

activities which would be allowable under section 41 of the Internal Revenue Code in effect on January 1, ~~1990~~ 1991.

Sec. 6. Sections 1, 2, and 5 of this Act are retroactive to January 1, 1990, for tax years beginning on or after that date.

Sec. 7. Section 3 of this Act is retroactive to January 1, 1991, for tax years beginning on or after that date.

Sec. 8. Section 4 of this Act takes effect January 1, 1992, for tax years beginning on or after that date.

Sec. 9. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 29, 1991

CHAPTER 216

FINANCIAL TRANSACTIONS — ELECTRONIC TRANSFERS — CREDIT CARD ISSUERS *S.F. 311*

AN ACT relating to the machines and access devices utilized to perform electronic transfer of funds, requiring registration of persons located outside of this state who issue credit cards, providing an examination fee, and providing a penalty.

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

Section 1. Section 527.2, Code 1991, is amended by adding the following new subsections:
NEW SUBSECTION. 18. "Electronic personal identifier" means a personal and confidential code or other security mechanism which has been designated by a financial institution issuing an access device to a customer to serve as a supplemental means of access to a customer's account that may be used by the customer in conjunction with an access device for the purpose of initiating a transaction by means of a satellite terminal.

NEW SUBSECTION. 19. "Limited-function terminal" means an on-line point-of-sale terminal or an off-line point-of-sale terminal which satisfies the requirements of section 527.4, subsection 3, paragraph "d", or a multiple use terminal, which is not operated in a manner to accept an electronic personal identifier, and which is not operated to distinguish between transactions which affect a customer asset account and transactions which do not affect a customer asset account. Except as otherwise provided, a limited-function terminal shall not be subject to the requirements imposed upon other satellite terminals pursuant to sections 527.4 and 527.5, subsections 1, 2, 3, 7, and 9.

NEW SUBSECTION. 20. "Customer asset account" or "account" means a demand deposit, share, checking, savings, or other customer account, other than an occasional or incidental credit balance in a credit plan, which represents a liability of the financial institution which maintains such account at a business location or office located in this state, either directly or indirectly for the benefit of a customer.

Sec. 2. Section 527.2, subsections 5, 10, and 14, Code 1991, are amended to read as follows:

5. "Financial institution" means and includes any bank incorporated under the provisions of ~~chapter 524~~ any state or federal law, any savings and loan association incorporated under the provisions of ~~chapter 534~~ any state or federal law, any credit union organized under the provisions of ~~chapter 533~~ any state or federal law, any corporation licensed as an industrial loan company under ~~chapter 536A~~, and any affiliate of a bank, savings and loan association,

or credit union incorporated under federal law or the laws of a state other than Iowa which has an office located within this state, or industrial loan company.

10. "Satellite terminal" means and includes any machine or device located off the premises of a financial institution, and any machine or device located on the premises of a financial institution only if the machine or device is available for use by customers of other financial institutions, whether attended or unattended, by means of which the financial institution and its customers utilizing an access device may engage through either the immediate transmission of electronic impulses to or from the financial institution or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the financial institution, in transactions which are incidental to the conduct of the business of the financial institution affect a customer asset account and which otherwise are specifically permitted by applicable law. "Satellite terminal" also includes any machine or device located on the premises of a financial institution only if the machine or device is available for use by customers of other financial institutions. However, the term "satellite terminal" does not include any such machine or device, wherever located, if that machine or device is not generally accessible to persons other than employees of a financial institution or an affiliate of a financial institution.

14. "Access device" means a card, code, or other means of access to a customer's account mechanism, or any combination thereof, that may be used by the a customer for the purpose of initiating a transaction by means of a satellite terminal which will affect a customer asset account.

Sec. 3. Section 527.2, subsection 6, paragraph a, Code 1991, is amended to read as follows:

a. The machine or device is established and owned or operated by a person who primarily engages in a service, business or enterprise, including but not limited to the retail sale of goods or services, but who is not organized under the laws of this state or under federal law as a bank, savings and loan association, or credit union;

Sec. 4. Section 527.3, subsection 2, Code 1991, is amended to read as follows:

2. The administrator shall have the authority to examine any person who operates a multiple use terminal, limited-function terminal, or other satellite terminal, and any other device or facility with which such terminal is interconnected, as to any transaction by, with, or involving a financial institution which affects a customer asset account. Information obtained in the course of such an examination shall not be disclosed, except as provided by law.

Sec. 5. Section 527.3, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 6. The authority of an administrator pursuant to section 527.5, subsection 2, paragraph "a", to approve access cards issued by a financial institution for use as an access device includes the requirement that a registration statement shall be filed with the administrator and be maintained on a current basis by each financial institution issuing access cards within the state. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, a depiction of both sides of the access card, and any other information the administrator deems relevant relating to the access card and transactions utilizing the access card which affect a customer asset account.

NEW SUBSECTION. 7. A financial institution shall not be required to join, be a member or shareholder of, or otherwise participate in, any corporation, association, partnership, cooperative, or other enterprise as a condition of the financial institution's utilization of any satellite terminal located within this state.

Sec. 6. Section 527.4, subsection 3, paragraph d, Code 1991, is amended to read as follows:

d. At any retail sales location in this state off the premises of the financial institution if all of the following apply:

(1) The satellite terminal is not designed, configured, or operated to accept deposits or to dispense scrip or other negotiable instruments.

(2) The satellite terminal is not ~~designed, configured, or operated to dispense cash except when operated by the retailer as part of a retail sales a person other than the customer initiating the transaction.~~

(3) The satellite terminal is utilized for the purpose of making payment to the ~~retailer for provider of goods or services purchased or provided~~ at the location of the satellite terminal.

Sec. 7. Section 527.5, subsection 2, paragraph b, Code 1991, is amended by striking the paragraph.

Sec. 8. Section 527.5, subsection 6, Code 1991, is amended to read as follows:

6. The charges required to be paid by any financial institution which utilizes the satellite terminal for transactions involving an access device shall not exceed a pro rata portion of the costs, determined in accordance with generally accepted accounting principles, of establishing, operating and maintaining the satellite terminal, plus a reasonable return on these costs to the owner of the satellite terminal.

Sec. 9. Section 527.5, subsection 8, Code 1991, is amended to read as follows:

8. a. A satellite terminal in this state shall not be operated in a manner to permit a person to credit deposit funds into a demand deposit account, savings account, share account, or any other account representing a liability of a financial institution, if that the business location of the financial institution where the original records pertaining to the person's account are maintained is located outside of this state.

b. Paragraph "a" of this subsection does not apply to a corporation licensed under chapter 536A. A satellite terminal shall not be operated in any manner to permit a person to credit deposit funds into an account representing a liability of a corporation licensed under chapter 536A, if the business location of the corporation where the original records pertaining to the person's account are maintained is located outside of this state.

Sec. 10. Section 527.5, subsection 9, paragraph b, subparagraph (2), Code 1991, is amended to read as follows:

(2) The transaction does not affect a deposit customer asset account held by a financial institution.

Sec. 11. Section 527.5, Code 1991, is amended by adding the following new subsections:

NEW SUBSECTION. 11. Any person, as defined in section 4.1, subsection 13, establishing a limited-function terminal within this state, except for a multiple use terminal, which is utilized to initiate transactions affecting a customer asset account shall file with the administrator and shall maintain on a current basis a registration statement on a form prescribed by the administrator containing the name and address of the registrant, the location of the limited-function terminal, and any other information the administrator deems relevant. All limited-function terminals established in this state prior to July 1, 1991, shall be registered in a similar manner by the establishing person no later than July 1, 1992.

NEW SUBSECTION. 12. If at any time, a limited-function terminal is upgraded, altered, or modified to be operated in a manner to accept the use of an electronic personal identifier or to distinguish between transactions which affect customer asset accounts and transactions which do not affect customer asset accounts, all requirements of a satellite terminal in this chapter apply. A financial institution not eligible to establish satellite terminals within this state, which has established a limited-function terminal which is subsequently upgraded, altered, or modified as contemplated in this subsection, shall enter into an agreement with a financial institution which is authorized to establish a satellite terminal within this state to comply with the requirements of section 527.4 and this subsection.

NEW SUBSECTION. 13. Effective July 1, 1993, any transaction engaged in with a retailer through a satellite terminal located in this state by means of an access device which results in a debit to a customer asset account shall be cleared and paid at par to the retailer during the settlement of such transaction to the retailer. Processing fees and charges for such transactions to the retailer shall not be based on a percentage of the amount of the transaction. All

accounting documents reflecting such fees and charges shall separately identify transactions which have resulted in a debit to a customer asset account and the charges imposed. The provisions of this subsection shall apply to all satellite terminals, including limited-function terminals and multiple use terminals.

Sec. 12. Section 527.7, subsection 2, Code 1991, is amended to read as follows:

2. In any transaction where the total ~~account~~ amount involved is deducted from funds in a customer's account and is simultaneously paid either directly or indirectly by the financial institution to the account of a third party, any portion of the transaction amount which represents a sales or other tax imposed upon or included within the transaction and collected by that third party from the customer, or any portion of the transaction amount which represents interest paid to the third party by the customer.

Sec. 13. NEW SECTION. 527.8A EXEMPTIONS.

Transactions initiated at a satellite terminal which do not involve the use of an access device to directly or indirectly affect a customer asset account are not governed by this chapter.

Sec. 14. Section 527.9, subsection 2, paragraphs e and f, Code 1991, are amended to read as follows:

e. An agreement by the applicant that the proposed central routing unit will be capable of accepting and routing, and will be operated to accept and route, transmissions of data originating at any satellite terminal located in this state, except limited-function terminals, whether receiving from that terminal or from a data processing center or other central routing unit.

f. A representation and undertaking that the proposed central routing unit is directly connected to every data processing center that is directly connected to a satellite terminal located in this state, and that the proposed central routing unit will provide for direct connection in the future with any data processing center that becomes directly connected to a satellite terminal located in this state. This representation and undertaking is not required of a central routing unit with respect to limited-function terminals.

Sec. 15. NEW SECTION. 536C.1 TITLE.

This chapter shall be known and may be cited as the "Lender Credit Card Act".

Sec. 16. NEW SECTION. 536C.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the superintendent of banking, the superintendent of savings and loan associations or the superintendent's successor, or the superintendent of credit unions. However, the powers of administration and enforcement of this chapter are to be exercised pursuant to section 536C.14.

2. "Agreement" means agreement as defined in section 537.1301, subsection 3.

3. "Cardholder" means cardholder as defined in section 537.1301, subsection 7.

4. "Consumer credit transaction" means consumer credit transaction as defined in section 537.1301, subsection 11.

5. "Credit card" means a card or device issued by a financial institution under an arrangement pursuant to which a card issuer gives a cardholder the privilege of purchasing or leasing property, or purchasing services, obtaining loans, or otherwise obtaining credit from at least one hundred persons not related to the card issuer.

6. "Financial institution" means a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, and any affiliate of such bank, savings and loan association, or credit union.

7. "Person" means any individual, firm, corporation, partnership, joint venture, or association, and any other organization or group, however organized.

Sec. 17. NEW SECTION. 536C.3 EXEMPTIONS.

This chapter does not apply to a bank chartered under chapter 524 or a bank chartered under federal law which has its principal place of business located in this state, a savings and loan association chartered under chapter 534 or a savings and loan association chartered under federal law which has its principal place of business located in this state, a credit union chartered under chapter 533 or a credit union chartered under federal law which has its principal place of business located in this state, regulated loan companies licensed under chapter 536, or industrial loan companies licensed under chapter 536A.

Sec. 18. NEW SECTION. 536C.4 NOTIFICATION.

1. A person shall file a registration statement annually with the administrator before conducting the business of issuing credit cards in this state, and annually thereafter on or before January 31 of each year. The registration statement shall be in writing on a form prescribed by the administrator, and contain the name and address of the registrant, the name and address of a designated agent upon whom service of process may be made in this state, and any other information the administrator deems relevant.

2. At the time of filing a registration statement the person shall provide the administrator with a copy of the credit agreement and billing statement being used by the card issuer.

3. If information in a filing statement becomes inaccurate after filing, the person shall notify the administrator in writing of the changes within sixty days of such change.

Sec. 19. NEW SECTION. 536C.5 FEES.

A person required to file a registration statement pursuant to this chapter shall pay to the administrator an annual fee of fifty dollars. The fee shall be paid at the time the person files the registration statement.

Sec. 20. NEW SECTION. 536C.6 APPLICABILITY OF IOWA CONSUMER CREDIT CODE.

1. The terms and conditions of a credit card agreement shall conform to the provisions of chapter 537, the Iowa consumer credit code.

2. A provision of the Iowa consumer credit code applicable to credit cards regulated by this chapter supersedes a conflicting provision of this chapter.

3. A person who is in full compliance with the provisions of this chapter is considered a supervised financial organization under the Iowa consumer credit code for purposes of contracting for finance charges authorized for credit card issuers under section 537.2402.

Sec. 21. NEW SECTION. 536C.7 BOOKS AND RECORDS.

A person who issues credit cards shall keep such books, accounts, and records as will enable the administrator to determine whether or not the person is complying with the provisions of this chapter and chapter 537. The person shall not be required to preserve or keep their records or files for a longer period than three years following the date of the final payment.

Sec. 22. NEW SECTION. 536C.8 INVESTIGATIONS.

1. The administrator may investigate at any time the business of a credit card issuer subject to the provisions of this chapter. The administrator may examine the books, records, accounts, and files pertaining to the business of issuing credit cards subject to the provisions of this chapter.

2. The administrator may accept a copy of an examination conducted by a state or federal regulator in lieu of an investigation or examination by the administrator.

3. If an investigation or examination is performed by the administrator under this section, the credit card issuer shall pay to the administrator a fee based on the actual cost of such investigation or examination as determined by the administrator.

4. Upon completion of an investigation or examination by the administrator, the examiner shall render a billing in triplicate, with one copy to be delivered to the credit card issuer and two copies to be delivered to the administrator. Failure to pay the fee to the administrator

within thirty days after the billing for the investigation of examination is delivered shall subject the credit card issuer to an additional fee of five percent of the amount of the original fee for each day the payment is delinquent.

Sec. 23. NEW SECTION. 536C.9 CEASE AND DESIST ORDERS.

1. If the administrator has reasonable cause to believe a person who issues credit cards is violating any provision of this chapter, or rules adopted pursuant to this chapter, the administrator may enter a written order requiring the person to cease, desist, and refrain from an act constituting a violation. A copy of the order shall be sent to the person by certified mail. The person may file with the administrator a written notice of appeal within fifteen days of receipt of the order. The person may also request that the order be stayed pending resolution of the appeal. The appellant shall be entitled to prompt consideration of the request to stay the order.

2. Within thirty days after receipt of a notice of appeal the administrator shall hold a hearing to consider the appeal. The appellant shall be informed regarding the time and place of the hearing not later than ten days prior to the hearing. The administrator's decision shall be provided, in writing, to the appellant within thirty days of the completion of the hearing.

Sec. 24. NEW SECTION. 536C.10 INJUNCTIONS.

The administrator may commence an action in the district court to restrain and enjoin any person from violating this chapter, or to restrain and enjoin any person from engaging in the business of issuing credit cards without filing a registration statement as required by this chapter.

Sec. 25. NEW SECTION. 536C.11 WAIVER UNENFORCEABLE.

A waiver of the provisions of this chapter or chapter 537 is not valid.

Sec. 26. NEW SECTION. 536C.12 PENALTY.

If an officer, director, or agent of a corporation engaged in the business of issuing credit cards violates any of the provisions of this chapter which are not also violations of the Iowa consumer credit code; or if a person individually or as a partner, or officer, director, or agent of a corporation engages in the business of issuing credit cards without filing the registration statement required by section 536C.4, the person is guilty of a serious misdemeanor. Violations of this chapter which are also violations of the Iowa consumer credit code shall be subject to the penalties provided in the Iowa consumer credit code.

Sec. 27. NEW SECTION. 536C.13 RULES.

The administrator may adopt such rules pursuant to chapter 17A, as may be necessary for the enforcement and administration of this chapter.

Sec. 28. NEW SECTION. 536C.14 ENFORCEMENT.

1. The superintendent of banking shall enforce the provisions of this chapter with respect to banks not exempt from the provisions of this chapter under section 536C.3.

2. The superintendent of credit unions shall enforce the provisions of this chapter with respect to credit unions not exempt from the provisions of this chapter under section 536C.3.

3. The superintendent of savings and loan associations or the superintendent's successor shall enforce the provisions of this chapter with respect to savings and loan associations not exempt from the provisions of this chapter under section 536C.3.

Approved May 29, 1991