

seven (527) of the Code, by means of which the licensee may transmit to or receive from any customer electronic impulses constituting transactions pursuant to this section. However, such utilization, establishment or operation is lawful only when in compliance with chapter five hundred twenty-seven (527) of the Code. Nothing in this section authorizes a licensee or other person to engage in transactions not otherwise permitted by applicable law, nor does anything in this section repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by a licensee.

Approved March 26, 1979

CHAPTER 130
FINANCIAL TRANSACTIONS

S. F. 158

AN ACT relating to financial transactions involving loans or deposits of money or extensions of credit which were affected by the provisions of Acts of the Sixty-seventh General Assembly, 1978 session, chapter one thousand one hundred ninety (1190), sections eleven (11) through twenty-four (24), and providing for the restriction or regulation of interest rates, charges and prepayment penalties in transactions which are subject to section five hundred thirty-five point two (535.2) of the Code, and providing for the restriction or regulation of the use of share drafts drawn on credit unions, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter five hundred thirty-three (533), Code 1979, is amended by adding the following new section:

NEW SECTION. SHARE DRAFTS.

1. As used in this section or chapter, unless the context otherwise requires:

a. "Share draft" means a negotiable draft which is payable upon demand and which is used to withdraw funds from a share-draft account. A share draft is an item for purposes of chapter five hundred fifty-four (554), article four (4), of the Code. The term does not include a draft issued by a credit union for the transfer of funds between the issuing credit union and another credit union or a bank, savings and loan association, or other depository financial institution.

b. "Payable-through bank" means the bank which is designated to make presentment of a share draft to the credit union for payment.

c. "Truncation" means the original share draft is not returned to the member.

d. "Share-draft account" means the demand account from which a credit union has agreed that funds may be withdrawn by means of a share draft. A share-draft account may bear interest or dividends as determined by the board of directors pursuant to this chapter, provided that a credit union shall not pay interest or dividends on a share-draft account at a rate which exceeds the maximum interest rate which Iowa state banks insured by the federal deposit insurance corporation are permitted by federal law to pay on insured passbook savings accounts.

2. Subject to the provisions of this chapter, a credit union may provide its members with share-draft accounts. The board of directors shall determine, prior to requesting authority to implement a share-draft program, that the members' use of share drafts is economically and operationally feasible for the credit union.

3. The share accounts and deposit accounts of a credit union operating a share-draft program must be insured by the national credit union administrator. The administrator of the credit union department shall order the termination of the share-draft program of a credit union which does not comply with this subsection. The provisions of this subsection supersede the provisions of section five hundred thirty-three point sixty-four (533.64) of the Code with respect to credit unions which have share-draft programs.

4. A credit union seeking share-draft authority shall submit to the administrator a written application. The application shall include all of the following:

a. A certified copy of the minutes of the board of directors authorizing a request to the administrator for authority to implement the share-draft program.

b. All background documentation which supports the decision of the board of directors that use of share drafts by members of the credit union is economically and operationally feasible for the credit union.

c. A statement verified by the chairperson of the board of directors that the forms and procedures which are proposed to be used by the credit union comply with any applicable rules.

d. A statement verified by the chairperson of the board of directors that the board of directors has determined appropriate surety bond coverage is in force. The board of directors shall purchase a fidelity bond to cover officers and employees having custody of or handling funds, with good and sufficient surety in an amount and character to be determined by the board, to protect the credit union against losses caused by occurrences such as fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication, or unfaithful performance of duty by these officers and employees.

e. A statement of operational specifications and procedures which expressly provides for all of the following:

(1) Identification of the payable-through bank. The payable-through bank must be a bank which is located in this state or in an adjacent state.

(2) Either a statement that the credit union has adopted truncation, or, if the credit union has not adopted truncation, a statement of the procedures to be followed in returning the original share drafts to issuing members.

(3) A share-draft account agreement with each participating member which outlines the responsibilities of the credit union and the member.

(4) The recording of overdrafts and notification to an overdrawn member.

(5) The encoding of each share draft with the routing and transit number of the payable-through bank, the share-draft account number, and the serial number of the share draft in accordance with standards required for use in a clearing system utilizing magnetic ink character recognition devices.

(6) The preprinting on the share draft of the names of the payable-through bank and the credit union.

(7) A method by which each member using share drafts may maintain a record of share drafts drawn.

(8) The submission of a periodic statement of account at least quarterly to each member who has a share-draft account. This statement shall include the serial number, the date of payment and the amount of payment of each share draft processed.

(9) Establishing responsibility for detection of unauthorized or forged drafts.

(10) Procedures for processing stop payment orders.

(11) Procedures for providing members with copies of paid drafts, should copies be requested.

(12) Procedures for retaining paid drafts or copies of paid drafts on file for a period of seven years after the first day of January of the year following the year in which the draft was paid. The paid drafts or copies need not be retained in the custody of the credit union.

(13) The fees, if any, to be charged for share-draft account services. The fees shall not exceed the direct and indirect costs of providing the services.

(14) Procedures for establishing, maintaining, verifying and replenishing as necessary the share-draft liquidity reserve required by section four (4) of this Act.

5. A credit union shall not commence the operation of a share-draft program until it has received written authority from the administrator. The administrator shall not issue authority if any of the following conditions exist:

a. The requirements of subsection four (4) of this section have not been met.

b. The auditing committee of the credit union has not fulfilled its statutory duties as specified in this chapter.

c. The management of the credit union has demonstrated through prior performance its inability to handle the additional activity the share-draft program will generate.

d. The credit union is not insured by the national credit union administrator.

e. The forms and procedures which are proposed to be used by the credit union do not comply with rules promulgated by the administrator.

6. a. The credit union shall notify the administrator in writing of the proposed implementation of a modification relating to any of the following:

(1) The payable-through bank.

(2) Truncation procedures.

(3) The share-draft agreement.

(4) Procedures for establishing and maintaining the share-draft liquidity reserve.

(5) Any other material modification of the share-draft program.

b. The written notice under paragraph a of this subsection shall be submitted to the administrator at least sixty days prior to the date the credit union intends to implement the modification, provided that if good cause is shown the administrator may approve a modification on less than sixty days' notice. A modification referred to in paragraph a of this subsection shall not be made except upon written approval of the administrator.

c. The credit union shall immediately notify the administrator of any matter affecting the information provided pursuant to subsection four (4), paragraphs a through d, of this section.

7. If a share-draft program is not authorized or a request for modification is not approved the administrator shall submit to the credit union a written statement of the reasons for the action.

8. A credit union may guarantee payment of a share draft if both of the following conditions are met:

a. A specific guarantee authorization is obtained for the share draft from the credit union.

b. The guarantee authorization is immediately noted on the share-draft account to prevent the withdrawal of funds needed to pay the guaranteed share draft.

9. The administrator may promulgate rules as necessary to administer the provisions of this chapter which relate to share-draft programs. In order to simplify the application for share-draft authority and the operation of share-draft programs, the administrator may cause to be prepared copies of approved forms and procedures which may be used by credit unions for guidance.

Sec. 2. Chapter five hundred thirty-three (533), Code 1979, is amended by adding the following new section:

NEW SECTION. PAYMENT OF SHARE DRAFTS DURING DISSOLUTION. Other provisions of section five hundred thirty-three point twenty-two (533.22) of the Code notwithstanding, when a credit union is dissolved, first priority of payment shall be given to unpaid share drafts. However, a share draft shall not be paid if any of the following conditions exist:

1. The share draft was issued on or after the date of appointment of a receiver in the event of an involuntary dissolution, or on or after the date the credit union is required by section five hundred thirty-three point twenty (533.20), subsection two (2) of the Code to cease doing business in the event of a voluntary dissolution.

2. The share draft is written against an account which does not contain sufficient funds with which to pay the share draft.

3. The share draft is payable to a member of the credit union, or to a member of the family of the issuer of the share draft, or to a business in which the issuer of the share draft has an interest. However, the exception

contained in this subsection does not apply to any person referred to in this subsection if the person is a holder in due course, as provided in chapter five hundred fifty-four (554), article three (3) of the Code; and with respect to a share draft which is issued prior to the expiration of one year after the effective date of this Act, the person shall not be denied the rights of a holder in due course of the share draft solely on the grounds that the share draft fails to meet the requirements of section five hundred fifty-four point three thousand one hundred four (554.3104), subsection one (1), paragraph d of the Code.

Sec. 3. Chapter five hundred thirty-three (533), Code 1979, is amended by adding the following new section:

NEW SECTION. SHARE-DRAFT VIOLATIONS--REVOCATION OF AUTHORITY. A credit union which offers a share-draft program to its members shall promptly honor share drafts which are written on accounts containing sufficient funds at the time the share drafts are presented for payment, and shall comply with the requirements of section one (1) of this Act, including all operational specifications and procedures established or modified in accordance with that section. If after notice and opportunity for hearing the administrator finds that a credit union has violated this section the administrator shall order the credit union to correct the condition. Failure of the credit union to comply with the order within a reasonable period of time as specified in the order shall be grounds for revocation of the authority to operate the share-draft program. The administrator shall revoke the authority to operate a share-draft program of a credit union demonstrating a continuing pattern of violations of this section.

A credit union whose share-draft authority has been revoked under this section is ineligible to receive authority to operate a share-draft program for two years after the date of revocation.

Sec. 4. Chapter five hundred thirty-three (533), Code 1979, is amended by adding the following new section:

NEW SECTION. SHARE-DRAFT LIQUIDITY RESERVE--VIOLATIONS--PENALTY.

1. A credit union which operates a share-draft program shall maintain a share-draft liquidity reserve to be used to ensure that share drafts are honored promptly.

2. The share-draft liquidity reserve shall be equal to the sum of the following two amounts:

a. Seven percent of the total amount of funds held by the credit union in share-draft accounts.

b. Three percent of the total amount of funds held by the credit union in deposit accounts. As used in this paragraph the term "deposit accounts" excludes share-draft accounts and share accounts.

3. The share-draft liquidity reserve shall be held as cash, or as demand deposits in the name of the credit union in state or national banks. All cash in the credit union and all demand deposits held in banks in the name of the credit union shall be credited against the reserve requirements of this section.

4. The share-draft liquidity reserve shall be verified and shall be replenished by the credit union as necessary at the end of each business day.

The share-draft liquidity reserve of the credit union is deficient and in violation of this section if after the end of any business day, and after any deposits as required by this subsection, the average of the amounts actually held by the credit union in cash and demand deposits on that business day and each of the preceding four business days is less than the minimum amount specified in subsection two (2) of this section.

5. Whenever it shall appear necessary to do so in the interest of the members of a credit union, the administrator may require that the credit union maintain reserves exceeding the amount required by subsection two (2) of this section, consisting of such obligations of the United States as the administrator shall prescribe. Any additional amount required under this subsection to be maintained in reserve shall be verified and replenished as required by the administrator. Failure to comply with requirements imposed by the administrator under this subsection is a violation of this section.

6. If after notice and opportunity for hearing the administrator finds that a credit union has violated this section, the administrator shall order the credit union to correct the condition within two business days, and the administrator may, in his or her discretion, order payment by the credit union to the state of a monetary penalty of not more than one hundred dollars per day for each day during which a deficiency existed. Failure of the credit union to correct the condition within the prescribed time shall be grounds for revocation of the authority to operate the share-draft program. However, if after notice and opportunity for hearing the administrator finds that a credit union has violated this section more than twice during any twelve-month period or has demonstrated a continuing pattern of violations of this section, the administrator shall revoke the authority of the credit union to operate a share-draft program.

7. A credit union whose share-draft authority has been revoked under this section is ineligible to receive authority to operate a share-draft program for two years after the date of revocation.

Sec. 5. Chapter five hundred thirty-three (533), Code 1979, is amended by adding the following new section:

NEW SECTION. ACCEPTANCE OF DEPOSITS AND INVESTMENTS WHILE INSOLVENT. A credit union shall not accept any deposits or investments in its shares, or renew or extend the term of any time deposits or time investments, when the credit union is insolvent.

Sec. 6. Section five hundred thirty-three point six (533.6), subsection four (4), Code 1979, is amended to read as follows:

4. If ~~it shall appear~~ after notice and opportunity for hearing the administrator determines that any a credit union ~~is insolvent or that it~~ has violated any of the provisions of this chapter, the administrator ~~may,--after a--hearing-or-after-an-opportunity-for-a-hearing-is-given,~~ shall, except when the credit union is insolvent, order ~~that~~ the credit union to correct the condition. The administrator shall may grant the credit union not ~~less~~ more than sixty days within which to comply with the order. Failure to comply shall afford the administrator grounds to revoke the certificate of approval and shall afford the administrator the authority to apply to the district court of the ~~district~~ county in which this credit union is located for the

appointment of a receiver for the credit union. Notwithstanding any other provision of this chapter, upon a determination by the administrator that a credit union's assets, if made immediately available, would not be sufficient to discharge the credit union's liabilities, the administrator shall take control of the credit union, and if the administrator determines that the condition cannot be corrected, the administrator shall revoke the certificate of approval and shall apply to the district court in the county in which the main office of the credit union is located for the appointment of a receiver for the credit union. The district court shall appoint the administrator of the credit union department as receiver unless the administrator of the credit union department has tendered the appointment to the administrator of the plan by which the accounts of the credit union are insured. Either administrator as receiver shall possess the rights, powers, and privileges granted by state law to a receiver of a state credit union. Neither administrator shall be required to furnish bond as receiver of a state credit union. This subsection does not apply to violations of section three (3) or four (4) of this Act, except in the event of insolvency of the credit union.

The administrator may adopt rules which define insolvency or which establish factors to be considered in determining insolvency. The administrator may adopt separate solvency standards for credit unions which are within their first year of operation.

Sec. 7. Section five hundred thirty-three point fourteen (533.14), Code 1979, is amended to read as follows:

533.14 INTEREST RATES.

1. Interest rates on loans made by a credit union, other than loans secured by a mortgage or deed of trust which is a first lien upon real property shall not exceed one percent a month on unpaid balances, except that with respect to consumer loans, a credit union may charge the finance charge permitted in sections 537.2401 and 537.2402.

2. With respect to a loan secured by a mortgage or deed of trust which is a first lien upon real property, a credit union shall not charge a rate of interest which exceeds the maximum rate permitted by section five hundred thirty-five point two (535.2) of the Code.

3. The provisions of this section do not apply to a loan which is subject to section six hundred eighty-two point forty-six (682.46) of the Code.

Sec. 8. Section five hundred thirty-three point nineteen (533.19), Code 1979, is amended to read as follows:

533.19 EXPULSION--WITHDRAWAL. A member may be expelled by a majority vote of the board of directors at a regular or special meeting of the board. The expelled member may request a hearing before the membership of the credit union. A meeting of the membership shall be held within sixty days of the member's request. The membership may, by majority vote at the membership meeting, reinstate the expelled member upon terms and conditions prescribed by it. Any member may withdraw from the credit union at any time, but notice of withdrawal may be required as provided in this section. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as ~~funds-become-available-and~~ after deducting all amounts due from the member to

the credit union and an amount as necessary to honor outstanding share drafts drawn against accounts of the member, be paid to him---The the member. Upon expulsion or withdrawal of a member from a credit union, or at any other time, the credit union may require sixty days' notice of intention to withdraw shares and thirty days' notice of intention to withdraw deposits, except that a credit union shall not at any time require notice of withdrawal with respect to funds which are subject to withdrawal by share drafts. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

Sec. 9. Section five hundred thirty-three point twenty-four (533.24), unnumbered paragraph two (2), Code 1979, is amended to read as follows:

The moneys and credits tax on credit unions is hereby imposed at a rate of five mills on each dollar of the legal and special reserves ~~of--every~~ which are required to be maintained by the credit union under section five hundred thirty-three point seventeen (533.17) of the Code, and shall be levied by the board of supervisors, and placed upon the tax list and collected by the county treasurer, except that an exemption shall be given to each credit union in the amount of ~~four~~ forty thousand dollars ~~and,--in--addition,--any amount--of--the--legal--and--special--reserves--which--are--invested--in--United--States government--securities.~~ The amount collected in each taxing district within a city shall be apportioned twenty percent to the county general fund, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county general fund and fifty percent to the general fund of the state. The moneys and credits tax shall be collected at the location of the credit union as shown in its articles of incorporation.

Sec. 10. Section seven hundred fourteen point one (714.1), subsection six (6), unnumbered paragraph one (1), Code 1979, is amended to read as follows:

6. Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person or corporation, and obtains property or service in exchange therefor, if the person knows that such check, share draft, draft or written order will not be paid when presented.

Sec. 11.

1. Notwithstanding other provisions of this Act, a credit union which has an operating share-draft program on the effective date of this Act may continue to offer share-draft services prior to submitting a request and receiving authority as required by this Act, but the credit union must submit a request as required by this Act not later than sixty days after the effective date of this Act. The administrator shall act upon the request within thirty days after receiving it. The temporary authority granted by this section expires ninety days after the effective date of this Act, or on the date the administrator acts upon the request for share-draft authority, whichever date is earlier.

2. Notwithstanding section one (1), subsection three (3), and section one (1), subsection five (5), paragraph d, of this Act, a credit union which has

an operating share-draft program on the effective date of this Act may continue to offer share-draft services prior to obtaining insurance for share accounts and deposit accounts from the national credit union administrator, but the credit union shall obtain the required insurance within ninety days after the effective date of this Act, and shall not open any additional share-draft accounts or offer any additional share-draft services until its accounts are so insured. The administrator shall order the termination of the share-draft program of a credit union which is subject to this subsection and which fails to comply with this subsection.

3. Notwithstanding section one (1), subsection four (4), paragraph e, subparagraph one (1), of this Act, a credit union which has an operating share-draft program on the effective date of this Act and which has a contractual arrangement with a payable-through bank that does not meet the requirements of this Act may continue to use the same bank until December 31, 1980. Effective January 1, 1981, or at any prior time the credit union terminates the arrangement with its payable-through bank, the credit union shall select a payable-through bank which meets the requirements of this Act.

Sec. 12. Share drafts which were issued by members of Iowa credit unions prior to the effective date of this Act are hereby declared to be valid and binding instruments for any lawful purposes for which issued, and customary or necessary acts in the course of business by credit unions upon which these share drafts were written and banks by which these share drafts were received, transferred, negotiated or otherwise processed are hereby declared to be legal.

Sec. 13. Notwithstanding section one (1), subsection one (1), paragraph a, of this Act, a credit union which has an operating share-draft program on the effective date of this Act may continue to supply its members with blank share-draft forms which were printed prior to the effective date of this Act, and these members may continue to use existing supplies of these share-draft forms until the supplies are exhausted or until the expiration of one year after the effective date of this Act, whichever occurs sooner. The administrator shall enforce compliance with this paragraph.

Share drafts which are nonnegotiable in printed form and which are issued by members of credit unions after the effective date of this Act under the authority of this section are hereby declared to be valid and binding instruments for any lawful purposes for which issued, and customary and necessary acts in the course of business by credit unions upon which these drafts were written and banks by which these drafts were received, transferred, negotiated or otherwise processed are hereby declared to be legal.

Sec. 14. Section five hundred twenty-four point nine hundred five (524.905), subsection five (5), paragraph d, Code 1979, is amended to read as follows:

d. The value of real property shall be determined by ~~averaging the appraisals~~ appraisal of ~~two~~ a qualified ~~persons~~ person, selected in a manner authorized by the board of directors, who ~~are~~ is familiar with real property values in the vicinity where the real property is located, and who ~~inspect~~ inspects the real property and ~~state~~ states its value to the best of ~~their~~

his or her judgment in a written report to be retained by the state bank during the term of the loan.

Sec. 15. Chapter five hundred twenty-four (524), division nine (IX), Code 1979, is amended by adding the following new section:

NEW SECTION. ADVANCE INTEREST ON PREPAYMENTS. Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that a state bank may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this section, however, authorizes a state bank to charge any advance interest or prepayment penalty where prohibited by Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section thirteen (13).

Sec. 16. Chapter five hundred thirty-three (533), Code 1979, is amended by adding the following new section:

NEW SECTION. ADVANCE INTEREST ON PREPAYMENTS. Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that a credit union may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this section, however, authorizes a credit union to charge any advance interest or prepayment penalty where prohibited by Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section thirteen (13).

Sec. 17. Section five hundred thirty-five point two (535.2), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section eleven (11), is reenacted and is the law of this state on and after the effective date of this Act, notwithstanding any contrary provision of Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190).

Sec. 18. Section five hundred thirty-five point two (535.2), subsection two (2), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section eleven (11), is amended effective July 1, 1979, to read as follows:

2. Any domestic or foreign corporation, and any real estate investment trust as defined in section 856 of the Internal Revenue Code, and any person purchasing securities as defined in chapter 502 on credit from a broker or dealer registered or licensed under chapter 502 or under the Security Securities Exchange Act of 1934, 48 Stat. 881, 15 United States Code 78A, as amended, and any person borrowing money or obtaining credit in the principal amount of ~~two~~ one hundred thousand dollars or more, exclusive of interest, for business purposes, and any person borrowing money or obtaining credit in the principal amount of five hundred thousand dollars or more, exclusive of interest, for agricultural purposes, may agree in writing to pay any rate of interest in excess of the rate permitted by this section, and no such

corporation or real estate investment trust or person so agreeing in writing shall plead or interpose the claim or defense of usury in any action or proceeding.

Sec. 19. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section eleven (11), subsection three (3), paragraph a, is amended on the effective date of this Act to read as follows:

a. The maximum lawful rate of interest which may be provided for in any written agreement for the payment of interest entered into during any calendar ~~quarter~~ month commencing on or after ~~July-17,-1978,~~ the effective date of this Act shall be two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds as published by the board of governors of the federal reserve system for the calendar month second preceding the ~~first~~ first month of the ~~calendar-quarter~~ during which the maximum rate based thereon will be effective, rounded to the nearest one-fourth of one percent per year.

On or before the twentieth day of ~~March,-June,-September-and-December-of~~ each year each month the superintendent of banking shall determine the maximum lawful rate of interest for the following calendar ~~quarter~~ month as prescribed herein, and shall cause ~~such~~ this rate to be published, as a notice in the Iowa administrative bulletin or as a legal notice in a newspaper of general circulation published in Polk county, prior to the first day of the following calendar month. ~~Such~~ This maximum lawful rate of interest shall be effective on the first day of the calendar month following publication. ~~As-seen-as-practicable-after-the-effective-date-of--this--Act,~~ ~~the--superintendent-of-banking-shall-determine-and-publish-the-maximum-lawful-rate-pursuant-to-this-paragraph-for-the-third-quarter-of-1978,-which--maximum-rate--shall--be-effective-upon-publication-thereof.~~ The determination of the maximum lawful rate of interest by the superintendent of banking shall be exempt from the provisions of chapter seventeen A (17A) of the Code.

Sec. 20. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section twelve (12), is reenacted except as provided in section twenty-one (21) of this Act and is the law of this state on and after the effective date of this Act, notwithstanding any contrary provision of Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190).

Sec. 21. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section twelve (12), subsection six (6), is amended on the effective date of this Act by striking the subsection.

Sec. 22. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section twelve (12), subsections one (1), two (2) and five (5), are amended effective July 1, 1979, to read as follows:

1. As used in this section, the term "loan" means ~~any-money-loaned--to--a~~ ~~borrower--who--furnishes,-as-security-for-all-or-part-of-the-loan,-a-mortgage~~ on a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or a two-family dwelling

occupied or to be occupied by the borrower. "Loan" includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

2. a. A lender may collect in connection with a loan a loan processing fee which does not exceed one percent of an amount which is equal to the loan principal less twelve thousand five hundred dollars, except that in the event of an assumption of a prior loan the lender may collect a loan processing fee which does not exceed an amount which is a reasonable estimate of the expense of processing the loan assumption but which does not exceed one percent of the amount assumed. A loan processing fee collected under the authority of this paragraph is compensation to the lender solely for the use of money, notwithstanding any provision of the agreement to the contrary. However, a loan processing fee collected under the authority of this paragraph shall be disregarded for purposes of determining the maximum charge permitted by section five hundred thirty-five point two (535.2) of the Code, or Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section thirteen (13), subsection two (2). The assessment--and collection in connection with a loan of a loan origination fee, closing fee, commitment fee or similar charge other than as expressly authorized by this paragraph is prohibited. ~~If any lender receives any amount as a loan origination fee, closing fee, commitment fee or similar charge, or any combination thereof, which exceeds the amount permitted by this section, the borrower shall have the right to recover that charge, plus attorney fees and court costs incurred in any action necessary to effect such recovery.~~

~~Any costs charged to a borrower, associated with a loan, shall not exceed actual costs which shall be disclosed to the borrower. Such costs may only include one or more of the following:~~

b. A lender may collect in connection with a loan any of the following costs which are incurred by the lender in connection with the loan and which are disclosed to the borrower:

a- (1) Credit reports.

b- (2) Appraisal fees paid to a third party, or when the appraisal is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the appraisal.

e- (3) Attorney's opinions.

d- (4) Abstracting fees paid to a third party, or when the abstracting is performed by the lender, a fee which is a reasonable estimate of the expense incurred by the lender in performing the abstracting.

e- (5) County recorder's fees.

f- (6) Inspection fees.

g- (7) Mortgage guarantee insurance charge.

h- (8) Surveying of property.

i- (9) Termite inspection.

The lender shall not charge the borrower for the cost of revenue stamps or real estate commissions which are paid by the seller. Collection of any cost other than as expressly permitted by this paragraph is prohibited.

c. If the purpose of the loan is to enable the borrower to purchase a single-family or two-family dwelling, for his or her residence, the loan agreement shall not contain any provision which prohibits the borrower from transferring his or her interest in the property to a third party for use by the third party as his or her residence, and shall not contain any provision which requires or permits the lender to make a change in the interest rate, the repayment schedule or the term of the loan as a result of a transfer by the borrower of his or her interest in the property to a third party for use by the third party as his or her residence. A provision of a loan agreement which violates this paragraph is void.

d. If a lender collects a fee or charge which is prohibited by paragraph a or b of this subsection or which exceeds the amount permitted by paragraph a or b of this subsection, the borrower has the right to recover the unlawful fee or charge or the unlawful portion of the fee or charge, plus attorney fees and costs incurred in any action necessary to effect recovery.

5. The provisions of this section shall not apply to any loan which is subject to the provisions of section six hundred eighty-two point forty-six (682.46) of the Code, nor shall it apply to origination fees, administrative fees, commitment fees or similar charges paid by one lender to another lender if these fees are not ultimately paid either directly or indirectly by the borrower who occupies or will occupy the dwelling or by the seller of the dwelling.

A lender shall not collect any fee from a real estate agent for the purpose of reserving or committing funds held or to be held by the lender for loans which are subject to this section. If a lender collects a fee which is prohibited by this paragraph the borrower has the right to recover the unlawful fee, plus attorney fees and costs incurred in an action necessary to effect recovery.

A lender shall not use an appraisal for any purpose in connection with making a loan under this section if the appraisal is performed by a person who is employed by or affiliated with any person receiving a commission or fee from the seller of the property. If a lender violates this paragraph the borrower is entitled to recover any actual damages plus the costs paid by the borrower, plus attorney fees incurred in an action necessary to effect recovery.

Sec. 23. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section thirteen (13), is reenacted and is the law of this state on and after the effective date of this Act, notwithstanding any contrary provision of Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190).

Sec. 24. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section thirteen (13), subsection one (1), is amended effective July 1, 1979, to read as follows:

1. ~~As used in this section:~~

~~a. -- "Loan" means money loaned to a borrower who furnishes, as security for all or any part of the loan, a mortgage on real property which is a single-family or a two-family dwelling to be occupied by the borrower or money~~

~~loaned--to--a--borrower--for--the--purpose--of--purchasing--agricultural--land--where--the--borrower--furnishes--a--mortgage--on--the--real--property--to--be--purchased--as--security--for--the--loan-~~

~~b.--"Lender"--means--any--state--or--federally--chartered--bank,--savings--and--loan--association--or--credit--union,--any--industrial--loan--company,--any--insuranc--company,--or--any--other--person--or--entity--which--makes--a--loan,--as--defined--in--this--section-~~

As used in this section, "loan" means a loan of money which is wholly or in part to be used for the purpose of purchasing real property which is a single-family or a two-family dwelling occupied or to be occupied by the borrower, or for the purpose of purchasing agricultural land. "Loan" includes the refinancing of a contract of sale, and the refinancing of a prior loan, whether or not the borrower also was the borrower under the prior loan, and the assumption of a prior loan.

Sec. 25. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section thirteen (13), subsection two (2), is amended effective July 1, 1979, to read as follows:

2. Whenever a borrower under a loan ~~repays--the--full--amount~~ prepays part or all of the outstanding balance of the loan ~~in--connection--with--a--transfer--of--ownership--of--the--real--property--given--as--security--for--that--loan,~~ the lender shall not receive an amount in payment of interest which is greater than the amount determined by applying the rate of interest agreed upon by the lender and the borrower to the unpaid balance of the loan for a period of time during which the borrower had the use of the money loaned; and the lender shall not impose any penalty or other charge in addition to the amount of interest due as a result of the repayment of that loan at a date earlier than is required by the terms of the loan agreement. A lender may, however, require advance notice of not more than thirty days of a borrower's intent to repay the ~~full--amount--of--a--loan~~ entire outstanding balance of a loan if the payment of that balance, together with any partial prepayments made previously by the borrower, will result in the repayment of the loan at a date earlier than is required by the terms of the loan agreement.

Sec. 26. Section five hundred thirty-four point twenty-one (534.21), subsection ten (10), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred thirty-three (133), section seven (7), and as further amended by Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section sixteen (16), is reenacted and shall be the law of this state on and after the effective date of this Act as amended by section twenty-seven (27) of this Act, notwithstanding any contrary provision of Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190).

Sec. 27. Section five hundred thirty-four point twenty-one (534.21), subsection ten (10), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred thirty-three (133), section seven (7), and as further amended by Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section sixteen (16) is amended on the effective date of this Act by striking the subsection and inserting in lieu thereof the following:

10. ADVANCE INTEREST ON PREPAYMENTS. Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, excepting that the association may charge not to exceed six months advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. Nothing contained in this subsection, however, authorizes an association to charge any advance interest or prepayment penalty where prohibited by Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section thirteen (13).

Sec. 28. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), sections fourteen (14), fifteen (15), seventeen (17), nineteen (19), and twenty-two (22), are reenacted, and are the law of this state on and after the effective date of this Act, notwithstanding any contrary provision of Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190).

Sec. 29. The maximum lawful rate of interest as established under Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section twelve (12), and in effect on the effective date of this Act as provided in that section, shall, notwithstanding contrary provisions of that section or that Act, be the maximum lawful rate until the maximum lawful rate for the first full calendar month which commences on or after the effective date of this Act is determined and published and takes effect as provided in section nineteen (19) of this Act.

Sec. 30. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), sections twenty-three (23) and twenty-six (26), are repealed on the effective date of this Act. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section twenty (20), is repealed on July 1, 1979.

Sec. 31. It is the intent of this Act that Acts of the Sixty-seventh General Assembly, one thousand one hundred ninety (1190), sections eleven (11) through seventeen (17), and sections nineteen (19) and twenty-two (22), which were enacted as temporary provisions to expire on July 1, 1979, shall be deemed permanent Iowa law as enacted, notwithstanding the temporary nature of those provisions when enacted, and that the laws of this state as contained in those provisions shall continue to be the laws of this state on and after the effective date of this Act, except as specifically amended by a provision of this Act, as if those provisions had been enacted as permanent Iowa law.

Sec. 32. The Code editor is directed to codify those sections of Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), which are reenacted by this Act or which are reenacted and amended by this Act, as permanent Code provisions, and to delete all references to 1977 Code law and to temporary law other than customary historical notations as appropriate.

Sec. 33. This Act, being of immediate importance, shall take effect, except as otherwise specifically provided in this Act, from and after its

publication in the Quad-City Times, a newspaper published in Davenport, Iowa, and in The Waterloo Courier, a newspaper published in Waterloo, Iowa.

Approved March 27, 1979

I hereby certify that the foregoing Act, Senate File 158, was published in The Waterloo Courier, Waterloo, Iowa on March 30, 1979, and republished April 6, 1979, and in the Quad-City Times, Davenport, Iowa on March 30, 1979, and republished April 4, 1979 and republished April 12, 1979.

MELVIN D. SYNHORST, *Secretary of State*

CHAPTER 131
SMALL LOAN MAXIMUM

H. F. 2

AN ACT increasing the maximum lending limit of a small loan company to two thousand dollars.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section five hundred thirty-six point one (536.1), Code 1979, is amended to read as follows:

536.1 LICENSE AND RIGHTS THEREUNDER--FACE-TO-FACE SOLICITATION. With respect to a loan other than a consumer loan, no person, copartnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of ~~one~~ two thousand dollars or less and charge, contract for, or receive on any such loan a greater rate of interest or consideration therefor than the lender would be permitted by law to charge if he or she were not a licensee hereunder except as authorized by this chapter and without first obtaining a license from the superintendent of banking, hereinafter called the superintendent. With respect to a consumer loan, a person required by section 537.2301 to have a license shall not engage in the business of making loans of money, credit, goods or things in action in the amount or value of ~~one~~ two thousand dollars or less and charge, contract for, or receive on any such loan a greater rate of interest or consideration therefor than the lender would be permitted by law to charge if he or she were not a licensee hereunder, except as authorized by this chapter and without first obtaining a license from the superintendent. A person who enters into less than ten supervised loans per year in this state and who neither has an office physically located in this state nor engages in face-to-face solicitation in this state may contract for and receive the rate of interest permitted in this chapter for licensees hereunder. A "consumer loan" shall be as defined in section 537.1301.

Sec. 2. Section five hundred thirty-six point thirteen (536.13), subsection five (5), Code 1979, is amended to read as follows: