

Senate File 113 - Introduced

SENATE FILE 113

BY BOLKCOM, DVORSKY, HOGG,
SENG, HATCH, HORN, DEARDEN,
FRAISE, BLACK, KIBBIE,
BEALL, QUIRMBACH, RAGAN,
WILHELM, JOCHUM, and
DANIELSON

A BILL FOR

1 An Act modifying provisions relating to the regulation of
2 delayed deposit services businesses, providing penalties,
3 and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 533D.2, subsection 2, unnumbered
2 paragraph 1, Code 2011, is amended to read as follows:

3 "*Delayed deposit services business*" means a person who for a
4 fee finance charge does either of the following:

5 Sec. 2. Section 533D.2, Code 2011, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 2A. "*Finance charge*" means all charges
8 payable directly or indirectly as a condition of a delayed
9 deposit service transaction, including interest, fees, service
10 charges, renewal charges, credit insurance premiums, and any
11 ancillary product sold in connection with a delayed deposit
12 service transaction.

13 Sec. 3. Section 533D.9, Code 2011, is amended to read as
14 follows:

15 **533D.9 Fee Finance charge restriction — required disclosure.**

16 1. A licensee shall not ~~charge a fee in excess of fifteen~~
17 ~~dollars on the first one hundred dollars on the face amount~~
18 ~~of a check or more than ten dollars on subsequent one hundred~~
19 ~~dollar increments on~~ apply a finance charge in excess of an
20 amount equal to thirty-six percent per annum, as computed
21 pursuant to the federal Truth in Lending Act, times the face
22 amount of the check for services provided by the licensee, ~~or~~
23 ~~pro rata for any portion of one hundred dollars face value.~~

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

28 a. The fee finance charge to be ~~charged~~ imposed for the
29 transaction.

30 b. The annual percentage rate as computed pursuant to the
31 federal Truth in Lending Act.

32 c. The date on which the check will be deposited or
33 presented for negotiation.

34 d. Any penalty, not to exceed fifteen dollars, which the
35 licensee will charge if the check is not negotiable on the

1 date agreed upon. A penalty to be charged pursuant to this
2 section shall only be collected by the licensee once on a check
3 no matter how long the check remains unpaid. A penalty to be
4 charged pursuant to this section is a licensee's exclusive
5 remedy and if a licensee charges a penalty pursuant to this
6 section no other penalties under this chapter or any other
7 provision apply.

8 3. In addition to the notice required by subsection 2, every
9 licensee shall conspicuously display a schedule of all ~~fees,~~
10 finance charges, and penalties for all services provided by
11 the licensee authorized by this section. The notice shall be
12 posted at the office and every branch office of the licensee.

13 Sec. 4. Section 533D.10, subsection 1, paragraphs d and f,
14 Code 2011, are amended to read as follows:

15 *d.* Require the maker to receive payment by a method which
16 causes the maker to pay additional ~~or further fees and~~ finance
17 charges to the licensee or another person.

18 *f.* Receive or apply any other finance charges or fees
19 penalties in addition to ~~the fees~~ those listed in section
20 533D.9, subsections 1 and 2.

21 Sec. 5. Section 533D.10, subsection 1, Code 2011, is amended
22 by adding the following new paragraph:

23 NEW PARAGRAPH. *g.* Engage in any device or subterfuge
24 intended to evade the requirements of this chapter, including
25 but not limited to assisting a maker of a check in entering
26 into a delayed deposit service transaction at a rate of
27 interest prohibited pursuant to the laws of this state,
28 entering into transactions disguised as personal property sales
29 and leaseback transactions, or disguising amounts received
30 pursuant to a transaction as cash rebates for the pretextual
31 installment sale of goods or services, or assisting a maker
32 of a check in entering into a transaction through the mail,
33 telephone, internet, or any other electronic means, regardless
34 of whether the licensee has a physical location in this state.

35 Sec. 6. Section 533D.10, Code 2011, is amended by adding the

1 following new subsection:

2 NEW SUBSECTION. 3. A delayed deposit service transaction
3 made in violation of this chapter may not be enforced against a
4 maker of a check. A delayed deposit service transaction made
5 in violation of this chapter is void, and the licensee does not
6 have the right to collect, receive, or retain any payments,
7 interest, or finance charges from the maker of the check.

8 Sec. 7. Section 533D.12, subsection 2, paragraph d, Code
9 2011, is amended by striking the paragraph.

10 Sec. 8. Section 533D.12, Code 2011, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 7. A violation of this chapter is a
13 violation of section 714.16, subsection 2, paragraph "a". The
14 provisions of section 714.16, including but not limited to
15 provisions relating to investigation, injunctive relief, and
16 penalties, shall apply to this chapter unless more prescriptive
17 and stringent provisions are otherwise specified in this
18 chapter.

19 Sec. 9. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
20 immediate importance, takes effect upon enactment.

21 EXPLANATION

22 This bill modifies provisions relating to the regulation of
23 delayed deposit services businesses.

24 The bill deletes current provisions prohibiting delayed
25 deposit services licensees from charging a fee in excess of \$15
26 on the first \$100 on the face amount of a check or more than \$10
27 on subsequent \$100 increments on the face amount of the check
28 for services provided by the licensee. The bill substitutes a
29 provision prohibiting imposition of a finance charge in excess
30 of 36 percent per annum as computed pursuant to the federal
31 Truth in Lending Act, times the face amount of the check. The
32 bill defines "finance charge" to mean all charges payable
33 directly or indirectly as a condition of a delayed deposit
34 service transaction, including interest, fees, service charges,
35 renewal charges, credit insurance premiums, and any ancillary

1 product sold in connection with a delayed deposit service
2 transaction.

3 The bill provides, with respect to prohibited acts by a
4 licensee, that a licensee may not engage in any device or
5 subterfuge intended to evade the requirements of Code chapter
6 533D, including but not limited to assisting a maker of a check
7 in entering into a delayed deposit service transaction at a
8 rate of interest prohibited pursuant to Iowa law, entering into
9 transactions disguised as personal property sales and leaseback
10 transactions, or disguising amounts received pursuant to a
11 transaction as cash rebates for the pretextual installment
12 sale of goods or services, or assisting a maker of a check
13 in entering into a transaction through the mail, telephone,
14 internet, or any other electronic means, regardless of whether
15 the licensee has a physical location in this state. The
16 bill additionally provides that a delayed deposit service
17 transaction entered into which violates the Code chapter may
18 not be enforced with respect to a maker of a check, that any
19 payment made or collected in connection therewith is void, and
20 that the licensee does not have the right to collect, receive,
21 or retain any payments, interest, or finance charges.

22 Further, the bill deletes a penalty provision authorizing
23 the superintendent of banking to impose a civil penalty not to
24 exceed \$5,000 per violation. The bill states that a violation
25 of the Code chapter constitutes a consumer fraud pursuant to
26 the provisions of Code section 714.16, and that the applicable
27 provisions relating to investigation, injunctive relief,
28 and penalties shall apply to Code chapter 533D unless more
29 prescriptive and stringent provisions are otherwise specified
30 in the Code chapter. The primary effect of this change is
31 to make violations subject to a civil penalty pursuant to
32 Code section 714.16, subsection 7, in an amount not to exceed
33 \$40,000 per violation, and in addition a civil penalty of
34 not more than \$5,000 for each day of intentional violation
35 of a temporary restraining order, preliminary injunction, or

1 permanent injunction.

2 The bill takes effect upon enactment.