

MAR 8 2004
Place On Calendar

HOUSE FILE 2484
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 537)

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

A BILL FOR

1 An Act relating to the reorganization of the division of banking
2 of the department of commerce and its regulation of banking.
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

HF 2484

1 Section 1. Section 8A.412, subsection 19, Code Supplement
2 2003, is amended to read as follows:

3 19. The superintendent ~~and the deputy superintendent~~ of
4 the banking division of the department of commerce, all
5 members of the state banking board council, and all employees
6 of the banking division.

7 Sec. 2. Section 524.201, subsection 1, Code 2003, is
8 amended to read as follows:

9 1. The governor shall appoint, subject to confirmation by
10 the senate, a superintendent of banking. The appointee shall
11 be selected solely with regard to qualification and fitness to
12 discharge the duties of office, and a person shall not be
13 appointed who has not had at least five years' experience as
14 an executive officer in a bank ~~or in the regulation or~~
15 ~~examination of banks.~~

16 Sec. 3. Section 524.203, Code 2003, is amended by striking
17 the section and inserting in lieu thereof the following:

18 524.203 SUPERINTENDENT -- VACANCY.

19 If the office of superintendent shall become vacant, the
20 governor may appoint an acting superintendent to complete the
21 unexpired term until an appointment is made as provided in
22 section 524.201.

23 Sec. 4. Section 524.204, Code 2003, is amended by striking
24 the section and inserting in lieu thereof the following:

25 524.204 DEPUTY SUPERINTENDENT OF BANKING.

26 The superintendent may appoint an employee of the division
27 of banking as deputy to perform the duties of the
28 superintendent during the absence or inability of the
29 superintendent to act. Any deputy so appointed shall be
30 removable at the pleasure of the superintendent.

31 Sec. 5. Section 524.205, Code 2003, is amended to read as
32 follows:

33 524.205 STATE BANKING BOARD COUNCIL.

34 1. The state banking board council shall ~~be composed~~
35 consist of the superintendent, who shall be an ex officio

1 nonvoting member and chairperson, and six other members,
2 appointed by the governor, who shall be chosen appointed,
3 where practical, from various sections parts of the state.
4 Provided, however, that in no event shall more than five
5 members of such board council be engaged in the business of
6 banking in any executive capacity. ~~In-case-of-a-vacancy-in~~
7 ~~the-state-banking-board, other than one resulting from a~~
8 ~~vacancy in the office of the superintendent, the governor~~
9 ~~shall appoint a new member to fill such vacancy for the~~
10 ~~unexpired term.~~

11 2. The regular-term terms of office of each member for
12 members of the state banking council, other than the
13 superintendent, shall be contemporaneous with the regular-term
14 of office of the superintendent as defined in subsection 2 of
15 section 524.201, and each such member shall hold office for
16 such term and until the member's successor shall have been
17 appointed four-year staggered terms. Each member shall hold
18 office for the term for which the member is appointed or until
19 a successor is appointed.

20 3. A member of the state banking board council, other than
21 the superintendent, shall not receive a salary but is entitled
22 to reimbursement for actual expenses incurred by the member in
23 connection with the member's duties. Each member of the board
24 council may also be eligible to receive compensation as
25 provided in section 7E.6.

26 4. The state banking board council shall act with the
27 superintendent in an advisory capacity concerning all matters
28 submitted to the council by the superintendent pertaining to
29 the conduct of the administration ~~of the provisions~~ of this
30 chapter ~~and shall perform such other duties as are~~
31 ~~specifically provided for by the laws of this state.~~

32 5. The state banking board council shall meet at least
33 once each month calendar quarter on such date and at such
34 place as the state-banking-board council may designate decide,
35 and shall meet at such other times as the-board may deem be

1 ~~deemed~~ necessary ~~or when called by the chairperson of the~~
2 ~~board or any two members thereof~~ by the superintendent or a
3 majority of the council members.

4 Sec. 6. Section 524.207, subsection 1, Code Supplement
5 2003, is amended to read as follows:

6 1. All expenses required in the discharge of the duties
7 and responsibilities imposed upon the banking division of the
8 department of commerce, the superintendent, and the state
9 banking ~~board~~ council by the laws of this state shall be paid
10 from fees provided by the laws of this state and appropriated
11 by the general assembly from the general fund of the state.
12 All of these fees are payable to the superintendent. The
13 superintendent shall pay all the fees and other moneys
14 received by the superintendent to the treasurer of state
15 within the time required by section 12.10 and the fees and
16 other moneys shall be deposited into the general fund of the
17 state. The superintendent may keep on hand with the treasurer
18 of state funds in excess of the current needs of the division
19 to the extent ~~approved~~ recommended by the state banking ~~board~~
20 council.

21 Sec. 7. Section 524.208, Code 2003, is amended to read as
22 follows:

23 524.208 ~~ASSISTANTS, EXAMINERS, AND OTHER EMPLOYEES.~~

24 The superintendent may appoint ~~assistants, examiners, and~~
25 other employees as the superintendent deems necessary to the
26 proper discharge of the duties imposed upon the superintendent
27 by the laws of this state. Pay plans shall be established for
28 employees, other than clerical, who examine the accounts and
29 affairs of state banks and who examine the accounts and
30 affairs of other persons, subject to supervision and
31 regulation by the superintendent, which are substantially
32 equivalent to those paid by the ~~Federal-Deposit-Insurance~~
33 ~~Corporation~~ federal deposit insurance corporation and other
34 federal supervisory agencies in this area of the United
35 States.

1 Sec. 8. Section 524.209, Code Supplement 2003, is amended
2 to read as follows:

3 524.209 EXPENSES.

4 The superintendent, ~~deputy-superintendent, assistants,~~
5 examiners, and other employees of the banking division shall
6 be entitled to receive reimbursement for expenses incurred in
7 the performance of their duties. The superintendent, and when
8 specifically authorized by the superintendent, ~~the deputy~~
9 ~~superintendent, assistants,~~ examiners and other employees of
10 the banking division, shall be entitled to receive
11 reimbursement for expenses incurred while attending
12 conventions, meetings, conferences, schools, or seminars
13 relating to the performance of their duties, and such expenses
14 shall be paid by the treasurer of state on warrants drawn by
15 the director of the department of administrative services.

16 Sec. 9. Section 524.210, Code 2003, is amended to read as
17 follows:

18 524.210 INSURANCE AND SURETY BONDS.

19 The superintendent shall acquire good and sufficient bond
20 in a company authorized to do business in this state insuring
21 the faithful performance of ~~the deputy-superintendent,~~
22 ~~assistants,~~ examiners, and all other employees of the banking
23 division and insuring against any liability which may accrue
24 in the case of the loss of any property of a state bank, of a
25 customer of a state bank or of any other person, in the course
26 of any examination, investigation, or other function required
27 or allowed by the laws of this state. The superintendent
28 shall be bonded in accordance with the provisions of chapter
29 64.

30 Sec. 10. Section 524.211, subsections 1, 2, 3, 4, 5, and
31 7, Code 2003, are amended to read as follows:

32 1. The superintendent, ~~deputy-superintendent, an assistant~~
33 ~~to the superintendent, a bank examination analyst,~~ general
34 counsel, ~~or an examiner~~ examiners, and other employees
35 assigned to the bank bureau of the banking division ~~is~~ are

1 prohibited from obtaining a loan of money or property from a
2 state-chartered bank or any person or entity affiliated with a
3 state-chartered bank.

4 2. The superintendent, ~~deputy-superintendent, finance~~
5 ~~company-bureau-chief,~~ general counsel, ~~and all~~ examiners, and
6 other employees assigned to the finance company bureau of the
7 banking division are prohibited from obtaining a loan of money
8 or property from a person or entity licensed pursuant to
9 chapter 533A, 533D, 536, or 536A, or a person or entity
10 affiliated with such licensee.

11 3. The superintendent, ~~deputy-superintendent, an assistant~~
12 ~~to the superintendent, a bank examination analyst, finance~~
13 ~~company-bureau-chief,~~ general counsel, ~~or an examiner~~
14 examiners, and other employees of the banking division, who
15 has have credit relations with a person or entity licensed or
16 registered pursuant to chapter 535B or 536C, is are prohibited
17 from participating in decisions, oversight, and official
18 review of matters concerning the regulation of the licensee or
19 registrant.

20 4. ~~An assistant to the superintendent, a bank examination~~
21 ~~analyst, or an examiner~~ Examiners and other employees assigned
22 to the bank bureau of the banking division who has have credit
23 relations with a person or entity licensed pursuant to chapter
24 533A, 533D, 536, or 536A, or with a person or entity
25 affiliated with such licensee, is are prohibited from
26 participating in decisions, oversight, and official review of
27 matters concerning the regulation of the licensee.

28 5. An employee of the banking division, other than the
29 superintendent or a member of the state banking board council,
30 shall not perform any services for, and shall not be a
31 shareholder, member, partner, owner, director, officer, or
32 employee of, any enterprise, person, or affiliate subject to
33 the regulatory purview of the banking division.

34 7. The superintendent, ~~deputy-superintendent, or any~~
35 ~~assistant or examiner~~ examiners, or other employees who is are

1 convicted of a felony while holding such position shall be
2 immediately discharged from employment and shall be forever
3 disqualified from holding any position in the banking
4 division.

5 Sec. 11. Section 524.212, Code Supplement 2003, is amended
6 to read as follows:

7 524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY
8 INFORMATION.

9 The superintendent, ~~deputy-superintendent, assistant-to-the~~
10 ~~superintendent, examiner~~ members of the state banking council,
11 general counsel, examiners, or other ~~employee~~ employees of the
12 banking division shall not disclose, in any manner, to any
13 person other than the person examined and those regulatory
14 agencies referred to in section 524.217, subsection 2, any
15 information relating specifically to the supervision and
16 regulation of any state bank, persons subject to the
17 provisions of chapter 533A, 533C, 536, or 536A, any affiliate
18 of any state bank, or an affiliate of a person subject to the
19 provisions of chapter 533A, 533C, 536, or 536A, except when
20 ordered to do so by a court of competent jurisdiction and then
21 only in those instances referred to in section 524.215,
22 subsections 1, 2, 3, and 5.

23 Sec. 12. Section 524.214, subsection 1, Code 2003, is
24 amended to read as follows:

25 1. The superintendent, ~~the deputy-superintendent,~~ and upon
26 the approval of the superintendent, any ~~assistant-or~~ examiner
27 or other employees of the banking division shall have the
28 power to subpoena witnesses, to compel their attendance, to
29 administer an oath, to examine any person under oath and to
30 require the production of any relevant books or papers. Such
31 examination may be conducted on any subject relating to the
32 duties imposed upon, or powers vested in, the superintendent
33 under the provisions of this chapter.

34 Sec. 13. Section 524.215, unnumbered paragraph 2, Code
35 2003, is amended to read as follows:

1 The superintendent, ~~deputy-superintendent, assistants, or~~
2 members of the state banking council, examiners, or other
3 employees of the banking division shall not be subpoenaed in
4 any cause or proceeding to give testimony concerning
5 information relating specifically to the supervision and
6 regulation of any state bank or other person by the
7 superintendent pursuant to the laws of this state, and the
8 records of the banking division which relate specifically to
9 the supervision and regulation of any such state bank or other
10 such person shall not be offered in evidence in any court or
11 subject to subpoena by any party except, where relevant:

12 Sec. 14. Section 524.216, unnumbered paragraph 1, Code
13 2003, is amended to read as follows:

14 The superintendent shall make a report in writing annually
15 to the governor in the manner and within the time required by
16 chapter 7A. ~~A copy of the report shall be furnished by the~~
17 ~~superintendent to each state bank.~~

18 Sec. 15. Section 524.217, subsection 1, paragraph a, Code
19 2003, is amended to read as follows:

20 a. Make or cause to be made an examination of every state
21 bank and trust company whenever in the superintendent's
22 judgment such examination is necessary or advisable, but in no
23 event less frequently than once during each two-year period by
24 either the banking division or the appropriate federal banking
25 agency. During the course of each examination of a state bank
26 or trust company, inquiry shall be made as to its financial
27 condition, the security afforded to those to whom it is
28 obligated, the policies of its management, whether the
29 requirements of law have been complied with in the
30 administration of its affairs, and such other matters as the
31 superintendent may prescribe.

32 Sec. 16. Section 524.218, Code 2003, is amended to read as
33 follows:

34 524.218 REGULATION AND EXAMINATION OF SERVICES.
35 A state bank ~~may~~ shall not cause to be performed, by

1 contract or otherwise, any bank services, of a type referred
2 to in section 524.804, for itself or any affiliate, whether on
3 or off its premises, unless ~~assurances-satisfactory-to-the~~
4 ~~superintendent-are-furnished-to-the-superintendent-by-both-the~~
5 ~~state-bank-and-the-person-performing-such-services-that-the~~
6 ~~performance-thereof~~ the person performing such services will
7 be subject to supervision, regulation, and examination by the
8 superintendent to the same extent as if such services were
9 being performed by the state bank itself on its own premises.

10 Sec. 17. Section 524.219, Code 2003, is amended to read as
11 follows:

12 524.219 FEES.

13 1. A state bank subject to examination, supervision, and
14 regulation by the superintendent, shall pay to the
15 superintendent, fees, established by the ~~state-banking-board~~
16 superintendent, based on the costs and expenses incurred in
17 the discharge of the duties imposed upon the superintendent by
18 this chapter. The fees shall include, but are not limited to,
19 costs and expenses for salaries, expenses and travel for
20 employees, office facilities, supplies, and equipment.

21 2. The fees for examination of any affiliate of a state
22 bank as provided for in section 524.1105, and the examinations
23 provided for in section 524.217, subsection 1, paragraphs "c"
24 and "d", shall be established by the ~~state-banking-board~~
25 superintendent, based on the time required for the examination
26 and the administrative costs and expenses incurred in the
27 discharge of the duties imposed upon the superintendent by
28 this chapter. The fees shall include, but not be limited to,
29 costs and expenses for salaries, expenses and travel for
30 employees, office facilities, supplies, and equipment.

31 ~~Upon-completion-of-each-examination-required-or-allowed-by~~
32 ~~this-chapter, the-examiner-in-charge-of-the-examination-shall~~
33 ~~render-a-bill-for-the-fees, in-duplicate, and-shall-deliver~~
34 ~~one-copy-of-the-bill-to-the-state-bank-and-one-copy-to-the~~
35 ~~superintendent.~~

1 3. Failure to pay the amount of the fees to the
2 superintendent within ten days after the date of billing shall
3 subject the state bank or any affiliate of a state bank to an
4 additional charge equal to five percent of the amount of the
5 fees for each day the payment is delinquent.

6 Sec. 18. Section 524.310, subsection 1, Code 2003, is
7 amended to read as follows:

8 1. The name of a state bank originally incorporated after
9 the effective date of this chapter shall include the word
10 "bank" and may include the word "state" or "trust" in its
11 name. A state bank using the word "trust" in its name must be
12 authorized under this chapter to act in a fiduciary capacity.
13 A national bank or federal savings bank shall not use the word
14 "state" in its legally chartered name.

15 Sec. 19. Section 524.405, subsection 1, unnumbered
16 paragraph 1, Code 2003, is amended to read as follows:

17 A state bank~~, with the approval of the superintendent,~~ may
18 increase its capital structure or effect an allocation of
19 amounts within its capital structure, by the use of any of the
20 following methods:

21 Sec. 20. NEW SECTION. 524.607A ACTION WITHOUT MEETING.

22 1. Unless the articles of incorporation or bylaws provide
23 otherwise, action required or permitted to be taken under this
24 chapter at a board of directors' meeting may be taken without
25 a meeting if the action is consented to by all members of the
26 board. The action must be evidenced by one or more written
27 consents describing the action taken, signed by each director,
28 and included in the minutes or filed with the corporate
29 records reflecting the action taken.

30 2. Action taken under this section is effective when the
31 last director signs the consent, unless the consent specifies
32 a different effective date.

33 3. A written consent signed under this section has the
34 effect of a meeting vote and may be described as such in any
35 document.

1 Sec. 21. Section 524.610, unnumbered paragraph 1, Code
2 2003, is amended to read as follows:

3 The shareholders of a state bank shall fix the reasonable
4 compensation of directors for their services as members of the
5 board of directors. Subject to ~~the approval of the~~
6 ~~superintendent and~~ approval by the shareholders at an annual
7 or special meeting called for that purpose, the shareholders
8 of a state bank may adopt a pension or profit sharing plan, or
9 both, or other plan of deferred compensation for directors, to
10 which a state bank may contribute.

11 Sec. 22. Section 524.703, unnumbered paragraph 2, Code
12 2003, is amended to read as follows:

13 Subject to ~~the approval of the superintendent, and~~ approval
14 by the shareholders at an annual or special meeting called for
15 the purpose, the board of directors of a state bank may adopt
16 a pension or profit-sharing plan, or both, or other plan of
17 deferred compensation, for both officers and employees, to
18 which the state bank may contribute.

19 Sec. 23. Section 524.802, subsection 5, Code 2003, is
20 amended to read as follows:

21 5. Act as agent for a depository institution affiliate to
22 ~~the same extent that a national bank can act as an agent for a~~
23 ~~depository institution under the provisions of section 18 of~~
24 ~~the Federal Deposit Insurance Act, 12 U.S.C. § 1828.~~

25 Sec. 24. Section 524.903, subsections 2 and 3, Code 2003,
26 are amended to read as follows:

27 2. A state bank shall not accept such drafts in an amount
28 which exceeds at any time in the aggregate for all drawers
29 thirty percent of the state bank's aggregate capital. The
30 ~~superintendent may authorize a state bank to accept drafts in~~
31 ~~an amount not exceeding at any time in the aggregate for all~~
32 ~~drawers sixty percent of the state bank's aggregate capital,~~
33 ~~but the aggregate of acceptance growing out of domestic~~
34 ~~transactions shall in no event exceed thirty percent of~~
35 ~~aggregate capital.~~

1 3. A state bank, ~~with the prior approval of the~~
2 ~~superintendent,~~ may accept drafts, having not more than three
3 months after sight to run, drawn upon it by banks or bankers
4 in foreign countries, or in dependencies or insular
5 possessions of the United States, for the purpose of
6 furnishing dollar exchange as required by the usages of trade
7 where the drafts are drawn in an aggregate amount which shall
8 not at any time exceed for all such acceptance on behalf of a
9 single bank or banker seven and one-half percent of the state
10 bank's aggregate capital, and for all such acceptances, thirty
11 percent of the state bank's aggregate capital.

12 Sec. 25. Section 524.904, subsection 7, paragraph a, Code
13 2003, is amended to read as follows:

14 a. Additional funds advanced for taxes or for insurance if
15 the advance is for the protection of the state bank, ~~and~~
16 ~~provided that such amounts receive the prior approval of the~~
17 ~~superintendent.~~

18 Sec. 26. Section 524.1201, subsection 3, Code 2003, is
19 amended to read as follows:

20 3. Notwithstanding any of the other provisions of this
21 section, original loan documentation and trust recordkeeping
22 functions may be located at an any authorized bank office or
23 at any other location approved by the superintendent.

24 Sec. 27. Section 524.1303, subsection 3, Code 2003, is
25 amended to read as follows:

26 3. Within thirty days after the application for
27 dissolution involving a provision of acquisition of the state
28 bank's assets and assumption of its liabilities by another
29 state bank is accepted for processing, the dissolving bank
30 shall publish ~~once each week for two consecutive weeks a~~
31 ~~notice of the proposed transaction. The notice shall be~~
32 ~~published~~ in a newspaper of general circulation published in
33 the municipal corporation or unincorporated area in which the
34 dissolving bank has its principal place of business, and in
35 the municipal corporation or unincorporated area in which the

1 acquiring state bank has its principal place of business, or
2 if there is none, a newspaper of general circulation published
3 in the county or counties, or in a county adjoining the county
4 or counties, in which the dissolving bank and the acquiring
5 bank have their principal place of business. The notice shall
6 be on forms provided by the superintendent, and proof of
7 publication of the notice shall be delivered to the
8 superintendent within fourteen days.

9 Sec. 28. Section 524.1402, subsection 4, Code 2003, is
10 amended to read as follows:

11 4. If a proposed merger will result in a state bank,
12 within thirty days after the application for merger is
13 accepted for processing, the parties to the plan shall
14 publish~~7-once-each-week-for-two-consecutive-weeks7~~ a notice of
15 the proposed transaction~~---The-notices-shall-be-published~~ in a
16 newspaper of general circulation published in the municipal
17 corporation or unincorporated area in which each party to the
18 plan has its principal place of business, or if there is none,
19 in a newspaper of general circulation published in the county,
20 or in a county adjoining the county, in which each party to
21 the plan has its principal place of business. The notice
22 shall be on forms prescribed by the superintendent and shall
23 set forth the names of the parties to the plan and the
24 resulting state bank, the location and post office address of
25 the principal place of business of the resulting state bank
26 and of each office to be maintained by the resulting state
27 bank, and the purpose or purposes of the resulting state bank.
28 Proof of publication of the notice shall be delivered to the
29 superintendent within fourteen days.

30 Sec. 29. Section 524.1412, unnumbered paragraph 1, Code
31 2003, is amended to read as follows:

32 Within thirty days after the application for conversion has
33 been accepted for processing, the national bank or federal
34 savings association shall publish a notice of the delivery of
35 the articles of conversion to the superintendent ~~once-each~~

1 ~~week-for-two-successive-weeks~~ in a newspaper of general
2 circulation published in the municipal corporation or
3 unincorporated area in which the national bank or federal
4 savings association has its principal place of business, or if
5 there is none, a newspaper of general circulation published in
6 the county, or in a county adjoining the county, in which the
7 national bank or federal savings association has its principal
8 place of business. Proof of publication of the notice shall
9 be delivered to the superintendent within fourteen days. The
10 notice shall set forth all of the following:

11 Sec. 30. Section 524.1416, subsection 2, Code 2003, is
12 amended to read as follows:

13 2. A state bank which converts into a national bank or
14 federal savings association shall notify the superintendent of
15 the proposed conversion, provide such evidence of the adoption
16 of the plan as the superintendent may request, notify the
17 superintendent of any abandonment or disapproval of the plan,
18 file with the superintendent and with the secretary of state a
19 certificate of the approval of the conversion by the
20 comptroller of the currency of the United States or director
21 of the office of thrift supervision, as applicable, and the
22 date upon which such conversion is to become effective. A
23 state bank that converts into a national bank or federal
24 savings association shall comply with the provisions of
25 section 524.310, subsection 1.

26 Sec. 31. Section 524.1611, subsection 1, Code 2003, is
27 amended to read as follows:

28 1. Any person violating the provisions of ~~subsection 1~~ of
29 section 524.211, subsection 1, shall be guilty of a fraudulent
30 practice, and shall be subject to a further fine of a sum
31 equal to the amount of the value of the property given or
32 received or the money so loaned or borrowed. ~~The deputy~~
33 ~~superintendent, an assistant or examiner~~ An employee of the
34 division of banking convicted of a violation of such
35 subsection shall be immediately discharged from employment and

1 shall be forever disqualified from holding any position in the
2 banking division.

3 Sec. 32. Section 546.3, Code 2003, is amended to read as
4 follows:

5 546.3 BANKING DIVISION.

6 The banking division shall regulate and supervise banks
7 under chapter 524, regulated loan companies under chapter 536,
8 and industrial loan companies under chapter 536A, and shall
9 perform other duties assigned to the division by law. The
10 division is headed by the superintendent of banking who is
11 appointed pursuant to section 524.201. The state banking
12 board council shall ~~perform duties~~ render advice within the
13 division ~~as prescribed by law~~ when requested by the
14 superintendent.

15 Sec. 33. STATE BANKING COUNCIL -- INITIAL FOUR-YEAR TERMS.

16 The governor shall appoint members to the state banking
17 council for terms beginning on May 1, 2005, as follows: One
18 member shall be appointed for a one-year term, one member
19 shall be appointed for a two-year term, two members shall be
20 appointed for three-year terms, and two members shall be
21 appointed for four-year terms.

22 Sec. 34. Section 68B.35, Code Supplement 2003, and
23 sections 536.13, 536.23, and 536.28, Code 2003, are amended by
24 striking from the sections the words "state banking board" and
25 "banking board" and "board" when referring to the state
26 banking board and inserting in lieu thereof the words "state
27 banking council".

28 Sec. 35. CODE EDITOR'S DIRECTIVE. The Code editor shall
29 correct any references to the state banking council as the
30 successor to the state banking board, including grammatical
31 constructions, anywhere else in the Iowa Code, in any bills
32 awaiting codification, and in any bills enacted by the
33 Eightieth General Assembly, 2004 Regular Session.

34 EXPLANATION

35 This bill implements reorganization of the division of

1 banking by substantially eliminating the position of deputy
2 superintendent and references thereto. A deputy may be
3 appointed by a superintendent to act when the superintendent
4 is not able. The governor may appoint an acting
5 superintendent until an official appointment can be made.

6 The bill changes the name of the state banking board to the
7 state banking council and delineates the appointment and terms
8 of council members. The superintendent's report to the
9 governor is no longer required to be distributed to each state
10 bank. The requirement that the superintendent examine every
11 state bank and trust company at least once every two years is
12 modified to provide that the examination may be performed by
13 either the banking division or a federal banking agency. The
14 superintendent, instead of the state banking board, shall set
15 all fees.

16 The bill allows a board of directors of a bank to take
17 action by written consent without a meeting. Certain prior
18 approvals by the superintendent required for actions of state
19 banks are eliminated. Certain notices required to be
20 published by banks are no longer required to be published at
21 least once a week for two weeks. Proof of publication of the
22 notice must be provided to the superintendent within 14 days.
23 A state bank converting into a national bank or federal
24 savings association may not continue to use "state" in the
25 bank's legally chartered name.

26 The bill makes other grammatical and technical changes
27 regarding the division of banking and its regulation of
28 banking.

29
30
31
32
33
34
35

HOUSE FILE 2484

H-8244

1 Amend House File 2484 as follows:

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

4 "DIVISION I
5 DIVISION OF BANKING"

6 2. Page 14, by inserting after line 33 the
7 following:

8 "DIVISION II
9 CREDIT UNIONS

10 Sec. _____. Section 533.2, Code 2003, is amended to
11 read as follows:

12 533.2 AMENDMENTS.

13 1. ~~The articles~~ Articles of incorporation ~~or the~~
14 ~~bylaws~~ may be amended by a favorable vote of a
15 majority of the members present at a meeting, if that
16 number constitutes a quorum and if the proposed
17 amendment was contained in the notice of the meeting.

18 2. ~~Bylaws may also~~ be amended by a any of the
19 following methods:

20 a. The favorable vote of a majority of the members
21 of the board, or by present at a meeting, if that
22 number constitutes a quorum and if the proposed
23 amendment was contained in the notice of the meeting.

24 b. The favorable vote of a majority of the members
25 of the board.

26 c. By a majority vote of members voting by mailed
27 or electronic ballot, according to procedures
28 specified by rule of the superintendent requiring at
29 least twenty days' notice to all members, mailed
30 ballots ensuring the confidentiality of voters,
31 announcement to members of the results of the vote,
32 and preservation of the ballots for a reasonable
33 period of time according to procedures specified by
34 rule of the superintendent, requiring at least twenty
35 days' notice to all members. All amendments must be
36 approved by the superintendent before they become
37 effective. An announcement shall be made to members
38 of the results of the vote. Ballots shall be
39 preserved for a reasonable period of time following
40 the vote.

41 d. A combination of procedures as specified in
42 paragraphs "a" and "c", whereby members are allowed to
43 vote either in person at a meeting or by mailed or
44 electronic ballot, according to procedures specified
45 by rule of the superintendent. If the proposed
46 amendment receives a favorable majority of the total
47 votes cast in person and by mailed ballot, the bylaws
48 shall be amended.

49 Sec. _____. Section 533.4, subsection 5, Code 2003,
50 is amended by adding the following new paragraph:

H-8244

-1-

H-8244

Page 2

1 NEW PARAGRAPH. j. Any investment permitted by
2 federal credit unions, provided that this paragraph
3 shall not permit a credit union to invest in a credit
4 union service organization except as provided in
5 paragraph "f".

6 Sec. _____. Section 533.4, Code 2003, is amended by
7 adding the following new subsection:

8 NEW SUBSECTION. 28. Set off a member's accounts
9 against any of the member's debts or liabilities owed
10 the state credit union pursuant to an agreement
11 entered into between the member and the credit union.
12 The credit union shall also have a lien on the shares
13 and deposits of a member for any sum due the credit
14 union from the member or for any loan endorsed by the
15 member.

16 Sec. _____. Section 533.6, subsection 2, Code 2003,
17 is amended to read as follows:

18 2. The superintendent may make or cause to be made
19 an examination of each credit union whenever the
20 superintendent believes such examination is necessary
21 or advisable, but in no event less frequently than
22 once during each ~~eighteen-month~~ twenty-four-month
23 period. A credit union designated as serving
24 predominantly low-income members shall be reviewed
25 during each examination to ensure that such credit
26 union is continuing to meet the standards established
27 by rule of the superintendent. Each credit union and
28 all of its officers and agents shall give to the
29 representatives of the superintendent free access to
30 all books, papers, securities, records, and other
31 sources of information under their control. A report
32 of such examination shall be forwarded to the
33 chairperson of each credit union within thirty days
34 after the completion of the examination. Within
35 thirty days of the receipt of this report, a meeting
36 of the directors shall be called to consider matters
37 contained in the report and the action taken shall be
38 set forth in the minutes of the board. The
39 superintendent may accept, in lieu of the examination
40 of a credit union, an audit report conducted by a
41 certified public accounting firm selected from a list
42 of firms previously approved by the superintendent.
43 The cost of the audit shall be paid by the credit
44 union.

45 Sec. _____. Section 533.8, Code 2003, is amended to
46 read as follows:

47 533.8 ELECTIONS.

48 1. At the organization meeting there shall be
49 elected a board of directors of not less than nine
50 members to hold office for such terms as the bylaws

H-8244

H-8244

Page 3

1 provide and until successors are elected and qualify.

2 2. At each annual meeting there shall be elected
3 one member to fill each position vacated by reason of
4 expiring terms or other causes.

5 3. Pursuant to rules adopted by the
6 superintendent, state credit unions may allow members
7 to vote on the election of directors via electronic
8 means including, but not limited to, the internet or
9 telephone.

10 4. A record of the names and addresses of the
11 directors, officers and committee persons shall be
12 filed with the superintendent within ten days
13 following each election.

14 5. A state credit union wishing to maintain a
15 board of directors of less than nine members may apply
16 to the superintendent for permission to reduce the
17 required number of directors to no fewer than seven
18 members. An application to reduce the required number
19 of directors under this subsection must demonstrate
20 both of the following:

21 a. The application is necessitated by a hardship
22 or other special circumstance.

23 b. The lesser number of directors is in the best
24 interest of the credit union and its members.

25 Sec. _____. Section 533.9, Code 2003, is amended to
26 read as follows:

27 533.9 DIRECTORS AND OFFICERS.

28 1. Within five days following the organization
29 meeting and each annual meeting, the directors shall
30 elect from their own number a chairperson of the
31 board, a vice chairperson, a secretary, and a chief
32 financial officer whose title shall be designated by
33 the board of directors.

34 2. The board shall appoint a credit committee of
35 not less than three members, and an auditing committee
36 of not less than three members, and may also appoint
37 alternate members of the credit committee.

38 3. Only a member of the board of directors or a
39 member of the credit union may be appointed to the
40 credit committee or to the auditing committee.

41 4. The board may appoint an executive committee to
42 act on its behalf when designated for that purpose.

43 5. The duties and responsibilities of a director
44 and of the board of directors ~~have general~~ shall
45 include, but are not limited to, all of the following:

46 a. General management of the affairs of the state
47 credit union including, but not limited to, the power
48 to fix.

49 b. Setting the amount of the surety bond which
50 that shall be required of all officers and employees

H-8244

H-8244

Page 4

1 handling money.

2 c. Periodic review of the original records of the
3 state credit union, or comprehensive summaries
4 prepared by the officers of the credit union,
5 pertaining to loans, security interests, and
6 investments.

7 d. Review of the adequacy of the state credit
8 union's internal controls.

9 e. Periodic review of utilization of security
10 measures.

11 f. Establishing education and training programs to
12 ensure that the directors possess adequate knowledge
13 to manage the affairs of the state credit union.

14 6. a. Directors of a state credit union shall
15 discharge the duties of their position in good faith
16 and with that diligence, care, and skill which
17 ordinarily prudent persons would exercise under
18 similar circumstances in like positions.

19 b. The directors have a continuing responsibility
20 to assure themselves that the state credit union is
21 being managed according to law and that the practices
22 and policies adopted by the board are being
23 implemented.

24 7. Unless the bylaws provide otherwise, the board
25 of directors may permit any and all directors to
26 participate in all except one meeting per year of the
27 board of directors through the use of any means of
28 communication by which all directors participating in
29 the meeting may simultaneously hear each other and
30 communicate during the meeting. A director
31 participating in a meeting by this means is deemed to
32 be present at the meeting.

33 8. a. A director, committee member, officer, or
34 employee of a state credit union shall not directly or
35 indirectly participate in either the deliberation upon
36 or the determination of any matter in which the
37 director, committee member, officer, or employee has a
38 direct or indirect interest.

39 b. For the purposes of this subsection, an
40 interest may include, but is not limited to, a
41 pecuniary or familial interest.

42 Sec. ____. Section 533.12, subsection 1, Code 2003,
43 is amended to read as follows:

44 1. The capital of a credit union shall consist of
45 the payments that have been made to it by the several
46 members thereof on shares. ~~The credit union shall~~
47 ~~have a lien on the shares and deposits of a member for~~
48 ~~any sum due to the credit union from the member or for~~
49 ~~any loan endorsed by the member.~~ A credit union may
50 charge an entrance fee as may be provided by the

H-8244

H-8244

Page 5

1 bylaws.

2 Sec. _____. Section 533.19, Code 2003, is amended to
3 read as follows:

4 533.19 EXPULSION -- WITHDRAWAL.

5 1. The board of directors may expel any member who
6 has failed to do either of the following:

7 a. Carry out the member's obligations to the state
8 credit union.

9 b. Comply with the state credit union's bylaws or
10 policies.

11 2. A member may be expelled by a majority vote of
12 the board of directors at a regular or special meeting
13 of the board.

14 a. The An expelled member may request a hearing
15 before the membership of the credit union. A meeting
16 of the membership shall be held within sixty days of
17 the member's request.

18 b. The membership may, by majority vote at the
19 membership meeting, reinstate the expelled member upon
20 terms and conditions prescribed by it.

21 3. Any member may withdraw from the credit union
22 at any time, but notice of withdrawal may be required
23 as provided in this section.

24 4. All amounts paid on shares or as deposits of an
25 expelled or withdrawing member, with any dividends or
26 interest accredited thereto, to the date thereof,
27 shall, after deducting all amounts due from the member
28 to the credit union and an amount as necessary to
29 honor outstanding share drafts drawn against accounts
30 of the member, be paid to the member.

31 5. Upon expulsion or withdrawal of a member from a
32 credit union, or at any other time, the credit union
33 may require sixty days' notice of intention to
34 withdraw shares and thirty days' notice of intention
35 to withdraw deposits, except that a credit union shall
36 not at any time require notice of withdrawal with
37 respect to funds which are subject to withdrawal by
38 share drafts.

39 6. Withdrawing or expelled members shall have no
40 further rights in the credit union but are not, by
41 such expulsion or withdrawal, released from any
42 remaining liability to the credit union.

43 Sec. _____. NEW SECTION. 533.19A SUSPENSION OR
44 RESTRICTION OF SERVICES.

45 1. A state credit union may suspend or deny
46 certain services to members who have performed any of
47 the following actions:

48 a. Caused a loss to the state credit union.

49 b. Violated the membership agreement or any policy
50 adopted by the board.

H-8244

-5-

H-8244

Page 6

1 c. Been physically or verbally abusive to state
2 credit union members or staff.

3 2. Members with suspended services may maintain a
4 share account and continue to vote at annual and
5 special meetings.

6 Sec. _____. Section 533.38, Code 2003, is amended by
7 adding the following new subsection:

8 NEW SUBSECTION. 12. Establish one or more capital
9 accounts in the same manner as if it were a federal
10 credit union.

DIVISION III

BANKS ARE LIMITED LIABILITY COMPANIES

13 Sec. _____. Section 422.11, Code 2003, is amended to
14 read as follows:

15 422.11 FRANCHISE TAX CREDIT.

16 The taxes imposed under this division, less the
17 credits allowed under section 422.12, shall be reduced
18 by a franchise tax credit. A taxpayer who is a
19 shareholder in a financial institution, as defined in
20 section 581 of the Internal Revenue Code, which has in
21 effect for the tax year an election under subchapter S
22 of the Internal Revenue Code, or is a member of a
23 financial institution organized as a limited liability
24 company under chapter 524 that is taxed as a
25 partnership for federal income tax purposes, shall
26 compute the amount of the tax credit by recomputing
27 the amount of tax under this division by reducing the
28 taxable income of the taxpayer by the taxpayer's pro
29 rata share of the items of income and expense of the
30 financial institution and subtracting the credits
31 allowed under section 422.12. This recomputed tax
32 shall be subtracted from the amount of tax computed
33 under this division after the deduction for credits
34 allowed under section 422.12. The resulting amount,
35 which shall not exceed the taxpayer's pro rata share
36 of the franchise tax paid by the financial
37 institution, is the amount of the franchise tax credit
38 allowed.

39 Sec. _____. Section 524.103, subsections 6, 8, 17,
40 20, 30, 31, and 33, Code 2003, are amended to read as
41 follows:

42 6. "Articles of incorporation" means the original
43 or restated articles of incorporation and all
44 amendments thereto and includes articles of merger.
45 "Articles of incorporation" also means the original or
46 restated articles of organization and all amendments
47 including articles of merger if a state bank is
48 organized as a limited liability company under this
49 chapter.

50 8. "Bank" means a corporation or limited liability

H-8244

H-8244

Page 7

1 company organized under this chapter or 12 U.S.C. §
2 21.

3 17. "Control" means when a person, directly or
4 indirectly or acting through or together with one or
5 more persons, satisfies any of the following:

6 a. Owns, controls, or has the power to vote fifty
7 percent or more of any class of voting securities or
8 membership interests of another person.

9 b. Controls, in any manner, the election of a
10 majority of the directors, managers, trustees, or
11 other persons exercising similar functions of another
12 person.

13 c. Has the power to exercise a controlling
14 influence over the management or policies of another
15 person.

16 20. "Executive officer" means a person who
17 participates or has authority to participate, other
18 than in the capacity of a director or manager, in
19 major policymaking functions of a state bank, whether
20 or not the officer has an official title, whether or
21 not such a title designates the officer as an
22 assistant, or whether or not the officer is serving
23 without salary or other compensation. The chief
24 executive officer, chairperson of the board, the
25 president, every vice president, and the cashier of a
26 state bank are deemed to be executive officers, unless
27 such an officer is excluded, by resolution of the
28 board of directors of a state bank or by the bylaws of
29 the state bank, from participation, other than in the
30 capacity of a director, in major policymaking
31 functions of the state bank, and the officer does not
32 actually participate in the major policymaking
33 functions. All officers who serve on a board of
34 directors are deemed to be executive officers, except
35 as provided for in section 524.701, subsection 3.

36 30. "Shareholder" means one who is a holder of
37 record of shares in a state bank. If a state bank is
38 organized as a limited liability company under this
39 chapter, "shareholder" means any member of the limited
40 liability company.

41 31. "Shares" means the units into which the
42 proprietary interests in a state bank are divided,
43 including any membership interests of a state bank
44 organized as a limited liability company under this
45 chapter.

46 33. "State bank" means any bank incorporated
47 pursuant to the provisions of this chapter after
48 January 1, 1970, and any "state bank" or "savings
49 bank" incorporated pursuant to the laws of this state
50 and doing business as such on January 1, 1970, or

H-8244

H-8244

Page 8

1 organized as a limited liability company under this
2 chapter.

3 Sec. ____ . Section 524.103, Code 2003, is amended
4 by adding the following new subsections:

5 NEW SUBSECTION. 9A. "Board of directors" means
6 the board of directors of a state bank as provided in
7 section 524.601. For state banks organized as a
8 limited liability company under this chapter, "board
9 of directors" means a board of directors or board of
10 managers as designated by the limited liability
11 company in its articles of organization or operating
12 agreement.

13 NEW SUBSECTION. 18A. "Director" means a member of
14 the board of directors and includes a manager of a
15 state bank organized as a limited liability company
16 under this chapter.

17 NEW SUBSECTION. 23A. "Manager" means a person
18 designated by the members to manage a state bank
19 organized as a limited liability company under this
20 chapter as provided in the articles of organization or
21 an operating agreement and may include a member of the
22 board of directors.

23 NEW SUBSECTION. 23B. "Member" means a person with
24 a membership interest in a state bank organized as a
25 limited liability company under this chapter.

26 NEW SUBSECTION. 23C. "Membership interest" means
27 a member's share of the profits and losses, the right
28 to receive distributions of assets, and any right to
29 vote or participate in management, of a state bank
30 organized as a limited liability company under this
31 chapter.

32 Sec. ____ . Section 524.301, Code 2003, is amended
33 to read as follows:

34 524.301 INCORPORATORS -- ORGANIZERS.

35 A state bank may be incorporated or organized as a
36 limited liability company under this chapter by one or
37 more individuals eighteen years of age or older, a
38 majority of whom shall be residents of this state and
39 citizens of the United States.

40 Sec. ____ . NEW SECTION. 524.302A ARTICLES OF
41 INCORPORATION -- LIMITED LIABILITY COMPANY.

42 1. The articles of incorporation of a state bank
43 organized as a limited liability company under this
44 chapter shall be in the form prescribed by the
45 superintendent, and shall set forth all of the
46 following:

47 a. The name of the state bank, that it is
48 organized for the purpose of conducting the business
49 of banking, and that it is organized under the
50 provisions of this chapter.

H-8244

-8-

H-8244

Page 9

- 1 b. The street address of the limited liability
2 company's initial registered office and the name of
3 its initial registered agent at that office.
- 4 c. The location of the state bank's proposed
5 principal office of the limited liability company,
6 which may be the same as the registered office, but
7 need not be within this state.
- 8 d. The duration of the state bank, which shall be
9 perpetual.
- 10 e. The aggregate number of common and preferred
11 shares which the state bank shall have authority to
12 issue and the par value of such shares. If such
13 shares are to be divided into classes or series, the
14 number of shares of each class or series and a
15 statement of the par value of the shares of each class
16 or series.
- 17 f. The number of managers constituting the initial
18 board of directors and the names and addresses of the
19 individuals who are to serve as directors until
20 successors are elected and qualify. A statement that
21 the exclusive authority to manage the state bank is
22 vested in a board of directors that is elected or
23 appointed by the members, that operates in
24 substantially the same manner as, and has
25 substantially the same rights, powers, privileges,
26 duties, and responsibilities as, a board of directors
27 of a state bank chartered as a corporation under this
28 chapter.
- 29 g. A provision that the articles of incorporation,
30 operating agreement, or other organizational documents
31 of the state bank shall not require the consent of any
32 other owner in order for an owner to transfer
33 membership interests in the state bank, including
34 voting rights.
- 35 2. The articles of incorporation may set forth any
36 or all of the following:
- 37 a. Provisions not inconsistent with law regarding
38 management of the business and regulation of the
39 affairs of the state bank.
- 40 b. Any provision required or permitted by this
41 chapter to be set forth in the operating agreement.
- 42 3. The articles of incorporation need not set
43 forth any of the organizational powers enumerated in
44 this chapter.
- 45 Sec. _____. Section 524.303, Code 2003, is amended
46 to read as follows:
- 47 524.303 APPLICATION FOR APPROVAL.
- 48 The incorporators or organizers shall make an
49 application to the superintendent for approval of a
50 proposed state bank in the manner prescribed by the

H-8244

H-8244

Page 10

1 superintendent and shall deliver to the
2 superintendent, together with such application:

3 1. The articles of incorporation.

4 2. Applicable fees, payable to the secretary of
5 state as specified in section 490.122 or 490A.124, for
6 the filing and recording of the articles of
7 incorporation.

8 Sec. _____. Section 524.304, subsection 1, Code
9 2003, is amended to read as follows:

10 1. The incorporators or organizers of a state bank
11 shall, within thirty days of the acceptance of the
12 application for processing, publish notice of the
13 proposed incorporation or organization once each week
14 for two successive weeks in a newspaper of general
15 circulation published in the municipal corporation
16 which is proposed as the principal place of business
17 of the state bank, or if there is none, a newspaper of
18 general circulation published in the county, or in a
19 county adjoining the county, in which the proposed
20 state bank is to have its principal place of business.
21 The notice shall set forth all of the following:

22 a. The name of the proposed state bank.

23 b. A statement that it is to be incorporated or
24 organized under this chapter.

25 c. The purpose or purposes of the state bank.

26 d. The names and addresses of the incorporators or
27 organizers and of the members of the initial board of
28 directors or board of directors as they appear, or
29 will appear, in the articles of incorporation.

30 e. The date the application was accepted for
31 processing.

32 f. If the incorporation or organization of the
33 state bank has been approved by the superintendent
34 under section 524.305, subsection 8, the name and
35 address of the bank with which the state bank will
36 have merged, or the assets of which the state bank
37 will have acquired or the condition of which in some
38 other way provided a purpose for the incorporation or
39 organization.

40 Sec. _____. Section 524.305, subsection 1, paragraph
41 d, Code 2003, is amended to read as follows:

42 d. The character and fitness of the incorporators
43 or organizers and of the members of the initial board
44 of directors are such as to command the confidence of
45 the community and to warrant the belief that the
46 business of the proposed state bank will be honestly
47 and efficiently conducted.

48 Sec. _____. Section 524.305, subsections 6, 7, and
49 9, Code 2003, are amended to read as follows:

50 6. If the superintendent approves the application,

H-8244

H-8244

Page 11

1 the superintendent shall notify the incorporators or
2 organizers, and such other persons who requested in
3 writing that they be notified, of the approval. If
4 the superintendent disapproves the application, the
5 superintendent shall notify the incorporators or
6 organizers of the action and the reason for the
7 decision.

8 7. The actions of the superintendent shall be
9 subject to judicial review in accordance with chapter
10 17A. The court may award damages to the incorporators
11 or organizers if it finds that review is sought
12 frivolously or in bad faith.

13 9. As a condition of receiving the decision of the
14 superintendent with respect to the application the
15 incorporators or organizers shall reimburse the
16 superintendent for all expenses incurred by the
17 superintendent in connection with the application.

18 Sec. _____. Section 524.306, Code 2003, is amended
19 to read as follows:

20 524.306 INCORPORATION OR ORGANIZATION OF STATE
21 BANK.

22 1. Unless a delayed effective date or time is
23 specified, the corporate or organizational existence
24 of a state bank begins when the articles of
25 incorporation, with the superintendent's approval
26 indicated on the articles of incorporation, are filed
27 with the secretary of state. The secretary of state
28 shall record the articles of incorporation and forward
29 a copy of them to the county recorder of the county in
30 which the state bank is to have its principal place of
31 business.

32 2. The secretary of state's acknowledgment of
33 filing of the articles of incorporation is conclusive
34 proof that the incorporators or organizers satisfied
35 all conditions precedent to incorporation or
36 organization, except in a proceeding instituted by the
37 superintendent to cancel or revoke the incorporation
38 or involuntarily dissolve the corporation or
39 organization.

40 Sec. _____. Section 524.307, Code 2003, is amended
41 to read as follows:

42 524.307 INITIAL ORGANIZATION OF STATE BANK.

43 Upon incorporation, or organization as a limited
44 liability company, of the state bank, the initial
45 board of directors shall hold an organizational
46 meeting within this state, at the call of a majority
47 of the directors, to complete the organization of the
48 state bank by electing officers, adopting bylaws, if
49 any are to be adopted, and conducting any other
50 business properly brought before the board at the

H-8244

-11-

H-8244

Page 12

1 meeting.

2 Sec. _____. Section 524.308, subsection 2, Code
3 2003, is amended to read as follows:

4 2. If a state bank transacts any business before
5 receipt of an authorization to do business in
6 violation of subsection 1, the directors, managers,
7 and officers who willfully authorized or participated
8 in the action are severally liable for the debts and
9 liabilities of the state bank incurred prior to the
10 receipt of the authorization to do business.

11 Sec. _____. Section 524.310, Code 2003, is amended
12 to read as follows:

13 524.310 NAME OF STATE BANK.

14 1. The name of a state bank originally
15 incorporated or organized after the effective date of
16 this chapter shall include the word "bank" and may
17 include the word "state" or "trust" in its name. A
18 state bank using the word "trust" in its name must be
19 authorized under this chapter to act in a fiduciary
20 capacity.

21 2. The provisions of this section shall not
22 require any state bank, existing and operating on
23 January 1, 1970, to add to, modify or otherwise change
24 its corporate or organizational name, either on
25 January 1, 1970, or upon renewal of its corporate
26 existence pursuant to section 524.314.

27 3. If a state bank existing and operating on
28 January 1, 1970, causes its corporate or
29 organizational name to be changed, the name as changed
30 shall comply with subsection 1 of this section.

31 4. a. A person may reserve the exclusive use of a
32 corporate or organizational name for a state bank by
33 delivering an application to the secretary of state
34 for filing. The application must set forth the name
35 and address of the applicant and the name proposed to
36 be reserved. If the secretary of state finds that the
37 corporate or organizational name applied for is
38 available, the secretary of state shall reserve the
39 name for the applicant's exclusive use for a
40 nonrenewable one hundred twenty day period.

41 b. The owner of a reserved corporate or
42 organizational name may transfer the reservation to
43 another person by delivering to the secretary of state
44 a signed notice of the transfer that states the name
45 and address of the transferee.

46 Sec. _____. Section 524.312, subsections 1 and 5,
47 Code 2003, are amended to read as follows:

48 1. A state bank originally incorporated or
49 organized pursuant to this chapter shall have its
50 principal place of business within the city limits of

H-8244

H-8244

Page 13

1 a municipal corporation. The existence of a state
2 bank shall not, however, be affected by the subsequent
3 discontinuance of the municipal corporation. A state
4 bank existing and operating on January 1, 1970, which
5 does not have its principal place of business within
6 the city limits of a municipal corporation, may renew
7 its corporate or organizational existence pursuant to
8 section 524.314 without regard to this section and may
9 also operate as a bank or convert to and operate as a
10 bank office when acquired by or merged into another
11 state bank and approved by the superintendent.

12 5. A state bank approved under the provisions of
13 section 524.305, subsection 8, shall not commence its
14 business at any location other than within a municipal
15 corporation or unincorporated area in which was
16 located the principal place of business or an office
17 of the bank the condition of which was the basis for
18 the superintendent authorizing incorporation or
19 organization of the new state bank.

20 Sec. _____. Section 524.313, Code 2003, is amended
21 to read as follows:

22 524.313 BYLAWS.

23 A state bank may adopt bylaws. The power to adopt,
24 amend, or repeal bylaws or adopt new bylaws is vested
25 in the board of directors unless reserved to the
26 shareholders by the articles of incorporation. The
27 bylaws may contain any provisions for the regulation
28 and management of the affairs of the state bank not
29 inconsistent with law or the articles of
30 incorporation. For a state bank organized as a
31 limited liability company under this chapter, "bylaws"
32 means the operating agreement of the state bank.

33 Sec. _____. NEW SECTION. 524.315 STATE BANKS AS
34 LIMITED LIABILITY COMPANIES.

35 1. A state bank organized as a limited liability
36 company under this chapter shall also be subject to
37 chapter 490A, the Iowa limited liability company Act.
38 If a provision of the Iowa limited liability company
39 Act conflicts with a provision of this chapter or any
40 rule of the superintendent adopted pursuant to this
41 chapter, the provisions of this chapter or rule of the
42 superintendent shall control.

43 2. The superintendent shall possess the exclusive
44 authority to regulate a state bank organized as a
45 limited liability company under this chapter.

46 3. The superintendent may adopt rules to ensure
47 that a state bank organized as a limited liability
48 company under this chapter is operating in a safe and
49 sound manner and is subject to the superintendent's
50 authority in the same manner as a state bank organized

H-8244

-13-

H-8244

Page 14

1 as a corporation.

2 Sec. ____ . Section 524.401, subsections 2, 3, and
3 4, Code 2003, are amended to read as follows:

4 2. The minimum capital structure of a state bank
5 incorporated after July 1, 1995, or organized after
6 July 1, 2004, pursuant to the provisions of this
7 chapter shall not be less than the amount required by
8 the federal deposit insurance corporation, or its
9 successor, or a greater amount which the
10 superintendent may deem necessary in view of the
11 deposit potential of the state bank and current
12 banking standards relating to total capital
13 requirements.

14 3. A state bank incorporated on or after July 1,
15 1995, or organized after July 1, 2004, pursuant to
16 this chapter, prior to receiving authorization to do
17 business from the superintendent, shall establish
18 paid-in surplus and undivided profits as required by
19 the superintendent.

20 4. A state bank originally incorporated or
21 organized pursuant to this chapter shall establish,
22 prior to receiving authorization to do business from
23 the superintendent, paid-in surplus and undivided
24 profits as required by the superintendent.

25 Sec. ____ . Section 524.525, Code 2003, is amended
26 to read as follows:

27 524.525 SUBSCRIPTION FOR SHARES BEFORE
28 INCORPORATION OR ORGANIZATION.

29 1. A subscription for shares entered into before
30 incorporation or organization of the state bank is
31 irrevocable for six months unless the subscription
32 agreement provides a longer or shorter period, or all
33 subscribers agree to revocation.

34 2. The board of directors may determine the
35 payment terms of subscriptions for shares that were
36 entered into before incorporation or organization of
37 the state bank unless the subscription agreement
38 specifies the terms. A call for payment by the board
39 of directors must be uniform so far as practicable as
40 to all shares of the same class or series, unless the
41 subscription agreement specifies otherwise.

42 3. Shares issued pursuant to subscriptions entered
43 into before incorporation or organization of the state
44 bank are fully paid and nonassessable when the state
45 bank receives the consideration specified in the
46 subscription agreement.

47 4. If a subscriber defaults in payment of money or
48 property under a subscription agreement entered into
49 before incorporation or organization of the state
50 bank, the state bank may do either of the following:

H-8244

-14-

H-8244

Page 15

- 1 a. Collect the amount owed as any other debt.
2 b. Unless the subscription agreement provides
3 otherwise, the state bank may rescind the agreement
4 and may sell the shares if the debt remains unpaid
5 more than twenty days after the state bank sends
6 written demand for payment to the subscriber.
7 Sec. _____. Section 524.528, subsection 2, paragraph
8 c, Code 2003, is amended to read as follows:
9 c. There is no preemptive right with respect to
10 any of the following:
11 (1) Shares issued as compensation to directors,
12 managers, officers, agents, or employees of the state
13 bank, its subsidiaries, or its affiliates.
14 (2) Shares issued to satisfy conversion or option
15 rights created to provide compensation to directors,
16 managers, officers, agents, or employees of the state
17 bank, its subsidiaries, or its affiliates.
18 (3) Shares authorized in articles of incorporation
19 that are issued within six months from the effective
20 date of incorporation or organization.
21 Sec. _____. Section 524.801, subsection 1, Code
22 2003, is amended to read as follows:
23 1. To sue and be sued, complain and defend, in its
24 corporate or organizational name.
25 Sec. _____. Section 524.801, unnumbered paragraph 2,
26 Code 2003, is amended to read as follows:
27 The powers granted in this section shall not be
28 construed as limiting or enlarging any grant of
29 authority made elsewhere in this chapter, or as a
30 limitation on the purposes for which a state bank may
31 be incorporated or organized.
32 Sec. _____. Section 524.1301, Code 2003, is amended
33 to read as follows:
34 524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS,
35 OR INITIAL DIRECTORS.
36 A majority of the incorporators, organizers, or
37 initial directors of a state bank that has not issued
38 shares or has not commenced business may dissolve the
39 state bank by delivering articles of dissolution to
40 the superintendent, together with the applicable
41 filing and recording fees, for filing with the
42 secretary of state that set forth all of the
43 following:
44 1. The name of the state bank.
45 2. The date of its incorporation or organization.
46 3. Either of the following:
47 a. That the state bank has not issued any shares.
48 b. That the state bank has not commenced business.
49 4. That no debt of the state bank remains unpaid.
50 5. If shares were issued, that the net assets of

H-8244

H-8244

Page 16

1 the state bank remaining after the payment of all
2 necessary expenses have been distributed to the
3 shareholders.

4 6. That a majority of the incorporators,
5 organizers, or initial directors authorized the
6 dissolution.

7 Sec. _____. Section 524.1302, Code 2003, is amended
8 to read as follows:

9 524.1302 INVOLUNTARY DISSOLUTION PRIOR TO
10 COMMENCEMENT OF BUSINESS.

11 Prior to the issuance of an authorization to do
12 business, the superintendent may cause the dissolution
13 of a state bank if there exists any reason why it
14 should not have been incorporated or organized under
15 this chapter or if an authorization to do business has
16 not been issued within one year after the date of its
17 incorporation or organization, or such longer time as
18 the superintendent may allow for satisfaction of
19 conditions precedent to its issuance. After giving
20 the state bank adequate notice and an opportunity for
21 hearing, the superintendent shall certify the
22 applicable facts by the filing of a statement with the
23 secretary of state, who shall thereafter issue a
24 certificate of dissolution. Upon the issuance of such
25 certificate of dissolution by the secretary of state,
26 the corporate or organizational existence of the state
27 bank shall cease.

28 Sec. _____. Section 524.1309, Code 2003, is amended
29 to read as follows:

30 524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

31 In lieu of the dissolution procedure prescribed in
32 sections 524.1303 to 524.1306, a state bank may cease
33 to carry on the business of banking and, after
34 compliance with this section, continue as a
35 corporation subject to chapter 490; or if the state
36 bank is organized as a limited liability company under
37 this chapter, continue as a limited liability company
38 subject to chapter 490A.

39 1. A state bank ~~which~~ that has commenced business
40 may propose to voluntarily cease to carry on the
41 business of banking and become a corporation subject
42 to chapter 490, or a limited liability company subject
43 to chapter 490A, upon the affirmative vote of the
44 holders of at least a majority of the shares entitled
45 to vote on such proposal, adopting a plan involving
46 both a provision for acquisition of its assets and
47 assumption of its liabilities by another state bank,
48 national bank, or other financial institution insured
49 by the federal deposit insurance corporation, and a
50 provision for continuance of its business if

H-8244

-16-

H-8244

Page 17

1 acquisition of its assets and assumption of its
2 liabilities is not effected, or any other plan
3 providing for the cessation of banking business and
4 the payment of its liabilities.

5 2. The application to the superintendent for
6 approval of a plan described in subsection 1 ~~of this~~
7 ~~section~~ shall be treated by the superintendent in the
8 same manner as an application for approval of a plan
9 of dissolution under ~~subsection 2 of~~ section 524.1303,
10 subsection 2, and shall be subject to ~~subsection 3 of~~
11 section 524.1303, subsection 3.

12 3. Immediately upon adoption and approval of a
13 plan to voluntarily cease to carry on the business of
14 banking and become a corporation subject to chapter
15 490, or a limited liability company subject to chapter
16 490A, the state bank shall deliver to the
17 superintendent a plan to cease the business of banking
18 and become a corporation subject to chapter 490, or a
19 limited liability company subject to chapter 490A,
20 which shall be signed by two of its duly authorized
21 officers and shall contain the name of the state bank,
22 the post office address of its principal place of
23 business, the name and address of its officers and
24 directors, the number of shares entitled to vote on
25 the plan and the number of shares voted for or against
26 the plan, respectively, the nature of the business to
27 be conducted by the corporation under chapter 490, or
28 by the limited liability company subject to chapter
29 490A, and the general nature of the assets to be held
30 by the corporation or company.

31 4. Upon approval of the plan by the
32 superintendent, the state bank shall immediately
33 surrender to the superintendent its authorization to
34 do business as a bank and shall cease to accept
35 deposits and carry on the banking business except
36 insofar as may be necessary for it to complete the
37 settlement of its affairs as a state bank in
38 accordance with subsection 5.

39 5. The board of directors has full power to
40 complete the settlement of the affairs of the state
41 bank. Within thirty days after approval by the
42 superintendent of the plan to cease the business of
43 banking and become a corporation subject to chapter
44 490, or a limited liability company subject to chapter
45 490A, the state bank shall give notice of its intent
46 to persons identified in section 524.1305, subsection
47 4, in the manner provided for in that subsection. In
48 completing the settlement of its affairs as a state
49 bank the state bank shall also follow the procedure
50 prescribed in section 524.1305, subsections 4, 5, and

H-8244

H-8244

Page 18

1 6.

2 6. Upon completion of all the requirements of this
3 section, the state bank shall deliver to the
4 superintendent articles of intent to be subject to
5 chapter 490 or 490A, together with the applicable
6 filing and recording fees, which shall set forth that
7 the state bank has complied with this section, that it
8 has ceased to carry on the business of banking, and
9 the information required by section 490.202 relative
10 to the contents of articles of incorporation under
11 chapter 490, or article of organization under chapter
12 490A. If the superintendent finds that the state bank
13 has complied with this section and that the articles
14 of intent to be subject to chapter 490 or 490A satisfy
15 the requirements of this section, the superintendent
16 shall deliver them to the secretary of state for
17 filing and recording in the secretary of state's
18 office, and they shall be filed and recorded in the
19 office of the county recorder.

20 7. Upon the filing of the articles of intent to be
21 subject to chapter 490 or 490A, the state bank shall
22 cease to be a state bank subject to this chapter, and
23 shall cease to have the powers of a state bank subject
24 to this chapter and shall become a corporation subject
25 to chapter 490 or a limited liability company subject
26 to chapter 490A. The secretary of state shall issue a
27 certificate as to the filing of the articles of intent
28 to be subject to chapter 490 or 490A, and send the
29 certificate to the corporation or limited liability
30 company or its representative. The articles of intent
31 to be subject to chapter 490 or 490A shall be the
32 articles of incorporation of the corporation or a
33 limited liability company. The provisions of chapter
34 490 or 490A becoming applicable to a corporation or
35 limited liability company formerly doing business as a
36 state bank shall not affect any right accrued or
37 established, or liability or penalty incurred under
38 this chapter prior to the filing with the secretary of
39 state of the articles of intent to be subject to
40 chapter 490 or 490A.

41 8. A shareholder of a state bank who objects to
42 adoption by the state bank of a plan to cease to carry
43 on the business of banking and to continue as a
44 corporation subject to chapter 490, or a limited
45 liability company subject to chapter 490A, is entitled
46 to appraisal rights provided for in chapter 490,
47 division XIII, or in chapter 490A, subchapter VII.

48 9. A state bank, at any time prior to the approval
49 of the articles of intent to become subject to chapter
50 490 or 490A, may revoke the proceedings in the manner

H-8244

-18-

H-8244

Page 19

1 prescribed by section 524.1306.

2 Sec. _____. Section 524.1405, subsection 2,
3 paragraph f, Code 2003, is amended to read as follows:
4 f. The shares of each party to the merger that are
5 to be converted into shares, obligations, or other
6 securities of the surviving party or any other
7 corporation or limited liability company or into cash
8 or other property are converted, and the former
9 holders of the shares are entitled only to the rights
10 provided in the articles of merger or to their rights
11 under section 524.1406.

12 Sec. _____. Section 524.1408, Code 2003, is amended
13 to read as follows:

14 524.1408 MERGER OF CORPORATION OR LIMITED
15 LIABILITY COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

16 A state bank owning at least ninety percent of the
17 outstanding shares, of each class, of another
18 corporation or limited liability company which it is
19 authorized to own under this chapter, may merge the
20 other corporation or limited liability company into
21 itself without approval by a vote of the shareholders
22 of either the state bank or the subsidiary corporation
23 or limited liability company. The board of directors
24 of the state bank shall approve a plan of merger, mail
25 to shareholders of record of the subsidiary
26 corporation or holders of membership interests in the
27 subsidiary limited company, and prepare and execute
28 articles of merger in the manner provided for in
29 section 490.1105. The articles of merger, together
30 with the applicable filing and recording fees, shall
31 be delivered to the superintendent who shall, if the
32 superintendent approves of the proposed merger and if
33 the superintendent finds the articles of merger
34 satisfy the requirements of this section, deliver them
35 to the secretary of state for filing and recording in
36 the secretary of state's office, and they shall be
37 filed in the office of the county recorder. The
38 secretary of state upon filing the articles of merger
39 shall issue a certificate of merger and send the
40 certificate to the state bank and a copy of it to the
41 superintendent.

42 Sec. _____. Section 524.1802, subsection 1, Code
43 2003, is amended by adding the following new
44 paragraph:

45 NEW PARAGRAPH. gg. "Incorporated in any state"
46 means a limited liability company organized as a state
47 bank under this chapter and a limited liability
48 company organized as a state bank under the laws of
49 any state as defined in 12 U.S.C. § 1813(a)(3).

50 Sec. _____. Section 524.2001, Code 2003, is amended

H-8244

H-8244

Page 20

1 to read as follows:

2 524.2001 APPLICABILITY OF OTHER CHAPTERS.

3 Chapters 490, 490A, 491, 492, and 493 do not apply

4 to banks except as provided by this chapter.

5 DIVISION IV

6 REAL PROPERTY LOANS

7 Sec. ____ . Section 535.8, subsection 2, paragraph

8 b, unnumbered paragraph 2, Code 2003, is amended to

9 read as follows:

10 The lender shall not charge the borrower for the

11 cost of revenue stamps or real estate commissions

12 which are paid by the seller.

13 PARAGRAPH DIVIDED. ~~Collection~~ The collection of14 any ~~cost~~ costs other than as expressly permitted by15 this lettered paragraph "b" is prohibited. However,16 additional costs incurred in connection with a loan17 under this paragraph "b", if bona fide and reasonable,18 may be collected by a state-chartered financial19 institution licensed under chapter 524, 533, or 534,20 to the extent permitted under applicable federal law21 as determined by the office of the comptroller of the22 currency of the United States department of treasury,23 the national credit union association, or the office24 of thrift supervision of the United States department25 of treasury. Such costs shall apply only to the same26 type of state chartered entity as the federally27 chartered entity affected."

28 3. Title page, by striking lines 1 and 2 and

29 inserting the following: "An Act relating to the

30 regulation of financial institutions including banks,

31 credit unions, and real property loan lenders."

32 4. By renumbering as necessary.

By JENKINS of Black Hawk

STRUYK of Pottawattamie

SANDS of Louisa

QUIRK of Chickasaw

VAN FOSSEN, J. K. of Scott

H-8244 FILED MARCH 15, 2004

HOUSE FILE 2484**H-8249**

1 Amend the amendment, H-8244, to House File 2484 as
2 follows:

3 1. Page 6, line 12, by striking the word "ARE"
4 and inserting the following: "AS".

5 2. Page 20, line 27, by inserting after the word
6 "affected" the following: "and to an insurer
7 organized under chapter 508 or 515, or otherwise
8 authorized to conduct the business of insurance in
9 this state".

By JENKINS of Black Hawk

H-8249 FILED MARCH 16, 2004

ADOPTED

HOUSE FILE 2484**H-8250**

1 Amend the amendment, H-8244, to House File 2484 as
2 follows:

3 1. Page 2, line 1, by striking the words
4 "investment permitted by" and inserting the following:
5 "permissible investment for".

By JENKINS of Black Hawk

H-8250 FILED MARCH 16, 2004

ADOPTED

HOUSE FILE 2484**H-8256**

1 Amend the amendment, H-8244, to House File 2484 as
2 follows:

3 1. Page 20, by striking lines 5 through 27.
4 2. Page 20, by striking lines 30 and 31 and
5 inserting the following: "regulation of banks and
6 credit unions.""

By EICHHORN of Hamilton

H-8256 FILED MARCH 16, 2004

LOST

HOUSE FILE 2484
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 537)

(As Amended and Passed by the House March 16, 2004)

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

A BILL FOR

1 An Act relating to the regulation of financial institutions
2 including banks, credit unions, and real property loan
3 lenders.

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

5
6
7
8
9

House Amendments _____

HOUSE FILE 2484

S-5147

11 1 Amend House File 2484, as amended, passed, and
12 2 reprinted by the House, as follows:
13 3 1. Page 39, by inserting after line 27 the
14 4 following:
15 5 "Nothing in this section shall be construed to
16 6 allow the sale of title insurance or the charging of
17 7 title insurance premiums except as provided in
18 8 subparagraph (10)."

By LARRY MCKIBBEN

S-5147 FILED MARCH 25, 2004

17
18
19
20
21

DIVISION I

DIVISION OF BANKING

1
2
3 Section 1. Section 8A.412, subsection 19, Code Supplement
4 2003, is amended to read as follows:

5 19. The superintendent ~~and the deputy superintendent~~ of
6 the banking division of the department of commerce, all
7 members of the state banking board council, and all employees
8 of the banking division.

9 Sec. 2. Section 524.201, subsection 1, Code 2003, is
10 amended to read as follows:

11 1. The governor shall appoint, subject to confirmation by
12 the senate, a superintendent of banking. The appointee shall
13 be selected solely with regard to qualification and fitness to
14 discharge the duties of office, and a person shall not be
15 appointed who has not had at least five years' experience as
16 an executive officer in a bank ~~or in the regulation or~~
17 ~~examination of banks.~~

18 Sec. 3. Section 524.203, Code 2003, is amended by striking
19 the section and inserting in lieu thereof the following:

20 524.203 SUPERINTENDENT -- VACANCY.

21 If the office of superintendent shall become vacant, the
22 governor may appoint an acting superintendent to complete the
23 unexpired term until an appointment is made as provided in
24 section 524.201.

25 Sec. 4. Section 524.204, Code 2003, is amended by striking
26 the section and inserting in lieu thereof the following:

27 524.204 DEPUTY SUPERINTENDENT OF BANKING.

28 The superintendent may appoint an employee of the division
29 of banking as deputy to perform the duties of the
30 superintendent during the absence or inability of the
31 superintendent to act. Any deputy so appointed shall be
32 removable at the pleasure of the superintendent.

33 Sec. 5. Section 524.205, Code 2003, is amended to read as
34 follows:

35 524.205 STATE BANKING BOARD COUNCIL.

1 1. The state banking board council shall be composed
2 consist of the superintendent, who shall be an ex officio
3 ~~nonvoting~~ member and chairperson, and six other members,
4 appointed by the governor, who shall be chosen appointed,
5 where practical, from various sections parts of the state.
6 Provided, however, that in no event shall more than five
7 members of such board council be engaged in the business of
8 banking in any executive capacity. ~~In case of a vacancy in~~
9 ~~the state banking board, other than one resulting from a~~
10 ~~vacancy in the office of the superintendent, the governor~~
11 ~~shall appoint a new member to fill such vacancy for the~~
12 ~~unexpired term.~~

13 2. The regular-term terms of office of each member for
14 members of the state banking council, other than the
15 superintendent, shall be contemporaneous with the regular term
16 of office of the superintendent as defined in subsection 2 of
17 section 524.201, and each such member shall hold office for
18 such term and until the member's successor shall have been
19 appointed four-year staggered terms. Each member shall hold
20 office for the term for which the member is appointed or until
21 a successor is appointed.

22 3. A member of the state banking board council, other than
23 the superintendent, shall not receive a salary but is entitled
24 to reimbursement for actual expenses incurred by the member in
25 connection with the member's duties. Each member of the board
26 council may also be eligible to receive compensation as
27 provided in section 7E.6.

28 4. The state banking board council shall act with the
29 superintendent in an advisory capacity concerning all matters
30 submitted to the council by the superintendent pertaining to
31 the conduct of the administration of the provisions of this
32 chapter and shall perform such other duties as are
33 specifically provided for by the laws of this state.

34 5. The state banking board council shall meet at least
35 once each month calendar quarter on such date and at such

1 place as the ~~state-banking-board~~ council may designate decide,
2 and shall meet at such other times as the-board may deem be
3 deemed necessary, ~~or when called by the chairperson of the~~
4 ~~board, or any two members thereof~~ by the superintendent or a
5 majority of the council members.

6 Sec. 6. Section 524.207, subsection 1, Code Supplement
7 2003, is amended to read as follows:

8 1. All expenses required in the discharge of the duties
9 and responsibilities imposed upon the banking division of the
10 department of commerce, the superintendent, and the state
11 banking board council by the laws of this state shall be paid
12 from fees provided by the laws of this state and appropriated
13 by the general assembly from the general fund of the state.
14 All of these fees are payable to the superintendent. The
15 superintendent shall pay all the fees and other moneys
16 received by the superintendent to the treasurer of state
17 within the time required by section 12.10 and the fees and
18 other moneys shall be deposited into the general fund of the
19 state. The superintendent may keep on hand with the treasurer
20 of state funds in excess of the current needs of the division
21 to the extent approved recommended by the state banking board
22 council.

23 Sec. 7. Section 524.208, Code 2003, is amended to read as
24 follows:

25 524.208 ~~ASSISTANTS, EXAMINERS, AND OTHER EMPLOYEES.~~

26 The superintendent may appoint ~~assistants, examiners, and~~
27 other employees as the superintendent deems necessary to the
28 proper discharge of the duties imposed upon the superintendent
29 by the laws of this state. Pay plans shall be established for
30 employees, other than clerical, who examine the accounts and
31 affairs of state banks and who examine the accounts and
32 affairs of other persons, subject to supervision and
33 regulation by the superintendent, which are substantially
34 equivalent to those paid by the ~~Federal-Deposit-Insurance~~
35 ~~Corporation~~ federal deposit insurance corporation and other

1 federal supervisory agencies in this area of the United
2 States.

3 Sec. 8. Section 524.209, Code Supplement 2003, is amended
4 to read as follows:

5 524.209 EXPENSES.

6 The superintendent, ~~deputy-superintendent~~, ~~assistants~~,
7 examiners, and other employees of the banking division shall
8 be entitled to receive reimbursement for expenses incurred in
9 the performance of their duties. The superintendent, and when
10 specifically authorized by the superintendent, ~~the-deputy~~
11 ~~superintendent~~, ~~assistants~~, examiners and other employees of
12 the banking division, shall be entitled to receive
13 reimbursement for expenses incurred while attending
14 conventions, meetings, conferences, schools, or seminars
15 relating to the performance of their duties, and such expenses
16 shall be paid by the treasurer of state on warrants drawn by
17 the director of the department of administrative services.

18 Sec. 9. Section 524.210, Code 2003, is amended to read as
19 follows:

20 524.210 INSURANCE AND SURETY BONDS.

21 The superintendent shall acquire good and sufficient bond
22 in a company authorized to do business in this state insuring
23 the faithful performance of ~~the-deputy-superintendent~~,
24 ~~assistants~~, examiners, and all other employees of the banking
25 division and insuring against any liability which may accrue
26 in the case of the loss of any property of a state bank, of a
27 customer of a state bank or of any other person, in the course
28 of any examination, investigation, or other function required
29 or allowed by the laws of this state. The superintendent
30 shall be bonded in accordance with the provisions of chapter
31 64.

32 Sec. 10. Section 524.211, subsections 1, 2, 3, 4, 5, and
33 7, Code 2003, are amended to read as follows:

34 1. The superintendent, ~~deputy-superintendent~~, ~~an-assistant~~
35 ~~to-the-superintendent~~, ~~a-bank-examination-analyst~~, general

1 counsel, ~~or-an-examiner~~ examiners, and other employees
2 assigned to the bank bureau of the banking division ~~is~~ are
3 prohibited from obtaining a loan of money or property from a
4 state-chartered bank or any person or entity affiliated with a
5 state-chartered bank.

6 2. The superintendent, ~~deputy-superintendent,~~-finance
7 ~~company-bureau-chief,~~ general counsel, and ~~all~~ examiners, and
8 other employees assigned to the finance ~~company~~ bureau of the
9 banking division are prohibited from obtaining a loan of money
10 or property from a person or entity licensed pursuant to
11 chapter 533A, 533D, 536, or 536A, or a person or entity
12 affiliated with such licensee.

13 3. The superintendent, ~~deputy-superintendent,~~-an-assistant
14 ~~to-the-superintendent,~~-a-bank-examination-analyst,-finance
15 ~~company-bureau-chief,~~ general counsel, ~~or-an-examiner~~
16 examiners, and other employees of the banking division, who
17 ~~has~~ have credit relations with a person or entity licensed or
18 registered pursuant to chapter 535B or 536C, ~~is~~ are prohibited
19 from participating in decisions, oversight, and official
20 review of matters concerning the regulation of the licensee or
21 registrant.

22 4. ~~An-assistant-to-the-superintendent,~~-a-bank-examination
23 ~~analyst,~~-or-an-examiner Examiners and other employees assigned
24 to the bank bureau of the banking division who ~~has~~ have credit
25 relations with a person or entity licensed pursuant to chapter
26 533A, 533D, 536, or 536A, or with a person or entity
27 affiliated with such licensee, ~~is~~ are prohibited from
28 participating in decisions, oversight, and official review of
29 matters concerning the regulation of the licensee.

30 5. An employee of the banking division, other than the
31 superintendent or a member of the state banking board council,
32 shall not perform any services for, and shall not be a
33 shareholder, member, partner, owner, director, officer, or
34 employee of, any enterprise, person, or affiliate subject to
35 the regulatory purview of the banking division.

1 7. The superintendent, ~~deputy-superintendent, or any~~
2 ~~assistant or examiner~~ examiners, or other employees who ~~is~~ are
3 convicted of a felony while holding such position shall be
4 immediately discharged from employment and shall be forever
5 disqualified from holding any position in the banking
6 division.

7 Sec. 11. Section 524.212, Code Supplement 2003, is amended
8 to read as follows:

9 524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY
10 INFORMATION.

11 The superintendent, ~~deputy-superintendent, assistant to the~~
12 ~~superintendent, examiner~~ members of the state banking council,
13 general counsel, examiners, or other ~~employee~~ employees of the
14 banking division shall not disclose, in any manner, to any
15 person other than the person examined and those regulatory
16 agencies referred to in section 524.217, subsection 2, any
17 information relating specifically to the supervision and
18 regulation of any state bank, persons subject to the
19 provisions of chapter 533A, 533C, 536, or 536A, any affiliate
20 of any state bank, or an affiliate of a person subject to the
21 provisions of chapter 533A, 533C, 536, or 536A, except when
22 ordered to do so by a court of competent jurisdiction and then
23 only in those instances referred to in section 524.215,
24 subsections 1, 2, 3, and 5.

25 Sec. 12. Section 524.214, subsection 1, Code 2003, is
26 amended to read as follows:

27 1. The superintendent, ~~the deputy-superintendent,~~ and upon
28 the approval of the superintendent, any ~~assistant or~~ examiner
29 or other employees of the banking division shall have the
30 power to subpoena witnesses, to compel their attendance, to
31 administer an oath, to examine any person under oath and to
32 require the production of any relevant books or papers. Such
33 examination may be conducted on any subject relating to the
34 duties imposed upon, or powers vested in, the superintendent
35 under the provisions of this chapter.

1 Sec. 13. Section 524.215, unnumbered paragraph 2, Code
2 2003, is amended to read as follows:

3 The superintendent, ~~deputy-superintendent, assistants, or~~
4 members of the state banking council, examiners, or other
5 employees of the banking division shall not be subpoenaed in
6 any cause or proceeding to give testimony concerning
7 information relating specifically to the supervision and
8 regulation of any state bank or other person by the
9 superintendent pursuant to the laws of this state, and the
10 records of the banking division which relate specifically to
11 the supervision and regulation of any such state bank or other
12 such person shall not be offered in evidence in any court or
13 subject to subpoena by any party except, where relevant:

14 Sec. 14. Section 524.216, unnumbered paragraph 1, Code
15 2003, is amended to read as follows:

16 The superintendent shall make a report in writing annually
17 to the governor in the manner and within the time required by
18 chapter 7A. ~~A copy of the report shall be furnished by the~~
19 ~~superintendent to each state bank.~~

20 Sec. 15. Section 524.217, subsection 1, paragraph a, Code
21 2003, is amended to read as follows:

22 a. Make or cause to be made an examination of every state
23 bank and trust company whenever in the superintendent's
24 judgment such examination is necessary or advisable, but in no
25 event less frequently than once during each two-year period by
26 either the banking division or the appropriate federal banking
27 agency. During the course of each examination of a state bank
28 or trust company, inquiry shall be made as to its financial
29 condition, the security afforded to those to whom it is
30 obligated, the policies of its management, whether the
31 requirements of law have been complied with in the
32 administration of its affairs, and such other matters as the
33 superintendent may prescribe.

34 Sec. 16. Section 524.218, Code 2003, is amended to read as
35 follows:

1 524.218 REGULATION AND EXAMINATION OF SERVICES.

2 A state bank ~~may~~ shall not cause to be performed, by
3 contract or otherwise, any bank services, of a type referred
4 to in section 524.804, for itself or any affiliate, whether on
5 or off its premises, unless ~~assurances-satisfactory-to-the~~
6 ~~superintendent-are-furnished-to-the-superintendent-by-both-the~~
7 ~~state-bank-and-the-person-performing-such-services-that-the~~
8 ~~performance-thereof~~ the person performing such services will
9 be subject to supervision, regulation, and examination by the
10 superintendent to the same extent as if such services were
11 being performed by the state bank itself on its own premises.

12 Sec. 17. Section 524.219, Code 2003, is amended to read as
13 follows:

14 524.219 FEES.

15 1. A state bank subject to examination, supervision, and
16 regulation by the superintendent, shall pay to the
17 superintendent fees, established by the ~~state-banking-board~~
18 superintendent, based on the costs and expenses incurred in
19 the discharge of the duties imposed upon the superintendent by
20 this chapter. The fees shall include, but are not limited to,
21 costs and expenses for salaries, expenses and travel for
22 employees, office facilities, supplies, and equipment.

23 2. The fees for examination of any affiliate of a state
24 bank as provided for in section 524.1105, and the examinations
25 provided for in section 524.217, subsection 1, paragraphs "c"
26 and "d", shall be established by the ~~state-banking-board~~
27 superintendent, based on the time required for the examination
28 and the administrative costs and expenses incurred in the
29 discharge of the duties imposed upon the superintendent by
30 this chapter. The fees shall include, but not be limited to,
31 costs and expenses for salaries, expenses and travel for
32 employees, office facilities, supplies, and equipment.

33 ~~Upon-completion-of-each-examination-required-or-allowed-by~~
34 ~~this-chapter, the-examiner-in-charge-of-the-examination-shall~~
35 ~~render-a-bill-for-the-fees, in-duplicate, and-shall-deliver~~

1 ~~one copy of the bill to the state bank and one copy to the~~
2 ~~superintendent.~~

3 3. Failure to pay the amount of the fees to the
4 superintendent within ten days after the date of billing shall
5 subject the state bank or any affiliate of a state bank to an
6 additional charge equal to five percent of the amount of the
7 fees for each day the payment is delinquent.

8 Sec. 18. Section 524.310, subsection 1, Code 2003, is
9 amended to read as follows:

10 1. The name of a state bank originally incorporated after
11 the effective date of this chapter shall include the word
12 "bank" and may include the word "state" or "trust" in its
13 name. A state bank using the word "trust" in its name must be
14 authorized under this chapter to act in a fiduciary capacity.
15 A national bank or federal savings bank shall not use the word
16 "state" in its legally chartered name.

17 Sec. 19. Section 524.405, subsection 1, unnumbered
18 paragraph 1, Code 2003, is amended to read as follows:

19 A state bank ~~with the approval of the superintendent,~~ may
20 increase its capital structure or effect an allocation of
21 amounts within its capital structure, by the use of any of the
22 following methods:

23 Sec. 20. NEW SECTION. 524.607A ACTION WITHOUT MEETING.

24 1. Unless the articles of incorporation or bylaws provide
25 otherwise, action required or permitted to be taken under this
26 chapter at a board of directors' meeting may be taken without
27 a meeting if the action is consented to by all members of the
28 board. The action must be evidenced by one or more written
29 consents describing the action taken, signed by each director,
30 and included in the minutes or filed with the corporate
31 records reflecting the action taken.

32 2. Action taken under this section is effective when the
33 last director signs the consent, unless the consent specifies
34 a different effective date.

35 3. A written consent signed under this section has the

1 effect of a meeting vote and may be described as such in any
2 document.

3 Sec. 21. Section 524.610, unnumbered paragraph 1, Code
4 2003, is amended to read as follows:

5 The shareholders of a state bank shall fix the reasonable
6 compensation of directors for their services as members of the
7 board of directors. Subject to ~~the approval of the~~
8 ~~superintendent and~~ approval by the shareholders at an annual
9 or special meeting called for that purpose, the shareholders
10 of a state bank may adopt a pension or profit sharing plan, or
11 both, or other plan of deferred compensation for directors, to
12 which a state bank may contribute.

13 Sec. 22. Section 524.703, unnumbered paragraph 2, Code
14 2003, is amended to read as follows:

15 Subject to ~~the approval of the superintendent, and~~ approval
16 by the shareholders at an annual or special meeting called for
17 the purpose, the board of directors of a state bank may adopt
18 a pension or profit-sharing plan, or both, or other plan of
19 deferred compensation, for both officers and employees, to
20 which the state bank may contribute.

21 Sec. 23. Section 524.802, subsection 5, Code 2003, is
22 amended to read as follows:

23 5. Act as agent for a depository institution affiliate to
24 ~~the same extent that a national bank can act as an agent for a~~
25 ~~depository institution under the provisions of section 18 of~~
26 ~~the Federal Deposit Insurance Act, 12 U.S.C. § 1828.~~

27 Sec. 24. Section 524.903, subsections 2 and 3, Code 2003,
28 are amended to read as follows:

29 2. A state bank shall not accept such drafts in an amount
30 which exceeds at any time in the aggregate for all drawers
31 thirty percent of the state bank's aggregate capital. The
32 ~~superintendent may authorize a state bank to accept drafts in~~
33 ~~an amount not exceeding at any time in the aggregate for all~~
34 ~~drawers sixty percent of the state bank's aggregate capital,~~
35 ~~but the aggregate of acceptance growing out of domestic~~

1 ~~transactions shall in no event exceed thirty percent of~~
2 ~~aggregate capital.~~

3 3. A state bank, ~~with the prior approval of the~~
4 ~~superintendent,~~ may accept drafts, having not more than three
5 months after sight to run, drawn upon it by banks or bankers
6 in foreign countries, or in dependencies or insular
7 possessions of the United States, for the purpose of
8 furnishing dollar exchange as required by the usages of trade
9 where the drafts are drawn in an aggregate amount which shall
10 not at any time exceed for all such acceptance on behalf of a
11 single bank or banker seven and one-half percent of the state
12 bank's aggregate capital, and for all such acceptances, thirty
13 percent of the state bank's aggregate capital.

14 Sec. 25. Section 524.904, subsection 7, paragraph a, Code
15 2003, is amended to read as follows:

16 a. Additional funds advanced for taxes or for insurance if
17 the advance is for the protection of the state bank, ~~and~~
18 ~~provided that such amounts receive the prior approval of the~~
19 ~~superintendent.~~

20 Sec. 26. Section 524.1201, subsection 3, Code 2003, is
21 amended to read as follows:

22 3. Notwithstanding any of the other provisions of this
23 section, original loan documentation and trust recordkeeping
24 functions may be located at an any authorized bank office or
25 at any other location approved by the superintendent.

26 Sec. 27. Section 524.1303, subsection 3, Code 2003, is
27 amended to read as follows:

28 3. Within thirty days after the application for
29 dissolution involving a provision of acquisition of the state
30 bank's assets and assumption of its liabilities by another
31 state bank is accepted for processing, the dissolving bank
32 shall publish ~~once each week for two consecutive weeks a~~
33 ~~notice of the proposed transaction.~~ ~~The notice shall be~~
34 ~~published~~ in a newspaper of general circulation published in
35 the municipal corporation or unincorporated area in which the

1 dissolving bank has its principal place of business, and in
2 the municipal corporation or unincorporated area in which the
3 acquiring state bank has its principal place of business, or
4 if there is none, a newspaper of general circulation published
5 in the county or counties, or in a county adjoining the county
6 or counties, in which the dissolving bank and the acquiring
7 bank have their principal place of business. The notice shall
8 be on forms provided by the superintendent, and proof of
9 publication of the notice shall be delivered to the
10 superintendent within fourteen days.

11 Sec. 28. Section 524.1402, subsection 4, Code 2003, is
12 amended to read as follows:

13 4. If a proposed merger will result in a state bank,
14 within thirty days after the application for merger is
15 accepted for processing, the parties to the plan shall
16 publish ~~7-once-each-week-for-two-consecutive-weeks,~~ a notice of
17 the proposed transaction. ~~--The notices shall be published in a~~
18 newspaper of general circulation published in the municipal
19 corporation or unincorporated area in which each party to the
20 plan has its principal place of business, or if there is none,
21 in a newspaper of general circulation published in the county,
22 or in a county adjoining the county, in which each party to
23 the plan has its principal place of business. The notice
24 shall be on forms prescribed by the superintendent and shall
25 set forth the names of the parties to the plan and the
26 resulting state bank, the location and post office address of
27 the principal place of business of the resulting state bank
28 and of each office to be maintained by the resulting state
29 bank, and the purpose or purposes of the resulting state bank.
30 Proof of publication of the notice shall be delivered to the
31 superintendent within fourteen days.

32 Sec. 29. Section 524.1412, unnumbered paragraph 1, Code
33 2003, is amended to read as follows:

34 Within thirty days after the application for conversion has
35 been accepted for processing, the national bank or federal

1 savings association shall publish a notice of the delivery of
2 the articles of conversion to the superintendent ~~once-each~~
3 ~~week-for-two-successive-weeks~~ in a newspaper of general
4 circulation published in the municipal corporation or
5 unincorporated area in which the national bank or federal
6 savings association has its principal place of business, or if
7 there is none, a newspaper of general circulation published in
8 the county, or in a county adjoining the county, in which the
9 national bank or federal savings association has its principal
10 place of business. Proof of publication of the notice shall
11 be delivered to the superintendent within fourteen days. The
12 notice shall set forth all of the following:

13 Sec. 30. Section 524.1416, subsection 2, Code 2003, is
14 amended to read as follows:

15 2. A state bank which converts into a national bank or
16 federal savings association shall notify the superintendent of
17 the proposed conversion, provide such evidence of the adoption
18 of the plan as the superintendent may request, notify the
19 superintendent of any abandonment or disapproval of the plan,
20 file with the superintendent and with the secretary of state a
21 certificate of the approval of the conversion by the
22 comptroller of the currency of the United States or director
23 of the office of thrift supervision, as applicable, and the
24 date upon which such conversion is to become effective. A
25 state bank that converts into a national bank or federal
26 savings association shall comply with the provisions of
27 section 524.310, subsection 1.

28 Sec. 31. Section 524.1611, subsection 1, Code 2003, is
29 amended to read as follows:

30 1. Any person violating the provisions ~~of-subsection-1~~ of
31 section 524.211, subsection 1, shall be guilty of a fraudulent
32 practice, and shall be subject to a further fine of a sum
33 equal to the amount of the value of the property given or
34 received or the money so loaned or borrowed. ~~The-deputy~~
35 ~~superintendent,-an-assistant-or-examiner~~ An employee of the

1 division of banking convicted of a violation of such
2 subsection shall be immediately discharged from employment and
3 shall be forever disqualified from holding any position in the
4 banking division.

5 Sec. 32. Section 546.3, Code 2003, is amended to read as
6 follows:

7 546.3 BANKING DIVISION.

8 The banking division shall regulate and supervise banks
9 under chapter 524, regulated loan companies under chapter 536,
10 and industrial loan companies under chapter 536A, and shall
11 perform other duties assigned to the division by law. The
12 division is headed by the superintendent of banking who is
13 appointed pursuant to section 524.201. The state banking
14 board council shall ~~perform duties~~ render advice within the
15 division ~~as prescribed by law~~ when requested by the
16 superintendent.

17 Sec. 33. STATE BANKING COUNCIL -- INITIAL FOUR-YEAR TERMS.

18 The governor shall appoint members to the state banking
19 council for terms beginning on May 1, 2005, as follows: One
20 member shall be appointed for a one-year term, one member
21 shall be appointed for a two-year term, two members shall be
22 appointed for three-year terms, and two members shall be
23 appointed for four-year terms.

24 Sec. 34. Section 68B.35, Code Supplement 2003, and
25 sections 536.13, 536.23, and 536.28, Code 2003, are amended by
26 striking from the sections the words "state banking board" and
27 "banking board" and "board" when referring to the state
28 banking board and inserting in lieu thereof the words "state
29 banking council".

30 Sec. 35. CODE EDITOR'S DIRECTIVE. The Code editor shall
31 correct any references to the state banking council as the
32 successor to the state banking board, including grammatical
33 constructions, anywhere else in the Iowa Code, in any bills
34 awaiting codification, and in any bills enacted by the
35 Eightieth General Assembly, 2004 Regular Session.

DIVISION II
CREDIT UNIONS

1
2
3 Sec. 36. Section 533.2, Code 2003, is amended to read as
4 follows:

5 533.2 AMENDMENTS.

6 1. ~~The articles~~ Articles of incorporation ~~or the bylaws~~
7 may be amended by a favorable vote of a majority of the
8 members present at a meeting, if that number constitutes a
9 quorum and if the proposed amendment was contained in the
10 notice of the meeting.

11 2. Bylaws may ~~also~~ be amended by a ~~any~~ of the following
12 methods:

13 a. The favorable vote of a majority of the members ~~of the~~
14 ~~board, or by~~ present at a meeting, if that number constitutes
15 a quorum and if the proposed amendment was contained in the
16 notice of the meeting.

17 b. The favorable vote of a majority of the members of the
18 board.

19 c. By a majority vote of members voting by mailed ~~or~~
20 electronic ballot, ~~according to procedures specified by rule~~
21 ~~of the superintendent requiring at least twenty days' notice~~
22 ~~to all members, mailed ballots~~ ensuring the confidentiality of
23 ~~voters, announcement to members of the results of the vote,~~
24 ~~and preservation of the ballots for a reasonable period of~~
25 time according to procedures specified by rule of the
26 superintendent, requiring at least twenty days' notice to all
27 members. ~~All amendments must be approved by the~~
28 ~~superintendent before they become effective.~~ An announcement
29 shall be made to members of the results of the vote. Ballots
30 shall be preserved for a reasonable period of time following
31 the vote.

32 d. A combination of procedures as specified in paragraphs
33 "a" and "c", whereby members are allowed to vote either in
34 person at a meeting or by mailed or electronic ballot,
35 according to procedures specified by rule of the

1 superintendent. If the proposed amendment receives a
2 favorable majority of the total votes cast in person and by
3 mailed ballot, the bylaws shall be amended.

4 Sec. 37. Section 533.4, subsection 5, Code 2003, is
5 amended by adding the following new paragraph:

6 NEW PARAGRAPH. j. Any permissible investment for federal
7 credit unions, provided that this paragraph shall not permit a
8 credit union to invest in a credit union service organization
9 except as provided in paragraph "f".

10 Sec. 38. Section 533.4, Code 2003, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 28. Set off a member's accounts against
13 any of the member's debts or liabilities owed the state credit
14 union pursuant to an agreement entered into between the member
15 and the credit union. The credit union shall also have a lien
16 on the shares and deposits of a member for any sum due the
17 credit union from the member or for any loan endorsed by the
18 member.

19 Sec. 39. Section 533.6, subsection 2, Code 2003, is
20 amended to read as follows:

21 2. The superintendent may make or cause to be made an
22 examination of each credit union whenever the superintendent
23 believes such examination is necessary or advisable, but in no
24 event less frequently than once during each eighteen-month
25 twenty-four-month period. A credit union designated as
26 serving predominantly low-income members shall be reviewed
27 during each examination to ensure that such credit union is
28 continuing to meet the standards established by rule of the
29 superintendent. Each credit union and all of its officers and
30 agents shall give to the representatives of the superintendent
31 free access to all books, papers, securities, records, and
32 other sources of information under their control. A report of
33 such examination shall be forwarded to the chairperson of each
34 credit union within thirty days after the completion of the
35 examination. Within thirty days of the receipt of this

1 report, a meeting of the directors shall be called to consider
2 matters contained in the report and the action taken shall be
3 set forth in the minutes of the board. The superintendent may
4 accept, in lieu of the examination of a credit union, an audit
5 report conducted by a certified public accounting firm
6 selected from a list of firms previously approved by the
7 superintendent. The cost of the audit shall be paid by the
8 credit union.

9 Sec. 40. Section 533.8, Code 2003, is amended to read as
10 follows:

11 533.8 ELECTIONS.

12 1. At the organization meeting there shall be elected a
13 board of directors of not less than nine members to hold
14 office for such terms as the bylaws provide and until
15 successors are elected and qualify.

16 2. At each annual meeting there shall be elected one
17 member to fill each position vacated by reason of expiring
18 terms or other causes.

19 3. Pursuant to rules adopted by the superintendent, state
20 credit unions may allow members to vote on the election of
21 directors via electronic means including, but not limited to,
22 the internet or telephone.

23 4. A record of the names and addresses of the directors,
24 officers and committee persons shall be filed with the
25 superintendent within ten days following each election.

26 5. A state credit union wishing to maintain a board of
27 directors of less than nine members may apply to the
28 superintendent for permission to reduce the required number of
29 directors to no fewer than seven members. An application to
30 reduce the required number of directors under this subsection
31 must demonstrate both of the following:

32 a. The application is necessitated by a hardship or other
33 special circumstance.

34 b. The lesser number of directors is in the best interest
35 of the credit union and its members.

1 Sec. 41. Section 533.9, Code 2003, is amended to read as
2 follows:

3 533.9 DIRECTORS AND OFFICERS.

4 1. Within five days following the organization meeting and
5 each annual meeting, the directors shall elect from their own
6 number a chairperson of the board, a vice chairperson, a
7 secretary, and a chief financial officer whose title shall be
8 designated by the board of directors.

9 2. The board shall appoint a credit committee of not less
10 than three members, and an auditing committee of not less than
11 three members, and may also appoint alternate members of the
12 credit committee.

13 3. Only a member of the board of directors or a member of
14 the credit union may be appointed to the credit committee or
15 to the auditing committee.

16 4. The board may appoint an executive committee to act on
17 its behalf when designated for that purpose.

18 5. The duties and responsibilities of a director and of
19 the board of directors ~~have-general~~ shall include, but are not
20 limited to, all of the following:

21 a. General management of the affairs of the state credit
22 union ~~including, but not limited to, the power to fix.~~

23 b. Setting the amount of the surety bond which that shall
24 be required of all officers and employees handling money.

25 c. Periodic review of the original records of the state
26 credit union, or comprehensive summaries prepared by the
27 officers of the credit union, pertaining to loans, security
28 interests, and investments.

29 d. Review of the adequacy of the state credit union's
30 internal controls.

31 e. Periodic review of utilization of security measures.

32 f. Establishing education and training programs to ensure
33 that the directors possess adequate knowledge to manage the
34 affairs of the state credit union.

35 6. a. Directors of a state credit union shall discharge

1 the duties of their position in good faith and with that
2 diligence, care, and skill which ordinarily prudent persons
3 would exercise under similar circumstances in like positions.

4 b. The directors have a continuing responsibility to
5 assure themselves that the state credit union is being managed
6 according to law and that the practices and policies adopted
7 by the board are being implemented.

8 7. Unless the bylaws provide otherwise, the board of
9 directors may permit any and all directors to participate in
10 all except one meeting per year of the board of directors
11 through the use of any means of communication by which all
12 directors participating in the meeting may simultaneously hear
13 each other and communicate during the meeting. A director
14 participating in a meeting by this means is deemed to be
15 present at the meeting.

16 8. a. A director, committee member, officer, or employee
17 of a state credit union shall not directly or indirectly
18 participate in either the deliberation upon or the
19 determination of any matter in which the director, committee
20 member, officer, or employee has a direct or indirect
21 interest.

22 b. For the purposes of this subsection, an interest may
23 include, but is not limited to, a pecuniary or familial
24 interest.

25 Sec. 42. Section 533.12, subsection 1, Code 2003, is
26 amended to read as follows:

27 1. The capital of a credit union shall consist of the
28 payments that have been made to it by the several members
29 thereof on shares. ~~The credit union shall have a lien on the~~
30 ~~shares and deposits of a member for any sum due to the credit~~
31 ~~union from the member or for any loan endorsed by the member.~~
32 A credit union may charge an entrance fee as may be provided
33 by the bylaws.

34 Sec. 43. Section 533.19, Code 2003, is amended to read as
35 follows:

1 533.19 EXPULSION -- WITHDRAWAL.

2 1. The board of directors may expel any member who has
3 failed to do either of the following:

4 a. Carry out the member's obligations to the state credit
5 union.

6 b. Comply with the state credit union's bylaws or
7 policies.

8 2. A member may be expelled by a majority vote of the
9 board of directors at a regular or special meeting of the
10 board.

11 a. The An expelled member may request a hearing before the
12 membership of the credit union. A meeting of the membership
13 shall be held within sixty days of the member's request.

14 b. The membership may, by majority vote at the membership
15 meeting, reinstate the expelled member upon terms and
16 conditions prescribed by it.

17 3. Any member may withdraw from the credit union at any
18 time, but notice of withdrawal may be required as provided in
19 this section.

20 4. All amounts paid on shares or as deposits of an
21 expelled or withdrawing member, with any dividends or interest
22 accrued thereto, to the date thereof, shall, after
23 deducting all amounts due from the member to the credit union
24 and an amount as necessary to honor outstanding share drafts
25 drawn against accounts of the member, be paid to the member.

26 5. Upon expulsion or withdrawal of a member from a credit
27 union, or at any other time, the credit union may require
28 sixty days' notice of intention to withdraw shares and thirty
29 days' notice of intention to withdraw deposits, except that a
30 credit union shall not at any time require notice of
31 withdrawal with respect to funds which are subject to
32 withdrawal by share drafts.

33 6. Withdrawing or expelled members shall have no further
34 rights in the credit union but are not, by such expulsion or
35 withdrawal, released from any remaining liability to the

1 credit union.

2 Sec. 44. NEW SECTION. 533.19A SUSPENSION OR RESTRICTION
3 OF SERVICES.

4 1. A state credit union may suspend or deny certain
5 services to members who have performed any of the following
6 actions:

7 a. Caused a loss to the state credit union.

8 b. Violated the membership agreement or any policy adopted
9 by the board.

10 c. Been physically or verbally abusive to state credit
11 union members or staff.

12 2. Members with suspended services may maintain a share
13 account and continue to vote at annual and special meetings.

14 Sec. 45. Section 533.38, Code 2003, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 12. Establish one or more capital
17 accounts in the same manner as if it were a federal credit
18 union.

19 DIVISION III

20 BANKS AS LIMITED LIABILITY COMPANIES

21 Sec. 46. Section 422.11, Code 2003, is amended to read as
22 follows:

23 422.11 FRANCHISE TAX CREDIT.

24 The taxes imposed under this division, less the credits
25 allowed under section 422.12, shall be reduced by a franchise
26 tax credit. A taxpayer who is a shareholder in a financial
27 institution, as defined in section 581 of the Internal Revenue
28 Code, which has in effect for the tax year an election under
29 subchapter S of the Internal Revenue Code, or is a member of a
30 financial institution organized as a limited liability company
31 under chapter 524 that is taxed as a partnership for federal
32 income tax purposes, shall compute the amount of the tax
33 credit by recomputing the amount of tax under this division by
34 reducing the taxable income of the taxpayer by the taxpayer's
35 pro rata share of the items of income and expense of the

1 financial institution and subtracting the credits allowed
2 under section 422.12. This recomputed tax shall be subtracted
3 from the amount of tax computed under this division after the
4 deduction for credits allowed under section 422.12. The
5 resulting amount, which shall not exceed the taxpayer's pro
6 rata share of the franchise tax paid by the financial
7 institution, is the amount of the franchise tax credit
8 allowed.

9 Sec. 47. Section 524.103, subsections 6, 8, 17, 20, 30,
10 31, and 33, Code 2003, are amended to read as follows:

11 6. "Articles of incorporation" means the original or
12 restated articles of incorporation and all amendments thereto
13 and includes articles of merger. "Articles of incorporation"
14 also means the original or restated articles of organization
15 and all amendments including articles of merger if a state
16 bank is organized as a limited liability company under this
17 chapter.

18 8. "Bank" means a corporation or limited liability company
19 organized under this chapter or 12 U.S.C. § 21.

20 17. "Control" means when a person, directly or indirectly
21 or acting through or together with one or more persons,
22 satisfies any of the following:

23 a. Owns, controls, or has the power to vote fifty percent
24 or more of any class of voting securities or membership
25 interests of another person.

26 b. Controls, in any manner, the election of a majority of
27 the directors, managers, trustees, or other persons exercising
28 similar functions of another person.

29 c. Has the power to exercise a controlling influence over
30 the management or policies of another person.

31 20. "Executive officer" means a person who participates or
32 has authority to participate, other than in the capacity of a
33 director or manager, in major policymaking functions of a
34 state bank, whether or not the officer has an official title,
35 whether or not such a title designates the officer as an

1 assistant, or whether or not the officer is serving without
2 salary or other compensation. The chief executive officer,
3 chairperson of the board, the president, every vice president,
4 and the cashier of a state bank are deemed to be executive
5 officers, unless such an officer is excluded, by resolution of
6 the board of directors of a state bank or by the bylaws of the
7 state bank, from participation, other than in the capacity of
8 a director, in major policymaking functions of the state bank,
9 and the officer does not actually participate in the major
10 policymaking functions. All officers who serve on a board of
11 directors are deemed to be executive officers, except as
12 provided for in section 524.701, subsection 3.

13 30. "Shareholder" means one who is a holder of record of
14 shares in a state bank. If a state bank is organized as a
15 limited liability company under this chapter, "shareholder"
16 means any member of the limited liability company.

17 31. "Shares" means the units into which the proprietary
18 interests in a state bank are divided, including any
19 membership interests of a state bank organized as a limited
20 liability company under this chapter.

21 33. "State bank" means any bank incorporated pursuant to
22 the provisions of this chapter after January 1, 1970, and any
23 "state bank" or "savings bank" incorporated pursuant to the
24 laws of this state and doing business as such on January 1,
25 1970, or organized as a limited liability company under this
26 chapter.

27 Sec. 48. Section 524.103, Code 2003, is amended by adding
28 the following new subsections:

29 NEW SUBSECTION. 9A. "Board of directors" means the board
30 of directors of a state bank as provided in section 524.601.
31 For state banks organized as a limited liability company under
32 this chapter, "board of directors" means a board of directors
33 or board of managers as designated by the limited liability
34 company in its articles of organization or operating
35 agreement.

1 NEW SUBSECTION. 18A. "Director" means a member of the
2 board of directors and includes a manager of a state bank
3 organized as a limited liability company under this chapter.

4 NEW SUBSECTION. 23A. "Manager" means a person designated
5 by the members to manage a state bank organized as a limited
6 liability company under this chapter as provided in the
7 articles of organization or an operating agreement and may
8 include a member of the board of directors.

9 NEW SUBSECTION. 23B. "Member" means a person with a
10 membership interest in a state bank organized as a limited
11 liability company under this chapter.

12 NEW SUBSECTION. 23C. "Membership interest" means a
13 member's share of the profits and losses, the right to receive
14 distributions of assets, and any right to vote or participate
15 in management, of a state bank organized as a limited
16 liability company under this chapter.

17 Sec. 49. Section 524.301, Code 2003, is amended to read as
18 follows:

19 524.301 INCORPORATORS -- ORGANIZERS.

20 A state bank may be incorporated or organized as a limited
21 liability company under this chapter by one or more
22 individuals eighteen years of age or older, a majority of whom
23 shall be residents of this state and citizens of the United
24 States.

25 Sec. 50. NEW SECTION. 524.302A ARTICLES OF INCORPORATION
26 -- LIMITED LIABILITY COMPANY.

27 1. The articles of incorporation of a state bank organized
28 as a limited liability company under this chapter shall be in
29 the form prescribed by the superintendent, and shall set forth
30 all of the following:

31 a. The name of the state bank, that it is organized for
32 the purpose of conducting the business of banking, and that it
33 is organized under the provisions of this chapter.

34 b. The street address of the limited liability company's
35 initial registered office and the name of its initial

1 registered agent at that office.

2 c. The location of the state bank's proposed principal
3 office of the limited liability company, which may be the same
4 as the registered office, but need not be within this state.

5 d. The duration of the state bank, which shall be
6 perpetual.

7 e. The aggregate number of common and preferred shares
8 which the state bank shall have authority to issue and the par
9 value of such shares. If such shares are to be divided into
10 classes or series, the number of shares of each class or
11 series and a statement of the par value of the shares of each
12 class or series.

13 f. The number of managers constituting the initial board
14 of directors and the names and addresses of the individuals
15 who are to serve as directors until successors are elected and
16 qualify. A statement that the exclusive authority to manage
17 the state bank is vested in a board of directors that is
18 elected or appointed by the members, that operates in
19 substantially the same manner as, and has substantially the
20 same rights, powers, privileges, duties, and responsibilities
21 as, a board of directors of a state bank chartered as a
22 corporation under this chapter.

23 g. A provision that the articles of incorporation,
24 operating agreement, or other organizational documents of the
25 state bank shall not require the consent of any other owner in
26 order for an owner to transfer membership interests in the
27 state bank, including voting rights.

28 2. The articles of incorporation may set forth any or all
29 of the following:

30 a. Provisions not inconsistent with law regarding
31 management of the business and regulation of the affairs of
32 the state bank.

33 b. Any provision required or permitted by this chapter to
34 be set forth in the operating agreement.

35 3. The articles of incorporation need not set forth any of

1 the organizational powers enumerated in this chapter.

2 Sec. 51. Section 524.303, Code 2003, is amended to read as
3 follows:

4 524.303 APPLICATION FOR APPROVAL.

5 The incorporators or organizers shall make an application
6 to the superintendent for approval of a proposed state bank in
7 the manner prescribed by the superintendent and shall deliver
8 to the superintendent, together with such application:

9 1. The articles of incorporation.

10 2. Applicable fees, payable to the secretary of state as
11 specified in section 490.122 or 490A.124, for the filing and
12 recording of the articles of incorporation.

13 Sec. 52. Section 524.304, subsection 1, Code 2003, is
14 amended to read as follows:

15 1. The incorporators or organizers of a state bank shall,
16 within thirty days of the acceptance of the application for
17 processing, publish notice of the proposed incorporation or
18 organization once each week for two successive weeks in a
19 newspaper of general circulation published in the municipal
20 corporation which is proposed as the principal place of
21 business of the state bank, or if there is none, a newspaper
22 of general circulation published in the county, or in a county
23 adjoining the county, in which the proposed state bank is to
24 have its principal place of business. The notice shall set
25 forth all of the following:

26 a. The name of the proposed state bank.

27 b. A statement that it is to be incorporated or organized
28 under this chapter.

29 c. The purpose or purposes of the state bank.

30 d. The names and addresses of the incorporators or
31 organizers and of the members of the initial board of
32 directors or board of directors as they appear, or will
33 appear, in the articles of incorporation.

34 e. The date the application was accepted for processing.

35 f. If the incorporation or organization of the state bank

1 has been approved by the superintendent under section 524.305,
2 subsection 8, the name and address of the bank with which the
3 state bank will have merged, or the assets of which the state
4 bank will have acquired or the condition of which in some
5 other way provided a purpose for the incorporation or
6 organization.

7 Sec. 53. Section 524.305, subsection 1, paragraph d, Code
8 2003, is amended to read as follows:

9 d. The character and fitness of the incorporators or
10 organizers and of the members of the initial board of
11 directors are such as to command the confidence of the
12 community and to warrant the belief that the business of the
13 proposed state bank will be honestly and efficiently
14 conducted.

15 Sec. 54. Section 524.305, subsections 6, 7, and 9, Code
16 2003, are amended to read as follows:

17 6. If the superintendent approves the application, the
18 superintendent shall notify the incorporators or organizers,
19 and such other persons who requested in writing that they be
20 notified, of the approval. If the superintendent disapproves
21 the application, the superintendent shall notify the
22 incorporators or organizers of the action and the reason for
23 the decision.

24 7. The actions of the superintendent shall be subject to
25 judicial review in accordance with chapter 17A. The court may
26 award damages to the incorporators or organizers if it finds
27 that review is sought frivolously or in bad faith.

28 9. As a condition of receiving the decision of the
29 superintendent with respect to the application the
30 incorporators or organizers shall reimburse the superintendent
31 for all expenses incurred by the superintendent in connection
32 with the application.

33 Sec. 55. Section 524.306, Code 2003, is amended to read as
34 follows:

35 524.306 INCORPORATION OR ORGANIZATION OF STATE BANK.

1 1. Unless a delayed effective date or time is specified,
2 the corporate or organizational existence of a state bank
3 begins when the articles of incorporation, with the
4 superintendent's approval indicated on the articles of
5 incorporation, are filed with the secretary of state. The
6 secretary of state shall record the articles of incorporation
7 and forward a copy of them to the county recorder of the
8 county in which the state bank is to have its principal place
9 of business.

10 2. The secretary of state's acknowledgment of filing of
11 the articles of incorporation is conclusive proof that the
12 incorporators or organizers satisfied all conditions precedent
13 to incorporation or organization, except in a proceeding
14 instituted by the superintendent to cancel or revoke the
15 incorporation or involuntarily dissolve the corporation or
16 organization.

17 Sec. 56. Section 524.307, Code 2003, is amended to read as
18 follows:

19 524.307 INITIAL ORGANIZATION OF STATE BANK.

20 Upon incorporation, or organization as a limited liability
21 company, of the state bank, the initial board of directors
22 shall hold an organizational meeting within this state, at the
23 call of a majority of the directors, to complete the
24 organization of the state bank by electing officers, adopting
25 bylaws, if any are to be adopted, and conducting any other
26 business properly brought before the board at the meeting.

27 Sec. 57. Section 524.308, subsection 2, Code 2003, is
28 amended to read as follows:

29 2. If a state bank transacts any business before receipt
30 of an authorization to do business in violation of subsection
31 1, the directors, managers, and officers who willfully
32 authorized or participated in the action are severally liable
33 for the debts and liabilities of the state bank incurred prior
34 to the receipt of the authorization to do business.

35 Sec. 58. Section 524.310, Code 2003, is amended to read as

1 follows:

2 524.310 NAME OF STATE BANK.

3 1. The name of a state bank originally incorporated or
4 organized after the effective date of this chapter shall
5 include the word "bank" and may include the word "state" or
6 "trust" in its name. A state bank using the word "trust" in
7 its name must be authorized under this chapter to act in a
8 fiduciary capacity.

9 2. The provisions of this section shall not require any
10 state bank, existing and operating on January 1, 1970, to add
11 to, modify or otherwise change its corporate or organizational
12 name, either on January 1, 1970, or upon renewal of its
13 corporate existence pursuant to section 524.314.

14 3. If a state bank existing and operating on January 1,
15 1970, causes its corporate or organizational name to be
16 changed, the name as changed shall comply with subsection 1 of
17 this section.

18 4. a. A person may reserve the exclusive use of a
19 corporate or organizational name for a state bank by
20 delivering an application to the secretary of state for
21 filing. The application must set forth the name and address
22 of the applicant and the name proposed to be reserved. If the
23 secretary of state finds that the corporate or organizational
24 name applied for is available, the secretary of state shall
25 reserve the name for the applicant's exclusive use for a
26 nonrenewable one hundred twenty day period.

27 b. The owner of a reserved corporate or organizational
28 name may transfer the reservation to another person by
29 delivering to the secretary of state a signed notice of the
30 transfer that states the name and address of the transferee.

31 Sec. 59. Section 524.312, subsections 1 and 5, Code 2003,
32 are amended to read as follows:

33 1. A state bank originally incorporated or organized
34 pursuant to this chapter shall have its principal place of
35 business within the city limits of a municipal corporation.

1 The existence of a state bank shall not, however, be affected
2 by the subsequent discontinuance of the municipal corporation.
3 A state bank existing and operating on January 1, 1970, which
4 does not have its principal place of business within the city
5 limits of a municipal corporation, may renew its corporate or
6 organizational existence pursuant to section 524.314 without
7 regard to this section and may also operate as a bank or
8 convert to and operate as a bank office when acquired by or
9 merged into another state bank and approved by the
10 superintendent.

11 5. A state bank approved under the provisions of section
12 524.305, subsection 8, shall not commence its business at any
13 location other than within a municipal corporation or
14 unincorporated area in which was located the principal place
15 of business or an office of the bank the condition of which
16 was the basis for the superintendent authorizing incorporation
17 or organization of the new state bank.

18 Sec. 60. Section 524.313, Code 2003, is amended to read as
19 follows:

20 524.313 BYLAWS.

21 A state bank may adopt bylaws. The power to adopt, amend,
22 or repeal bylaws or adopt new bylaws is vested in the board of
23 directors unless reserved to the shareholders by the articles
24 of incorporation. The bylaws may contain any provisions for
25 the regulation and management of the affairs of the state bank
26 not inconsistent with law or the articles of incorporation.
27 For a state bank organized as a limited liability company
28 under this chapter, "bylaws" means the operating agreement of
29 the state bank.

30 Sec. 61. NEW SECTION. 524.315 STATE BANKS AS LIMITED
31 LIABILITY COMPANIES.

32 1. A state bank organized as a limited liability company
33 under this chapter shall also be subject to chapter 490A, the
34 Iowa limited liability company Act. If a provision of the
35 Iowa limited liability company Act conflicts with a provision

1 of this chapter or any rule of the superintendent adopted
2 pursuant to this chapter, the provisions of this chapter or
3 rule of the superintendent shall control.

4 2. The superintendent shall possess the exclusive
5 authority to regulate a state bank organized as a limited
6 liability company under this chapter.

7 3. The superintendent may adopt rules to ensure that a
8 state bank organized as a limited liability company under this
9 chapter is operating in a safe and sound manner and is subject
10 to the superintendent's authority in the same manner as a
11 state bank organized as a corporation.

12 Sec. 62. Section 524.401, subsections 2, 3, and 4, Code
13 2003, are amended to read as follows:

14 2. The minimum capital structure of a state bank
15 incorporated after July 1, 1995, or organized after July 1,
16 2004, pursuant to the provisions of this chapter shall not be
17 less than the amount required by the federal deposit insurance
18 corporation, or its successor, or a greater amount which the
19 superintendent may deem necessary in view of the deposit
20 potential of the state bank and current banking standards
21 relating to total capital requirements.

22 3. A state bank incorporated on or after July 1, 1995, or
23 organized after July 1, 2004, pursuant to this chapter, prior
24 to receiving authorization to do business from the
25 superintendent, shall establish paid-in surplus and undivided
26 profits as required by the superintendent.

27 4. A state bank originally incorporated or organized
28 pursuant to this chapter shall establish, prior to receiving
29 authorization to do business from the superintendent, paid-in
30 surplus and undivided profits as required by the
31 superintendent.

32 Sec. 63. Section 524.525, Code 2003, is amended to read as
33 follows:

34 524.525 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION OR
35 ORGANIZATION.

1 1. A subscription for shares entered into before
2 incorporation or organization of the state bank is irrevocable
3 for six months unless the subscription agreement provides a
4 longer or shorter period, or all subscribers agree to
5 revocation.

6 2. The board of directors may determine the payment terms
7 of subscriptions for shares that were entered into before
8 incorporation or organization of the state bank unless the
9 subscription agreement specifies the terms. A call for
10 payment by the board of directors must be uniform so far as
11 practicable as to all shares of the same class or series,
12 unless the subscription agreement specifies otherwise.

13 3. Shares issued pursuant to subscriptions entered into
14 before incorporation or organization of the state bank are
15 fully paid and nonassessable when the state bank receives the
16 consideration specified in the subscription agreement.

17 4. If a subscriber defaults in payment of money or
18 property under a subscription agreement entered into before
19 incorporation or organization of the state bank, the state
20 bank may do either of the following:

21 a. Collect the amount owed as any other debt.

22 b. Unless the subscription agreement provides otherwise,
23 the state bank may rescind the agreement and may sell the
24 shares if the debt remains unpaid more than twenty days after
25 the state bank sends written demand for payment to the
26 subscriber.

27 Sec. 64. Section 524.528, subsection 2, paragraph c, Code
28 2003, is amended to read as follows:

29 c. There is no preemptive right with respect to any of the
30 following:

31 (1) Shares issued as compensation to directors, managers,
32 officers, agents, or employees of the state bank, its
33 subsidiaries, or its affiliates.

34 (2) Shares issued to satisfy conversion or option rights
35 created to provide compensation to directors, managers,

1 officers, agents, or employees of the state bank, its
2 subsidiaries, or its affiliates.

3 (3) Shares authorized in articles of incorporation that
4 are issued within six months from the effective date of
5 incorporation or organization.

6 Sec. 65. Section 524.801, subsection 1, Code 2003, is
7 amended to read as follows:

8 1. To sue and be sued, complain and defend, in its
9 corporate or organizational name.

10 Sec. 66. Section 524.801, unnumbered paragraph 2, Code
11 2003, is amended to read as follows:

12 The powers granted in this section shall not be construed
13 as limiting or enlarging any grant of authority made elsewhere
14 in this chapter, or as a limitation on the purposes for which
15 a state bank may be incorporated or organized.

16 Sec. 67. Section 524.1301, Code 2003, is amended to read
17 as follows:

18 524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS, OR
19 INITIAL DIRECTORS.

20 A majority of the incorporators, organizers, or initial
21 directors of a state bank that has not issued shares or has
22 not commenced business may dissolve the state bank by
23 delivering articles of dissolution to the superintendent,
24 together with the applicable filing and recording fees, for
25 filing with the secretary of state that set forth all of the
26 following:

27 1. The name of the state bank.

28 2. The date of its incorporation or organization.

29 3. Either of the following:

30 a. That the state bank has not issued any shares.

31 b. That the state bank has not commenced business.

32 4. That no debt of the state bank remains unpaid.

33 5. If shares were issued, that the net assets of the state
34 bank remaining after the payment of all necessary expenses
35 have been distributed to the shareholders.

1 6. That a majority of the incorporators, organizers, or
2 initial directors authorized the dissolution.

3 Sec. 68. Section 524.1302, Code 2003, is amended to read
4 as follows:

5 524.1302 INVOLUNTARY DISSOLUTION PRIOR TO COMMENCEMENT OF
6 BUSINESS.

7 Prior to the issuance of an authorization to do business,
8 the superintendent may cause the dissolution of a state bank
9 if there exists any reason why it should not have been
10 incorporated or organized under this chapter or if an
11 authorization to do business has not been issued within one
12 year after the date of its incorporation or organization, or
13 such longer time as the superintendent may allow for
14 satisfaction of conditions precedent to its issuance. After
15 giving the state bank adequate notice and an opportunity for
16 hearing, the superintendent shall certify the applicable facts
17 by the filing of a statement with the secretary of state, who
18 shall thereafter issue a certificate of dissolution. Upon the
19 issuance of such certificate of dissolution by the secretary
20 of state, the corporate or organizational existence of the
21 state bank shall cease.

22 Sec. 69. Section 524.1309, Code 2003, is amended to read
23 as follows:

24 524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

25 In lieu of the dissolution procedure prescribed in sections
26 524.1303 to 524.1306, a state bank may cease to carry on the
27 business of banking and, after compliance with this section,
28 continue as a corporation subject to chapter 490; or if the
29 state bank is organized as a limited liability company under
30 this chapter, continue as a limited liability company subject
31 to chapter 490A.

32 1. A state bank which that has commenced business may
33 propose to voluntarily cease to carry on the business of
34 banking and become a corporation subject to chapter 490, or a
35 limited liability company subject to chapter 490A, upon the

1 affirmative vote of the holders of at least a majority of the
2 shares entitled to vote on such proposal, adopting a plan
3 involving both a provision for acquisition of its assets and
4 assumption of its liabilities by another state bank, national
5 bank, or other financial institution insured by the federal
6 deposit insurance corporation, and a provision for continuance
7 of its business if acquisition of its assets and assumption of
8 its liabilities is not effected, or any other plan providing
9 for the cessation of banking business and the payment of its
10 liabilities.

11 2. The application to the superintendent for approval of a
12 plan described in subsection 1 of this section shall be
13 treated by the superintendent in the same manner as an
14 application for approval of a plan of dissolution under
15 subsection 2 of section 524.1303, subsection 2, and shall be
16 subject to subsection 3 of section 524.1303, subsection 3.

17 3. Immediately upon adoption and approval of a plan to
18 voluntarily cease to carry on the business of banking and
19 become a corporation subject to chapter 490, or a limited
20 liability company subject to chapter 490A, the state bank
21 shall deliver to the superintendent a plan to cease the
22 business of banking and become a corporation subject to
23 chapter 490, or a limited liability company subject to chapter
24 490A, which shall be signed by two of its duly authorized
25 officers and shall contain the name of the state bank, the
26 post office address of its principal place of business, the
27 name and address of its officers and directors, the number of
28 shares entitled to vote on the plan and the number of shares
29 voted for or against the plan, respectively, the nature of the
30 business to be conducted by the corporation under chapter 490,
31 or by the limited liability company subject to chapter 490A,
32 and the general nature of the assets to be held by the
33 corporation or company.

34 4. Upon approval of the plan by the superintendent, the
35 state bank shall immediately surrender to the superintendent

1 its authorization to do business as a bank and shall cease to
2 accept deposits and carry on the banking business except
3 insofar as may be necessary for it to complete the settlement
4 of its affairs as a state bank in accordance with subsection
5 5.

6 5. The board of directors has full power to complete the
7 settlement of the affairs of the state bank. Within thirty
8 days after approval by the superintendent of the plan to cease
9 the business of banking and become a corporation subject to
10 chapter 490, or a limited liability company subject to chapter
11 490A, the state bank shall give notice of its intent to
12 persons identified in section 524.1305, subsection 4, in the
13 manner provided for in that subsection. In completing the
14 settlement of its affairs as a state bank the state bank shall
15 also follow the procedure prescribed in section 524.1305,
16 subsections 4, 5, and 6.

17 6. Upon completion of all the requirements of this
18 section, the state bank shall deliver to the superintendent
19 articles of intent to be subject to chapter 490 or 490A,
20 together with the applicable filing and recording fees, which
21 shall set forth that the state bank has complied with this
22 section, that it has ceased to carry on the business of
23 banking, and the information required by section 490.202
24 relative to the contents of articles of incorporation under
25 chapter 490, or article of organization under chapter 490A.
26 If the superintendent finds that the state bank has complied
27 with this section and that the articles of intent to be
28 subject to chapter 490 or 490A satisfy the requirements of
29 this section, the superintendent shall deliver them to the
30 secretary of state for filing and recording in the secretary
31 of state's office, and they shall be filed and recorded in the
32 office of the county recorder.

33 7. Upon the filing of the articles of intent to be subject
34 to chapter 490 or 490A, the state bank shall cease to be a
35 state bank subject to this chapter, and shall cease to have

1 the powers of a state bank subject to this chapter and shall
2 become a corporation subject to chapter 490 or a limited
3 liability company subject to chapter 490A. The secretary of
4 state shall issue a certificate as to the filing of the
5 articles of intent to be subject to chapter 490 or 490A, and
6 send the certificate to the corporation or limited liability
7 company or its representative. The articles of intent to be
8 subject to chapter 490 or 490A shall be the articles of
9 incorporation of the corporation or a limited liability
10 company. The provisions of chapter 490 or 490A becoming
11 applicable to a corporation or limited liability company
12 formerly doing business as a state bank shall not affect any
13 right accrued or established, or liability or penalty incurred
14 under this chapter prior to the filing with the secretary of
15 state of the articles of intent to be subject to chapter 490
16 or 490A.

17 8. A shareholder of a state bank who objects to adoption
18 by the state bank of a plan to cease to carry on the business
19 of banking and to continue as a corporation subject to chapter
20 490, or a limited liability company subject to chapter 490A,
21 is entitled to appraisal rights provided for in chapter 490,
22 division XIII, or in chapter 490A, subchapter VII.

23 9. A state bank, at any time prior to the approval of the
24 articles of intent to become subject to chapter 490 or 490A,
25 may revoke the proceedings in the manner prescribed by section
26 524.1306.

27 Sec. 70. Section 524.1405, subsection 2, paragraph f, Code
28 2003, is amended to read as follows:

29 f. The shares of each party to the merger that are to be
30 converted into shares, obligations, or other securities of the
31 surviving party or any other corporation or limited liability
32 company or into cash or other property are converted, and the
33 former holders of the shares are entitled only to the rights
34 provided in the articles of merger or to their rights under
35 section 524.1406.

1 Sec. 71. Section 524.1408, Code 2003, is amended to read
2 as follows:

3 524.1408 MERGER OF CORPORATION OR LIMITED LIABILITY
4 COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

5 A state bank owning at least ninety percent of the
6 outstanding shares, of each class, of another corporation or
7 limited liability company which it is authorized to own under
8 this chapter, may merge the other corporation or limited
9 liability company into itself without approval by a vote of
10 the shareholders of either the state bank or the subsidiary
11 corporation or limited liability company. The board of
12 directors of the state bank shall approve a plan of merger,
13 mail to shareholders of record of the subsidiary corporation
14 or holders of membership interests in the subsidiary limited
15 company, and prepare and execute articles of merger in the
16 manner provided for in section 490.1105. The articles of
17 merger, together with the applicable filing and recording
18 fees, shall be delivered to the superintendent who shall, if
19 the superintendent approves of the proposed merger and if the
20 superintendent finds the articles of merger satisfy the
21 requirements of this section, deliver them to the secretary of
22 state for filing and recording in the secretary of state's
23 office, and they shall be filed in the office of the county
24 recorder. The secretary of state upon filing the articles of
25 merger shall issue a certificate of merger and send the
26 certificate to the state bank and a copy of it to the
27 superintendent.

28 Sec. 72. Section 524.1802, subsection 1, Code 2003, is
29 amended by adding the following new paragraph:

30 NEW PARAGRAPH. gg. "Incorporated in any state" means a
31 limited liability company organized as a state bank under this
32 chapter and a limited liability company organized as a state
33 bank under the laws of any state as defined in 12 U.S.C. §
34 1813(a)(3).

35 Sec. 73. Section 524.2001, Code 2003, is amended to read

1 as follows:

2 524.2001 APPLICABILITY OF OTHER CHAPTERS.

3 Chapters 490, 490A, 491, 492, and 493 do not apply to banks
4 except as provided by this chapter.

5 DIVISION IV

6 REAL PROPERTY LOANS

7 Sec. 74. Section 535.8, subsection 2, paragraph b,
8 unnumbered paragraph 2, Code 2003, is amended to read as
9 follows:

10 The lender shall not charge the borrower for the cost of
11 revenue stamps or real estate commissions which are paid by
12 the seller.

13 PARAGRAPH DIVIDED. ~~Collection~~ The collection of any cost
14 costs other than as expressly permitted by this lettered
15 paragraph "b" is prohibited. However, additional costs
16 incurred in connection with a loan under this paragraph "b",
17 if bona fide and reasonable, may be collected by a state-
18 chartered financial institution licensed under chapter 524,
19 533, or 534, to the extent permitted under applicable federal
20 law as determined by the office of the comptroller of the
21 currency of the United States department of treasury, the
22 national credit union association, or the office of thrift
23 supervision of the United States department of treasury. Such
24 costs shall apply only to the same type of state chartered
25 entity as the federally chartered entity affected and to an
26 insurer organized under chapter 508 or 515, or otherwise
27 authorized to conduct the business of insurance in this state.

28
29
30
31
32
33
34
35

HOUSE FILE 2484

S-5157

1 Amend House File 2484, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 39, by inserting before line 28 the
4 following:

"DIVISION V

DELAYED DEPOSIT SERVICES

7 Sec. ____ . Section 533D.9, Code 2003, is amended to
8 read as follows:

9 533D.9 FEE RESTRICTION -- REQUIRED DISCLOSURE.

10 1. A licensee shall not charge, contract for, or
11 directly or indirectly receive any interest, fees, or
12 charges, except those specifically authorized by this
13 section:

14 a. TRANSACTION FEE. A licensee shall not charge a
15 fee in excess of fifteen five dollars on the first one
16 per hundred dollars on the face amount of a check or
17 more than ten dollars on subsequent one hundred dollar
18 increments on the face amount of the check for
19 services provided by the licensee, or pro rata for any
20 portion of one hundred dollars face value the amount
21 financed. However, the licensee may receive a minimum
22 charge of five dollars when the amount financed
23 exceeds seventy-five dollars, or three dollars and
24 fifty cents when the amount financed exceeds fifty
25 dollars.

26 b. DEFAULT FEE. If the check is not negotiable on
27 the date agreed upon, a licensee may charge a default
28 fee, not to exceed fifteen dollars. Only one such fee
29 may be collected with respect to a check even if it
30 has been redeposited and returned more than once, no
31 matter how long the check remains unpaid. A fee
32 charged pursuant to this section is a licensee's
33 exclusive remedy and charge for late payment or
34 nonpayment.

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

41 a. The transaction fee to be charged for the
42 transaction,

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

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

50 d. Any penalty, not to exceed fifteen dollars,

S-5157

S-5157

Page 2

1 ~~which~~ The default fee that the licensee will charge if
2 the check is not negotiable on the date agreed upon.
3 ~~A penalty~~ The notice shall state that the default fee
4 to be charged pursuant to this section shall only be
5 collected by the licensee once on a check no matter
6 how long the check remains unpaid. ~~A penalty; and~~
7 that a default fee to be charged pursuant to this
8 section is a licensee's exclusive remedy and if a
9 licensee charges a ~~penalty~~ default fee pursuant to
10 this section no other penalties under this chapter or
11 any other provision apply.

12 3. In addition to the notice required by
13 subsection 2, every licensee shall conspicuously
14 display a schedule of all fees, charges, and penalties
15 for all services provided by the licensee authorized
16 by this section. The notice shall be posted at the
17 office and every branch office of the licensee. The
18 licensee shall provide a written schedule of the fees,
19 charges, interest rates, and penalties upon request.

20 4. The licensee shall make all notices and
21 disclosures required under this section available in
22 the languages spoken by consumers who frequent that
23 location.

24 Sec. ____. Section 533D.10, Code 2003, is amended
25 to read as follows:

26 533D.10 PROHIBITED ACTS BY LICENSEE.

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

28 a. Hold from any one maker more than ~~two checks~~
29 one check at any one time.

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

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

35 d. Require the maker to receive payment by a
36 method ~~which~~ that causes the maker to pay additional
37 or further fees and charges to the licensee or another
38 person.

39 e. Repay, refinance, or otherwise consolidate a
40 postdated check transaction with the proceeds of
41 another postdated check transaction made by the same
42 licensee.

43 f. Receive any other charges or fees in addition
44 to the fees listed in section 533D.9, ~~subsections~~
45 subsection 1 and 2.

46 g. The termination of a delayed deposit
47 transaction either through the payment of the
48 consumer's check by the drawee bank, through the
49 return of the check to a consumer who redeems it for
50 consideration, through expiration of the check's

S-5157

S-5157

Page 3

1 maturity date, or through any other method of
2 termination. The licensee shall not enter into
3 another delayed deposit transaction with the same
4 consumer for at least two days after the termination
5 of a delayed deposit transaction either through the
6 payment of the consumer's check by the drawee bank,
7 through the return of the check to a consumer who
8 redeems it for consideration, through expiration of
9 the check's maturity date, or through any other method
10 of termination. However, the licensee may extend the
11 term of the loan without charge.

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

17 2. Title page, line 2, by inserting after the
18 word "unions," the following: "delayed deposit
19 services,".

By JOE BOLKCOM

THOMAS G. COURTNEY

ROGER STEWART

HERMAN C. QUIRMBACH

S-5157 FILED MARCH 29, 2004

HOUSE FILE 2484

S-5243

1 Amend House File 2484, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 39, line 25, by striking the word "to"
4 and inserting the following: "shall apply to and may
5 be collected by".

6 2. Page 39, by inserting after line 27 the
7 following:

8 "Nothing in this section shall be construed to
9 change the prohibition against the sale of title
10 insurance or sale of insurance against loss or damage
11 by reason of defective title or encumbrances as
12 provided in section 515.48, subsection 10."

By RON WIECK

S-5243 FILED APRIL 1, 2004

HOUSE FILE 2484

S-5284

1 Amend House File 2484, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 39, by inserting after line 27 the
4 following:

"DIVISION

REAL PROPERTY FINANCIAL LIABILITY

7 Sec. ____ . NEW SECTION. 455B.751 DEFINITIONS.

8 As used in this division, unless the context
9 otherwise requires:

10 1. "Acquired" means purchased, leased, obtained by
11 inheritance or descent and distribution, or obtained
12 by foreclosure sale under chapter 654, nonjudicial
13 voluntary foreclosure under section 654.18, deed in
14 lieu of foreclosure under section 654.19, foreclosure
15 without redemption under section 654.20, or
16 nonjudicial foreclosure of nonagriculture mortgages
17 under chapter 655A.

18 2. "Hazardous substance" means the same as defined
19 in section 455B.381 or 455B.411.

20 3. "Hazardous waste" means the same as defined in
21 section 455B.411.

22 4. "Potentially responsible party" means a person
23 whose acts or omissions were a proximate cause of the
24 contamination of the acquired property, or a person
25 whose negligent acts or omissions are a proximate
26 cause of injury or damages resulting from exposure to
27 such contamination. Injury or damages to persons or
28 property arising by reason of contamination that
29 migrates from the acquired property shall not be
30 deemed to be caused by an act or omission of the
31 person that acquired the property, except to the
32 extent that the act or omission of such person
33 exacerbated the release of such contamination.

34 5. "Regulated substance" means the same as defined
35 in section 455B.471.

36 6. "Response action" means any action taken to
37 reduce, minimize, eliminate, clean up, control,
38 assess, or monitor a release of hazardous substances,
39 hazardous waste, or regulated substances to protect
40 the public health, safety, or the environment.

41 7. "Third party" means any person other than a
42 person that holds indicia of title to property as
43 identified in section 455B.752, subsection 1, or that
44 has acquired property as identified in section
45 455B.752, subsection 2.

46 8. "Third-party liability" means any liability or
47 obligation, other than contractual obligations that
48 specifically waive all or part of the immunity
49 provided by section 455B.752, arising out of or
50 resulting from contamination of property by a

S-5284

S-5284

Page 2

1 hazardous substance, hazardous waste, or a regulated
2 substance, including without limitation, claims for
3 illness, personal injury, death, consequential
4 damages, exemplary damages, lost profits, trespass,
5 loss of use of property, loss of rental value,
6 reduction in property value, property damages, or
7 statutory or common law nuisance.

8 Sec. ____ . NEW SECTION. 455B.752 IMMUNITY FROM
9 THIRD-PARTY LIABILITY.

10 A person that holds indicia of ownership of
11 property contaminated by a hazardous substance,
12 hazardous waste, or regulated substance, and that
13 satisfies all of the conditions provided in section
14 455B.381, subsection 7, paragraphs "a", "b", and "c",
15 or section 455B.471, subsection 6, paragraph "b",
16 subparagraphs (1), (2), and (3), or a person that has
17 acquired property contaminated by a hazardous
18 substance, hazardous waste, or regulated substance,
19 shall not be liable to any third party for any third-
20 party liability arising from such contamination
21 provided that all of the following apply:

22 1. The person does not knowingly cause or permit a
23 new or additional hazardous substance, hazardous
24 waste, or regulated substance to arise on or from the
25 acquired property that injures a third party or
26 contaminates property owned or leased by a third
27 party.

28 2. The person is not a potentially responsible
29 party or affiliated with any potentially responsible
30 party by reason of any of the following:

31 a. Any direct or indirect familial relationship.

32 b. Any contractual, corporate, or financial
33 relationship, other than a contractual, corporate, or
34 financial relationship that is created by the
35 instruments by which title to the property is conveyed
36 or financed or by a contract for the sale of goods or
37 services.

38 c. A reorganization of a business entity that is
39 or was a potentially responsible party.

40 Sec. ____ . NEW SECTION. 455B.753 ACCESS TO
41 PROPERTY.

42 A person that holds indicia of title to property or
43 a person that has acquired property as identified in
44 section 455B.752, shall provide reasonable access to
45 the acquired property to any potentially responsible
46 party or to any authorized regulatory authority for
47 the purpose of investigating or evaluating any
48 contamination, planning, or preparing a remedial plan
49 for any abatement of the contamination, and for any
50 required remediation.

S-5284

-2-

1 Sec. ____ . NEW SECTION. 455B.754 LEGAL
2 RESPONSIBILITY.

3 This division shall not be interpreted to affect
4 the legal responsibility to the state to conduct
5 response actions under any applicable state law. This
6 division shall not be interpreted to affect or provide
7 immunity from any criminal liability.

8 Sec. ____ . EFFECTIVE DATE. This division of this
9 Act, being deemed of immediate importance, takes
10 effect upon enactment."

11 2. Title page, line 1, by striking the word
12 "institutions" and inserting the following: "and real
13 property institutions and assets".

14 3. Title page, by striking lines 2 and 3 and
15 inserting the following: "including banks, credit
16 unions, real property loan lenders, and real property
17 financial liability."

18 4. By renumbering, redesignating, and correcting
19 internal references as necessary.

By JULIE HOSCH

**SENATE AMENDMENT TO
HOUSE FILE 2484**

H-8448

1 Amend House File 2484, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 39, line 25, by striking the word "to"
4 and inserting the following: "shall apply to and may
5 be collected by".

6 2. Page 39, by inserting after line 27 the
7 following:

8 "Nothing in this section shall be construed to
9 change the prohibition against the sale of title
10 insurance or sale of insurance against loss or damage
11 by reason of defective title or encumbrances as
12 provided in section 515.48, subsection 10."

13 3. Page 39, by inserting after line 27 the
14 following:

"DIVISION

REAL PROPERTY FINANCIAL LIABILITY

17 Sec. ____ . NEW SECTION. 455B.751 DEFINITIONS.

18 As used in this division, unless the context
19 otherwise requires:

20 1. "Acquired" means purchased, leased, obtained by
21 inheritance or descent and distribution, or obtained
22 by foreclosure sale under chapter 654, nonjudicial
23 voluntary foreclosure under section 654.18, deed in
24 lieu of foreclosure under section 654.19, foreclosure
25 without redemption under section 654.20, or
26 nonjudicial foreclosure of nonagriculture mortgages
27 under chapter 655A.

28 2. "Hazardous substance" means the same as defined
29 in section 455B.381 or 455B.411.

30 3. "Hazardous waste" means the same as defined in
31 section 455B.411.

32 4. "Potentially responsible party" means a person
33 whose acts or omissions were a proximate cause of the
34 contamination of the acquired property, or a person
35 whose negligent acts or omissions are a proximate
36 cause of injury or damages resulting from exposure to
37 such contamination. Injury or damages to persons or
38 property arising by reason of contamination that
39 migrates from the acquired property shall not be
40 deemed to be caused by an act or omission of the
41 person that acquired the property, except to the
42 extent that the act or omission of such person
43 exacerbated the release of such contamination.

44 5. "Regulated substance" means the same as defined
45 in section 455B.471.

46 6. "Response action" means any action taken to
47 reduce, minimize, eliminate, clean up, control,
48 assess, or monitor a release of hazardous substances,
49 hazardous waste, or regulated substances to protect
50 the public health, safety, or the environment.

H-8448

H-8448

Page 2

1 7. "Third party" means any person other than a
2 person that holds indicia of title to property as
3 identified in section 455B.752, subsection 1, or that
4 has acquired property as identified in section
5 455B.752, subsection 2.

6 8. "Third-party liability" means any liability or
7 obligation, other than contractual obligations that
8 specifically waive all or part of the immunity
9 provided by section 455B.752, arising out of or
10 resulting from contamination of property by a
11 hazardous substance, hazardous waste, or a regulated
12 substance, including without limitation, claims for
13 illness, personal injury, death, consequential
14 damages, exemplary damages, lost profits, trespass,
15 loss of use of property, loss of rental value,
16 reduction in property value, property damages, or
17 statutory or common law nuisance.

18 Sec. ____ . NEW SECTION. 455B.752 IMMUNITY FROM
19 THIRD-PARTY LIABILITY.

20 A person that holds indicia of ownership of
21 property contaminated by a hazardous substance,
22 hazardous waste, or regulated substance, and that
23 satisfies all of the conditions provided in section
24 455B.381, subsection 7, paragraphs "a", "b", and "c",
25 or section 455B.471, subsection 6, paragraph "b",
26 subparagraphs (1), (2), and (3), or a person that has
27 acquired property contaminated by a hazardous
28 substance, hazardous waste, or regulated substance,
29 shall not be liable to any third party for any third-
30 party liability arising from such contamination
31 provided that all of the following apply:

32 1. The person does not knowingly cause or permit a
33 new or additional hazardous substance, hazardous
34 waste, or regulated substance to arise on or from the
35 acquired property that injures a third party or
36 contaminates property owned or leased by a third
37 party.

38 2. The person is not a potentially responsible
39 party or affiliated with any potentially responsible
40 party by reason of any of the following:

41 a. Any direct or indirect familial relationship.

42 b. Any contractual, corporate, or financial
43 relationship, other than a contractual, corporate, or
44 financial relationship that is created by the
45 instruments by which title to the property is conveyed
46 or financed or by a contract for the sale of goods or
47 services.

48 c. A reorganization of a business entity that is
49 or was a potentially responsible party.

50 Sec. ____ . NEW SECTION. 455B.753 ACCESS TO

H-8448

H-8448

Page 3

1 PROPERTY.

2 A person that holds indicia of title to property or
3 a person that has acquired property as identified in
4 section 455B.752, shall provide reasonable access to
5 the acquired property to any potentially responsible
6 party or to any authorized regulatory authority for
7 the purpose of investigating or evaluating any
8 contamination, planning, or preparing a remedial plan
9 for any abatement of the contamination, and for any
10 required remediation.

11 Sec. ____ . NEW SECTION. 455B.754 LEGAL

12 RESPONSIBILITY.

13 This division shall not be interpreted to affect
14 the legal responsibility to the state to conduct
15 response actions under any applicable state law. This
16 division shall not be interpreted to affect or provide
17 immunity from any criminal liability.

18 Sec. ____ . EFFECTIVE DATE. This division of this
19 Act, being deemed of immediate importance, takes
20 effect upon enactment."

21 4. Title page, line 1, by striking the word
22 "institutions" and inserting the following: "and real
23 property institutions and assets".

24 5. Title page, by striking lines 2 and 3 and
25 inserting the following: "including banks, credit
26 unions, real property loan lenders, and real property
27 financial liability."

28 6. By renumbering, relettering, or redesignating
29 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-8448 FILED APRIL 8, 2004

Sands, Chair
Kurtenbach
Wise

Sum
SF 02484

HSB 537

COMMERCE, REGULATION & LABOR

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/BANKING
DIVISION BILL)

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

A BILL FOR

1 An Act relating to the reorganization of the division of banking
2 of the department of commerce and its regulation of banking.
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. Section 8A.412, subsection 19, Code Supplement
2 2003, is amended to read as follows:

3 19. The superintendent ~~and-the-deputy-superintendent~~ of
4 the banking division of the department of commerce, all
5 members of the state banking board council, and all employees
6 of the banking division.

7 Sec. 2. Section 524.201, subsection 1, Code 2003, is
8 amended to read as follows:

9 1. The governor shall appoint, subject to confirmation by
10 the senate, a superintendent of banking. The appointee shall
11 be selected solely with regard to qualification and fitness to
12 discharge the duties of office, and a person shall not be
13 appointed who has not had at least five years' experience as
14 an executive officer in a bank ~~or-in-the-regulation-or~~
15 ~~examination-of-banks~~.

16 Sec. 3. Section 524.202, Code 2003, is amended to read as
17 follows:

18 524.202 SUPERINTENDENT -- SALARY.

19 The superintendent shall receive a salary to be fixed by
20 the governor which shall be comparable in amount with
21 compensation received by chief executive officers of state
22 banks.

23 Sec. 4. Section 524.203, Code 2003, is amended by striking
24 the section and inserting in lieu thereof the following:

25 524.203 SUPERINTENDENT -- VACANCY.

26 If the office of superintendent shall become vacant, the
27 governor may appoint an acting superintendent to complete the
28 unexpired term until an appointment is made as provided in
29 section 524.201.

30 Sec. 5. Section 524.204, Code 2003, is amended by striking
31 the section and inserting in lieu thereof the following:

32 524.204 DEPUTY SUPERINTENDENT OF BANKING.

33 The superintendent may appoint an employee of the division
34 of banking as deputy to perform the duties of the
35 superintendent during the absence or inability of the

1 superintendent to act. Any deputy so appointed shall be
2 removable at the pleasure of the superintendent.

3 Sec. 6. Section 524.205, Code 2003, is amended to read as
4 follows:

5 524.205 STATE BANKING BOARD COUNCIL.

6 1. The state banking board council shall be composed
7 consist of the superintendent, who shall be an ex officio
8 nonvoting member and chairperson, and six other members,
9 appointed by the governor, who shall be chosen appointed,
10 where practical, from various sections parts of the state.

11 ~~Provided, however, that in no event shall more than five~~
12 ~~members of such board be engaged in the business of banking in~~
13 ~~any executive capacity. In case of a vacancy in the state~~
14 ~~banking board, other than one resulting from a vacancy in the~~
15 ~~office of the superintendent, the governor shall appoint a new~~
16 ~~member to fill such vacancy for the unexpired term.~~

17 2. The regular-term terms of office of each member for
18 members of the state banking council, other than the
19 superintendent, shall be ~~contemporaneous with the regular term~~
20 ~~of office of the superintendent as defined in subsection 2 of~~
21 ~~section 524.201, and each such member shall hold office for~~
22 ~~such term and until the member's successor shall have been~~
23 appointed four-year staggered terms. Each member shall hold
24 office for the term for which the member is appointed or until
25 a successor is appointed.

26 3. ~~A member~~ Members of the state banking board council,
27 other than the superintendent, shall ~~not receive a salary but~~
28 is be entitled to reimbursement for actual expenses incurred
29 ~~by the member in connection with the member's duties~~ and to
30 receive a fee for attendance at council meetings consistent
31 with fees paid to nonsalaried directors of state banks. Each
32 ~~member of the board may also be eligible to receive~~
33 ~~compensation as provided in section 7E-6.~~

34 4. The state banking board council shall act ~~with the~~
35 superintendent in an advisory capacity concerning ~~all~~ matters

1 submitted to the council by the superintendent pertaining to
2 the conduct of the administration ~~of-the-provisions~~ of this
3 chapter ~~and-shall-perform-such-other-duties-as-are~~
4 ~~specifically-provided-for-by-the-laws-of-this-state.~~

5 5. The state banking board council shall meet at least
6 once each month calendar quarter on such date and at such
7 place as the ~~state-banking-board~~ council may designate decide,
8 and shall meet at such other times as ~~the-board~~ may deem be
9 deemed necessary, ~~or-when-called-by-the-chairperson-of-the~~
10 ~~board-or-any-two-members-thereof~~ by the superintendent or a
11 majority of the council members.

12 Sec. 7. Section 524.207, subsection 1, Code Supplement
13 2003, is amended to read as follows:

14 1. All expenses required in the discharge of the duties
15 and responsibilities imposed upon the banking division of the
16 department of commerce, the superintendent, and the state
17 banking board council by the laws of this state shall be paid
18 from fees provided by the laws of this state and appropriated
19 by the general assembly from the general fund of the state.
20 All of these fees are payable to the superintendent. The
21 superintendent shall pay all the fees and other moneys
22 received by the superintendent to the treasurer of state
23 within the time required by section 12.10 and the fees and
24 other moneys shall be deposited into the general fund of the
25 state. The superintendent may keep on hand with the treasurer
26 of state funds in excess of the current needs of the division
27 to the extent approved recommended by the state banking board
28 council.

29 Sec. 8. Section 524.208, Code 2003, is amended to read as
30 follows:

31 524.208 ASSISTANTS, EXAMINERS, AND OTHER EMPLOYEES.

32 The superintendent may appoint ~~assistants~~, examiners, and
33 other employees as the superintendent deems necessary to the
34 proper discharge of the duties imposed upon the superintendent
35 by the laws of this state. Pay plans shall be established for

1 employees, other than clerical, who examine the accounts and
 2 affairs of state banks and who examine the accounts and
 3 affairs of other persons, subject to supervision and
 4 regulation by the superintendent, which are substantially
 5 equivalent to those paid by the ~~Federal-Deposit-Insurance~~
 6 Corporation federal deposit insurance corporation and other
 7 federal supervisory agencies in this area of the United
 8 States.

9 Sec. 9. Section 524.209, Code Supplement 2003, is amended
 10 to read as follows:

11 524.209 EXPENSES.

12 The superintendent, ~~deputy-superintendent,~~-assistants,
 13 examiners and other employees of the banking division shall be
 14 entitled to receive reimbursement for expenses incurred in the
 15 performance of their duties. The superintendent, and when
 16 specifically authorized by the superintendent, ~~the-deputy~~
 17 ~~superintendent,~~-assistants, examiners and other employees of
 18 the banking division, shall be entitled to receive
 19 reimbursement for expenses incurred while attending
 20 conventions, meetings, conferences, schools, or seminars
 21 relating to the performance of their duties, and such expenses
 22 shall be paid by the treasurer of state on warrants drawn by
 23 the director of the department of administrative services.

24 Sec. 10. Section 524.210, Code 2003, is amended to read as
 25 follows:

26 524.210 INSURANCE AND SURETY BONDS.

27 The superintendent shall acquire good and sufficient bond
 28 in a company authorized to do business in this state insuring
 29 the faithful performance of ~~the-deputy-superintendent,~~
 30 ~~assistants,~~ examiners, and all other employees of the banking
 31 division and insuring against any liability which may accrue
 32 in the case of the loss of any property of a state bank, of a
 33 customer of a state bank or of any other person, in the course
 34 of any examination, investigation, or other function required
 35 or allowed by the laws of this state. The superintendent

1 shall be bonded in accordance with the provisions of chapter
2 64.

3 Sec. 11. Section 524.211, subsections 1, 2, 3, 4, 5, and
4 7, Code 2003, are amended to read as follows:

5 1. The superintendent, ~~deputy-superintendent, an assistant~~
6 ~~to the superintendent, a bank examination analyst,~~ general
7 counsel, ~~or an examiner~~ examiners, and other employees
8 assigned to the bank bureau of the banking division is are
9 prohibited from obtaining a loan of money or property from a
10 state-chartered bank or any person or entity affiliated with a
11 state-chartered bank.

12 2. The superintendent, ~~deputy-superintendent, finance~~
13 ~~company-bureau-chief,~~ general counsel, ~~and all~~ examiners, and
14 other employees assigned to the finance company bureau of the
15 banking division are prohibited from obtaining a loan of money
16 or property from a person or entity licensed pursuant to
17 chapter 533A, 533D, 536, or 536A, or a person or entity
18 affiliated with such licensee.

19 3. The superintendent, ~~deputy-superintendent, an assistant~~
20 ~~to the superintendent, a bank examination analyst, finance~~
21 ~~company-bureau-chief,~~ general counsel, ~~or an examiner~~
22 examiners, and other employees of the banking division, who
23 has have credit relations with a person or entity licensed or
24 registered pursuant to chapter 535B or 536C, is are prohibited
25 from participating in decisions, oversight, and official
26 review of matters concerning the regulation of the licensee or
27 registrant.

28 4. ~~An assistant to the superintendent, a bank examination~~
29 ~~analyst, or an examiner~~ Examiners and other employees assigned
30 to the bank bureau of the banking division who has have credit
31 relations with a person or entity licensed pursuant to chapter
32 533A, 533D, 536, or 536A, or with a person or entity
33 affiliated with such licensee, is are prohibited from
34 participating in decisions, oversight, and official review of
35 matters concerning the regulation of the licensee.

1 5. An employee of the banking division, other than the
 2 superintendent or a member of the state banking board council,
 3 shall not perform any services for, and shall not be a
 4 shareholder, member, partner, owner, director, officer, or
 5 employee of, any enterprise, person, or affiliate subject to
 6 the regulatory purview of the banking division.

7 7. The superintendent, ~~deputy-superintendent, or any~~
 8 ~~assistant or examiner~~ examiners, or other employees who ~~is~~ are
 9 convicted of a felony while holding such position shall be
 10 immediately discharged from employment and shall be forever
 11 disqualified from holding any position in the banking
 12 division.

13 Sec. 12. Section 524.212, Code Supplement 2003, is amended
 14 to read as follows:

15 524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY
 16 INFORMATION.

17 The superintendent, ~~deputy-superintendent, assistant to the~~
 18 ~~superintendent, examiner~~ members of the state banking council,
 19 general counsel, examiners, or other employee employees of the
 20 banking division shall not disclose, in any manner, to any
 21 person other than the person examined and those regulatory
 22 agencies referred to in section 524.217, subsection 2, any
 23 information relating specifically to the supervision and
 24 regulation of any state bank, persons subject to the
 25 provisions of chapter 533A, 533C, 536, or 536A, any affiliate
 26 of any state bank, or an affiliate of a person subject to the
 27 provisions of chapter 533A, 533C, 536, or 536A, except when
 28 ordered to do so by a court of competent jurisdiction and then
 29 only in those instances referred to in section 524.215,
 30 subsections 1, 2, 3, and 5.

31 Sec. 13. Section 524.214, subsection 1, Code 2003, is
 32 amended to read as follows:

33 1. The superintendent, ~~the deputy-superintendent,~~ and upon
 34 the approval of the superintendent, any ~~assistant or examiner~~
 35 or other employees of the banking division shall have the

1 power to subpoena witnesses, to compel their attendance, to
2 administer an oath, to examine any person under oath and to
3 require the production of any relevant books or papers. Such
4 examination may be conducted on any subject relating to the
5 duties imposed upon, or powers vested in, the superintendent
6 under the provisions of this chapter.

7 Sec. 14. Section 524.215, unnumbered paragraph 2, Code
8 2003, is amended to read as follows:

9 The superintendent, ~~deputy-superintendent, assistants, or~~
10 members of the state banking council, examiners, or other
11 employees of the banking division shall not be subpoenaed in
12 any cause or proceeding to give testimony concerning
13 information relating specifically to the supervision and
14 regulation of any state bank or other person by the
15 superintendent pursuant to the laws of this state, and the
16 records of the banking division which relate specifically to
17 the supervision and regulation of any such state bank or other
18 such person shall not be offered in evidence in any court or
19 subject to subpoena by any party except, where relevant:

20 Sec. 15. Section 524.216, unnumbered paragraph 1, Code
21 2003, is amended to read as follows:

22 The superintendent shall make a report in writing annually
23 to the governor in the manner and within the time required by
24 chapter 7A. ~~A copy of the report shall be furnished by the~~
25 ~~superintendent to each state bank.~~

26 Sec. 16. Section 524.217, subsection 1, paragraph a, Code
27 2003, is amended to read as follows:

28 a. Make or cause to be made an examination of every state
29 bank and trust company whenever in the superintendent's
30 judgment such examination is necessary or advisable ~~but in no~~
31 ~~event less frequently than once during each two-year period.~~
32 During the course of each examination of a state bank or trust
33 company, inquiry shall be made as to its financial condition,
34 the security afforded to those to whom it is obligated, the
35 policies of its management, whether the requirements of law

1 have been complied with in the administration of its affairs,
2 and such other matters as the superintendent may prescribe.

3 Sec. 17. Section 524.218, Code 2003, is amended to read as
4 follows:

5 524.218 REGULATION AND EXAMINATION OF SERVICES.

6 A state bank ~~may~~ shall not cause to be performed, by
7 contract or otherwise, any bank services, of a type referred
8 to in section 524.804, for itself or any affiliate, whether on
9 or off its premises, unless ~~assurances-satisfactory-to-the~~
10 ~~superintendent-are-furnished-to-the-superintendent-by-both-the~~
11 ~~state-bank-and-the-person-performing-such-services-that-the~~
12 ~~performance-thereof~~ the person performing such services will
13 be subject to supervision, regulation, and examination by the
14 superintendent to the same extent as if such services were
15 being performed by the state bank itself on its own premises.

16 Sec. 18. Section 524.219, Code 2003, is amended to read as
17 follows:

18 524.219 FEES.

19 1. A state bank subject to examination, supervision, and
20 regulation by the superintendent, shall pay to the
21 superintendent fees, established by the ~~state-banking-board~~
22 superintendent, based on the costs and expenses incurred in
23 the discharge of the duties imposed upon the superintendent by
24 this chapter. The fees shall include, but are not limited to,
25 costs and expenses for salaries, expenses and travel for
26 employees, office facilities, supplies, and equipment.

27 2. The fees for examination of any affiliate of a state
28 bank as provided for in section 524.1105, and the examinations
29 provided for in section 524.217, subsection 1, paragraphs "c"
30 and "d", shall be established by the ~~state-banking-board~~
31 superintendent, based on the time required for the examination
32 and the administrative costs and expenses incurred in the
33 discharge of the duties imposed upon the superintendent by
34 this chapter. The fees shall include, but not be limited to,
35 costs and expenses for salaries, expenses and travel for

1 employees, office facilities, supplies, and equipment.

2 ~~Upon completion of each examination required or allowed by~~
3 ~~this chapter, the examiner in charge of the examination shall~~
4 ~~render a bill for the fees, in duplicate, and shall deliver~~
5 ~~one copy of the bill to the state bank and one copy to the~~
6 ~~superintendent.~~

7 3. Failure to pay the amount of the fees to the
8 superintendent within ten days after the date of billing shall
9 subject the state bank or any affiliate of a state bank to an
10 additional charge equal to five percent of the amount of the
11 fees for each day the payment is delinquent.

12 Sec. 19. Section 524.310, subsection 1, Code 2003, is
13 amended to read as follows:

14 1. The name of a state bank originally incorporated after
15 the effective date of this chapter shall include the word
16 "bank" and may include the word "state" or "trust" in its
17 name. A state bank using the word "trust" in its name must be
18 authorized under this chapter to act in a fiduciary capacity.
19 A national bank or federal savings bank shall not use the word
20 "state" in its legally chartered name.

21 Sec. 20. Section 524.405, subsection 1, unnumbered
22 paragraph 1, Code 2003, is amended to read as follows:

23 ~~A state bank, with the approval of the superintendent,~~ may
24 increase its capital structure or effect an allocation of
25 amounts within its capital structure, by the use of any of the
26 following methods:

27 Sec. 21. NEW SECTION. 524.607A ACTION WITHOUT MEETING.

28 1. Unless the articles of incorporation or bylaws provide
29 otherwise, action required or permitted to be taken under this
30 chapter at a board of directors' meeting may be taken without
31 a meeting if the action is consented to by all members of the
32 board. The action must be evidenced by one or more written
33 consents describing the action taken, signed by each director,
34 and included in the minutes or filed with the corporate
35 records reflecting the action taken.

1 2. Action taken under this section is effective when the
2 last director signs the consent, unless the consent specifies
3 a different effective date.

4 3. A written consent signed under this section has the
5 effect of a meeting vote and may be described as such in any
6 document.

7 Sec. 22. Section 524.610, unnumbered paragraph 1, Code
8 2003, is amended to read as follows:

9 The shareholders of a state bank shall fix the reasonable
10 compensation of directors for their services as members of the
11 board of directors. Subject to ~~the approval of the~~
12 ~~superintendent and~~ approval by the shareholders at an annual
13 or special meeting called for that purpose, the shareholders
14 of a state bank may adopt a pension or profit sharing plan, or
15 both, or other plan of deferred compensation for directors, to
16 which a state bank may contribute.

17 Sec. 23. Section 524.703, unnumbered paragraph 2, Code
18 2003, is amended to read as follows:

19 Subject to ~~the approval of the superintendent, and~~ approval
20 by the shareholders at an annual or special meeting called for
21 the purpose, the board of directors of a state bank may adopt
22 a pension or profit-sharing plan, or both, or other plan of
23 deferred compensation, for both officers and employees, to
24 which the state bank may contribute.

25 Sec. 24. Section 524.802, subsection 5, Code 2003, is
26 amended to read as follows:

27 5. Act as agent for a depository institution affiliate to
28 ~~the same extent that a national bank can act as an agent for a~~
29 ~~depository institution under the provisions of section 18 of~~
30 ~~the Federal Deposit Insurance Act, 12 U.S.C. § 1828.~~

31 Sec. 25. Section 524.903, subsections 2 and 3, Code 2003,
32 are amended to read as follows:

33 2. A state bank shall not accept such drafts in an amount
34 which exceeds at any time in the aggregate for all drawers
35 thirty percent of the state bank's aggregate capital. The

~~1 superintendent may authorize a state bank to accept drafts in
2 an amount not exceeding at any time in the aggregate for all
3 drawers sixty percent of the state bank's aggregate capital,
4 but the aggregate of acceptance growing out of domestic
5 transactions shall in no event exceed thirty percent of
6 aggregate capital.~~

7 3. A state bank, ~~with the prior approval of the~~
8 superintendent, may accept drafts, having not more than three
9 months after sight to run, drawn upon it by banks or bankers
10 in foreign countries, or in dependencies or insular
11 possessions of the United States, for the purpose of
12 furnishing dollar exchange as required by the usages of trade
13 where the drafts are drawn in an aggregate amount which shall
14 not at any time exceed for all such acceptance on behalf of a
15 single bank or banker seven and one-half percent of the state
16 bank's aggregate capital, and for all such acceptances, thirty
17 percent of the state bank's aggregate capital.

18 Sec. 26. Section 524.904, subsection 7, paragraph a, Code
19 2003, is amended to read as follows:

20 a. Additional funds advanced for taxes or for insurance if
21 the advance is for the protection of the state bank, ~~and~~
22 ~~provided that such amounts receive the prior approval of the~~
23 ~~superintendent.~~

24 Sec. 27. Section 524.1201, subsection 3, Code 2003, is
25 amended to read as follows:

26 3. Notwithstanding any of the other provisions of this
27 section, original loan documentation and trust recordkeeping
28 functions may be located at an any authorized bank office or
29 at any other location approved by the superintendent.

30 Sec. 28. Section 524.1303, subsection 3, Code 2003, is
31 amended to read as follows:

32 3. Within thirty days after the application for
33 dissolution involving a provision of acquisition of the state
34 bank's assets and assumption of its liabilities by another
35 state bank is accepted for processing, the dissolving bank

1 shall publish ~~once-each-week-for-two-consecutive-weeks-a~~
 2 notice of the proposed transaction. ~~The notice shall be~~
 3 published in a newspaper of general circulation published in
 4 the municipal corporation or unincorporated area in which the
 5 dissolving bank has its principal place of business, and in
 6 the municipal corporation or unincorporated area in which the
 7 acquiring state bank has its principal place of business, or
 8 if there is none, a newspaper of general circulation published
 9 in the county or counties, or in a county adjoining the county
 10 or counties, in which the dissolving bank and the acquiring
 11 bank have their principal place of business. The notice shall
 12 be on forms provided by the superintendent, and proof of
 13 publication of the notice shall be delivered to the
 14 superintendent within fourteen days.

15 Sec. 29. Section 524.1402, subsection 4, Code 2003, is
 16 amended to read as follows:

17 4. If a proposed merger will result in a state bank,
 18 within thirty days after the application for merger is
 19 accepted for processing, the parties to the plan shall
 20 publish ~~once-each-week-for-two-consecutive-weeks,~~ a notice of
 21 the proposed transaction. ~~The notices shall be published in a~~
 22 newspaper of general circulation published in the municipal
 23 corporation or unincorporated area in which each party to the
 24 plan has its principal place of business, or if there is none,
 25 in a newspaper of general circulation published in the county,
 26 or in a county adjoining the county, in which each party to
 27 the plan has its principal place of business. The notice
 28 shall be on forms prescribed by the superintendent and shall
 29 set forth the names of the parties to the plan and the
 30 resulting state bank, the location and post office address of
 31 the principal place of business of the resulting state bank
 32 and of each office to be maintained by the resulting state
 33 bank, and the purpose or purposes of the resulting state bank.
 34 Proof of publication of the notice shall be delivered to the
 35 superintendent within fourteen days.

1 Sec. 30. Section 524.1412, unnumbered paragraph 1, Code
2 2003, is amended to read as follows:

3 Within thirty days after the application for conversion has
4 been accepted for processing, the national bank or federal
5 savings association shall publish a notice of the delivery of
6 the articles of conversion to the superintendent ~~once-each~~
7 ~~week-for-two-successive-weeks~~ in a newspaper of general
8 circulation published in the municipal corporation or
9 unincorporated area in which the national bank or federal
10 savings association has its principal place of business, or if
11 there is none, a newspaper of general circulation published in
12 the county, or in a county adjoining the county, in which the
13 national bank or federal savings association has its principal
14 place of business. Proof of publication of the notice shall
15 be delivered to the superintendent within fourteen days. The
16 notice shall set forth all of the following:

17 Sec. 31. Section 524.1416, subsection 2, Code 2003, is
18 amended to read as follows:

19 2. A state bank which converts into a national bank or
20 federal savings association shall notify the superintendent of
21 the proposed conversion, provide such evidence of the adoption
22 of the plan as the superintendent may request, notify the
23 superintendent of any abandonment or disapproval of the plan,
24 file with the superintendent and with the secretary of state a
25 certificate of the approval of the conversion by the
26 comptroller of the currency of the United States or director
27 of the office of thrift supervision, as applicable, and the
28 date upon which such conversion is to become effective. A
29 state bank that converts into a national bank or federal
30 savings association shall comply with the provisions of
31 section 524.310, subsection 1.

32 Sec. 32. Section 524.1611, subsection 1, Code 2003, is
33 amended to read as follows:

34 1. Any person violating the provisions ~~of-subsection-1~~ of
35 section 524.211, subsection 1, shall be guilty of a fraudulent

1 practice, and shall be subject to a further fine of a sum
 2 equal to the amount of the value of the property given or
 3 received or the money so loaned or borrowed. ~~The-deputy~~
 4 ~~superintendent,-an-assistant-or-examiner~~ An employee of the
 5 division of banking convicted of a violation of such
 6 subsection shall be immediately discharged from employment and
 7 shall be forever disqualified from holding any position in the
 8 banking division.

9 Sec. 33. Section 546.3, Code 2003, is amended to read as
 10 follows:

11 546.3 BANKING DIVISION.

12 The banking division shall regulate and supervise banks
 13 under chapter 524, regulated loan companies under chapter 536,
 14 and industrial loan companies under chapter 536A, and shall
 15 perform other duties assigned to the division by law. The
 16 division is headed by the superintendent of banking who is
 17 appointed pursuant to section 524.201. The state banking
 18 board council shall ~~perform-duties~~ render advice within the
 19 division ~~as-prescribed-by-law~~ when requested by the
 20 superintendent.

21 Sec. 34. STATE BANKING COUNCIL -- INITIAL FOUR-YEAR TERMS.

22 The governor shall appoint members to the state banking
 23 council for terms beginning on May 1, 2005, as follows: One
 24 member shall be appointed for a one-year term, one member
 25 shall be appointed for a two-year term, two members shall be
 26 appointed for three-year terms, and two members shall be
 27 appointed for four-year terms.

28 Sec. 35. Section 68B.35, Code Supplement 2003, and
 29 sections 536.13, 536.23, and 536.28, Code 2003, are amended by
 30 striking from the sections the words "state banking board" and
 31 "banking board" and "board" when referring to the state
 32 banking board and inserting in lieu thereof the words "state
 33 banking council".

34 Sec. 36. CODE EDITOR'S DIRECTIVE. The Code editor shall
 35 correct any references to the state banking council as the

1 successor to the state banking board, including grammatical
2 constructions, anywhere else in the Iowa Code, in any bills
3 awaiting codification, and in any bills enacted by the
4 Eightieth General Assembly, 2004 Regular Session.

5 EXPLANATION

6 This bill implements reorganization of the division of
7 banking by substantially eliminating the position of deputy
8 superintendent and references thereto. A deputy may be
9 appointed by a superintendent to act when the superintendent
10 is not able. The salary of the superintendent shall continue
11 to be fixed by the governor but must be comparable with
12 compensation paid to chief executives at state banks. The
13 governor may appoint an acting superintendent until an
14 official appointment can be made.

15 The bill changes the name of the state banking board to the
16 state banking council and delineates the appointment and terms
17 of council members. The superintendent's report to the
18 governor is no longer required to be distributed to each state
19 bank. The requirement that the superintendent examine every
20 state bank and trust company at least once every two years is
21 eliminated. The superintendent, instead of the state banking
22 board, shall set all fees.

23 The bill allows a board of directors of a bank to take
24 action by written consent without a meeting. Certain prior
25 approvals by the superintendent required for actions of state
26 banks are eliminated. Certain notices required to be
27 published by banks are no longer required to be published at
28 least once a week for two weeks. Proof of publication of the
29 notice must be provided to the superintendent within 14 days.
30 A state bank converting into a national bank or federal
31 savings association may not continue to use "state" in the
32 bank's legally chartered name.

33 The bill makes other grammatical and technical changes
34 regarding the division of banking and its regulation of
35 banking.



THOMAS J. VILSACK
GOVERNOR
SALLY J. PEDERSON
LT. GOVERNOR

THOMAS B. GRONSTAL
SUPERINTENDENT

BACKGROUND MEMORANDUM

TO: Members of the General Assembly

DATE: November 18, 2003

The Iowa Division of Banking recently undertook a study to reorganize the Division. The requested changes in legislation are necessary to implement the results of this reorganization. Several employee titles set forth in current legislation were eliminated and amendments are required to implement these changes.

The study also recommended the elimination of certain prior approvals required of the Superintendent of Banking to streamline actions that could be taken by banks without affecting the safety or soundness of the bank taking the action.

The current state banking board reviewed all of the statutory provisions to be changed and unanimously approved the changes. The last comprehensive review of the state banking laws took place in 1995.

krj

HOUSE FILE 2484

AN ACT

RELATING TO THE REGULATION OF FINANCIAL AND REAL PROPERTY INSTITUTIONS AND ASSETS INCLUDING BANKS, CREDIT UNIONS, REAL PROPERTY LOAN LENDERS, AND REAL PROPERTY FINANCIAL LIABILITY.

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

DIVISION I
DIVISION OF BANKING

Section 1. Section 8A.412, subsection 19, Code Supplement 2003, is amended to read as follows:

19. The superintendent and the deputy superintendent of the banking division of the department of commerce, all members of the state banking board council, and all employees of the banking division.

Sec. 2. Section 524.201, subsection 1, Code 2003, is amended to read as follows:

1. The governor shall appoint, subject to confirmation by the senate, a superintendent of banking. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office, and a person shall not be appointed who has not had at least five years' experience as an executive officer in a bank ~~or in the regulation or examination of banks.~~

Sec. 3. Section 524.203, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

524.203 SUPERINTENDENT -- VACANCY.

If the office of superintendent shall become vacant, the governor may appoint an acting superintendent to complete the unexpired term until an appointment is made as provided in section 524.201.

Sec. 4. Section 524.204, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

524.204 DEPUTY SUPERINTENDENT OF BANKING.

The superintendent may appoint an employee of the division of banking as deputy to perform the duties of the superintendent during the absence or inability of the superintendent to act. Any deputy so appointed shall be removable at the pleasure of the superintendent.

Sec. 5. Section 524.205, Code 2003, is amended to read as follows:

524.205 STATE BANKING BOARD COUNCIL.

1. The state banking board council shall be composed consist of the superintendent, who shall be an ex officio nonvoting member and chairperson, and six other members, appointed by the governor, who shall be chosen appointed, where practical, from various sections parts of the state. Provided, however, that in no event shall more than five members of such board council be engaged in the business of banking in any executive capacity. ~~In case of a vacancy in the state banking board, other than one resulting from a vacancy in the office of the superintendent, the governor shall appoint a new member to fill such vacancy for the unexpired term.~~

2. The regular-term terms of office of each member for members of the state banking council, other than the superintendent, shall be contemporaneous with the regular-term of office of the superintendent as defined in subsection 2 of section 524.201, and each such member shall hold office for

~~such-term-and-until-the-member's-successor-shall-have-been appointed four-year staggered terms. Each member shall hold office for the term for which the member is appointed or until a successor is appointed.~~

3. A member of the state banking board council, other than the superintendent, shall not receive a salary but is entitled to reimbursement for actual expenses incurred by the member in connection with the member's duties. Each member of the board council may also be eligible to receive compensation as provided in section 7E.6.

4. The state banking board council shall act ~~with the superintendent~~ in an advisory capacity concerning all matters submitted to the council by the superintendent pertaining to the conduct of the administration ~~of the provisions~~ of this chapter ~~and shall perform such other duties as are specifically provided for by the laws of this state.~~

5. The state banking board council shall meet at least once each month calendar quarter on such date and at such place as the state banking board council may designate decide, and shall meet at such other times as ~~the board~~ may deem be deemed necessary, or when called by the chairperson of the board, or any two members thereof by the superintendent or a majority of the council members.

Sec. 6. Section 524.207, subsection 1, Code Supplement 2003, is amended to read as follows:

1. All expenses required in the discharge of the duties and responsibilities imposed upon the banking division of the department of commerce, the superintendent, and the state banking board council by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the general fund of the state. All of these fees are payable to the superintendent. The superintendent shall pay all the fees and other moneys received by the superintendent to the treasurer of state within the time required by section 12.10 and the fees and

other moneys shall be deposited into the general fund of the state. The superintendent may keep on hand with the treasurer of state funds in excess of the current needs of the division to the extent approved recommended by the state banking board council.

Sec. 7. Section 524.208, Code 2003, is amended to read as follows:

524.208 ASSISTANTS, EXAMINERS, AND OTHER EMPLOYEES.

The superintendent may appoint assistants, examiners, and other employees as the superintendent deems necessary to the proper discharge of the duties imposed upon the superintendent by the laws of this state. Pay plans shall be established for employees, other than clerical, who examine the accounts and affairs of state banks and who examine the accounts and affairs of other persons, subject to supervision and regulation by the superintendent, which are substantially equivalent to those paid by the ~~Federal Deposit Insurance Corporation~~ federal deposit insurance corporation and other federal supervisory agencies in this area of the United States.

Sec. 8. Section 524.209, Code Supplement 2003, is amended to read as follows:

524.209 EXPENSES.

The superintendent, ~~deputy superintendent, assistants, examiners,~~ and other employees of the banking division shall be entitled to receive reimbursement for expenses incurred in the performance of their duties. The superintendent, and when specifically authorized by the superintendent, ~~the deputy superintendent, assistants,~~ examiners and other employees of the banking division, shall be entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties, and such expenses shall be paid by the treasurer of state on warrants drawn by the director of the department of administrative services.

Sec. 9. Section 524.210, Code 2003, is amended to read as follows:

524.210 INSURANCE AND SURETY BONDS.

The superintendent shall acquire good and sufficient bond in a company authorized to do business in this state insuring the faithful performance of ~~the deputy superintendent~~ ~~assistants~~, examiners, and all other employees of the banking division and insuring against any liability which may accrue in the case of the loss of any property of a state bank, of a customer of a state bank or of any other person, in the course of any examination, investigation, or other function required or allowed by the laws of this state. The superintendent shall be bonded in accordance with the provisions of chapter 64.

Sec. 10. Section 524.211, subsections 1, 2, 3, 4, 5, and 7, Code 2003, are amended to read as follows:

1. The superintendent, ~~deputy superintendent~~, ~~an assistant to the superintendent~~, ~~a bank examination analyst~~, general counsel, or ~~an examiner~~ examiners, and other employees assigned to the bank bureau of the banking division ~~is~~ are prohibited from obtaining a loan of money or property from a state-chartered bank or any person or entity affiliated with a state-chartered bank.

2. The superintendent, ~~deputy superintendent~~, ~~finance company bureau chief~~, general counsel, ~~and all~~ examiners, and other employees assigned to the finance company bureau of the banking division are prohibited from obtaining a loan of money or property from a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or a person or entity affiliated with such licensee.

3. The superintendent, ~~deputy superintendent~~, ~~an assistant to the superintendent~~, ~~a bank examination analyst~~, ~~finance company bureau chief~~, general counsel, or ~~an examiner~~ examiners, and other employees of the banking division, who has have credit relations with a person or entity licensed or

registered pursuant to chapter 535B or 536C, ~~is~~ are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee or registrant.

4. ~~An assistant to the superintendent, a bank examination analyst, or an examiner~~ Examiners and other employees assigned to the bank bureau of the banking division who has have credit relations with a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or with a person or entity affiliated with such licensee, ~~is~~ are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee.

5. An employee of the banking division, other than the superintendent or a member of the state banking board council, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

7. The superintendent, ~~deputy superintendent~~, ~~or any assistant or examiner~~ examiners, or other employees who ~~is~~ are convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

Sec. 11. Section 524.212, Code Supplement 2003, is amended to read as follows:

524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY INFORMATION.

The superintendent, ~~deputy superintendent~~, ~~assistant to the superintendent~~, ~~examiner~~ members of the state banking council, general counsel, examiners, or other ~~employee~~ employees of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and

regulation of any state bank, persons subject to the provisions of chapter 533A, 533C, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533C, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsections 1, 2, 3, and 5.

Sec. 12. Section 524.214, subsection 1, Code 2003, is amended to read as follows:

1. The superintendent, ~~the deputy superintendent,~~ and upon the approval of the superintendent, any ~~assistant or~~ examiner or other employees of the banking division shall have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter.

Sec. 13. Section 524.215, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The superintendent, ~~deputy superintendent, assistants, or members of the state banking council, examiners, or other employees of the banking division~~ shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, and the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person shall not be offered in evidence in any court or subject to subpoena by any party except, where relevant:

Sec. 14. Section 524.216, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The superintendent shall make a report in writing annually to the governor in the manner and within the time required by

~~chapter 7A. A copy of the report shall be furnished by the superintendent to each state bank.~~

Sec. 15. Section 524.217, subsection 1, paragraph a, Code 2003, is amended to read as follows:

a. Make or cause to be made an examination of every state bank and trust company whenever in the superintendent's judgment such examination is necessary or advisable, but in no event less frequently than once during each two-year period by either the banking division or the appropriate federal banking agency. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe.

Sec. 16. Section 524.218, Code 2003, is amended to read as follows:

524.218 REGULATION AND EXAMINATION OF SERVICES.

A state bank may shall not cause to be performed, by contract or otherwise, any bank services, of a type referred to in section 524.804, for itself or any affiliate, whether on or off its premises, unless ~~assurances satisfactory to the superintendent are furnished to the superintendent by both the state bank and the person performing such services that the performance thereof~~ the person performing such services will be subject to supervision, regulation, and examination by the superintendent to the same extent as if such services were being performed by the state bank itself on its own premises.

Sec. 17. Section 524.219, Code 2003, is amended to read as follows:

524.219 FEES.

1. A state bank subject to examination, supervision, and regulation by the superintendent, shall pay to the superintendent fees, established by the ~~state banking board~~

superintendent, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but are not limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

2. The fees for examination of any affiliate of a state bank as provided for in section 524.1105, and the examinations provided for in section 524.217, subsection 1, paragraphs "c" and "d", shall be established by the state-banking-board superintendent, based on the time required for the examination and the administrative costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include, but not be limited to, costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

~~Upon completion of each examination required or allowed by this chapter, the examiner in charge of the examination shall render a bill for the fees, in duplicate, and shall deliver one copy of the bill to the state bank and one copy to the superintendent.~~

3. Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state bank or any affiliate of a state bank to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

Sec. 18. Section 524.310, subsection 1, Code 2003, is amended to read as follows:

1. The name of a state bank originally incorporated after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity. A national bank or federal savings bank shall not use the word "state" in its legally chartered name.

Sec. 19. Section 524.405, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~A state bank, with the approval of the superintendent, may increase its capital structure or effect an allocation of amounts within its capital structure, by the use of any of the following methods:~~

Sec. 20. NEW SECTION. 524.607A ACTION WITHOUT MEETING.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this chapter at a board of directors' meeting may be taken without a meeting if the action is consented to by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

3. A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Sec. 21. Section 524.610, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The shareholders of a state bank shall fix the reasonable compensation of directors for their services as members of the board of directors. Subject to ~~the approval of the superintendent and~~ approval by the shareholders at an annual or special meeting called for that purpose, the shareholders of a state bank may adopt a pension or profit sharing plan, or both, or other plan of deferred compensation for directors, to which a state bank may contribute.

Sec. 22. Section 524.703, unnumbered paragraph 2, Code 2003, is amended to read as follows:

Subject to ~~the approval of the superintendent, and~~ approval by the shareholders at an annual or special meeting called for

the purpose, the board of directors of a state bank may adopt a pension or profit-sharing plan, or both, or other plan of deferred compensation, for both officers and employees, to which the state bank may contribute.

Sec. 23. Section 524.802, subsection 5, Code 2003, is amended to read as follows:

5. Act as agent for a depository institution affiliate to ~~the same extent that a national bank can act as an agent for a depository institution under the provisions of section 18 of the Federal Deposit Insurance Act, 12 U.S.C. § 1828.~~

Sec. 24. Section 524.903, subsections 2 and 3, Code 2003, are amended to read as follows:

2. A state bank shall not accept such drafts in an amount which exceeds at any time in the aggregate for all drawers thirty percent of the state bank's aggregate capital. ~~The superintendent may authorize a state bank to accept drafts in an amount not exceeding at any time in the aggregate for all drawers sixty percent of the state bank's aggregate capital, but the aggregate of acceptance growing out of domestic transactions shall in no event exceed thirty percent of aggregate capital.~~

3. A state bank, ~~with the prior approval of the superintendent,~~ may accept drafts, having not more than three months after sight to run, drawn upon it by banks or bankers in foreign countries, or in dependencies or insular possessions of the United States, for the purpose of furnishing dollar exchange as required by the usages of trade where the drafts are drawn in an aggregate amount which shall not at any time exceed for all such acceptance on behalf of a single bank or banker seven and one-half percent of the state bank's aggregate capital, and for all such acceptances, thirty percent of the state bank's aggregate capital.

Sec. 25. Section 524.904, subsection 7, paragraph a, Code 2003, is amended to read as follows:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank, ~~and provided that such amounts receive the prior approval of the superintendent.~~

Sec. 26. Section 524.1201, subsection 3, Code 2003, is amended to read as follows:

3. Notwithstanding any of the other provisions of this section, original loan documentation and trust recordkeeping functions may be located at an any authorized bank office or at any other location approved by the superintendent.

Sec. 27. Section 524.1303, subsection 3, Code 2003, is amended to read as follows:

3. Within thirty days after the application for dissolution involving a provision of acquisition of the state bank's assets and assumption of its liabilities by another state bank is accepted for processing, the dissolving bank shall publish ~~once each week for two consecutive weeks~~ a notice of the proposed transaction. ~~The notice shall be published~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the dissolving bank has its principal place of business, and in the municipal corporation or unincorporated area in which the acquiring state bank has its principal place of business, or if there is none, a newspaper of general circulation published in the county or counties, or in a county adjoining the county or counties, in which the dissolving bank and the acquiring bank have their principal place of business. The notice shall be on forms provided by the superintendent, and proof of publication of the notice shall be delivered to the superintendent within fourteen days.

Sec. 28. Section 524.1402, subsection 4, Code 2003, is amended to read as follows:

4. If a proposed merger will result in a state bank, within thirty days after the application for merger is accepted for processing, the parties to the plan shall

~~publish once each week for two consecutive weeks~~, a notice of the proposed transaction. ~~The notices shall be published~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which each party to the plan has its principal place of business, or if there is none, in a newspaper of general circulation published in the county, or in a county adjoining the county, in which each party to the plan has its principal place of business. The notice shall be on forms prescribed by the superintendent and shall set forth the names of the parties to the plan and the resulting state bank, the location and post office address of the principal place of business of the resulting state bank and of each office to be maintained by the resulting state bank, and the purpose or purposes of the resulting state bank. Proof of publication of the notice shall be delivered to the superintendent within fourteen days.

Sec. 29. Section 524.1412, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Within thirty days after the application for conversion has been accepted for processing, the national bank or federal savings association shall publish a notice of the delivery of the articles of conversion to the superintendent ~~once each week for two successive weeks~~ in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank or federal savings association has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank or federal savings association has its principal place of business. Proof of publication of the notice shall be delivered to the superintendent within fourteen days. The notice shall set forth all of the following:

Sec. 30. Section 524.1416, subsection 2, Code 2003, is amended to read as follows:

2. A state bank which converts into a national bank or federal savings association shall notify the superintendent of the proposed conversion, provide such evidence of the adoption of the plan as the superintendent may request, notify the superintendent of any abandonment or disapproval of the plan, file with the superintendent and with the secretary of state a certificate of the approval of the conversion by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, and the date upon which such conversion is to become effective. A state bank that converts into a national bank or federal savings association shall comply with the provisions of section 524.310, subsection 1.

Sec. 31. Section 524.1611, subsection 1, Code 2003, is amended to read as follows:

1. Any person violating the provisions of ~~subsection 1~~ of section 524.211, subsection 1, shall be guilty of a fraudulent practice, and shall be subject to a further fine of a sum equal to the amount of the value of the property given or received or the money so loaned or borrowed. ~~The deputy superintendent, an assistant or examiner~~ An employee of the division of banking convicted of a violation of such subsection shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

Sec. 32. Section 546.3, Code 2003, is amended to read as follows:

546.3 BANKING DIVISION.

The banking division shall regulate and supervise banks under chapter 524, regulated loan companies under chapter 536, and industrial loan companies under chapter 536A, and shall perform other duties assigned to the division by law. The division is headed by the superintendent of banking who is appointed pursuant to section 524.201. The state banking board council shall perform duties render advice within the

division as prescribed by law when requested by the superintendent.

Sec. 33. STATE BANKING COUNCIL -- INITIAL FOUR-YEAR TERMS. The governor shall appoint members to the state banking council for terms beginning on May 1, 2005, as follows: One member shall be appointed for a one-year term, one member shall be appointed for a two-year term, two members shall be appointed for three-year terms, and two members shall be appointed for four-year terms.

Sec. 34. Section 68B.35, Code Supplement 2003, and sections 536.13, 536.23, and 536.28, Code 2003, are amended by striking from the sections the words "state banking board" and "banking board" and "board" when referring to the state banking board and inserting in lieu thereof the words "state banking council".

Sec. 35. CODE EDITOR'S DIRECTIVE. The Code editor shall correct any references to the state banking council as the successor to the state banking board, including grammatical constructions, anywhere else in the Iowa Code, in any bills awaiting codification, and in any bills enacted by the Eightieth General Assembly, 2004 Regular Session.

DIVISION II
CREDIT UNIONS

Sec. 36. Section 533.2, Code 2003, is amended to read as follows:

533.2 AMENDMENTS.

1. ~~The articles~~ Articles of incorporation ~~or the bylaws~~ may be amended by a favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting.

2. Bylaws may ~~also~~ be amended by a any of the following methods:

a. The favorable vote of a majority of the members of the board, or by present at a meeting, if that number constitutes

a quorum and if the proposed amendment was contained in the notice of the meeting.

b. The favorable vote of a majority of the members of the board.

c. By a majority vote of members voting by mailed or electronic ballot, according to procedures specified by rule of the superintendent requiring at least twenty days' notice to all members, mailed ballots ensuring the confidentiality of voters, announcement to members of the results of the vote, and preservation of the ballots for a reasonable period of time according to procedures specified by rule of the superintendent, requiring at least twenty days' notice to all members. All amendments must be approved by the superintendent before they become effective. An announcement shall be made to members of the results of the vote. Ballots shall be preserved for a reasonable period of time following the vote.

d. A combination of procedures as specified in paragraphs "a" and "c", whereby members are allowed to vote either in person at a meeting or by mailed or electronic ballot, according to procedures specified by rule of the superintendent. If the proposed amendment receives a favorable majority of the total votes cast in person and by mailed ballot, the bylaws shall be amended.

Sec. 37. Section 533.4, subsection 5, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. Any permissible investment for federal credit unions, provided that this paragraph shall not permit a credit union to invest in a credit union service organization except as provided in paragraph "f".

Sec. 38. Section 533.4, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 28. Set off a member's accounts against any of the member's debts or liabilities owed the state credit union pursuant to an agreement entered into between the member

and the credit union. The credit union shall also have a lien on the shares and deposits of a member for any sum due the credit union from the member or for any loan endorsed by the member.

Sec. 39. Section 533.6, subsection 2, Code 2003, is amended to read as follows:

2. The superintendent may make or cause to be made an examination of each credit union whenever the superintendent believes such examination is necessary or advisable, but in no event less frequently than once during each eighteen-month twenty-four-month period. A credit union designated as serving predominantly low-income members shall be reviewed during each examination to ensure that such credit union is continuing to meet the standards established by rule of the superintendent. Each credit union and all of its officers and agents shall give to the representatives of the superintendent free access to all books, papers, securities, records, and other sources of information under their control. A report of such examination shall be forwarded to the chairperson of each credit union within thirty days after the completion of the examination. Within thirty days of the receipt of this report, a meeting of the directors shall be called to consider matters contained in the report and the action taken shall be set forth in the minutes of the board. The superintendent may accept, in lieu of the examination of a credit union, an audit report conducted by a certified public accounting firm selected from a list of firms previously approved by the superintendent. The cost of the audit shall be paid by the credit union.

Sec. 40. Section 533.8, Code 2003, is amended to read as follows:

533.8 ELECTIONS.

1. At the organization meeting there shall be elected a board of directors of not less than nine members to hold office for such terms as the bylaws provide and until successors are elected and qualify.

2. At each annual meeting there shall be elected one member to fill each position vacated by reason of expiring terms or other causes.

3. Pursuant to rules adopted by the superintendent, state credit unions may allow members to vote on the election of directors via electronic means including, but not limited to, the internet or telephone.

4. A record of the names and addresses of the directors, officers and committee persons shall be filed with the superintendent within ten days following each election.

5. A state credit union wishing to maintain a board of directors of less than nine members may apply to the superintendent for permission to reduce the required number of directors to no fewer than seven members. An application to reduce the required number of directors under this subsection must demonstrate both of the following:

a. The application is necessitated by a hardship or other special circumstance.

b. The lesser number of directors is in the best interest of the credit union and its members.

Sec. 41. Section 533.9, Code 2003, is amended to read as follows:

533.9 DIRECTORS AND OFFICERS.

1. Within five days following the organization meeting and each annual meeting, the directors shall elect from their own number a chairperson of the board, a vice chairperson, a secretary, and a chief financial officer whose title shall be designated by the board of directors.

2. The board shall appoint a credit committee of not less than three members, and an auditing committee of not less than three members, and may also appoint alternate members of the credit committee.

3. Only a member of the board of directors or a member of the credit union may be appointed to the credit committee or to the auditing committee.

4. The board may appoint an executive committee to act on its behalf when designated for that purpose.

5. The duties and responsibilities of a director and of the board of directors have-general shall include, but are not limited to, all of the following:

a. General management of the affairs of the state credit union including-but-not-limited-to-the-power-to-fix.

b. Setting the amount of the surety bond which that shall be required of all officers and employees handling money.

c. Periodic review of the original records of the state credit union, or comprehensive summaries prepared by the officers of the credit union, pertaining to loans, security interests, and investments.

d. Review of the adequacy of the state credit union's internal controls.

e. Periodic review of utilization of security measures.

f. Establishing education and training programs to ensure that the directors possess adequate knowledge to manage the affairs of the state credit union.

6. a. Directors of a state credit union shall discharge the duties of their position in good faith and with that diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

b. The directors have a continuing responsibility to assure themselves that the state credit union is being managed according to law and that the practices and policies adopted by the board are being implemented.

7. Unless the bylaws provide otherwise, the board of directors may permit any and all directors to participate in all except one meeting per year of the board of directors through the use of any means of communication by which all directors participating in the meeting may simultaneously hear each other and communicate during the meeting. A director participating in a meeting by this means is deemed to be present at the meeting.

8. a. A director, committee member, officer, or employee of a state credit union shall not directly or indirectly participate in either the deliberation upon or the determination of any matter in which the director, committee member, officer, or employee has a direct or indirect interest.

b. For the purposes of this subsection, an interest may include, but is not limited to, a pecuniary or familial interest.

Sec. 42. Section 533.12, subsection 1, Code 2003, is amended to read as follows:

1. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. ~~The credit union shall have a lien on the shares and deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member.~~ A credit union may charge an entrance fee as may be provided by the bylaws.

Sec. 43. Section 533.19, Code 2003, is amended to read as follows:

533.19 EXPULSION -- WITHDRAWAL.

1. The board of directors may expel any member who has failed to do either of the following:

a. Carry out the member's obligations to the state credit union.

b. Comply with the state credit union's bylaws or policies.

2. A member may be expelled by a majority vote of the board of directors at a regular or special meeting of the board.

a. ~~The An~~ expelled member may request a hearing before the membership of the credit union. A meeting of the membership shall be held within sixty days of the member's request.

b. The membership may, by majority vote at the membership meeting, reinstate the expelled member upon terms and conditions prescribed by it.

3. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required as provided in this section.

4. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, after deducting all amounts due from the member to the credit union and an amount as necessary to honor outstanding share drafts drawn against accounts of the member, be paid to the member.

5. Upon expulsion or withdrawal of a member from a credit union, or at any other time, the credit union may require sixty days' notice of intention to withdraw shares and thirty days' notice of intention to withdraw deposits, except that a credit union shall not at any time require notice of withdrawal with respect to funds which are subject to withdrawal by share drafts.

6. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

Sec. 44. NEW SECTION. 533.19A SUSPENSION OR RESTRICTION OF SERVICES.

1. A state credit union may suspend or deny certain services to members who have performed any of the following actions:

- a. Caused a loss to the state credit union.
- b. Violated the membership agreement or any policy adopted by the board.
- c. Been physically or verbally abusive to state credit union members or staff.

2. Members with suspended services may maintain a share account and continue to vote at annual and special meetings.

Sec. 45. Section 533.38, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 12. Establish one or more capital accounts in the same manner as if it were a federal credit union.

DIVISION III

BANKS AS LIMITED LIABILITY COMPANIES

Sec. 46. Section 422.11, Code 2003, is amended to read as follows:

422.11 FRANCHISE TAX CREDIT.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code, or is a member of a financial institution organized as a limited liability company under chapter 524 that is taxed as a partnership for federal income tax purposes, shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution and subtracting the credits allowed under section 422.12. This recomputed tax shall be subtracted from the amount of tax computed under this division after the deduction for credits allowed under section 422.12. The resulting amount, which shall not exceed the taxpayer's pro rata share of the franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

Sec. 47. Section 524.103, subsections 6, 8, 17, 20, 30, 31, and 33, Code 2003, are amended to read as follows:

6. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger. "Articles of incorporation" also means the original or restated articles of organization and all amendments including articles of merger if a state

bank is organized as a limited liability company under this chapter.

8. "Bank" means a corporation or limited liability company organized under this chapter or 12 U.S.C. § 21.

17. "Control" means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

a. Owns, controls, or has the power to vote fifty percent or more of any class of voting securities or membership interests of another person.

b. Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

c. Has the power to exercise a controlling influence over the management or policies of another person.

20. "Executive officer" means a person who participates or has authority to participate, other than in the capacity of a director or manager, in major policymaking functions of a state bank, whether or not the officer has an official title, whether or not such a title designates the officer as an assistant, or whether or not the officer is serving without salary or other compensation. The chief executive officer, chairperson of the board, the president, every vice president, and the cashier of a state bank are deemed to be executive officers, unless such an officer is excluded, by resolution of the board of directors of a state bank or by the bylaws of the state bank, from participation, other than in the capacity of a director, in major policymaking functions of the state bank, and the officer does not actually participate in the major policymaking functions. All officers who serve on a board of directors are deemed to be executive officers, except as provided for in section 524.701, subsection 3.

30. "Shareholder" means one who is a holder of record of shares in a state bank. If a state bank is organized as a limited liability company under this chapter, "shareholder" means any member of the limited liability company.

31. "Shares" means the units into which the proprietary interests in a state bank are divided, including any membership interests of a state bank organized as a limited liability company under this chapter.

33. "State bank" means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any "state bank" or "savings bank" incorporated pursuant to the laws of this state and doing business as such on January 1, 1970, or organized as a limited liability company under this chapter.

Sec. 48. Section 524.103, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 9A. "Board of directors" means the board of directors of a state bank as provided in section 524.601. For state banks organized as a limited liability company under this chapter, "board of directors" means a board of directors or board of managers as designated by the limited liability company in its articles of organization or operating agreement.

NEW SUBSECTION. 18A. "Director" means a member of the board of directors and includes a manager of a state bank organized as a limited liability company under this chapter.

NEW SUBSECTION. 23A. "Manager" means a person designated by the members to manage a state bank organized as a limited liability company under this chapter as provided in the articles of organization or an operating agreement and may include a member of the board of directors.

NEW SUBSECTION. 23B. "Member" means a person with a membership interest in a state bank organized as a limited liability company under this chapter.

NEW SUBSECTION. 23C. "Membership interest" means a member's share of the profits and losses, the right to receive distributions of assets, and any right to vote or participate in management, of a state bank organized as a limited liability company under this chapter.

Sec. 49. Section 524.301, Code 2003, is amended to read as follows:

524.301 INCORPORATORS -- ORGANIZERS.

A state bank may be incorporated or organized as a limited liability company under this chapter by one or more individuals eighteen years of age or older, a majority of whom shall be residents of this state and citizens of the United States.

Sec. 50. NEW SECTION. 524.302A ARTICLES OF INCORPORATION -- LIMITED LIABILITY COMPANY.

1. The articles of incorporation of a state bank organized as a limited liability company under this chapter shall be in the form prescribed by the superintendent, and shall set forth all of the following:

a. The name of the state bank, that it is organized for the purpose of conducting the business of banking, and that it is organized under the provisions of this chapter.

b. The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office.

c. The location of the state bank's proposed principal office of the limited liability company, which may be the same as the registered office, but need not be within this state.

d. The duration of the state bank, which shall be perpetual.

e. The aggregate number of common and preferred shares which the state bank shall have authority to issue and the par value of such shares. If such shares are to be divided into classes or series, the number of shares of each class or series and a statement of the par value of the shares of each class or series.

f. The number of managers constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until successors are elected and qualify. A statement that the exclusive authority to manage

the state bank is vested in a board of directors that is elected or appointed by the members, that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities as, a board of directors of a state bank chartered as a corporation under this chapter.

g. A provision that the articles of incorporation, operating agreement, or other organizational documents of the state bank shall not require the consent of any other owner in order for an owner to transfer membership interests in the state bank, including voting rights.

2. The articles of incorporation may set forth any or all of the following:

a. Provisions not inconsistent with law regarding management of the business and regulation of the affairs of the state bank.

b. Any provision required or permitted by this chapter to be set forth in the operating agreement.

3. The articles of incorporation need not set forth any of the organizational powers enumerated in this chapter.

Sec. 51. Section 524.303, Code 2003, is amended to read as follows:

524.303 APPLICATION FOR APPROVAL.

The incorporators or organizers shall make an application to the superintendent for approval of a proposed state bank in the manner prescribed by the superintendent and shall deliver to the superintendent, together with such application:

1. The articles of incorporation.

2. Applicable fees, payable to the secretary of state as specified in section 490.122 or 490A.124, for the filing and recording of the articles of incorporation.

Sec. 52. Section 524.304, subsection 1, Code 2003, is amended to read as follows:

1. The incorporators or organizers of a state bank shall, within thirty days of the acceptance of the application for

processing, publish notice of the proposed incorporation or organization once each week for two successive weeks in a newspaper of general circulation published in the municipal corporation which is proposed as the principal place of business of the state bank, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the proposed state bank is to have its principal place of business. The notice shall set forth all of the following:

- a. The name of the proposed state bank.
- b. A statement that it is to be incorporated or organized under this chapter.
- c. The purpose or purposes of the state bank.
- d. The names and addresses of the incorporators or organizers and of the members of the initial board of directors or board of directors as they appear, or will appear, in the articles of incorporation.
- e. The date the application was accepted for processing.
- f. If the incorporation or organization of the state bank has been approved by the superintendent under section 524.305, subsection 8, the name and address of the bank with which the state bank will have merged, or the assets of which the state bank will have acquired or the condition of which in some other way provided a purpose for the incorporation or organization.

Sec. 53. Section 524.305, subsection 1, paragraph d, Code 2003, is amended to read as follows:

d. The character and fitness of the incorporators or organizers and of the members of the initial board of directors are such as to command the confidence of the community and to warrant the belief that the business of the proposed state bank will be honestly and efficiently conducted.

Sec. 54. Section 524.305, subsections 6, 7, and 9, Code 2003, are amended to read as follows:

6. If the superintendent approves the application, the superintendent shall notify the incorporators or organizers, and such other persons who requested in writing that they be notified, of the approval. If the superintendent disapproves the application, the superintendent shall notify the incorporators or organizers of the action and the reason for the decision.

7. The actions of the superintendent shall be subject to judicial review in accordance with chapter 17A. The court may award damages to the incorporators or organizers if it finds that review is sought frivolously or in bad faith.

9. As a condition of receiving the decision of the superintendent with respect to the application the incorporators or organizers shall reimburse the superintendent for all expenses incurred by the superintendent in connection with the application.

Sec. 55. Section 524.306, Code 2003, is amended to read as follows:

524.306 INCORPORATION OR ORGANIZATION OF STATE BANK.

1. Unless a delayed effective date or time is specified, the corporate or organizational existence of a state bank begins when the articles of incorporation, with the superintendent's approval indicated on the articles of incorporation, are filed with the secretary of state. The secretary of state shall record the articles of incorporation and forward a copy of them to the county recorder of the county in which the state bank is to have its principal place of business.

2. The secretary of state's acknowledgment of filing of the articles of incorporation is conclusive proof that the incorporators or organizers satisfied all conditions precedent to incorporation or organization, except in a proceeding instituted by the superintendent to cancel or revoke the incorporation or involuntarily dissolve the corporation or organization.

Sec. 56. Section 524.307, Code 2003, is amended to read as follows:

524.307 INITIAL ORGANIZATION OF STATE BANK.

Upon incorporation, or organization as a limited liability company, of the state bank, the initial board of directors shall hold an organizational meeting within this state, at the call of a majority of the directors, to complete the organization of the state bank by electing officers, adopting bylaws, if any are to be adopted, and conducting any other business properly brought before the board at the meeting.

Sec. 57. Section 524.308, subsection 2, Code 2003, is amended to read as follows:

2. If a state bank transacts any business before receipt of an authorization to do business in violation of subsection 1, the directors, managers, and officers who willfully authorized or participated in the action are severally liable for the debts and liabilities of the state bank incurred prior to the receipt of the authorization to do business.

Sec. 58. Section 524.310, Code 2003, is amended to read as follows:

524.310 NAME OF STATE BANK.

1. The name of a state bank originally incorporated or organized after the effective date of this chapter shall include the word "bank" and may include the word "state" or "trust" in its name. A state bank using the word "trust" in its name must be authorized under this chapter to act in a fiduciary capacity.

2. The provisions of this section shall not require any state bank, existing and operating on January 1, 1970, to add to, modify or otherwise change its corporate or organizational name, either on January 1, 1970, or upon renewal of its corporate existence pursuant to section 524.314.

3. If a state bank existing and operating on January 1, 1970, causes its corporate or organizational name to be changed, the name as changed shall comply with subsection 1 of this section.

4. a. A person may reserve the exclusive use of a corporate or organizational name for a state bank by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate or organizational name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty day period.

b. The owner of a reserved corporate or organizational name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Sec. 59. Section 524.312, subsections 1 and 5, Code 2003, are amended to read as follows:

1. A state bank originally incorporated or organized pursuant to this chapter shall have its principal place of business within the city limits of a municipal corporation. The existence of a state bank shall not, however, be affected by the subsequent discontinuance of the municipal corporation. A state bank existing and operating on January 1, 1970, which does not have its principal place of business within the city limits of a municipal corporation, may renew its corporate or organizational existence pursuant to section 524.314 without regard to this section and may also operate as a bank or convert to and operate as a bank office when acquired by or merged into another state bank and approved by the superintendent.

5. A state bank approved under the provisions of section 524.305, subsection 8, shall not commence its business at any location other than within a municipal corporation or unincorporated area in which was located the principal place of business or an office of the bank the condition of which was the basis for the superintendent authorizing incorporation or organization of the new state bank.

Sec. 60. Section 524.313, Code 2003, is amended to read as follows:

524.313 BYLAWS.

A state bank may adopt bylaws. The power to adopt, amend, or repeal bylaws or adopt new bylaws is vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the state bank not inconsistent with law or the articles of incorporation. For a state bank organized as a limited liability company under this chapter, "bylaws" means the operating agreement of the state bank.

Sec. 61. NEW SECTION. 524.315 STATE BANKS AS LIMITED LIABILITY COMPANIES.

1. A state bank organized as a limited liability company under this chapter shall also be subject to chapter 490A, the Iowa limited liability company Act. If a provision of the Iowa limited liability company Act conflicts with a provision of this chapter or any rule of the superintendent adopted pursuant to this chapter, the provisions of this chapter or rule of the superintendent shall control.

2. The superintendent shall possess the exclusive authority to regulate a state bank organized as a limited liability company under this chapter.

3. The superintendent may adopt rules to ensure that a state bank organized as a limited liability company under this chapter is operating in a safe and sound manner and is subject to the superintendent's authority in the same manner as a state bank organized as a corporation.

Sec. 62. Section 524.401, subsections 2, 3, and 4, Code 2003, are amended to read as follows:

2. The minimum capital structure of a state bank incorporated after July 1, 1995, or organized after July 1, 2004, pursuant to the provisions of this chapter shall not be less than the amount required by the federal deposit insurance

corporation, or its successor, or a greater amount which the superintendent may deem necessary in view of the deposit potential of the state bank and current banking standards relating to total capital requirements.

3. A state bank incorporated on or after July 1, 1995, or organized after July 1, 2004, pursuant to this chapter, prior to receiving authorization to do business from the superintendent, shall establish paid-in surplus and undivided profits as required by the superintendent.

4. A state bank originally incorporated or organized pursuant to this chapter shall establish, prior to receiving authorization to do business from the superintendent, paid-in surplus and undivided profits as required by the superintendent.

Sec. 63. Section 524.525, Code 2003, is amended to read as follows:

524.525 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION OR ORGANIZATION.

1. A subscription for shares entered into before incorporation or organization of the state bank is irrevocable for six months unless the subscription agreement provides a longer or shorter period, or all subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation or organization of the state bank unless the subscription agreement specifies the terms. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation or organization of the state bank are fully paid and nonassessable when the state bank receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation or organization of the state bank, the state bank may do either of the following:

- a. Collect the amount owed as any other debt.
- b. Unless the subscription agreement provides otherwise, the state bank may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the state bank sends written demand for payment to the subscriber.

Sec. 64. Section 524.528, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. There is no preemptive right with respect to any of the following:

(1) Shares issued as compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, managers, officers, agents, or employees of the state bank, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation or organization.

Sec. 65. Section 524.801, subsection 1, Code 2003, is amended to read as follows:

1. To sue and be sued, complain and defend, in its corporate or organizational name.

Sec. 66. Section 524.801, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The powers granted in this section shall not be construed as limiting or enlarging any grant of authority made elsewhere in this chapter, or as a limitation on the purposes for which a state bank may be incorporated or organized.

Sec. 67. Section 524.1301, Code 2003, is amended to read as follows:

524.1301 DISSOLUTION BY INCORPORATORS, ORGANIZERS, OR INITIAL DIRECTORS.

A majority of the incorporators, organizers, or initial directors of a state bank that has not issued shares or has not commenced business may dissolve the state bank by delivering articles of dissolution to the superintendent, together with the applicable filing and recording fees, for filing with the secretary of state that set forth all of the following:

1. The name of the state bank.
2. The date of its incorporation or organization.
3. Either of the following:
 - a. That the state bank has not issued any shares.
 - b. That the state bank has not commenced business.
4. That no debt of the state bank remains unpaid.
5. If shares were issued, that the net assets of the state bank remaining after the payment of all necessary expenses have been distributed to the shareholders.
6. That a majority of the incorporators, organizers, or initial directors authorized the dissolution.

Sec. 68. Section 524.1302, Code 2003, is amended to read as follows:

524.1302 INVOLUNTARY DISSOLUTION PRIOR TO COMMENCEMENT OF BUSINESS.

Prior to the issuance of an authorization to do business, the superintendent may cause the dissolution of a state bank if there exists any reason why it should not have been incorporated or organized under this chapter or if an authorization to do business has not been issued within one year after the date of its incorporation or organization, or such longer time as the superintendent may allow for satisfaction of conditions precedent to its issuance. After giving the state bank adequate notice and an opportunity for

hearing, the superintendent shall certify the applicable facts by the filing of a statement with the secretary of state, who shall thereafter issue a certificate of dissolution. Upon the issuance of such certificate of dissolution by the secretary of state, the corporate or organizational existence of the state bank shall cease.

Sec. 69. Section 524.1309, Code 2003, is amended to read as follows:

524.1309 BECOMING SUBJECT TO CHAPTER 490 OR 490A.

In lieu of the dissolution procedure prescribed in sections 524.1303 to 524.1306, a state bank may cease to carry on the business of banking and, after compliance with this section, continue as a corporation subject to chapter 490; or if the state bank is organized as a limited liability company under this chapter, continue as a limited liability company subject to chapter 490A.

1. A state bank which that has commenced business may propose to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, upon the affirmative vote of the holders of at least a majority of the shares entitled to vote on such proposal, adopting a plan involving both a provision for acquisition of its assets and assumption of its liabilities by another state bank, national bank, or other financial institution insured by the federal deposit insurance corporation, and a provision for continuance of its business if acquisition of its assets and assumption of its liabilities is not effected, or any other plan providing for the cessation of banking business and the payment of its liabilities.

2. The application to the superintendent for approval of a plan described in subsection 1 ~~of this section~~ shall be treated by the superintendent in the same manner as an application for approval of a plan of dissolution under ~~subsection 2 of~~ section 524.1303, subsection 2, and shall be subject to ~~subsection 3 of~~ section 524.1303, subsection 3.

3. Immediately upon adoption and approval of a plan to voluntarily cease to carry on the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, the state bank shall deliver to the superintendent a plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, which shall be signed by two of its duly authorized officers and shall contain the name of the state bank, the post office address of its principal place of business, the name and address of its officers and directors, the number of shares entitled to vote on the plan and the number of shares voted for or against the plan, respectively, the nature of the business to be conducted by the corporation under chapter 490, or by the limited liability company subject to chapter 490A, and the general nature of the assets to be held by the corporation or company.

4. Upon approval of the plan by the superintendent, the state bank shall immediately surrender to the superintendent its authorization to do business as a bank and shall cease to accept deposits and carry on the banking business except insofar as may be necessary for it to complete the settlement of its affairs as a state bank in accordance with subsection 5.

5. The board of directors has full power to complete the settlement of the affairs of the state bank. Within thirty days after approval by the superintendent of the plan to cease the business of banking and become a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, the state bank shall give notice of its intent to persons identified in section 524.1305, subsection 4, in the manner provided for in that subsection. In completing the settlement of its affairs as a state bank the state bank shall also follow the procedure prescribed in section 524.1305, subsections 4, 5, and 6.

6. Upon completion of all the requirements of this section, the state bank shall deliver to the superintendent articles of intent to be subject to chapter 490 or 490A, together with the applicable filing and recording fees, which shall set forth that the state bank has complied with this section, that it has ceased to carry on the business of banking, and the information required by section 490.202 relative to the contents of articles of incorporation under chapter 490, or article of organization under chapter 490A. If the superintendent finds that the state bank has complied with this section and that the articles of intent to be subject to chapter 490 or 490A satisfy the requirements of this section, the superintendent shall deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed and recorded in the office of the county recorder.

7. Upon the filing of the articles of intent to be subject to chapter 490 or 490A, the state bank shall cease to be a state bank subject to this chapter, and shall cease to have the powers of a state bank subject to this chapter and shall become a corporation subject to chapter 490 or a limited liability company subject to chapter 490A. The secretary of state shall issue a certificate as to the filing of the articles of intent to be subject to chapter 490 or 490A, and send the certificate to the corporation or limited liability company or its representative. The articles of intent to be subject to chapter 490 or 490A shall be the articles of incorporation of the corporation or a limited liability company. The provisions of chapter 490 or 490A becoming applicable to a corporation or limited liability company formerly doing business as a state bank shall not affect any right accrued or established, or liability or penalty incurred under this chapter prior to the filing with the secretary of state of the articles of intent to be subject to chapter 490 or 490A.

8. A shareholder of a state bank who objects to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to chapter 490, or a limited liability company subject to chapter 490A, is entitled to appraisal rights provided for in chapter 490, division XIII, or in chapter 490A, subchapter VII.

9. A state bank, at any time prior to the approval of the articles of intent to become subject to chapter 490 or 490A, may revoke the proceedings in the manner prescribed by section 524.1306.

Sec. 70. Section 524.1405, subsection 2, paragraph f, Code 2003, is amended to read as follows:

f. The shares of each party to the merger that are to be converted into shares, obligations, or other securities of the surviving party or any other corporation or limited liability company or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under section 524.1406.

Sec. 71. Section 524.1408, Code 2003, is amended to read as follows:

524.1408 MERGER OF CORPORATION OR LIMITED LIABILITY COMPANY SUBSTANTIALLY OWNED BY A STATE BANK.

A state bank owning at least ninety percent of the outstanding shares, of each class, of another corporation or limited liability company which it is authorized to own under this chapter, may merge the other corporation or limited liability company into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation or limited liability company. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation or holders of membership interests in the subsidiary limited company, and prepare and execute articles of merger in the manner provided for in section 490.1105. The articles of

merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent approves of the proposed merger and if the superintendent finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the certificate to the state bank and a copy of it to the superintendent.

Sec. 72. Section 524.1802, subsection 1, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. gg. "Incorporated in any state" means a limited liability company organized as a state bank under this chapter and a limited liability company organized as a state bank under the laws of any state as defined in 12 U.S.C. § 1813(a)(3).

Sec. 73. Section 524.2001, Code 2003, is amended to read as follows:

524.2001 APPLICABILITY OF OTHER CHAPTERS.

Chapters 490, 490A, 491, 492, and 493 do not apply to banks except as provided by this chapter.

DIVISION IV

REAL PROPERTY LOANS

Sec. 74. Section 535.8, subsection 2, paragraph b, unnumbered paragraph 2, Code 2003, is amended to read as follows:

The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller.

PARAGRAPH DIVIDED. ~~Collection~~ The collection of any ~~cost~~ costs other than as expressly permitted by this lettered paragraph "b" is prohibited. However, additional costs incurred in connection with a loan under this paragraph "b",

if bona fide and reasonable, may be collected by a state-chartered financial institution licensed under chapter 524, 533, or 534, to the extent permitted under applicable federal law as determined by the office of the comptroller of the currency of the United States department of treasury, the national credit union association, or the office of thrift supervision of the United States department of treasury. Such costs shall apply only to the same type of state chartered entity as the federally chartered entity affected and shall apply to and may be collected by an insurer organized under chapter 508 or 515, or otherwise authorized to conduct the business of insurance in this state.

Nothing in this section shall be construed to change the prohibition against the sale of title insurance or sale of insurance against loss or damage by reason of defective title or encumbrances as provided in section 515.48, subsection 10.

DIVISION V

REAL PROPERTY FINANCIAL LIABILITY

Sec. 75. NEW SECTION. 455B.751 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Acquired" means purchased, leased, obtained by inheritance or descent and distribution, or obtained by foreclosure sale under chapter 654, nonjudicial voluntary foreclosure under section 654.18, deed in lieu of foreclosure under section 654.19, foreclosure without redemption under section 654.20, or nonjudicial foreclosure of nonagriculture mortgages under chapter 655A.
2. "Hazardous substance" means the same as defined in section 455B.381 or 455B.411.
3. "Hazardous waste" means the same as defined in section 455B.411.
4. "Potentially responsible party" means a person whose acts or omissions were a proximate cause of the contamination of the acquired property, or a person whose negligent acts or

omissions are a proximate cause of injury or damages resulting from exposure to such contamination. Injury or damages to persons or property arising by reason of contamination that migrates from the acquired property shall not be deemed to be caused by an act or omission of the person that acquired the property, except to the extent that the act or omission of such person exacerbated the release of such contamination.

5. "Regulated substance" means the same as defined in section 455B.471.

6. "Response action" means any action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release of hazardous substances, hazardous waste, or regulated substances to protect the public health, safety, or the environment.

7. "Third party" means any person other than a person that holds indicia of title to property as identified in section 455B.752, subsection 1, or that has acquired property as identified in section 455B.752, subsection 2.

8. "Third-party liability" means any liability or obligation, other than contractual obligations that specifically waive all or part of the immunity provided by section 455B.752, arising out of or resulting from contamination of property by a hazardous substance, hazardous waste, or a regulated substance, including without limitation, claims for illness, personal injury, death, consequential damages, exemplary damages, lost profits, trespass, loss of use of property, loss of rental value, reduction in property value, property damages, or statutory or common law nuisance.

Sec. 76. NEW SECTION. 455B.752 IMMUNITY FROM THIRD-PARTY LIABILITY.

A person that holds indicia of ownership of property contaminated by a hazardous substance, hazardous waste, or regulated substance, and that satisfies all of the conditions provided in section 455B.381, subsection 7, paragraphs "a", "b", and "c", or section 455B.471, subsection 6, paragraph

"b", subparagraphs (1), (2), and (3), or a person that has acquired property contaminated by a hazardous substance, hazardous waste, or regulated substance, shall not be liable to any third party for any third-party liability arising from such contamination provided that all of the following apply:

1. The person does not knowingly cause or permit a new or additional hazardous substance, hazardous waste, or regulated substance to arise on or from the acquired property that injures a third party or contaminates property owned or leased by a third party.

2. The person is not a potentially responsible party or affiliated with any potentially responsible party by reason of any of the following:

- a. Any direct or indirect familial relationship.
- b. Any contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the property is conveyed or financed or by a contract for the sale of goods or services.
- c. A reorganization of a business entity that is or was a potentially responsible party.

Sec. 77. NEW SECTION. 455B.753 ACCESS TO PROPERTY.

A person that holds indicia of title to property or a person that has acquired property as identified in section 455B.752, shall provide reasonable access to the acquired property to any potentially responsible party or to any authorized regulatory authority for the purpose of investigating or evaluating any contamination, planning, or preparing a remedial plan for any abatement of the contamination, and for any required remediation.

Sec. 78. NEW SECTION. 455B.754 LEGAL RESPONSIBILITY.

This division shall not be interpreted to affect the legal responsibility to the state to conduct response actions under any applicable state law. This division shall not be interpreted to affect or provide immunity from any criminal liability.

Sec. 79. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2484, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved _____, 2004

THOMAS J. VILSACK
Governor