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SENATE FILE 274
BY BOLKCOM

(COMPANION TO LSB 2376HH
BY RAECKER)

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

A BILL FOR

1 An Act relating to delayed deposit loans, making penalties
2 applicable, and providing for civil remedies.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 274
COMMERCE

1 Section 1. Section 533D.1, Code 2001, is amended to read
2 as follows:

3 533D.1 TITLE AND PURPOSE.

4 1. This chapter shall be known and may be cited as the
5 "Delayed Deposit Services-bicensing Loan Act".

6 2. The purpose of this chapter is to protect consumers who
7 enter into short-term loans with high rates of interest.

8 3. Loans made pursuant to this chapter are subject to the
9 Iowa consumer credit code.

10 4. This chapter shall be liberally construed as a consumer
11 protection statute in order to effectuate its purpose.

12 Sec. 2. Section 533D.2, Code 2001, is amended to read as
13 follows:

14 533D.2 DEFINITIONS.

15 For purposes of this chapter, unless the context otherwise
16 requires:

17 1. "Check" means a check, draft, share draft, or other
18 instrument for the payment of money.

19 1A. "Consumer" means any natural person who singly, or
20 jointly with another consumer, enters into a delayed deposit
21 loan.

22 2. "Delayed deposit services-business loan" means includes
23 any arrangement in which a person who-for-a-fee does either of
24 the following for a fee, service charge, or other
25 consideration:

26 a. Accepts a check dated subsequent to the date it was
27 written and agrees to hold the check for deposit until the
28 date written on the check.

29 b. Accepts a check dated on the date it was written and
30 holds the check for a period of time prior to deposit or
31 presentment pursuant to an agreement with, or any
32 representation made to, the maker of the check, whether
33 express or implied.

34 2A. "Delayed deposit loan business" means a person who
35 makes delayed deposit loans.

1 2B. "Facilitator" means any person who facilitates,
2 enables, or acts as a conduit for another person, who is or
3 may be exempt from licensing, who is operating a delayed
4 deposit loan business.

5 3. "Licensee" means a person licensed to operate pursuant
6 to this chapter, or any facilitator. Except for section
7 533D.3, for purposes of this chapter, a licensee includes a
8 supervised financial organization as defined in section
9 537.1301.

10 4. "Person" means an individual, group of individuals,
11 partnership, association, corporation, or any other business
12 unit or legal entity.

13 5. "Superintendent" means the superintendent of banking.

14 6. "Supervised financial organization" means a person as
15 defined in section 537.1301, subsection 42.

16 Sec. 3. NEW SECTION. 533D.2A APPLICABILITY --
17 EXEMPTIONS.

18 1. IN GENERAL. Except as otherwise provided in this
19 section, this chapter applies to any person who, for a fee,
20 service charge or other consideration, accepts a check dated
21 on the date it was written and agrees to hold it for a period
22 of days prior to deposit or presentment, or accepts a check
23 dated subsequent to the date it was written, and agrees to
24 hold the check for deposit until the date written on the
25 check.

26 2. FACILITATORS. This chapter applies to any facilitator.

27 3. SUPERVISED FINANCIAL ORGANIZATIONS. To the extent that
28 supervised financial organizations are subject to federal laws
29 that may preempt the provisions of this chapter regarding
30 limitations on interest rates and fees, all other provisions
31 of this chapter, except the requirements for licensure in
32 section 533D.3, apply to supervised financial organizations.

33 4. EMPLOYEES. Any individual who is acting solely as an
34 employee of a licensee need not be separately licensed.

35 5. EVASION OF APPLICABILITY. This chapter shall apply to

1 any person who seeks to evade its applicability by any device,
2 subterfuge, or pretense.

3 Sec. 4. Section 533D.3, Code 2001, is amended to read as
4 follows:

5 533D.3 LICENSE REQUIRED -- APPLICATION PROCESS -- DISPLAY.

6 1. A person shall not operate a delayed deposit ~~services~~
7 loan business or be a facilitator in this state unless the
8 person is licensed by the superintendent as provided in this
9 chapter or unless the person is a supervised financial
10 organization exempt from the license requirements of this
11 chapter by virtue of other state or federal laws.

12 2. An applicant for a license shall submit an application,
13 under oath, to the superintendent on forms prescribed by the
14 superintendent. The forms shall contain such information as
15 the superintendent may prescribe.

16 3. The application required by this section shall be
17 submitted with ~~both~~ all of the following:

18 a. An application fee in an amount prescribed by rule
19 adopted by the superintendent.

20 b. A license fee of two hundred fifty dollars per
21 location.

22 ~~b.~~ c. A surety bond executed by a surety company
23 authorized to do business in this state in the sum of twenty-
24 five thousand dollars per location, which bond shall be
25 continuous in nature until canceled by the surety. A surety
26 shall provide at least thirty days' notice in writing to the
27 licensee and to the superintendent indicating the surety's
28 intent to cancel the bond and the effective date of the
29 cancellation. The surety bond shall be for the benefit of the
30 citizens of this state and shall be conditioned upon the
31 licensee's willingness to comply with this chapter, the
32 faithful performance by the licensee of the duties and
33 obligations pertaining to the delayed deposit ~~services~~ loan
34 business so licensed, and the prompt payment of any judgment
35 recovered against the licensee. The surety's liability under

1 this chapter is limited to the amount of the bond regardless
2 of the number of years the bond is in effect.

3 4. The superintendent shall issue a license to an
4 applicant if the superintendent finds all of the following:

5 a. The experience, character, and general fitness of the
6 applicant and its officers, directors, shareholders, partners,
7 or members are such as to warrant a finding that the applicant
8 will conduct the delayed deposit services loan business
9 honestly, fairly, and efficiently.

10 b. The applicant and its officers, directors,
11 shareholders, partners, or members have not been convicted of
12 a serious misdemeanor, aggravated misdemeanor, or a felony in
13 this state, or convicted of a crime in another jurisdiction
14 which that would be a serious misdemeanor, aggravated
15 misdemeanor, or a felony in this state.

16 c. The applicant is financially responsible and will
17 conduct the delayed deposit services loan business pursuant to
18 this chapter, chapter 537, and other applicable laws.

19 d. The applicant has unencumbered assets of at least
20 twenty-five thousand dollars per location available for
21 operating the delayed deposit services loan business.

22 5. The superintendent shall approve or deny an application
23 for a license by written order not more than ninety days after
24 the filing of an application. An order of the superintendent
25 issued pursuant to this section may be appealed pursuant to
26 chapter 17A.

27 6. A license issued pursuant to this chapter shall be
28 conspicuously posted at the licensee's place of business. A
29 license shall remain in effect until the next succeeding May
30 1, unless earlier suspended or revoked by the superintendent.
31 A license shall be renewed annually by filing with the
32 superintendent an application for renewal containing such
33 information as the superintendent may require to indicate any
34 material change in the information contained in the original
35 application or succeeding renewal applications and a renewal

1 fee of ~~one~~ two hundred fifty dollars.

2 Sec. 5. Section 533D.4, Code 2001, is amended to read as
3 follows:

4 533D.4 SURRENDER OF LICENSE.

5 1. A licensee may surrender a delayed deposit ~~services~~
6 loan license by delivering to the superintendent written
7 notice that the license is surrendered.

8 2. The surrender does not affect the licensee's civil or
9 criminal liability for acts committed prior to such surrender,
10 or the liability of the surety on the bond, or ~~nor does the~~
11 surrender entitle such licensee to a return of any part of the
12 annual license fee.

13 3. The superintendent may establish procedures for the
14 disposition of the books, accounts, and records of the
15 licensee and may require such action as deemed necessary for
16 the protection of the makers of checks ~~which~~ that are
17 outstanding at the time of surrender of the license.

18 Sec. 6. Section 533D.5, Code 2001, is amended to read as
19 follows:

20 533D.5 CHANGE IN CIRCUMSTANCES -- NOTIFICATION OF
21 SUPERINTENDENT.

22 A licensee ~~is-to~~ shall notify the superintendent in writing
23 within thirty days of the occurrence of a material development
24 affecting the licensee, including, but not limited to, any of
25 the following:

26 1. Filing for bankruptcy or reorganization.

27 2. Reorganization of the business.

28 3. Commencement of license revocation or any other civil
29 or criminal proceedings by any other state or jurisdiction.

30 4. The filing of a criminal indictment or complaint
31 against the licensee or any of the licensee's officers,
32 directors, shareholders, partners, members, employees, or
33 agents.

34 5. A serious misdemeanor, aggravated misdemeanor, or a
35 felony conviction against the licensee or any of the

1 licensee's officers, directors, shareholders, partners,
2 members, employees, or agents.

3 Sec. 7. Section 533D.6, Code 2001, is amended to read as
4 follows:

5 533D.6 CONTINUED OPERATION AFTER CHANGE IN OWNERSHIP --
6 APPROVAL OF SUPERINTENDENT REQUIRED.

7 1. The prior written approval of the superintendent is
8 required for the continued operation of a delayed deposit
9 services loan business whenever a change in control of a
10 licensee is proposed.

11 a. Control in the case of a corporation means direct or
12 indirect ownership of, or the right to control, ten percent or
13 more of the voting shares of the corporation, or the ability
14 of a person to elect a majority of the directors or otherwise
15 effect a change in policy.

16 b. Control in the case of any other entity means any
17 change in the principals of the organization, whether active
18 or passive.

19 c. The superintendent may require information deemed
20 necessary to determine whether a new application is required.
21 Costs incurred by the superintendent in investigating a change
22 of control request shall be paid by the person requesting such
23 approval.

24 2. A license issued pursuant to this chapter is not
25 transferable or assignable.

26 Sec. 8. Section 533D.7, Code 2001, is amended to read as
27 follows:

28 533D.7 PRINCIPAL PLACE OF BUSINESS -- BRANCH OFFICES
29 AUTHORIZED.

30 1. Except as provided in subsection 2, a licensee may
31 operate a delayed deposit services loan business only at an
32 office designated as its principal place of business in the
33 application.

34 a. The licensee shall maintain its books, accounts, and
35 records at its designated principal place of business.

1 b. A licensee may change the location of its designated
2 principal place of business with the prior written approval of
3 the superintendent. The superintendent shall establish forms
4 and procedures for determining whether the change of location
5 should be approved.

6 2. A licensee may operate branch offices only in the same
7 county in which the licensee's designated principal place of
8 business is located. The licensee may establish a branch
9 office, provided that the financial requirements of section
10 533D.3 are met with regard to the additional location, or
11 change the location of a branch office, with the prior written
12 approval of the superintendent. The superintendent shall
13 establish forms and procedures for determining whether the
14 location of a branch office should be approved.

15 3. A fee of one two hundred fifty dollars shall be paid to
16 the superintendent for each request made pursuant to
17 subsection 1 or 2.

18 Sec. 9. Section 533D.8, Code 2001, is amended to read as
19 follows:

20 533D.8 OTHER BUSINESS OPERATIONS AT SAME SITE --
21 RESTRICTIONS.

22 1. A licensee may operate a delayed deposit services loan
23 business at a location where any other business is operated or
24 in association or conjunction with any other business with the
25 written approval of the superintendent and consistent with
26 both of the following requirements:

27 a. The books, accounts, and records of the delayed deposit
28 services loan business are kept and maintained separate and
29 apart from the books, accounts, and records of the other
30 business.

31 b. The other business is not of a type which would tend to
32 enable the concealment of acts engaged in to evade the
33 requirements of this chapter. If the superintendent
34 determines upon investigation that the other business is of a
35 type which would conceal such acts the superintendent shall

1 order the licensee to cease the operation of the delayed
2 deposit services loan business at the location.

3 2. The department may order the licensee to cease
4 operations of the business if it fails to obtain written
5 approval of the superintendent before operating a business in
6 association or conjunction with services provided under this
7 chapter.

8 Sec. 10. Section 533D.9, Code 2001, is amended by striking
9 the section and inserting in lieu thereof the following:

10 533D.9 PERMITTED FEES.

11 A licensee shall not charge, contract for, or directly or
12 indirectly receive, any interest, fees, or charges, except
13 those specifically authorized by this section.

14 1. TRANSACTION FEE. A licensee shall not charge a fee in
15 excess of five dollars per hundred dollars of the amount
16 financed. However, the licensee may receive a minimum charge
17 of five dollars when the amount financed exceeds seventy-five
18 dollars, or three dollars and fifty cents when the amount
19 financed exceeds fifty dollars.

20 2. DEFAULT FEE. If the check is not negotiable on the
21 date agreed upon, a licensee may charge a default fee, not to
22 exceed fifteen dollars. Only one such fee may be collected
23 with respect to a check even if it has been redeposited and
24 returned more than once, no matter how long the check remains
25 unpaid. A fee charged pursuant to this subsection is a
26 licensee's exclusive remedy and charge for late payment or
27 nonpayment.

28 Sec. 11. NEW SECTION. 533D.9A REQUIRED DOCUMENTS AND
29 DISCLOSURES.

30 1. INFORMATION PAMPHLET PROVIDED TO ALL CONSUMERS. Before
31 entering into a delayed deposit loan, the licensee shall
32 deliver to the consumer a pamphlet prepared by the
33 superintendent which explains, in simple English and Spanish,
34 all of the consumer's rights and responsibilities in a delayed
35 deposit loan transaction, includes a toll-free number to the

1 superintendent's office to handle concerns or complaints by
2 consumers, and informs consumers that the superintendent's
3 office can provide information about whether a delayed deposit
4 loan businesses is licensed, whether complaints have been
5 filed with the superintendent, and the resolution of such
6 complaints.

7 2. LOAN DOCUMENTS. Licensees shall provide consumers with
8 a written agreement in clear, understandable English and the
9 language in which the loan was negotiated, on a form specified
10 or approved by the superintendent, in a form the consumer can
11 keep, that includes all of the following information:

12 a. The name, address, and telephone number of the licensee
13 making the delayed deposit loan, and the name and title of the
14 individual employee who signs the agreement on behalf of the
15 licensee.

16 b. An itemization of fees and charges to be paid by the
17 consumers.

18 c. The date on which the check will be deposited or
19 presented for negotiation.

20 d. A clear description of the consumer's payment
21 obligations under the transaction.

22 e. The default fee that the licensee will charge if the
23 check is not negotiable on the date agreed upon; that it may
24 be collected only once on a check no matter how long the check
25 remains unpaid; and that it is the exclusive fee and remedy
26 for late payment or nonpayment.

27 f. Disclosures required by section 537.3201 and the Truth
28 in Lending Act as defined in section 537.1302, irrespective of
29 whether the Truth in Lending Act applies to the particular
30 delayed deposit loan transaction.

31 g. Applicable notices pursuant to Iowa law, including, but
32 not limited to, that required by section 537.3203.

33 h. In a manner that is more conspicuous than the other
34 information provided in the loan document, and located
35 immediately preceding the signature of the consumer, the

1 following notice in at least fourteen point type: "You cannot
2 be prosecuted in criminal court to collect this loan."

3 3. POSTED NOTICE. Notices must be clearly and
4 conspicuously posted by all licensees in each location, in
5 English, and in any other language in which a significant
6 amount of delayed deposit loan transaction business is
7 conducted at that location, which informs consumers of the
8 following information:

9 a. Informs consumers that the licensee cannot use the
10 criminal process against a consumer to collect any delayed
11 deposit loan transaction check.

12 b. Informs the consumers of the schedule of all fees,
13 charges, interest, and penalties to be charged on delayed
14 deposit loan transactions. The schedule shall include an
15 example of the amounts that would be charged on a one hundred
16 dollar loan payable in fourteen and thirty days, and shall
17 provide the corresponding annual percentage rate.

18 Sec. 12. NEW SECTION. 533D.9B REQUIREMENTS AND TERMS.

19 1. Each delayed deposit loan must have a minimum term of
20 no less than two weeks for each fifty dollars owed on the
21 loan.

22 2. The maximum amount of a delayed deposit loan shall not
23 exceed five hundred dollars.

24 3. The minimum amount of a delayed deposit loan shall be
25 fifty dollars.

26 4. A consumer shall be permitted to make partial payments
27 on the loan at any time, without charge, in amounts equal to
28 no less than five dollar increments.

29 5. The check written by the consumer in a delayed deposit
30 loan must be made payable to the licensee.

31 6. Upon receipt of the check from the consumer for a
32 delayed deposit loan, the licensee must immediately stamp the
33 back of the check with an endorsement that states "This check
34 is being negotiated as part of a delayed deposit loan pursuant
35 to Iowa Code chapter 533D, and any holder of this check takes

1 it subject to all claims and defenses of the maker."

2 7. Any facilitator is subject to enforcement under
3 sections 533D.12 through 533D.15 and the civil remedies in
4 section 533D.15A if the person making the delayed deposit loan
5 fails to comply with the requirements of this chapter.

6 8. The licensee must provide the consumer, or each
7 consumer if there is more than one, with copies of the
8 documents described in section 533D.9A, subsection 2, prior to
9 the consummation of the loan.

10 9. The holder or assignee of any check written by a
11 consumer in connection with a delayed deposit loan takes the
12 instrument subject to all claims and defenses of the maker.

13 10. The licensee shall give to each person making a
14 payment, whether in whole or in part, a signed, dated receipt
15 showing the amount paid and the balance due on the loan.

16 Sec. 13. Section 533D.10, Code 2001, is amended to read as
17 follows:

18 533D.10 PROHIBITED ACTS BY LICENSEE.

19 1. A licensee shall not do any of the following:

20 a. Hold from any one maker more than ~~two-checks~~ one check
21 at any one time, or otherwise make more than one delayed
22 deposit loan to a consumer at a time.

23 ~~b.--Hold-from-any-one-maker-a-check-or-checks-in-an~~
24 ~~aggregate-face-amount-of-more-than-five-hundred-dollars-at-any~~
25 ~~one-time.~~

26 ~~c.--Hold-or-agree-to-hold-a-check-for-more-than-thirty-one~~
27 ~~days.~~

28 ~~d.~~ b. Require the maker to receive payment by a method
29 which that causes the maker to pay additional or further fees
30 and charges to the licensee or another person, or otherwise
31 charge to cash a check representing the proceeds of the
32 delayed deposit loan.

33 ~~e.~~ c. Repay, refinance, or otherwise consolidate a
34 postdated check transaction with the proceeds of another
35 postdated check transaction made by the same licensee. Upon

1 termination of a delayed deposit loan through the payment of
2 the consumer's check by the drawee bank, the return of a check
3 to a consumer who redeems it for consideration, through
4 expiration of maturity date, or any other method of
5 termination, the licensee shall not enter into another delayed
6 deposit loan with the same consumer for at least thirty days
7 thereafter; provided, that a licensee may extend the term of
8 the loan without charge.

9 f. d. Receive Contract for or receive any other charges or
10 fees in addition to the fees listed in section 533D.97
11 subsections-1-and-2. This prohibition includes but is not
12 limited to any charges for insurance.

13 e. Engage in the business of delayed deposit lending
14 unless the superintendent has issued a valid license.

15 f. Use or threaten to use the criminal process in this or
16 any other state to collect on the delayed deposit loan.

17 g. Engage in unfair, deceptive, or fraudulent practices in
18 the advertising, making, or collecting of a delayed deposit
19 loan.

20 h. Use any device or agreement that would have the effect
21 of charging or collecting more fees than allowed by this
22 chapter, including but not limited to entering into a
23 different type of transaction with the consumer.

24 i. Alter any information on the check or any other loan
25 documents.

26 j. In the event of default, sue on the check. All suits
27 arising out of default shall be brought on the written
28 agreement executed by the consumer in accordance with section
29 533D.9A, subsection 2.

30 k. Accepting collateral for any delayed deposit loan; or
31 using or attempting to use the check provided in connection
32 with a delayed deposit loan as security for purposes of state
33 or federal law.

34 2. For purposes of this section, "licensee" includes a
35 person related to the licensee by common ownership or control,

1 a person in whom the licensee has any financial interest, or
2 any employee or agent of the licensee.

3 Sec. 14. Section 533D.11, Code 2001, is amended to read as
4 follows:

5 533D.11 EXAMINATION OF RECORDS BY SUPERINTENDENT.

6 1. The superintendent shall examine the books, accounts,
7 and records of each licensee annually.

8 2. The licensee shall pay to costs-of the superintendent
9 incurred-in an examination shall-be-paid-by-the-licensee fee,
10 based on the actual cost of the examination plus the
11 proportionate share of administrative expenses in the
12 operation of the banking division of the department of
13 commerce attributable to the administration of this chapter as
14 determined by the superintendent.

15 3. The superintendent may examine or investigate
16 complaints or reports concerning alleged violations of this
17 chapter or any rule adopted or order issued by the
18 superintendent, or violations of chapter 537 or any rule
19 adopted or order issued by the administrator of the Iowa
20 consumer credit code. The superintendent may order the actual
21 cost of the examination or investigation to be paid by the
22 person who is the subject of the examination or investigation,
23 whether or not the alleged violator is licensed.

24 Sec. 15. Section 533D.12, subsection 1, paragraph a, Code
25 2001, is amended to read as follows:

26 a. A licensee or any of its officers, directors,
27 shareholders, partners, or members has violated this chapter
28 or any rule adopted or order issued by the superintendent, or
29 violated chapter 537 or any rule adopted or order issued by
30 the administrator of the Iowa consumer credit code.

31 Sec. 16. Section 533D.12, Code 2001, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 3. The revocation, suspension, or
34 surrender of any license shall not relieve the licensee from
35 civil or criminal liability for acts committed prior to the

1 revocation, suspension, or surrender.

2 Sec. 17. Section 533D.13, Code 2001, is amended to read as
3 follows:

4 533D.13 CEASE AND DESIST ORDER -- INJUNCTION.

5 1. If the superintendent believes that any person has
6 engaged in or is about to engage in an act or practice
7 constituting a violation of this chapter or any rule adopted
8 or order issued by the superintendent, or a violation of
9 chapter 537 or any rule adopted or order issued by the
10 administrator of the Iowa consumer credit code, the
11 superintendent may issue and serve on the person a cease and
12 desist order.

13 2. Upon entry of a cease and desist order, the
14 superintendent shall promptly notify in writing all persons to
15 whom the order is directed that it has been entered and the
16 reasons for the order.

17 3. Any person to whom the order is directed may request in
18 writing a hearing within fifteen business days after the date
19 of the issuance of the order.

20 4. Upon receipt of the written request, the matter shall
21 be set for hearing within fifteen business days of the receipt
22 by the superintendent, unless the person requesting the
23 hearing consents to a later date. If a hearing is not
24 requested within fifteen business days and none is ordered by
25 the superintendent, the order of the superintendent shall
26 automatically become final and remain in effect until modified
27 or vacated by the superintendent. If a hearing is requested
28 or ordered, the superintendent, after notice and hearing,
29 shall issue written findings of fact and conclusions of law
30 and shall affirm, vacate, or modify the order.

31 5. The superintendent may vacate or modify an order if the
32 superintendent finds that the conditions which that caused its
33 entry have changed or that it is otherwise in the public
34 interest to do so. Any person aggrieved by a final order of
35 the superintendent may appeal the order as provided in chapter

1 17A.

2 6. If it appears that a person has engaged in or is
3 engaging in an act or practice in violation of this chapter or
4 chapter 537, the attorney general may initiate an action in
5 the district court to enjoin such acts or practices pursuant
6 to this subsection, or chapter 537, article 6, part 1, and to
7 enforce compliance with this chapter or chapter 537. Upon a
8 showing of a violation of this chapter or chapter 537, a
9 permanent or temporary injunction, restraining order, or writ
10 of mandamus shall be granted, or a receiver or conservator may
11 be appointed to oversee the person's assets. The attorney
12 general shall not be required to post a bond.

13 Sec. 18. Section 533D.14, subsection 1, Code 2001, is
14 amended to read as follows:

15 1. If the superintendent finds, after notice and hearing
16 as provided in this chapter, that a person has violated this
17 chapter, a rule adopted pursuant to this chapter, or an order
18 of the superintendent, or has violated chapter 537 or any rule
19 adopted or order issued by the administrator of the Iowa
20 consumer credit code, the superintendent may order the person
21 to pay an administrative fine of not more than five thousand
22 dollars for each violation, in addition to the costs of
23 investigation.

24 Sec. 19. Section 533D.15, Code 2001, is amended to read as
25 follows:

26 533D.15 CRIMINAL VIOLATION -- OPERATION OF BUSINESS
27 WITHOUT LICENSE -- INJUNCTION.

28 1. A person required to be licensed under this chapter who
29 operates a delayed deposit ~~services~~ loan business in this
30 state without first obtaining a license under this chapter or
31 while such license is suspended or revoked by the
32 superintendent is guilty of a serious misdemeanor.

33 2. In addition to the criminal penalty provided for in
34 ~~this-section~~ subsection 1, the superintendent may also
35 commence an action to enjoin the operation of the business.

1 533D.1 to the "Delayed Deposit Loan Act", instead of the
2 "Delayed Deposit Services Licensing Act", to indicate clearly
3 that the financial transactions covered by Code chapter 533D
4 are loans. The bill also adds that the chapter's purpose is
5 to protect consumers who enter into short-term loans with high
6 rates of interest, and that the loans regulated under Code
7 chapter 533D are also subject to Code chapter 537, the Iowa
8 consumer credit code, except as specifically displaced by
9 provisions of the delayed deposit loan Act. References to
10 Code chapter 537 are added at numerous places in the chapter.

11 The bill adds several definitions to Code section 533D.2,
12 including "consumer", "delayed deposit loan business",
13 "facilitator", and "supervised financial organization". The
14 bill changes the existing definition for "licensee". The bill
15 changes the definition for the previously defined term of
16 "delayed deposit services business", and applies it to
17 "delayed deposit loan".

18 The bill adds new Code section 533D.2A, which addresses the
19 applicability of the chapter and specific exemptions. New
20 Code section 533D.2A states that Code chapter 533D applies to
21 any person who, for a fee or other consideration, accepts a
22 check dated on the date it was written and agrees to hold it
23 for a period of days prior to deposit or presentment, or
24 accepts a check dated subsequent to the date it was written
25 and agrees to hold the check for deposit until the date
26 written on the check. Code section 533D.2A states that the
27 chapter applies to any person who seeks to evade its
28 applicability by any device, subterfuge, or pretense.
29 Individual employees of a licensee acting solely as employees
30 do not need to be separately licensed under the chapter.

31 Facilitators are expressly within the applicability of the
32 chapter. "Facilitators" is defined in Code section 533D.2,
33 subsection 2B, as any person who facilitates, enables, or acts
34 as a conduit for another person who is or may be exempt from
35 licensing, who is operating a delayed deposit loan business.

1 To the extent that supervised financial organizations are
2 subject to federal law that may preempt the provisions of the
3 delayed deposit loan Act regarding limitations on interest
4 rates and fees, all other provisions of Code chapter 533D,
5 except the licensure requirements in Code section 533D.3,
6 apply to supervised financial organizations. "Supervised
7 financial organizations" is defined in Code section 533D.2,
8 subsection 2A, by reference to Code section 537.1301,
9 subsection 42, as any person, other than an insurance company
10 or other organization primarily engaged in an insurance
11 business, which is organized, chartered, or holding an
12 authorization certificate pursuant to Code chapter 524, 533,
13 or 534, or pursuant to the laws of any other state or of the
14 United States which authorizes the person to make loans and to
15 receive deposits, including a savings, share, certificate, or
16 deposit account, and which is subject to supervision by an
17 official or agency of this state, such other state, or of the
18 United States. In conjunction, current Code section 533D.16,
19 which provides that Code chapter 533D is not applicable to
20 state and federal banks, savings and loan associations, credit
21 unions, or industrial loan companies, is repealed.

22 The bill amends Code section 533D.3 regarding the license
23 application process. The bill adds a license fee of \$250 per
24 location, separate from the application fee. The bill
25 requires that the license applicant, officers, directors,
26 shareholders, partners, or members have not been convicted of
27 a serious misdemeanor, aggravated misdemeanor, or a felony,
28 rather than the previous requirement of no prior felonies.
29 The bill requires the applicant to have unencumbered assets of
30 at least \$25,000 per location available for operating the
31 business, not \$25,000 total. The bill changes the renewal fee
32 to \$250, from \$100. Changes in terminology, including the
33 added concepts of facilitators and supervised financial
34 organizations, are also made in the Code section.

35 The bill changes Code section 533D.5 to require the

1 licensee to notify the superintendent in writing within 30
2 days when a serious misdemeanor, aggravated misdemeanor, or a
3 felony conviction is entered against the licensee, or any
4 officer, director, shareholder, partner, member, employee, or
5 agent, rather than the previous requirement of notification of
6 only a felony conviction.

7 The bill changes the fee in Code section 533D.7 to \$250, an
8 increase from \$150, for a change in the designated principal
9 place of business, or establishment or change of location of a
10 branch office.

11 The bill inserts new language regarding fees in Code
12 section 533D.9. A licensee may only charge the fees allowed
13 in that Code section. The allowable transaction fee is \$5 per
14 \$100 of the amount financed, or a minimum charge of \$5 when
15 the amount financed exceeds \$75, or \$3.50 when the amount
16 financed exceeds \$50. The previous fee allowed was \$15 on the
17 first \$100 financed, and \$10 for subsequent \$100 increments.
18 The default fee that may be charged if the check is not
19 negotiable on the date agreed upon is no more than \$15. It
20 may be charged once, no matter how many times the check is
21 redeposited and returned. This fee is the licensee's
22 exclusive remedy for late payment and nonpayment. This fee
23 and language are similar to that in the current Code.
24 Provisions regarding disclosure of terms in current Code
25 section 533D.9 are deleted, and addressed separately in new
26 Code section 533D.9A.

27 New Code section 533D.9A sets forth the disclosure
28 requirements for delayed deposit loan transactions, including:
29 (1) an information pamphlet must be furnished to all consumers
30 before entering into a loan, that conveys, in English and
31 Spanish, all of the consumer's rights and responsibilities,
32 including a toll-free telephone number to the banking division
33 for questions, concerns, or complaints; (2) loan documents
34 written in simple English that include an itemization of fees
35 and charges, the date the check will be deposited or

1 presented, a clear description of the payment obligations, the
2 default fee, and the limitations upon the licensee in charging
3 it, disclosures required under the Iowa consumer credit code
4 and the federal Truth in Lending Act, and a notice in at least
5 14 point type that states: "You cannot be prosecuted in
6 criminal court to collect this loan."; (3) posted notices that
7 inform consumers of the schedule of all fees, charges,
8 interest, and penalties, and that the criminal process cannot
9 be used to collect any deferred deposit transaction checks.

10 The bill adds new Code section 533D.9B regarding the
11 requirements and terms of the delayed deposit loans. The
12 maximum amount of a delayed deposit loan is \$500, the minimum
13 is \$50. Each delayed deposit loan must have a minimum term of
14 no less than two weeks for each \$50 owed. The consumer may
15 make partial payments on the loan at any time, in at least \$5
16 increments. The check received by the licensee must
17 immediately be stamped with an endorsement that states the
18 check is being negotiated pursuant to Code chapter 533D, and
19 any holder of the check takes it subject to all claims and
20 defenses of the maker, and Code section 533D.9B states that
21 any holder or assignee takes the instrument subject to all
22 claims and defenses of the maker. The licensee must give the
23 consumer copies of all documents required by Code section
24 533D.9A, and a signed, dated receipt each time a payment is
25 made, showing the amount paid and the balance due on the loan.

26 The bill amends Code section 533D.10, regarding prohibited
27 acts by licensees, which for purposes of this section includes
28 any person related to the licensee by common ownership or
29 control, a person in whom the licensee has any financial
30 interest, or any employee or agent of the licensee. The bill
31 prohibits a licensee from the following: (1) holding more
32 than one check from any one maker at any time, or otherwise
33 making more than one loan to a consumer at a time, rather than
34 the current Code language that allows a licensee to hold no
35 more than two checks at one time from a single maker; (2)

1 requiring a maker to receive payment by a method that causes
2 the maker to pay additional fees and charges to the licensee
3 or another person; (3) repaying, refinancing, or otherwise
4 consolidating a postdated check transaction with the proceeds
5 of another postdated check transaction made by the licensee,
6 including the addition in the bill of a 30-day prohibition on
7 the licensee entering into another transaction with the same
8 consumer upon repayment of the loan; (4) contracting for or
9 receiving any charges or fees other than the transaction fee
10 and default fee permitted under Code section 533.9; (5)
11 engaging in the business of delayed deposit lending without a
12 license; (6) using or threatening to use the criminal process
13 to collect on a delayed deposit loan; (7) engaging in unfair,
14 deceptive, or fraudulent practices in advertising, making or
15 collecting a loan; (8) using any device or agreement that
16 would have the effect of charging or collecting more fees than
17 allowed by Code chapter 533D; (9) altering any information on
18 the check or loan documents; (10) suing on the check in the
19 event of default; and (11) accepting collateral for any
20 delayed deposit loan, or using or attempting to use the check
21 given for the delayed deposit transaction as security for
22 purposes of state or federal law.

23 The bill amends Code section 533D.11 to require the
24 licensee to pay an examination fee that is based not only on
25 the actual costs of the examination as allowed in current Code
26 language, but also on a proportionate share of the
27 administrative expenses of the banking division attributable
28 to the administration of Code chapter 533D. The bill also
29 permits the superintendent to investigate not only alleged
30 violations of Code chapter 533D, but also of Code chapter 537,
31 and related administrative rules or orders.

32 The bill amends Code section 533D.12 to allow the
33 superintendent to revoke a license when a licensee or any of
34 its officers, directors, shareholders, partners, or members
35 has violated not only Code chapter 533D or a related

1 administrative rule or order, but also Code chapter 537 and a
2 related administrative rule or order. A new subsection is
3 added to specify that revocation, suspension, or surrender of
4 the license does not relieve the licensee from civil or
5 criminal liability for acts committed prior to the revocation,
6 suspension, or surrender.

7 The bill amends Code section 533D.12 to allow the
8 superintendent to seek a cease and desist order, and the
9 attorney general to seek injunctive relief, not only for
10 alleged violations of Code chapter 533D, but also for Code
11 chapter 537 and related administrative rules or orders. The
12 bill amends Code section 533D.14 to allow the superintendent
13 to impose administrative fines for violations of Code chapter
14 537, as well as Code chapter 533D.

15 The bill adds Code section 533D.15A to provide civil
16 remedies. Code section 533D.15A provides that violations of
17 Code chapter 533D constitute a violation of Code section
18 714.16, and violations of Code section 714.16, subsection 2,
19 paragraph "a", regarding deceptive acts constituting consumer
20 frauds constitute a violation of Code chapter 533D. A
21 violation of Code chapter 533D or chapter 537, or any related
22 regulations, renders the loan void, and the person shall have
23 no right to collect or retain principal, interest, or other
24 charges. A person who violates Code chapter 533D is liable
25 for the following: (1) statutory damages of \$1,000 per
26 violation; (2) actual, consequential, and punitive damages;
27 and (3) costs and attorney fees. A consumer may also seek
28 injunctive or other equitable relief, or may pursue a class
29 action.

30 The following sections contain technical changes only:
31 Code section 533D.4, regarding the surrender of license; Code
32 section 533D.6, regarding operation after change in ownership;
33 Code section 533D.8, regarding restrictions on operating other
34 businesses at the same site; and Code section 533D.15,
35 regarding criminal violations for operating without a license.