

*Substituted for  
HF 396  
4-6-95 (P.1352)*

FILED MAR 20 1995

SENATE FILE **423**  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 225)

Passed Senate, Date <sup>(P. 846)</sup> 3/23/95

Passed House, Date <sup>(P. 1571)</sup> 4/13/95

Vote: Ayes 49 Nays 0

Vote: Ayes 84 Nays 13

*Re-passed Senate  
Ayes 48 Nays 0  
4/19/95 (P. 1300)*

Approved May 1, 1995

**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:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

S.F. 423

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.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

## SENATE FILE 423

H-3709

1 Amend Senate File 423, as passed by the Senate, as  
2 follows:

3 1. Page 6, by inserting after line 15 the  
4 following:

5 "\_\_\_\_\_. The annual percentage rate on the first  
6 hundred dollars on the face amount of the check which  
7 the fee represents, and the annual percentage rate on  
8 subsequent one hundred dollar increments which the fee  
9 represents, if different."

10 2. Page 6, line 20, by inserting after the word  
11 "upon." the following: "A penalty to be charged  
12 pursuant to this section shall only be collected by  
13 the licensee once on a check no matter how long the  
14 check remains unpaid. A penalty to be charged  
15 pursuant to this section is a licensee's exclusive  
16 remedy and if a licensee charges a penalty pursuant to  
17 this section no other penalties under this chapter or  
18 any other provision apply."

19 3. Page 9, line 32, by inserting after the word  
20 "LICENSE" the following: "-- INJUNCTION".

21 4. Page 10, line 2, by inserting after the word  
22 "misdemeanor." the following: "In addition to the  
23 criminal penalty provided for in this section, the  
24 superintendent may also commence an action to enjoin  
25 the operation of the business."

26 5. By relettering as necessary.

By METCALF of Polk

H-3709 FILED APRIL 3, 1995

*Adopted*  
*4-13-95*  
*(P. 1570)*

HOUSE AMENDMENT TO  
SENATE FILE 423

S-3434

- 1 Amend Senate File 423, as passed by the Senate, as  
2 follows:
- 3 1. Page 6, by inserting after line 15 the  
4 following:  
5 " . The annual percentage rate on the first  
6 hundred dollars on the face amount of the check which  
7 the fee represents, and the annual percentage rate on  
8 subsequent one hundred dollar increments which the fee  
9 represents, if different."
- 10 2. Page 6, line 20, by inserting after the word  
11 "upon." the following: "A penalty to be charged  
12 pursuant to this section shall only be collected by  
13 the licensee once on a check no matter how long the  
14 check remains unpaid. A penalty to be charged  
15 pursuant to this section is a licensee's exclusive  
16 remedy and if a licensee charges a penalty pursuant to  
17 this section no other penalties under this chapter or  
18 any other provision apply."
- 19 3. Page 9, line 32, by inserting after the word  
20 "LICENSE" the following: "-- INJUNCTION".
- 21 4. Page 10, line 2, by inserting after the word  
22 "misdemeanor." the following: "In addition to the  
23 criminal penalty provided for in this section, the  
24 superintendent may also commence an action to enjoin  
25 the operation of the business."
- 6 5. By relettering as necessary.

RECEIVED FROM THE HOUSE

S-3434 FILED APRIL 13, 1995

*Senate concurred 4/19/95 (p. 1299)*

Redfern  
Gronstal  
Palmer

SSB 225

Commerce

Succeeded By

SENATE FILE 423

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 delayed deposit services businesses and  
2 providing penalties.

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

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

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.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SENATE FILE 423

AN ACT

RELATING TO DELAYED DEPOSIT SERVICES BUSINESSES AND  
PROVIDING PENALTIES.

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

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

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

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

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

1. "Check" means a check, draft, share draft, or other  
instrument for the payment of money.
2. "Delayed deposit services business" means a person who  
for a fee does either of the following:
  - a. Accepts a check dated subsequent to the date it was  
written.
  - b. Accepts a check dated on the date it was written and  
holds the check for a period of time prior to deposit or  
presentment pursuant to an agreement with, or any  
representation made to, the maker of the check, whether  
express or implied.
3. "Licensee" means a person licensed to operate pursuant  
to this chapter.
4. "Person" means an individual, group of individuals,  
partnership, association, corporation, or any other business  
unit or legal entity.
5. "Superintendent" means the superintendent of banking.

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

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

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

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

- a. An application fee in an amount prescribed by rule  
adopted by the superintendent.
- b. A surety bond executed by a surety company authorized  
to do business in this state in the sum of twenty-five  
thousand dollars, which bond shall be continuous in nature  
until canceled by the surety. A surety shall provide at least  
thirty days' notice in writing to the licensee and to the  
superintendent indicating the surety's intent to cancel the  
bond and the effective date of the cancellation. The surety  
bond shall be for the benefit of the citizens of this state  
and shall be conditioned upon the licensee's willingness to  
comply with this chapter, the faithful performance by the  
licensee of the duties and obligations pertaining to the  
delayed deposit services business so licensed, and the prompt  
payment of any judgment recovered against the licensee. The  
surety's liability under this chapter is limited to the amount  
of the bond regardless of the number of years the bond is in  
effect.

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

- a. The experience, character, and general fitness of the  
applicant and its officers, directors, shareholders, partners,  
or members are such as to warrant a finding that the applicant  
will conduct the delayed deposit services business honestly,  
fairly, and efficiently.
- b. The applicant and its officers, directors,  
shareholders, partners, or members have not been convicted of  
a felony in this state, or convicted of a crime in another  
jurisdiction which would be a felony in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The other business is not of a type which would tend to enable the concealment of acts engaged in to evade the requirements of this chapter. If the superintendent determines upon investigation that the other business is of a type which would conceal such acts the superintendent shall

order the licensee to cease the operation of the delayed deposit services business at the location.

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

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

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

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

a. The fee to be charged for the transaction.

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

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

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

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

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

1. A licensee shall not do any of the following:
  - a. Hold from any one maker more than two checks at any one time.
  - b. Hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars at any one time.
  - c. Hold or agree to hold a check for more than thirty-one days.
  - d. Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or another person.
  - e. Repay, refinance, or otherwise consolidate a postdated check transaction with the proceeds of another postdated check transaction made by the same licensee.
  - f. Receive any other charges or fees in addition to the fees listed in section 533D.9, subsections 1 and 2.
2. For purposes of this section, "licensee" includes a person related to the licensee by common ownership or control, a person in whom the licensee has any financial interest, or any employee or agent of the licensee.

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

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

The superintendent may examine or investigate complaints or reports concerning alleged violations of this chapter or any rule adopted or order issued by the superintendent. The

superintendent may order the actual cost of the examination or investigation to be paid by the person who is the subject of the examination or investigation, whether or not the alleged violator is licensed.

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

1. The superintendent may, after notice and hearing pursuant to chapter 17A, suspend or revoke any license issued pursuant to this chapter upon the finding of any of the following:
  - a. A licensee or any of its officers, directors, shareholders, partners, or members has violated this chapter or any rule adopted or order issued by the superintendent.
  - b. A licensee has failed to pay a license fee required under this chapter.
  - c. A fact or condition existing which, if it had existed at the time of the original application for the license, would have resulted in the denial of the superintendent to issue the license.
  - d. A licensee has abandoned its place of business for a period of sixty days or more.
  - e. A licensee fails to pay an administrative penalty and the cost of investigation as ordered by the superintendent.
2. Notice of the time and place of the hearing provided for in this section shall be given no less than ten days prior to the date of the hearing.

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

If the superintendent believes that any person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or any rule adopted or order issued by the superintendent, the superintendent may issue and serve on the person a cease and desist order. Upon entry of a cease and desist order the superintendent shall promptly notify in writing all persons to whom the order is directed that it has been entered and the reasons for the order. Any person to

whom the order is directed may request in writing a hearing within fifteen business days after the date of the issuance of the order. Upon receipt of the written request, the matter shall be set for hearing within fifteen business days of the receipt by the superintendent, unless the person requesting the hearing consents to a later date. If a hearing is not requested within fifteen business days and none is ordered by the superintendent, the order of the superintendent shall automatically become final and remain in effect until modified or vacated by the superintendent. If a hearing is requested or ordered, the superintendent, after notice and hearing, shall issue written findings of fact and conclusions of law and shall affirm, vacate, or modify the order.

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

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

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

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

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

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

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

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

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

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

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

consumer rental purchase agreement, in a transaction which was a consumer credit sale or in a transaction which would have been a consumer credit sale if credit was granted and if a finance charge was made, or in a transaction regulated under chapter 533D.

---

LEONARD L. BOSWELL  
President of the Senate


---

RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 423, Seventy-sixth General Assembly.

---

JOHN F. DWYER  
Secretary of the Senate

Approved  , 1995

---

TERRY E. BRANSTAD  
Governor