

Reprinted 2/14

FILED FEB 28 1984

SENATE FILE 2232

BY COMMITTEE ON COMMERCE

(FORMERLY SSB 2220)

Passed Senate, Date 3-13-84 (p. 791) Passed House, Date 4-17-84 (P. 2069)
Vote: Ayes 45 Nays 0 Vote: Ayes 94 Nays 0
Approved May 4, 1984

A BILL FOR

1 An Act relating to charges by small loan and industrial loan
2 licensees by providing for a bad check charge, authorizing
3 industrial loan licensees to collect an appraisal fee
4 on loans secured by a mortgage and requiring industrial
5 loan licensees to pay interest on funds held in escrow
6 in connection with a single-family or two-family home loan.

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

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S. 2232

1 Section 1. Section 536.13, subsection 6, unnumbered para-
2 graph 4, Code 1983, is amended to read as follows:

3 A provision of the Iowa consumer credit code, chapter 537,
4 applicable to loans regulated by this chapter shall supersede
5 supersedes a conflicting provision of this chapter. However,
6 subsection 7 is not superseded by the Iowa consumer credit
7 code.

8 Sec. 2. Section 536.13, Code 1983, is amended by adding
9 the following new subsection:

10 NEW SUBSECTION. 7. Notwithstanding any other limitation,
11 in addition to the other charges authorized by this chapter,
12 a licensee may collect a ten dollar charge if payment is made
13 by check, draft, or similar signed order and it is not honored
14 for any reason except an error by a third party to the loan.
15 The charge may be collected when the payment is due or at
16 any time thereafter.

17 Sec. 3. Section 536A.20, subsection 3, unnumbered paragraph
18 1, Code Supplement 1983, is amended to read as follows:

19 A licensed industrial loan company may act as an escrow
20 agent with respect to real property that is mortgaged to the
21 licensed industrial loan company, and may receive funds and
22 make disbursements from escrowed funds in that capacity.
23 The licensed industrial loan company shall be deemed to be
24 acting in a fiduciary capacity with respect to these funds.
25 A licensed industrial loan company receiving funds in escrow
26 pursuant to an escrow agreement executed on or after July
27 1, 1982 and before July 1, 1983 or on or after the effective
28 date of this Act in connection with a loan defined in section
29 535.8, subsection 1, shall pay interest to the borrower on
30 those funds, calculated on a daily basis, at the lowest rate
31 the company pays to holders of thrift certificates issued
32 by the company. A licensed industrial loan company which
33 maintains such an escrow account, whether or not the mortgage
34 has been assigned to a third person, shall deliver to the
35 mortgagor a written summary of all transactions made with

1 respect to the loan and escrow accounts during each calendar
 2 year. However, the mortgagor and mortgagee may, by mutual
 3 agreement, select a fiscal year reporting period other than
 4 the calendar year.

5 Sec. 4. Section 536A.23, Code 1983, is amended by adding
 6 the following new subsections:

7 NEW SUBSECTION. 5. In addition to the other charges
 8 authorized by this chapter, a licensee may collect a ten
 9 dollar charge if payment is made by check, draft, or similar
 10 signed order and it is not honored for any reason except an
 11 error by a third party to the loan. The charge may be
 12 collected when the payment is due or at any time thereafter.

13 NEW SUBSECTION. 6. In addition to the other charges au-
 14 thorized by this chapter, industrial loan companies licensed
 15 under this chapter may collect an appraisal fee on a loan
 16 secured by a mortgage or deed of trust upon real property,
 17 if the appraisal fee is bona fide, reasonable in amount, and
 18 not for purposes of circumvention or evasion of this chapter.

19 Sec. 5. Section 536A.31, subsection 3, Code 1983, is
 20 amended to read as follows:

21 3. A provision of the Iowa consumer credit code, chapter
 22 537, applicable to loans regulated by this chapter ~~shall~~
 23 supersede ~~supersedes~~ a conflicting provision of this chapter.
 24 However, section 536A.23, subsections 5 and 6 are not
 25 superseded by the Iowa consumer credit code.

26 EXPLANATION

27 The bill authorizes licensees under chapter 536 and 536A
 28 to collect a \$10 bad check charge when a payment is made by
 29 check, draft or similar signed order which is dishonored for
 30 any reason other than an error by a third party to the loan
 31 transaction. The bill permits licensees under chapter 536A
 32 to collect an appraisal fee on loans secured by a mortgage
 33 or deed of trust upon real property. The appraisal fee must
 34 be bona fide, reasonable in amount and not for purposes of
 35 circumvention or evasion of chapter 536A. The bill provides

1 that chapter 537, the Iowa consumer credit code, does not
2 supersede the provisions added in this bill.

3 The bill reinstates the requirement that an industrial
4 loan company which holds funds in an escrow account in con-
5 nection with a single-family or two-family home loan shall
6 pay interest on the funds in the escrow account. The re-
7 quirement was repealed last session. A similar requirement
8 is in the current law for state banks, savings and loan
9 associations, and credit unions.

10 The bill takes effect July 1 following enactment.

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SENATE FILE 2232

S-5326

- 1 Amend Senate File 2232 as follows:
- 2 1. Page 1, by striking lines 8 through 16.
- 3 2. Page 2, line 6, by striking the word
- 4 "subsections" and inserting in lieu thereof the word
- 5 "subsection".
- 6 3. Page 2, by striking lines 7 through 12.
- 7 4. Renumber as necessary.

S-5326 FILED

BY BILL HUTCHINS

MARCH 9, 1984

Classed out of order 3/12 (p. 791)

SENATE FILE 2232

S-5334

- 1 Amend S-5326 to Senate File 2232 as follows:
- 2 1. Page 1, by inserting after line 6 the following:
- 3 "4. Title page, line 2, by striking the words
- 4 "providing for a bad check charge,"."
- 5 2. Renumber as necessary.

S-5334 FILED

BY C. W. BILL HUTCHINS

MARCH 9, 1984

Classed out of order 2/13 (p. 791)

SENATE FILE 2232

S-5350

- 1 Amend Senate File 2232 as follows:
- 2 1. Page 1, by striking lines 1 through 16.
- 3 2. Page 2, line 6, by striking the word
- 4 "subsections" and inserting in lieu thereof the word
- 5 "subsection".
- 6 3. Page 2, by striking lines 7 through 12.
- 7 4. Title page, line 1, by striking the words
- 8 "small loan and".
- 9 5. Title page, line 2, by striking the words
- 10 "providing for a bad check charge,".
- 11 6. Renumber as necessary.

S-5350 FILED

BY BILL HUTCHINS

MARCH 12, 1984

Adopted 3/13 (p. 792)

Small Business and Commerce: Groninga, Chair; Hanson and Knapp.

SENATE FILE **2232**

BY COMMITTEE ON COMMERCE

(AS AMENDED AND PASSED BY THE SENATE MARCH 13, 1984)

Passed Senate, Date 3-13-84 (S. 7917) Passed House, Date 4-17-84 (S. 2069)

Vote: Ayes 45 Nays 0 Vote: Ayes 94 Nays 0

Approved May 4, 1984

A BILL FOR

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5811
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1 An Act relating to charges by industrial loan licensees by
2 authorizing industrial loan licensees to collect an appraisal
3 fee on loans secured by a mortgage and requiring industrial
4 loan licensees to pay interest on funds held in escrow in
5 connection with a single-family or two-family home loan.

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

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————— = New Language
by the Senate

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by the Senate

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Section 1. Section 536A.20, subsection 3, unnumbered paragraph 1, Code Supplement 1983, is amended to read as follows:

A licensed industrial loan company may act as an escrow agent with respect to real property that is mortgaged to the licensed industrial loan company, and may receive funds and make disbursements from escrowed funds in that capacity.

The licensed industrial loan company shall be deemed to be acting in a fiduciary capacity with respect to these funds.

A licensed industrial loan company receiving funds in escrow pursuant to an escrow agreement executed on or after July

1, 1982 and before July 1, 1983 or on or after the effective date of this Act in connection with a loan defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the lowest rate the company pays to holders of thrift certificates issued by the company. A licensed industrial loan company which

maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year.

Sec. 2. Section 536A.23, Code 1983, is amended by adding the following new subsection:

* 27 NEW SUBSECTION. 5. In addition to the other charges authorized by this chapter, industrial loan companies licensed under this chapter may collect an appraisal fee on a loan secured by a mortgage or deed of trust upon real property, if the appraisal fee is bona fide, reasonable in amount, and not for purposes of circumvention or evasion of this chapter.

Sec. 3. Section 536A.31, subsection 3, Code 1983, is amended to read as follows:

3. A provision of the Iowa consumer credit code, chapter

1 537, applicable to loans regulated by this chapter shall
2 ~~supersede~~ supersedes a conflicting provision of this chapter.
3 However, section 536A.23, subsection 5 is not superseded by
4 the Iowa consumer credit code.

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1 Amend Senate File 2232 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. NEW SECTION. DEFINITIONS. As used
6 in sections 1 through 6 of this Act, unless the context
7 otherwise requires:

8 1. "Building standards" means the structural,
9 mechanical, electrical, and quality standards of the
10 home building industry for the geographic area in
11 which the dwelling is situated.

12 2. "Dwelling" means a new building, not previously
13 occupied, constructed for the purpose of habitation;
14 but does not include appurtenant recreational
15 facilities, detached garages, driveways, walkways,
16 patios, boundary walls, retaining walls not necessary
17 for the structural stability of the dwelling,
18 landscaping, fences, nonpermanent construction
19 materials, off-site improvements, and all other similar
20 items.

21 3. "Initial vendee" means a person who first
22 contracts to purchase a dwelling from a vendor for
23 the purpose of habitation and not for resale in the
24 ordinary course of trade.

25 4. "Major construction defect" means actual damage
26 to the load-bearing portion of the dwelling, including
27 damage due to subsidence, expansion or lateral movement
28 of the soil, which affects its load-bearing function
29 and which vitally affects or is imminently likely
30 to vitally affect use of the dwelling for residential
31 purposes. "Major construction defect" does not include
32 damage due to movement of the soil caused by flood,
33 earthquake or other natural disaster.

34 5. "Vendee" means any purchaser of a dwelling
35 and includes the initial vendee and any subsequent
36 purchasers.

37 6. "Vendor" means any person, firm, or corporation
38 which constructs dwellings for the purpose of sale,
39 including the construction of dwellings on land owned
40 by vendees.

41 7. "Warranty date" means the date from and after
42 which the statutory warranties provided in section
43 2 of this Act shall be effective, and which is the
44 earliest of the following:

45 a. The date of the initial vendee's first occupancy
46 of the dwelling.

47 b. The date on which the initial vendee takes
48 legal or equitable title in the dwelling.

49 Sec. 2. NEW SECTION. STATUTORY WARRANTIES.

50 1. In every sale of a completed dwelling, and

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Page Two

1 in every contract for the sale of a dwelling to be
2 completed, the vendor shall warrant to the vendee
3 all of the following:

4 a. That during the one-year period from and after
5 the warranty date the dwelling shall be free from
6 defects caused by faulty workmanship and defective
7 materials due to noncompliance with building standards.

8 b. That during the two-year period from and after
9 the warranty date, the dwelling shall be free from
10 defects caused by faulty installation of plumbing,
11 electrical, heating, and cooling systems.

12 c. That during the ten-year period from and after
13 the warranty date, the dwelling shall be free from
14 major construction defects.

15 2. The statutory warranties provided in this
16 section shall survive the passing of legal or equitable
17 title in the dwelling to the vendee.

18 Sec. 3. NEW SECTION. EXCLUSIONS. The liability
19 of the vendor under sections 1 to 6 of this Act is
20 limited to the specific items set forth in sections
21 1 to 6 of this Act and does not extend to any of the
22 following:

23 1. Loss or damage not reported by the vendee to
24 the vendor in writing within six months after the
25 vendee discovers or should have discovered the loss
26 or damage.

27 2. Loss or damage caused by defects in design,
28 installation, or materials which the vendee supplied,
29 installed, or had installed under the vendee's
30 direction.

31 3. Secondary loss or damage such as personal
32 injury or property damage.

33 4. Loss or damage from normal wear and tear.

34 5. Loss or damage from normal shrinkage caused
35 by drying of the dwelling within tolerances of building
36 standards.

37 6. Loss or damage from dampness and condensation
38 due to insufficient ventilation after occupancy.

39 7. Loss or damage from negligence, improper
40 maintenance or alteration of the dwelling by parties
41 other than the vendor.

42 8. Loss or damage from changes in grading of the
43 ground around the dwelling by parties other than the
44 vendor.

45 9. Landscaping or insect loss or damage.

46 10. Loss or damage from failure to maintain the
47 dwelling in good repair.

48 11. Loss or damage which the vendee, whenever
49 feasible, has not taken timely action to minimize.

50 12. Loss or damage which occurs after the dwelling

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Page Five

1 or wrongful death, shall not be brought more than
2 fifteen years after the date on which occurred the
3 act or omission of the defendant alleged in the action
4 to have been the cause of the injury or death.
5 However, this subsection shall not be construed to
6 bar an action against a person solely in the person's
7 capacity as an owner, occupant, or operator of an
8 improvement to real property."

9 3. Title page, by striking lines 1 through 5 and
10 inserting in lieu thereof the following:

11 "An Act relating to improvements on real property
12 by providing for a warranty on the construction of
13 a dwelling, establishing a maximum statute of
14 limitations for actions arising out of improvements
15 to real property, authorizing industrial loan licensees
16 to collect an appraisal fee on loans secured by a
17 real estate mortgage or deed of trust, and requiring
18 industrial loan licensees to pay interest on funds
19 held in escrow in connection with a single-family
20 or two-family home loan."

21 4. Renumber as necessary.

BY COMMITTEE ON SMALL

H-5811 FILED MARCH 23, 1984 BUSINESS AND COMMERCE

Reid not german 4/17 (p. 2069)

SENATE FILE 2232

H-5940

1 Amend amendment H-5811 to Senate File 2232 as
2 amended, passed and reprinted by the Senate, as
3 follows:

4 1. Page 5, line 2, by striking the word "fifteen"
5 and inserting in lieu thereof the word "twenty".

H-5940 FILED MARCH 28, 1984 BY ROSENBERG of Story

RD 4/17 (p. 2069)

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Page Three

1 is no longer used primarily as a residence.

2 13. Accidental loss or damage usually described
3 as acts of God, including, but not limited to, fire,
4 explosion, smoke, water escape, windstorm, hail or
5 lightening, falling trees, aircraft and vehicles,
6 flood, and earthquake, except when the loss or damage
7 is caused by failure to comply with building standards.

8 14. Loss or damage from soil movement which is
9 compensated by legislation or covered by insurance.

10 15. Loss or damage due to soil conditions where
11 construction is done upon lands owned by the vendee
12 and obtained by the vendee from a source independent
13 of the vendor.

14 Sec. 4. NEW SECTION. WAIVER AND MODIFICATION
15 LIMITED.

16 1. Except as provided in subsections 2 and 3,
17 sections 1 to 6 of this Act cannot be waived or
18 modified by contract or otherwise. An agreement which
19 purports to waive or modify sections 1 to 6 of this
20 Act, except as provided in subsections 2 and 3, shall
21 be void.

22 2. At any time after a contract for the sale of
23 a dwelling is entered into by and between a vendor
24 and a vendee, any of the statutory warranties provided
25 for in section 2 of this Act may be excluded or
26 modified only by a written instrument, printed in
27 bold face type of a minimum size of ten points, which
28 is signed by the vendee and which sets forth in detail
29 the warranty involved, the consent of the vendee,
30 and the terms of the new agreement contained in the
31 writing. An exclusion or modification shall not be
32 effective unless the vendor provides substitute express
33 warranties offering substantially the same protections
34 to the vendee as the statutory warranties set forth
35 in section 2 of this Act.

36 3. If a major construction defect is discovered
37 prior to the sale of a dwelling, the statutory warranty
38 set forth in section 2, subsection 1, paragraph "c",
39 of this Act may be waived for the defect identified
40 in the waiver instrument, after full oral disclosure
41 of the specific defect, by an instrument which sets
42 forth in detail the specific defect; the difference
43 between the value of the dwelling without the de-
44 fect, and the value of the dwelling with the defect,
45 as determined and attested to by an independent
46 appraiser, contractor, insurance adjuster, engineer
47 or any other similarly knowledgeable person selected
48 by the vendee; the price reduction; the date the
49 construction was completed; the legal description
50 of the dwelling; the consent of the vendee to the

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Page Four

1 waiver; and the signatures of the vendee, the vendor,
2 and two witnesses.

3 A single waiver agreed to pursuant to this
4 subsection may not apply to more than one major
5 construction defect in a dwelling.

6 The waiver shall not be effective unless filed
7 for recording with the county recorder or registrar
8 of titles who shall file the waiver for record.

9 4. If the vendor excludes, modifies, or wavier
10 any of the statutory warranties provided in section
11 2 of this Act, or if the vendor fails to provide
12 substitute express warranties offering substantially
13 the same protections to the vendee as the statutory
14 warranties set forth in section 2 of this Act the
15 statute of limitations provided in section 614.1,
16 subsection 11, shall not apply to an action arising
17 from any defect in the dwelling for which a statutory
18 warranty or a substitute express warranty was excluded,
19 modified, or waived.

20 Sec. 5. NEW SECTION. REMEDIES. Upon breach of
21 a warranty imposed by section 2 of this Act, the
22 vendee shall have a cause of action against the vendor
23 for damages arising out of the breach, or for specific
24 performance. Damages shall be limited to either of
25 the following:

26 1. The amount necessary to remedy the defect or
27 breach.

28 2. The difference between the value of the dwelling
29 without the defect and the value of the dwelling with
30 the defect.

31 Sec. 6. NEW SECTION. OTHER WARRANTIES. The
32 statutory warranties provided for in section 2 of
33 this Act shall be in addition to all other warranties
34 imposed by law or agreement. The remedies provided
35 in section 5 of this Act shall not be construed as
36 limiting the remedies in any action not predicated
37 upon breach of the statutory warranties imposed by
38 section 2 of this Act."

39 2. Page 1, line 12, by striking the figure "1983"
40 and inserting in lieu thereof the figure "1984".

41 3. Page 2, by inserting after line 4 the following:

42 "Sec. 9. Section 614.1, Code Supplement 1983,
43 is amended by adding the following new subsection:

44 NEW SUBSECTION. 11. IMPROVEMENTS TO REAL PROPERTY.
45 In addition to limitations contained elsewhere in
46 this section, an action arising out of the unsafe
47 or defective condition of an improvement to real
48 property based on tort and implied warranty and for
49 contribution and indemnity, and founded on injury
50 to property, real or personal, or injury to the person

SENATE FILE 2232

H-6044

1 Amend amendment H-5811 to Senate File 2232 as
2 amended, passed and reprinted by the Senate, as
3 follows:

4 1. Page 2, by striking lines 48 and 49 and
5 inserting in lieu thereof the following:
6 "11. Loss or damage caused by the vendee's failure
7 to take timely action to minimize."

BY JAY of Appanoose

H-6044 FILED APRIL 3, 1984

CHAPMAN of Linn

W/O 4/17 (p. 2668)

SENATE FILE 2232

H-6045

1 Amend amendment H-5811 to Senate File 2232 as
2 amended, passed and reprinted by the Senate, as
3 follows:

4 1. Page 2, by striking lines 31 and 32.
5 2. Renumber as necessary.

H-6045 FILED APRIL 3, 1984 BY JAY of Appanoose

W/O 4/17 (p. 2668)

SENATE FILE 2232

H-6077

1 Amend amendment H-5811 to Senate File 2232 as
2 amended, passed and reprinted by the Senate, as
3 follows:

4 1. Page 4, by striking lines 47 and 48 and
5 inserting in lieu thereof the following: "or defective
6 condition of a dwelling based on tort and implied
7 warranty and for".

H-6077 FILED APRIL 3, 1984 BY JAY of Appanoose

W/O 4/17 (p. 2668)

SENATE FILE 2232

AN ACT

RELATING TO CHARGES BY INDUSTRIAL LOAN LICENSEES BY AUTHORIZING INDUSTRIAL LOAN LICENSEES TO COLLECT AN APPRAISAL FEE ON LOANS SECURED BY A MORTGAGE AND REQUIRING INDUSTRIAL LOAN LICENSEES TO PAY INTEREST ON FUNDS HELD IN ESCROW IN CONNECTION WITH A SINGLE-FAMILY OR TWO-FAMILY HOME LOAN.

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

Section 1. Section 536A.20, subsection 3, unnumbered paragraph 1, Code Supplement 1983, is amended to read as follows:

A licensed industrial loan company may act as an escrow agent with respect to real property that is mortgaged to the licensed industrial loan company, and may receive funds and make disbursements from escrowed funds in that capacity. The licensed industrial loan company shall be deemed to be acting in a fiduciary capacity with respect to these funds. A licensed industrial loan company receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 and before July 1, 1983 or on or after the effective date of this Act in connection with a loan defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the lowest rate the company pays to holders of thrift certificates issued by the company. A licensed industrial loan company which maintains such an escrow account, whether or not the mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year.

Sec. 2. Section 536A.23, Code 1983, is amended by adding the following new subsection:

NEW SUBSECTION. 5. In addition to the other charges authorized by this chapter, industrial loan companies licensed under this chapter may collect an appraisal fee on a loan secured by a mortgage or deed of trust upon real property, if the appraisal fee is bona fide, reasonable in amount, and not for purposes of circumvention or evasion of this chapter.

Sec. 3. Section 536A.31, subsection 3, Code 1983, is amended to read as follows:

3. A provision of the Iowa consumer credit code, chapter 537, applicable to loans regulated by this chapter ~~shall supersede~~ supersedes a conflicting provision of this chapter. However, section 536A.23, subsection 5 is not superseded by the Iowa consumer credit code.

CHARLES P. MILLER
President Pro Tempore of the
Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2232, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 4 1984

TERRY E. BRANSTAD
Governor

S.F. 2232