

Senate Study Bill 3154 - Introduced

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

A BILL FOR

1 An Act relating to and making changes to matters under the
2 purview of the division of banking of the department of
3 commerce, making a penalty applicable, and including
4 effective date provisions.

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

1 Section 1. Section 12C.1, subsection 2, paragraph a, Code
2 2009, is amended to read as follows:

3 a. "Bank" means a corporation or limited liability
4 company engaged in the business of banking ~~authorized by law~~
5 ~~to receive deposits and whose deposits are insured by the bank~~
6 ~~insurance fund or the savings association insurance fund of the~~
7 ~~federal deposit insurance corporation and includes any office~~
8 ~~of a bank~~ and organized under the laws of this state, another
9 state, or the United States. "Bank" also means a savings and
10 loan, ~~or~~ savings association, or savings bank organized under
11 the laws of this state, another state, or the United States.

12 Sec. 2. Section 12C.1, subsection 2, Code 2009, is amended
13 by adding the following new paragraph:

14 NEW PARAGRAPH. Oh. "Superintendent" means the
15 superintendent of banking of this state when the depository is
16 a bank, and the superintendent of credit unions of this state
17 when the depository is a credit union.

18 Sec. 3. Section 12C.23A, subsection 1, Code 2009, is amended
19 by adding the following new paragraph:

20 NEW PARAGRAPH. e. Consent to the jurisdiction and authority
21 of the superintendent as provided under section 12C.29.

22 Sec. 4. Section 12C.28, Code 2009, is amended to read as
23 follows:

24 **12C.28 Electronic reporting.**

25 Any notice, information, report, or other communication
26 required by this chapter shall be deemed effective and in
27 compliance with this chapter if sent or given electronically
28 as provided in rules adopted pursuant to chapter 17A by the
29 appropriate superintendent or the treasurer of state.

30 Sec. 5. NEW SECTION. **12C.29 Authority of superintendent to**
31 **issue orders.**

32 1. If it appears to the superintendent that a bank is
33 violating or has violated, or the superintendent has reasonable
34 cause to believe that a bank is about to violate, any provision
35 of this chapter or any rules adopted pursuant thereto, or if

1 a bank is less than well capitalized as defined in 12 U.S.C.
2 § 1831o(b)(1)(A), or if a bank is subject to a final order or
3 written agreement subject to the public disclosure requirements
4 of 12 U.S.C. § 1818(u), the superintendent may issue an order
5 requiring the bank to do one or more of the following:

- 6 a. Not accept uninsured public funds deposits.
- 7 b. Reduce the amount of uninsured public funds accepted.
- 8 c. Return to the depositors some or all uninsured public
9 funds held in demand deposits and, when deposit instruments
10 or agreements mature, return to the depositors some or all
11 uninsured deposits representing proceeds of such instruments
12 or agreements.
- 13 d. Pledge collateral to the treasurer of state, with such
14 collateral having a value at all times up to one hundred ten
15 percent of the public funds held by the bank.
- 16 e. Comply with such other requirements as the superintendent
17 may impose.

18 2. An order issued pursuant to this section shall become
19 effective upon service of the order on the bank and shall
20 remain effective except to such extent modified, terminated, or
21 set aside by action of the superintendent or of the district
22 court of Polk county as provided in subsection 3.

23 3. An order issued pursuant to this section shall contain a
24 concise statement of the facts forming the basis for issuing
25 the order and shall provide the bank an opportunity to appeal
26 the order by requesting a hearing. If the bank requests a
27 hearing, the hearing shall be fixed for a date not later than
28 thirty days after the service of the order unless a later date
29 is set at the request of the bank. If upon the record made
30 at the hearing, the superintendent finds that the grounds
31 for the order have been established, the superintendent may
32 issue and serve upon the bank an order upholding the original
33 order. If the superintendent finds the grounds for the order
34 have not been established, the superintendent shall set aside
35 the original order or modify the order, as the superintendent

1 deems appropriate. An administrative law judge may assist
2 the superintendent at the hearing or, at the superintendent's
3 request, preside over the hearing. The hearing shall not be
4 open to the public. The superintendent's decision shall be
5 subject to judicial review in Polk county district court in
6 accordance with the provisions of chapter 17A.

7 4. An order issued pursuant to this section shall be
8 confidential, and the Polk county district court shall review
9 the record in camera and shall maintain filings of any judicial
10 review filed pursuant to section 3 under seal.

11 5. This section is intended to provide the superintendent
12 additional authority and regulatory flexibility in regulating
13 a bank that accepts public funds deposits and whose financial
14 condition, level of public funds, or level of collateral may
15 pose a greater than normal risk of loss coverage from the state
16 sinking fund applicable for uninsured and unsecured public
17 funds.

18 6. An act or omission by the superintendent pursuant to this
19 section shall not subject the state to liability.

20 Sec. 6. Section 524.213, Code 2009, is amended to read as
21 follows:

22 **524.213 Duties and powers of superintendent.**

23 The superintendent shall have general control, supervision
24 and regulation of all state banks and shall be charged with
25 the administration, interpretation, and execution of the laws,
26 rules, and regulations of this state relating to banks and
27 banking and with such other duties and responsibilities as are
28 imposed upon the superintendent by the laws of this state. The
29 superintendent shall have power to adopt and promulgate such
30 rules and regulations as necessary to carry out and enforce,
31 properly and effectively, the provisions of this chapter and
32 chapter 12C applicable to banks.

33 Sec. 7. Section 524.215A, Code 2009, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 4. The division of banking may adopt a

1 record retention policy authorizing the division to destroy
2 communications received by electronic mail that are more than
3 six months old.

4 Sec. 8. Section 524.310, Code 2009, is amended by adding the
5 following new subsection:

6 NEW SUBSECTION. 5. A state bank using a fictitious name to
7 transact business in this state may file its fictitious name
8 with the secretary of state by delivering to the superintendent
9 for filing with the secretary of state a copy of the resolution
10 of its board of directors certified by its secretary, adopting
11 the fictitious name. A state bank using a fictitious name
12 shall comply with the requirements of section 524.1206 and with
13 any other regulatory requirements governing use of its name.
14 The fictitious name must be distinguishable upon the record of
15 the secretary of state from all of the following:

16 a. The corporate name of a business or nonprofit corporation
17 incorporated or authorized to transact business in this state.

18 b. A corporate name reserved, registered, or protected as
19 provided in section 490.402, 490.403, 504.402, or 504.403.

20 c. The fictitious name of another foreign business or
21 nonprofit corporation authorized to transact business in this
22 state.

23 Sec. 9. Section 524.602, Code 2009, is amended to read as
24 follows:

25 **524.602 Board of directors — election.**

26 1. At Except as provided in subsection 2, at the first
27 annual meeting of shareholders and at each annual meeting
28 thereafter the shareholders shall elect directors to hold
29 office until the next succeeding annual meeting. Directors
30 shall hold office for one year or until their successors have
31 been elected and qualified, unless removed in accordance with
32 provisions of section 524.606. When the shareholders determine
33 the number of directors at an annual meeting or at a special
34 meeting, they shall, at the same meeting, elect a director to
35 fill each directorship.

1 2. The articles of incorporation of a state bank may
2 authorize directors to be elected to staggered terms of three
3 years. At the first meeting of shareholders or at an annual
4 or special meeting where the shareholders adopt staggered
5 terms for directors, and at each annual meeting thereafter,
6 the shareholders shall elect directors to hold office for
7 any vacant position. A director shall hold office until the
8 director's term expires or until the director's successor has
9 been elected and qualified, unless the director is removed in
10 accordance with the provisions of section 524.606.

11 Sec. 10. Section 524.814, subsection 1, Code 2009, is
12 amended to read as follows:

13 1. To secure deposits of the state bank or a bank that is
14 an affiliate of the state bank when a customer is required
15 to obtain such security, or a bank is required to provide
16 security, by the laws of the United States, by any agency or
17 instrumentality of the United States, by the laws of the state
18 of Iowa or another state, by the state board of regents, by a
19 resolution or ordinance relating to the issuance of bonds, by
20 the terms of any interstate compact or by order of any court
21 of competent jurisdiction. The lending of securities to a
22 bank that is an affiliate, or the pledging of securities for
23 the account of a bank that is an affiliate, shall be on terms
24 and conditions that are consistent with safe and sound banking
25 practices.

26 Sec. 11. Section 524.901, subsection 2, Code 2009, is
27 amended to read as follows:

28 2. A state bank shall not invest for its own account more
29 than fifteen percent of its aggregate capital in investment
30 securities of any one obligor. Any The par value of the
31 investment securities shall be used to determine the amount
32 that may be invested under this subsection, and any premium
33 paid by a state bank for any investment securities shall not be
34 included in determining the amount that may be invested under
35 this subsection.

1 Sec. 12. Section 536.13, subsection 7, paragraph d, Code
2 2009, is amended by striking the paragraph and inserting in
3 lieu thereof the following:

4 *d.* Except as provided in this subsection, the provisions
5 of the Iowa consumer credit code, chapter 537, apply to loans
6 regulated by this chapter and supersede conflicting provisions
7 of this chapter. Section 537.2402, subsection 1, does not
8 apply to loans regulated by this chapter.

9 Sec. 13. Section 536A.23, subsection 1, Code 2009, is
10 amended to read as follows:

11 1. No industrial loan company licensed under the provisions
12 of this chapter shall have the power and authority to:

13 ~~*a.* (1) Charge, receive, or collect interest at a rate~~
14 ~~exceeding ten cents on the hundred by the year, except that~~
15 ~~the interest may be computed when the note is made on the~~
16 ~~full amount of the cash advanced on the loan from the date~~
17 ~~of the note to the date of the final installment thereof,~~
18 ~~and the interest so computed may be included in the note,~~
19 ~~notwithstanding any agreement to pay the entire amount in~~
20 ~~installments; or the interest may be computed on the amount of~~
21 ~~the note and discounted or collected in advance when the loan~~
22 ~~is made, notwithstanding any agreement to pay the entire amount~~
23 ~~in installments. If the note is repayable in other than equal~~
24 ~~monthly installments, the interest may be an amount computed on~~
25 ~~the basis of the effective rates permitted as provided above;~~
26 ~~provided, however, there shall be no compounding of interest~~
27 ~~and when an interest rate as authorized herein is advertised,~~
28 ~~or negotiated for with a prospective borrower, with intent that~~
29 ~~it be computed by either of the two methods authorized herein,~~
30 ~~they being the "add on" method or the "discount" method, in~~
31 ~~such case such rate shall be further described as to the method~~
32 ~~of computation to be used, but interest computed by either~~
33 ~~method shall be stated to the borrower as provided in section~~
34 ~~537.3210.~~

35 ~~(2) If a borrower elects to repay a loan secured by a~~

1 ~~mortgage or deed of trust upon real property which is a~~
2 ~~single family or two family dwelling or agricultural land at~~
3 ~~a date earlier than is required by the terms of the loan, the~~
4 ~~licensee shall be governed by section 535.9.~~

5 ~~(3) The limitation on interest rate which is contained in~~
6 ~~this paragraph "a" shall not apply to any loan in which the~~
7 ~~borrower is a corporation or investment trust or any other~~
8 ~~person who is referred to in section 535.2, subsection 2.~~

9 ~~b. Charge, receive, or collect in advance, a service charge~~
10 ~~in excess of one dollar for each fifty dollars of the amount of~~
11 ~~the note, not to exceed a total of one hundred twenty dollars.~~

12 a. Charge, receive, or collect interest at a rate exceeding
13 the maximum rate of interest allowable for regulated loan
14 companies and fixed by the superintendent in accordance with
15 the provisions of section 536.13.

16 ~~e.~~ b. Require any borrower to purchase insurance from
17 the lender as a condition for obtaining a loan. However,
18 an industrial loan company may collect from the borrower, at
19 the option of the borrower, and transmit the premiums charged
20 for insuring real or personal property used by the borrower
21 as security for a loan and provided that such insurance is
22 obtained from a licensed insurance producer for an insurance
23 company authorized to do business in Iowa; and the premiums
24 charged for insuring the life of one party on the loan in an
25 amount not to exceed the total amount of the note or contract,
26 including cash advance, interest and service charge, provided
27 that no licensee shall require that the contract of life
28 insurance be outstanding for more than the unpaid balance of
29 the indebtedness and provided that such insurance is obtained
30 from a licensed insurance producer for an insurance company
31 authorized to do business in Iowa; and an industrial loan
32 company may receive and transmit the premiums charged for
33 accident and health insurance on the borrower, provided such
34 insurance bears a reasonable relationship to the existing
35 hazards or risk of loss, and the aggregate benefits of which

1 shall not exceed the approximate amount of the contractual
2 payments on the loan outstanding at the time of loss, and
3 provided that such insurance is obtained from a licensed
4 producer for an insurance company authorized to do business in
5 Iowa. However, all life insurance rates in connection with
6 industrial loans shall be subject to the rules and regulations
7 of the insurance commissioner of the state of Iowa.

8 ~~d.~~ c. Engage in commercial activities or have an affiliate
9 that engages in commercial activities. This paragraph shall
10 not apply to an industrial loan company with an affiliate that
11 is engaged in commercial activities prior to January 1, 2006,
12 if control of the industrial loan company is not thereafter
13 transferred to an entity that engages in commercial activities
14 directly or through an affiliate.

15 ~~e.~~ d. Obtain or arrange a residential mortgage loan for a
16 potential borrower from a third person, unless the industrial
17 loan company also has a mortgage broker license and complies
18 with all provisions of chapter 535B.

19 Sec. 14. Section 536A.31, subsection 3, Code 2009, is
20 amended by striking the subsection and inserting in lieu
21 thereof the following:

22 3. Except as provided in this subsection, the provisions
23 of the Iowa consumer credit code, chapter 537, apply to loans
24 regulated by this chapter and supersede conflicting provisions
25 of this chapter. Section 537.2402, subsection 1, does not
26 apply to loans regulated by this chapter.

27 Sec. 15. EFFECTIVE UPON ENACTMENT. The sections of this
28 Act amending sections 12C.1, 12C.23A, and 12C.28 and enacting
29 section 12C.29, being deemed of immediate importance, take
30 effect upon enactment.

31 EXPLANATION

32 This bill makes changes regarding provisions governing the
33 administration and regulation of banks.

34 The definition of "bank" contained in Code section 12C.1
35 currently refers to a corporation authorized by law to

1 receive deposits insured by the bank insurance fund or savings
2 association insurance fund of the federal deposit insurance
3 fund of the federal deposit insurance corporation. The
4 bill adds a limited liability company to the definition and
5 substitutes the reference to insured deposits to organization
6 under the laws of Iowa, another state, or the United States.
7 The bill also adds a savings bank organized under the laws of
8 Iowa, another state, or the United States to the definition
9 of "bank". The bill also amends Code section 12C.1 to add a
10 definition of "superintendent". "Superintendent" is defined to
11 refer to either the superintendent of banking in Iowa when the
12 depository is a bank and the superintendent of credit unions in
13 Iowa when the depository is a credit union. The bill makes a
14 corresponding amendment to Code section 12C.28.

15 The bill adds new Code section 12C.29, giving the
16 superintendent authority to issue orders in the event it
17 appears a bank is, has, or is about to violate any provision
18 of Code chapter 12C or any rules adopted pursuant thereto, if
19 a bank is less than well capitalized as defined in a provided
20 reference to the United States Code, or if a bank is subject
21 to a final order or written agreement subject to the public
22 disclosure requirements of another provided reference to
23 the United States Code. If such authority exists, the bill
24 provides that the superintendent may issue an order requiring
25 the bank not to accept uninsured public funds deposits, to
26 reduce the amount of uninsured public funds accepted, to return
27 to depositors some or all deposits as specified, to pledge
28 collateral to the treasurer of state up to 110 percent of
29 the public funds held by the bank, and to comply with such
30 other requirements as the superintendent may impose. The bill
31 additionally establishes procedures regarding the issuance
32 of an order and resulting hearings, states that these are
33 intended to provide the superintendent additional authority and
34 regulatory flexibility, and provides that an act or omission
35 by the superintendent pursuant to this section shall not

1 subject the state to liability. The bill provides that the
2 acceptance of public funds by a bank constitutes consent to the
3 jurisdiction and authority of the superintendent of banking.

4 Further, the bill specifies that the duties and powers of the
5 superintendent shall include administration, interpretation,
6 and execution of the laws, rules, and regulations of Iowa
7 relating to banks and banking. This authorization would
8 facilitate the establishment of policy for the implementation
9 and administration of the Code chapter. The bill authorizes
10 the division of banking to adopt a record retention policy
11 authorizing the division to destroy e-mails more than six
12 months old, adds provisions regarding state bank utilization of
13 a fictitious name, establishes election procedures regarding
14 the election of directors by bank shareholders, and requires
15 that the par value of investment securities be used in
16 determining the amount of aggregate capital that a state bank
17 may invest in investment securities of any one obligor.

18 The bill amends Code section 524.814 to authorize the
19 lending or pledging of state bank assets when a customer is
20 required to obtain security or a bank is required to provide
21 security pursuant to the laws of another state. Violation of
22 this section is a serious misdemeanor punishable by confinement
23 for no more than one year and a fine of at least \$315 but not
24 more than \$1,875.

25 The bill provides, with respect to regulated loans under
26 Code chapter 536 and industrial loans under Code section
27 536A.31, that unless otherwise provided the provisions of the
28 Iowa consumer credit code contained in Code chapter 537 are
29 applicable and supersede conflicting provisions of Code chapter
30 536 and Code section 536A.31. The bill states, however, that
31 the provisions of Code section 537.2402, subsection 1, relating
32 to creditors authorized to make supervised loans contracting
33 for and receiving a finance charge without limitation as to
34 amount or rate with respect to a loan pursuant to open-end
35 credit, do not apply to loans regulated under Code chapter 536

1 or Code section 536A.31.

2 Additionally, the bill deletes provisions currently
3 applicable to industrial loan companies in Code section 536A.23
4 regarding the charging, receiving or collection of interest,
5 prepayment of loans secured by specified mortgages or deeds
6 of trust, and imposition in advance of service charges. The
7 bill substitutes in their place the statement that a licensed
8 industrial loan company may not charge, receive, or collect
9 interest at a rate exceeding the maximum rate of interest
10 allowable for regulated loan companies and fixed by the
11 superintendent in accordance with the provisions of Code
12 section 536.13.

13 The sections of the bill amending Code chapter 12C take
14 effect upon enactment, and the sections of the bill amending
15 Code chapters 524, 536, and 536A take effect July 1, 2010.