

House Study Bill 634

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 regulatory duties of the banking division
2 of the department of commerce regarding banking, debt
3 management, delayed deposit services, mortgage banking, and
4 industrial loan companies, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 5291DP 82
7 rn/nh/5

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1 1 Section 1. Section 524.107, subsection 2, Code 2007, is
1 2 amended to read as follows:
1 3 2. A person doing business in this state shall not use the
1 4 words "bank" or "trust" or use any derivative, plural, or
1 5 compound of the words "bank", "banking", "bankers", or "trust"
1 6 in any manner which would tend to create the impression that
1 7 the person is authorized to engage in the business of banking
1 8 or to act in a fiduciary capacity, except a state bank
1 9 authorized to do so by this chapter, a national bank to the
1 10 extent permitted by the laws of the United States, a bank
1 11 holding company as defined in section 524.1801, a savings and
1 12 loan holding company as defined in 12 U.S.C. } 1467a, a state
1 13 association pursuant to section 534.507, or a federal
1 14 association to the extent permitted by the laws of the United
1 15 States, or, insofar as the word "trust" is concerned, an
1 16 individual permissibly serving as a fiduciary in this state,
1 17 pursuant to section 633.63, or, insofar as the words "trust"
1 18 and "bank" are concerned, a nonresident corporate fiduciary
1 19 permissibly serving as a fiduciary in this state pursuant to
1 20 section 633.64.

1 21 Sec. 2. Section 524.203, Code 2007, is amended by striking
1 22 the section and inserting in lieu thereof the following:

1 23 524.203 SUPERINTENDENT == VACANCY.

1 24 If the office of the superintendent of banking is vacant,
1 25 the chief of the bank bureau of the banking division shall be
1 26 the acting superintendent until the governor appoints a new
1 27 superintendent or acting superintendent. If the chief of the
1 28 bank bureau is unable to serve, the chief of the finance
1 29 bureau of the banking division shall be the acting
1 30 superintendent until the governor appoints a new
1 31 superintendent or acting superintendent. If both the chief of
1 32 the bank bureau and the chief of the finance bureau are unable
1 33 to serve, the chief of the professional licensing and
1 34 regulation bureau of the banking division shall be the acting
1 35 superintendent until the governor appoints a new
2 1 superintendent or acting superintendent.

2 2 Sec. 3. Section 524.211, subsection 1, Code Supplement
2 3 2007, is amended to read as follows:

2 4 1. The superintendent, general counsel, examiners, and
2 5 other employees assigned to the bank bureau of the banking
2 6 division are prohibited from obtaining a loan of money or
2 7 property from a state-chartered bank, a state savings and loan
2 8 association, or any person or entity affiliated with a
2 9 state-chartered bank or a state savings and loan association,
2 10 unless they do not personally participate in the examination,
2 11 oversight, or official review concerning the regulation of the
2 12 bank or savings and loan association.

2 13 Sec. 4. Section 524.212, Code Supplement 2007, is amended
2 14 to read as follows:

2 15 524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY
2 16 INFORMATION.

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

2 30 2. The superintendent may receive documents, materials, or
2 31 other information, including otherwise confidential and
2 32 privileged documents, materials, or other information, from
2 33 other local, state, federal, and international regulatory
2 34 agencies, the conference of state bank supervisors and its
2 35 affiliates or subsidiaries, the American association of
3 1 mortgage regulators and its affiliates or subsidiaries, and
3 2 the national association of consumer credit administrators and
3 3 its affiliates or subsidiaries, and shall maintain as
3 4 confidential and privileged any such document, material, or
3 5 other information received with notice or the understanding
3 6 that it is confidential or privileged under the laws of the
3 7 jurisdiction that is the source of the document, material, or
3 8 other information.

3 9 Sec. 5. Section 524.216, subsection 2, paragraph c, Code
3 10 Supplement 2007, is amended to read as follows:

3 11 c. A statement of the receipts and disbursements of funds
3 12 of the superintendent during the ~~calendar~~ fiscal year ending
3 13 on the preceding ~~December 31~~ June 30 and of the funds on hand
3 14 on such ~~December 31~~ June 30.

3 15 Sec. 6. NEW SECTION. 524.229 EMERGENCY POWERS OF
3 16 SUPERINTENDENT.

3 17 Whenever the superintendent determines that an emergency
3 18 affecting one or more state-chartered banks or bank offices
3 19 exists, or is impending, in this state or in any part or parts
3 20 of this state, the superintendent may temporarily suspend
3 21 applicable rules or statutes to the extent necessary to allow
3 22 the affected bank or banks to respond to the emergency.

3 23 Sec. 7. Section 524.312, subsection 2, Code 2007, is
3 24 amended to read as follows:

3 25 2. A state bank may, with the prior written approval of
3 26 the superintendent, change the location of its principal place
3 27 of business to a new location within the state. ~~A change of~~
3 28 ~~location shall be limited to another location in the same~~
3 29 ~~municipal corporation, to a location in a municipal~~
3 30 ~~corporation in the same county, or to a location in a~~
3 31 ~~municipal corporation in a county that is contiguous to or~~
3 32 ~~touching or cornering on the county in which the state bank is~~
3 33 ~~located. If a state bank has its principal place of business~~
3 34 ~~in an unincorporated area, the superintendent may authorize a~~
3 35 ~~change of location of its principal place of business to a new~~
4 1 ~~location within the same unincorporated area as well as to any~~
4 2 ~~location referred to in this subsection.~~

4 3 Sec. 8. Section 524.1607, Code 2007, is amended to read as
4 4 follows:

4 5 524.1607 FALSE STATEMENT FOR CREDIT.

4 6 1. For the purposes of this section, unless the context
4 7 otherwise requires:

4 8 a. "Financial institution" means a financial institution
4 9 as defined in 18 U.S.C. } 20.

4 10 b. "Mortgage banker" means a person who makes or
4 11 originates mortgage loans on real property located in this
4 12 state.

4 13 c. "Mortgage broker" means a person who arranges or
4 14 negotiates, or attempts to arrange or negotiate, mortgage
4 15 loans on real property located in this state.

4 16 2. Any person who knowingly makes or causes to be made,
4 17 directly or indirectly, any false statement in writing, or who
4 18 procures, knowing that a false statement in writing has been
4 19 made concerning the financial condition or means or ability to
4 20 pay of such person, or any other person in which such person
4 21 is interested or for whom such person is acting, with the
4 22 intent that such statement shall be relied upon by a ~~bank~~
4 23 financial institution, a mortgage banker, a mortgage broker,
4 24 or any other entity licensed by the banking division for the
4 25 purpose of procuring the delivery of property, the payment of
4 26 cash or the receipt of credit in any form, for the benefit of
4 27 such person or of any other person in which such person is

4 28 interested or for whom such person is acting, shall be guilty
4 29 of a fraudulent practice.

4 30 Sec. 9. Section 533A.2, subsections 1 and 2, Code

4 31 Supplement 2007, are amended to read as follows:

4 32 1. A person shall not engage in the business of debt
4 33 management in this state without a license as provided for in
4 34 this chapter unless exempt under subsection 2. A person
4 35 engages in the business of debt management in this state if
5 1 the person solicits, on behalf of the person or another
5 2 person, to provide, or enters into a contract with one or more
5 3 debtors to provide debt management to a debtor who resides in
5 4 this state.

5 5 2. The following persons, including employees of such
5 6 persons, shall not be required to be licensed ~~when engaged in~~
5 7 ~~the regular course of their respective businesses and~~
5 8 ~~professions or to otherwise comply with the provisions of this~~
5 9 ~~chapter:~~

5 10 a. ~~Attorneys at law~~ A licensed attorney admitted to
5 11 practice in this state acting solely as an incident to the
5 12 practice of law.

5 13 b. Banks, savings and loan associations, credit unions,
5 14 mortgage bankers and mortgage brokers licensed or registered
5 15 under chapter 535B, insurance companies and similar
5 16 fiduciaries, regulated loan companies licensed under chapter
5 17 536, and industrial loan companies licensed under chapter
5 18 536A, authorized and admitted to transact business in this
5 19 state and performing credit and financial adjusting in the
5 20 regular course of their principal business, or while
5 21 performing an escrow function.

5 22 c. Abstract companies, while performing an escrow
5 23 function.

5 24 d. Employees of licensees under this chapter, while
5 25 performing services for the employee's licensed employer.

5 26 e. Judicial officers or others acting under court orders.

5 27 f. Nonprofit religious, fraternal, or cooperative
5 28 organizations offering to debtors gratuitous debt=management
5 29 service.

5 30 g. Those persons whose principal business is the
5 31 origination of first mortgage loans on real estate for their
5 32 own portfolios or for sale to institutional investors.

5 33 Sec. 10. Section 533A.7, Code 2007, is amended by striking
5 34 the section and inserting in lieu thereof the following:

5 35 533A.7 DISCIPLINARY ACTION.

6 1 1. The superintendent may, after notice and hearing
6 2 pursuant to chapter 17A, take disciplinary action against a
6 3 licensee if the superintendent finds any of the following:

6 4 a. The licensee, or an owner, partner, member,
6 5 shareholder, officer, director, or manager of the licensee,
6 6 has been convicted of a felony or of an indictable misdemeanor
6 7 for financial gain.

6 8 b. The licensee, or an owner, partner, member,
6 9 shareholder, officer, director, or manager of the licensee,
6 10 has violated any of the provisions of this chapter or any
6 11 other state or federal law, rule, or regulation applicable to
6 12 the conduct of its business.

6 13 c. The licensee, or an owner, partner, member,
6 14 shareholder, officer, director, or manager of the licensee,
6 15 has engaged in fraud or deceit in procuring the issuance of a
6 16 license or renewal under this chapter.

6 17 d. The licensee, or an owner, partner, member,
6 18 shareholder, officer, director, or manager of the licensee,
6 19 has engaged in unfair conduct.

6 20 e. The licensee is insolvent, or has filed for bankruptcy,
6 21 receivership, or assignment for the benefit of creditors.

6 22 f. The licensee fails to post the bond required by the
6 23 provisions of this chapter or the superintendent receives
6 24 notice that the required bond has been canceled.

6 25 2. The superintendent may impose one or more of the
6 26 following disciplinary actions against a licensee:

6 27 a. Revoke a license.

6 28 b. Suspend a license until further order of the
6 29 superintendent for a specified period of time.

6 30 c. Impose a period of probation under specified
6 31 conditions.

6 32 d. Impose civil penalties in an amount not to exceed five
6 33 thousand dollars for each violation.

6 34 e. Issue a citation and warning respecting licensee
6 35 behavior.

7 1 f. Order the licensee to pay restitution.

7 2 3. The superintendent may order an emergency suspension of
7 3 a licensee's license pursuant to section 17A.18A. A written

7 4 order containing the facts or conduct which warrants the
7 5 emergency action shall be timely sent to the licensee by
7 6 restricted certified mail. Upon issuance of the suspension
7 7 order, the licensee must also be notified of the right to an
7 8 evidentiary hearing. A suspension proceeding shall be
7 9 promptly instituted and determined.

7 10 4. Except as provided in this section, a license shall not
7 11 be revoked or suspended except after notice and a hearing
7 12 thereon in accordance with chapter 17A.

7 13 5. A licensee may surrender a license by delivering to the
7 14 superintendent written notice of surrender, but a surrender
7 15 does not affect the licensee's civil or criminal liability for
7 16 acts committed before the surrender.

7 17 6. A revocation, suspension, or surrender of a license
7 18 does not impair or affect the obligation of a preexisting
7 19 lawful contract between the licensee and any person, including
7 20 a debtor.

7 21 Sec. 11. NEW SECTION. 533A.16 DEBT SETTLEMENT SERVICES
7 22 PROHIBITED == PENALTY.

7 23 1. For the purposes of this section, "debt settlement
7 24 services" means serving as an intermediary between a debtor
7 25 and one or more creditors of the debtor for a fee for the
7 26 purpose of obtaining concessions from the creditors where the
7 27 plan or strategy offered to the debtor advises a debtor to
7 28 stop making payments to creditors or is otherwise structured
7 29 in a way that encourages the debtor to stop making payments to
7 30 creditors.

7 31 2. A person shall not engage in debt settlement services
7 32 on behalf of a debtor residing in this state. A person
7 33 engages in debt settlement services on behalf of a debtor
7 34 residing in this state if the person solicits, on behalf of
7 35 the person or another person, to provide, or enters into a
8 1 contract with one or more debtors to provide, debt settlement
8 2 services to a debtor who resides in this state. Any person or
8 3 any owner, partner, member, officer, director, employee,
8 4 agent, or representative thereof who engages in debt
8 5 settlement services on behalf of a debtor residing in this
8 6 state shall be guilty of a serious misdemeanor.

8 7 Sec. 12. NEW SECTION. 533A.17 VIOLATIONS == INJUNCTIONS
8 8 == CIVIL PENALTIES.

8 9 1. If the superintendent believes that a person has
8 10 engaged in, or is about to engage in, an act or practice that
8 11 constitutes or will constitute a violation of this chapter,
8 12 the superintendent may apply to the district court for an
8 13 order enjoining such act or practice. Upon a showing by the
8 14 superintendent that such person has engaged, or is about to
8 15 engage, in any such act or practice, the district court shall
8 16 grant an injunction.

8 17 2. The superintendent may investigate or initiate
8 18 complaints against persons who are not licensed under this
8 19 chapter to determine whether the person is violating this
8 20 chapter.

8 21 3. In addition to or as an alternative to applying to the
8 22 district court for an injunction, the superintendent may issue
8 23 an order to a person who is not licensed under this chapter to
8 24 require compliance with this chapter, may impose a civil
8 25 penalty against such person for any violation of this chapter
8 26 in an amount up to five thousand dollars for each violation,
8 27 and may order the person to pay restitution.

8 28 4. Before issuing an order under this section, the
8 29 superintendent shall provide the person written notice and the
8 30 opportunity to request a hearing. The hearing must be
8 31 requested within thirty days after receipt of the notice and
8 32 shall be conducted in the same manner as provided for in
8 33 disciplinary proceedings involving a licensee under this
8 34 chapter.

8 35 5. A person aggrieved by the imposition of a civil penalty
9 1 under this section may seek judicial review pursuant to
9 2 section 17A.19.

9 3 6. An action to enforce an order under this section may be
9 4 joined with an action for an injunction.

9 5 Sec. 13. Section 533D.3, subsection 1, Code 2007, is
9 6 amended to read as follows:

9 7 1. A person shall not operate a delayed deposit services
9 8 business in this state unless the person is physically located
9 9 in this state and licensed by the superintendent as provided
9 10 in this chapter.

9 11 Sec. 14. Section 533D.12, Code 2007, is amended by
9 12 striking the section and inserting in lieu thereof the
9 13 following:

9 14 533D.12 DISCIPLINARY ACTION.

9 15 1. The superintendent may, after notice and hearing
9 16 pursuant to chapter 17A, take disciplinary action against a
9 17 licensee if the superintendent finds any of the following:
9 18 a. The licensee or any of its officers, directors,
9 19 shareholders, partners, or members has violated this chapter,
9 20 any rule adopted by the superintendent, or any other state or
9 21 federal law applicable to the conduct of its business.
9 22 b. The licensee has failed to pay a license fee required
9 23 under this chapter or to maintain in effect the bond or bonds
9 24 required under this chapter.
9 25 c. A fact or condition existing which, if it had existed
9 26 at the time of the original application for the license, would
9 27 have resulted in the denial of issuance of a license.
9 28 d. The licensee has abandoned its place of business for a
9 29 period of sixty days or more.
9 30 e. The licensee fails to pay an administrative penalty or
9 31 the cost of investigation as ordered by the superintendent.
9 32 f. The licensee has violated an order of the
9 33 superintendent.

9 34 2. The superintendent may impose one or more of the
9 35 following disciplinary actions against a licensee:
10 1 a. Revoke a license.
10 2 b. Suspend a license until further order of the
10 3 superintendent or for a specified period of time.
10 4 c. Impose a period of probation under specified
10 5 conditions.
10 6 d. Impose civil penalties in an amount not to exceed five
10 7 thousand dollars for each violation.
10 8 e. Issue a citation and warning respecting licensee
10 9 behavior.

10 10 f. Order the licensee to pay restitution.
10 11 3. The superintendent may order an emergency suspension of
10 12 a licensee's license pursuant to section 17A.18A. A written
10 13 order containing the facts or conduct which warrants the
10 14 emergency action shall be timely sent to the licensee by
10 15 restricted certified mail. Upon issuance of the suspension
10 16 order, the licensee must also be notified of the right to an
10 17 evidentiary hearing. A suspension proceeding shall be
10 18 promptly instituted and determined.

10 19 4. Except as provided in this section, a license shall not
10 20 be revoked or suspended except after notice and a hearing
10 21 thereon in accordance with chapter 17A.

10 22 5. A licensee may surrender a license by delivering to the
10 23 superintendent written notice of surrender, but a surrender
10 24 does not affect the licensee's civil or criminal liability for
10 25 acts committed before the surrender.

10 26 6. A revocation, suspension, or surrender of a license
10 27 does not impair or affect the obligation of a preexisting
10 28 lawful contract between the licensee and any person, including
10 29 a debtor.

10 30 Sec. 15. Section 535.8, subsection 1, Code 2007, is
10 31 amended by striking the subsection and inserting in lieu
10 32 thereof the following:

10 33 1. DEFINITIONS. For purposes of this section, unless the
10 34 context otherwise requires:

10 35 a. "Collect" means the collection of any fees or costs
11 1 payable directly or indirectly by the borrower and imposed
11 2 directly or indirectly by the lender as an incident to or a
11 3 condition of making or closing the loan.

11 4 b. "Lender" means a person who makes or originates a loan;
11 5 a person who is identified as a lender on the loan documents;
11 6 a person who arranges, negotiates, or brokers a loan; and a
11 7 person who provides any goods or services as an incident to or
11 8 as a condition required for the making or closing of the loan.

11 9 c. "Loan" means a loan of money which is wholly or in part
11 10 to be used for the purpose of purchasing real property which
11 11 is a single-family or a two-family dwelling occupied or to be
11 12 occupied by the borrower. A loan includes the refinancing of
11 13 a contract or sale, and the refinancing of a prior loan,
11 14 whether or not the borrower also was the borrower under the
11 15 prior loan, and the assumption of a prior loan.

11 16 Sec. 16. Section 535B.2, Code 2007, is amended to read as
11 17 follows:

11 18 535B.2 EXEMPTIONS.

11 19 This chapter, except for sections 535B.3, 535B.11, 535B.12,
11 20 and 535B.13, does not apply to any of the following:

11 21 1. A bank, bank holding company, savings bank, savings and
11 22 loan association, or credit union organized under the laws of
11 23 this state, another state, or the United States, or a wholly
11 24 ~~owned operating subsidiary or affiliate~~ of such a bank, bank
11 25 ~~holding company,~~ savings bank, savings and loan association,

11 26 or credit union.

11 27 2. A loan company licensed under chapter 536 or 536A.

11 28 3. An insurance company or a subsidiary or affiliate of an
11 29 insurance company organized under the laws of this state,
11 30 another state, or the United States, and subject to regulation
11 31 by the commissioner of insurance.

11 32 4. Mortgage lenders or mortgage bankers maintaining an
11 33 office in this state whose principal business in this state is
11 34 conducted with or through mortgage lenders or mortgage bankers
11 35 otherwise exempt under this section and which maintain a place
12 1 of business in this state.

12 2 ~~5. An insurance producer licensed under chapter 522B.~~

12 3 ~~6.~~ 5. An individual who is employed by a person otherwise
12 4 exempt under this section, or who is under an exclusive
12 5 contract with a person otherwise exempt under this section to
12 6 the extent that the individual is acting within the scope of
12 7 the individual's employment or exclusive contract with the
12 8 exempt person and is acting within the scope of the exempt
12 9 person's charter, license, authority, approval, or
12 10 certificate.

12 11 ~~7.~~ 6. A real estate broker licensed under chapter 543B
12 12 while engaged in practice as a real estate broker.

12 13 ~~8.~~ 7. A nonprofit organization qualifying for tax-exempt
12 14 status under the Internal Revenue Code as defined in section
12 15 422.3 which offers housing services to low and moderate income
12 16 families.

12 17 Sec. 17. Section 535B.3, subsections 1 and 3, Code 2007,
12 18 are amended to read as follows:

12 19 1. A person exempt under section 535B.2, subsection 4 or ~~6~~
12 20 7, shall register with the administrator.

12 21 3. The registrant, except a nonprofit organization exempt
12 22 under section 535B.2, subsection ~~8~~ 7, shall pay an annual
12 23 registration fee of one hundred dollars.

12 24 Sec. 18. Section 535B.4, subsections 6 and 7, Code
12 25 Supplement 2007, are amended to read as follows:

12 26 6. Licenses granted under this chapter expire on the next
12 27 ~~June 30~~ December 31 after their issuance.

12 28 7. Applications for renewals of licenses and individual
12 29 registrations under this chapter must be filed with the
12 30 administrator before ~~June 1~~ December 1 of the year of
12 31 expiration on forms prescribed by the administrator. A
12 32 renewal application must be accompanied by a fee of two
12 33 hundred dollars for a license to transact business solely as a
12 34 mortgage broker, and four hundred dollars for a license to
12 35 transact business as a mortgage banker. The fee to renew an
13 1 individual registration shall be the fee determined pursuant
13 2 to section 535B.4A. The administrator may assess a late fee
13 3 of ten dollars per day for applications or registrations
13 4 accepted for processing after ~~June~~ December 1.

13 5 Sec. 19. Section 535B.4, Code Supplement 2007, is amended
13 6 by adding the following new subsection:

13 7 NEW SUBSECTION. 9. In addition to the application and
13 8 renewal fees provided for in subsections 4 and 7, the
13 9 administrator may assess application and renewal fees for each
13 10 branch location of the licensee, sponsor fees, and change of
13 11 sponsor fees.

13 12 Sec. 20. Section 535B.4A, Code 2007, is amended to read as
13 13 follows:

13 14 535B.4A INDIVIDUAL REGISTRATION REQUIREMENTS == FEES.

13 15 1. A natural person who is a mortgage banker or mortgage
13 16 broker and who is employed by, under contract with, or is an
13 17 agent of a licensee under section 535B.4 shall apply for an
13 18 individual registration with the administrator and shall
13 19 register annually with the administrator. The administrator
13 20 shall collect registration fees necessary to cover the costs
13 21 associated with the annual registrations ~~made pursuant to this~~
13 22 ~~section, including but not limited to sponsor fees and change~~
13 23 ~~of sponsor fees.~~

13 24 2. Beginning January 1, 2009, each applicant for an
13 25 individual registration must meet the education and training
13 26 requirements adopted by the administrator by rule. The
13 27 education and training requirements may include a post-high
13 28 school education requirement or a requirement that the
13 29 applicant have successfully completed accredited courses
13 30 covering specified subject matters. The administrator may
13 31 incorporate any education and training criteria recommended by
13 32 federal law, or by other financial regulators, self-regulatory
13 33 organizations, or financial industry organizations.

13 34 3. Beginning January 1, 2009, each applicant for an
13 35 individual registration must have passed an examination
14 1 prescribed by the administrator within two years immediately

14 2 prior to making the application to the administrator. An
14 3 applicant who fails the examination once shall be allowed to
14 4 take the examination up to two additional times, provided at
14 5 least one month has elapsed since the applicant last took the
14 6 examination. An applicant shall pay any fees associated with
14 7 the examination.

14 8 ~~2.~~ 4. An individual registrant who registers applies for
14 9 an individual registration pursuant to this section for the
14 10 first time shall submit to a national criminal history check
14 11 through the federal bureau of investigation prior to being
14 12 registered. The administrator may submit the registrant's
14 13 fingerprints to the federal bureau of investigation by the
14 14 department of public safety through the state criminal history
14 15 repository for the purpose of a national criminal history
14 16 check. The results of a criminal history check conducted
14 17 pursuant to this subsection shall not be considered a public
14 18 record under chapter 22. The administrator shall collect fees
14 19 necessary to cover the costs associated with criminal history
14 20 checks conducted pursuant to this section.

14 21 ~~3.~~ 5. A person shall not be eligible for licensing
14 22 pursuant to section 535B.4 unless all individual registrants
14 23 employed by, under contract with, or who are agents of the
14 24 person have successfully completed the registration and
14 25 criminal background check required by this section.

14 26 ~~4.~~ 6. The registration of an individual registrant
14 27 pursuant to this section is not assignable.

14 28 ~~5.~~ 7. The registration of an individual registrant
14 29 pursuant to this section expires on ~~June 30~~ December 31
14 30 following the date of registration.

14 31 ~~6.~~ 8. An individual registrant who fails to comply with
14 32 the requirements of section 535B.9A shall not be ~~registered~~
14 33 renewed or the registration of the individual registrant may
14 34 be suspended or revoked by the administrator.

14 35 Sec. 21. Section 535B.7, subsection 2, Code 2007, is
15 1 amended by adding the following new paragraph:

15 2 NEW PARAGRAPH. f. Order the licensee or individual
15 3 registrant to pay restitution.

15 4 Sec. 22. Section 535B.8, Code 2007, is amended to read as
15 5 follows:

15 6 535B.8 OPERATING WITHOUT A LICENSE OR REGISTRATION.

15 7 A person, who without first obtaining a license or
15 8 individual registration under this chapter, engages in the
15 9 business or occupation of, or advertises or holds the person
15 10 out as, or claims to be, or temporarily acts as, a mortgage
15 11 banker or mortgage broker in this state is guilty of a class
15 12 "D" felony and may be prosecuted by the attorney general or a
15 13 county attorney.

15 14 Sec. 23. Section 535B.9, subsection 1, Code 2007, is
15 15 amended to read as follows:

15 16 1. An applicant for a license shall file with the
15 17 administrator a bond furnished by a surety company authorized
15 18 to do business in this state, together with evidence of
15 19 whether the applicant is seeking to transact business as a
15 20 mortgage broker or as a mortgage banker. The bond shall be in
15 21 the amount of fifty thousand dollars for a mortgage broker and
15 22 one hundred thousand dollars for a mortgage banker. The bond
15 23 shall be continuous in nature until canceled by the surety
15 24 with not less than thirty days' notice in writing to the
15 25 mortgage broker or mortgage banker and to the administrator
15 26 indicating the surety's intention to cancel the bond on a
15 27 specific date. The bond shall be for the use of the state and
15 28 any persons who may have causes of action against the
15 29 applicant. The bond shall be conditioned upon the applicant's
15 30 faithfully conforming to and abiding by this chapter and any
15 31 rules adopted under this chapter and shall require that the
15 32 surety pay to the state and to any persons all moneys that
15 33 become due or owing to the state and to the persons from the
15 34 applicant by virtue of this chapter.

15 35 Sec. 24. Section 535B.10, subsection 2, Code 2007, is
16 1 amended to read as follows:

16 2 2. For the purposes of discovering violations of this
16 3 chapter or any related rules or for securing information
16 4 lawfully required under this chapter, the administrator may at
16 5 any time and as often as the administrator deems necessary,
16 6 but in no event less frequently than once during each two-year
16 7 period, investigate the business and examine the books,
16 8 accounts, records, and files used by a licensee or individual
16 9 registrant.

16 10 Sec. 25. Section 535B.10, subsection 6, paragraph b, Code
16 11 2007, is amended to read as follows:

16 12 b. The administrator may furnish information relating to

16 13 the supervision of licensees and registrants to the federal
16 14 agencies or federally related entities listed in subsection 3,
16 15 the federal deposit insurance corporation, the federal reserve
16 16 system, the office of the comptroller of the currency, the
16 17 office of thrift supervision, the national credit union
16 18 administration, the federal home loan bank, ~~and a financial~~
16 19 institution regulatory ~~authorities authority~~ of ~~any other~~
16 20 ~~states state, a professional licensing authority of this state~~
16 21 ~~or any other state, or a law enforcement agency,~~ or to any
16 22 official or supervising examiner of such regulatory
16 23 authorities.

16 24 Sec. 26. Section 536.3, Code 2007, is amended to read as
16 25 follows:

16 26 536.3 BOND.

16 27 The applicant shall also at the same time file with the
16 28 superintendent a bond to be approved by the superintendent in
16 29 which the applicant shall be the obligor, with one or more
16 30 sureties, in the sum of ~~one~~ twenty-five thousand dollars. The
16 31 said bond shall run to the state for the use of the state and
16 32 of any person or persons who may have a cause of action
16 33 against the obligor of said bond under the provisions of this
16 34 chapter. Such bond shall be conditioned that said obligor
16 35 will faithfully conform to and abide by the provisions of this
17 1 chapter and of all rules and regulations lawfully made by the
17 2 superintendent hereunder, and will pay to the state and to any
17 3 such person or persons any and all moneys that may become due
17 4 or owing to the state or to such person or persons from said
17 5 obligor under and by virtue of the provisions of this chapter.

17 6 Sec. 27. Section 536.6, unnumbered paragraph 1, Code 2007,
17 7 is amended to read as follows:

17 8 If the superintendent shall find at any time that the bond
17 9 is insecure or exhausted or otherwise of doubtful validity or
17 10 collectibility, an additional bond to be approved by the
17 11 superintendent, with one or more sureties and of the character
17 12 specified in section 536.3, in the sum of not more than ~~one~~
17 13 twenty-five thousand dollars, shall be filed by the licensee
17 14 within ten days after written demand upon the licensee by the
17 15 superintendent.

17 16 Sec. 28. Section 536.9, Code 2007, is amended by striking
17 17 the section and inserting in lieu thereof the following:

17 18 536.9 DISCIPLINARY ACTION.

17 19 1. The superintendent may, after notice and hearing
17 20 pursuant to chapter 17A, take disciplinary action against a
17 21 licensee if the superintendent finds any of the following:

17 22 a. The licensee has violated a provision of this chapter
17 23 or a rule adopted under this chapter or any other state or
17 24 federal law, rule, or regulation applicable to the conduct of
17 25 its business.

17 26 b. A fact or condition exists which would have warranted
17 27 the superintendent to refuse to originally issue the license.

17 28 c. The licensee has failed to pay the annual license fee
17 29 or to maintain in effect the bond or bonds required under the
17 30 provisions of this chapter.

17 31 d. The licensee is insolvent.

17 32 e. The licensee has violated an order of the
17 33 superintendent.

17 34 2. The superintendent may impose one or more of the
17 35 following disciplinary actions against a licensee:

18 1 a. Revoke a license.

18 2 b. Suspend a license until further order of the
18 3 superintendent or for a specified period of time.

18 4 c. Impose a period of probation under specified
18 5 conditions.

18 6 d. Impose civil penalties in an amount not to exceed five
18 7 thousand dollars for each violation.

18 8 e. Issue a citation and warning respecting licensee
18 9 behavior.

18 10 f. Order the licensee to pay restitution.

18 11 3. The superintendent may order an emergency suspension of
18 12 a licensee's license pursuant to section 17A.18A. A written
18 13 order containing the facts or conduct which warrants the
18 14 emergency action shall be timely sent to the licensee by
18 15 restricted certified mail. Upon issuance of the suspension
18 16 order, the licensee must also be notified of the right to an
18 17 evidentiary hearing. A suspension proceeding shall be
18 18 promptly instituted and determined.

18 19 4. Except as provided in this section, a license shall not
18 20 be revoked or suspended except after notice and a hearing
18 21 thereon in accordance with chapter 17A.

18 22 5. A licensee may surrender a license by delivering to the
18 23 superintendent written notice of surrender, but a surrender

18 24 does not affect the licensee's civil or criminal liability for
18 25 acts committed before the surrender.

18 26 6. A revocation, suspension, or surrender of a license
18 27 does not impair or affect the obligation of a preexisting
18 28 lawful contract between the licensee and any person, including
18 29 a borrower.

18 30 Sec. 29. Section 536.11, unnumbered paragraph 2, Code
18 31 2007, is amended to read as follows:

18 32 Each licensee shall annually on or before the fifteenth day
18 33 of ~~March~~ April file a report with the superintendent giving
18 34 such relevant information as the superintendent reasonably may
18 35 require concerning the business and operations during the
19 1 preceding calendar year of the licensed places of business
19 2 conducted by such licensee within the state. Such report
19 3 shall be made under oath and shall be in the form prescribed
19 4 by the superintendent who shall make and publish annually an
19 5 analysis and recapitulation of such reports.

19 6 Sec. 30. Section 536.12, Code 2007, is amended to read as
19 7 follows:

19 8 536.12 RESTRICTIONS ON PRACTICES.

19 9 1. No licensee shall conduct the business of making loans
19 10 under the provisions of this chapter within any office, room,
19 11 suite or place of business in which any other business is
19 12 solicited or engaged in, or in association or conjunction
19 13 therewith, except as may be authorized in writing by the
19 14 superintendent upon the superintendent's finding that the
19 15 character of such other business is such that the granting of
19 16 such authority would not facilitate evasions of this chapter
19 17 or of the rules lawfully made by the superintendent hereunder.

19 18 2. No licensee shall make any loan provided for by this
19 19 chapter under any other name or at any other place of business
19 20 than that named in the license.

19 21 3. No licensee shall take any instrument in which blanks
19 22 are left to be filled in after execution.

19 23 4. No licensee shall agree to obtain or arrange a
19 24 residential mortgage for a potential borrower from a third
19 25 person, unless the licensee also has a mortgage broker license
19 26 and complies with all of the provisions of chapter 535B.

19 27 Sec. 31. Section 536.16, unnumbered paragraph 1, Code
19 28 2007, is amended to read as follows:

19 29 Notwithstanding other provisions of this chapter to the
19 30 contrary, a person who neither has an office physically
19 31 located in this state nor engages in face-to-face solicitation
19 32 in this state, if authorized by another state to make loans in
19 33 that state at a rate of finance charge in excess of the rate
19 34 provided in chapter 535, shall not be subject to ~~the following~~
19 35 ~~provisions of this chapter: section 536.10 to the extent it~~

20 1 ~~requires the superintendent to make an examination of the~~
20 2 ~~affairs, place of business, and records of the person on a~~
20 3 ~~periodic basis.~~

20 4 Sec. 32. Section 536.16, subsections 1 through 4, Code
20 5 2007, are amended by striking the subsections.

20 6 Sec. 33. NEW SECTION. 536A.7A BONDS.

20 7 1. An applicant for a license shall file with the
20 8 superintendent a bond furnished by a surety company authorized
20 9 to do business in this state. The bond shall be in the amount
20 10 of twenty-five thousand dollars. The bond shall be continuous
20 11 in nature until canceled by the surety with not less than
20 12 thirty days notice in writing to the applicant and to the
20 13 superintendent indicating the surety's intention to cancel the
20 14 bond on a specific date. The bond shall be for the use of the
20 15 state and any persons who may have causes of action against
20 16 the applicant. The bond shall be conditioned upon the
20 17 applicant's faithfully conforming to and abiding by this
20 18 chapter and any rules adopted under this chapter and shall
20 19 require that the surety pay to the state and to any persons
20 20 all moneys that become due or owing to the state and to the
20 21 persons from the applicant by virtue of this chapter.

20 22 2. In lieu of filing a bond, the applicant may pledge an
20 23 alternative form of collateral acceptable to the
20 24 superintendent, if the alternative collateral provides
20 25 protection to the state and any aggrieved person that is
20 26 equivalent to that provided by a bond.

20 27 Sec. 34. Section 536A.14, unnumbered paragraph 1, Code
20 28 2007, is amended to read as follows:

20 29 Each licensee shall annually on or before the fifteenth day
20 30 of ~~March~~ April file with the superintendent a report in
20 31 writing showing the results of the operation of its industrial
20 32 loan business for the previous calendar year, which reports
20 33 shall contain:

20 34 Sec. 35. Section 536A.18, Code 2007, is amended by

20 35 striking the section and inserting in lieu thereof the
21 1 following:
21 2 536A.18 DISCIPLINARY ACTION.
21 3 1. The superintendent may, after notice and hearing
21 4 pursuant to chapter 17A, take disciplinary action against a
21 5 licensee if the superintendent finds any of the following:
21 6 a. That the licensee has failed to pay the annual license
21 7 fee required by this chapter or to maintain in effect the bond
21 8 or bonds required under this chapter.
21 9 b. That the licensee has violated any of the provisions of
21 10 this chapter or a rule adopted under this chapter or any other
21 11 state or federal law, rule, or regulation applicable to the
21 12 conduct of its business.
21 13 c. That the licensee has refused to submit to the
21 14 examination required by this chapter.
21 15 d. That the licensee has neglected or refused for a period
21 16 of more than thirty days to pay a final judgment rendered
21 17 against it in the courts of this state.
21 18 e. That the licensee has become insolvent.
21 19 f. A fact or condition exists which would have warranted
21 20 the superintendent to refuse to originally issue the license.
21 21 g. The licensee has violated an order of the
21 22 superintendent.
21 23 2. The superintendent may impose one or more of the
21 24 following disciplinary actions against a licensee:
21 25 a. Revoke a license.
21 26 b. Suspend a license until further order of the
21 27 superintendent or for a specified period of time.
21 28 c. Impose a period of probation under specified
21 29 conditions.
21 30 d. Impose civil penalties in an amount not to exceed five
21 31 thousand dollars for each violation.
21 32 e. Issue a citation and warning respecting licensee
21 33 behavior.
21 34 f. Order the licensee to pay restitution.
21 35 3. The superintendent may order an emergency suspension of
22 1 a licensee's license pursuant to section 17A.18A. A written
22 2 order containing the facts or conduct which warrants the
22 3 emergency action shall be timely sent to the licensee by
22 4 restricted certified mail. Upon issuance of the suspension
22 5 order, the licensee must also be notified of the right to an
22 6 evidentiary hearing. A suspension proceeding shall be
22 7 promptly instituted and determined.
22 8 4. Except as provided in this section, a license shall not
22 9 be revoked or suspended except after notice and a hearing
22 10 thereon in accordance with chapter 17A.
22 11 5. A licensee may surrender a license by delivering to the
22 12 superintendent written notice of surrender, but a surrender
22 13 does not affect the licensee's civil or criminal liability for
22 14 acts committed before the surrender.
22 15 6. A suspension, revocation, relinquishment, or expiration
22 16 of a license shall not invalidate, impair, or affect the
22 17 legality of obligations of any preexisting contracts, or
22 18 prevent the enforcement or collection thereof.
22 19 7. Judicial review of the actions of the superintendent
22 20 may be sought in accordance with the terms of the Iowa
22 21 administrative procedure Act, chapter 17A.
22 22 Sec. 36. Section 536A.23, subsection 1, Code 2007, is
22 23 amended by adding the following new paragraph:
22 24 NEW PARAGRAPH. e. Obtain or arrange a residential
22 25 mortgage loan for a potential borrower from a third person,
22 26 unless the industrial loan company also has a mortgage broker
22 27 license and complies with all provisions of chapter 535B.
22 28 Sec. 37. Section 558.70, subsection 4, Code Supplement
22 29 2007, is amended to read as follows:
22 30 4. This section applies to a contract seller who entered
22 31 into four or more residential real estate contracts in the
22 32 three hundred sixty-five days previous to the contract seller
22 33 signing the contract disclosure statement. For purposes of
22 34 this subsection, two or more entities sharing a common owner
22 35 or manager are considered a single contract seller. This
23 1 section does not apply to a person or organization listed in
23 2 section 535B.2, subsections 1 through 7 6.

23 3 EXPLANATION

23 4 This bill makes a number of changes to Code provisions
23 5 under the purview of the banking division of the department of
23 6 commerce.
23 7 With regard to Code chapter 524, dealing with bank
23 8 regulation, the bill adds bank holding companies and savings
23 9 and loan holding companies to the list of entities authorized
23 10 to use the word "bank" in the name or title of their business

23 11 organization, designates successor acting superintendents in
23 12 the event the office of the superintendent of banking is
23 13 vacant, and allows the superintendent regulatory flexibility
23 14 in the event of a determination of a disaster impacting a
23 15 bank's operation. The bill restricts application of a
23 16 prohibition against obtaining a loan or property from banks
23 17 applicable to specified banking officials and employees, to
23 18 banks or savings and loan associations the official or
23 19 employee is personally involved in examining or reviewing, and
23 20 provides that information received by the superintendent of
23 21 banking regarded as confidential by other regulatory agencies
23 22 and entities will maintain that confidential status when in
23 23 the custody of the banking division. The bill also changes
23 24 from a calendar to fiscal year basis information contained in
23 25 the superintendent's annual report, eliminates outdated
23 26 geographic restrictions on a bank's ability to change its
23 27 principal place of business, and makes it a fraudulent
23 28 practice to provide false information for credit to any type
23 29 of financial institution, as defined in the bill, as well as
23 30 mortgage bankers and mortgage brokers.

23 31 Regarding Code chapter 533A, dealing with debt management,
23 32 the bill changes a reference to "attorneys at law" to refer to
23 33 a licensed attorney admitted to practice in Iowa acting solely
23 34 as an incident to the attorney's legal practice in a section
23 35 relating to exemptions from the Code chapter, and adds to an
24 1 exemption relating to employees of licensees that they are
24 2 exempt from licensing while performing services for their
24 3 employer. The bill adds to the definition of engaging in the
24 4 business of debt management solicitation either by a person on
24 5 their own behalf or on behalf of another person, and prohibits
24 6 engaging in debt settlement services whereby a person accepts
24 7 a fee from a debtor in obtaining concessions as an
24 8 intermediary with creditors and subsequently advises the
24 9 debtor to discontinue making creditor payments, and imposes a
24 10 civil penalty of up to \$5,000 for each violation. Further,
24 11 the bill provides an expanded array of disciplinary actions
24 12 and uniform processes available to the superintendent in the
24 13 event of specified licensee criminal and civil violations,
24 14 unfair conduct, insolvency, failure to post required bond, or
24 15 violations of an order of the superintendent, and specifies
24 16 injunctive relief and civil penalties in an amount up to
24 17 \$5,000 for violations of the Code chapter.

24 18 In connection with Code chapter 533D, relating to delayed
24 19 deposit services, the bill provides that delayed deposit
24 20 companies must be physically located in this state in order to
24 21 operate a delayed deposit service in the state, and provides
24 22 an expanded array of disciplinary actions and uniform
24 23 processes available in the event of licensee misconduct
24 24 similar in nature to the actions available with respect to
24 25 licensees under Code chapter 533A pursuant to the bill,
24 26 including the civil penalty of up to \$5,000.

24 27 Concerning Code chapter 535, relating to regulation of
24 28 matters pertaining to money and interest, the bill expands a
24 29 definition of "lender", to which requirements relating to
24 30 costs and fees on residential real estate loan costs and
24 31 disclosures regarding discount points apply, to include loan
24 32 originators, brokers, and persons providing any goods or
24 33 services as an incident to or condition required for the
24 34 making or closing of a loan.

24 35 The bill additionally modifies Code chapter 535B, dealing
25 1 with mortgage bankers and brokers. The bill deletes a
25 2 reference to an "affiliate" of a bank, bank holding company,
25 3 savings bank, savings and loan association, or credit union
25 4 and an insurance producer, as qualifying for an exemption from
25 5 applicability of much of the chapter and modifies the
25 6 exemption for real estate brokers, changes licensing and
25 7 individual registration expiration periods and renewal
25 8 deadlines to December 31 and December 1, respectively, and
25 9 provides for additional fees in the form of application and
25 10 renewal fees for branch locations, sponsor fees, and change of
25 11 sponsor fees. Further, the bill authorizes establishment of
25 12 education and testing requirements as a prerequisite to
25 13 registration, authorizes payment of restitution by licensees
25 14 as part of a disciplinary case, clarifies that acting as a
25 15 mortgage banker or broker as an employee or contractor of a
25 16 licensee without obtaining individual registration is a class
25 17 "D" felony, and increases the size of the bond mortgage banker
25 18 licensees must pay from \$50,000 to \$100,000. The bill also
25 19 mandates auditing of licensees or registrants under the Code
25 20 chapter at least once every two years, and expands the
25 21 entities to which information relating to licensee and

25 22 registrant supervision may be furnished to include
25 23 professional licensing authorities in this state, other
25 24 states, and law enforcement agencies.
25 25 Regarding Code chapter 536, relating to regulated loans,
25 26 the bill increases the size of the bond paid by licensees from
25 27 \$1,000 to \$25,000, and extends, similar to other provisions of
25 28 the bill, an expanded array of disciplinary actions and
25 29 uniform processes available in the event of specified licensee
25 30 misconduct. The bill changes the date licensees under the
25 31 Code chapter must submit their annual reports from March 15 to
25 32 April 15, provides that a licensee may not broker loans
25 33 without a mortgage broker license, and deletes several
25 34 exemptions previously applicable to nonresident licensees who
25 35 are not physically located in this state nor engaged in
26 1 face-to-face solicitation.
26 2 The bill additionally contains changes applicable to Code
26 3 chapter 536A, concerning industrial loans. The bill changes
26 4 the date for annual report submission from March 15 to April
26 5 15, and again imposes an expanded array of disciplinary
26 6 actions and uniform processes applicable to licensee
26 7 misconduct, including the civil penalty provision of up to
26 8 \$5,000. The bill provides that a licensee under the Code
26 9 chapter may not broker loans without a mortgage broker
26 10 license, and provides that licensees must post a bond in the
26 11 amount of \$25,000, or in the alternative pledge a form of
26 12 collateral providing a comparable degree of protection.
26 13 LSB 5291DP 82
26 14 rn/nh/5.2