

2019 2019

SENATE FILE 507
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 217)

Passed Senate, Date 4/2/91 (p. 996) Passed House, Date April 25, 1991 (p. 1536)
Vote: Ayes 50 Nays 0 Vote: Ayes 95 Nays 0

Approved May 29, 1991

*Passed Senate as amended by
House & further amended
by Senate 5/3/91 (p. 1649)
44-0*

*Repealed as further amended
5/6/91 (p. 2121)
97-0*

A BILL FOR

1 An Act relating to the authority of the superintendent of banking
2 to remove officers and directors of state banks and to
3 prohibit an institution-affiliated party from participating in
4 the conduct of the affairs of a state bank, and providing
5 civil penalties.

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

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SF 507

4 3046
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1 Section 1. Section 524.103, Code 1991, is amended by
2 adding the following new subsection:
3 NEW SUBSECTION. 29. "Institution-affiliated party" means
4 a director, officer, employee, controlling stockholder (other
5 than a bank holding company), agent, consultant, joint venture
6 partner, or any other person who has filed or is required to
7 file a change-in-control notice. "Institution-affiliated
8 party" also means an independent contractor (including an
9 attorney, appraiser, or accountant) who knowingly violates or
10 recklessly participates in a violation of law or rule, a
11 breach of fiduciary duty, or an unsafe or unsound practice
12 which caused or is likely to cause more than a minimal
13 financial loss to, or a significant adverse effect on, the
14 state bank.

H 21707

15 Sec. 2. Section 524.223, Code 1991, is amended by striking
16 the section and inserting in lieu thereof the following:

17 524.223 CEASE AND DESIST PROCEEDINGS.

18 1. If, in the opinion of the superintendent, a state bank
19 or an institution-affiliated party is engaging in or has
20 engaged in, or the superintendent has reasonable cause to
21 believe that the state bank or institution-affiliated party is
22 about to engage in, an unsafe or unsound practice in
23 conducting the business of the state bank, or is violating or
24 has violated, or the superintendent has reasonable cause to
25 believe that the state bank or institution-affiliated party is
26 about to violate, a law, rule, regulation, or condition
27 imposed in writing by the superintendent in connection with
28 the granting of an application or other request by the state
29 bank or a written agreement entered into with the
30 superintendent, the superintendent may issue and serve upon
31 the state bank or the party a notice of charges concerning the
32 alleged unsafe or unsound practice or the alleged violation.
33 The notice shall contain a statement of the facts constituting
34 the alleged unsafe or unsound practice or the alleged
35 violation, and shall fix a time and place at which a hearing

1 will be held to determine whether an order to cease and desist
2 from the alleged unsafe or unsound practice or the alleged
3 violation should issue against the state bank or the
4 institution-affiliated party. The hearing shall be fixed for
5 a date not earlier than thirty days nor later than sixty days
6 after service of notice of charges unless an earlier or a
7 later date is set by the superintendent at the request of a
8 party so served. Unless a party served appears at the hearing
9 personally or by a duly authorized representative, the party
10 is deemed to have consented to the issuance of the cease and
11 desist order. In the event of such consent, or if upon the
12 record made at the hearing, the superintendent finds that an
13 unsafe or unsound practice or violation specified in the
14 notice of charges is established, the superintendent may issue
15 and serve upon the state bank or the institution-affiliated
16 party an order to cease and desist from any such practice or
17 violation. The order may, by provisions which are mandatory
18 or otherwise, require the state bank or the institution-
19 affiliated party to cease and desist from the practice or
20 violation and to take affirmative action to correct the
21 conditions resulting from any such practice or violation.

22 2. A cease and desist order becomes effective upon service
23 of the order upon the state bank or institution-affiliated
24 party (except in the case of a cease and desist order issued
25 upon consent, which becomes effective at the time specified in
26 the order), and remains effective and enforceable as provided
27 in the order, except to the extent that the order is stayed,
28 modified, terminated, or set aside by action of the
29 superintendent or a reviewing court.

30 3. The authority to issue an order under this subsection
31 and subsection 4, which requires a state bank or an
32 institution-affiliated party to take affirmative action to
33 correct any conditions resulting from a violation or practice
34 with respect to which an order is issued, includes the
35 authority to require the state bank or the party to do any or

1 all of the following:

2 a. Make restitution or provide reimbursement,
3 indemnification, or guarantee against loss if the state bank
4 or the institution-affiliated party was unjustly enriched in
5 connection with the violation or practice or the violation or
6 practice involved a reckless disregard for the law or an
7 applicable rule, regulation, or prior order of the
8 superintendent.

9 b. Restrict the growth of the state bank.

10 c. Dispose of any loan or asset involved.

11 d. Rescind agreements or contracts.

12 e. Employ qualified officers or employees, who may be
13 subject to approval by the superintendent at the direction of
14 the superintendent.

15 f. Place limitations on the activities or functions of a
16 state bank or an institution-affiliated party.

17 g. Take other action the superintendent determines to be
18 appropriate.

19 4. If the superintendent determines that the violation or
20 threatened violation or the unsafe or unsound practice,
21 specified in the notice of charges served upon the state bank
22 or an institution-affiliated party pursuant to subsection 1 of
23 this section, or the continuation of the violation or the
24 unsafe or unsound practice, is likely to cause insolvency or
25 significant dissipation of assets or earnings of the state
26 bank, or is likely to weaken the condition of the state bank
27 or otherwise prejudice the interests of its depositors prior
28 to the completion of the proceedings conducted pursuant to
29 subsection 1 of this section, the superintendent may issue a
30 temporary order requiring the state bank or the institution-
31 affiliated party to cease and desist from the violation or
32 practice and to take affirmative action to prevent such
33 insolvency, dissipation, condition, or prejudice pending
34 completion of the proceedings. The order shall become
35 effective upon service upon the state bank or the institution-

1 affiliated party and, unless set aside, limited, or suspended
2 by a court in proceedings as provided for in this section,
3 remains effective and enforceable pending the completion of
4 the administrative proceedings pursuant to the notice and
5 until such time as the superintendent dismisses the charges
6 specified in the notice, or if a cease and desist order is
7 issued against the state bank or a party, until the effective
8 date of the order.

9 Within ten days after the state bank concerned or an
10 institution-affiliated party has been served with a temporary
11 cease and desist order, the state bank or the party may apply
12 to the district court of the county in which the principal
13 place of business of the state bank is located for an
14 injunction setting aside, limiting, or suspending the
15 enforcement, operation, or effectiveness of the order pending
16 the completion of the administrative proceedings pursuant to
17 the notice of charges served upon the state bank or the
18 institution-affiliated party under subsection 1 of this
19 section, and the court has jurisdiction to issue the
20 injunction.

21 5. If a notice of charges served under subsection 1 of
22 this section specifies, on the basis of particular facts and
23 circumstances, that a state bank's books and records are so
24 incomplete or inaccurate that the superintendent is unable,
25 through the normal supervisory process, to determine the
26 financial condition of that state bank or the details or
27 purpose of any transaction that may have a material effect on
28 the financial condition of that state bank, the superintendent
29 may issue a temporary order requiring the cessation of any
30 activity or practice which gave rise, whether in whole or in
31 part, to the incomplete or inaccurate state of the books or
32 records. The superintendent may also order affirmative action
33 to restore the books or records to a complete and accurate
34 state, until the completion of the proceedings under
35 subsection 1 of this section.

1 A temporary order issued under this subsection becomes
2 effective upon service, and unless set aside, limited, or
3 suspended by a court in proceedings under subsection 4,
4 remains in effect and is enforceable until the earlier of
5 either of the following:

6 a. The completion of the proceeding initiated under
7 subsection 1 of this section in connection with the notice of
8 charges.

9 b. The date the superintendent determines, by examination
10 or otherwise, that the state bank's books or records are
11 accurate and reflect the financial condition of the state
12 bank.

13 6. In the case of a violation or threatened violation of,
14 or a failure to obey, a temporary cease and desist order
15 issued pursuant to subsection 4 of this section, the
16 superintendent may apply to the district court of the county
17 in which the state bank has its principal place of business
18 for an injunction to enforce the order. If the court
19 determines that there has been a violation or threatened
20 violation or failure to obey, the court shall issue the
21 injunction.

22 Sec. 3. Section 524.606, subsection 2, Code 1991, is
23 amended by striking the subsection and inserting in lieu
24 thereof the following:

25 2. The superintendent shall serve upon an institution-
26 affiliated party a written notice of the superintendent's
27 intention to remove the party from office or to prohibit any
28 further participation by the party, in any manner, in the
29 conduct of affairs of a state bank, upon a determination by
30 the superintendent of any of the following:

31 a. That the institution-affiliated party, directly or
32 indirectly, has violated a law, rule, or regulation, a cease
33 and desist order, or an agreement or condition in writing
34 between the superintendent and the state bank.

35 b. That the institution-affiliated party has engaged or

1 participated in an unsafe or unsound practice in connection
2 with the state bank.

3 c. That the institution-affiliated party has committed or
4 engaged in any act, omission, or practice which constitutes a
5 breach of the party's fiduciary duty which resulted in
6 financial or probable financial loss to the state bank, or
7 financial gain or benefit to the institution-affiliated party.

8 3. If written notice is served pursuant to subsection 2,
9 and the superintendent determines that it is necessary for the
10 protection of the state bank or the interests of the state
11 bank's depositors, the superintendent may also suspend the
12 institution-affiliated party from office or prohibit the party
13 from further participation in any manner in the conduct of the
14 affairs of the state bank. The institution-affiliated party
15 shall be served written notice of a suspension pursuant to
16 this subsection.

17 A suspension order issued pursuant to this subsection
18 becomes effective upon service and, unless a court issues a
19 stay of the order, the order remains in effect and is
20 enforceable until the date the superintendent dismisses the
21 charges contained in the notice served pursuant to subsection
22 2 or until the effective date of an order issued by the
23 superintendent to the institution-affiliated party pursuant to
24 subsection 2.

25 4. A notice of intention to remove an institution-
26 affiliated party from office or to prohibit the party from
27 participating in the conduct of the affairs of a state bank
28 shall contain a statement of the facts constituting grounds
29 for the removal and shall state the time and place at which a
30 hearing will be held on the issue of removal. The hearing
31 shall be fixed for a date not earlier than thirty days nor
32 later than sixty days after the date of service of the notice,
33 unless otherwise set by the superintendent at the request of
34 the institution-affiliated party for good cause shown, or the
35 request of the attorney general. If the institution-

1 affiliated party fails to appear in person or by an authorized
2 representative, the party is deemed to have consented to the
3 issuance of the order of removal or prohibition.

4 If the institution-affiliated party so consents, or if upon
5 the record made at a hearing the superintendent finds that any
6 of the grounds specified in the notice have been established,
7 the superintendent may issue an order as provided in
8 subsection 2, as the superintendent deems appropriate. An
9 order becomes effective upon service upon the state bank and
10 the party, except if the order is issued upon consent, in
11 which case it becomes effective at the time specified in the
12 order. The order remains effective and enforceable except to
13 the extent the order is stayed, modified, terminated, or set
14 aside by action of the superintendent or a reviewing court.

15 5. An institution-affiliated party subject to an order
16 issued under this section shall not do any of the following:

17 a. Participate in any manner in the conduct of the affairs
18 of a state bank.

19 b. Solicit, procure, transfer, attempt to transfer, vote,
20 or attempt to vote a proxy, consent, or authorization with
21 respect to any voting rights in a state bank.

22 c. Vote for a director or serve or act as an institution-
23 affiliated party of a state bank.

24 6. An institution-affiliated party who, pursuant to an
25 order issued under this section, has been removed from office
26 in a state bank or prohibited from participating in the
27 conduct of the affairs of a state bank shall not, while the
28 order is in effect, continue or commence to hold an office in,
29 or participate in any manner in the conduct of the affairs of,
30 a state-regulated insured depository institution located in
31 this state. A violation of this subsection by an institution-
32 affiliated party who is subject to an order issued under this
33 section, shall be treated as a violation of the order.

34 7. Within ten days after an institution-affiliated party
35 is suspended from office or prohibited from participation in

1 the conduct of the affairs of a state bank, the party may
2 apply to the district court of the county in which the
3 principal place of business of the state bank is located for a
4 stay of the suspension or prohibition, or both, pending the
5 completion of the administrative proceedings pursuant to the
6 notice served upon the party under subsection 2.

7 8. a. If an institution-affiliated party is charged, in
8 an information, indictment, or complaint with the commission,
9 with participation in a crime involving dishonesty or breach
10 of trust which is punishable by imprisonment for a term
11 exceeding one year under state or federal law, the
12 superintendent may, by written notice served upon the party,
13 suspend the party from office or prohibit the party from
14 further participation in any manner in the conduct of the
15 affairs of the state bank, if the superintendent determines
16 that continued service or participation by the party may pose
17 a threat to the interests of the state bank's depositors or
18 may threaten to impair public confidence in the state bank. A
19 copy of the notice shall also be served upon the state bank.
20 A suspension or prohibition under this subsection remains in
21 effect until the information, indictment, or complaint is
22 finally disposed of, or until terminated by the
23 superintendent.

24 b. Upon conviction or agreement that the party will enter
25 a program involving pretrial diversion or a similar program,
26 and at such time as a judgment of conviction is not subject to
27 further appeal, the superintendent may suspend the party in
28 the same manner as provided in paragraph "a", except that the
29 party may serve as an officeholder and participate in the
30 conduct of the affairs of the state bank with the written
31 consent of the superintendent.

32 c. An acquittal or other disposition of the charge does
33 not preclude the superintendent from instituting proceedings
34 to remove the party from office or to prohibit the party from
35 further participation in any manner in the conduct of the

1 affairs of the state bank.

2 d. A notice of suspension or order of removal pursuant to
3 this subsection is effective and enforceable until the
4 completion of any hearing or appeal, unless otherwise
5 determined by the superintendent.

6 9. If, as a result of a suspension of one or more
7 directors pursuant to this section, there is less than a
8 quorum of directors not suspended, the powers and functions
9 vested in the board shall vest in and are exercisable by the
10 members of the board not suspended, until such time as there
11 is a quorum of directors not suspended. If all the directors
12 of a state bank are suspended pursuant to this section, the
13 superintendent shall appoint persons to serve temporarily as
14 directors of the state bank until the suspensions of a quorum
15 of the directors are terminated or until those directors
16 suspended cease to be directors of the state bank and their
17 successor directors take office.

18 Within thirty days from the service of a notice of
19 suspension or order of removal issued pursuant to this
20 section, the institution-affiliated party affected by the
21 order may request in writing an opportunity to appear before
22 the superintendent to show that the party's continued
23 participation in the conduct of the affairs of the state bank
24 does not, or is not likely to, pose a threat to the interests
25 of the state bank's depositors or threaten to impair public
26 confidence in the state bank. Upon receipt of the request,
27 the superintendent shall set a time, not more than thirty days
28 after the date of receipt of the request unless an extension
29 is requested by the party, and place at which the party shall
30 appear, personally or by representative, before the
31 superintendent or the superintendent's designee and present
32 written evidence. At the discretion of the superintendent or
33 the superintendent's designee, the party may be allowed to
34 present oral testimony. Within sixty days after the hearing,
35 the superintendent shall notify the party whether the

1 suspension from participation in any manner in the conduct of
2 the affairs of the state bank will be continued, terminated,
3 or otherwise modified, or whether the order removing the party
4 from office or prohibiting the party from further
5 participation in any manner in the conduct of the affairs of
6 the state bank will be rescinded or otherwise modified. The
7 notification shall contain a statement of the basis for the
8 superintendent's decision, if the decision is adverse to the
9 party.

10 10. A hearing provided for in this section shall be held
11 in the office of the superintendent. The hearing shall be
12 private, unless the superintendent determines after full
13 consideration of the views of the party afforded the hearing,
14 that a public hearing is necessary to protect the public
15 interest. After the hearing, and within ninety days after the
16 superintendent has notified the parties that the case has been
17 submitted to the superintendent for final decision, the
18 superintendent shall render a decision, including findings of
19 fact upon which the decision is predicated, and issue and
20 serve upon each party to the proceeding an order consistent
21 with this section. Judicial review of the order may be sought
22 pursuant to chapter 17A.

23 A party to a proceeding under this section may obtain a
24 review of an order served pursuant to this section, other than
25 an order issued with consent of the state bank or the
26 institution-affiliated party or an order issued pursuant to
27 subsection 8 or 9, by filing in the district court for the
28 county in which the principal place of business of the state
29 bank is located, within thirty days after the date of service
30 of the order, a written petition requesting that the order of
31 the superintendent be modified, terminated, or set aside. The
32 commencement of judicial review pursuant to this subsection
33 shall not operate as a stay of an order of the superintendent
34 unless specifically ordered by the court.

35 11. a. The superintendent may apply to the district court

1 for the county in which the principal place of business of the
2 state bank is located for an order enforcing an effective and
3 outstanding notice or order issued pursuant to this section.
4 The district court has jurisdiction to require compliance with
5 the notice or order.

6 b. A state bank or institution-affiliated party in
7 violation of this section or section 524.223, or a rule or
8 final order issued pursuant to this section or section
9 524.223, in violation of a condition imposed in writing by the
10 superintendent related to the grant of an application or other
11 request of the state bank, or in violation of a written
12 agreement between the state bank and the superintendent shall
13 be assessed a civil penalty of not more than five thousand
14 dollars for each day the violation continues.

15 c. Notwithstanding paragraph "b", a state bank or
16 institution-affiliated party shall be assessed a civil penalty
17 of not more than twenty-five thousand dollars for each day
18 that the state bank or institution-affiliated party does any
19 of the following:

- 20 (1) Commits a violation as defined in paragraph "b".
- 21 (2) Recklessly engages in an unsafe or unsound practice in
22 conducting the affairs of the state bank or breaches a
23 fiduciary duty resulting in any of the following:
 - 24 (a) A pattern of misconduct by the state bank or
25 institution-affiliated party.
 - 26 (b) More than a minimal loss to the state bank.
 - 27 (c) Pecuniary gain or other benefit to the party.

28 d. The superintendent shall notify in writing a state bank
29 or an institution-affiliated party of a penalty assessed
30 pursuant to this section and shall direct the bank or party to
31 make payment to the superintendent. A state bank or
32 institution-affiliated party subject to a penalty assessed
33 pursuant to this subsection shall be afforded a hearing before
34 the superintendent if the state bank or institution-affiliated
35 party submits a request for hearing within twenty days after

1 the issuance of the notice of assessment. If a hearing is not
2 requested concerning an assessment made pursuant to this
3 section within twenty days after issuance of the notice of
4 assessment, the assessment constitutes a final and
5 unappealable order. The superintendent may modify any penalty
6 which the superintendent assesses or has already assessed
7 under this section.

8 In determining the amount of a penalty to be assessed, the
9 superintendent shall take into account the appropriateness of
10 the penalty with respect to the financial resources of the
11 state bank or institution-affiliated party, whether the state
12 bank or the party acted in good faith, the nature of the
13 violation, any history of previous violations, and such other
14 matters deemed appropriate by the superintendent.

15 If a state bank or institution-affiliated party fails to
16 pay a penalty assessed pursuant to this section after the
17 assessment becomes final, the superintendent shall file an
18 action in the district court to recover the penalty.

19 e. The resignation, termination of employment or
20 participation, or separation of an institution-affiliated
21 party, including a separation caused by the closing of a state
22 bank, do not affect the jurisdiction and authority of the
23 superintendent to issue a notice and proceed under this
24 section against a party, if the notice is served within six
25 years of the period beginning on the date the party ceases to
26 be an institution-affiliated party.

27 Sec. 4. Section 524.901, subsection 3, Code 1991, is
28 amended by adding the following new paragraph:

29 NEW PARAGRAPH. m. Shares in a federal home loan bank.

30 Sec. 5. Section 524.1105, Code 1991, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 3. An affiliate of a state bank that
33 refuses to permit an examiner to examine the affiliate or
34 refuses to provide information required in the course of an
35 examination is subject to a penalty of up to five thousand

1 dollars per day for each day the affiliate refuses to provide
2 the information. The penalty shall be assessed by the
3 superintendent.

4 EXPLANATION

5 This bill grants the superintendent additional enforcement
6 authority to remove an officer or director from a state bank,
7 or to require that an institution-affiliated party cease
8 participation in the conduct of the affairs of the state bank
9 as the result of certain violations of law, rule, or
10 regulation. The bill authorizes the superintendent to assess
11 civil penalties against state banks and institution-affiliated
12 parties as a result of those violations. The superintendent
13 may also request that the district court enforce a cease and
14 desist order against a state bank or institution-affiliated
15 party to prevent continued violations. Notice provisions
16 concerning the superintendent's actions are provided and the
17 state bank or institution-affiliated party is also given the
18 opportunity to request a hearing before the superintendent or
19 in the district court, concerning a violation or a penalty
20 assessed.

21 The bill also provides that a bank may invest in shares of
22 a federal home loan bank.

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SENATE FILE 507

H-3595

1 Amend Senate File 507, as passed by the Senate, as
2 follows:

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

5 "Section 1. Section 17.8, Code 1991, is amended to
6 read as follows:

7 17.8 SUPERINTENDENT OF BANKING.

8 The annual report of the superintendent of banking
9 shall cover the year ending June 30 of each year, and
10 shall be filed as soon as practicable after said date
11 and not later than September- $\frac{1}{2}$ December 31.

12 Sec. 2. Section 524.901, subsection 6, Code 1991,
13 is amended to read as follows:

14 6. A state bank may, in the exercise of the powers
15 granted in this chapter, purchase cash value life
16 insurance contracts which may include provisions for
17 the lump sum payment of premiums and which may include
18 insurance against the loss of the lump sum payment.
19 The cash value life insurance contracts purchased from
20 any one company shall not exceed twenty percent of
21 capital and surplus of the state bank and in the
22 aggregate from all companies, shall not exceed twenty-
23 five percent of total equity capital of the state bank
24 unless the state bank has obtained the approval of the
25 superintendent prior to the purchase of any cash value
26 life insurance contract in excess of this limitation.

27 Sec. 3. 1990 Iowa Acts, chapter 1274, unnumbered
28 paragraph 1 after the enacting clause, is amended to
29 read as follows:

30 That the banking laws contained in Code chapter
31 524, as identified by the superintendent of banking,
32 are suspended to the extent that the laws restrict any
33 state or nationally chartered bank located in Iowa or
34 bank holding company owning a bank located in Iowa in
35 the acquisition of savings associations eligible for
36 assistance or their assets or liabilities. Such
37 suspension shall remain in effect until July 1, ~~1991~~
38 1992. On and after July 1, ~~1991~~ 1992, the
39 restrictions in Code chapter 524 shall be applied as
40 though acquisitions made pursuant to this resolution
41 had not been made."

42 2. Title page, line 4, by inserting after the
43 word "bank," the following: "limiting the aggregate
44 amount of cash value life insurance a state bank may
45 purchase, amending the date by which the
46 superintendent must file an annual report, suspending
47 certain laws,".

48 3. Renumber as necessary.

By COMMITTEE ON COMMERCE
HANSEN of Woodbury, Chairperson

H-3595 FILED APRIL 11, 1991

Adopted 4/25/91 (p. 1534)

SENATE FILE 507

H-3778

1 Amend Senate File 507, as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting after line 14 the
4 following:

5 "Sec. ____ Section 524.201, subsection 1, Code
6 1991, is amended to read as follows:

7 1. The governor shall appoint, subject to
8 confirmation by the senate, a superintendent of
9 banking. The appointee shall be selected solely with
10 regard to qualification and fitness to discharge the
11 duties of office, and no person shall be appointed who
12 has not had at least five years experience in a bank
13 or in the regulation or examination of banks.
14 However, an appointee shall not knowingly engage in a
15 business or employment which would be a conflict of
16 interest or interfere or conflict with the proper
17 discharge of the duties of the superintendent of
18 banking."

19 2. Renumber as necessary.

By HANSEN of Woodbury

H-3778 FILED APRIL 23, 1991

WLB 4/25/91

SENATE FILE 507

H-3801

1 Amend Senate File 507, as passed by the Senate, as
2 follows:

3 1. By striking page 1, line 1, through page 13,
4 line 3.

By HANSEN of Woodbury

H-3801 FILED APRIL 24, 1991

Adopted 4/25/91 (p. 1535)

SENATE FILE 507

H-3806

1 Amend Senate File 507, as passed by the Senate, as
2 follows:

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

5 "Section 1. Section 524.201, subsection 1, Code
6 1991, is amended to read as follows:

7 1. The governor shall appoint, subject to
8 confirmation by the senate, a superintendent of
9 banking. The appointee shall be selected solely with
10 regard to qualification and fitness to discharge the
11 duties of office, and no person shall be appointed who
12 has not had at least five years experience in a bank
13 or in the regulation or examination of banks.
14 However, an appointee shall not knowingly engage in a
15 business or employment which would be a conflict of
16 interest or interfere or conflict with the proper
17 discharge of the duties of the superintendent of
18 banking."

19 2. Renumber as necessary.

By HANSEN of Woodbury

H-3806 FILED APRIL 24, 1991

Revised not germane 4/25/91 (p. 1535)

SENATE FILE 507

H-3823

1 Amend amendment H-3595, to Senate File 507, as
2 passed by the Senate, as follows:
3 1. Page 1, by striking lines 42 and 43, and
4 inserting the following:
5 "2. Title page, by striking lines 1 through 5, and
6 inserting the following: "An Act relating to limiting
7 the aggregate".
8 2. Page 1, by striking lines 46 and 47, and
9 inserting the following: "superintendent must file an
10 annual report, and suspending certain laws."

By HANSEN of Woodbury

H-3823 FILED APRIL 25, 1991

ADOPTED BY UNANIMOUS CONSENT (p. 1535)

SENATE FILE 507

S-3643

- 1 Amend the House amendment, S-3633, to Senate File
2 507, as passed by the Senate, as follows:
3 1. Page 1, by inserting after line 11 the
4 following:
5 "Sec. _____. Section 524.901, subsection 3, Code
6 1991, is amended by adding the following new
7 paragraph:
8 NEW PARAGRAPH. m. Shares in a federal home loan
9 bank."
10 2. Page 1, by striking line 41 and inserting the
11 following: "had not been made."
12 Sec. _____. This Act, being deemed of immediate
13 importance, is effective upon enactment."
14 3. Page 1, by striking lines 48 and 49 and
15 inserting the following: "the superintendent must
16 file an annual report, suspending certain laws,
17 authorizing certain investments by a state bank, and
18 providing an effective date."
19 4. Renumber as necessary.

By PAT DELUHERY
KAY HEDGE

S-3643 FILED APRIL 29, 1991

Adopted 5/3/91 (p. 1648)

HOUSE AMENDMENT TO
SENATE FILE 507

S-3633

1 Amend Senate File 507, as passed by the Senate, as
2 follows:

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

5 "Section 1. Section 17.8, Code 1991, is amended to
6 read as follows:

7 17.8 SUPERINTENDENT OF BANKING.

8 The annual report of the superintendent of banking
9 shall cover the year ending June 30 of each year, and
10 shall be filed as soon as practicable after said date
11 and not later than ~~September 1~~ December 31.

12 Sec. 2. Section 524.901, subsection 5, Code 1991,
13 is amended to read as follows:

14 5. A state bank may, in the exercise of the powers
15 granted in this chapter, purchase cash value life
16 insurance contracts which may include provisions for
17 the lump sum payment of premiums and which may include
18 insurance against the loss of the lump sum payment.
19 The cash value life insurance contracts purchased from
20 any one company shall not exceed twenty percent of
21 capital and surplus of the state bank and in the
22 aggregate from all companies, shall not exceed twenty-
23 five percent of total equity capital of the state bank
24 unless the state bank has obtained the approval of the
25 superintendent prior to the purchase of any cash value
26 life insurance contract in excess of this limitation.

27 Sec. 3. 1990 Iowa Acts, chapter 1274, unnumbered
28 paragraph 1 after the enacting clause, is amended to
29 read as follows:

30 That the banking laws contained in Code chapter
31 524, as identified by the superintendent of banking,
32 are suspended to the extent that the laws restrict any
33 state or nationally chartered bank located in Iowa or
34 bank holding company owning a bank located in Iowa in
35 the acquisition of savings associations eligible for
36 assistance or their assets or liabilities. Such
37 suspension shall remain in effect until July 1, 1991
38 1992. On and after July 1, 1991 1992, the
39 restrictions in Code chapter 524 shall be applied as
40 though acquisitions made pursuant to this resolution
41 had not been made."

42 2. By striking page 1, line 1, through page 13,
43 line 3.

44 3. Title page, by striking lines 1 through 5, and
45 inserting the following: "An Act relating to limiting
46 the aggregate amount of cash value life insurance a
47 state bank may purchase, amending the date by which
48 the superintendent must file an annual report, and
49 suspending certain laws."

50 4. By renumbering, relettering, or redesignating

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1 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3633 FILED APRIL 29, 1991

Senate amended & Concurred 5/3/91 (S 1649)

SENATE FILE 507

S-3689

1 Amend the House amendment, S-3633, to Senate File
2 507, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by striking line 43, and inserting the
5 following: "line 3, and inserting the following:

6 "Sec. ____ . NEW SECTION. 524.228 INTERIM CEASE
7 AND DESIST ORDER -- SUSPENSION.

8 1. If it appears to the superintendent that a
9 state bank, or any director, officer, employee, or
10 substantial shareholder of the state bank is engaging
11 in or is about to engage in an unsafe or unsound
12 practice or dishonest act in conducting the business
13 of the state bank that is likely to cause insolvency
14 or substantial dissipation of assets or earnings of
15 the state bank, or is likely to seriously weaken the
16 condition of the state bank or otherwise seriously
17 prejudice the interests of its depositors prior to the
18 completion of the proceedings conducted pursuant to
19 section 524.223, 524.606, subsection 2, or 524.707,
20 subsection 2, the superintendent may issue an interim
21 order requiring the bank, director, officer, employee,
22 or substantial shareholder to cease and desist from
23 any such practice or act, and to take affirmative
24 action, including suspension of the director, officer,
25 or employee to prevent such insolvency, dissipation,
26 condition, or prejudice pending completion of the
27 proceedings. The interim order becomes effective upon
28 service upon the state bank, or upon the director,
29 officer, employee, or substantial shareholder of the
30 state bank and, unless set aside, limited, or
31 suspended by a court as provided in this chapter,
32 remains effective and enforceable pending the
33 completion of the administrative proceedings pursuant
34 to the interim order and until such time as the
35 superintendent dismisses the charges specified in the
36 interim order, or, if a final cease and desist order
37 is issued against the state bank or the director,
38 officer, employee, or substantial shareholder until
39 the effective date of the final order.

40 2. Within ten days after the state bank concerned
41 or any director, officer, employee, or substantial
42 shareholder is served within an interim order, the
43 bank or such director, officer, employee, or
44 substantial shareholder may apply to the district
45 court in the county in which the bank has its
46 principal place of business, for an injunction setting
47 aside, limiting, or suspending the enforcement,
48 operation, or effectiveness of such interim order
49 pending the completion of the administrative
50 proceedings. If serious prejudice to the interests of

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1 the superintendent, the state bank, the officer,
2 director, employee, or substantial shareholder would
3 result from such hearing, the court may order the
4 judicial proceeding to be conducted in camera.

5 3. The interim order shall contain a concise
6 statement of the facts constituting the alleged unsafe
7 or unsound practice or alleged dishonest act, and
8 shall fix a time and place at which a hearing will be
9 held to determine whether a final order to cease and
10 desist should issue against the state bank or any
11 director, officer, employee, or substantial
12 shareholder. The hearing shall be fixed for a date
13 not later than thirty days after service of the
14 interim order unless a later date is set at the
15 request of the party so served. If the state bank, or
16 the director, officer, employee, or substantial
17 shareholder fails to appear at the hearing, the state
18 bank, or the director, officer, employee, or
19 substantial shareholder is deemed to have consented to
20 the issuance of a cease and desist order. In the
21 event of such consent, or if upon the record made at
22 the hearing the superintendent finds that any unsafe
23 or unsound practice or dishonest act specified in the
24 interim order has been established, the superintendent
25 may issue and serve upon the bank, or the director,
26 officer, employee, or substantial shareholder a final
27 order to cease and desist from any such practice or
28 act. The order may require the state bank, or the
29 director, officer, employee, or substantial
30 shareholder to cease and desist from any such practice
31 or act and, further, to take affirmative action,
32 including suspension of the director, officer, or
33 employee.

34 4. A hearing provided for in this section shall be
35 presided over by an administrative law judge appointed
36 in accordance with section 17A.11. The hearing shall
37 be private, unless the superintendent determines after
38 full consideration of the views of the party afforded
39 the hearing, that a public hearing is necessary to
40 protect the public interest. After the hearing, and
41 within thirty days after the case has been submitted
42 for decision, the superintendent shall review the
43 proposed order of the administrative law judge and
44 render a final decision, including findings of fact
45 upon which the decision is predicated, and issue and
46 serve upon each party to the proceeding an order
47 consistent with this section.

48 5. Any final order issued by the superintendent
49 pursuant to subsection 3 becomes effective upon
50 service of the final order on the state bank,

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1 director, officer, employee, or substantial
2 shareholder and shall remain effective except to the
3 extent that it is stayed, modified, terminated, or set
4 aside by action of the superintendent or of the
5 district court of the county in which the state bank
6 has its principal place of business in accordance with
7 the terms of chapter 17A.

8 6. In the case of violation or threatened
9 violation of, or failure to obey, an interim order
10 issued pursuant to subsection 1 or a final order
11 issued pursuant to subsection 3, the superintendent
12 may apply to the district court of the county in which
13 the state bank has its principal place of business for
14 the enforcement of the order and such court shall have
15 jurisdiction and power to order and require compliance
16 with the interim order or final order.

17 7. For purposes of this section, "substantial
18 shareholder" means a shareholder exercising a
19 controlling influence over the management or policies
20 of a state bank as determined by the superintendent.

21 Sec. ____ . Section 524.606, subsection 2,
22 unnumbered paragraph 1, Code 1991, is amended to read
23 as follows:

24 When, in the opinion of the superintendent any
25 director of a state bank ~~shall have continued to~~
26 ~~violate~~ has violated any law relating to such state
27 bank or ~~shall have continued~~ has engaged in unsafe or
28 unsound practices in conducting the business of such
29 state bank, ~~after having been warned by the~~
30 ~~superintendent to discontinue or correct such~~
31 ~~violations of law or such unsafe or unsound practices,~~
32 the superintendent may cause notice to be served upon
33 such director, to appear before the superintendent to
34 show cause why the director should not be removed from
35 office. A copy of such notice shall be sent to each
36 director of the state bank affected, by registered or
37 certified mail. If, after granting the accused
38 director a reasonable opportunity to be heard, the
39 superintendent finds that the director ~~continued to~~
40 ~~violate~~ violated any law relating to such state bank
41 or ~~continued~~ engaged in unsafe or unsound practices in
42 conducting the business of such state bank ~~after~~
43 ~~having been warned by the superintendent to~~
44 ~~discontinue or correct such violations of law or such~~
45 ~~unsafe or unsound practices,~~ the superintendent, in
46 the superintendent's discretion, may order that such
47 director be removed from office. A copy of the order
48 shall be served upon such director and upon the state
49 bank of which the person is a director at which time
50 the person shall cease to be a director of the state

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1 bank.
2 Sec. ____ . Section 524.707, subsection 2, Code
3 1991, is amended to read as follows:
4 2. Subsection 2 of section 524.606 providing for
5 the removal of directors by the superintendent, shall
6 have equal application to officers and employees."
7 2. Page 1, line 48, by inserting after the word
8 "report," the following: "providing certain
9 regulatory authority over certain persons associated
10 with a state bank,".
11 3. Renumber as necessary.

By PATRICK J. DELUHERY RICHARD F. DRAKE
JOHN W. JENSEN JAMES B. KERSTEN
MICHAEL E. GRONSTAL

S-3689 FILED MAY 2, 1991
Adopted as amended by 3693 5/3/91 (p. 1649)

SENATE FILE 507

S-3693

1 Amend the amendment, S-3689, to the House
2 amendment, S-3633, to Senate File 507, as amended,
3 passed and reprinted by the Senate as follows:
4 1. Page 1, line 42, by striking the word "within"
5 and inserting the following: "with".
By JOHN W. JENSEN

S-3693 FILED MAY 3, 1991
ADOPTED *(p. 1649)*

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 507
H-4049

1 Amend the House amendment, S-3633, to Senate File
2 507, as passed by the Senate, as follows:

3 1. Page 1, by inserting after line 11 the
4 following:

5 "Sec. ____ . Section 524.901, subsection 3, Code
6 1991, is amended by adding the following new
7 paragraph:

8 NEW PARAGRAPH. m. Shares in a federal home loan
9 bank."

10 2. Page 1, by striking line 41 and inserting the
11 following: "had not been made.

12 Sec. ____ . This Act, being deemed of immediate
13 importance, is effective upon enactment.""

14 3. Page 1, by striking line 43, and inserting the
15 following: "line 3, and inserting the following:

16 "Sec. ____ . NEW SECTION. 524.228 INTERIM CEASE
17 AND DESIST ORDER -- SUSPENSION.

18 1. If it appears to the superintendent that a
19 state bank, or any director, officer, employee, or
20 substantial shareholder of the state bank is engaging
21 in or is about to engage in an unsafe or unsound
22 practice or dishonest act in conducting the business
23 of the state bank that is likely to cause insolvency
24 or substantial dissipation of assets or earnings of
25 the state bank, or is likely to seriously weaken the
26 condition of the state bank or otherwise seriously
27 prejudice the interests of its depositors prior to the
28 completion of the proceedings conducted pursuant to
29 section 524.223, 524.606, subsection 2, or 524.707,
30 subsection 2, the superintendent may issue an interim
31 order requiring the bank, director, officer, employee,
32 or substantial shareholder to cease and desist from
33 any such practice or act, and to take affirmative
34 action, including suspension of the director, officer,
35 or employee to prevent such insolvency, dissipation,
36 condition, or prejudice pending completion of the
37 proceedings. The interim order becomes effective upon
38 service upon the state bank, or upon the director,
39 officer, employee, or substantial shareholder of the
40 state bank and, unless set aside, limited, or
41 suspended by a court as provided in this chapter,
42 remains effective and enforceable pending the
43 completion of the administrative proceedings pursuant
44 to the interim order and until such time as the
45 superintendent dismisses the charges specified in the
46 interim order, or, if a final cease and desist order
47 is issued against the state bank or the director,
48 officer, employee, or substantial shareholder until
49 the effective date of the final order.

50 2. Within ten days after the state bank concerned

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1 or any director, officer, employee, or substantial
2 shareholder is served with an interim order, the bank
3 or such director, officer, employee, or substantial
4 shareholder may apply to the district court in the
5 county in which the bank has its principal place of
6 business, for an injunction setting aside, limiting,
7 or suspending the enforcement, operation, or
8 effectiveness of such interim order pending the
9 completion of the administrative proceedings. If
10 serious prejudice to the interests of the
11 superintendent, the state bank, the officer, director,
12 employee, or substantial shareholder would result from
13 such hearing, the court may order the judicial
14 proceeding to be conducted in camera.

15 3. The interim order shall contain a concise
16 statement of the facts constituting the alleged unsafe
17 or unsound practice or alleged dishonest act, and
18 shall fix a time and place at which a hearing will be
19 held to determine whether a final order to cease and
20 desist should issue against the state bank or any
21 director, officer, employee, or substantial
22 shareholder. The hearing shall be fixed for a date
23 not later than thirty days after service of the
24 interim order unless a later date is set at the
25 request of the party so served. If the state bank, or
26 the director, officer, employee, or substantial
27 shareholder fails to appear at the hearing, the state
28 bank, or the director, officer, employee, or
29 substantial shareholder is deemed to have consented to
30 the issuance of a cease and desist order. In the
31 event of such consent, or if upon the record made at
32 the hearing the superintendent finds that any unsafe
33 or unsound practice or dishonest act specified in the
34 interim order has been established, the superintendent
35 may issue and serve upon the bank, or the director,
36 officer, employee, or substantial shareholder a final
37 order to cease and desist from any such practice or
38 act. The order may require the state bank, or the
39 director, officer, employee, or substantial
40 shareholder to cease and desist from any such practice
41 or act and, further, to take affirmative action,
42 including suspension of the director, officer, or
43 employee.

44 4. A hearing provided for in this section shall be
45 presided over by an administrative law judge appointed
46 in accordance with section 17A.11. The hearing shall
47 be private, unless the superintendent determines after
48 full consideration of the views of the party afforded
49 the hearing, that a public hearing is necessary to
50 protect the public interest. After the hearing, and

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1 within thirty days after the case has been submitted
2 for decision, the superintendent shall review the
3 proposed order of the administrative law judge and
4 render a final decision, including findings of fact
5 upon which the decision is predicated, and issue and
6 serve upon each party to the proceeding an order
7 consistent with this section.

8 5. Any final order issued by the superintendent
9 pursuant to subsection 3 becomes effective upon
10 service of the final order on the state bank,
11 director, officer, employee, or substantial
12 shareholder and shall remain effective except to the
13 extent that it is stayed, modified, terminated, or set
14 aside by action of the superintendent or of the
15 district court of the county in which the state bank
16 has its principal place of business in accordance with
17 the terms of chapter 17A.

18 6. In the case of violation or threatened
19 violation of, or failure to obey, an interim order
20 issued pursuant to subsection 1 or a final order
21 issued pursuant to subsection 3, the superintendent
22 may apply to the district court of the county in which
23 the state bank has its principal place of business for
24 the enforcement of the order and such court shall have
25 jurisdiction and power to order and require compliance
26 with the interim order or final order.

27 7. For purposes of this section, "substantial
28 shareholder" means a shareholder exercising a
29 controlling influence over the management or policies
30 of a state bank as determined by the superintendent.

31 Sec. ____ . Section 524.606, subsection 2,
32 unnumbered paragraph 1, Code 1991, is amended to read
33 as follows:

34 When, in the opinion of the superintendent any
35 director of a state bank ~~shall have continued to~~
36 ~~violate~~ has violated any law relating to such state
37 bank or ~~shall have continued~~ has engaged in unsafe or
38 unsound practices in conducting the business of such
39 state bank, ~~after having been warned by the~~
40 ~~superintendent to discontinue or correct such~~
41 ~~violations of law or such unsafe or unsound practices,~~
42 the superintendent may cause notice to be served upon
43 such director, to appear before the superintendent to
44 show cause why the director should not be removed from
45 office. A copy of such notice shall be sent to each
46 director of the state bank affected, by registered or
47 certified mail. If, after granting the accused
48 director a reasonable opportunity to be heard, the
49 superintendent finds that the director ~~continued to~~
50 violated any law relating to such state bank

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1 or continued engaged in unsafe or unsound practices
2 conducting the business of such state bank after
3 ~~having been warned by the superintendent to~~
4 ~~discontinue or correct such violations or law or such~~
5 ~~unsafe or unsound practices~~, the superintendent, in
6 the superintendent's discretion, may order that such
7 director be removed from office. A copy of the order
8 shall be served upon such director and upon the state
9 bank of which the person is a director at which time
10 the person shall cease to be a director of the state
11 bank.

12 Sec. ____ . Section 524.707, subsection 2, Code
13 1991, is amended to read as follows:

14 2. Subsection 2 of section 524.606 providing for
15 the removal of directors by the superintendent, shall
16 have equal application to officers and employees."

17 4. Page 1, by striking lines 48 and 49 and
18 inserting the following: "the superintendent must
19 file an annual report, providing certain regulatory
20 authority over certain persons associated with a state
21 bank, suspending certain laws, authorizing certain
22 investments by a state bank, and providing an
23 effective date."

24 5. By renumbering, relettering, or redesignating
25 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-4049 FILED MAY 3, 1991

House Committee 5/6/91 (p. 212)

DELUHERY, CH.

PRIEBE

KERSTEN

SSB 277

Commerce

SENATE FILE 507

BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON DELUHERY)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the authority of the superintendent of banking
2 to remove officers and directors of state banks and to
3 prohibit an institution-affiliated party from participating in
4 the conduct of the affairs of a state bank, and providing
5 civil penalties.

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

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1 Section 524.103, Code 1991, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 29. "Institution-affiliated party" means
4 a director, officer, employee, controlling stockholder (other
5 than a bank holding company), agent, consultant, joint venture
6 partner, or any other person who has filed or is required to
7 file a change-in-control notice. "Institution-affiliated
8 party" also means an independent contractor (including an
9 attorney, appraiser, or accountant) who knowingly violates or
10 recklessly participates in a violation of law or rule, a
11 breach of fiduciary duty, or an unsafe or unsound practice
12 which caused or is likely to cause more than a minimal
13 financial loss to, or a significant adverse effect on, the
14 state bank.

15 Sec. 2. Section 524.223, Code 1991, is amended by striking
16 the section and inserting in lieu thereof the following:

17 524.223 CEASE AND DESIST PROCEEDINGS.

18 1. If, in the opinion of the superintendent, a state bank
19 or an institution-affiliated party is engaging in or has
20 engaged in, or the superintendent has reasonable cause to
21 believe that the state bank or institution-affiliated party is
22 about to engage in, an unsafe or unsound practice in
23 conducting the business of the state bank, or is violating or
24 has violated, or the superintendent has reasonable cause to
25 believe that the state bank or institution-affiliated party is
26 about to violate, a law, rule, regulation, or condition
27 imposed in writing by the superintendent in connection with
28 the granting of an application or other request by the state
29 bank or a written agreement entered into with the
30 superintendent, the superintendent may issue and serve upon
31 the state bank or the party a notice of charges concerning the
32 alleged unsafe or unsound practice or the alleged violation.
33 The notice shall contain a statement of the facts constituting
34 the alleged unsafe or unsound practice or the alleged
35 violation, and shall fix a time and place at which a hearing

1 will be held to determine whether an order to cease and desist
2 from the alleged unsafe or unsound practice or the alleged
3 violation should issue against the state bank or the
4 institution-affiliated party. The hearing shall be fixed for
5 a date not earlier than thirty days nor later than sixty days
6 after service of notice of charges unless an earlier or a
7 later date is set by the superintendent at the request of a
8 party so served. Unless a party served appears at the hearing
9 personally or by a duly authorized representative, the party
10 is deemed to have consented to the issuance of the cease and
11 desist order. In the event of such consent, or if upon the
12 record made at the hearing, the superintendent finds that an
13 unsafe or unsound practice or violation specified in the
14 notice of charges is established, the superintendent may issue
15 and serve upon the state bank or the institution-affiliated
16 party an order to cease and desist from any such practice or
17 violation. The order may, by provisions which are mandatory
18 or otherwise, require the state bank or the institution-
19 affiliated party to cease and desist from the practice or
20 violation and to take affirmative action to correct the
21 conditions resulting from any such practice or violation.

22 2. A cease and desist order becomes effective upon service
23 of the order upon the state bank or institution-affiliated
24 party (except in the case of a cease and desist order issued
25 upon consent, which becomes effective at the time specified in
26 the order), and remains effective and enforceable as provided
27 in the order, except to the extent that the order is stayed,
28 modified, terminated, or set aside by action of the
29 superintendent or a reviewing court.

30 3. The authority to issue an order under this subsection
31 and subsection 4, which requires a state bank or an
32 institution-affiliated party to take affirmative action to
33 correct any conditions resulting from a violation or practice
34 with respect to which an order is issued, includes the
35 authority to require the state bank or the party to do any or

- 1 all of the following:
- 2 a. Make restitution or provide reimbursement,
 - 3 indemnification, or guarantee against loss if the state bank
 - 4 or the institution-affiliated party was unjustly enriched in
 - 5 connection with the violation or practice or the violation or
 - 6 practice involved a reckless disregard for the law or an
 - 7 applicable rule, regulation, or prior order of the
 - 8 superintendent.
 - 9 b. Restrict the growth of the state bank.
 - 10 c. Dispose of any loan or asset involved.
 - 11 d. Rescind agreements or contracts.
 - 12 e. Employ qualified officers or employees, who may be
 - 13 subject to approval by the superintendent at the direction of
 - 14 the superintendent.
 - 15 f. Place limitations on the activities or functions of a
 - 16 state bank or an institution-affiliated party.
 - 17 g. Take other action the superintendent determines to be
 - 18 appropriate.
- 19 4. If the superintendent determines that the violation or
- 20 threatened violation or the unsafe or unsound practice,
- 21 specified in the notice of charges served upon the state bank
- 22 or an institution-affiliated party pursuant to subsection 1 of
- 23 this section, or the continuation of the violation or the
- 24 unsafe or unsound practice, is likely to cause insolvency or
- 25 significant dissipation of assets or earnings of the state
- 26 bank, or is likely to weaken the condition of the state bank
- 27 or otherwise prejudice the interests of its depositors prior
- 28 to the completion of the proceedings conducted pursuant to
- 29 subsection 1 of this section, the superintendent may issue a
- 30 temporary order requiring the state bank or the institution-
- 31 affiliated party to cease and desist from the violation or
- 32 practice and to take affirmative action to prevent such
- 33 insolvency, dissipation, condition, or prejudice pending
- 34 completion of the proceedings. The order shall become
- 35 effective upon service upon the state bank or the institution-

1 affiliated party and, unless set aside, limited, or suspended
2 by a court in proceedings as provided for in this section,
3 remains effective and enforceable pending the completion of
4 the administrative proceedings pursuant to the notice and
5 until such time as the superintendent dismisses the charges
6 specified in the notice, or if a cease and desist order is
7 issued against the state bank or a party, until the effective
8 date of the order.

9 Within ten days after the state bank concerned or an
10 institution-affiliated party has been served with a temporary
11 cease and desist order, the state bank or the party may apply
12 to the district court of the county in which the principal
13 place of business of the state bank is located for an
14 injunction setting aside, limiting, or suspending the
15 enforcement, operation, or effectiveness of the order pending
16 the completion of the administrative proceedings pursuant to
17 the notice of charges served upon the state bank or the
18 institution-affiliated party under subsection 1 of this
19 section, and the court has jurisdiction to issue the
20 injunction.

21 5. If a notice of charges served under subsection 1 of
22 this section specifies, on the basis of particular facts and
23 circumstances, that a state bank's books and records are so
24 incomplete or inaccurate that the superintendent is unable,
25 through the normal supervisory process, to determine the
26 financial condition of that state bank or the details or
27 purpose of any transaction that may have a material effect on
28 the financial condition of that state bank, the superintendent
29 may issue a temporary order requiring the cessation of any
30 activity or practice which gave rise, whether in whole or in
31 part, to the incomplete or inaccurate state of the books or
32 records. The superintendent may also order affirmative action
33 to restore the books or records to a complete and accurate
34 state, until the completion of the proceedings under
35 subsection 1 of this section.

1 A temporary order issued under this subsection becomes
2 effective upon service, and unless set aside, limited, or
3 suspended by a court in proceedings under subsection 4,
4 remains in effect and is enforceable until the earlier of
5 either of the following:

6 a. The completion of the proceeding initiated under
7 subsection 1 of this section in connection with the notice of
8 charges.

9 b. The date the superintendent determines, by examination
10 or otherwise, that the state bank's books or records are
11 accurate and reflect the financial condition of the state
12 bank.

13 6. In the case of a violation or threatened violation of,
14 or a failure to obey, a temporary cease and desist order
15 issued pursuant to subsection 4 of this section, the
16 superintendent may apply to the district court of the county
17 in which the state bank has its principal place of business
18 for an injunction to enforce the order. If the court
19 determines that there has been a violation or threatened
20 violation or failure to obey, the court shall issue the
21 injunction.

22 Sec. 3. Section 524.606, subsection 2, Code 1991, is
23 amended by striking the subsection and inserting in lieu
24 thereof the following:

25 2. The superintendent shall serve upon an institution-
26 affiliated party a written notice of the superintendent's
27 intention to remove the party from office or to prohibit any
28 further participation by the party, in any manner, in the
29 conduct of affairs of a state bank, upon a determination by
30 the superintendent of any of the following:

31 a. That the institution-affiliated party, directly or
32 indirectly, has violated a law, rule, or regulation, a cease
33 and desist order, or an agreement or condition in writing
34 between the superintendent and the state bank.

35 b. That the institution-affiliated party has engaged or

1 participated in an unsafe or unsound practice in connection
2 with the state bank.

3 c. That the institution-affiliated party has committed or
4 engaged in any act, omission, or practice which constitutes a
5 breach of the party's fiduciary duty which resulted in
6 financial or probable financial loss to the state bank, or
7 financial gain or benefit to the institution-affiliated party.

8 3. If written notice is served pursuant to subsection 2,
9 and the superintendent determines that it is necessary for the
10 protection of the state bank or the interests of the state
11 bank's depositors, the superintendent may also suspend the
12 institution-affiliated party from office or prohibit the party
13 from further participation in any manner in the conduct of the
14 affairs of the state bank. The institution-affiliated party
15 shall be served written notice of a suspension pursuant to
16 this subsection.

17 A suspension order issued pursuant to this subsection
18 becomes effective upon service and, unless a court issues a
19 stay of the order, the order remains in effect and is
20 enforceable until the date the superintendent dismisses the
21 charges contained in the notice served pursuant to subsection
22 2 or until the effective date of an order issued by the
23 superintendent to the institution-affiliated party pursuant to
24 subsection 2.

25 4. A notice of intention to remove an institution-
26 affiliated party from office or to prohibit the party from
27 participating in the conduct of the affairs of a state bank
28 shall contain a statement of the facts constituting grounds
29 for the removal and shall state the time and place at which a
30 hearing will be held on the issue of removal. The hearing
31 shall be fixed for a date not earlier than thirty days nor
32 later than sixty days after the date of service of the notice,
33 unless otherwise set by the superintendent at the request of
34 the institution-affiliated party for good cause shown, or the
35 request of the attorney general. If the institution-

1 affiliated party fails to appear in person or by an authorized
2 representative, the party is deemed to have consented to the
3 issuance of the order of removal or prohibition.

4 If the institution-affiliated party so consents, or if upon
5 the record made at a hearing the superintendent finds that any
6 of the grounds specified in the notice have been established,
7 the superintendent may issue an order as provided in
8 subsection 2, as the superintendent deems appropriate. An
9 order becomes effective upon service upon the state bank and
10 the party, except if the order is issued upon consent, in
11 which case it becomes effective at the time specified in the
12 order. The order remains effective and enforceable except to
13 the extent the order is stayed, modified, terminated, or set
14 aside by action of the superintendent or a reviewing court.

15 5. An institution-affiliated party subject to an order
16 issued under this section shall not do any of the following:

17 a. Participate in any manner in the conduct of the affairs
18 of a state bank.

19 b. Solicit, procure, transfer, attempt to transfer, vote,
20 or attempt to vote a proxy, consent, or authorization with
21 respect to any voting rights in a state bank.

22 c. Vote for a director or serve or act as an institution-
23 affiliated party of a state bank.

24 6. An institution-affiliated party who, pursuant to an
25 order issued under this section, has been removed from office
26 in a state bank or prohibited from participating in the
27 conduct of the affairs of a state bank shall not, while the
28 order is in effect, continue or commence to hold an office in,
29 or participate in any manner in the conduct of the affairs of,
30 a state-regulated insured depository institution located in
31 this state. A violation of this subsection by an institution-
32 affiliated party who is subject to an order issued under this
33 section, shall be treated as a violation of the order.

34 7. Within ten days after an institution-affiliated party
35 is suspended from office or prohibited from participation in

1 the conduct of the affairs of a state bank, the party may
2 apply to the district court of the county in which the
3 principal place of business of the state bank is located for a
4 stay of the suspension or prohibition, or both, pending the
5 completion of the administrative proceedings pursuant to the
6 notice served upon the party under subsection 2.

7 8. a. If an institution-affiliated party is charged, in
8 an information, indictment, or complaint with the commission,
9 with participation in a crime involving dishonesty or breach
10 of trust which is punishable by imprisonment for a term
11 exceeding one year under state or federal law, the
12 superintendent may, by written notice served upon the party,
13 suspend the party from office or prohibit the party from
14 further participation in any manner in the conduct of the
15 affairs of the state bank, if the superintendent determines
16 that continued service or participation by the party may pose
17 a threat to the interests of the state bank's depositors or
18 may threaten to impair public confidence in the state bank. A
19 copy of the notice shall also be served upon the state bank.
20 A suspension or prohibition under this subsection remains in
21 effect until the information, indictment, or complaint is
22 finally disposed of, or until terminated by the
23 superintendent.

24 b. Upon conviction or agreement that the party will enter
25 a program involving pretrial diversion or a similar program,
26 and at such time as a judgment of conviction is not subject to
27 further appeal, the superintendent may suspend the party in
28 the same manner as provided in paragraph "a", except that the
29 party may serve as an officeholder and participate in the
30 conduct of the affairs of the state bank with the written
31 consent of the superintendent.

32 c. An acquittal or other disposition of the charge does
33 not preclude the superintendent from instituting proceedings
34 to remove the party from office or to prohibit the party from
35 further participation in any manner in the conduct of the

1 affairs of the state bank.

2 d. A notice of suspension or order of removal pursuant to
3 this subsection is effective and enforceable until the
4 completion of any hearing or appeal, unless otherwise
5 determined by the superintendent.

6 9. If, as a result of a suspension of one or more
7 directors pursuant to this section, there is less than a
8 quorum of directors not suspended, the powers and functions
9 vested in the board shall vest in and are exercisable by the
10 members of the board not suspended, until such time as there
11 is a quorum of directors not suspended. If all the directors
12 of a state bank are suspended pursuant to this section, the
13 superintendent shall appoint persons to serve temporarily as
14 directors of the state bank until the suspensions of a quorum
15 of the directors are terminated or until those directors
16 suspended cease to be directors of the state bank and their
17 successor directors take office.

18 Within thirty days from the service of a notice of
19 suspension or order of removal issued pursuant to this
20 section, the institution-affiliated party affected by the
21 order may request in writing an opportunity to appear before
22 the superintendent to show that the party's continued
23 participation in the conduct of the affairs of the state bank
24 does not, or is not likely to, pose a threat to the interests
25 of the state bank's depositors or threaten to impair public
26 confidence in the state bank. Upon receipt of the request,
27 the superintendent shall set a time, not more than thirty days
28 after the date of receipt of the request unless an extension
29 is requested by the party, and place at which the party shall
30 appear, personally or by representative, before the
31 superintendent or the superintendent's designee and present
32 written evidence. At the discretion of the superintendent or
33 the superintendent's designee, the party may be allowed to
34 present oral testimony. Within sixty days after the hearing,
35 the superintendent shall notify the party whether the

1 suspension from participation in any manner in the conduct of
2 the affairs of the state bank will be continued, terminated,
3 or otherwise modified, or whether the order removing the party
4 from office or prohibiting the party from further
5 participation in any manner in the conduct of the affairs of
6 the state bank will be rescinded or otherwise modified. The
7 notification shall contain a statement of the basis for the
8 superintendent's decision, if the decision is adverse to the
9 party.

10 10. A hearing provided for in this section shall be held
11 in the office of the superintendent. The hearing shall be
12 private, unless the superintendent determines after full
13 consideration of the views of the party afforded the hearing,
14 that a public hearing is necessary to protect the public
15 interest. After the hearing, and within ninety days after the
16 superintendent has notified the parties that the case has been
17 submitted to the superintendent for final decision, the
18 superintendent shall render a decision, including findings of
19 fact upon which the decision is predicated, and issue and
20 serve upon each party to the proceeding an order consistent
21 with this section. Judicial review of the order may be sought
22 pursuant to chapter 17A.

23 A party to a proceeding under this section may obtain a
24 review of an order served pursuant to this section, other than
25 an order issued with consent of the state bank or the
26 institution-affiliated party or an order issued pursuant to
27 subsection 8 or 9, by filing in the district court for the
28 county in which the principal place of business of the state
29 bank is located, within thirty days after the date of service
30 of the order, a written petition requesting that the order of
31 the superintendent be modified, terminated, or set aside. The
32 commencement of judicial review pursuant to this subsection
33 shall not operate as a stay of an order of the superintendent
34 unless specifically ordered by the court.

35 11. a. The superintendent may apply to the district court

1 for the county in which the principal place of business of the
2 state bank is located for an order enforcing an effective and
3 outstanding notice or order issued pursuant to this section.
4 The district court has jurisdiction to require compliance with
5 the notice or order.

6 b. A state bank or institution-affiliated party in
7 violation of this section or section 524.223, or a rule or
8 final order issued pursuant to this section or section
9 524.223, in violation of a condition imposed in writing by the
10 superintendent related to the grant of an application or other
11 request of the state bank, or in violation of a written
12 agreement between the state bank and the superintendent shall
13 be assessed a civil penalty of not more than five thousand
14 dollars for each day the violation continues.

15 c. Notwithstanding paragraph "b", a state bank or
16 institution-affiliated party shall be assessed a civil penalty
17 of not more than twenty-five thousand dollars for each day
18 that the state bank or institution-affiliated party does any
19 of the following:

20 (1) Commits a violation as defined in paragraph "b".

21 (2) Recklessly engages in an unsafe or unsound practice in
22 conducting the affairs of the state bank or breaches a
23 fiduciary duty resulting in any of the following:

24 (a) A pattern of misconduct by the state bank or
25 institution-affiliated party.

26 (b) More than a minimal loss to the state bank.

27 (c) Pecuniary gain or other benefit to the party.

28 d. The superintendent shall notify in writing a state bank
29 or an institution-affiliated party of a penalty assessed
30 pursuant to this section and shall direct the bank or party to
31 make payment to the superintendent. A state bank or
32 institution-affiliated party subject to a penalty assessed
33 pursuant to this subsection shall be afforded a hearing before
34 the superintendent if the state bank or institution-affiliated
35 party submits a request for hearing within twenty days after

1 the issuance of the notice of assessment. If a hearing is not
2 requested concerning an assessment made pursuant to this
3 section within twenty days after issuance of the notice of
4 assessment, the assessment constitutes a final and
5 unappealable order. The superintendent may modify any penalty
6 which the superintendent assesses or has already assessed
7 under this section.

8 In determining the amount of a penalty to be assessed, the
9 superintendent shall take into account the appropriateness of
10 the penalty with respect to the financial resources of the
11 state bank or institution-affiliated party, whether the state
12 bank or the party acted in good faith, the nature of the
13 violation, any history of previous violations, and such other
14 matters deemed appropriate by the superintendent.

15 If a state bank or institution-affiliated party fails to
16 pay a penalty assessed pursuant to this section after the
17 assessment becomes final, the superintendent shall file an
18 action in the district court to recover the penalty.

19 e. The resignation, termination of employment or
20 participation, or separation of an institution-affiliated
21 party, including a separation caused by the closing of a state
22 bank, do not affect the jurisdiction and authority of the
23 superintendent to issue a notice and proceed under this
24 section against a party, if the notice is served within six
25 years of the period beginning on the date the party ceases to
26 be an institution-affiliated party.

27 Sec. 4. Section 524.901, subsection 3, Code 1991, is
28 amended by adding the following new paragraph:

29 NEW PARAGRAPH. m. Shares in a federal home loan bank.

30 Sec. 5. Section 524.1105, Code 1991, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 3. An affiliate of a state bank that
33 refuses to permit an examiner to examine the affiliate or
34 refuses to provide information required in the course of an
35 examination is subject to a penalty of up to five thousand

1 dollars per day for each day the affiliate refuses to provide
2 the information. The penalty shall be assessed by the
3 superintendent.

4 EXPLANATION

5 This bill grants the superintendent additional enforcement
6 authority to remove an officer or director from a state bank,
7 or to require that an institution-affiliated party cease
8 participation in the conduct of the affairs of the state bank
9 as the result of certain violations of law, rule, or
10 regulation. The bill authorizes the superintendent to assess
11 civil penalties against state banks and institution-affiliated
12 parties as a result of those violations. The superintendent
13 may also request that the district court enforce a cease and
14 desist order against a state bank or institution-affiliated
15 party to prevent continued violations. Notice provisions
16 concerning the superintendent's actions are provided and the
17 state bank or institution-affiliated party is also given the
18 opportunity to request a hearing before the superintendent or
19 in the district court, concerning a violation or a penalty
20 assessed.

21 The bill also provides that a bank may invest in shares of
22 a federal home loan bank.

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SENATE FILE 507

AN ACT

RELATING TO LIMITING THE AGGREGATE AMOUNT OF CASH VALUE LIFE INSURANCE A STATE BANK MAY PURCHASE, AMENDING THE DATE BY WHICH THE SUPERINTENDENT MUST FILE AN ANNUAL REPORT, PROVIDING CERTAIN REGULATORY AUTHORITY OVER CERTAIN PERSONS ASSOCIATED WITH A STATE BANK, SUSPENDING CERTAIN LAWS, AUTHORIZING CERTAIN INVESTMENTS BY A STATE BANK, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 17.8, Code 1991, is amended to read as follows:

17.8 SUPERINTENDENT OF BANKING.

The annual report of the superintendent of banking shall cover the year ending June 30 of each year, and shall be filed as soon as practicable after said date and not later than ~~September 1~~ December 31.

Sec. 2. NEW SECTION. 524.228 INTERIM CEASE AND DESIST ORDER -- SUSPENSION.

1. If it appears to the superintendent that a state bank, or any director, officer, employee, or substantial shareholder of the state bank is engaging in or is about to engage in an unsafe or unsound practice or dishonest act in conducting the business of the state bank that is likely to cause insolvency or substantial dissipation of assets or earnings of the state bank, or is likely to seriously weaken the condition of the state bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to section 524.223, 524.606, subsection 2, or 524.707, subsection 2, the superintendent may issue an interim order requiring the bank, director, officer, employee,

or substantial shareholder to cease and desist from any such practice or act, and to take affirmative action, including suspension of the director, officer, or employee to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings. The interim order becomes effective upon service upon the state bank, or upon the director, officer, employee, or substantial shareholder of the state bank and, unless set aside, limited, or suspended by a court as provided in this chapter, remains effective and enforceable pending the completion of the administrative proceedings pursuant to the interim order and until such time as the superintendent dismisses the charges specified in the interim order, or, if a final cease and desist order is issued against the state bank or the director, officer, employee, or substantial shareholder until the effective date of the final order.

2. Within ten days after the state bank concerned or any director, officer, employee, or substantial shareholder is served with an interim order, the bank or such director, officer, employee, or substantial shareholder may apply to the district court in the county in which the bank has its principal place of business, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such interim order pending the completion of the administrative proceedings. If serious prejudice to the interests of the superintendent, the state bank, the officer, director, employee, or substantial shareholder would result from such hearing, the court may order the judicial proceeding to be conducted in camera.

3. The interim order shall contain a concise statement of the facts constituting the alleged unsafe or unsound practice or alleged dishonest act, and shall fix a time and place at which a hearing will be held to determine whether a final order to cease and desist should issue against the state bank or any director, officer, employee, or substantial

shareholder. The hearing shall be fixed for a date not later than thirty days after service of the interim order unless a later date is set at the request of the party so served. If the state bank, or the director, officer, employee, or substantial shareholder fails to appear at the hearing, the state bank, or the director, officer, employee, or substantial shareholder is 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 the hearing the superintendent finds that any unsafe or unsound practice or dishonest act specified in the interim order has been established, the superintendent may issue and serve upon the bank, or the director, officer, employee, or substantial shareholder a final order to cease and desist from any such practice or act. The order may require the state bank, or the director, officer, employee, or substantial shareholder to cease and desist from any such practice or act and, further, to take affirmative action, including suspension of the director, officer, or employee.

4. A hearing provided for in this section shall be presided over by an administrative law judge appointed in accordance with section 178.11. The hearing shall be private, unless the superintendent determines after full consideration of the views of the party afforded the hearing, that a public hearing is necessary to protect the public interest. After the hearing, and within thirty days after the case has been submitted for decision, the superintendent shall review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is predicated, and issue and serve upon each party to the proceeding an order consistent with this section.

5. Any final order issued by the superintendent pursuant to subsection 3 becomes effective upon service of the final order on the state bank, director, officer, employee, or substantial shareholder and shall remain effective except to the 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 in accordance with the terms of chapter 17A.

6. In the case of violation or threatened violation of, or failure to obey, an interim order issued pursuant to subsection 1 or a final order issued pursuant to subsection 3, 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 the order and such court shall have jurisdiction and power to order and require compliance with the interim order or final order.

7. For purposes of this section, "substantial shareholder" means a shareholder exercising a controlling influence over the management or policies of a state bank as determined by the superintendent.

Sec. 3. Section 524.606, subsection 2, unnumbered paragraph 1, Code 1991, is amended to read as follows:

When, in the opinion of the superintendent any director of a state bank ~~shall have continued to violate~~ has violated any law relating to such state bank or ~~shall have continued~~ has engaged in 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 the director 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~~ violated any law relating to such state bank or ~~continued~~ engaged in 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 the superintendent's 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 the person is a director at which time the person shall cease to be a director of the state bank.

Sec. 4. Section 524.707, subsection 2, Code 1991, is amended to read as follows:

2. Subsection 2 of section 524.606 providing for the removal of directors by the superintendent, shall have equal application to officers and employees.

Sec. 5. Section 524.901, subsection 3, Code 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. Shares in a federal home loan bank.

Sec. 6. Section 524.901, subsection 6, Code 1991, is amended to read as follows:

6. A state bank may, in the exercise of the powers granted in this chapter, purchase cash value life insurance contracts which may include provisions for the lump sum payment of premiums and which may include insurance against the loss of the lump sum payment. The cash value life insurance contracts purchased from any one company shall not exceed twenty percent of capital and surplus of the state bank and in the aggregate from all companies, shall not exceed twenty-five percent of total equity capital of the state bank unless the state bank has obtained the approval of the superintendent prior to the purchase of any cash value life insurance contract in excess of this limitation.

Sec. 7. 1990 Iowa Acts, chapter 1274, unnumbered paragraph 1 after the enacting clause, is amended to read as follows:

That the banking laws contained in Code chapter 524, as identified by the superintendent of banking, are suspended to the extent that the laws restrict any state or nationally chartered bank located in Iowa or bank holding company owning a bank located in Iowa in the acquisition of savings

associations eligible for assistance or their assets or liabilities. Such suspension shall remain in effect until July 1, ~~1991~~ 1992. On and after July 1, ~~1991~~ 1992, the restrictions in Code chapter 524 shall be applied as though acquisitions made pursuant to this resolution had not been made.

Sec. 8. This Act, being deemed of immediate importance, is effective upon enactment.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 507, Seventy-fourth General Assembly.

JOHN P. DWYER
Secretary of the Senate

Approved _____, 1991

TERRY E. BRANSTAD
Governor

SF 507