

Final Report of the Banking Laws Study Committee

Pursuant to a proposal presented by the Superintendent of Banking, John Chrystal, the 1965-67 Legislative Research Committee established the Banking Laws Study Committee, in September, 1965, to begin consideration of the recodification of Iowa's banking statutes. Representative Al Meacham of Grinnell was designated as Chairman of the Study Committee, and Senator Kenneth Benda of Hartwick was elected Vice Chairman at the organizational meeting. Also serving on the 1965-67 Banking Laws Study Committee were Senators C. Joseph Coleman of Clare, Robert K. Rigler of New Hampton, and Alan Shirley of Perry, and Representatives James V. Gallagher of Waterloo, Leroy S. Miller of Shenandoah, and Clark R. Rasmussen of West Des Moines.

It was known, at the time the Banking Laws Study was authorized by the Legislative Research Committee, that the magnitude of the banking law recodification project would prevent its being completed for submission to the 1967 Legislative Senate Concurrent Resolution 41 of the Sixty-second General Assembly directed that the study be continued during the 1967-69 interim. Senator Benda was designated Chairman of the 1967-69 Banking Laws Study Committee, and Representative Gallagher was elected Vice Chairman. As Representative Miller had been designated Chairman of another study committee, and Representatives Meacham and Rasmussen were no longer members of the Legislature, they were succeeded on the 1967-69 Study Committee by Representatives Ray V. Bailey of Clarion, William H. Harbor of Henderson, and J. E. King of Albia.

Although the 1965-67 Banking Laws Study Committee was able to hold only three meetings, much of the actual work of preparing material for submission to the Study Committee was done during this period. The 1967-69 Study Committee thus had a "running start", and held ten meetings in the period from August 29, 1967 through October 29, 1968. Most of these were joint meetings with the Banking Laws Advisory Commit-

tee, the organization of which is explained elsewhere in this report.

STUDY PROCEDURE

The organization and procedures employed in conducting the Banking Laws Study are in some respects unique among study committees functioning under the Legislative Research Committee. It was decided at the outset that the Department of Banking, rather than the Legislative Research Bureau, would have primary responsibility for development of legislative proposals to be presented to the Banking Laws Study Committee. The Legislative Research Bureau has provided secretarial and other staff services to the Study Committee.

Advisory Committee

Section 2.55, *Code of Iowa* (1966) permits appointment of persons other than legislators as advisory members of study committees established by the Legislative Research Committee, and the Banking Laws Study Committee was so organized during the 1965-67 interim. Advisory members appointed were Superintendent Chrystal, Mr. J. H. Gronstal of Carroll, Mr. M. J. Klaus of Charles City, and Mr. John F. O'Neill of Burlington. A number of additional persons were suggested by the Iowa Bankers Association for appointment as advisory members of the Study Committee late in the 1965-67 interim.

When the Banking Laws Study was resumed in mid-1967, a different organizational approach than had been taken during the 1965-67 interim was developed. A separate Banking Laws Advisory Committee was appointed, including among others those persons who had been serving, or had been suggested for appointment, as advisory members of the Banking Laws Study Committee during the previous interim, all representing the banking industry. On November 16, 1967, Senator Benda announced the further expansion of the Banking Laws Advisory Committee to include representatives of many other segments of

Iowa's economy. It may be noted that none of the thirty-six persons who served on the Banking Laws Advisory Committee during 1967 and 1968 were reimbursed by the state for travel or other expenses incurred in attending meetings of the Committee. Those persons were:

Mr. John B. Rigler, Muscatine
Chairman

Mr. George E. Allbee Waterloo	Mr. Stanley R. Barber Wellman
Mr. Edmund W. Braack Davenport	Mr. John Bryant Des Moines
Mr. Ben C. Buckingham Des Moines	Mr. J. L. Campbell, Jr. Humboldt
Supt. John Chrystal Des Moines	Mr. J. S. Craiger Des Moines
Mr. Paul D. Dunlap Red Oak	Mr. Cecil Dunn Eagle Grove
Mr. D. W. Ernst Dubuque	Mr. Wendell Gibson Des Moines
Mr. Joe H. Gronstal Carroll	Mr. Oliver A. Hansen Durant
Mr. John R. Hensley Green Mountain	Mr. Robert H. Henstorf Farragut
Mr. Charles S. Johnson Des Moines	Mr. Richard D. Johnson Sheldahl
Mr. Don Kirchner Riverside	Mr. Merton J. Klaus Charles City
Mr. Arthur E. Lindquist, Jr. Des Moines	Mr. E. W. Maser LeMars
Mr. Arden E. Melcher LaPorte City	Mr. James F. Meyer Paullina
Mr. Jake B. Mincks* Ottumwa	Mr. Donald E. Noller Evansdale
Mr. John F. O'Neill Burlington	Mr. James H. Redman Fort Dodge
Mr. Carl G. Riggs Tingley	Mr. Dale C. Smith Des Moines
Mr. Hal Stookey* Des Moines	Mr. Edward S. Tesdell Des Moines

Mr. Carleton C. Van Dyke Sioux City	Mr. L. D. Vickers Newton
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Mr. Max von Schrader
Ottumwa

*Mr. Stookey succeeded Mr. Mincks on the Advisory Committee during the interim.

Drafting and Revision

On July 13, 1966, the Iowa Executive Council approved the retention by the Department of Banking of Meade H. Emory, Assistant Professor, University of Iowa College of Law, to undertake the actual drafting of a recodified Iowa banking statute. Professor Emory's principal assistant in this work has been Mr. Howard Sokol, Assistant to the Dean of The University of Iowa College of Law. Students of The University of Iowa College of Law also provided research and drafting services in connection with the study.

An outline was developed for recodification of all of Iowa's existing banking statutes, and of related statutes. The proposed Iowa Banking Act of 1969, prepared pursuant to this outline, is organized in eighteen divisions, in a manner which will be discussed later in this report.

Initial drafting of the recodified banking statute was the responsibility of Professor Emory, assisted by Mr. Sokol. Upon completion of each group of two to four divisions, the material was reviewed by a drafting group consisting of Superintendent Chrystal, Deputy Superintendent of Banking Holmes Foster, Mr. Lindquist and Mr. Gibson, as well as Professor Emory and Mr. Sokol. Mr. Foster, in particular, has devoted many weeks of work to the banking law recodification over the past three years.

When the drafting group was satisfied with a group of divisions, the material was submitted to the Banking Laws Study and Advisory Committees for their consideration. Any portion of the material with which Committee members were not satisfied was referred back to Professor Emory, Mr. Sokol and the drafting group for further revision. In some cases, drafts of a single division or section were considered and discussed at three or four separate meetings of the joint Committees before being accepted. The final

group of divisions was accepted by the Banking Laws Study Committee at a joint meeting of the Study and Advisory Committees on June 6, 1968.

Review of Completed Draft

Immediately thereafter all eighteen divisions, as accepted by the Study Committee, were assembled into a tentative final draft which was intensively reviewed by Professor Emory, Mr. Foster and Mr. Sokol in an attempt to clarify the language of the bill wherever possible and eliminate any internal inconsistencies or other ambiguities remaining in the bill, while preserving the intent of the Banking Laws Study Committee. In addition, explanatory comments were written for each section of the proposed Iowa Banking Act of 1969, stating the purpose of the section and its relationship to existing Iowa law.

The revised draft of the completed bill was then prepared, with the relevant explanatory comments appearing immediately following each section. Several hundred copies of this version of the bill, which was designated tentative final draft number two, were published at the expense of the Iowa Bankers Association and widely circulated to bankers, attorneys, and many other interested parties in the state. Tentative final draft number two was presented for review and discussion at regional symposiums sponsored by the Bankers Association in Storm Lake on September 17 and Iowa City on September 25, and at the Bankers Association convention in Des Moines on October 29. It has also been reviewed by officials of Federal agencies whose primary jurisdiction is in the field of banking, and by the Iowa Bar Association, particularly the Bar Association's probate committee.

The suggestions received pursuant to review of tentative final draft number two by the foregoing parties were considered at the final meetings of the Banking Laws Study Committee, and a number of changes were adopted. These changes are incorporated in the proposed Iowa Banking Act of 1969, which has been prepared for introduction in the Sixty-third General Assembly as Senate File 18.

RECOMMENDATION

The Banking Laws Study Committee recommends to the Legislative Research Committee and the Sixty-third General Assembly the enact-

ment of the proposed Iowa Banking Act of 1969, which is hereafter referred to in this report as Senate File 18. The text of Senate File 18 with explanatory comments following each section, which has been printed and bound separately from this report due to the length of the bill and comments, will be distributed to all members of the Sixty-third General Assembly and is available upon request from the Legislative Research Bureau.

NOTE: Care should be taken not to confuse the blue-bound copies of tentative final draft number two of the Iowa Banking Act of 1969, printed and distributed in mid-1968, with Senate File 18. Due to the changes made by the Banking Laws Study Committee in preparing the bill for recommendation to the Legislative Research Committee and introduction in the Sixty-third General Assembly, there are significant differences between tentative final draft number two and Senate File 18.

Objectives of Senate File 18

The broad objectives of Senate File 18 are:

1. To rearrange existing Iowa laws governing establishment and operation of state-chartered banks into a single chapter of the Code, so as to achieve improved organization, consistency, and clarity.
2. To update Iowa banking law where necessary, to the extent possible without becoming involved in matters believed to be controversial and therefore likely to be the subject of considerable debate when proposed to the Legislature.
3. To end the variety of state-chartered banking entities authorized by present law and substitute a single entity, to be known in law simply as a "state bank".
4. To prescribe more precisely the requirements for establishment and dissolution of corporations which exist for the purpose of carrying on a banking business, and place these requirements in the same chapter of the Code with other banking laws of the state.

These objectives are discussed in slightly greater detail in the following paragraphs. For more fully detailed information, the text of Senate File 18

and the comments following each section of the bill may be consulted.

Rearrangement of Existing Law—Senate File 18 would repeal and replace chapters 524 through 532, inclusive, of the *Code of Iowa* (1966), as amended. These chapters constitute all of Title XXI of the Code, entitled "Banks", except the last two chapters (533, "credit unions", and 533B, "sale of certain instruments for payment of money"). Most of the provisions of the repealed chapters are included in Senate File 18, but are arranged in what is considered a more orderly sequence. Also, some provisions now found in other parts of the Code are placed in the proposed bill in the interest of creating a single, largely self-contained state banking statute.

Updating of Banking Law—In some instances, specific portions of existing banking laws believed obsolete are entirely repealed by Senate File 18. An example is the present section 528.1, which specifies varying minimum capital requirements for new state-chartered banks according to the size of the community in which the bank is to be established. The proposed bill includes a uniform state-wide minimum capital requirement of \$100,000 for any new state bank, and allows the Superintendent in his discretion to require a greater capitalization (state-chartered banks presently having less than \$100,000 capital need not increase their capital above the amount they have on the effective date of the bill).

Conversely, some features not found in existing law have been written into the proposed bill if there appears to be fairly general agreement that the new features are necessary or desirable. An example is section 519, which requires that the Superintendent of Banking be notified of any change in ownership of shares of stock in a state bank which will result in a change in control of the bank, as evidenced by power to elect, directly or indirectly, the board of directors.

Two areas in Iowa banking law, of which there has been considerable discussion in recent years, have been deliberately avoided. These pertain to permissible rates of interest on loans to individuals, and the legalization of branch banking in Iowa. The 1965-67 Banking Laws Study Committee decided at its organizational meeting that both of these matters should be specifically excluded from consideration, because they are sufficiently controversial to pose a threat to enact-

ment of the general recodification of state banking laws, which it is hoped will not encounter significant opposition. This decision was reaffirmed by the 1967-69 Study Committee at its first meeting.

The Study Committee believes it only fair to state that a number of Iowa bankers disagreed with this decision, particularly as it applies to interest rate limits. Others who accepted the decision—perhaps reluctantly—nevertheless believe there is an urgent need to increase the permissible rates of interest on loans to individuals (Iowa law presently places no limits on rates of interest which may be charged corporations). The fact that Senate File 18 would permit no increase in the existing maximum interest rates should not be interpreted as indicating that Iowa bankers are satisfied with present limits. It is not known how much support may exist for a change in the present law prohibiting branch banking in Iowa.

Single Banking Entity—Present Iowa banking law permits, at least in theory, the existence of no less than five different types of state-chartered banking entities, namely state banks, savings banks, trust companies, private banks, and cooperative banks. Senate File 18 provides for establishment of only one type of state-chartered banking entity, which will be known in law as a state bank, and will have general and complete commercial banking powers. Any state bank may also exercise fiduciary (i.e., trust) powers upon authorization to do so by the Superintendent of Banking.

Nearly all of the state-chartered banks now doing business in Iowa are established under present law as either state banks or savings banks. There are some technical distinctions between the two, but it has been concluded that these are no longer meaningful. Under Senate File 18, any newly established state banks will receive perpetual charters, and existing state or savings banks will be enabled to renew their charters in perpetuity as the present charters expire, or at any earlier time if they so desire. Newly chartered banks will be required to have the word "state" and either the word "bank" or the word "trust" (the latter only if the bank is authorized to exercise trust powers) in their names. Present state and savings banks would not be required to change their names to conform to the recodified banking statute.

Although a number of Iowa banks, both national and state, have the word "trust" in their names, there is only one true trust company, as defined in present Iowa law, remaining in business in the state. This trust company will be able to remain in business, under the provisions of Senate File 18, until the expiration of its present charter, which has a number of years to run. It is believed that this trust company will suffer no undue hardship by reason of being unable to renew its charter, since it is wholly owned by and has its offices in the same building with one of the state's larger banks, with which the trust company may be merged.

Iowa law has prohibited establishment of private banks since April 19, 1919, but a very few such banks which were in business before that date have been permitted to remain in existence under sections 524.26 through 524.30, inclusive, *Code of Iowa* (1966), the substance of which is incorporated into Division XVII of the proposed recodified Iowa banking statute. Chapter 531 of the Code, relating to cooperative banks, is inoperative, since cooperative banks have not been successful in Iowa and none have been in existence in the state for many years.

Corporation Law for State Banks—Professor Emory, principal draftsman of Senate File 18, has prepared the following explanation of the bill's provisions relating to formation of corporations for the purpose of conducting a banking business:

Existing banking law is deeply intertwined with chapter 491 of the Code of Iowa, the "old" corporation law of this state. This corporation law was replaced, as the general corporation law, by chapter 496A, an enactment of the modern and well drafted Model Business Corporation Act which has been adopted in many states. Because of practical problems and its applicability to many existing corporations, including banks and insurance companies, the continued existence of chapter 491 has been tolerated. There is, however, a great deal of uncertainty in existing law regarding the extent of the applicability of chapter 491 to banks organized and operating under the law of this state. Obviously some provisions which explicitly refer to banks have application (e.g., sections 491.33, 491.34, 491.35 and 491.37), but the extent of the application in other situations is not as certain. Since clarity on these questions was obviously a goal of the revision project, it is im-

portant to disclose with certainty the extent to which general corporation law shall have application to banks. In view of the fact that . . . (chapter 496A) is a well drafted and widely adopted statutory format relating to corporate matters generally, it is deemed wise to relate corporate matters involving banks to that statute where appropriate. Since section 496A.142(1) specifically renders . . . (chapter 496A) non-applicable to banks organized and operating under the laws of this state, it is necessary to make positively applicable those portions of chapter 496A which are relevant to banks. Except in a few instances in which incorporation by reference has been the technique to reduce statutory bulk, specific provisions of chapter 496A have been incorporated either verbatim or with only minor changes in wording where appropriate. Thus, only when specifically made applicable by the banking laws, or when incorporated therein, will the provisions of chapter 496A be applicable to banks. Those provisions of chapter 491 specifically dealing only with banks will be repealed. This technique will allow all statutory material relating to banks, either corporate or regulatory, to be within one statutory enactment.

Organization of Senate File 18

In conclusion, a brief comment should perhaps be made regarding the organization of Senate File 18. As previously indicated, the bill consists of 18 divisions, each designated by a roman numeral, the headings of which are as follows:

Division I	— General Provisions
Division II	— Department of Banking
Division III	— Incorporation
Division IV	— Capital Structure
Division V	— Shares, Shareholders and Dividends
Division VI	— Directors
Division VII	— Officers and Employees
Division VIII	— General Banking Powers
Division IX	— Investment and Lending Powers
Division X	— Fiduciary Powers
Division XI	— Affiliates

- Division XII — Offices
- Division XIII — Dissolution
- Division XIV — Merger, Consolidation and Conversion
- Division XV — Amendment to Articles of Incorporation
- Division XVI — Penal
- Division XVII — Private Banks
- Division XVIII — Effective Date and Repealer

Each division is composed of two or more numbered sections. Although the entire bill is intended to become a single chapter of the *Code of Iowa*, the sections are not numbered serially through the bill. Instead each section is assigned a three or four digit arabic numeral, the first one or two digits corresponding to the roman numeral assigned the division of which the section is a part, and the latter two digits indicating the position of the section in the division. Thus the first section in Division VII is section 701, the second is section 702, and so forth. This arrangement, to which the Code Editor's office has agreed, will permit any new sections which it might be necessary to add in future years to be placed in the proper division without disrupting the numbering of sections in succeeding divisions.