

Substituted by
SF 423 4-6-95
(P. 1352)

MAR 13 1995
Place On Calendar

HOUSE FILE 396
BY COMMITTEE ON COMMERCE
AND REGULATION

(SUCCESSOR TO HSB 183)

WITHDRAWN
4-6-95
(P. 1352)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to delayed deposit services businesses and
2 providing penalties.

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

HOUSE FILE 396

H-3708

- 1 Amend House File 396 as follows:
- 2 1. Page 6, by striking lines 16 through 19.
- 3 2. Page 6, by striking lines 24 through 30 and
- 4 inserting the following: "date agreed upon."
- 5 3. Page 10, line 7, by striking the word "--
- 6 INJUNCTION".
- 7 4. Page 10, by striking lines 12 through 15 and
- 8 inserting the following: "guilty of a serious
- 9 misdemeanor."
- 10 5. By renumbering as necessary.

By METCALF of Polk

H-3708 FILED APRIL 3, 1995

Adopted 4-6-95
(P. 1352)

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HF 396

1 Section 1. NEW SECTION. 533D.1 TITLE.

2 This chapter shall be known and may be cited as the
3 "Delayed Deposit Services Licensing Act".

4 Sec. 2. NEW SECTION. 533D.2 DEFINITIONS.

5 For purposes of this chapter, unless the context otherwise
6 requires:

7 1. "Check" means a check, draft, share draft, or other
8 instrument for the payment of money.

9 2. "Delayed deposit services business" means a person who
10 for a fee does either of the following:

11 a. Accepts a check dated subsequent to the date it was
12 written.

13 b. Accepts a check dated on the date it was written and
14 holds the check for a period of time prior to deposit or
15 presentment pursuant to an agreement with, or any
16 representation made to, the maker of the check, whether
17 express or implied.

18 3. "Licensee" means a person licensed to operate pursuant
19 to this chapter.

20 4. "Person" means an individual, group of individuals,
21 partnership, association, corporation, or any other business
22 unit or legal entity.

23 5. "Superintendent" means the superintendent of banking.

24 Sec. 3. NEW SECTION. 533D.3 LICENSE REQUIRED --
25 APPLICATION PROCESS -- DISPLAY.

26 1. A person shall not operate a delayed deposit services
27 business in this state unless the person is licensed by the
28 superintendent as provided in this chapter.

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

33 3. The application required by this section shall be
34 submitted with both of the following:

35 a. An application fee in an amount prescribed by rule

1 adopted by the superintendent.

2 b. A surety bond executed by a surety company authorized
3 to do business in this state in the sum of twenty-five
4 thousand dollars, which bond shall be continuous in nature
5 until canceled by the surety. A surety shall provide at least
6 thirty days' notice in writing to the licensee and to the
7 superintendent indicating the surety's intent to cancel the
8 bond and the effective date of the cancellation. The surety
9 bond shall be for the benefit of the citizens of this state
10 and shall be conditioned upon the licensee's willingness to
11 comply with this chapter, the faithful performance by the
12 licensee of the duties and obligations pertaining to the
13 delayed deposit services business so licensed, and the prompt
14 payment of any judgment recovered against the licensee. The
15 surety's liability under this chapter is limited to the amount
16 of the bond regardless of the number of years the bond is in
17 effect.

18 4. The superintendent shall issue a license to an
19 applicant if the superintendent finds all of the following:

20 a. The experience, character, and general fitness of the
21 applicant and its officers, directors, shareholders, partners,
22 or members are such as to warrant a finding that the applicant
23 will conduct the delayed deposit services business honestly,
24 fairly, and efficiently.

25 b. The applicant and its officers, directors,
26 shareholders, partners, or members have not been convicted of
27 a felony in this state, or convicted of a crime in another
28 jurisdiction which would be a felony in this state.

29 c. The applicant is financially responsible and will
30 conduct the delayed deposit services business pursuant to this
31 chapter and other applicable laws.

32 d. The applicant has unencumbered assets of at least
33 twenty-five thousand dollars available for operating the
34 delayed deposit services business.

35 5. The superintendent shall approve or deny an application

1 for a license by written order not more than ninety days after
2 the filing of an application. An order of the superintendent
3 issued pursuant to this section may be appealed pursuant to
4 chapter 17A.

5 6. A license issued pursuant to this chapter shall be
6 conspicuously posted at the licensee's place of business. A
7 license shall remain in effect until the next succeeding May
8 1, unless earlier suspended or revoked by the superintendent.
9 A license shall be renewed annually by filing with the
10 superintendent an application for renewal containing such
11 information as the superintendent may require to indicate any
12 material change in the information contained in the original
13 application or succeeding renewal applications and a renewal
14 fee of one hundred dollars.

15 Sec. 4. NEW SECTION. 533D.4 SURRENDER OF LICENSE.

16 A licensee may surrender a delayed deposit services license
17 by delivering to the superintendent written notice that the
18 license is surrendered. The surrender does not affect the
19 licensee's civil or criminal liability for acts committed
20 prior to such surrender, the liability of the surety on the
21 bond, or entitle such licensee to a return of any part of the
22 annual license fee. The superintendent may establish
23 procedures for the disposition of the books, accounts, and
24 records of the licensee and may require such action as deemed
25 necessary for the protection of the makers of checks which are
26 outstanding at the time of surrender of the license.

27 Sec. 5. NEW SECTION. 533D.5 CHANGE IN CIRCUMSTANCES --
28 NOTIFICATION OF SUPERINTENDENT.

29 A licensee is to notify the superintendent in writing
30 within thirty days of the occurrence of a material development
31 affecting the licensee, including, but not limited to, any of
32 the following:

- 33 1. Filing for bankruptcy or reorganization.
- 34 2. Reorganization of the business.
- 35 3. Commencement of license revocation or any other civil

1 or criminal proceedings by any other state or jurisdiction.

2 4. The filing of a criminal indictment or complaint
3 against the licensee or any of the licensee's officers,
4 directors, shareholders, partners, members, employees, or
5 agents.

6 5. A felony conviction against the licensee or any of the
7 licensee's officers, directors, shareholders, partners,
8 members, employees, or agents.

9 Sec. 6. NEW SECTION. 533D.6 CONTINUED OPERATION AFTER
10 CHANGE IN OWNERSHIP -- APPROVAL OF SUPERINTENDENT REQUIRED.

11 1. The prior written approval of the superintendent is
12 required for the continued operation of a delayed deposit
13 services business whenever a change in control of a licensee
14 is proposed. Control in the case of a corporation means
15 direct or indirect ownership, or the right to control, ten
16 percent or more of the voting shares of the corporation, or
17 the ability of a person to elect a majority of the directors
18 or otherwise effect a change in policy. Control in the case
19 of any other entity means any change in the principals of the
20 organization, whether active or passive. The superintendent
21 may require information deemed necessary to determine whether
22 a new application is required. Costs incurred by the
23 superintendent in investigating a change of control request
24 shall be paid by the person requesting such approval.

25 2. A license issued pursuant to this chapter is not
26 transferable or assignable.

27 Sec. 7. NEW SECTION. 533D.7 PRINCIPAL PLACE OF BUSINESS
28 -- BRANCH OFFICES AUTHORIZED.

29 1. Except as provided in subsection 2, a licensee may
30 operate a delayed deposit services business only at an office
31 designated as its principal place of business in the
32 application. The licensee shall maintain its books, accounts,
33 and records at its designated principal place of business. A
34 licensee may change the location of its designated principal
35 place of business with the prior written approval of the

1 superintendent. The superintendent shall establish forms and
2 procedures for determining whether the change of location
3 should be approved.

4 2. A licensee may operate branch offices only in the same
5 county in which the licensee's designated principal place of
6 business is located. The licensee may establish a branch
7 office or change the location of a branch office with the
8 prior written approval of the superintendent. The
9 superintendent shall establish forms and procedures for
10 determining whether the location of a branch office should be
11 approved.

12 3. A fee of one hundred fifty dollars shall be paid to the
13 superintendent for each request made pursuant to subsection 1
14 or 2.

15 Sec. 8. NEW SECTION. 533D.8 OTHER BUSINESS OPERATIONS AT
16 SAME SITE -- RESTRICTIONS.

17 1. A licensee may operate a delayed deposit services
18 business at a location where any other business is operated or
19 in association or conjunction with any other business with the
20 written approval of the superintendent and consistent with
21 both of the following requirements:

22 a. The books, accounts, and records of the delayed deposit
23 services business are kept and maintained separate and apart
24 from the books, accounts, and records of the other business.

25 b. The other business is not of a type which would tend to
26 enable the concealment of acts engaged in to evade the
27 requirements of this chapter. If the superintendent
28 determines upon investigation that the other business is of a
29 type which would conceal such acts the superintendent shall
30 order the licensee to cease the operation of the delayed
31 deposit services business at the location.

32 2. The department may order the licensee to cease
33 operations of the business if it fails to obtain written
34 approval of the superintendent before operating a business in
35 association or conjunction with services provided under this

1 chapter.

2 Sec. 9. NEW SECTION. 533D.9 FEE RESTRICTION, -- REQUIRED
3 DISCLOSURE.

4 1. A licensee shall not charge a fee in excess of fifteen
5 dollars on the first one hundred dollars on the face amount of
6 a check or more than ten dollars on subsequent one hundred
7 dollar increments on the face amount of the check for services
8 provided by the licensee, or pro rata for any portion of one
9 hundred dollars face value.

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

15 a. The fee to be charged for the transaction.

16 b. The annual percentage rate on the first hundred dollars
17 on the face amount of the check which the fee represents, and
18 the annual percentage rate on subsequent one hundred dollar
19 increments which the fee represents, if different.

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

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

31 3. In addition to the notice required by subsection 2,
32 every licensee shall conspicuously display a schedule of all
33 fees, charges, and penalties for all services provided by the
34 licensee authorized by this section. The notice shall be
35 posted at the office and every branch office of the licensee.

1 Sec. 10. NEW SECTION. 533D.10 PROHIBITED ACTS BY
2 LICENSEE.

- 3 1. A licensee shall not do any of the following:
4 a. Hold from any one maker more than two checks at any one
5 time.
6 b. Hold from any one maker a check or checks in an
7 aggregate face amount of more than five hundred dollars at any
8 one time.
9 c. Hold or agree to hold a check for more than thirty-one
10 days.
11 d. Require the maker to receive payment by a method which
12 causes the maker to pay additional or further fees and charges
13 to the licensee or another person.
14 e. Repay, refinance, or otherwise consolidate a postdated
15 check transaction with the proceeds of another postdated check
16 transaction made by the same licensee.
17 f. Receive any other charges or fees in addition to the
18 fees listed in section 533D.9, subsections 1 and 2.

19 2. For purposes of this section, "licensee" includes a
20 person related to the licensee by common ownership or control,
21 a person in whom the licensee has any financial interest, or
22 any employee or agent of the licensee.

23 Sec. 11. NEW SECTION. 533D.11 EXAMINATION OF RECORDS BY
24 SUPERINTENDENT.

25 The superintendent shall examine the books, accounts, and
26 records of each licensee annually. The costs of the
27 superintendent incurred in an examination shall be paid by the
28 licensee.

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

1 Sec. 12. NEW SECTION. 533D.12 SUSPENSION OR REVOCATION
2 OF LICENSE.

3 1. The superintendent may, after notice and hearing
4 pursuant to chapter 17A, suspend or revoke any license issued
5 pursuant to this chapter upon the finding of any of the
6 following:

7 a. A licensee or any of its officers, directors,
8 shareholders, partners, or members has violated this chapter
9 or any rule adopted or order issued by the superintendent.

10 b. A licensee has failed to pay a license fee required
11 under this chapter.

12 c. A fact or condition existing which, if it had existed
13 at the time of the original application for the license, would
14 have resulted in the denial of the superintendent to issue the
15 license.

16 d. A licensee has abandoned its place of business for a
17 period of sixty days or more.

18 e. A licensee fails to pay an administrative penalty and
19 the cost of investigation as ordered by the superintendent.

20 2. Notice of the time and place of the hearing provided
21 for in this section shall be given no less than ten days prior
22 to the date of the hearing.

23 Sec. 13. NEW SECTION. 533D.13 CEASE AND DESIST ORDER --
24 INJUNCTION.

25 If the superintendent believes that any person has engaged
26 in or is about to engage in an act or practice constituting a
27 violation of this chapter or any rule adopted or order issued
28 by the superintendent, the superintendent may issue and serve
29 on the person a cease and desist order. Upon entry of a cease
30 and desist order the superintendent shall promptly notify in
31 writing all persons to whom the order is directed that it has
32 been entered and the reasons for the order. Any person to
33 whom the order is directed may request in writing a hearing
34 within fifteen business days after the date of the issuance of
35 the order. Upon receipt of the written request, the matter

1 shall be set for hearing within fifteen business days of the
2 receipt by the superintendent, unless the person requesting
3 the hearing consents to a later date. If a hearing is not
4 requested within fifteen business days and none is ordered by
5 the superintendent, the order of the superintendent shall
6 automatically become final and remain in effect until modified
7 or vacated by the superintendent. If a hearing is requested
8 or ordered, the superintendent, after notice and hearing,
9 shall issue written findings of fact and conclusions of law
10 and shall affirm, vacate, or modify the order.

11 The superintendent may vacate or modify an order if the
12 superintendent finds that the conditions which caused its
13 entry have changed or that it is otherwise in the public
14 interest to do so. Any person aggrieved by a final order of
15 the superintendent may appeal the order as provided in chapter
16 17A.

17 If it appears that a person has engaged in or is engaging
18 in an act or practice in violation of this chapter, the
19 attorney general may initiate an action in the district court
20 to enjoin such acts or practices and to enforce compliance
21 with this chapter. Upon a showing of a violation of this
22 chapter, a permanent or temporary injunction, restraining
23 order, or writ of mandamus shall be granted or a receiver or
24 conservator may be appointed to oversee the person's assets.
25 The attorney general shall not be required to post a bond.

26 Sec. 14. NEW SECTION. 533D.14 ADMINISTRATIVE PENALTY.

27 1. If the superintendent finds, after notice and hearing
28 as provided in this chapter, that a person has violated this
29 chapter, a rule adopted pursuant to this chapter, or an order
30 of the superintendent, the superintendent may order the person
31 to pay an administrative fine of not more than five thousand
32 dollars for each violation, in addition to the costs of
33 investigation.

34 2. If a person fails to pay an administrative fine and the
35 costs of investigation ordered pursuant to subsection 1, a

1 lien in the amount of the fine and costs may be imposed upon
2 all assets and property of the person in this state and may be
3 recovered in a civil action by the superintendent. Failure of
4 the person to pay the fine and costs constitutes a separate
5 violation of this chapter.

6 Sec. 15. NEW SECTION. 533D.15 CRIMINAL VIOLATION --
7 OPERATION OF BUSINESS WITHOUT LICENSE -- INJUNCTION.

8 A person required to be licensed under this chapter who
9 operates a delayed deposit services business in this state
10 without first obtaining a license under this chapter or while
11 such license is suspended or revoked by the superintendent is
12 guilty of a serious misdemeanor. In addition to the criminal
13 penalty provided for in this section, the superintendent may
14 also commence an action to enjoin the operation of the
15 business.

16 Sec. 16. NEW SECTION. 533D.16 APPLICABILITY.

17 This chapter does not apply to a bank incorporated under
18 the provisions of any state or federal law, a savings and loan
19 association incorporated under the provisions of any state or
20 federal law, a credit union organized under the provisions of
21 any state or federal law, a corporation licensed as an
22 industrial loan company under chapter 536A, or an affiliate of
23 a bank, savings and loan association, credit union, or
24 industrial loan company.

25 Sec. 17. Section 537.7102, subsection 3, Code 1995, is
26 amended to read as follows:

27 3. "Debt" means an actual or alleged obligation arising
28 out of a consumer credit transaction, consumer rental purchase
29 agreement, or a transaction which would have been a consumer
30 credit transaction either if a finance charge was made, if the
31 obligation was not payable in installments, if a lease was for
32 a term of four months or less, or if a lease was of an
33 interest in land. A debt includes a check as defined in
34 section 554.3104 given in a transaction in connection with a
35 consumer rental purchase agreement, in a transaction which was

1 a consumer credit sale or in a transaction which would have
2 been a consumer credit sale if credit was granted and if a
3 finance charge was made, or in a transaction regulated under
4 chapter 533D.

5 EXPLANATION

6 This bill establishes a new chapter 533D which defines and
7 regulates delayed deposit services businesses.

8 Section 533D.1 establishes the title of the chapter.

9 Section 533D.2 defines terms used in the new chapter.

10 Section 533D.3 prohibits a person from operating a delayed
11 deposit services business unless licensed by the
12 superintendent. The person must submit an application to the
13 superintendent with an application fee as established by the
14 superintendent by rule. Additionally, the applicant must
15 submit a surety bond in the sum of \$25,000 executed by a
16 surety company authorized to do business in this state. A
17 license issued pursuant to this chapter is to be conspicuously
18 posted at the licensee's place of business.

19 Section 533D.4 provides that a license may be surrendered
20 to the superintendent. The surrender of the license does not
21 affect the civil or criminal liability of the licensee or the
22 surety for acts committed prior to the surrender.

23 Section 533D.5 requires that a licensee must notify the
24 superintendent of the occurrence of a material development
25 affecting the licensee including, but not limited to, filing
26 for bankruptcy or reorganization, reorganization of the
27 business, commencement of a license revocation or any other
28 civil or criminal proceeding in another state, filing of a
29 criminal indictment or complaint against the licensee or any
30 of the licensee's officers, directors, shareholders, partners,
31 members, employees, or agents, or a felony conviction against
32 the licensee or any of the licensee's officers, directors,
33 shareholders, partners, members, employees, or agents.

34 Section 533D.6 provides that the written approval of the
35 superintendent is required for the continued operation of a

1 delayed deposit services business whenever a change in control
2 of the licensee occurs. The section provides that a license
3 issued pursuant to this chapter is not transferable.

4 Section 533D.7 provides that a licensee may operate a
5 delayed deposit services business only at an office designated
6 as its principal place of business, except that with the
7 superintendent's approval, the licensee may operate a branch
8 office in the same county in which the licensee's principal
9 place of business is located.

10 Section 533D.8 provides that a licensee may operate another
11 business at the location of the delayed deposit services
12 business with the written permission of the superintendent.

13 Section 533D.9 prohibits the licensee from charging a fee
14 in excess of \$15 on the first \$100 on the face amount of the
15 check, or more than \$10 on subsequent \$100 increments on the
16 face amount of the check.

17 Section 533D.10 prohibits the licensee from engaging in
18 certain acts related to the business.

19 Section 533D.11 provides that the superintendent is to
20 examine the books, accounts, and records of the licensee
21 annually. The costs of the examination are to be paid by the
22 licensee being examined.

23 Section 533D.12 provides that the superintendent may
24 suspend or revoke a license issued under this chapter after
25 notice and hearing upon a finding of a violation of this
26 chapter by a licensee, failure by a licensee to pay a required
27 fee, penalty, or other costs the existence of a fact or
28 condition which would have resulted in the denial of a license
29 if the fact or condition existed at the time of the original
30 application, or the licensee has abandoned its place of
31 business for a period of 60 days or more.

32 Section 533D.13 grants the superintendent the authority to
33 issue a cease and desist order, and provides that the attorney
34 general may seek an injunction to prevent acts constituting
35 violations of this chapter.

1 Section 533D.14 provides for an administrative penalty to
2 be assessed by the superintendent as a result of a violation
3 of this chapter.

4 Section 533D.15 provides that a person who operates a
5 delayed deposit services business without a license commits a
6 serious misdemeanor.

7 Section 533D.16 provides that this chapter does not apply
8 to a bank incorporated under the provisions of any state or
9 federal law, any savings and loan association incorporated
10 under the provisions of any state or federal law, a credit
11 union organized under the provisions of any state or federal
12 law, a corporation licensed as an industrial loan company
13 under chapter 536A, or an affiliate of a bank, savings and
14 loan association, credit union, or industrial loan company.

15 The amendment to section 537.7102 is amended to provide
16 that the definition of "debt" under the Iowa Debt Collection
17 Practices Act includes a check given in a transaction
18 regulated under the new chapter 533D.

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METCALF - CHAIR
NUTT
WEIGEL

HSB 183

COMMERCE - REGULATION

SUCCESSOR
HOUSE FILE 396

BY (PROPOSED COMMITTEE ON
COMMERCE AND REGULATION
BILL BY CHAIRPERSON
METCALF)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to delayed deposit services businesses and
2 providing penalties.

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

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1 Section 1. NEW SECTION. 533D.1 TITLE.

2 This chapter shall be known and may be cited as the
3 "Delayed Deposit Services Licensing Act".

4 Sec. 2. NEW SECTION. 533D.2 DEFINITIONS.

5 For purposes of this chapter, unless the context otherwise
6 requires:

7 1. "Check" means a check, draft, share draft, or other
8 instrument for the payment of money.

9 2. "Delayed deposit services business" means a person who
10 for a fee does either of the following:

11 a. Accepts a check dated subsequent to the date it was
12 written.

13 b. Accepts a check dated on the date it was written and
14 holds the check for a period of time prior to deposit or
15 presentment pursuant to an agreement with, or any
16 representation made to, the maker of the check, whether
17 express or implied.

18 3. "Licensee" means a person licensed to operate pursuant
19 to this chapter.

20 4. "Person" means an individual, group of individuals,
21 partnership, association, corporation, or any other business
22 unit or legal entity.

23 5. "Superintendent" means the superintendent of banking.

24 Sec. 3. NEW SECTION. 533D.3 LICENSE REQUIRED --
25 APPLICATION PROCESS -- DISPLAY.

26 1. A person shall not operate a delayed deposit services
27 business in this state unless the person is licensed by the
28 superintendent as provided in this chapter.

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

33 3. The application required by this section shall be
34 submitted with both of the following:

35 a. An application fee in an amount prescribed by rule

1 adopted by the superintendent.

2 b. A surety bond executed by a surety company authorized
3 to do business in this state in the sum of twenty-five
4 thousand dollars, which bond shall be continuous in nature
5 until canceled by the surety. A surety shall provide at least
6 thirty days' notice in writing to the licensee and to the
7 superintendent indicating the surety's intent to cancel the
8 bond and the effective date of the cancellation. The surety
9 bond shall be for the benefit of the citizens of this state
10 and shall be conditioned upon the licensee's willingness to
11 comply with this chapter, the faithful performance by the
12 licensee of the duties and obligations pertaining to the
13 delayed deposit services business so licensed, and the prompt
14 payment of any judgment recovered against the licensee. The
15 surety's liability under this chapter is limited to the amount
16 of the bond regardless of the number of years the bond is in
17 effect.

18 4. The superintendent shall issue a license to an
19 applicant if the superintendent finds all of the following:

20 a. The experience, character, and general fitness of the
21 applicant and its officers, directors, shareholders, partners,
22 or members are such as to warrant a finding that the applicant
23 will conduct the delayed deposit services business honestly,
24 fairly, and efficiently.

25 b. The applicant and its officers, directors,
26 shareholders, partners, or members have not been convicted of
27 a felony in this state, or convicted of a crime in another
28 jurisdiction which would be a felony in this state.

29 c. The applicant is financially responsible and will
30 conduct the delayed deposit services business pursuant to this
31 chapter and other applicable laws.

32 d. The applicant has unencumbered assets of at least
33 twenty-five thousand dollars available for operating the
34 delayed deposit services business.

35 5. The superintendent shall approve or deny an application

1 for a license by written order not more than ninety days after
2 the filing of an application. An order of the superintendent
3 issued pursuant to this section may be appealed pursuant to
4 chapter 17A.

5 6. A license issued pursuant to this chapter shall be
6 conspicuously posted at the licensee's place of business. A
7 license shall remain in effect until the next succeeding May
8 1, unless earlier suspended or revoked by the superintendent.
9 A license shall be renewed annually by filing with the
10 superintendent an application for renewal containing such
11 information as the superintendent may require to indicate any
12 material change in the information contained in the original
13 application or succeeding renewal applications and a renewal
14 fee of one hundred dollars.

15 Sec. 4. NEW SECTION. 533D.4 SURRENDER OF LICENSE.

16 A licensee may surrender a delayed deposit services license
17 by delivering to the superintendent written notice that the
18 license is surrendered. The surrender does not affect the
19 licensee's civil or criminal liability for acts committed
20 prior to such surrender, the liability of the surety on the
21 bond, or entitle such licensee to a return of any part of the
22 annual license fee. The superintendent may establish
23 procedures for the disposition of the books, accounts, and
24 records of the licensee and may require such action as deemed
25 necessary for the protection of the makers of checks which are
26 outstanding at the time of surrender of the license.

27 Sec. 5. NEW SECTION. 533D.5 CHANGE IN CIRCUMSTANCES --
28 NOTIFICATION OF SUPERINTENDENT.

29 A licensee is to notify the superintendent in writing
30 within thirty days of the occurrence of a material development
31 affecting the licensee, including, but not limited to, any of
32 the following:

- 33 1. Filing for bankruptcy or reorganization.
- 34 2. Reorganization of the business.
- 35 3. Commencement of license revocation or any other civil

1 or criminal proceedings by any other state or jurisdiction.

2 4. The filing of a criminal indictment or complaint
3 against the licensee or any of the licensee's officers,
4 directors, shareholders, partners, members, employees, or
5 agents.

6 5. A felony conviction against the licensee or any of the
7 licensee's officers, directors, shareholders, partners,
8 members, employees, or agents.

9 Sec. 6. NEW SECTION. 533D.6 CONTINUED OPERATION AFTER
10 CHANGE IN OWNERSHIP -- APPROVAL OF SUPERINTENDENT REQUIRED.

11 1. The prior written approval of the superintendent is
12 required for the continued operation of a delayed deposit
13 services business whenever a change in control of a licensee
14 is proposed. Control in the case of a corporation means
15 direct or indirect ownership, or the right to control, ten
16 percent or more of the voting shares of the corporation, or
17 the ability of a person to elect a majority of the directors
18 or otherwise effect a change in policy. Control in the case
19 of any other entity means any change in the principals of the
20 organization, whether active or passive. The superintendent
21 may require information deemed necessary to determine whether
22 a new application is required. Costs incurred by the
23 superintendent in investigating a change of control request
24 shall be paid by the person requesting such approval.

25 2. A license issued pursuant to this chapter is not
26 transferable or assignable.

27 Sec. 7. NEW SECTION. 533D.7 PRINCIPAL PLACE OF BUSINESS
28 -- BRANCH OFFICES AUTHORIZED.

29 1. Except as provided in subsection 2, a licensee may
30 operate a delayed deposit services business only at an office
31 designated as its principal place of business in the
32 application. The licensee shall maintain its books, accounts,
33 and records at its designated principal place of business. A
34 licensee may change the location of its designated principal
35 place of business with the prior written approval of the

1 superintendent. The superintendent shall establish forms and
2 procedures for determining whether the change of location
3 should be approved.

4 2. A licensee may operate branch offices only in the same
5 county in which the licensee's designated principal place of
6 business is located. The licensee may establish a branch
7 office or change the location of a branch office with the
8 prior written approval of the superintendent. The
9 superintendent shall establish forms and procedures for
10 determining whether the location of a branch office should be
11 approved.

12 3. A fee of one hundred fifty dollars shall be paid to the
13 superintendent for each request made pursuant to subsection 1
14 or 2.

15 Sec. 8. NEW SECTION. 533D.8 OTHER BUSINESS OPERATIONS AT
16 SAME SITE -- RESTRICTIONS.

17 1. A licensee may operate a delayed deposit services
18 business at a location where any other business is operated or
19 in association or conjunction with any other business with the
20 written approval of the superintendent and consistent with
21 both of the following requirements:

22 a. The books, accounts, and records of the delayed deposit
23 services business are kept and maintained separate and apart
24 from the books, accounts, and records of the other business.

25 b. The other business is not of a type which would tend to
26 enable the concealment of acts engaged in to evade the
27 requirements of this chapter. If the superintendent
28 determines upon investigation that the other business is of a
29 type which would conceal such acts the superintendent shall
30 order the licensee to cease the operation of the delayed
31 deposit services business at the location.

32 2. The department may order the licensee to cease
33 operations of the business if it fails to obtain written
34 approval of the superintendent before operating a business in
35 association or conjunction with services provided under this

1 chapter.

2 Sec. 9. NEW SECTION. 533D.9 FEE RESTRICTION -- REQUIRED
3 DISCLOSURE.

4 1. A licensee shall not charge a fee in excess of fifteen
5 dollars on the first one hundred dollars on the face amount of
6 a check or more than ten dollars on subsequent one hundred
7 dollar increments on the face amount of the check for services
8 provided by the licensee, or pro rata for any portion of one
9 hundred dollars face value.

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

15 a. The fee to be charged for the transaction.

16 b. The date on which the check will be deposited or
17 presented for negotiation.

18 c. Any penalty, not to exceed fifteen dollars, which the
19 licensee will charge if the check is not negotiable on the
20 date agreed upon.

21 3. In addition to the notice required by subsection 2,
22 every licensee shall conspicuously display a schedule of all
23 fees, charges, and penalties for all services provided by the
24 licensee authorized by this section. The notice shall be
25 posted at the office and every branch office of the licensee.

26 Sec. 10. NEW SECTION. 533D.10 PROHIBITED ACTS BY
27 LICENSEE.

28 1. A licensee shall not do any of the following:

29 a. Hold from any one maker more than two checks at any one
30 time.

31 b. Hold from any one maker a check or checks in an
32 aggregate face amount of more than five hundred dollars at any
33 one time.

34 c. Hold or agree to hold a check for more than thirty-one
35 days.

1 d. Require the maker to receive payment by a method which
2 causes the maker to pay additional or further fees and charges
3 to the licensee or another person.

4 e. Repay, refinance, or otherwise consolidate a postdated
5 check transaction with the proceeds of another postdated check
6 transaction made by the same licensee.

7 f. Receive any other charges or fees in addition to the
8 fees listed in section 533D.9, subsections 1 and 2.

9 2. For purposes of this section, "licensee" includes a
10 person related to the licensee by common ownership or control,
11 a person in whom the licensee has any financial interest, or
12 any employee or agent of the licensee.

13 Sec. 11. NEW SECTION. 533D.11 EXAMINATION OF RECORDS BY
14 SUPERINTENDENT.

15 The superintendent shall examine the books, accounts, and
16 records of each licensee annually. The costs of the
17 superintendent incurred in an examination shall be paid by the
18 licensee.

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

26 Sec. 12. NEW SECTION. 533D.12 SUSPENSION OR REVOCATION
27 OF LICENSE.

28 1. The superintendent may, after notice and hearing
29 pursuant to chapter 17A, suspend or revoke any license issued
30 pursuant to this chapter upon the finding of any of the
31 following:

32 a. A licensee or any of its officers, directors,
33 shareholders, partners, or members has violated this chapter
34 or any rule adopted or order issued by the superintendent.

35 b. A licensee has failed to pay a license fee required

1 under this chapter.

2 c. A fact or condition existing which, if it had existed
3 at the time of the original application for the license, would
4 have resulted in the denial of the superintendent to issue the
5 license.

6 d. A licensee has abandoned its place of business for a
7 period of sixty days or more.

8 e. A licensee fails to pay an administrative penalty and
9 the cost of investigation as ordered by the superintendent.

10 2. Notice of the time and place of the hearing provided
11 for in this section shall be given no less than ten days prior
12 to the date of the hearing.

13 Sec. 13. NEW SECTION. 533D.13 CEASE AND DESIST ORDER --
14 INJUNCTION.

15 If the superintendent believes that any person has engaged
16 in or is about to engage in an act or practice constituting a
17 violation of this chapter or any rule adopted or order issued
18 by the superintendent, the superintendent may issue and serve
19 on the person a cease and desist order. Upon entry of a cease
20 and desist order the superintendent shall promptly notify in
21 writing all persons to whom the order is directed that it has
22 been entered and the reasons for the order. Any person to
23 whom the order is directed may request in writing a hearing
24 within fifteen business days after the date of the issuance of
25 the order. Upon receipt of the written request, the matter
26 shall be set for hearing within fifteen business days of the
27 receipt by the superintendent, unless the person requesting
28 the hearing consents to a later date. If a hearing is not
29 requested within fifteen business days and none is ordered by
30 the superintendent, the order of the superintendent shall
31 automatically become final and remain in effect until modified
32 or vacated by the superintendent. If a hearing is requested
33 or ordered, the superintendent, after notice and hearing,
34 shall issue written findings of fact and conclusions of law
35 and shall affirm, vacate, or modify the order.

1 The superintendent may vacate or modify an order if the
2 superintendent finds that the conditions which caused its
3 entry have changed or that it is otherwise in the public
4 interest to do so. Any person aggrieved by a final order of
5 the superintendent may appeal the order as provided in chapter
6 17A.

7 If it appears that a person has engaged in or is engaging
8 in an act or practice in violation of this chapter, the
9 attorney general may initiate an action in the district court
10 to enjoin such acts or practices and to enforce compliance
11 with this chapter. Upon a showing of a violation of this
12 chapter, a permanent or temporary injunction, restraining
13 order, or writ of mandamus shall be granted or a receiver or
14 conservator may be appointed to oversee the person's assets.
15 The attorney general shall not be required to post a bond.

16 Sec. 14. NEW SECTION. 533D.14 ADMINISTRATIVE PENALTY.

17 1. If the superintendent finds, after notice and hearing
18 as provided in this chapter, that a person has violated this
19 chapter, a rule adopted pursuant to this chapter, or an order
20 of the superintendent, the superintendent may order the person
21 to pay an administrative fine of not more than five thousand
22 dollars for each violation, in addition to the costs of
23 investigation.

24 2. If a person fails to pay an administrative fine and the
25 costs of investigation ordered pursuant to subsection 1, a
26 lien in the amount of the fine and costs may be imposed upon
27 all assets and property of the person in this state and may be
28 recovered in a civil action by the superintendent. Failure of
29 the person to pay the fine and costs constitutes a separate
30 violation of this chapter.

31 Sec. 15. NEW SECTION. 533D.15 CRIMINAL VIOLATION --
32 OPERATION OF BUSINESS WITHOUT LICENSE.

33 A person required to be licensed under this chapter who
34 operates a delayed deposit services business in this state
35 without first obtaining a license under this chapter or while

1 such license is suspended or revoked by the superintendent is
2 guilty of a serious misdemeanor.

3 Sec. 16. NEW SECTION. 533D.16 APPLICABILITY.

4 This chapter does not apply to a bank incorporated under
5 the provisions of any state or federal law, a savings and loan
6 association incorporated under the provisions of any state or
7 federal law, a credit union organized under the provisions of
8 any state or federal law, a corporation licensed as an
9 industrial loan company under chapter 536A, or an affiliate of
10 a bank, savings and loan association, credit union, or
11 industrial loan company.

12 Sec. 17. Section 537.7102, subsection 3, Code 1995, is
13 amended to read as follows:

14 3. "Debt" means an actual or alleged obligation arising
15 out of a consumer credit transaction, consumer rental purchase
16 agreement, or a transaction which would have been a consumer
17 credit transaction either if a finance charge was made, if the
18 obligation was not payable in installments, if a lease was for
19 a term of four months or less, or if a lease was of an
20 interest in land. A debt includes a check as defined in
21 section 554.3104 given in a transaction in connection with a
22 consumer rental purchase agreement, in a transaction which was
23 a consumer credit sale or in a transaction which would have
24 been a consumer credit sale if credit was granted and if a
25 finance charge was made, or in a transaction regulated under
26 chapter 533D.

27

EXPLANATION

28 This bill establishes a new chapter 533D which defines and
29 regulates delayed deposit services businesses.

30 Section 533D.1 establishes the title of the chapter.

31 Section 533D.2 defines terms used in the new chapter.

32 Section 533D.3 prohibits a person from operating a delayed
33 deposit services business unless licensed by the
34 superintendent. The person must submit an application to the
35 superintendent with an application fee as established by the

1 superintendent by rule. Additionally, the applicant must
2 submit a surety bond in the sum of \$25,000 executed by a
3 surety company authorized to do business in this state. A
4 license issued pursuant to this chapter is to be conspicuously
5 posted at the licensee's place of business.

6 Section 533D.4 provides that a license may be surrendered
7 to the superintendent. The surrender of the license does not
8 affect the civil or criminal liability of the licensee or the
9 surety for acts committed prior to the surrender.

10 Section 533D.5 requires that a licensee must notify the
11 superintendent of the occurrence of a material development
12 affecting the licensee including, but not limited to, filing
13 for bankruptcy or reorganization, reorganization of the
14 business, commencement of a license revocation or any other
15 civil or criminal proceeding in another state, filing of a
16 criminal indictment or complaint against the licensee or any
17 of the licensee's officers, directors, shareholders, partners,
18 members, employees, or agents, or a felony conviction against
19 the licensee or any of the licensee's officers, directors,
20 shareholders, partners, members, employees, or agents.

21 Section 533D.6 provides that the written approval of the
22 superintendent is required for the continued operation of a
23 delayed deposit services business whenever a change in control
24 of the licensee occurs. The section provides that a license
25 issued pursuant to this chapter is not transferable.

26 Section 533D.7 provides that a licensee may operate a
27 delayed deposit services business only at an office designated
28 as its principal place of business, except that with the
29 superintendent's approval, the licensee may operate a branch
30 office in the same county in which the licensee's principal
31 place of business is located.

32 Section 533D.8 provides that a licensee may operate another
33 business at the location of the delayed deposit services
34 business with the written permission of the superintendent.

35 Section 533D.9 prohibits the licensee from charging a fee

1 in excess of \$15 on the first \$100 on the face amount of the
2 check, or more than \$10 on subsequent \$100 increments on the
3 face amount of the check.

4 Section 533D.10 prohibits the licensee from engaging in
5 certain acts related to the business.

6 Section 533D.11 provides that the superintendent is to
7 examine the books, accounts, and records of the licensee
8 annually. The costs of the examination are to be paid by the
9 licensee being examined.

10 Section 533D.12 provides that the superintendent may
11 suspend or revoke a license issued under this chapter after
12 notice and hearing upon a finding of a violation of this
13 chapter by a licensee, failure by a licensee to pay a required
14 fee, penalty, or other costs the existence of a fact or
15 condition which would have resulted in the denial of a license
16 if the fact or condition existed at the time of the original
17 application, or the licensee has abandoned its place of
18 business for a period of 60 days or more.

19 Section 533D.13 grants the superintendent the authority to
20 issue a cease and desist order, and provides that the attorney
21 general may seek an injunction to prevent acts constituting
22 violations of this chapter.

23 Section 533D.14 provides for an administrative penalty to
24 be assessed by the superintendent as a result of a violation
25 of this chapter.

26 Section 533D.15 provides that a person who operates a
27 delayed deposit services business without a license commits a
28 serious misdemeanor.

29 Section 533D.16 provides that this chapter does not apply
30 to a bank incorporated under the provisions of any state or
31 federal law, any savings and loan association incorporated
32 under the provisions of any state or federal law, a credit
33 union organized under the provisions of any state or federal
34 law, a corporation licensed as an industrial loan company
35 under chapter 536A, or an affiliate of a bank, savings and

1 loan association, credit union, or industrial loan company.

2 The amendment to section 537.7102 is amended to provide
3 that the definition of "debt" under the Iowa Debt Collection
4 Practices Act includes a check given in a transaction
5 regulated under the new chapter 533D.

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