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COMMERCE, REGULATION & LABOR

HOUSE FILE 2003
BY HUTTER

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

A BILL FOR

1 An Act relating to the regulation of payday loans and lenders,
2 including the establishment of fees and civil penalties, and
3 providing for an impact study by the superintendent of
4 banking.

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

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HF-2003

1 Section 1. NEW SECTION. 533E.1 TITLE.

2 This chapter shall be known and may be cited as the "Payday
3 Loan Reform Act".

4 Sec. 2. NEW SECTION. 533E.2 PURPOSE AND CONSTRUCTION.

5 The purposes of this chapter are to protect consumers who
6 enter into payday loans and to regulate the lenders of payday
7 loans. This chapter shall be construed as a consumer
8 protection law for all purposes. This chapter shall be
9 liberally construed to effectuate its purposes.

10 Sec. 3. NEW SECTION. 533E.3 DEFINITIONS.

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

13 1. "Check" means the same as defined in section 554.3104.

14 2. "Commercially reasonable method of verification" means
15 a consumer reporting service database certified by the
16 superintendent pursuant to section 533E.13 as effective in
17 verifying that a proposed loan agreement is permissible under
18 this chapter.

19 3. "Consumer" means a natural person who, singly or
20 jointly with another consumer, enters into a loan.

21 4. "Consumer reporting service" means an entity that
22 provides a database certified by the superintendent pursuant
23 to section 533E.13.

24 5. "Gross monthly income" means monthly income as
25 demonstrated by official documentation of the income,
26 including, but not limited to, a pay stub or a receipt
27 reflecting payment of government benefits, for the period
28 thirty days prior to the date on which the loan is made.

29 6. "Lender" means a person or entity, including an
30 affiliate or subsidiary of a lender, that offers or makes a
31 payday loan, buys a whole or partial interest in a payday
32 loan, arranges a payday loan for a third party, or acts as an
33 agent for a third party in making a payday loan, regardless of
34 whether approval, acceptance, or ratification by the third
35 party is necessary to create a legal obligation for the third

1 party, and includes any other person or entity if the
2 superintendent determines that the person or entity is engaged
3 in a transaction that is in substance a disguised payday loan
4 or a subterfuge for the purpose of avoiding the requirements
5 of this chapter.

6 7. "Loan agreement" means a written agreement between a
7 lender and consumer to make a loan to the consumer, regardless
8 of whether any loan proceeds are actually paid to the consumer
9 on the date on which the loan agreement is made.

10 8. "Member of the military" means a person serving in the
11 armed forces of the United States, the Iowa national guard, or
12 any reserve component of the armed forces of the United
13 States. "Member of the military" includes those persons
14 engaged in active duty, training, or education under the
15 supervision of the United States preliminary to induction into
16 military service, or a period of active duty with this state
17 under Title 10 or Title 32 of the United States Code pursuant
18 to order of the president of the United States or the
19 governor.

20 9. "Outstanding balance" means the total amount owed by a
21 consumer on a loan to a lender, including all principal,
22 finance charges, fees, and charges of every kind.

23 10. "Payday loan" or "loan" means a loan with a finance
24 charge exceeding an annual percentage rate of thirty-six
25 percent and with a term that does not exceed one hundred
26 twenty days, including any transaction conducted via any
27 medium, including, but not limited to, paper, facsimile,
28 internet, or telephone, pursuant to which any of the following
29 occurs:

30 a. A lender accepts one or more checks dated on the date
31 written and agrees to hold them for a period of days before
32 deposit or presentment, or accepts one or more checks dated
33 subsequent to the date written and agrees to hold them for
34 deposit.

35 b. A lender accepts one or more authorizations to debit a

1 consumer's bank account.

2 c. A lender accepts an interest in a consumer's wages,
3 including, but not limited to, a wage assignment.

4 11. "Principal amount" means the amount received by the
5 consumer from the lender which is due and owing on a loan,
6 excluding any finance charges, interest, fees, or other loan-
7 related charges.

8 12. "Rollover" means to refinance, renew, amend, or extend
9 a loan beyond its original term.

10 13. "Superintendent" means the superintendent of banking.

11 Sec. 4. NEW SECTION. 533E.4 APPLICABILITY.

12 1. Except as otherwise provided in this section, this
13 chapter applies to any lender that offers or makes a payday
14 loan to a consumer in this state.

15 2. The provisions of this chapter apply to any person or
16 entity that seeks to evade its applicability by any device,
17 subterfuge, or pretense whatsoever.

18 3. A bank, savings and loan association, credit union,
19 insurance company or related corporation, licensed to do
20 business in this state pursuant to another chapter of this
21 Code, or the laws of the United States or the laws of another
22 state, and engaged primarily in lending or investing funds is
23 exempt from the provisions of this chapter.

24 4. A lender that is an agent for a bank, savings and loan
25 association, credit union, or insurance company for the
26 purpose of brokering, selling, or otherwise offering payday
27 loans made by the bank, savings and loan association, credit
28 union, or insurance company shall be subject to all of the
29 provisions of this chapter, except those provisions related to
30 finance charges.

31 Sec. 5. NEW SECTION. 533E.5 LICENSURE REQUIREMENT.

32 A person or entity acting as a payday lender shall be
33 licensed by the superintendent as provided in this chapter.

34 Sec. 6. NEW SECTION. 533E.6 LICENSURE -- FEES.

35 1. An application for a license shall be in writing and in

1 a form prescribed by the superintendent. The superintendent
2 may not issue a payday loan license unless and until all of
3 the following findings are made:

4 a. That the financial responsibility, experience,
5 character, and general fitness of the applicant are such as to
6 command the confidence of the public and to warrant the belief
7 that the business will be operated lawfully and fairly and
8 within the provisions and purposes of this chapter.

9 b. That the applicant has submitted such other information
10 as the superintendent may deem necessary.

11 2. A license shall not be issued for longer than one year,
12 and shall not be renewed if the lender has substantially
13 violated this chapter and has not cured the violation to the
14 satisfaction of the superintendent.

15 3. A licensed lender shall appoint, in writing, the
16 superintendent as attorney in fact upon whom all legal process
17 against the lender may be served with the same legal force and
18 validity as if served on the lender. A copy of the written
19 appointment, duly certified, shall be filed in the office of
20 the superintendent, and a copy thereof certified by the
21 superintendent shall be sufficient evidence to subject a
22 licensed lender to jurisdiction in a court of law. The
23 appointment shall remain in effect while any liability remains
24 outstanding in this state against the lender. When a summons
25 is served upon the superintendent as attorney in fact for a
26 licensed lender, the superintendent shall immediately notify
27 the lender by registered mail, enclosing the summons and
28 specifying the hour and day of service.

29 4. A payday loan license shall state the address,
30 including city and state, at which the business is to be
31 conducted and shall state fully the name of the lender. The
32 license shall be conspicuously posted in the place of business
33 of the lender and shall not be transferable or assignable.

34 5. A lender licensed pursuant to this section shall pay an
35 annual license fee of one thousand dollars. If a lender fails

1 to renew its license each year by December 31, its license
2 shall automatically expire; however, the superintendent may
3 reinstate an expired license upon compliance by the lender
4 with both of the following:

5 a. Payment of the annual license fee within thirty days of
6 the date of expiration.

7 b. Proof of good cause for failure to renew.

8 6. The superintendent shall maintain a list of lenders
9 licensed pursuant to this chapter that shall be available to
10 interested consumers, lenders, and the public. The
11 superintendent shall maintain a toll-free telephone number
12 whereby consumers may obtain information about lenders. The
13 superintendent shall also establish a complaint process under
14 which an aggrieved consumer may file a complaint against a
15 lender who violates any provision of this chapter.

16 7. When a license is denied, the superintendent shall
17 serve the lender with notice of the denial, including a
18 statement of supporting reasons, either personally, or by
19 certified mail, return receipt requested. Service by
20 certified mail shall be deemed completed when the notice is
21 deposited in the United States mail. A lender that is denied
22 a license pursuant to this section may file a written appeal
23 with the superintendent and request a hearing within ten days
24 after receiving notice of the denial. If a hearing is
25 requested, the superintendent shall schedule a hearing within
26 thirty days after the request is received unless otherwise
27 agreed to by the parties. The hearing shall be conducted as a
28 contested case proceeding pursuant to chapter 17A.

29 Sec. 7. NEW SECTION. 533E.7 PLACE OF BUSINESS.

30 1. Not more than one place of business shall be maintained
31 under the same license, but the superintendent may issue more
32 than one license to the same lender upon compliance with all
33 of the provisions of this chapter governing issuance of a
34 single license. The location of a place of business, except
35 those locations already in existence as of July 1, 2006, shall

1 not be within one mile of a facility where pari-mutuel
2 wagering is conducted pursuant to chapter 99D, within one mile
3 of a facility at which gambling is conducted pursuant to
4 chapter 99F, or within one mile of any state of Iowa or United
5 States military base or naval installation.

6 2. A lender shall not conduct the business of making loans
7 under this chapter within any office, suite, room, or place of
8 business in which any other business is solicited or engaged
9 in unless the other business is licensed by the superintendent
10 or, in the opinion of the superintendent, the other business
11 would not be contrary to the best interests of consumers and
12 is authorized by the superintendent in writing.

13 Sec. 8. NEW SECTION. 533E.8 CLOSING OF BUSINESS --
14 SURRENDER OF LICENSE.

15 1. At least ten days before a licensed lender ceases
16 operations, closes the business, or files for bankruptcy, the
17 lender shall do all of the following:

18 a. Notify the superintendent of the lender's intended
19 action in writing.

20 b. Except when filing for bankruptcy, surrender the
21 lender's license to the superintendent for cancellation.

22 c. Notify the superintendent of the location where the
23 books, accounts, contracts, and records of the lender will be
24 maintained.

25 2. The surrender of the license shall not affect the
26 lender's civil or criminal liability for acts committed before
27 or after the surrender or entitle the lender to a return of
28 any part of the annual license fee.

29 3. The accounts, books, records, and contracts of the
30 lender shall be maintained and serviced by the lender, by
31 another lender licensed under this chapter, or by the
32 superintendent.

33 Sec. 9. NEW SECTION. 533E.9 LOAN TERMS.

34 1. Without affecting the right of a consumer to prepay at
35 any time without cost or penalty, a payday loan shall not have

1 a minimum term of less than thirteen days.

2 2. A payday loan shall not be made to a consumer if the
3 loan would result in the consumer being indebted to one or
4 more lenders for a period in excess of forty-five consecutive
5 days. Except as provided in section 533E.18, if a consumer
6 has or has had loans outstanding for a period in excess of
7 forty-five consecutive days, a lender shall not offer or make
8 a loan to the consumer for at least seven calendar days after
9 the date on which the outstanding balance of all payday loans
10 made during the forty-five-consecutive-day period is paid in
11 full. For purposes of this subsection, the term "consecutive
12 days" means a series of continuous calendar days during which
13 the consumer has an outstanding balance on one or more payday
14 loans; however, if a payday loan is made to a consumer within
15 six days or less after the outstanding balance of all loans is
16 paid in full, those days are counted as "consecutive days" for
17 purposes of this subsection.

18 3. A lender shall not make a payday loan to a consumer if
19 the total principal amount of the loan, when combined with the
20 principal amount of all of the consumer's other outstanding
21 payday loans, exceeds one thousand dollars or twenty-five
22 percent of the consumer's gross monthly income, whichever is
23 less.

24 4. A payday loan shall not be made to a consumer who has
25 an outstanding balance on more than one payday loan.

26 5. A lender shall not charge more than fifteen dollars and
27 fifty cents per one hundred dollars loaned on any payday loan
28 over the term of the loan. Except as provided in section
29 533E.15, this charge is considered fully earned as of the date
30 on which the loan is made.

31 6. A lender shall not take or attempt to take an interest
32 in any of the consumer's personal property to secure a payday
33 loan.

34 7. A consumer has the right to redeem a check or any other
35 item described in the definition of a payday loan under

1 section 533E.3 issued in connection with a payday loan from
2 the lender holding the check or other item at any time before
3 the payday loan becomes payable by paying the full amount of
4 the check or other item.

5 Sec. 10. NEW SECTION. 533E.10 WAGE ASSIGNMENTS.

6 A payday loan that is a transaction in which the lender
7 accepts a wage assignment shall meet the requirements of this
8 chapter, section 539.4, and section 537.3305, and be revocable
9 at will by the consumer. A violation of this section
10 constitutes a material violation of this chapter.

11 Sec. 11. NEW SECTION. 533E.11 PERMITTED FEES.

12 1. If there are insufficient funds to pay a check, debit,
13 or any other item described in the definition of a payday loan
14 under section 533E.3 on the day of presentment and only after
15 the lender has incurred an expense, a lender may charge a fee
16 not to exceed the amount permitted pursuant to section
17 537.2501, subsection 1, paragraph "g". Only one such fee may
18 be collected by the lender with respect to a particular check,
19 debit, or item even if it has been deposited and returned more
20 than once. A lender shall present the check, debit, or other
21 item described in the definition of a payday loan under
22 section 533E.3 for payment not more than twice. A fee charged
23 under this subsection is a lender's exclusive charge for late
24 payment.

25 2. Except for the finance charges described in section
26 533E.9 and as specifically allowed by this section, a lender
27 may not impose on a consumer any additional finance charges,
28 interest, fees, or charges of any sort for any purpose.

29 Sec. 12. NEW SECTION. 533E.12 VERIFICATION OF DATABASES
30 -- CONFIDENTIALITY.

31 1. Before entering into a loan agreement with a consumer,
32 a lender shall use a commercially reasonable method of
33 verification to verify that the proposed loan agreement is
34 permissible under this chapter.

35 2. The superintendent shall certify that one or more

1 consumer reporting service databases are commercially
2 reasonable methods of verification pursuant to section
3 533E.13.

4 3. A lender may rely on the information provided by a
5 certified consumer reporting service database as accurate and
6 is not subject to any administrative penalty or liability as a
7 result of relying on inaccurate information obtained through
8 the commercially reasonable method of verification.

9 4. A lender shall update the certified consumer reporting
10 service databases by inputting all information required by the
11 superintendent in the following manner:

12 a. On the same day that a payday loan is made.

13 b. On the same day that a consumer elects a repayment
14 plan, as provided in section 533E.18.

15 c. On the same day that a consumer's payday loan is paid
16 in full.

17 5. A consumer reporting service shall indemnify lenders
18 against all claims and actions arising from illegal, willful,
19 or wanton acts on the part of the consumer reporting service
20 when the lender is utilizing the service's database as a
21 commercially reasonable method of verification.

22 6. Except as otherwise provided in this chapter, all
23 personally identifiable information regarding any consumer
24 obtained through verification is confidential and shall not be
25 subject to disclosure under chapter 22.

26 7. Notwithstanding any other provision of law to the
27 contrary, a consumer seeking a payday loan may make a direct
28 inquiry to a consumer reporting service to request a more
29 detailed explanation of the basis for a determination that the
30 consumer is ineligible for a new payday loan.

31 Sec. 13. NEW SECTION. 533E.13 APPLICATION FOR
32 CERTIFICATION OF VERIFICATION METHOD -- REQUIREMENTS -- FEES.

33 1. A consumer reporting service shall submit an
34 application to the superintendent for certification of the
35 service's database as a commercially reasonable method of

1 verification that a proposed loan agreement is permissible
2 under this chapter pursuant to section 533E.12.

3 2. Each application for certification shall be accompanied
4 by a nonrefundable investigation fee of two thousand five
5 hundred dollars and an initial certification fee of one
6 thousand dollars.

7 3. Each application for certification shall certify that
8 the consumer reporting service database complies with all of
9 the following requirements:

10 a. Provides real-time access through an internet
11 connection or, if real-time access through an internet
12 connection becomes unavailable to lenders due to a consumer
13 reporting service's technical problems incurred by the
14 consumer reporting service, through alternative verification
15 mechanisms, including, but not limited to, verification by
16 telephone.

17 b. Is accessible to the superintendent and to lenders in
18 order to ensure compliance with this chapter and in order to
19 provide any other information that the superintendent deems
20 necessary.

21 c. Requires lenders to input all information required by
22 the superintendent.

23 d. Maintains a real-time copy of the required reporting
24 information that shall be available to the superintendent at
25 all times and shall be the property of the superintendent.

26 e. Provides lenders only with a statement that a consumer
27 is eligible or ineligible for a new payday loan and a
28 description of the reason for the determination.

29 f. Contains safeguards to ensure that all information
30 contained in the database regarding consumers is kept
31 confidential.

32 4. Each application for certification by a consumer
33 reporting service under this chapter shall be accompanied by a
34 surety bond acceptable to the superintendent in the amount of
35 one million dollars. The surety bond shall be in a form

1 satisfactory to the superintendent and shall run to the state
2 for the benefit of any claimants against the consumer
3 reporting service to secure the faithful performance of its
4 obligations under this chapter. The aggregate liability of
5 the surety may exceed the principal sum of the bond.
6 Claimants against the consumer reporting service may
7 themselves bring suit directly on the surety bond or the
8 superintendent may bring suit on behalf of claimants, either
9 in one action or in successive actions.

10 a. The surety bond shall remain in effect until
11 cancellation, which may occur only after ninety days' written
12 notice to the superintendent. Cancellation shall not affect
13 any liability incurred or accrued during the ninety-day
14 period.

15 b. The surety bond shall remain in place for five years
16 after the consumer reporting service ceases operation in this
17 state.

18 c. The surety bond proceeds and any cash or other
19 collateral posted as security by a consumer reporting service
20 shall be deemed by operation of law to be held in trust for
21 any claimants under this chapter in the event of the
22 bankruptcy of the consumer reporting service.

23 d. To the extent that any indemnity or civil penalty
24 exceeds the amount of the surety bond described under this
25 section, the consumer reporting service shall be liable for
26 that amount.

27 5. Each consumer reporting service providing a certified
28 database shall have at all times a net worth of not less than
29 one million dollars calculated in accordance with generally
30 accepted accounting principles.

31 6. Upon certifying that a consumer reporting service
32 database is a commercially reasonable method of verification,
33 the superintendent shall provide reasonable notice to all
34 licensed lenders identifying the consumer reporting service
35 database as a commercially reasonable method of verification.

1 7. On or before March 1 of each year, each consumer
2 reporting service with a certified database under this section
3 shall pay to the superintendent a certification fee in the
4 amount of one thousand dollars.

5 Sec. 14. NEW SECTION. 533E.14 REQUIRED DISCLOSURES --
6 LOAN AGREEMENT.

7 1. Before a payday loan is made, a lender shall deliver to
8 the consumer a pamphlet prepared by the superintendent that
9 does all of the following:

10 a. Explains, in simple English and Spanish, all of the
11 consumer's rights and responsibilities in a payday loan
12 transaction.

13 b. Includes a toll-free telephone number to the
14 superintendent's office to handle concerns or provide
15 information about whether a lender is licensed, whether
16 complaints have been filed with the superintendent, and the
17 resolution of those complaints.

18 c. Provides information regarding the availability of debt
19 management services.

20 2. A lender shall provide a consumer with a written loan
21 agreement that may be kept by the consumer. The written loan
22 agreement shall include all of the following information in
23 English and in the language in which the loan was negotiated:

24 a. The name and address of the lender making the payday
25 loan and the name and title of the individual employee who
26 signs the agreement on behalf of the lender.

27 b. Disclosures required by the federal Truth in Lending
28 Act as defined by section 537.1302.

29 c. A clear description of the consumer's payment
30 obligations under the loan.

31 d. The following statement, in at least fourteen point
32 bold type: "You cannot be prosecuted in criminal court to
33 collect this loan." The information required to be disclosed
34 under this paragraph shall be conspicuously disclosed in the
35 loan agreement and shall be located immediately preceding the

1 signature of the consumer.

2 e. The following statement, in at least fourteen point
3 bold type:

4 "WARNING: This loan is not intended to meet long-term
5 financial needs. This loan should be used only to meet short-
6 term cash needs. The cost of your loan may be higher than
7 loans offered by other lending institutions. This loan is
8 regulated by the Superintendent of Banking for the State of
9 Iowa."

10 3. The following notices in English and Spanish shall be
11 conspicuously posted by a lender in each location of a place
12 of business providing payday loans:

13 a. A notice that informs consumers that the lender cannot
14 use the criminal process against a consumer to collect any
15 payday loan.

16 b. The schedule of all finance charges to be charged on
17 loans with an example of the amounts that would be charged on
18 a one hundred dollar loan payable in thirteen days and a four
19 hundred dollar loan payable in thirty days, giving the
20 corresponding annual percentage rate.

21 c. In one-inch bold type, a notice to the public in the
22 lending area of each place of business containing the
23 following statement:

24 "WARNING: A payday loan is not intended to meet long-term
25 financial needs. A payday loan should be used only to meet
26 short-term cash needs. The cost of a payday loan may be
27 higher than loans offered by other lending institutions.
28 Payday loans are regulated by the Superintendent of Banking
29 for the State of Iowa."

30 d. In one-inch bold type, a notice to the public in the
31 lending area of each business location containing the
32 following statement:

33 "INTEREST-FREE REPAYMENT PLAN: If you still owe on one or
34 more payday loans after thirty-five days, you are entitled to
35 enter into a repayment plan. The repayment plan will give you

1 at least fifty-five days to repay your loan in installments
2 with no additional finance charges, interest, fees, or other
3 charges of any kind."

4 4. At the time a payday loan is made, the lender shall
5 provide the consumer with a separate written notice signed by
6 the consumer of the consumer's right to request a repayment
7 plan. The written notice shall comply with the requirements
8 of subsection 6.

9 5. The loan agreement shall include the following language
10 in at least fourteen point bold type:

11 "IF YOU STILL OWE ON ONE OR MORE PAYDAY LOANS AFTER THIRTY-
12 FIVE DAYS, YOU ARE ENTITLED TO ENTER INTO A REPAYMENT PLAN.
13 THE REPAYMENT PLAN WILL GIVE YOU AT LEAST FIFTY-FIVE DAYS TO
14 REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE
15 CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND."

16 6. At the time a payday loan is made, on the first page of
17 the loan agreement and in a separate document signed by the
18 consumer, the following shall be inserted in at least fourteen
19 point bold type:

20 "I UNDERSTAND THAT IF I STILL OWE ON ONE OR MORE PAYDAY
21 LOANS AFTER THIRTY-FIVE DAYS, I AM ENTITLED TO ENTER INTO A
22 REPAYMENT PLAN THAT WILL GIVE ME AT LEAST FIFTY-FIVE DAYS TO
23 REPAY THE LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE
24 CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND."

25 Sec. 15. NEW SECTION. 533E.15 RIGHT TO CANCEL FUTURE
26 PAYMENT OBLIGATIONS.

27 A consumer may cancel future payment obligations on a
28 payday loan, without cost or finance charges, no later than
29 the end of the second business day immediately following the
30 day on which the payday loan agreement was executed. To
31 cancel future payment obligations on a payday loan, the
32 consumer shall inform the lender in writing that the consumer
33 wants to cancel the future payment obligations on the payday
34 loan and shall return the uncashed proceeds, check or cash, in
35 an amount equal to the principal amount of the loan.

1 Sec. 16. NEW SECTION. 533E.16 ROLLOVERS PROHIBITED.

2 Rollover of a payday loan by any lender is prohibited.

3 This section does not prohibit entering into a repayment plan,
4 as provided in section 533E.18.

5 Sec. 17. NEW SECTION. 533E.17 PROCEEDS AND PAYMENTS.

6 1. A lender may issue the proceeds of a loan in the form
7 of a check drawn on the lender's bank account, in cash, by
8 money order, by debit card, or by electronic funds transfer.
9 When the proceeds are issued in the form of a check drawn on
10 the lender's bank account, by money order, or by electronic
11 funds transfer, the lender may not charge a fee for cashing
12 the check, money order, or electronic funds transfer. When
13 the proceeds are issued in cash, the lender shall provide the
14 consumer with written verification of the cash transaction and
15 shall maintain a record of the transaction for at least three
16 years.

17 2. After each payment made in full or in part on any loan,
18 the lender shall give the consumer making the payment either a
19 signed, dated receipt or a signed, computer-generated receipt
20 showing the amount paid and the balance due on the loan.

21 3. Before a loan is made, the lender shall provide the
22 consumer, or each consumer if there is more than one, with a
23 copy of the loan documents described in section 533E.14.

24 4. The holder or assignee of any loan agreement or of any
25 check written by a consumer in connection with a payday loan
26 takes the loan agreement or check subject to all claims and
27 defenses of the consumer against the maker.

28 5. Upon receipt of a check from a consumer for a loan, the
29 lender shall immediately stamp the back of the check with an
30 endorsement that states: "This check is being negotiated as
31 part of a loan under the Payday Loan Reform Act, and any
32 holder of this check takes it subject to all claims and
33 defenses of the maker."

34 6. Loan payments may be electronically debited from a
35 consumer's bank account. Except as may be provided by federal

1 law, the lender shall obtain prior written approval from the
2 consumer for such transactions.

3 7. A consumer may prepay on a loan in increments of five
4 dollars or more at any time without cost or penalty.

5 8. A loan is made on the date on which a loan agreement is
6 signed by both parties, regardless of whether the lender gives
7 any money to the consumer on that date.

8 Sec. 18. NEW SECTION. 533E.18 REPAYMENT PLAN.

9 1. If a consumer has or has had one or more payday loans
10 outstanding for thirty-five consecutive days, any payday loan
11 outstanding on the thirty-fifth consecutive day shall be
12 payable under the terms of a repayment plan as provided for in
13 this section, if the consumer requests the repayment plan. As
14 to any loan that becomes eligible for a repayment plan under
15 this subsection, the consumer has until twenty-eight days
16 after the default date of the loan to request a repayment
17 plan. Within forty-eight hours after the request for a
18 repayment plan is made, the lender shall prepare the repayment
19 plan agreement and both parties shall execute the agreement.
20 Execution of the repayment plan agreement shall be made in the
21 same manner in which the loan was made and shall be evidenced
22 in writing.

23 2. The terms of the repayment plan for a payday loan shall
24 include all of the following:

25 a. The lender may not impose any charge on the consumer
26 for requesting or using a repayment plan. Performance of the
27 terms of the repayment plan extinguishes the consumer's
28 obligation on the loan.

29 b. The lender shall not charge the consumer any finance
30 charges, interest, fees, or other charges of any kind, except
31 a fee for insufficient funds, as provided in section 533E.11.

32 c. The consumer shall be allowed to repay the loan in at
33 least four equal installments with at least thirteen days
34 between installments, provided that the term of the repayment
35 plan does not exceed ninety days. The first payment under the

1 repayment plan shall not be due before at least thirteen days
2 after the repayment plan is signed by both parties. The
3 consumer may prepay the amount due under the repayment plan at
4 any time, without charge or penalty.

5 d. The length of time between installments may be extended
6 by the parties so long as the total period of repayment does
7 not exceed ninety days. Any such modification shall be in
8 writing and signed by both parties.

9 3. Notwithstanding any provision of law to the contrary, a
10 lender shall not make a payday loan to a consumer who has a
11 payday loan outstanding under a repayment plan and for at
12 least fourteen days after the outstanding balance of the loan
13 under the repayment plan and the outstanding balance of all
14 other payday loans outstanding during the term of the
15 repayment plan are paid in full.

16 4. A lender shall not accept postdated checks for payments
17 under a repayment plan.

18 5. Notwithstanding any provision of law to the contrary, a
19 lender may voluntarily agree to enter into a repayment plan
20 with a consumer at any time. If a consumer is eligible for a
21 repayment plan under subsection 1, any repayment agreement
22 constitutes a repayment plan under this section and all
23 provisions of this section apply to that agreement.

24 Sec. 19. NEW SECTION. 533E.19 DEFAULT.

25 1. No legal proceeding of any kind, including, but not
26 limited to, a lawsuit or arbitration, may be filed or
27 initiated against a consumer to collect on a payday loan until
28 twenty-eight days after the default date of the loan, or, in
29 the case of a payday loan under a repayment plan, for twenty-
30 eight days after the default date under the terms of the
31 repayment plan.

32 2. Upon and after default, a lender shall not charge the
33 consumer any finance charges, interest, fees, or charges of
34 any kind, other than the insufficient fund fee described in
35 section 533E.11.

1 3. Notwithstanding whether a loan is or has been in
2 default, once the loan becomes subject to a repayment plan,
3 the loan shall not be construed to be in default until the
4 default date provided under the terms of the repayment plan.

5 Sec. 20. NEW SECTION. 533E.20 PRACTICES CONCERNING
6 MEMBERS OF THE MILITARY.

7 1. A lender may not garnish the wages or salary of a
8 consumer who is a member of the military.

9 2. In addition to any rights and obligations provided
10 under the federal Servicemembers Civil Relief Act, 50 U.S.C.
11 App. 501 et seq., a lender shall suspend and defer collection
12 activity against a consumer who is a member of the military
13 and who has been deployed to a combat or combat support
14 posting for the duration of the deployment.

15 3. A lender may not knowingly contact the military chain
16 of command of a consumer who is a member of the military in an
17 effort to collect on a payday loan.

18 4. A lender shall honor the terms of any repayment plan
19 entered into with any consumer, including a repayment
20 agreement negotiated through military counselors or third-
21 party credit counselors.

22 Sec. 21. NEW SECTION. 533E.21 RECORDKEEPING AND
23 REPORTING REQUIREMENTS -- CIVIL PENALTY.

24 1. A lender shall keep and use books, accounts, records,
25 and loan documents that will enable the superintendent to
26 determine if the lender is complying with the provisions of
27 this chapter and shall maintain any other records as required
28 by the superintendent. The superintendent shall have the
29 authority to conduct examinations of the books, accounts,
30 records, and loan documents at any time.

31 2. A lender shall collect and maintain all of the
32 following information:

33 a. The total number of payday loans made during the
34 preceding calendar year.

35 b. The total number of payday loans outstanding as of

1 December 31 of the preceding calendar year.

2 c. The minimum, maximum, and average dollar amount of
3 payday loans made during the preceding calendar year.

4 d. The average annual percentage rate and the average term
5 of payday loans made during the preceding calendar year.

6 e. The total number of payday loans paid in full, the
7 total number of loans that went into default, and the total
8 number of loans written off during the preceding calendar
9 year.

10 3. The information required to be collected and maintained
11 pursuant to subsection 2 shall be annually reported to the
12 superintendent in detail and under appropriate headings. The
13 report shall be verified by the oath or affirmation of the
14 owner, manager, or president of the lender. The report shall
15 be filed with the superintendent no later than March 1 of the
16 year following the year for which the report discloses the
17 information specified in subsection 2. The superintendent may
18 impose upon a lender a civil penalty of twenty-five dollars
19 per day for each day beyond the filing deadline that the
20 report is not filed.

21 4. The superintendent shall publish a biennial report that
22 contains a compilation of aggregate data concerning the payday
23 lending industry and shall make the report available to the
24 governor, the general assembly, and the general public.

25 Sec. 22. NEW SECTION. 533E.22 ADVERTISING.

26 1. Advertising for loans transacted under this chapter may
27 not be false, misleading, or deceptive. Payday loan
28 advertising, if it states a rate or amount of charge for a
29 loan, shall state the rate as an annual percentage rate. A
30 lender shall not advertise in any manner so as to indicate or
31 imply that its rates or charges for loans are in any way
32 recommended, approved, set, or established by the state of
33 Iowa or by this chapter.

34 2. If any advertisement to which this section applies
35 states the amount of any installment payment, the dollar

1 amount of any finance charge, or the number of installments or
2 the period of repayment, then the advertisement shall state
3 all of the following:

4 a. The amount of the loan.

5 b. The number, amount, and due dates or period of payments
6 scheduled to repay the indebtedness if the credit is extended.

7 c. The finance charge expressed as an annual percentage
8 rate.

9 Sec. 23. NEW SECTION. 533E.23 PROHIBITED ACTS.

10 A lender making payday loans shall not commit, or have
11 committed on behalf of the lender, any of the following acts:

12 1. Threaten to use or use the criminal process in this or
13 any other state to collect on a loan.

14 2. Use any device or agreement that would have the effect
15 of charging or collecting more fees or charges than allowed by
16 this chapter, including, but not limited to, entering into a
17 different type of transaction with the consumer.

18 3. Engage in unfair, deceptive, or fraudulent practices in
19 the making or collecting of a payday loan.

20 4. Use or attempt to use a check provided by the consumer
21 in a payday loan as collateral for a transaction not related
22 to the payday loan.

23 5. Knowingly accept payment in whole or in part on a
24 payday loan through the proceeds of another payday loan
25 provided by any lender.

26 6. Knowingly accept any security, other than that
27 specified in the definition of a payday loan in section
28 533E.3, for a payday loan.

29 7. Charge any fees or charges other than those
30 specifically authorized by this chapter.

31 8. Threaten to take any action against a consumer that is
32 prohibited by this chapter or make any misleading or deceptive
33 statements regarding a payday loan or any consequences
34 thereof.

35 9. Make a misrepresentation of a material fact in

1 obtaining or attempting to obtain a license under this
2 chapter.

3 10. Include any of the following provisions in a loan
4 agreement required by section 533E.14, subsection 2:

5 a. A confession of judgment clause.

6 b. A waiver of the right to a jury trial, if applicable,
7 in any action brought by or against a consumer, unless the
8 waiver is included in an arbitration clause that is not
9 prohibited under paragraph "c".

10 c. A mandatory arbitration clause that is oppressive,
11 unfair, unconscionable, or substantially in derogation of the
12 rights of consumers.

13 d. A provision in which the consumer agrees not to assert
14 any claim or defense arising out of the contract.

15 11. Sell insurance of any kind whether or not sold in
16 connection with the making or collecting of a payday loan.

17 12. Take any power of attorney.

18 13. Take any security interest in real estate.

19 14. Collect a delinquency or collection charge on any
20 installment regardless of the period in which it remains in
21 default.

22 15. Collect treble damages on an amount owing from a
23 payday loan.

24 16. Refuse, or intentionally delay or inhibit, a
25 consumer's right to enter into a repayment plan pursuant to
26 this chapter.

27 17. Charge for, or attempt to collect, attorney fees,
28 court costs, or arbitration costs incurred in connection with
29 the collection of a payday loan.

30 18. Make a loan in violation of this chapter.

31 19. Violate any other provision of this chapter.

32 Sec. 24. NEW SECTION. 533E.24 ENFORCEMENT AND REMEDIES

33 -- CIVIL PENALTY -- LICENSE REVOCATION.

34 1. The remedies provided in this chapter are cumulative
35 and apply to persons or entities subject to this chapter.

1 2. Any material violation of this chapter, including the
2 commission of an act prohibited under section 533E.23,
3 constitutes an unfair or deceptive practice in violation of
4 section 714.16, subsection 2, paragraph "a".

5 3. If any provision of the written loan agreement
6 described in section 533E.14, subsection 2, violates this
7 chapter, then that provision is unenforceable against the
8 consumer.

9 4. a. The superintendent may issue a cease and desist
10 order to any lender or other person providing payday loans
11 without a license issued pursuant to this chapter, when in the
12 opinion of the superintendent the lender or other person is
13 violating or is about to violate any provision of this chapter
14 or any rule or requirement imposed in writing by the
15 superintendent as a condition of granting any authorization
16 permitted by this chapter. The cease and desist order
17 permitted by this subsection may be issued prior to a hearing.

18 b. The superintendent shall serve notice of an order to
19 cease and desist, including, but not limited to, a statement
20 of the reasons for the order, either personally or by
21 certified mail, return receipt requested. Service by
22 certified mail shall be deemed completed when the notice is
23 deposited in the United States mail.

24 c. Within ten days of service of the cease and desist
25 order, the lender or other person may request a hearing in
26 writing. The superintendent shall schedule a hearing within
27 thirty days after the request for a hearing unless otherwise
28 agreed to by the parties.

29 d. If it is determined that the superintendent had the
30 authority to issue the cease and desist order, the
31 superintendent may issue such orders as may be reasonably
32 necessary to correct, eliminate, or remedy the conduct.

33 e. The powers vested in the superintendent pursuant to
34 this subsection are additional to any and all other powers and
35 remedies vested in the superintendent by law, and nothing in

1 this subsection shall be construed as requiring that the
2 superintendent shall employ the power conferred in this
3 subsection instead of or as a condition precedent to the
4 exercise of any other power or remedy vested in the
5 superintendent.

6 5. a. The superintendent may, after ten days' notice by
7 registered mail to the lender at the address set forth in the
8 license stating the violation, issue a civil penalty against
9 the lender in an amount not exceeding ten thousand dollars per
10 violation, or revoke or suspend any license issued under this
11 chapter after finding any of the following:

12 (1) The lender has failed to comply with any provision of
13 this chapter or any order, decision, finding, rule,
14 regulation, or direction of the superintendent lawfully made
15 pursuant to the authority of this chapter.

16 (2) Any fact or condition exists which, if it had existed
17 at the time of the original application for the license,
18 clearly would have warranted the superintendent in refusing to
19 issue the license.

20 b. The superintendent may take action under this
21 subsection against only the particular person or licensee with
22 respect to whom grounds for the fine, revocation, or
23 suspension occur or exist. However, if the superintendent
24 finds that grounds for action are of general application to
25 all places of business or to more than one place of business
26 of the lender, the superintendent shall take action against
27 every person or licensee to whom the grounds apply.

28 c. A revocation, suspension, or surrender of any license
29 shall not impair or affect the obligation of any preexisting
30 lawful contract between the lender and any obligor.

31 d. The superintendent may issue a new license to a lender
32 whose license has been revoked when facts or conditions which
33 clearly would have warranted the superintendent in originally
34 refusing to issue the license no longer exist.

35 e. In every case in which a license is suspended or

1 revoked or an application for a license or renewal of a
2 license is denied, the superintendent shall serve the lender
3 with notice of the suspension, revocation, or denial,
4 including a statement of supporting reasons, either
5 personally, or by certified mail, return receipt requested.
6 Service by certified mail shall be deemed completed when the
7 notice is deposited in the United States mail.

8 f. An order assessing a civil penalty, an order revoking
9 or suspending a license, or an order denying renewal of a
10 license shall take effect upon service of the order unless the
11 lender files a written appeal and requests a hearing within
12 ten days after the date of service. In the event a hearing is
13 requested, the order shall be stayed until a final
14 administrative order is entered. If the lender requests a
15 hearing, the superintendent shall schedule a hearing within
16 thirty days after the request for a hearing is received unless
17 otherwise agreed to by the parties. The hearing shall be
18 conducted as a contested case proceeding pursuant to chapter
19 17A. The costs of any hearing conducted pursuant to this
20 section shall be paid by the lender.

21 6. The reasonable expenses of an examination or hearing by
22 the superintendent under any provision of this chapter shall
23 be borne by the lender.

24 Sec. 25. NEW SECTION. 533E.25 POSTING OF BOND.

25 1. A lender engaged in making payday loans under this
26 chapter shall post a bond to the superintendent in the amount
27 of fifty thousand dollars for each place of business where
28 loans are provided, up to a maximum bond amount of five
29 hundred thousand dollars.

30 2. A bond posted under subsection 1 shall continue in
31 effect for the period of licensure and for three additional
32 years if the bond is still available. The bond shall be
33 available to pay damages to consumers harmed by violations of
34 this chapter and for penalties incurred for violations of this
35 chapter.

1 3. The superintendent may require a lender to file a bond
2 in an additional sum if the superintendent determines it to be
3 necessary. The bond shall not be for an amount more than the
4 total outstanding liabilities of the lender.

5 Sec. 26. NEW SECTION. 533E.26 REPORTING OF VIOLATIONS.

6 The superintendent shall report to the attorney general all
7 material violations of this chapter for enforcement assistance
8 by the attorney general.

9 Sec. 27. NEW SECTION. 533E.27 DEPOSIT OF FEES AND
10 PENALTIES.

11 All fees and civil penalties collected pursuant to this
12 chapter shall be deposited in the general fund.

13 Sec. 28. NEW SECTION. 533E.28 RULEMAKING.

14 The superintendent may make and enforce such reasonable
15 rules, orders, decisions, and findings as the administration
16 and enforcement of the provisions of this chapter require, and
17 as are not inconsistent with this chapter.

18 Sec. 29. NEW SECTION. 533E.29 JUDICIAL REVIEW.

19 All final administrative orders of the superintendent under
20 this chapter are subject to judicial review pursuant to
21 chapter 17A and any rules adopted pursuant thereto.

22 Sec. 30. NEW SECTION. 533E.30 NO WAIVERS.

23 There shall be no waiver of any provision of this chapter.

24 Sec. 31. NEW SECTION. 533E.31 SUPERIORITY OF ACT.

25 To the extent this chapter conflicts with any other state
26 financial regulation laws, this chapter is superior and
27 supersedes those laws for the purposes of regulating payday
28 loans in this state, provided that nothing in this chapter
29 shall apply to any lender that is a bank, savings and loan
30 association, credit union, or insurance company organized,
31 chartered, or holding a certificate of authority to do
32 business under the laws of this state or any other state or
33 under the laws of the United States.

34 Sec. 32. NEW SECTION. 533E.32 SEVERABILITY.

35 The provisions of this chapter are severable under section

1 4.12.

2 Sec. 33. Section 524.211, subsections 2 and 4, Code 2005,
3 are amended to read as follows:

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

10 4. Examiners and other employees assigned to the bank
11 bureau of the banking division who have credit relations with
12 a person or entity licensed pursuant to chapter 533A, 533B
13 533E, 536, or 536A, or with a person or entity affiliated with
14 such licensee, are prohibited from participating in decisions,
15 oversight, and official review of matters concerning the
16 regulation of the licensee.

17 Sec. 34. Section 533C.103, subsection 11, Code 2005, is
18 amended by striking the subsection and inserting in lieu
19 thereof the following:

20 11. A payday loan lender licensed pursuant to chapter
21 533E.

22 Sec. 35. Section 537.7102, subsection 3, Code 2005, is
23 amended to read as follows:

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

1 chapter 533D 533E.

2 Sec. 36. Chapter 533D, Code 2005, is repealed.

3 Sec. 37. TRANSITION PROVISIONS.

4 1. A person or entity acting as a payday lender who is
5 licensed pursuant to chapter 533D, Code 2005, need not comply
6 with section 533E.5 until the superintendent of banking takes
7 action on the lender's application for a payday loan license.
8 The application shall be submitted to the superintendent by
9 December 31, 2006. If the application is not submitted by
10 December 31, 2006, the person or entity acting as a payday
11 lender is subject to section 533E.5.

12 2. As soon as practicable, the superintendent shall
13 promulgate reasonable rules regarding the issuance of payday
14 loans by banks, savings and loan associations, credit unions,
15 and insurance companies. Such rules shall be consistent with
16 this Act and shall be limited in scope to the actual products
17 and services offered by lenders governed by this Act.

18 3. a. Prior to December 31, 2006, the superintendent
19 shall certify that one or more consumer reporting service
20 databases are commercially reasonable methods of verification
21 as provided in this Act. Upon certifying that a consumer
22 reporting service database is a commercially reasonable method
23 of verification, the superintendent shall provide reasonable
24 notice to all licensed lenders identifying the commercially
25 reasonable methods of verification that are available.

26 b. Prior to the certification of a consumer reporting
27 service database by the superintendent, a lender may use any
28 reasonably reliable written verification by the consumer
29 concerning all of the following:

30 (1) Whether the consumer has any outstanding payday loans.

31 (2) The principal amount of those outstanding payday
32 loans.

33 (3) Whether any payday loans have been paid in full by the
34 consumer in the preceding seven days.

35 c. Within fourteen days after certification of at least

1 one commercially reasonable method of verification by the
2 superintendent, paragraph "b" shall not apply and the lender
3 shall comply with section 533E.11.

4 4. Payday loans outstanding on but executed prior to July
5 1, 2006, shall be enforceable upon the agreed terms of the
6 loan and the requirements of chapter 533D, Code 2005, until
7 the term of the loan expires and shall not be renewed or
8 extended.

9 Sec. 38. PAYDAY LOAN STUDY.

10 1. The superintendent of banking shall, over a three-year
11 period, conduct a study of the payday loan industry to
12 determine the impact and effectiveness of this Act. The
13 superintendent shall report its findings to the general
14 assembly by November 1, 2009. The study shall determine the
15 effect of this Act on the protection of consumers in this
16 state and on the fair and reasonable regulation of the payday
17 loan industry.

18 2. The study shall include, but shall not be limited to,
19 an analysis of the ability of the industry to use private
20 reporting tools that ensure substantial compliance with this
21 Act, including real-time reporting of outstanding payday loans
22 and providing data to the superintendent in an appropriate
23 form and with appropriate content to allow the superintendent
24 to adequately monitor the industry.

25 3. The report of the superintendent shall, if necessary,
26 identify and recommend specific amendments to this Act to
27 further protect consumers and to guarantee fair and reasonable
28 regulation of the payday loan industry.

29 EXPLANATION

30 This bill relates to payday lending services by providing
31 for the licensing and regulation of payday loan lenders in new
32 Code chapter 533E. The bill defines a "payday loan" as a loan
33 with a finance charge that exceeds a 36 percent annual
34 percentage rate with a term not more than 120 days and
35 pursuant to which the lender either accepts a personal check,

1 a debit authorization, or a wage assignment for repayment of
2 the loan. The regulation of payday loans in the bill does not
3 extend to banks, savings and loan associations, credit unions,
4 insurance companies, or similar entities licensed in this
5 state and primarily engaged in lending or investing funds, but
6 does extend to agents of such entities except with regard to
7 the regulation of finance charges.

8 The bill requires payday loan lenders to be licensed by the
9 superintendent of banking. The bill requires the
10 superintendent to restrict the issuance of licenses to only
11 those lenders who show financial responsibility, appoint the
12 superintendent as attorney in fact for the service of legal
13 process, and pay an annual license fee of \$1,000. Lenders are
14 required to notify the superintendent prior to ceasing
15 operations, closing the business, or filing for bankruptcy.

16 The bill restricts the minimum term of a payday loan to no
17 less than 13 days. A lender shall not make a payday loan to a
18 consumer which would result in the consumer being indebted
19 with outstanding payday loans for more than 45 consecutive
20 days, or if the total principal amount of the loan combined
21 with all other outstanding payday loans of the consumer
22 exceeds \$1,000 or 25 percent of the consumer's gross monthly
23 income, whichever is less. A lender shall not make a payday
24 loan to a consumer who already has an outstanding balance on
25 more than one payday loan.

26 The bill restricts payday loan lenders from charging more
27 than \$15.50 per \$100 loaned for any payday loan over the term
28 of the loan. A lender is prohibited from taking an interest
29 in a consumer's personal property to secure a payday loan and
30 may only take a wage assignment if other state requirements
31 are met and the assignment may be revoked by the consumer at
32 any time. A lender may not charge more than allowed by
33 existing state law for returned checks.

34 Prior to providing a payday loan, a lender shall check with
35 a consumer reporting service certified by the superintendent

1 for verification that the proposed payday loan is not
2 prohibited due to other outstanding payday loans or similar
3 restrictions provided under the bill. The lender shall
4 provide the consumer reporting service with updated
5 information required to be provided by the superintendent.

6 The bill provides requirements for a consumer reporting
7 service database to become certified by the superintendent,
8 including the submission of an application with an
9 investigation fee of \$2,500 and a certification fee of \$1,000.
10 A consumer reporting service is also required to submit a \$1
11 million bond to the superintendent for certification of its
12 database. The proceeds of the bond may be used to satisfy
13 liability obligations of the consumer reporting service for
14 civil penalties and other liability incurred pursuant to new
15 Code chapter 533E. Consumer reporting services with databases
16 certified by the superintendent are required to maintain a
17 minimum of \$1 million in net worth.

18 The bill requires certain disclosures to be made to the
19 consumer prior to a lender providing a payday loan regarding
20 the consumer's rights and responsibilities regarding the loan
21 and other information. A consumer shall be allowed to cancel
22 future payment obligations within a certain period of time and
23 a lender may not roll over a payday loan into another payday
24 loan.

25 The bill provides restrictions and requirements regarding
26 how proceeds of a loan may be issued and payments made. A
27 lender shall allow a consumer to enter into a repayment plan
28 and may not initiate a legal proceeding against a consumer to
29 collect on a payday loan until 28 days after default. A
30 lender may not garnish the wages of a consumer who is a member
31 of the military and may not engage in any collection activity
32 against a consumer who has been deployed for military combat.

33 The bill requires lenders to keep certain records to be
34 provided to the superintendent by March 1 of each year. The
35 superintendent may issue a civil penalty in the amount of \$25

1 per day for each day the report is filed beyond the March 1
2 deadline. The superintendent shall publish a biennial report
3 regarding the payday lending industry. The bill places
4 restrictions on false, misleading, or deceptive advertising
5 regarding payday loans.

6 The bill prohibits lenders from engaging in certain
7 prohibited acts and from including certain provisions in
8 payday loan documents. A material violation of a provision of
9 new Code chapter 533E and commission of a prohibited act shall
10 be considered unfair and deceptive practices. The
11 superintendent may issue a cease and desist order against a
12 lender or other person providing payday loans without a
13 license. The superintendent may also issue a civil penalty in
14 an amount up to \$10,000 and revoke or suspend the license of a
15 payday lender for failing to comply with any provision of new
16 Code chapter 533E or if any fact or condition exists which
17 would have resulted in the denial of a license to the lender
18 if the fact or condition had existed at the time of
19 application. An order assessing a civil penalty, or revoking
20 or suspending a license, is effective upon service of the
21 order unless the lender requests a hearing within 10 days
22 after service.

23 The bill requires payday loan lenders to post a \$50,000
24 bond to the superintendent for each place of business where
25 payday loans are provided, with a total bond amount not to
26 exceed \$500,000. The bond must remain in effect for the
27 duration of the license plus three years and be available for
28 the payment of damages and penalties to consumers and the
29 superintendent.

30 The attorney general may assist with enforcement of
31 violations. The superintendent may adopt reasonable rules to
32 enforce and administer new Code chapter 533E. All
33 administrative orders by the superintendent are subject to
34 judicial review. No waivers of any provision of new Code
35 chapter 533E are permitted. All fees and penalties collected

1 under the bill shall be deposited in the general fund of the
2 state. Where provisions of new Code chapter 533E conflict
3 with any other state financial regulation laws, new Code
4 chapter 533E shall prevail.

5 The bill repeals Code chapter 533D relating to the
6 licensing and regulation of delayed deposit services
7 businesses and makes other technical corrections. The bill
8 provides for certain transition provisions and requires the
9 superintendent to conduct a study to determine the impact and
10 effectiveness of the bill and to report to the general
11 assembly by November 1, 2009.

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