

House Study Bill 183

Conference Committee Text

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1 1 Section 1. NEW SECTION. 533D.1 TITLE.
1 2 This chapter shall be known and may be cited as the
1 3 "Delayed Deposit Services Licensing Act".
1 4 Sec. 2. NEW SECTION. 533D.2 DEFINITIONS.
1 5 For purposes of this chapter, unless the context otherwise
1 6 requires:
1 7 1. "Check" means a check, draft, share draft, or other
1 8 instrument for the payment of money.
1 9 2. "Delayed deposit services business" means a person who
1 10 for a fee does either of the following:
1 11 a. Accepts a check dated subsequent to the date it was
1 12 written.
1 13 b. Accepts a check dated on the date it was written and
1 14 holds the check for a period of time prior to deposit or
1 15 presentment pursuant to an agreement with, or any
1 16 representation made to, the maker of the check, whether
1 17 express or implied.
1 18 3. "Licensee" means a person licensed to operate pursuant
1 19 to this chapter.
1 20 4. "Person" means an individual, group of individuals,
1 21 partnership, association, corporation, or any other business
1 22 unit or legal entity.
1 23 5. "Superintendent" means the superintendent of banking.
1 24 Sec. 3. NEW SECTION. 533D.3 LICENSE REQUIRED &endash;
1 25 APPLICATION PROCESS &endash; DISPLAY.
1 26 1. A person shall not operate a delayed deposit services
1 27 business in this state unless the person is licensed by the
1 28 superintendent as provided in this chapter.
1 29 2. An applicant for a license shall submit an application,
1 30 under oath, to the superintendent on forms prescribed by the
1 31 superintendent. The forms shall contain such information as
1 32 the superintendent may prescribe.
1 33 3. The application required by this section shall be
1 34 submitted with both of the following:
1 35 a. An application fee in an amount prescribed by rule
2 1 adopted by the superintendent.
2 2 b. A surety bond executed by a surety company authorized
2 3 to do business in this state in the sum of twenty-five
2 4 thousand dollars, which bond shall be continuous in nature
2 5 until canceled by the surety. A surety shall provide at least
2 6 thirty days' notice in writing to the licensee and to the
2 7 superintendent indicating the surety's intent to cancel the
2 8 bond and the effective date of the cancellation. The surety
2 9 bond shall be for the benefit of the citizens of this state
2 10 and shall be conditioned upon the licensee's willingness to
2 11 comply with this chapter, the faithful performance by the
2 12 licensee of the duties and obligations pertaining to the
2 13 delayed deposit services business so licensed, and the prompt
2 14 payment of any judgment recovered against the licensee. The
2 15 surety's liability under this chapter is limited to the amount
2 16 of the bond regardless of the number of years the bond is in
2 17 effect.
2 18 4. The superintendent shall issue a license to an
2 19 applicant if the superintendent finds all of the following:
2 20 a. The experience, character, and general fitness of the
2 21 applicant and its officers, directors, shareholders, partners,

2 22 or members are such as to warrant a finding that the applicant
2 23 will conduct the delayed deposit services business honestly,
2 24 fairly, and efficiently.

2 25 b. The applicant and its officers, directors,
2 26 shareholders, partners, or members have not been convicted of
2 27 a felony in this state, or convicted of a crime in another
2 28 jurisdiction which would be a felony in this state.

2 29 c. The applicant is financially responsible and will
2 30 conduct the delayed deposit services business pursuant to this
2 31 chapter and other applicable laws.

2 32 d. The applicant has unencumbered assets of at least
2 33 twenty-five thousand dollars available for operating the
2 34 delayed deposit services business.

2 35 5. The superintendent shall approve or deny an application
3 1 for a license by written order not more than ninety days after
3 2 the filing of an application. An order of the superintendent
3 3 issued pursuant to this section may be appealed pursuant to
3 4 chapter 17A.

3 5 6. A license issued pursuant to this chapter shall be
3 6 conspicuously posted at the licensee's place of business. A
3 7 license shall remain in effect until the next succeeding May
3 8 1, unless earlier suspended or revoked by the superintendent.
3 9 A license shall be renewed annually by filing with the
3 10 superintendent an application for renewal containing such
3 11 information as the superintendent may require to indicate any
3 12 material change in the information contained in the original
3 13 application or succeeding renewal applications and a renewal
3 14 fee of one hundred dollars.

3 15 Sec. 4. NEW SECTION. 533D.4 SURRENDER OF LICENSE.

3 16 A licensee may surrender a delayed deposit services license
3 17 by delivering to the superintendent written notice that the
3 18 license is surrendered. The surrender does not affect the
3 19 licensee's civil or criminal liability for acts committed
3 20 prior to such surrender, the liability of the surety on the
3 21 bond, or entitle such licensee to a return of any part of the
3 22 annual license fee. The superintendent may establish
3 23 procedures for the disposition of the books, accounts, and
3 24 records of the licensee and may require such action as deemed
3 25 necessary for the protection of the makers of checks which are
3 26 outstanding at the time of surrender of the license.

3 27 Sec. 5. NEW SECTION. 533D.5 CHANGE IN CIRCUMSTANCES –
3 28 NOTIFICATION OF SUPERINTENDENT.

3 29 A licensee is to notify the superintendent in writing
3 30 within thirty days of the occurrence of a material development
3 31 affecting the licensee, including, but not limited to, any of
3 32 the following:

- 3 33 1. Filing for bankruptcy or reorganization.
- 3 34 2. Reorganization of the business.
- 3 35 3. Commencement of license revocation or any other civil
4 1 or criminal proceedings by any other state or jurisdiction.
- 4 2 4. The filing of a criminal indictment or complaint
4 3 against the licensee or any of the licensee's officers,
4 4 directors, shareholders, partners, members, employees, or
4 5 agents.

4 6 5. A felony conviction against the licensee or any of the
4 7 licensee's officers, directors, shareholders, partners,
4 8 members, employees, or agents.

4 9 Sec. 6. NEW SECTION. 533D.6 CONTINUED OPERATION AFTER
4 10 CHANGE IN OWNERSHIP – APPROVAL OF SUPERINTENDENT REQUIRED.

4 11 1. The prior written approval of the superintendent is
4 12 required for the continued operation of a delayed deposit
4 13 services business whenever a change in control of a licensee
4 14 is proposed. Control in the case of a corporation means
4 15 direct or indirect ownership, or the right to control, ten
4 16 percent or more of the voting shares of the corporation, or
4 17 the ability of a person to elect a majority of the directors
4 18 or otherwise effect a change in policy. Control in the case

4 19 of any other entity means any change in the principals of the
4 20 organization, whether active or passive. The superintendent
4 21 may require information deemed necessary to determine whether
4 22 a new application is required. Costs incurred by the
4 23 superintendent in investigating a change of control request
4 24 shall be paid by the person requesting such approval.

4 25 2. A license issued pursuant to this chapter is not
4 26 transferable or assignable.

4 27 Sec. 7. NEW SECTION. 533D.7 PRINCIPAL PLACE OF BUSINESS
4 28 &endash; BRANCH OFFICES AUTHORIZED.

4 29 1. Except as provided in subsection 2, a licensee may
4 30 operate a delayed deposit services business only at an office
4 31 designated as its principal place of business in the
4 32 application. The licensee shall maintain its books, accounts,
4 33 and records at its designated principal place of business. A
4 34 licensee may change the location of its designated principal
4 35 place of business with the prior written approval of the
5 1 superintendent. The superintendent shall establish forms and
5 2 procedures for determining whether the change of location
5 3 should be approved.

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

5 12 3. A fee of one hundred fifty dollars shall be paid to the
5 13 superintendent for each request made pursuant to subsection 1
5 14 or 2.

5 15 Sec. 8. NEW SECTION. 533D.8 OTHER BUSINESS OPERATIONS AT
5 16 SAME SITE &endash; RESTRICTIONS.

5 17 1. A licensee may operate a delayed deposit services
5 18 business at a location where any other business is operated or
5 19 in association or conjunction with any other business with the
5 20 written approval of the superintendent and consistent with
5 21 both of the following requirements:

5 22 a. The books, accounts, and records of the delayed deposit
5 23 services business are kept and maintained separate and apart
5 24 from the books, accounts, and records of the other business.

5 25 b. The other business is not of a type which would tend to
5 26 enable the concealment of acts engaged in to evade the
5 27 requirements of this chapter. If the superintendent
5 28 determines upon investigation that the other business is of a
5 29 type which would conceal such acts the superintendent shall
5 30 order the licensee to cease the operation of the delayed
5 31 deposit services business at the location.

5 32 2. The department may order the licensee to cease
5 33 operations of the business if it fails to obtain written
5 34 approval of the superintendent before operating a business in
5 35 association or conjunction with services provided under this
6 1 chapter.

6 2 Sec. 9. NEW SECTION. 533D.9 FEE RESTRICTION &endash; REQUIRED
6 3 DISCLOSURE.

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

6 10 2. A licensee shall give to the maker of the check, at the
6 11 time any delayed deposit service transaction is made, or if
6 12 there are two or more makers, to one of them, notice written
6 13 in clear, understandable language disclosing all of the
6 14 following:

6 15 a. The fee to be charged for the transaction.

6 16 b. The date on which the check will be deposited or
6 17 presented for negotiation.

6 18 c. Any penalty, not to exceed fifteen dollars, which the
6 19 licensee will charge if the check is not negotiable on the
6 20 date agreed upon.

6 21 3. In addition to the notice required by subsection 2,
6 22 every licensee shall conspicuously display a schedule of all
6 23 fees, charges, and penalties for all services provided by the
6 24 licensee authorized by this section. The notice shall be
6 25 posted at the office and every branch office of the licensee.

6 26 Sec. 10. NEW SECTION. 533D.10 PROHIBITED ACTS BY
6 27 LICENSEE.

6 28 1. A licensee shall not do any of the following:

6 29 a. Hold from any one maker more than two checks at any one
6 30 time.

6 31 b. Hold from any one maker a check or checks in an
6 32 aggregate face amount of more than five hundred dollars at any
6 33 one time.

6 34 c. Hold or agree to hold a check for more than thirty-one
6 35 days.

7 1 d. Require the maker to receive payment by a method which
7 2 causes the maker to pay additional or further fees and charges
7 3 to the licensee or another person.

7 4 e. Repay, refinance, or otherwise consolidate a postdated
7 5 check transaction with the proceeds of another postdated check
7 6 transaction made by the same licensee.

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

7 9 2. For purposes of this section, "licensee" includes a
7 10 person related to the licensee by common ownership or control,
7 11 a person in whom the licensee has any financial interest, or
7 12 any employee or agent of the licensee.

7 13 Sec. 11. NEW SECTION. 533D.11 EXAMINATION OF RECORDS BY
7 14 SUPERINTENDENT.

7 15 The superintendent shall examine the books, accounts, and
7 16 records of each licensee annually. The costs of the
7 17 superintendent incurred in an examination shall be paid by the
7 18 licensee.

7 19 The superintendent may examine or investigate complaints or
7 20 reports concerning alleged violations of this chapter or any
7 21 rule adopted or order issued by the superintendent. The
7 22 superintendent may order the actual cost of the examination or
7 23 investigation to be paid by the person who is the subject of
7 24 the examination or investigation, whether or not the alleged
7 25 violator is licensed.

7 26 Sec. 12. NEW SECTION. 533D.12 SUSPENSION OR REVOCATION
7 27 OF LICENSE.

7 28 1. The superintendent may, after notice and hearing
7 29 pursuant to chapter 17A, suspend or revoke any license issued
7 30 pursuant to this chapter upon the finding of any of the
7 31 following:

7 32 a. A licensee or any of its officers, directors,
7 33 shareholders, partners, or members has violated this chapter
7 34 or any rule adopted or order issued by the superintendent.

7 35 b. A licensee has failed to pay a license fee required
8 1 under this chapter.

8 2 c. A fact or condition existing which, if it had existed
8 3 at the time of the original application for the license, would
8 4 have resulted in the denial of the superintendent to issue the
8 5 license.

8 6 d. A licensee has abandoned its place of business for a
8 7 period of sixty days or more.

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

8 10 2. Notice of the time and place of the hearing provided
8 11 for in this section shall be given no less than ten days prior
8 12 to the date of the hearing.

8 13 Sec. 13. NEW SECTION. 533D.13 CEASE AND DESIST ORDER ‐
8 14 INJUNCTION.

8 15 If the superintendent believes that any person has engaged
8 16 in or is about to engage in an act or practice constituting a
8 17 violation of this chapter or any rule adopted or order issued
8 18 by the superintendent, the superintendent may issue and serve
8 19 on the person a cease and desist order. Upon entry of a cease
8 20 and desist order the superintendent shall promptly notify in
8 21 writing all persons to whom the order is directed that it has
8 22 been entered and the reasons for the order. Any person to
8 23 whom the order is directed may request in writing a hearing
8 24 within fifteen business days after the date of the issuance of
8 25 the order. Upon receipt of the written request, the matter
8 26 shall be set for hearing within fifteen business days of the
8 27 receipt by the superintendent, unless the person requesting
8 28 the hearing consents to a later date. If a hearing is not
8 29 requested within fifteen business days and none is ordered by
8 30 the superintendent, the order of the superintendent shall
8 31 automatically become final and remain in effect until modified
8 32 or vacated by the superintendent. If a hearing is requested
8 33 or ordered, the superintendent, after notice and hearing,
8 34 shall issue written findings of fact and conclusions of law
8 35 and shall affirm, vacate, or modify the order.

9 1 The superintendent may vacate or modify an order if the
9 2 superintendent finds that the conditions which caused its
9 3 entry have changed or that it is otherwise in the public
9 4 interest to do so. Any person aggrieved by a final order of
9 5 the superintendent may appeal the order as provided in chapter
9 6 17A.

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

9 16 Sec. 14. NEW SECTION. 533D.14 ADMINISTRATIVE PENALTY.
9 17 1. If the superintendent finds, after notice and hearing
9 18 as provided in this chapter, that a person has violated this
9 19 chapter, a rule adopted pursuant to this chapter, or an order
9 20 of the superintendent, the superintendent may order the person
9 21 to pay an administrative fine of not more than five thousand
9 22 dollars for each violation, in addition to the costs of
9 23 investigation.

9 24 2. If a person fails to pay an administrative fine and the
9 25 costs of investigation ordered pursuant to subsection 1, a
9 26 lien in the amount of the fine and costs may be imposed upon
9 27 all assets and property of the person in this state and may be
9 28 recovered in a civil action by the superintendent. Failure of
9 29 the person to pay the fine and costs constitutes a separate
9 30 violation of this chapter.

9 31 Sec. 15. NEW SECTION. 533D.15 CRIMINAL VIOLATION ‐
9 32 OPERATION OF BUSINESS WITHOUT LICENSE.

9 33 A person required to be licensed under this chapter who
9 34 operates a delayed deposit services business in this state
9 35 without first obtaining a license under this chapter or while
10 1 such license is suspended or revoked by the superintendent is
10 2 guilty of a serious misdemeanor.

10 3 Sec. 16. NEW SECTION. 533D.16 APPLICABILITY.

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

10 10 a bank, savings and loan association, credit union, or
10 11 industrial loan company.
10 12 Sec. 17. Section [537.7102](#), subsection 3, Code 1995, is
10 13 amended to read as follows:
10 14 3. "Debt" means an actual or alleged obligation arising
10 15 out of a consumer credit transaction, consumer rental purchase
10 16 agreement, or a transaction which would have been a consumer
10 17 credit transaction either if a finance charge was made, if the
10 18 obligation was not payable in installments, if a lease was for
10 19 a term of four months or less, or if a lease was of an
10 20 interest in land. A debt includes a check as defined in
10 21 section 554.3104 given in a transaction in connection with a
10 22 consumer rental purchase agreement, in a transaction which was
10 23 a consumer credit sale or in a transaction which would have
10 24 been a consumer credit sale if credit was granted and if a
10 25 finance charge was made, or in a transaction regulated under
10 26 chapter 533D.

10 27 EXPLANATION

10 28 This bill establishes a new chapter 533D which defines and
10 29 regulates delayed deposit services businesses.

10 30 Section 533D.1 establishes the title of the chapter.

10 31 Section 533D.2 defines terms used in the new chapter.

10 32 Section 533D.3 prohibits a person from operating a delayed
10 33 deposit services business unless licensed by the
10 34 superintendent. The person must submit an application to the
10 35 superintendent with an application fee as established by the
11 1 superintendent by rule. Additionally, the applicant must
11 2 submit a surety bond in the sum of \$25,000 executed by a
11 3 surety company authorized to do business in this state. A
11 4 license issued pursuant to this chapter is to be conspicuously
11 5 posted at the licensee's place of business.

11 6 Section 533D.4 provides that a license may be surrendered
11 7 to the superintendent. The surrender of the license does not
11 8 affect the civil or criminal liability of the licensee or the
11 9 surety for acts committed prior to the surrender.

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

11 21 Section 533D.6 provides that the written approval of the
11 22 superintendent is required for the continued operation of a
11 23 delayed deposit services business whenever a change in control
11 24 of the licensee occurs. The section provides that a license
11 25 issued pursuant to this chapter is not transferable.

11 26 Section 533D.7 provides that a licensee may operate a
11 27 delayed deposit services business only at an office designated
11 28 as its principal place of business, except that with the
11 29 superintendent's approval, the licensee may operate a branch
11 30 office in the same county in which the licensee's principal
11 31 place of business is located.

11 32 Section 533D.8 provides that a licensee may operate another
11 33 business at the location of the delayed deposit services
11 34 business with the written permission of the superintendent.

11 35 Section 533D.9 prohibits the licensee from charging a fee
12 1 in excess of \$15 on the first \$100 on the face amount of the
12 2 check, or more than \$10 on subsequent \$100 increments on the
12 3 face amount of the check.

12 4 Section 533D.10 prohibits the licensee from engaging in
12 5 certain acts related to the business.

12 6 Section 533D.11 provides that the superintendent is to

12 7 examine the books, accounts, and records of the licensee
12 8 annually. The costs of the examination are to be paid by the
12 9 licensee being examined.

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

12 19 Section 533D.13 grants the superintendent the authority to
12 20 issue a cease and desist order, and provides that the attorney
12 21 general may seek an injunction to prevent acts constituting
12 22 violations of this chapter.

12 23 Section 533D.14 provides for an administrative penalty to
12 24 be assessed by the superintendent as a result of a violation
12 25 of this chapter.

12 26 Section 533D.15 provides that a person who operates a
12 27 delayed deposit services business without a license commits a
12 28 serious misdemeanor.

12 29 Section 533D.16 provides that this chapter does not apply
12 30 to a bank incorporated under the provisions of any state or
12 31 federal law, any savings and loan association incorporated
12 32 under the provisions of any state or federal law, a credit
12 33 union organized under the provisions of any state or federal
12 34 law, a corporation licensed as an industrial loan company
12 35 under chapter 536A, or an affiliate of a bank, savings and
13 1 loan association, credit union, or industrial loan company.

13 2 The amendment to section 537.7102 is amended to provide
13 3 that the definition of "debt" under the Iowa Debt Collection
13 4 Practices Act includes a check given in a transaction
13 5 regulated under the new chapter 533D.

13 6 LSB 1966HC 76

13 7 mj/jj/8