are under a disability and there is no person legally competent to receive such amount, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state in the manner required by subsection five (5) of section thirteen hundred five (1305) of this Act. Such property shall be treated as abandoned, retained by the treasurer of state, and subject to claim, in the manner provided for in sections fourteen (14) through twenty-one (21) of chapter three hundred ninety-one (391), Acts of the Sixty-second General Assembly. The attorney general, or such assistants as shall be appointed by the court, shall represent the superintendent in all proceedings connected with such receivership.

Comment

This section continues the effect of existing law by allowing the superintendent to obtain appointment as receiver in situations where his conclusion that the state bank is insolvent or otherwise in an unsafe or unsound condition has resulted in an order that the state bank cease to carry on its business. See sections 528.29, 528.33. This section improves upon existing law by making it clear that the superintendent shall apply to the district court for appointment as receiver in all instances in which he has ordered that a state bank cease to carry on its business. If the superintendent does not tender the appointment as receiver to the Federal Deposit Insurance Corporation, pursuant to 12 U.S.C. section 1821(e), the district court must appoint the superintendent as receiver. As under existing law, the affairs of the state bank shall be under the direction of the district court in the event that a receiver is appointed. See section 528.33. Amounts due creditors who are unknown, under a disability and without representation or who cannot be found, shall be handled in the manner provided for in section 496A.101 of the Iowa Business Corporation Act. Amounts due to depositors falling within this description shall be handled in the same manner as amounts due such depositors in voluntary dissolution proceedings. See section 1305(5).

Sec. 1311. Involuntary dissolution after commencement of business--receivership procedure.

1. In all situations in which the superintendent has been named the receiver as provided in section thirteen hundred ten (1310) of this Act he shall make a diligent effort to collect and realize on the assets of the state bank, and make distribution of the proceeds from time to time to those entitled thereto. The superintendent may execute assignments, releases and satisfactions to effectuate sales and transfers as receiver or after the receivership has terminated. Upon the order of the court in which the receivership is pending, the superintendent

may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such state bank, on such terms as the court shall direct.

2. All expenses of the receivership and dissolution shall be fixed by the superintendent, subject to the approval of the district court, and shall be paid out of the assets of the state bank.

3. At the termination of the receivership, the superintendent shall file his final report containing the details of his actions therein, together with such additional facts as the court may require.

4. Upon the submission and approval of the final report, the court shall enter a decree dissolving the state bank whereupon the corporate existence of the state bank shall cease. It shall be the duty of the clerk of such court to cause certified copies of the decree to be filed with and recorded by the secretary of state and the county recorder of the county in which is located the state bank. No fee shall be charged by the secretary of state or said county recorder for the filing or recording thereof.

Comment

Subsection 1 of this section is analogous to, though more succinct than, section 496A.95 of the Iowa Business Corporation Act. It also preserves the effect of existing law. See sections 528.78, 528.79 and 528.80. The last sentence is drawn from 12 U.S.C. section 192 of federal law governing national banks.

Subsection 2 continues the effect of existing law. See section 528.44.

Subsection 3 continues the effect of existing law. See section 528.39 (last sentence).

Subsection 4 of this section adopts relevant portions of sections 496A.99 and 496A.100 of the Iowa Business Corporation Act.

Sec. 1312. Distribution of assets upon insolvency. In the

distribution of the assets of a state bank which is dissolved under this Act, or by any other method, the order of payment of the liabilities of the state bank, in the event that its assets are insufficient to pay in full all its liabilities for which claims are made, shall be:

1. The payment of costs and expenses of the administration of the dissolution.

2. The payment of claims which are given priority by applicable statutes and, if the assets are insufficient for the payment in full of all such claims, in the order provided by such statutes or, in the absence of contrary provisions, pro rata.

3. Amounts due to depositors.

4. The payment of all other claims pro rata, exclusive of claims on capital notes and debentures.

5. The payment of capital notes and debentures.

Comment

This section preserves the effect of existing law insofar as it gives preference to the claims of depositors in relation to the claims of others. See section 528.33. The first priority under this section covers the first priority under existing law but broadens the priority to cover all costs and expenses of the administration of the dissolution. The second priority under this section will principally include claims for federal taxes and claims for state taxes; it will also include certain claims arising out of the bank collection process by reason of the statutory preference given by the Uniform Commercial Code (see section 554.4214). The second priority also includes a provision to govern the order of payment of claims included in this priority in the event the assets are insufficient for full payment of all such claims. Existing case law insures, however, that amounts held by a state bank in a fiduciary capacity are not subject to the payment of the obligations of the state bank and are entitled to preferred treatment because of the preferential treatment.

Sec. 1313. Involuntary dissolution after commencement of business - tender of receivership to F.D.I.C.

1. When an insured state bank has ceased to carry on its business, the superintendent may tender to the federal deposit insurance corporation the appointment as receiver of the insured state bank. If the federal deposit insurance corporation accepts the appointment as receiver, the rights of depositors and other creditors of the insured state bank shall be determined in accordance with the laws of this state.

2. The federal deposit insurance corporation as receiver shall possess all the powers, rights and privileges given to the superintendent under section thirteen hundred eleven (1311) of this Act, except insofar as that section may be in conflict with the laws of the United States.

3. If the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of an insured state bank, the federal deposit insurance corporation, whether or not it has become receiver, shall be subrogated by operation of law to all rights against such insured state bank of the owners of such deposits in the same manner and to the same extent as subrogation of the federal deposit insurance corporation is provided for in applicable federal law in the case of a national bank.

Comment

Subsection 1 of this section permits the superintendent to tender the appointment of receiver to the Federal Deposit Insurance Corporation as provided for by 12 U.S.C. section 1821(e).

Subsection 3 of this section continues the effect of existing law. See section 530.3. This section intends to supply the required subrogation rights which are necessary if the Federal Deposit Insurance Corporation is to make a payment to a depositor of a closed insured state bank. Shortened language has been used, removing the necessity for the inclusion of the second sentence of section 530.3 of existing law. This section contemplates, however, supplying to the Federal Deposit Insurance

Corporation the same subrogation rights that it has as respects a closed national bank.

Sec. 1314. Survival of rights and remedies after dissolution or expiration--preservation of records.

1. The dissolution of a state bank, or the expiration of its period of duration, shall not take away or impair any remedy available to or against such state bank, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred prior to such dissolution or expiration, if action or other proceeding thereon is commenced within two years after the date of such dissolution or expiration. Any such action or proceeding by or against the state bank may be prosecuted or defended by the state bank in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

2. Subsequent to the dissolution of a state bank, other than through the adoption of a plan involving a provision for acquisition of its assets and assumption of its liabilities by another state or national bank, the superintendent shall assume custody of the records of the state bank and shall retain them in accordance with the provisions of section two hundred twenty-one (221) of this Act. The superintendent may make copies of such records in accordance with the provisions of subsection one (1) of section two hundred twenty-one (221) of this Act.

Comment

Subsection 1 of this section adopts the first three sentences of section 496A.102 of the Iowa Business Corporation Act.

Subsection 2 of this section is new and has no counterpart in existing law. This subsection will have applicability in any dissolution which does not involve a purchase and assumption by a state or national bank.

Division XIV

MERGER, CONSOLIDATION AND CONVERSION

Sec. 1401. Authority to merge or consolidate.

1. Upon compliance with the requirements of this Act, one or more state banks or one or more national banks, or any combination of state and national banks, may merge or consolidate into a national bank or, with the approval of the superintendent, may merge into a state bank or consolidate into a new state bank.

2. The authority of a state bank to merge or consolidate into a national bank shall be subject to the condition that at the time of the transaction the laws of the United States shall authorize a national bank located in this state, without approval by the comptroller of the currency of the United States, to merge or consolidate into a state bank under limitations no more restrictive than those contained in this Act with respect to the merger or consolidation of a state bank into a national bank.

Comment

The form and substance of the provisions dealing with merger or consolidation have been significantly changed.

As under existing law, state banks are given authority to merge or consolidate with another state bank or banks or with another national bank or banks. The statute contemplates that the approval of the superintendent will be required when the resulting banking organization, either by merger or consolidation, is a state bank. This subsection continues the effect of existing law. See sections 528B.2 and 528B.3.

Subsection 2 of this section contains the substance of existing law but is in a modified form. See sections 528B.2 and 528B.3. The language of this section matches comparable language in the federal law. See 12 U.S.C. section 214c.

Sec. 1402. Requirements for a merger or consolidation. The requirements for a merger or consolidation which must be sat-

isfied by the parties thereto are:

1. The parties shall adopt a plan stating the method, terms and conditions of the merger or consolidation, including the rights under the plan of the shareholders of each of the parties, and an agreement concerning the merger or consolidation.

2. In the case of a state bank which is a party to the plan, if the proposed merger or consolidation will result in a state bank subject to this Act, adoption of the plan by such state bank shall require the affirmative vote of at least a majority of the directors and approval by the shareholders, in the manner and according to the procedures prescribed in section four hundred ninety-six A point seventy (496A.70) of the Code, at a meeting called in accordance with the terms of that section. In the case of a national bank, or if the proposed merger or consolidation will result in a national bank, adoption of the plan by each party thereto shall require the affirmative vote of at least such directors and shareholders whose affirmative vote thereon is required under the laws of the United States. Subject to applicable requirements of the laws of the United States in a case in which a national bank is a party to a plan, any modification of a plan which has been adopted shall be made by any method provided therein, or in the absence of such provision, by the same vote as required for adoption.

3. If a proposed merger or consolidation will result in a state bank, application for the required approval by the superintendent shall be made in the manner prescribed by the superintendent. There shall also be delivered to the superintendent, when available:

a. Articles of merger or consolidation.

b. Applicable fees payable to the secretary of state, as specified in section four hundred ninety-six A point one hundred twenty-four (496A.124) of the Code, for the filing and recording of the articles of merger or consolidation.

c. If there is any modification of the plan at any time prior to the approval by the superintendent under section four-

teen hundred three (1403) of this Act, an amendment of the application and, if necessary, of the articles of merger or consolidation, signed in the same manner as the originals, setting forth the modification of the plan, the method by which such modification was adopted and any related change in the provisions of the articles of merger or consolidation.

d. Proof of publication of the notice required by subsection four (4) of this section.

4. If a proposed merger or consolidation will result in a state bank, the parties to the plan shall publish a notice of the proposed transaction in a newspaper of general circulation published in a municipal corporation or unincorporated area in which each party to the plan has its principal place of business, and in the case of a consolidation, in which the resulting state bank is to have 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 and, in the case of a consolidation, in which the resulting state bank is to have its principal place of business. The notice shall be published once each week for two successive weeks, within thirty days after making application to the superintendent for approval of the plan. The notice 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, the purpose or purposes of the resulting state bank, and the date of delivery of the articles of merger and consolidation to the superintendent.

5. The articles of merger or consolidation shall be signed by two duly authorized officers of each party to the plan and shall contain:

a. The names of the parties to the plan, and of the resulting state bank.

b. The location and the post office address of the principal place of business of each party to the plan, and of each additional office maintained by the parties to the plan, and the location and post office address of the principal place of business of the resulting state bank, and of each additional office to be maintained by the resulting state bank.

c. The votes by which the plan was adopted, and the time and place of each meeting in connection with such adoption.

d. The number of directors constituting the board of directors, and the names and addresses of the persons who are to serve as directors until the next annual meeting of the shareholders or until their successors be elected and qualify.

e. In the case of a merger, any amendment of the articles of incorporation of the resulting state bank.

f. In the case of a consolidation, the provisions required in the articles of incorporation of a state bank by subsections three (3), four (4), five (5), six (6), seven (7), nine (9), and ten (10) of section three hundred two (302) of this Act.

g. The plan of merger or consolidation.

6. If a proposed merger or consolidation will result in a national bank, a state bank which is a party to the plan shall:

a. Notify the superintendent of the proposed merger or consolidation.

b. Provide such evidence of the adoption of the plan as the superintendent may request.

c. Notify the superintendent of any abandonment or disapproval of the plan.

d. File with the superintendent and with the secretary of state a certificate of approval of the merger or consolidation by the comptroller of the currency of the United States.

e. Notify the superintendent of the date upon which such merger or consolidation is to become effective.

Comment

Subsection 1 of this section deals with the contents of a plan for merger and consolidation.

Subsection 2 deals with the adoption of the plan by the directors and shareholders of banks which are parties to the plan. As respects a state bank, or if the merger or consolidation will result in a state bank, the plan must receive the approval of the board of directors and the shareholders according to the provisions of state law. The manner in which the shareholders are to approve the merger or consolidation is the same as in situations involving business corporations generally. See section 496A.70 of the Iowa Business Corporation Act. Insofar as this subsection requires the approval of a majority of the board of directors of a state bank and the approval of at least two-thirds of the outstanding shares, it continues the effect of existing law. See sections 528B.4 and 528B.5. This subsection properly has the effect of rendering state law applicable when a state bank is a party to the plan or the resulting entity will be a state bank. Contrary wise, as respects national banks, and in situations in which the resulting entity will be a national bank, the manner in which the plan is adopted by the board of directors and the shareholders shall be controlled by federal law. The current federal law requires a two-thirds vote of the shareholders of a national bank and also of a state bank where the resulting entity is a national bank. 12 U.S.C. sections 214a and 215. The last sentence of subsection 2 is intended to allow flexibility to provide for a change in circumstances between the time of the adoption of the plan and the time that all required state and federal approvals have been obtained. Shareholder approval is not required for a modification of the plan if the plan so provides but adequate protection of the interests of shareholders is one of the criteria for approval by the superintendent. See section 1403(1)(b). The last sentence of this subsection is made subject to federal law in a case involving a national bank since the federal law may require the same action for a modification as for the original approval, not only for the national bank but for a state bank as well.

Subsection 3 of this section adopts existing law by requiring the approval of the superintendent when a merger or consolidation will result in a state bank. As is the case in situations involving the organization of a new state bank (see section 303), provision is made for the direct submission of the relevant documents and information to the superintendent as he has the primary responsibility in making a judgment with respect to the proposed transaction.

Subsection 4 of this section requires the publication of a notice, similar to that required by section 304 in situations involving the organization of a new state bank, which is intended to give notice of the proposed transaction to interested parties. This subsection requires publication of the notice in locations which are relevant to the transaction and requires publication of such notice within thirty days after application for approval is made to the superintendent. This is intended to allow interested parties to present their views to the superintendent before he makes his decision. Comparable publication is required by federal law in such transactions involving insured banks. See 12 U.S.C. section 1828(c).

Subsection 5 of this section provides for the contents of the articles of merger or consolidation. This document is not a part of the merger or consolidation process under existing law. It is, however, a regular part of that process as respects business corporations generally. See section 496A.71 of the Iowa Business Corporation Act.

Subsection 6 applies where the resulting entity is a national bank and the approval of the superintendent is not required. This subsection has the effect of providing the superintendent with notification of the fact that a state bank is a party to such a plan. It also provides for notice to the secretary of state so that he may be made aware of the fact that the state bank will disappear as a separate entity.

Sec. 1403. Approval of merger or consolidation by super-

intendent.

1. Upon receipt of an application for approval of a merger or consolidation and of the supporting items required by subsection three (3) of section fourteen hundred two (1402) of this Act, the superintendent shall conduct such investigation as he deems necessary to ascertain whether:

a. The articles of merger or consolidation and supporting items satisfy the requirements of this Act.

b. The plan and any modification thereof adequately protects the interests of depositors, other creditors and shareholders.

c. The requirements for a merger or consolidation under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this Act with respect to it.

d. The merger or consolidation would be consistent with adequate and sound banking and in the public interest on the basis of the financial history and condition of the parties to the plan, including the adequacy of the capital structure of the resulting state bank, the character of the management of the resulting state bank, the potential effect of the merger or consolidation on competition and the convenience and needs of the area primarily to be served by the resulting state bank.

2. Within one hundred eighty days after receipt of the application, or within an additional period of not more than sixty days after receipt of an amendment of the application, the superintendent shall make a determination whether to approve or disapprove the application on the basis of his investigation. The plan shall not be modified at any time after approval of the application by the superintendent. Prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested persons an opportunity for a stenographically reported hearing during which such persons shall be allowed to present evidence in support of, or in opposition to, the pending application. If the super-

intendent finds that he must act immediately on the pending application in order to protect the interests of depositors or the assets of any party to the plan, he may proceed without requiring publication of the notice and without providing for the hearing referred to in this subsection. Before receiving the decision of the superintendent with respect to the pending application, the parties to the plan shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. Thereafter the superintendent shall give to the parties to the plan written notice of his decision and, in the event of disapproval, a statement of the reasons for his decision. The decision of the superintendent shall be subject to review by the district court of Polk county upon petition by any interested person within thirty days after the superintendent notifies the parties to the plan of his decision. The decision of the superintendent shall be upheld unless unsupported by substantial evidence.

Comment

This section is analogous to section 305 relating to approval by the superintendent in situations involving the organization of a new state bank. Subsection 1 of this section sets forth the criteria which are relevant to the decision of the superintendent.

Subsection 2 of this section increases the time during which the superintendent can make a decision on a proposed merger or consolidation from thirty days to one hundred eighty days. See section 528B.4. As in subsection 3 of section 1303 the superintendent is given authority to dispense with the notice and hearing if necessary to protect the depositors. This provision is analogous to federal law. See 12 U.S.C. 1828(c)(3).

Sec. 1404. Procedure after approval by the superintendent--issuance of certificate of merger or consolidation. If the laws of the United States require the approval of the merger or consolidation by any federal agency, the superintendent shall,

after his approval, retain the articles of merger or consolidation until he receives notice of the decision of such agency. If the final approval of the agency is not given, the superintendent shall notify the parties to the plan that the approval of the superintendent has been rescinded for that reason. If such agency gives its approval, the superintendent shall deliver the articles of merger or consolidation, with his approval indicated thereon, to the secretary of state, and shall notify the parties to the plan. The receipt of the approved articles of merger or consolidation by the secretary of state shall constitute filing thereof with that office. The secretary of state shall record the articles of merger or consolidation in his office, and the same shall be filed and recorded in the office of the county recorder in each county in which the parties to the plan had previously maintained a principal place of business and, in the case of a consolidation, in the county in which the new state bank is to maintain its principal place of business. On the date upon which the merger or consolidation is effective the secretary of state shall issue a certificate of merger or consolidation and send the same to the resulting state bank and a copy thereof to the superintendent.

Comment

This section provides that the approval of the superintendent shall be contingent upon obtaining the requisite approval of the proper federal agency. It is thus analogous to section 1304(3) respecting the approval of the superintendent in situations involving the dissolution of a state bank where the assets and liabilities of that bank are to be purchased and acquired by another bank. This section also adopts relevant portions of section 496A.71 of the Iowa Business Corporation Act. The last sentence requires that the secretary of state shall forward a copy of the certificate of merger or consolidation to the superintendent for informational purposes.

Sec. 1405. Effect of merger or consolidation.

1. The merger or consolidation shall be effective upon the filing of the articles of merger or consolidation with the secretary of state, or at any later date and time specified by the superintendent in writing on the articles of merger or consolidation. The certificate of merger or consolidation shall be conclusive evidence of the performance of all conditions precedent to the merger or consolidation, and of the existence or creation of the resulting state bank, except as against the state.

2. When a merger or consolidation becomes effective, the existence of each party to the plan, except the resulting state bank, shall cease as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the resulting state bank and which shall have all the property, rights, powers, duties and obligations of each party to the plan, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this Act. A resulting state bank may, however, engage in any business and exercise any right that any party to the plan which was a state bank subject to this Act could lawfully exercise or engage in immediately prior to the merger or consolidation.

3. No liability of any party to the plan or of its shareholders, directors or officers shall be affected, nor shall any lien on any property of a party to the plan be impaired, by the merger or consolidation. Any claim existing or action pending by or against any party to the plan may be prosecuted to judgment as if the merger or consolidation had not taken place, or the resulting state bank may be substituted in its place. The articles of incorporation of the resulting state bank shall be, in the case of a merger, the same as its articles of incorporation prior to the merger with any change stated in the articles of merger, and in the case of a consolidation,

the provisions stated in the articles of consolidation shall be deemed to be the original articles of incorporation of the resulting state bank.

Comment

Subsection 1 of this section allows some flexibility in setting an effective date for the merger or consolidation. In all situations, however, the effective date shall be subject to the control of the superintendent. The last sentence of this subsection adopts existing law. See section 528B.6(2).

Subsection 2 of this section gives statutory expression to the effect of a merger or consolidation upon the parties to the plan. It is analogous to, but shorter than, section 496A.73 of the Iowa Business Corporation Act. As the statute indicates, a resulting state bank will be authorized to act in a fiduciary capacity, for example, if a state bank which was a party to the plan could properly exercise such power.

Subsection 3 gives continuing effect to liabilities and claims to the extent provided therein. The last sentence of this subsection is analogous to section 496A.73(6) of the Iowa Business Corporation Act.

Sec. 1406. Rights of dissenting shareholders.

1. A shareholder of a state bank, which is a party to a proposed merger or consolidation plan which will result in a state bank subject to this Act, who objects to the plan in the manner prescribed by section four hundred ninety-six A point seventy-eight (496A.78) of the Code, shall be entitled to the rights and remedies of a dissenting shareholder as provided in that section. Shares acquired by a state bank pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, pursuant to section four hundred ninety-six A point seventy-eight (496A.78), shall be sold at public or private sale, within one year from the time of their purchase or acquisition, unless the time is extended by the superintendent.

2. If a shareholder of a national bank which is a party to a proposed merger or consolidation plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, shall object to the plan and shall comply with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case may be, shall be liable for the value of his shares as determined in accordance with such laws of the United States. Shares acquired by a state bank pursuant to this subsection shall be sold at public or private sale within one year from the time of their purchase or acquisition, unless the time is extended by the superintendent.

Comment

Subsection 1 of this section provides for the application of state law, insofar as the rights of dissenting shareholders are concerned, in situations involving a shareholder of a state bank which is a party to a proposed merger or consolidation which will result in a state bank. This subsection incorporates section 496A.78 of the Iowa Business Corporation Act, which provides for payment to the dissenting shareholder, if proper notice of his dissent is given, and sets up a method whereby the value of such shares may be determined in the event of disagreement. Since a state bank is not permitted to possess treasury shares, the last sentence of this subsection requires disposition of those shares acquired pursuant to this subsection.

The rights of dissenting shareholders of national banks, and of a state bank in situations in which a national bank will be the resulting entity, are controlled by federal law. Subsection 2 renders that law applicable. 12 U.S.C. sections 214a and 215.

Sec. 1407. Succession to fiduciary accounts and appointments--application for appointment of new fiduciary.

1. If a party to a plan of merger or consolidation was authorized to act in a fiduciary capacity and if the resulting state or national bank is similarly authorized, the resulting state

or national bank shall be automatically substituted by reason of the merger or consolidation as fiduciary of all accounts held in that capacity by such party to the plan, without further action and without any order or decree of any court or public officer, and shall have all the rights and be subject to all the obligations of such party as fiduciary.

2. No designation, nomination or appointment as fiduciary of a party to a plan of merger or consolidation shall lapse by reason of the merger or consolidation. The resulting state or national bank shall, if authorized to act in a fiduciary capacity, be entitled to act as fiduciary pursuant to each such designation, nomination or appointment to the same extent as the party to the plan so named could have acted in the absence of the merger or consolidation.

3. Any person with an interest in an account held in a fiduciary capacity by a party to a plan of merger or consolidation may, within sixty days after the effective date of the merger or consolidation, apply to the district court in the county in which the resulting state or national bank has its principal place of business, for the appointment of a new fiduciary to replace the resulting state or national bank on the ground that the merger or consolidation will adversely affect the administration of the fiduciary account. The court shall have the discretion to appoint a new fiduciary to replace the resulting state or national bank if it should find, upon hearing after notice to all interested parties, that the merger or consolidation will adversely affect the administration of the fiduciary account and that the appointment of a new fiduciary will be in the best interests of the beneficiaries of the fiduciary account. This provision shall be in addition to any other provision of law governing the removal of fiduciaries and shall be subject to the terms upon which the party to the plan which held the fiduciary account was designated as fiduciary.

Comment

This section is new and has no counterpart in existing law,

but see section 528B.10.

Sec. 1408. Merger of corporation substantially owned by a state bank. Any state bank owning at least ninety-five percent of the outstanding shares, of each class, of another corporation which it is authorized to own under the provisions of this Act, may merge such other corporation into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation and prepare and execute articles of merger in the manner provided for in section four hundred ninety-six A point seventy-two (496A.72) of the Code. The articles of merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if he approves of the proposed merger and if he finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in his office, and the same 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 same to the state bank and a copy thereof to the superintendent.

Comment

This section, which adopts section 496A.72 of the Iowa Business Corporation Act, provides a vehicle whereby a state bank may effect a merger of a corporation which it permissibly owns at least ninety-five percent of the outstanding shares. As in other situations of this nature, the statute provides for delivery of the relevant documents to the superintendent who shall, if he finds them in order, transmit them to the secretary of state.

Sec. 1409. Authority for conversion of national bank into state bank. A national bank may, subject to the provisions

of this Act, convert into a state bank upon authorization by and compliance with the laws of the United States, adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders, and upon approval of the superintendent.

Comment

This section requires director and shareholder action, as under existing law (section 528B.7), for adoption of a plan of conversion of a national bank into a state bank. The required vote of shareholders is the same as that required of shareholders of a converting national bank by federal law. 12 U.S.C. section 214a. By reason of the conformity of this section to federal law the required vote is different from the shareholder votes required under other provisions of this statute which take into account possible differences in the voting rights of shares. As under existing law (section 528B.7), the approval of the superintendent is necessary for conversion of a national bank into a state bank.

Sec. 1410. Application for approval by superintendent. A national bank shall make an application to the superintendent for approval of the conversion in a manner prescribed by the superintendent and shall deliver to the superintendent, when available:

1. Articles of conversion.

2. As soon as available, proof of publication of the notice required by section fourteen hundred twelve (1412) of this Act.

3. The applicable fee payable to the secretary of state, by reason of subsection twenty (20) of section four hundred ninety-six A point one hundred twenty-four (496A.124) of the Code, for the filing and recording of the articles of conversion.

Comment

This section is analogous to sections elsewhere in the statute (e.g., section 303 relating to application for the approval of the superintendent as respects the organization of a new state bank) and provides for the manner in which application for the approval of the superintendent shall be made in situations involving the conversion of a national bank into a state bank.

Sec. 1411. Articles of conversion. The articles of conversion shall be signed by two duly authorized officers of the national bank and shall contain:

1. The name of the national bank and the name of the resulting state bank.

2. The location and post office address of its principal place of business and of each additional office, and the location and post office address of the principal place of business of the resulting state bank and of each additional office to be maintained by the resulting state bank.

3. The votes by which the plan of conversion was adopted and the time and place of each meeting in connection with the adoption.

4. The number of directors constituting the board of directors, and the names and addresses of the persons who are to serve as directors until the next annual meeting of shareholders or until successors be elected and qualify.

5. The provisions required in the articles of incorporation by subsections three (3), four (4), five (5), six (6), seven (7), nine (9), and ten (10) of section three hundred two (302) of this Act.

6. The plan of conversion.

Comment

This section sets forth the contents of the articles of conversion, a document not present under existing law.

Sec. 1412. Publication of notice. The national bank shall

publish a notice of its intention to deliver, or 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 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 has its principal place of business. The notice shall appear prior to, or within seven days after, the date of delivery of the articles of conversion to the superintendent and shall set forth:

1. The name of the national bank and the name of the resulting state bank.

2. The location and post office address of its principal place of business.

3. A statement that articles of conversion are to be, or have been delivered to the superintendent.

4. The purpose or purposes of the resulting state bank.

5. The date of delivery of the articles of conversion to the superintendent.

Comment

This section is analogous to section 1402(4) and provides for publication of a notice regarding the proposed conversion of a national bank into a state bank.

Sec. 1413. Approval of conversion by superintendent. Upon receipt of an application for approval of a conversion the superintendent shall conduct such investigation as he may deem necessary to ascertain whether:

1. The articles of conversion and supporting items satisfy the requirements of this Act.

2. The plan adequately protects the interests of depositors.

3. The requirements for a conversion under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this Act applicable to it.

4. The resulting state bank will possess an adequate capital structure.

Within ninety days after receipt of the application the superintendent shall make a determination whether to approve or disapprove the pending application on the basis of his investigation. Before receiving the decision of the superintendent with respect to the pending application, the national bank shall, upon notice, reimburse the superintendent to the extent of the expenses incurred by him in connection with the application. Thereafter, the superintendent shall give the national bank written notice of his decision and, in the event of disapproval, a statement of the reasons for his decision. If the superintendent approves the pending application, he shall deliver the articles of conversion, with his approval indicated thereon, to the secretary of state. The decision of the superintendent shall be subject to review by the district court of Polk county upon petition by any interested party within thirty days after the superintendent notifies the national bank of his decision. The decision of the superintendent shall be upheld unless unsupported by substantial evidence.

Comment

This section is analogous to section 1403 relating to the superintendent's approval of a proposed merger or consolidation.

Sec. 1414. Issuance of certificate of conversion. The receipt of the approved articles of conversion by the secretary of state shall constitute filing thereof with that office. The secretary of state shall record the articles of conversion in his office, and the same shall be filed and recorded in the office of the county recorder in the county in which the resulting state bank has its principal place of business. On the date upon which the conversion is effective, the secretary of state shall issue a certificate of conversion and send the same to the resulting state bank and a copy thereof to the superintendent and the superintendent shall issue to the resulting

state bank an authorization to do business.

Comment

This section is analogous to section 1404 relating to the issuance of a certificate of merger or consolidation.

Sec. 1415. Effect of filing of articles of conversion with secretary of state and of certificate of conversion.

1. The conversion shall be effective upon the filing of the articles of conversion with the secretary of state, or at any later date and time specified by the superintendent in writing on the articles of conversion. The certificate of conversion shall be conclusive evidence of the performance of all conditions required by this Act for conversion of a national bank into a state bank, except as against the state.

2. When a conversion becomes effective, the existence of the national bank shall continue in the resulting state bank which shall have all the property, rights, powers and duties of the national bank, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this Act. The articles of incorporation of the resulting state bank shall be the provisions stated in the articles of conversion.

3. No liability of the national bank or of its shareholders, directors or officers shall be affected, nor shall any lien on any property of the national bank be impaired by the conversion. Any claim existing or action pending by or against the national bank may be prosecuted to judgment as if the conversion had not taken place, or the resulting state bank may be substituted in its place.

Comment

This section is analogous to section 1405 relating to the effect of merger or consolidation.

Sec. 1416. Authority for conversion of state bank into national bank.

1. A state bank may convert into a national bank upon authorization by and compliance with the laws of the United States, and adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders. The authority of a state bank to convert into a national bank shall be subject to the condition that at the time of the transaction, the laws of the United States shall authorize a national bank located in this state, without approval by the comptroller of the currency of the United States, to convert into a state bank under limitations and conditions no more restrictive than those contained in this section and section fourteen hundred seventeen (1417) of this Act with respect to conversion of a state bank into a national bank.

2. A state bank which converts into a national bank 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, and the date upon which such conversion is to become effective.

Comment

This section contains authority for a state bank to effect conversion into a national bank. This section requires the vote of the "holders of two-thirds of each class of its shares." The required vote under this section is the same as that required under federal law for the conversion of a national bank into a state bank. 12 U.S.C. section 214a. It is appropriate to make the requirement the same for both cases even though federal law requires only a fifty-one percent vote for a state

bank converting into a national bank. 12 U.S.C. section 35. The second sentence of subsection 1 adopts language similar to 12 U.S.C. section 214c respecting the requirement, contained in federal law, that state law must allow a conversion of a state bank into a national bank under conditions no more restrictive than those contained in federal law with respect to the conversion of a national bank into a state bank. The approval of the superintendent is not required under this section for the conversion of a state bank into a national bank.

Subsection 2 of this section provides machinery for notifying the superintendent and the secretary of state of the conversion of a state bank into a national bank.

Sec. 1417. Rights of dissenting shareholder of converting state or national bank.

1. A shareholder of a state bank which converts into a national bank, who votes against the plan of conversion or has given the state bank written notice that he dissents from the plan, at or prior to the meeting at which the plan is adopted in the manner prescribed by section fourteen hundred sixteen (1416) of this Act, shall be entitled to receive in cash the value of the shares held by him, if and when the conversion is consummated, upon written request made to the resulting national bank at any time within thirty days after the consummation of the conversion, accompanied by the surrender of his share certificates. The value of such shares shall be determined as of the date of the shareholders' meeting at which the conversion plan was adopted, by a committee of three persons, one to be selected by unanimous vote of the dissenting shareholders entitled to receive the value of their shares, one by the directors of the resulting national bank, and the third by the two so chosen. The valuation agreed upon by any two of three appraisers thus chosen shall govern. If the value so fixed shall not be satisfactory to any dissenting shareholder who has requested payment as provided herein, such shareholder

may, within five days after being notified of the appraised value of his shares, appeal to the superintendent, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant. If, within ninety days from the date of consummation of the conversion, for any reason one or more of the appraisers is not selected as herein provided, or the appraisers fail to determine the value of such shares, the superintendent shall, upon written request of any interested party, cause an appraisal to be made which shall be final and binding on all parties. The expenses of the superintendent in making the reappraisal, or the appraisal as the case may be, shall be paid by the resulting national bank. The plan of conversion shall provide the manner of disposing of the shares of the resulting national bank not taken by the dissenting shareholders of the state bank.

2. If a shareholder of a national bank, which converts into a state bank, shall object to the plan of conversion and shall comply with the requirements of applicable laws of the United States, the resulting state bank shall be liable for the value of his shares as determined in accordance with such laws of the United States. Shares acquired by a state bank pursuant to this subsection shall be sold at public or private sale, within one year from the time of purchase or acquisition, unless the time is extended by the superintendent.

Comment

Subsection 1 of this section provides dissenting shareholders of a converting state bank with the same rights as are given by federal law to dissenting shareholders of a converting national bank. See 12 U.S.C. section 214b.

Subsection 2 of this section renders the resulting state bank liable for the value of the shares of a dissenting shareholder of a converting national bank. Such liability is, however, predicated upon the dissenting shareholder's compliance with federal law. 12 U.S.C. section 214a.

Sec. 1418. Succession to fiduciary accounts and appointments--application for appointment of new fiduciary. The provisions of section fourteen hundred seven (1407) of this Act shall apply to a resulting state or national bank after a conversion with the same effect as though such state or national bank were a party to a plan of merger or consolidation, and the conversion were a merger or consolidation, within the provisions of that section.

Comment

This section renders section 1407, relating to fiduciary accounts of a bank involved in a merger or consolidation, applicable in similar situations involving conversions.

Sec. 1419. Offices of a resulting state bank. If a merger, consolidation or conversion results in a state bank subject to the provisions of this Act, the resulting state bank shall, after the effective date of the merger, consolidation or conversion, be subject to all the provisions of sections twelve hundred one (1201), twelve hundred two (1202) and twelve hundred three (1203) of this Act relating to the bank offices and parking lot offices.

Comment

This section renders the provisions relating to offices applicable to a resulting state bank in a merger, consolidation or conversion.

Sec. 1420. Nonconforming assets of resulting state bank. If a merger, consolidation or conversion results in a state bank subject to the provisions of this Act, and the resulting state bank has assets which do not conform with the provisions of this Act, the superintendent may allow the resulting state bank a reasonable time to conform with state law.

Comment

This section adopts section 528B.11 of existing law.

Division XV

AMENDMENT TO ARTICLES OF INCORPORATION

Sec. 1501. Right to amend. A state bank may, with the approval of the superintendent and in the manner provided in this Act, amend its articles of incorporation in order to make any change therein so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in the original articles of incorporation at the time of making such amendment.

Comment

This section continues the effect of existing law by allowing a state bank to amend its articles of incorporation. See section 528.124. The requirement that any change so effected be such as might lawfully be contained in the original articles of incorporation is adopted from section 496A.55 of the Iowa Business Corporation Act.

Sec. 1502. Procedure to amend.

1. An amendment of the articles of incorporation shall be proposed by adoption of a resolution by the board of directors, directing that it be submitted to a vote at a meeting of shareholders called in the manner required by section five hundred nine (509) of this Act.

2. The resolution proposing an amendment or amendments shall contain the language of each amendment by setting forth in full the articles of incorporation as they would be amended or any provision thereof as it would be amended or by setting forth in full any matter to be added to or deleted from the articles of incorporation. A copy of the resolution or a summary thereof shall be included with the notice of the meeting required for the vote of the shareholders.

3. Adoption of each amendment shall require the affirmative vote of the holders of a majority of the shares entitled to vote thereon and, if any class is entitled to vote thereon as a class, the affirmative vote of the holders of a majority of

the shares of each class entitled to vote thereon as a class.

Comment

As under existing law, the shareholders must approve an amendment to the articles of incorporation. See sections 528.125 and 528.126. The procedure to amend is described, however, in a slightly different manner than under existing law. Subsection 1 of this section provides that a resolution by the board of directors be precedent to an amendment to the articles of incorporation. This method of initiation of the amendment process is drawn from section 496A.56(1) of the Iowa Business Corporation Act.

Subsection 2 of this section continues the effect of existing law by providing that each shareholder shall receive a proper notice of the nature of the proposed amendment. See section 528.125.

Subsection 3 of this section continues the effect of existing law by requiring the affirmative vote of a majority of the shares. See section 528.126. This subsection also provides that if class voting is permitted (see section 1503), the affirmative vote of a majority of the shares of such class is also necessary.

Sec. 1503. Class voting on amendments. The shareholders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of such class.

2. Increase or decrease the par value of the shares of such class.

3. Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

4. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares

of such class.

5. Change the designations, preferences, limitations, or relative rights of the shares of such class.

6. Change the shares of such class into the same or a different number of shares of the same class or another class or classes.

7. Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class.

8. Divide the unissued shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

9. Limit or deny the existing preemptive rights, if any, of the shares of such class.

10. Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

Comment

This section is new and has no counterpart in existing law. This section adopts, with only minor changes in wording, section 496A.57 of the Iowa Business Corporation Act. The right to vote as a class on amendments which directly affect that class is a common provision and is a part of most corporation statutes. Its presence here, in much the same form as in the Iowa Business Corporation Act, seems necessary.

Sec. 1504. Articles of amendment.

1. Upon the adoption of an amendment, articles of amendment shall be prepared on forms supplied by the superintendent, signed by two duly authorized officers of the state bank and shall contain:

a. The name of the state bank.

b. The location and post office address of its principal

place of business.

c. The amendment adopted, which shall be set forth in full.

d. The place, date and hour of the meeting of shareholders at which the amendment was adopted, and the kind and period of notice given to the shareholders.

e. The number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each class.

f. The number of shares voted for and against such amendment, respectively, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment.

2. The articles of amendment shall be delivered to the superintendent together with the applicable fees for the filing and recording of the articles of amendment.

Comment

This section adds a procedural step to existing law by providing for articles of amendment and the contents thereof. Subsection 1 of this section is similar to section 496A.58 of the Iowa Business Corporation Act.

Subsection 2 provides, as in similar situations, for delivery of the articles of amendment directly to the superintendent as they are subject to his approval.

Sec. 1505. Approval of articles of amendment.

1. Upon receipt of the articles of amendment the superintendent shall conduct such investigation as he may deem necessary to determine whether the articles of amendment satisfy the requirements of section fifteen hundred four (1504) of this Act and whether the amendment, if effected, will in any way prejudice the interests of the depositors of the state bank.

2. Within sixty days after receipt of the articles of amendment the superintendent shall approve or disapprove the articles of amendment on the basis of his investigation. If the superintendent shall approve the articles of amendment, he shall

deliver them with his written approval to the secretary of state and notify the state bank of his action. If the superintendent shall disapprove the articles of amendment, he shall give written notice to the state bank of his disapproval and a statement of the reasons for his decision. The decision of the superintendent shall be subject to review by the district court of Polk county upon petition by any interested party within thirty days after the superintendent notifies the state bank of his decision. The decision of the superintendent shall be upheld unless unsupported by substantial evidence.

Comment

This section is new but gives statutory expression to current practice. As the superintendent must approve the original articles of incorporation (section 305), this section also provides that any amendment to such articles is similarly subject to his approval.

Sec. 1506. Certificate of amendment--effect.

1. The secretary of state shall record the articles of amendment in his office, and the same shall be filed and recorded in the office of the county recorder in the county in which the state bank has its principal place of business. The secretary of state upon the filing of the articles of amendment shall issue a certificate of amendment and send the same to the state bank.

2. Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. No amendment shall affect the existing rights of persons other than shareholders, or any existing cause of action in favor of or against such state bank, or any pending suit to which such state bank shall be a party, and, in the event the name of the state bank shall be changed by amendment, no suit brought by or against such state bank under its former name shall abate for that reason.

Comment

This section, which is also new, is designed to complete the procedural aspect relating to the amendment of the articles of incorporation. Subsection 1 is drawn from and adopts section 496A.59 of the Iowa Business Corporation Act. As the original articles of incorporation must be filed with the secretary of state, so also an amendment thereto must be similarly filed. The secretary of state also effects the filing and recording of such amendment in the office of the county recorder.

Subsection 2, similar to section 308(1) relating to the effect of the certificate of incorporation, demonstrates the effect of the certificate of amendment and is drawn from section 496A.60 of the Iowa Business Corporation Act.

Sec. 1507. Change of location of principal place of business.

1. If a change in the location of the principal place of business of a state bank is proposed and involves a change other than a change within the municipal corporation or unincorporated area in which the state bank has its principal place of business, application for the required approval of the superintendent shall be made in the manner required by the superintendent and subject to the provisions of this section. Any change in location of the principal place of business of a state bank subject to this section shall require amendment to the articles of incorporation in accordance with the provisions of sections fifteen hundred two (1502), fifteen hundred four (1504), and fifteen hundred six (1506) of this Act. A state bank seeking approval of a change of location pursuant to this subsection shall publish a notice of the proposed change of location in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the state bank 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 the state

bank has its principal place of business, and in the municipal corporation in which it seeks to establish 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 such municipal corporation is located. The notice shall be published within thirty days after making application to the superintendent for approval of the change in location. The notice shall set forth the name of the state bank, the present location of its principal place of business, the location to which it wishes to move its principal place of business and the date upon which the state bank made application to the superintendent for approval of the change.

2. Upon receipt of an application for approval of a change of location of the principal place of business of a state bank pursuant to subsection one (1) of this section, the superintendent shall conduct such investigation as he deems necessary giving due consideration to factors substantially similar to those set forth in subsections two (2) through six (6) of section three hundred five (305) of this Act. Within one hundred eighty days after receipt of the application, the superintendent shall make a determination whether to approve or disapprove the application on the basis of his investigation. Prior to making a determination on the pending application the superintendent shall, upon adequate notice, afford all interested persons an opportunity for a stenographically reported hearing during which such persons shall be allowed to present evidence in support of, or in opposition to, the pending application. Thereafter the superintendent shall give written notice of his decision to the state bank and, in the event of disapproval, a statement of the reasons for his decision. If the superintendent shall approve the change in location he shall deliver the articles of amendment to the secretary of state. The decision of the superintendent shall be subject to review by the district court of Polk county upon petition by any interested person within thirty days after the superintendent notifies the state bank of his decision. The

decision of the superintendent shall be upheld unless unsupported by substantial evidence. Before receiving the decision of the superintendent with respect to the pending application, the state bank shall upon notice reimburse the superintendent to the extent of the expenses incurred by him in connection with the application.

Comment

This section, which is new, states the procedure, which shall involve an amendment to the articles of incorporation of a state bank, if the state bank is to change its principal place of business to another municipal corporation.

Sec. 1508. *Restatement of articles of incorporation.* A state bank may at any time restate its articles of incorporation, which may be amended by such restatement, so long as its articles of incorporation as so restated contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such restatement, by the adoption of restated articles of incorporation, including any amendments to its articles of incorporation to be made thereby, in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation, which may include an amendment or amendments to the articles of incorporation of the state bank to be made thereby, and directing that such restated articles, including such amendment or amendments, be submitted to a vote at a meeting of shareholders, which may be either an annual meeting or a special meeting.

2. Written or printed notice setting forth the proposed restated articles or a summary of the provisions thereof shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in section five hundred nine (509) of this Act. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of such annual meeting. If the restated articles include an

amendment or amendments to the articles of incorporation to be made thereby, the notice shall separately set forth such amendment or amendments or a summary of the changes to be effected thereby.

3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed restated articles. The proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless such restated articles include an amendment to the articles of incorporation to be made thereby which, if contained in a proposed amendment to articles of incorporation to be made without restatement of the articles of incorporation, would entitle a class of shares to vote as a class thereon, in which event the proposed restated articles shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class, and of the total shares entitled to vote thereon.

Upon such approval, restated articles of incorporation shall be executed by the state bank by its president or vice-president and by its cashier or an assistant cashier, and verified by one of the officers signing the same, and shall set forth, as then stated in the articles of incorporation of the state bank and, if the restated articles of incorporation included an amendment or amendments to the articles of incorporation to be made thereby, as so amended, the material and contents described in section three hundred two (302) of this Act.

The restated articles of incorporation shall set forth also a statement that they correctly set forth the provisions of the articles of incorporation as theretofore or thereby amended, that they have been duly adopted as required by law and that they supersede the original articles of incorporation and all amendments thereto.

The restated articles of incorporation shall be delivered to the superintendent together with the applicable fees for

the filing and recording of the restated articles of incorporation. The superintendent shall conduct such investigation and give his approval or disapproval, all as in the manner provided for in section fifteen hundred five (1505) of this Act. If the superintendent shall approve the restated articles of incorporation he shall deliver them with his written approval to the secretary of state for filing and recording in his office and the same shall be filed and recorded in the office of the county recorder. The secretary of state upon filing the restated articles of incorporation shall issue a restated certificate of incorporation and send the same to the state bank or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation including any amendment or amendments to the articles of incorporation made thereby, shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

No amendment shall affect the existing rights of persons other than shareholders, or any existing cause of action in favor of or against such state bank, or any pending suit to which such state bank shall be a party; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such state bank under its former name shall abate for that reason.

Comment

This section is new and draws heavily from section 496A.61 of the Iowa Business Corporation Act.

Division XVI

PENAL

Sec. 1601. Penalties and criminal provisions applicable to directors, officers and employees of state banks.

1. A director, officer or employee of a state bank who willfully violates any of the provisions of subsection four (4)

of section six hundred twelve (612), section six hundred thirteen (613), subsection two (2) of section seven hundred six (706) [insofar as such subsection incorporates subsection four (4) of section six hundred twelve (612)], or section seven hundred ten (710) of this Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, plus, in the following circumstances, an additional fine or fines equal to:

a. The amount of money or the value of the property which he received for procuring, or attempting to procure, a loan, extension of credit or investment by the state bank, upon conviction of a violation of subsection one (1) of section six hundred thirteen (613), or of subsection one (1) of section seven hundred ten (710) of this Act.

b. The amount by which his deposit account in the state bank is overdrawn, upon conviction of a violation of subsection two (2) of section six hundred thirteen (613), or of subsection two (2) of section seven hundred ten (710) of this Act.

c. The amount of any profit which he receives on the transaction, upon conviction of a violation of subsection four (4) of section six hundred twelve (612), or of subsection two (2) of section seven hundred six (706) of this Act, insofar as each applies to purchases from and sales to a state bank upon terms more favorable to such director or officer than those offered to other persons.

d. The amount of profit, fees or other compensation received, upon conviction of a violation of subsection three (3) of section seven hundred ten (710) of this Act.

2. A director or officer who willfully makes or receives a loan in violation of subsection one (1) of section six hundred twelve (612), or subsection one (1) of section seven hundred six (706) of this Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a

fine not exceeding one thousand dollars, or both, plus an additional fine equal to that amount of the loan in excess of the limitation imposed by such subsections, and shall be forever disqualified from acting as a director or officer of any state bank. For the purpose of this subsection, amounts which are treated as obligations of an officer or director pursuant to subsection five (5) of section six hundred twelve (612) of this Act, shall be considered in determining whether the loan or extension of credit is in violation of subsection one (1) of section six hundred twelve (612) and subsection one (1) of section seven hundred six (706) of this Act.

3. A director, officer or employee of a state bank who willfully makes or receives a loan or extension of credit of funds held by the state bank as fiduciary, in violation of subsection four (4) of section ten hundred two (1002) of this Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, plus a further fine equal to the amount of the loan or extension of credit made in violation of subsection four (4) of section ten hundred two (1002), and shall be forever disqualified from acting as a director, officer or employee of any state bank.

4. A director, officer or employee of a state bank who willfully violates, or participates in the violation of, section eight hundred fourteen (814), or section eight hundred nineteen (819) of this Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both.

Comment

Each criminal provision and penalty imposed under this statute (Division XVI) is applicable only in the case of a willful violation of a provision of the statute. Existing law (section 528.7) states that an officer, director, or employee of a state bank

shall be guilty of embezzlement in situations involving improper loans to such individuals. While an analogy between the crime of embezzlement and improper loans may exist, it seems more appropriate to provide an independent sanction in such situations. Thus, subsection 2 of this section makes it a misdemeanor if a director or officer willfully makes or receives a loan in violation of the provisions of this act.

Subsection 4 makes more severe the penalty which may be imposed in situations where a director, officer or employee of a state bank willfully fails to clear checks at par. See section 528.63 of existing law.

Sec. 1602. Penalties applicable to state bank. The superintendent may impose a penalty on a state bank of up to one hundred dollars for each day:

1. That its cash reserves are less than the amount required by section eight hundred sixteen (816) of this Act.

2. That it holds investments for its own account in bonds or securities in violation of section nine hundred one (901) of this Act.

3. On which it accepts and holds drafts in violation of section nine hundred three (903) of this Act.

4. On which it has money loaned, credit extended or holds discounted or purchased evidences of indebtedness or agreements for the payment of money, in violation of sections nine hundred four (904), nine hundred five (905), nine hundred six (906), or nine hundred seven (907) of this Act.

5. On which it has money loaned, invested or is otherwise in violation of sections eleven hundred two (1102) or eleven hundred four (1104) of this Act.

6. On which it publishes, disseminates or distributes any advertising containing any false, misleading or deceptive statements concerning rates, terms and conditions on which loans are made or deposits are received, in violation of section sixteen hundred six (1606) of this Act.

Comment

Most of this section is new and has no counterpart in existing law. The violations catalogued in this section are not predicated upon willfulness. This section provides for the payment of the stated penalty in all situations referred to therein. The statute provides, however, that the superintendent has discretion as to whether or not to impose the penalty.

Sec. 1603. Engaging in business unlawfully.

1. Any person who willfully engages in the business of receiving money for deposit or transacts the business generally done by banks, or who willfully establishes a place of business for such purposes, in violation of subsection one (1) of section one hundred seven (107) of this Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to:

a. In the case of an individual, imprisonment in the county jail for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both.

b. In the case of any other person, to a fine not exceeding five thousand dollars.

2. The superintendent may impose a penalty on a state bank of up to one hundred dollars for each day that it violates the provisions of section twelve hundred one (1201) of this Act.

Comment

Subsection 1 of this section retains the effect of existing law. See section 524.25.

Subsection 2 alters somewhat the penalty imposed in situations where a state bank maintains an illegal office. Subsection 2 is not predicated upon willfulness; a state bank may be called upon to make the payment provided for therein in each instance in which a violation occurs. The superintendent has discretion, however, respecting the imposition of the penalty.

Sec. 1604. Failure to file report or make statement.

1. Any person whose duty it is to make statements or file reports as may be required by this Act, and who willfully neglects or refuses to perform such duty, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars.

2. A state bank which fails to furnish to the superintendent the statement of condition required within the time required by this Act, or fails to furnish him any report or other information he is legally authorized to request, within ten days of his request therefor, or within the time required by this Act, shall pay to the superintendent a penalty of fifty dollars for each day of delinquency, unless prior to such delinquency the superintendent has extended the time within which the same may be filed.

3. Any officer or employee who violates section seven hundred nine (709) of this Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment in the county jail for a period not to exceed one year or a fine not exceeding one thousand dollars, or both.

Comment

Subsection 1 retains the effect of existing law. See section 528.83.

Subsection 2 retains the effect of existing law. See section 528.24. The delinquency penalty is, however, increased from ten dollars a day to fifty dollars a day. Willfulness is not a prerequisite to the application of this subsection.

Sec. 1605. False statements, reports and fraudulent acts.

1. Any director, officer or employee of a state bank who shall knowingly subscribe or make any false statements or false entries in the books, records, or memoranda of a state bank, or knowingly subscribe or exhibit false papers with intent to deceive any person authorized to examine its condition, or shall knowingly subscribe or make false reports, or shall knowingly

divert the funds of the state bank to other purposes than those authorized by law, or who commits any other act with intent to defraud the state bank or any other person shall, upon conviction thereof, be subject to imprisonment in the penitentiary for a period not exceeding five years or a fine not exceeding ten thousand dollars, or both, and shall be forever disqualified from acting as a director, officer or employee of any state bank.

2. Any officer or employee of a state bank who, with intent to defraud the state bank or any other person, certifies any check when there are not sufficient funds on hand available to the credit of the drawer of said check to pay the same, or who issues any certificate of deposit when funds have not been deposited equal to the amount of such certificate, or who, with intent to defraud the state bank or any other person, draws any draft or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation or instrument, or participates in, or receives directly or indirectly any money, property or other benefit from any transaction, loan, contract or other act of a state bank shall, upon conviction thereof, be subject to imprisonment in the penitentiary for a period not exceeding five years, or a fine not exceeding ten thousand dollars, or both, or be subject to imprisonment in the county jail for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

Comment

Subsection 1 of this section retains existing law in a slightly expanded form. See section 528.84.

Subsection 2 of this section retains existing law (section 528.87) and adopts certain aspects of 18 U.S.C. section 1006 of federal law.

Sec. 1606. Fraudulent advertising or notice. A state bank

shall not publish, disseminate or distribute any advertising or notice containing any false, misleading or deceptive statements concerning the rates, terms or conditions on which loans are made or deposits are received, any charge which the state bank is authorized to impose pursuant to this Act, or the financial condition of the state bank. Any officer or employee of a state bank who willfully violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both.

Comment

The first sentence of this section adopts the first sentence of existing law (section 529.12) placing a prohibition upon fraudulent advertising. The second sentence is analogous to the effect of existing law. See section 526.44. This section contains its own sanction and the reference contained in existing law to the sanction contained in the provision dealing with the consumer frauds (section 713.24) has been removed.

Sec. 1607. False statement for credit. Any person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning the financial condition or means or ability to pay of such person, or any other person in which such person is interested or for whom such person is acting, with the intent that such statement shall be relied upon by a bank for the purpose of procuring the delivery of property, the payment of cash or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such person is acting, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both.

Comment

This section retains the substance of existing law (section 528.88) in a shorter form.

Sec. 1608. Penalty for accepting deposits while insolvent. If a state bank shall accept any deposit or renew any certificate of deposit in violation of subsection five (5) of section eight hundred five (805), any officer or employee knowing of such insolvency who willfully receives, accepts or renews or is accessory to or otherwise knowingly permits such acceptance shall, upon conviction thereof, be subject to imprisonment in the penitentiary for a period not exceeding ten years or a fine not exceeding ten thousand dollars, or both, or subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, and shall, in either event be forever disqualified from acting as an officer or employee of any state bank.

Comment

This section retains the effect of existing law (section 528.82) in a slightly different form.

Sec. 1609. False statements concerning state banks. Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any state bank which imputes, or tends to impute, insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke, or aid in causing or provoking, a general withdrawal of deposits from such state bank, or which may otherwise injure or tend to injure the business or good will of such state bank, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both.

Comment

This section retains existing law. See section 528.89.

Sec. 1610. Violation of prohibition against receiving a commission for organizing a state bank. Any person violating the provisions of section three hundred eleven (311) of this Act shall be guilty of a misdemeanor and shall upon conviction thereof be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, plus an additional fine equal to twice the amount of such commission or bonus.

Comment

This section retains the substance of existing law (section 528.75) although providing for a slightly different penalty.

Sec. 1611. Offenses involving employees of department of banking.

1. Any person violating the provisions of subsection one (1) of section two hundred eleven (211) of this Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both, 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 convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking.

2. Any examiner violating the provision of section two hundred twelve (212) of this Act shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to imprisonment in the county jail for a period not exceeding one year or a fine not exceeding one thousand dollars, or both. Any examiner convicted of a violation of section two hundred twelve (212) of this Act shall be immediately discharged from employment and shall be forever disqualified from holding any position in the department of banking.

Comment

This section is new and has no counterpart in existing law.

Division XVII

PRIVATE BANKS

Sec. 1701. Application of Act. Nothing in this Act shall be construed as affecting or in any way interferring with any private bank or private banker that was engaged in lawful business prior to April 19, 1919.

Comment

This section and the following section retain the substance of existing law with respect to private banks. See section 524.24 through 524.30. Only a rearrangement of existing law has been effected. This section adopts section 524.26 of existing law.

Sec. 1702. Application for supervision--effect.

1. A private bank may request of the superintendent that such private bank be subject to examination and supervision pursuant to this Act and to such rules and regulations as may be prescribed by the superintendent applicable to state banks. The superintendent may adopt and promulgate such regulations as he deems necessary for the supervision of private banks which have applied for supervision in accordance with this section.

2. Subsequent to the receipt by the superintendent of a request as provided in subsection one (1) of this section, a private bank shall be subject to examination and supervision in the same manner as a state bank and shall thereafter remain subject to such examination and supervision. The superintendent shall have power to take over the management of the property and business of such private bank in the same manner as he may take over the management of the property and business of a state bank pursuant to this Act. In the event that a receiver is appointed for a private bank which is subject to examination and supervision in the same manner as a state bank,

the superintendent shall be appointed as such receiver.

Comment

Subsection 1 of this section adopts sections 524.28 and 524.29 of existing law. Changes in wording have been made but the substance of existing law has been preserved.

Subsection 2 of this section adopts section 524.30 of existing law. Changes in wording have been made but the substance of existing law has been preserved.

Division XVIII
EFFECTIVE DATE AND REPEALER

Sec. 1801. Effective date. This Act shall take effect and be in force on and after January 1, 1970.

Sec. 1802. Applicability of other chapters. The provisions of chapters four hundred ninety-one (491), four hundred ninety-two (492), four hundred ninety-three (493), and four hundred ninety-six A (496A) of the Code shall not apply to banks except insofar as is provided by this Act.

Sec. 1803. Section sixty-four point six (64.6), Code 1966, subsection nine (9), is amended by striking from line one (1) the word "twenty" and inserting in lieu thereof the words "one hundred".

Sec. 1804. Section one hundred sixteen point nine (116.9), subsection two (2), Code 1966, is amended as follows:

1. By striking from line five (5) the word "banking,".

2. By inserting in line seven (7) after the word "state", the words "or a bank examiner employed by the department of banking of this state pursuant to section two hundred eight (208) of this Act".

Sec. 1805. Section two hundred forty-four point six (244.6), Code 1966, is amended by striking from line three (3) the words "savings bank" and inserting in lieu thereof the words "state bank or national bank authorized to do business in this state".

Sec. 1806. Section two hundred sixty-two point sixty-three (262.63), Code 1966, is amended as follows:

1. By striking from lines two (2) and three (3) the words "bankers, savings banks and institutions,".

2. By striking from line five (5) the words "a banking or" and inserting in lieu thereof the word "an".

Sec. 1807. Section three hundred twenty-one A point twenty-five (321A.25), Code 1966, subsection one (1), is amended by striking from line six (6) the words "savings banks" and inserting in lieu thereof the words "a state bank".

Sec. 1808. Section three hundred eighty-three point ten (383.10), Code 1966, is amended by inserting in line eighty-nine (89) after the words "trust company" the words "or bank having fiduciary powers".

Sec. 1809. Section three hundred eighty-three point sixteen (383.16), Code 1966, is amended by inserting in lines thirty-six (36) and thirty-seven (37) after the word "deposit" the words "state or".

Sec. 1810. Section four hundred three point six (403.6), Code 1966, subsection four (4), is amended by striking from line five (5) the words "savings banks" and inserting in lieu thereof the words "a state bank".

Sec. 1811. Section four hundred three point ten (403.10), Code 1966, is amended as follows:

1. By striking from lines two (2) and three (3) the words "bankers, savings banks and institutions,".

2. By striking from lines five (5) and six (6) the words "a banking or" and inserting in lieu thereof the word "an".

Sec. 1812. Section four hundred nineteen point four (419.4), Code 1966, subsection two (2), is amended as follows:

1. By striking from paragraph f, subparagraph six (6), line two (2), the words "commercial banks;" and inserting in lieu thereof the words "banks organized under the laws of any state or of the United States;".

2. By striking from paragraph f, subparagraph eight (8), lines one (1) and two (2), the words "commercial banks;" and inserting in lieu thereof the words "banks organized under the

laws of any state or of the United States;".

Sec. 1813. Section four hundred twenty-one point seventeen (421.17), Code 1966, subsection seven (7), is amended as follows:

1. By striking from line eleven (11) the words "loan and".

2. By striking from line eighteen (18) the words "loan and".

3. By striking from line twenty (20) the words "loan and".

Sec. 1814. Section four hundred twenty-two point thirty-four (422.34), Code 1966, subsection one (1), is amended by striking lines one (1) and two (2) and inserting in lieu thereof the words "1. All state banks, as defined in section one hundred three (103) of this Act, and all national and private banks, credit unions, title insur-".

Sec. 1815. Section four hundred twenty-eight point twelve (428.12), Code 1966, is amended as follows:

1. By striking from line seven (7) the words "or agency".

2. By striking from lines eleven (11) and twelve (12) the words "branch business is done" and inserting in lieu thereof the words "bank office is located".

Sec. 1816. Section four hundred twenty-nine point two (429.2), Code 1966, is amended by striking lines fifteen (15) and sixteen (16) and inserting in lieu thereof the words "shares of stock of national banks, state banks as defined in section one hundred three (103) of this Act, and trust companies, and".

Sec. 1817. Section four hundred twenty-nine point nine (429.9), Code 1966, is amended by striking the comma at the end of line two (2) and all of line three (3) and inserting in lieu thereof the words "bank as defined in section one hundred three (103) of this Act, national bank, or trust".

Sec. 1818. Section four hundred thirty point two (430.2), Code 1966, is amended as follows:

1. By striking line two (2) and inserting in lieu thereof the words "banks, state banks as defined in section one hundred three (103) of this Act,".

2. By striking from line five (5) the words "loan and".

Sec. 1819. Section four hundred thirty point three (430.3), Code 1966, is amended by striking from lines two (2) and three (3) the words "and state and savings banks and loan" and inserting in lieu thereof the words ", state banks as defined in section one hundred three (103) of this Act,".

Further amend said section by striking from lines four (4) and five (5) the word "stockholders" and inserting in lieu thereof the word "shareholders".

Sec. 1820. Section four hundred thirty point ten (430.10), Code 1966, is amended by striking from lines six (6), seven (7), and eight (8) the words "state, savings, national bank, and loan and trust company stock is" and inserting in lieu thereof the words "shares of state banks, as defined in section one hundred three (103) of this Act, national banks, and trust companies are".

Sec. 1821. Section four hundred thirty A point two (430A.2), Code 1966, is amended by striking from lines ten (10) and eleven (11) the words "regularly chartered".

Sec. 1822. Section four hundred fifty-three point one (453.1), Code 1966, as amended by chapter three hundred one (301), section three (3), and chapter three hundred fifty-nine (359), section two (2), Acts of the Sixty-second General Assembly, is further amended by striking lines twenty-five (25) and twenty-six (26) and inserting in lieu thereof the words "means a bank or a private bank, as defined in section one hundred three (103) of this Act."

Sec. 1823. Section four hundred fifty-four point seven (454.7), Code 1966, is amended as follows:

1. By striking lines ten (10) through sixteen (16), inclusive, and inserting in lieu thereof the following:

"or merger with another bank or banks, or in any manner authorized by the National Bank Conservation Act, and especially section two hundred seven (207) of title II thereof, or".

2. By striking lines twenty (20) through twenty-five (25), inclusive, and inserting in lieu thereof the following:

"ized in any manner authorized by the National Bank Conservation Act, and especially section two hundred seven (207) of title II thereof,".

Sec. 1824. Section four hundred fifty-four point fourteen (454.14), Code 1966, is amended as follows:

1. By striking lines twelve (12) through twenty (20), inclusive, and inserting in lieu thereof the following:

"of the assets of another bank, or merger with another bank or banks, or in any manner authorized by the National Bank Conservation Act and especially section two hundred seven (207) of title II thereof, the state of Iowa or any county, city,".

2. By striking lines thirty-two (32) through thirty-seven (37), inclusive, and inserting in lieu thereof the words "by him. Unless".

3. By striking from line forty-one (41) the word "both".

4. By striking from lines forty-two (42) and forty-three (43) the words "and that part represented by the trust certificate,".

Sec. 1825. Section four hundred ninety-one point twenty-four (491.24), Code 1966, is amended by striking from lines four (4) and five (5) the words "for the establishment and conduct of savings banks,".

Sec. 1826. Section four hundred ninety-one point thirty (491.30), Code 1966, is amended by striking from lines seven (7) and eight (8) the words "for the establishment and conduct of savings banks,".

Sec. 1827. Section four hundred ninety-one point thirty-three (491.33), Code 1966, is repealed.

Sec. 1828. Section four hundred ninety-one point thirty-four (491.34), Code 1966, is repealed.

Sec. 1829. Section four hundred ninety-one point thirty-five (491.35), Code 1966, is repealed.

Sec. 1830. Section four hundred ninety-one point thirty-

seven (491.37), Code 1966, is repealed.

Sec. 1831. Section four hundred ninety-two point six (492.6), Code 1966, is amended as follows:

1. By striking from line twelve (12) the words "banks or".

2. By striking lines fifteen (15) through nineteen (19), inclusive, and inserting in lieu thereof the word "Any".

3. By striking from line twenty-five (25) the words "to the superintendent of banking or".

Sec. 1832. Section four hundred ninety-two point seven (492.7), Code 1966, is amended by striking from lines two (2) and three (3) the words ", the superintendent of banking".

Sec. 1833. Section four hundred ninety-three point one (493.1), Code 1966, is amended by striking from line four (4) the words "banks, savings" and inserting in lieu thereof the word "state".

Sec. 1834. Section four hundred ninety-four point four (494.4), Code 1966, is amended by striking from lines twenty-five (25) to twenty-seven (27), inclusive, the words "or for the establishment and conduct of savings banks,".

Sec. 1835. Section four hundred ninety-six point nineteen (496.19), Code 1966, is amended by striking from line eight (8) the words "or loan".

Sec. 1836. Section four hundred ninety-six B point two (496B.2), Code 1966, subsection two (2), is amended by striking from lines one (1) and two (2) the words "banking institution, savings bank, co-operative".

Sec. 1837. Section four hundred ninety-six B point nine (496B.9), Code 1966, subsection three (3), paragraph b, is amended by striking all of subparagraph three (3).

Sec. 1838. Section four hundred ninety-nine point seven (499.7), Code 1966, is amended by striking from subsection eight (8) all after the period in line three (3).

Sec. 1839. Section five hundred fifteen point seventy-six (515.76), Code 1966, subsection two (2), is amended by striking from line twenty (20) the word "of" and inserting in

lieu thereof the words "or a bank having fiduciary powers, located in".

Sec. 1840. Section five hundred twenty point nine (520.9), Code 1966, is amended by inserting in line twenty-six (26), after the word "company", the words "or bank having fiduciary powers".

Sec. 1841. Section five hundred twenty-three A point three (523A.3), Code 1966, is repealed.

Sec. 1842. Chapter five hundred twenty-four (524), Code 1966, is repealed.

Sec. 1843. Chapter five hundred twenty-five (525), Code 1966, is repealed.

Sec. 1844. Chapter five hundred twenty-six (526), Code 1966, is repealed.

Sec. 1845. Chapter five hundred twenty-seven (527), Code 1966, is repealed.

Sec. 1846. Chapter five hundred twenty-eight (528), Code 1966, is repealed.

Sec. 1847. Chapter five hundred twenty-eight A (528A), Code 1966, is repealed.

Sec. 1848. Chapter five hundred twenty-eight B (528B), Code 1966, is repealed.

Sec. 1849. Chapter five hundred twenty-nine (529), Code 1966, is repealed.

Sec. 1850. Chapter five hundred thirty (530), Code 1966, is repealed.

Sec. 1851. Chapter five hundred thirty-one (531), Code 1966, is repealed.

Sec. 1852. Chapter five hundred thirty-two (532), Code 1966, is repealed.

Sec. 1853. Section five hundred thirty-three point four (533.4), Code 1966, subsection five (5), is amended by striking from lines one (1) and two (2), the word "savings" and inserting in lieu thereof the word "state".

Sec. 1854. Section five hundred thirty-six point thirteen

(536.13), Code 1966, subsection one (1), paragraph b, is amended by striking from the last line the word "commercial".

Sec. 1855. Section five hundred thirty-six point twenty (536.20), Code 1966, is amended by striking from line five (5) the words "savings banks,".

Sec. 1856. Section five hundred sixty-five A point one (565A.1), Code 1966, subsection fourteen (14), is amended by striking from line two (2) the word "trust" and inserting in lieu thereof the word "fiduciary".

Sec. 1857. Section five hundred sixty-five A point two (565A.2), Code 1966, subsection one (1), paragraph c, is amended by striking from line five (5) the word "trust" and inserting in lieu thereof the word "fiduciary".

Sec. 1858. Section six hundred eighty point eight (680.8), Code 1966, is amended as follows:

1. By striking from line three (3) the words "savings banks, loan and" and inserting in lieu thereof the words "as defined in section one hundred five (105) of this Act,".

2. By striking from line five (5) the words "state banks, savings banks, loan" and inserting in lieu thereof the words "such state banks".

Sec. 1859. Section six hundred eighty-two point twenty-three (682.23), Code 1966, subsection fourteen (14), is amended by striking from line four (4) the words "banking institution" and inserting in lieu thereof the word "bank".

Sec. 1860. Section seven hundred eight point nine (708.9), Code 1966, is amended as follows:

1. By striking from lines three (3) and four (4) the words "or banking association".

2. By striking from lines five (5) and six (6) the words "or any banking association".

3. By striking from lines ten (10) and eleven (11) the words "or banking association".

EXPLANATION

This bill is a complete recodification of the present Iowa

banking statutes. The bill's major objectives are to improve the organization, consistency, and clarity of the state's banking laws, to update these laws in some respects, to replace the variety of state-chartered banking entities presently authorized by law with a single type of state bank, and to prescribe more precisely the requirements for establishment and dissolution of banking corporations.

For more detailed information, see the Report of the Banking Laws Study Committee, contained in the Report of the Iowa Legislative Research Committee to the first session of the Sixty-third General Assembly.