

Senate Study Bill 1114

SENATE/HOUSE FILE _____
BY (PROPOSED IOWA FINANCE
AUTHORITY BILL)

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

A BILL FOR

1 An Act requiring licensure of and regulating escrow agents,
2 making an appropriation, and providing a penalty and an
3 effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1143DP 83
6 jr/rj/24

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1 1 Section 1. Section 16.5, subsection 1, Code 2009, is
2 amended by adding the following new paragraph:
1 3 NEW PARAGRAPH. v. Regulate the activities of escrow
1 4 agents through the escrow agent examining board.
1 5 Sec. 2. NEW SECTION. 16.200 PURPOSE.
1 6 The activity of escrow agents in facilitating real estate
1 7 transactions involves important rights of property owners and
1 8 lenders, and the receipt and disbursement of third-party
1 9 funds. Limiting the risk of fraud or other activity
1 10 detrimental to the economic well-being of Iowa's citizens and
1 11 promoting stability in real estate transactions is a public
1 12 purpose. In order to permit uniform and equitable regulation
1 13 of all escrow agents and to improve the standards of escrow
1 14 conduct, this chapter shall be construed to grant the board
1 15 authority to protect the public health, safety, and welfare.
1 16 Sec. 3. NEW SECTION. 16.201 DEFINITIONS.
1 17 As used in section 16.200, this section, and sections
1 18 16.202 through 16.225, unless the context otherwise requires:
1 19 1. "Board" means the escrow agent examining board.
1 20 2. "Escrow" means a transaction wherein a written
1 21 instrument, money, evidence of title to real or personal
1 22 property, or other thing of value is delivered, for the
1 23 purpose of paying an obligation or effecting the sale,
1 24 transfer, encumbrance, or lease of real property located in
1 25 this state, to a person not otherwise having any right, title,
1 26 or interest therein, to be held by that person until the
1 27 happening of a specified event or the performance of a
1 28 prescribed condition, when it is then to be delivered by such
1 29 person to a grantee, grantor, promisee, promisor, obligee,
1 30 obligor, bailee, bailor, or any agent or employee thereof.
1 31 3. "Escrow agent" means a person engaged in the business
1 32 of administering escrows.
1 33 4. "Examining division" means the escrow agent examining
1 34 division created within the authority.
1 35 5. "Licensee" means a person holding a valid license as an
2 1 escrow agent.
2 2 Sec. 4. NEW SECTION. 16.202 ESTABLISHMENT OF ESCROW
2 3 AGENT EXAMINING BOARD AND DIVISION.
2 4 1. An escrow agent examining board is created consisting
2 5 of three members who are professional members and two members
2 6 who shall represent the general public. Members shall be
2 7 appointed by the governor, subject to confirmation by the
2 8 senate. A professional member shall be actively engaged in
2 9 the practice of escrowing and shall have been so engaged for
2 10 five years preceding appointment, the last two of which shall
2 11 have been in Iowa.
2 12 2. Appointments shall be for three-year terms and shall
2 13 commence and end as provided in section 69.19. Vacancies
2 14 shall be filled for the unexpired term by appointment of the
2 15 governor and are subject to senate confirmation. Members
2 16 shall serve no more than three terms or nine years, whichever
2 17 is less.
2 18 3. An escrow agent examining division is created within

2 19 the authority. The executive director of the authority shall
2 20 appoint a director of the examining division who shall serve
2 21 as an ex officio, nonvoting member of the board. The
2 22 executive director of the authority shall hire and provide
2 23 staff to assist the board in administering this chapter.

2 24 Sec. 5. NEW SECTION. 16.203 LICENSE REQUIRED ==
2 25 EXEMPTIONS.

2 26 A person shall not engage in business as an escrow agent
2 27 without first obtaining a license pursuant to this chapter.
2 28 This chapter shall not apply to any of the following:

2 29 1. A bank, bank holding company, trust company, savings
2 30 bank, savings and loan association, or credit union that is
2 31 subject to licensing, supervision, or auditing by an agency of
2 32 this state, another state, or the United States, or any
2 33 subsidiary or affiliate thereof.

2 34 2. A mortgage lender or mortgage banker maintaining an
2 35 office in this state whose principal business in this state is
3 1 conducted with or through a mortgage lender or mortgage banker
3 2 to which this chapter does not otherwise apply and which
3 3 maintains a place of business in this state.

3 4 3. An insurance company organized under the laws of this
3 5 state and subject to regulation by the commissioner of
3 6 insurance, or a wholly owned subsidiary with its principal
3 7 place of business in this state.

3 8 4. A person licensed to practice law in this state
3 9 rendering services in the performance of duties as an attorney
3 10 at law and utilizing an interest on lawyers' trust account to
3 11 hold escrow funds. However, an attorney who owns or operates
3 12 a company engaged in the business of administering escrows
3 13 separate and distinct from the practice of law shall be
3 14 subject to this chapter.

3 15 5. A real estate broker licensed under chapter 543B who is
3 16 the broker for a party to the escrow and utilizing a real
3 17 estate escrow account.

3 18 6. An officer or employee of the federal government, any
3 19 state government, or a political subdivision of the state
3 20 acting in an official capacity.

3 21 7. A person acting under the supervision or order of any
3 22 court.

3 23 8. A qualified intermediary facilitating an exchange under
3 24 section 1031 of the Internal Revenue Code whose role in the
3 25 transaction is limited to the receipt of moneys or other
3 26 property.

3 27 Sec. 6. NEW SECTION. 16.204 LICENSE == APPLICATION.

3 28 An application for an escrow agent license must be in
3 29 writing in such form as is prescribed by the board, and must
3 30 be verified on oath by the applicant. Notification of
3 31 material changes in the information contained in an
3 32 application must be immediately filed with the examining
3 33 division. The application must be accompanied by a filing fee
3 34 as set by rule adopted pursuant to this chapter and contain
3 35 the following:

4 1 1. The applicant's form of business organization and place
4 2 of organization.

4 3 2. If the applicant is a corporation or limited liability
4 4 company, the address of the physical location of its
4 5 headquarters, a list of employees, officers, controlling
4 6 persons, and directors of such corporation or company and
4 7 their residential addresses, telephone numbers, and other
4 8 identifying information as required by rule adopted pursuant
4 9 to this chapter. If the applicant is a sole proprietorship or
4 10 partnership, the address of its business location, a list of
4 11 owners, partners, employees, and controlling persons and their
4 12 residential addresses, telephone numbers, and other
4 13 identifying information as required by rule adopted pursuant
4 14 to this chapter.

4 15 3. The name under which the applicant will conduct
4 16 business.

4 17 4. The qualifications and business history of the
4 18 applicant and all of its officers, directors, owners,
4 19 partners, employees, and controlling persons.

4 20 5. The name of a natural person to receive service of
4 21 process.

4 22 6. Evidence of compliance with the financial
4 23 responsibility requirements of section 16.210.

4 24 7. Whether any of the officers, directors, owners,
4 25 partners, employees, or controlling persons have been
4 26 convicted of any crime which relates to the business or duties
4 27 of escrow agents, or have suffered a judgment in any civil
4 28 action involving fraud, misrepresentation, or any unfair or
4 29 deceptive act or practice.

4 30 8. Any other information the board may require by rule.

4 31 Sec. 7. NEW SECTION. 16.205 GRANTING AND DENIAL OF
4 32 LICENSE.

4 33 1. Upon the filing of an application for a license on a
4 34 form provided by the board and satisfying the requirements as
4 35 set forth in this chapter, the board shall issue and deliver
5 1 to the applicant a license to engage in the business of an
5 2 escrow agent at the location set forth in the license if the
5 3 board finds the financial responsibility, character, and
5 4 general fitness of the applicant and of the members and
5 5 employees thereof if the applicant is a partnership,
5 6 association, or other organization and of the officers,
5 7 directors, and employees thereof if the applicant is a
5 8 corporation, are such to warrant belief that the business will
5 9 be operated honestly, soundly, and efficiently in the public
5 10 interest, consistent with the purposes of this chapter. If
5 11 the board does not so find, the board shall not issue the
5 12 license and the board shall notify the applicant in writing of
5 13 the denial and the reasons for the denial.

5 14 2. The board shall approve or deny an application for a
5 15 license within ninety days after the filing of the application
5 16 for a license.

5 17 Sec. 8. NEW SECTION. 16.206 LICENSE == DURATION ==
5 18 POSTING.

5 19 An escrow agent's license remains in effect until
5 20 surrendered, revoked, suspended, or until the license expires
5 21 and copies of the license shall at all times be kept
5 22 conspicuously posted in all places of business of the
5 23 licensee.

5 24 Sec. 9. NEW SECTION. 16.207 LICENSE == SPECIFICATION OF
5 25 PLACE OF BUSINESS.

5 26 An applicant desiring to be licensed as an escrow agent
5 27 shall maintain a physical place of business in this state for
5 28 the transaction of business pursuant to the authority granted
5 29 in the license. A licensee may transact business from another
5 30 location other than that designated in the license.

5 31 Sec. 10. NEW SECTION. 16.208 PROHIBITION ON
5 32 ADMINISTERING ESCROWS IN CONJUNCTION WITH MORTGAGE BROKERS ==
5 33 EXCEPTIONS.

5 34 A licensee who is also a mortgage broker subject to
5 35 licensing pursuant to chapter 535B shall not conduct the
6 1 business of administering escrows pursuant to this chapter
6 2 unless the licensee and the mortgage broker maintain separate
6 3 accounts, books, and records, and maintain separate licenses.

6 4 Sec. 11. NEW SECTION. 16.209 LICENSE == EXPIRATION,
6 5 RENEWAL, AND REINSTATEMENT == FEES.

6 6 1. A license issued pursuant to this chapter expires on
6 7 July 1 of each year if not renewed. A license may be renewed
6 8 prior to expiration by filing an application for renewal,
6 9 paying the annual fee for the succeeding year as set by the
6 10 board, and submitting all information required to complete the
6 11 renewal.

6 12 2. The escrow agent examining board may recommend rules
6 13 for adoption by the Iowa finance authority board which
6 14 establish a grace period following expiration of a license in
6 15 which the license is not invalidated. The escrow agent
6 16 examining board may assess a reasonable penalty for renewal of
6 17 a license during the grace period. Failure of a licensee to
6 18 renew a license within the grace period shall cause the
6 19 license to lapse. A licensee whose license has lapsed shall
6 20 not act as an escrow agent until the license is reinstated.

6 21 Sec. 12. NEW SECTION. 16.210 FINANCIAL RESPONSIBILITY.

6 22 1. At the time of filing an application for an escrow
6 23 agent license, or any renewal or reinstatement of an escrow
6 24 agent license, the applicant shall provide satisfactory
6 25 evidence to the board of having obtained evidence of financial
6 26 responsibility.

6 27 2. The escrow agent examining board may recommend rules
6 28 for adoption by the Iowa finance authority board which shall
6 29 establish financial responsibility requirements, which may
6 30 include fidelity bonds, surety bonds, errors and omissions
6 31 policies, or alternative forms of financial responsibility,
6 32 including collateral if the collateral provides protection to
6 33 the state and any aggrieved person that is equivalent to that
6 34 provided by a bond or errors and omissions policy.

6 35 3. A fidelity bond, surety bond, errors and omissions
7 1 policy, or alternative collateral required by the board shall
7 2 be kept in full force and effect as a condition precedent to
7 3 the escrow agent's authority to transact escrow business in
7 4 this state, and the escrow agent shall supply the board with
7 5 satisfactory evidence thereof upon request.

7 6 4. In the event of cancellation or withdrawal of the
7 7 required fidelity bond, surety bond, errors and omissions
7 8 policy, or alternative collateral, the board shall require new
7 9 evidence of financial responsibility. Failure to provide the
7 10 board with satisfactory evidence shall be sufficient grounds
7 11 for the suspension or revocation of the escrow agent's
7 12 license.

7 13 Sec. 13. NEW SECTION. 16.211 DUTIES OF THE BOARD.

7 14 1. The board shall enforce this chapter and shall conduct
7 15 examinations of applicants for licensure. The board shall
7 16 keep a record of its proceedings. The board shall adopt an
7 17 official seal which shall be affixed to all certificates of
7 18 licensure granted. The board shall maintain a roster showing
7 19 the name, place of business, and residence, and the date and
7 20 number of the certificate of licensure of every escrow agent
7 21 in this state.

7 22 2. The board shall elect annually from its members a
7 23 chairperson and vice chairperson. A majority of the members
7 24 constitutes a quorum. Action at any meeting shall not be
7 25 taken without the affirmative votes of a majority of the
7 26 members of the board.

7 27 3. The board shall do all of the following:

7 28 a. Recommend rules for adoption by the Iowa finance
7 29 authority board pursuant to chapter 17A, as set out in this
7 30 section.

7 31 b. Conduct or cause to be conducted an examination of each
7 32 licensee licensed pursuant to this chapter or rules adopted
7 33 pursuant to this chapter.

7 34 c. Conduct or cause to be conducted such investigations as
7 35 may be necessary to determine whether any person has violated
8 1 any provision of this chapter or rules adopted pursuant to
8 2 this chapter.

8 3 d. Conduct or cause to be conducted such examinations,
8 4 investigations, and hearings, in addition to those
8 5 specifically provided for by law, as may be necessary and
8 6 proper for the efficient administration of the laws of this
8 7 state relating to escrow.

8 8 e. Recommend to the Iowa finance authority board rules for
8 9 the fees to be paid by licensees for the supervision and
8 10 examination of the licensees by the board.

8 11 f. Recommend to the Iowa finance authority board rules for
8 12 the continuing education requirements for licensees.

8 13 Sec. 14. NEW SECTION. 16.212 EXAMINATIONS.

8 14 1. The board may conduct examinations of a licensee as
8 15 often as the board deems necessary for the purpose of assuring
8 16 the licensee is in compliance with all laws, rules, or orders
8 17 issued by the board.

8 18 2. The board shall have full access to a licensee's
8 19 records pertaining to escrow functions and may make inquiries
8 20 as may be necessary to ascertain the condition of the
8 21 licensee. All directors, incorporators, officers, employees,
8 22 and agents of a licensee being examined shall cooperate fully
8 23 with the board and shall answer all inquiries and furnish all
8 24 information pertaining to the same, to the best of their
8 25 knowledge and ability.

8 26 Sec. 15. NEW SECTION. 16.213 RECORDS OF ESCROW
8 27 TRANSACTIONS.

8 28 A licensee shall maintain, for a period of not less than
8 29 seven years, complete and suitable records of all escrow
8 30 transactions. Such records shall be maintained at the
8 31 licensee's principal place of business. The records required
8 32 by this section may be stored in electronic format.

8 33 Sec. 16. NEW SECTION. 16.214 RECORDS OF BOARD == PUBLIC
8 34 INSPECTION AND DISCIPLINARY ORDERS.

8 35 1. All papers, documents, reports, and other writings
9 1 filed with the board pursuant to this chapter shall be kept
9 2 confidential except as otherwise provided in this section,
9 3 notwithstanding chapter 22.

9 4 2. The board may release the papers, documents, reports,
9 5 and other writings in the course of an enforcement proceeding
9 6 or at a hearing held by the board.

9 7 3. The board may provide examination papers, documents,
9 8 reports, and other writings to the attorney general for
9 9 purposes of enforcing this chapter or the consumer fraud Act,
9 10 section 714.16.

9 11 Sec. 17. NEW SECTION. 16.215 SALE OR TRANSFER OF LICENSE
9 12 OR CHANGE IN CONTROL.

9 13 1. A license issued pursuant to this chapter is not
9 14 transferable.

9 15 2. A licensee shall make a new application to the board,
9 16 pursuant to section 16.204, under the following circumstances:

9 17 a. A change in at least twenty-five percent of the
9 18 outstanding voting stock of a licensee.
9 19 b. A bona fide sale of all or substantially all of the
9 20 ongoing operations of a licensee.
9 21 c. The sale of any outstanding voting stock of an escrow
9 22 agent if the acquisition will result in a change in the
9 23 control of the escrow agent.
9 24 3. The board may waive the requirements of this section
9 25 pursuant to an application that has undergone similar
9 26 investigation by a state or federal agency in connection with
9 27 the licensing of the applicant.
9 28 Sec. 18. NEW SECTION. 16.216 ADMINISTRATION FUND.
9 29 1. An administration fund is created in the state treasury
9 30 under the control of the board. Except as otherwise provided
9 31 by law, any moneys collected by the board or authority
9 32 pursuant to the escrow agent licensing provisions of this
9 33 chapter shall be deposited in the fund, is appropriated, and
9 34 shall only be used to carry out the programs and laws related
9 35 to the business of administering escrows as administered by
10 1 the board and the authority and pay the expenses related to
10 2 such operations of the board and the authority.
10 3 2. Notwithstanding section 8.33, moneys in the fund at the
10 4 end of each fiscal year shall not revert to any other fund but
10 5 shall remain in the fund for expenditure for subsequent fiscal
10 6 years.
10 7 3. Any interest or income earned on moneys in the fund
10 8 shall be credited to the fund after deducting any applicable
10 9 charges.
10 10 4. If the board determines that there are surplus moneys
10 11 in the fund after providing for operating expenses of the
10 12 board, the surplus moneys shall be transferred to the housing
10 13 assistance fund created pursuant to section 16.40.
10 14 5. Claims against the examining division or examining
10 15 board shall be payable solely and only out of the moneys,
10 16 assets, and revenues of the fund and are not an indebtedness
10 17 or liability of the Iowa finance authority.
10 18 Sec. 19. NEW SECTION. 16.217 LEGAL ACTION BY PRIVATE
10 19 PARTY.
10 20 A private party may bring an action against a person who
10 21 acts in the capacity of an escrow agent without a license
10 22 pursuant to this chapter to recover, in addition to actual
10 23 damages, one hundred dollars in statutory damages per each
10 24 transaction in violation of this chapter, reasonable attorney
10 25 fees, and costs. When the board has commenced action by
10 26 serving notice, a private party shall not bring a related
10 27 private cause of action based on the facts underlying the
10 28 pending action unless otherwise authorized by rules adopted
10 29 pursuant to this chapter.
10 30 Sec. 20. NEW SECTION. 16.218 DISCIPLINARY PROCEEDINGS.
10 31 1. The board may investigate the actions of a licensee and
10 32 may revoke or suspend the license or otherwise discipline a
10 33 licensee for violation of a provision of this chapter,
10 34 violation of chapter 272C, violation of a rule adopted
10 35 pursuant to this chapter, violation of an order of the board
11 1 or any other state or federal law applicable to the conduct of
11 2 its business, or commission of any of the following acts or
11 3 omissions:
11 4 a. The licensee has procured or attempted to procure a
11 5 license under this chapter by knowingly making a false
11 6 statement, submitting false information, refusing to provide
11 7 complete information in response to a question in an
11 8 application for licensure, or participating in any form of
11 9 fraud or misrepresentation.
11 10 b. The licensee has been convicted, including a conviction
11 11 based upon a plea of guilty or nolo contendere, of a crime
11 12 which is substantially related to the qualifications,
11 13 functions, and duties of an escrow agent.
11 14 c. A fact or condition exists which, if it had existed at
11 15 the time of the original application for the license, would
11 16 have warranted the board to refuse originally to issue the
11 17 license.
11 18 d. The licensee is found upon investigation to be
11 19 insolvent, in which case the license shall be revoked
11 20 immediately.
11 21 e. The financial condition of the licensee is such that it
11 22 cannot continue in business with safety to escrow agency
11 23 customers.
11 24 f. The licensee has committed fraud in connection with any
11 25 transaction governed by this chapter or a rule adopted
11 26 pursuant to this chapter or any other state or federal law
11 27 applicable to the conduct of its business.

11 28 g. The licensee has had a professional license of any kind
11 29 revoked in any state or jurisdiction. An agreement to
11 30 surrender a license and not to operate in an occupation in
11 31 which a professional license is required shall be considered a
11 32 revocation for the purposes of this paragraph.

11 33 2. The board may impose one or more of the following
11 34 disciplinary actions against a licensee:

11 35 a. Revoke a license.
12 1 b. Suspend a license until further order of the board or
12 2 for a specified period of time.
12 3 c. Impose a period of probation under specified
12 4 conditions.
12 5 d. Impose civil penalties in an amount not to exceed five
12 6 thousand dollars for each violation.
12 7 e. Issue a citation and warning respecting licensee
12 8 behavior.

12 9 3. The board may order an emergency suspension of a
12 10 license pursuant to chapter 17A. A written order containing
12 11 the facts or conduct which warrants the emergency action shall
12 12 be timely sent to the licensee by restricted certified mail.
12 13 Upon issuance of the suspension order, the licensee shall be
12 14 notified of the right to an evidentiary hearing. A suspension
12 15 proceeding shall be promptly instituted.

12 16 4. A licensee may surrender a license by delivering to the
12 17 board written notice of surrender, but a surrender does not
12 18 affect the licensee's civil or criminal liability for acts
12 19 committed before the surrender.

12 20 5. A revocation, suspension, or surrender of a license
12 21 does not impair or affect the obligation of a preexisting
12 22 lawful contract between the licensee and any person.

12 23 6. Notice of the entry of an order of suspension or
12 24 revocation or of the imposition of a penalty or denial of a
12 25 license to an escrow agent shall be given in writing, served
12 26 personally, or sent by certified mail to the last known
12 27 address of the escrow agent affected.

12 28 7. Upon the suspension or revocation of a license, or the
12 29 voluntary surrender of a license in lieu of suspension or
12 30 revocation, the board may immediately take possession of all
12 31 the property, business, and assets of the escrow agent and
12 32 retain possession of them pending further proceedings provided
12 33 for in this chapter or rules adopted pursuant to this chapter.

12 34 Sec. 21. NEW SECTION. 16.219 CEASE AND DESIST POWERS ==
12 35 INJUNCTIVE RELIEF == SUBPOENAS.

13 1 1. The board has the following cease and desist powers:
13 2 a. If the board has reason to believe that a person is
13 3 conducting business in an unsafe and injurious manner or in
13 4 violation of this chapter or rules adopted pursuant to this
13 5 chapter, after notice and hearing, the board may order a
13 6 person to cease and desist from violating any provision of
13 7 this chapter or rules adopted pursuant to this chapter.
13 8 b. The board, when conducting examinations,
13 9 investigations, or hearings, may administer oaths, and examine
13 10 and cross examine witnesses, receive evidence, and subpoena
13 11 witnesses, compel their attendance, and require the production
13 12 of all papers, documents, reports, and other writings which
13 13 the board deems relevant to the inquiry. In case of a refusal
13 14 of a person to comply with a subpoena issued under this
13 15 section or to testify with respect to any matter relevant to a
13 16 proceeding, on application of the board, the district court of
13 17 Polk county may issue an order requiring the person to comply
13 18 with the subpoena and to testify. A failure to obey an order
13 19 of the court to comply with the subpoena may be punished by
13 20 the court as a civil contempt. A cease and desist hearing
13 21 need not observe any formal rules of pleading or evidence.
13 22 c. If after the hearing, the board finds that the person
13 23 charged has violated this chapter or rules adopted pursuant to
13 24 this chapter, the board shall issue written findings, a copy
13 25 of which shall be served upon the person charged with the
13 26 violation, along with an order requiring the person to cease
13 27 and desist from engaging in the violation.

13 28 2. A person aggrieved by a cease and desist order of the
13 29 board may obtain judicial review of the order and the board
13 30 may obtain an order of the Polk county district court for the
13 31 enforcement of the cease and desist order.

13 32 3. A proceeding for judicial review must be initiated,
13 33 pursuant to section 17A.19, within thirty days after the
13 34 aggrieved person receives the cease and desist order. If a
13 35 proceeding is not initiated, the board may obtain a decree of
14 1 the Polk county district court for enforcement of the cease
14 2 and desist order.

14 3 4. A person who violates a cease and desist order of the

14 4 board may, after notice and hearing, and upon further order of
14 5 the board, be subject to a penalty not to exceed five thousand
14 6 dollars for each act or violation of the cease and desist
14 7 order.

14 8 5. The board may request the attorney general to enforce
14 9 the provisions of this chapter. A civil enforcement action by
14 10 the attorney general may be filed in equity in either the
14 11 county in which the violation occurred or Polk county. A
14 12 civil enforcement action by the attorney general may seek any
14 13 or all of the following:

14 14 a. Temporary and permanent injunctive relief.
14 15 b. Restitution for an aggrieved party due to a violation
14 16 of this chapter or the rules adopted pursuant to this chapter.
14 17 c. Costs for the investigation and prosecution of the
14 18 enforcement action including attorney fees.

14 19 6. This chapter does not limit the power of the attorney
14 20 general to determine that any other practice is unlawful under
14 21 the Iowa consumer fraud Act, section 714.16, and to file an
14 22 action under that section.

14 23 Sec. 22. NEW SECTION. 16.220 PROCEDURES FOLLOWING
14 24 DECISION ON APPEAL.

14 25 1. If the order of the board is reversed, the court shall
14 26 specifically direct the board as to the board's further action
14 27 in the matter including the making and entering of any order
14 28 and any conditions, limitations, or restrictions to be
14 29 contained in the order. The board may revoke or alter the
14 30 order for any proper cause which is discovered after the order
14 31 is issued.

14 32 2. If an order of the board is affirmed, the appellant is
14 33 not barred after one year from filing a new application if
14 34 such application is not otherwise barred or limited.

14 35 3. The appeal does not suspend the operation of the order
15 1 appealed from during the pendency of the appeal except upon
15 2 order of the court.

15 3 Sec. 23. NEW SECTION. 16.221 TRUST ACCOUNTS.

15 4 1. All moneys deposited in escrow to be delivered upon the
15 5 close of the escrow or upon any other contingency must be
15 6 deposited in a trust account in a financial institution that
15 7 is insured by the federal deposit insurance corporation or
15 8 national credit union share insurance fund unless another
15 9 financial institution has been designated in writing in the
15 10 escrow instructions.

15 11 2. The moneys when deposited must be designated as trust
15 12 funds or escrow accounts or under some other appropriate name
15 13 indicating that the moneys are not the moneys of the licensee.

15 14 3. The trust account shall be an interest-bearing account.
15 15 Unless otherwise instructed in writing by the parties to the
15 16 escrow agreement, the interest on the account shall be
15 17 transferred to the administration fund created by section
15 18 16.216. The licensee shall not benefit from interest received
15 19 on moneys of others in the possession of the licensee.

15 20 4. A licensee shall notify the board of the name of each
15 21 financial institution in which a trust account is maintained
15 22 and the name of the account on forms acceptable to the board.
15 23 A licensee may maintain more than one trust account provided
15 24 the board is advised of the multiple trust accounts.

15 25 5. A licensee shall only deposit trust funds or escrow
15 26 funds in a trust account and shall not commingle the
15 27 licensee's personal funds or other funds in the trust account
15 28 with the exception that a licensee may deposit and keep a sum
15 29 not to exceed five hundred dollars in the trust account from
15 30 the licensee's personal funds, which sum shall be specifically
15 31 identified and deposited to cover bank service charges
15 32 relating to the trust account.

15 33 6. Money deposited in escrow is not subject to execution
15 34 or attachment on any claim against the licensee.

15 35 7. A licensee shall not knowingly keep or cause to be kept
16 1 any moneys in any bank, credit union, or other financial
16 2 institution under any name designating the moneys as belonging
16 3 to a client of a licensee, unless the money was actually
16 4 entrusted to the licensee by the client for deposit in escrow.

16 5 8. The board shall conduct examinations of a trust
16 6 account, as deemed necessary by the board.

16 7 Sec. 24. NEW SECTION. 16.222 PROOF OF LICENSURE REQUIRED
16 8 IN ACTION FOR COLLECTION OF COMPENSATION.

16 9 A person engaged in the business or acting in the capacity
16 10 of an escrow agent within this state shall not bring or
16 11 maintain an action in a court of this state for the collection
16 12 of compensation for the performance of a act pursuant to this
16 13 chapter without alleging and proving that the person was a
16 14 licensed escrow agent at the time the alleged cause of action

16 15 arose.

16 16 Sec. 25. NEW SECTION. 16.223 STATUTORY AND COMMON LAW
16 17 RIGHTS UNAFFECTED.

16 18 The provisions of this chapter do not limit any statutory
16 19 or common law right of any person to bring an action in a
16 20 court for an act involved in the transaction of the escrow
16 21 business or the right of the state to punish a person for any
16 22 violation of a law.

16 23 Sec. 26. NEW SECTION. 16.224 TRANSACTIONS BY FOREIGN
16 24 CORPORATIONS.

16 25 A foreign corporation shall not transact an escrow business
16 26 in this state unless the foreign corporation qualifies under
16 27 chapter 490 and otherwise complies with the provisions of this
16 28 chapter.

16 29 Sec. 27. Section 272C.1, subsection 6, Code 2009, is
16 30 amended by adding the following new paragraph:

16 31 NEW PARAGRAPH. af. The escrow agent examining board,
16 32 created pursuant to chapter 16.

16 33 Sec. 28. Section 272C.3, subsection 2, paragraph a, Code
16 34 2009, is amended to read as follows:

16 35 a. Revoke a license, or suspend a license either until
17 1 further order of the board or for a specified period, upon any
17 2 of the grounds specified in section 16.218, 105.22, 147.55,
17 3 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219,
17 4 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or
17 5 chapter 151 or 155, as applicable, or upon any other grounds
17 6 specifically provided for in this chapter for revocation of
17 7 the license of a licensee subject to the jurisdiction of that
17 8 board, or upon failure of the licensee to comply with a
17 9 decision of the board imposing licensee discipline.

17 10 Sec. 29. Section 272C.4, subsection 6, Code 2009, is
17 11 amended to read as follows:

17 12 6. Define by rule acts or omissions that are grounds for
17 13 revocation or suspension of a license under section 16.218,
17 14 105.22, 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24,
17 15 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15,
17 16 or 602.3203 or chapter 151 or 155, as applicable, and to
17 17 define by rule acts or omissions that constitute negligence,
17 18 careless acts, or omissions within the meaning of section
17 19 272C.3, subsection 2, paragraph "b", which licensees are
17 20 required to report to the board pursuant to section 272C.9,
17 21 subsection 2.

17 22 Sec. 30. Section 272C.5, subsection 2, paragraph c, Code
17 23 2009, is amended to read as follows:

17 24 c. Shall state whether the procedures are an alternative
17 25 to or an addition to the procedures stated in sections 16.218
17 26 through 16.220, 105.23 and 105.24, 148.6 through 148.9,
17 27 152.10, 152.11, 153.33, 154A.23, 542.11, 542B.22, 543B.35,
17 28 543B.36, and 544B.16.

17 29 Sec. 31. EFFECTIVE DATE. This Act takes effect on July 1,
17 30 2010.

17 31 EXPLANATION

17 32 This bill creates a new, five-member licensing board, the
17 33 escrow agent examining board. The board is created within the
17 34 Iowa finance authority. Escrow agents generally operate as
17 35 neutral third parties on behalf of sellers and buyers in a
18 1 real estate transaction, accepting funds and documents for
18 2 delivery to the parties when the terms of escrow have been
18 3 completed. Licenses may be issued either to individuals or
18 4 businesses. Several entities are excluded from the licensure
18 5 requirements: Iowa banks, Iowa mortgage or insurance
18 6 companies, lawyers acting within the scope of their practice,
18 7 real estate brokers, government employees, and persons acting
18 8 under the direction of a court.

18 9 The escrow agent examining board follows the traditional
18 10 licensing board model, issuing annual licenses, conducting
18 11 examinations, investigations, and hearings, and imposing
18 12 licensee discipline that includes license suspension or
18 13 revocation. The examining board may also issue cease and
18 14 desist orders if a licensee is conducting business in an
18 15 unsafe and injurious manner or in violation of the law. A
18 16 person who violates a cease and desist order may be subject to
18 17 a penalty not to exceed \$5,000 for each act or violation of
18 18 the cease and desist order.

18 19 The board does not hold the power to adopt its own rules;
18 20 rulemaking authority is held by the Iowa finance authority.

18 21 Any person may bring legal action against an escrow agent
18 22 who does not hold the required license. In addition to actual
18 23 damages, the person bringing the action may collect \$100 in
18 24 statutory damages per each transaction in violation of the
18 25 law, reasonable attorney fees, and costs.

18 26 Under the bill, all moneys deposited in escrow must be
18 27 deposited in an interest-bearing trust account in a financial
18 28 institution that is insured by the federal deposit insurance
18 29 corporation or national credit union share insurance fund
18 30 unless another financial institution has been designated in
18 31 writing in the escrow instructions.

18 32 The operation of the board is self-sustaining, a fund is
18 33 created in the state treasury under the control of the board
18 34 and any money collected by the board or authority is deposited
18 35 in the fund, and is appropriated to pay the expenses related
19 1 to the operations of the board and the authority. Unused
19 2 funds do not revert to the general fund.

19 3 The bill takes effect on July 1, 2010.

19 4 LSB 1143DP 83

19 5 jr/rj/24.2