

House File 2556 - Enrolled

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1 1 HOUSE FILE 2556

1 2

1 3 AN ACT

1 4 RELATING TO THE REGULATORY DUTIES OF THE BANKING DIVISION

1 5 OF THE DEPARTMENT OF COMMERCE REGARDING BANKING, DEBT

1 6 MANAGEMENT, DELAYED DEPOSIT SERVICES, MORTGAGE BANKING,

1 7 AND INDUSTRIAL LOAN COMPANIES, AND PROVIDING PENALTIES.

1 8

1 9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 10

1 11 Section 1. Section 524.107, subsection 2, Code 2007, is

1 12 amended to read as follows:

1 13 2. A person doing business in this state shall not use the

1 14 words "bank" or "trust" or use any derivative, plural, or

1 15 compound of the words "bank", "banking", "bankers", or "trust"

1 16 in any manner which would tend to create the impression that

1 17 the person is authorized to engage in the business of banking

1 18 or to act in a fiduciary capacity, except a state bank

1 19 authorized to do so by this chapter, a national bank to the

1 20 extent permitted by the laws of the United States, a bank

1 21 holding company as defined in section 524.1801, a savings and

1 22 loan holding company as defined in 12 U.S.C. } 1467a, a state

1 23 association pursuant to section 534.507, or a federal

1 24 association to the extent permitted by the laws of the United

1 25 States, or, insofar as the word "trust" is concerned, an

1 26 individual permissibly serving as a fiduciary in this state,

1 27 pursuant to section 633.63, or, insofar as the words "trust"

1 28 and "bank" are concerned, a nonresident corporate fiduciary

1 29 permissibly serving as a fiduciary in this state pursuant to

1 30 section 633.64.

1 31 Sec. 2. Section 524.203, Code 2007, is amended by striking

1 32 the section and inserting in lieu thereof the following:

1 33 524.203 SUPERINTENDENT == VACANCY.

1 34 If the office of the superintendent of banking is vacant,

1 35 the chief of the bank bureau of the banking division shall be

2 1 the acting superintendent until the governor appoints a new
2 2 superintendent or acting superintendent. If the chief of the
2 3 bank bureau is unable to serve, the chief of the finance
2 4 bureau of the banking division shall be the acting
2 5 superintendent until the governor appoints a new
2 6 superintendent or acting superintendent. If both the chief of
2 7 the bank bureau and the chief of the finance bureau are unable
2 8 to serve, the chief of the professional licensing and
2 9 regulation bureau of the banking division shall be the acting
2 10 superintendent until the governor appoints a new
2 11 superintendent or acting superintendent.

2 12 Sec. 3. Section 524.211, subsection 1, Code Supplement
2 13 2007, is amended to read as follows:

2 14 1. The superintendent, general counsel, examiners, and
2 15 other employees assigned to the bank bureau of the banking
2 16 division are prohibited from obtaining a loan of money or
2 17 property from a state-chartered bank, a state savings and loan
2 18 association, or any person or entity affiliated with a
2 19 state-chartered bank or a state savings and loan association,
2 20 unless they do not personally participate in the examination,
2 21 oversight, or official review concerning the regulation of the
2 22 bank or savings and loan association.

2 23 Sec. 4. Section 524.212, Code Supplement 2007, is amended
2 24 to read as follows:

2 25 524.212 PROHIBITION AGAINST DISCLOSURE OF REGULATORY
2 26 INFORMATION.

2 27 1. The superintendent, members of the state banking
2 28 council, general counsel, examiners, or other employees of the
2 29 banking division shall not disclose, in any manner, to any
2 30 person other than the person examined and those regulatory
2 31 agencies referred to in section 524.217, subsection 2, any
2 32 information relating specifically to the supervision and
2 33 regulation of any state bank, persons subject to the
2 34 provisions of chapter 533A, 533C, 536, or 536A, any affiliate
2 35 of any state bank, or an affiliate of a person subject to the

3 1 provisions of chapter 533A, 533C, 536, or 536A, except when
3 2 ordered to do so by a court of competent jurisdiction and then
3 3 only in those instances referred to in section 524.215,
3 4 subsection 2, paragraphs "a", "b", "c", and "e".

3 5 2. The superintendent may receive documents, materials, or
3 6 other information, including otherwise confidential and
3 7 privileged documents, materials, or other information, from
3 8 other local, state, federal, and international regulatory
3 9 agencies, the conference of state bank supervisors and its
3 10 affiliates or subsidiaries, the American association of
3 11 mortgage regulators and its affiliates or subsidiaries, and
3 12 the national association of consumer credit administrators and
3 13 its affiliates or subsidiaries, and shall maintain as
3 14 confidential and privileged any such document, material, or
3 15 other information received with notice or the understanding
3 16 that it is confidential or privileged under the laws of the
3 17 jurisdiction that is the source of the document, material, or
3 18 other information.

3 19 Sec. 5. Section 524.216, subsection 2, paragraph c, Code
3 20 Supplement 2007, is amended to read as follows:

3 21 c. A statement of the receipts and disbursements of funds
3 22 of the superintendent during the ~~calendar~~ fiscal year ending
3 23 on the preceding ~~December 31~~ June 30 and of the funds on hand
3 24 on such ~~December 31~~ June 30.

3 25 Sec. 6. NEW SECTION. 524.229 EMERGENCY POWERS OF
3 26 SUPERINTENDENT.

3 27 Whenever the superintendent determines that an emergency
3 28 affecting one or more state-chartered banks or bank offices
3 29 exists, or is impending, in this state or in any part or parts
3 30 of this state, the superintendent may temporarily suspend
3 31 applicable rules or statutes to the extent necessary to allow
3 32 the affected bank or banks to respond to the emergency.

3 33 Sec. 7. Section 524.312, subsection 2, Code 2007, is
3 34 amended to read as follows:

3 35 2. A state bank may, with the prior written approval of

4 1 the superintendent, change the location of its principal place
4 2 of business to a new location within the state. ~~A change of~~
~~4 3 location shall be limited to another location in the same~~
~~4 4 municipal corporation, to a location in a municipal~~
~~4 5 corporation in the same county, or to a location in a~~
~~4 6 municipal corporation in a county that is contiguous to or~~
~~4 7 touching or cornering on the county in which the state bank is~~
~~4 8 located. If a state bank has its principal place of business~~
~~4 9 in an unincorporated area, the superintendent may authorize a~~
~~4 10 change of location of its principal place of business to a new~~
~~4 11 location within the same unincorporated area as well as to any~~
~~4 12 location referred to in this subsection.~~

4 13 Sec. 8. Section 524.1607, Code 2007, is amended to read as
4 14 follows:

4 15 524.1607 FALSE STATEMENT FOR CREDIT.

4 16 1. For the purposes of this section, unless the context
4 17 otherwise requires:

4 18 a. "Financial institution" means a financial institution
4 19 as defined in 18 U.S.C. } 20.

4 20 b. "Mortgage banker" means a person who makes or
4 21 originates mortgage loans on real property located in this
4 22 state.

4 23 c. "Mortgage broker" means a person who arranges or
4 24 negotiates, or attempts to arrange or negotiate, mortgage
4 25 loans on real property located in this state.

4 26 2. Any person who knowingly makes or causes to be made,
4 27 directly or indirectly, any false statement in writing, or who
4 28 procures, knowing that a false statement in writing has been
4 29 made concerning the financial condition or means or ability to
4 30 pay of such person, or any other person in which such person
4 31 is interested or for whom such person is acting, with the
4 32 intent that such statement shall be relied upon by a ~~bank~~
4 33 financial institution, a mortgage banker, a mortgage broker,
4 34 or any other entity licensed by the banking division for the
4 35 purpose of procuring the delivery of property, the payment of

5 1 cash or the receipt of credit in any form, for the benefit of
5 2 such person or of any other person in which such person is
5 3 interested or for whom such person is acting, shall be guilty
5 4 of a fraudulent practice.

5 5 Sec. 9. Section 533A.2, subsections 1 and 2, Code
5 6 Supplement 2007, are amended to read as follows:

5 7 1. A person shall not engage in the business of debt
5 8 management in this state without a license as provided for in
5 9 this chapter unless exempt under subsection 2. A person
5 10 engages in the business of debt management in this state if
5 11 the person solicits, on behalf of the person or another
5 12 person, to provide, or enters into a contract with one or more
5 13 debtors to provide debt management to a debtor who resides in
5 14 this state.

5 15 2. The following persons, including employees of such
5 16 persons, shall not be required to be licensed ~~when engaged in~~
~~5 17 the regular course of their respective businesses and~~
~~5 18 professions~~ or to otherwise comply with the provisions of this
5 19 chapter:

5 20 a. ~~Attorneys at law~~ A licensed attorney admitted to
5 21 practice in this state acting solely as an incident to the
5 22 practice of law.

5 23 b. Banks, savings and loan associations, credit unions,
5 24 mortgage bankers and mortgage brokers licensed or registered
5 25 under chapter 535B, insurance companies and similar
5 26 fiduciaries, regulated loan companies licensed under chapter
5 27 536, and industrial loan companies licensed under chapter
5 28 536A, authorized and admitted to transact business in this
5 29 state and performing credit and financial adjusting in the
5 30 regular course of their principal business, or while
5 31 performing an escrow function.

5 32 c. Abstract companies, while performing an escrow
5 33 function.

5 34 d. Employees of licensees under this chapter, while
5 35 performing services for the employee's licensed employer.

6 1 e. Judicial officers or others acting under court orders.

6 2 f. Nonprofit religious, fraternal, or cooperative
6 3 organizations offering to debtors gratuitous debt-management
6 4 service.

6 5 g. Those persons whose principal business is the
6 6 origination of first mortgage loans on real estate for their
6 7 own portfolios or for sale to institutional investors.

6 8 Sec. 10. Section 533A.7, Code 2007, is amended by striking
6 9 the section and inserting in lieu thereof the following:

6 10 533A.7 DISCIPLINARY ACTION.

6 11 1. The superintendent may, after notice and hearing
6 12 pursuant to chapter 17A, take disciplinary action against a
6 13 licensee if the superintendent finds any of the following:

6 14 a. The licensee, or an owner, partner, member,
6 15 shareholder, officer, director, or manager of the licensee,
6 16 has been convicted of a felony or of an indictable misdemeanor
6 17 for financial gain.

6 18 b. The licensee, or an owner, partner, member,
6 19 shareholder, officer, director, or manager of the licensee,
6 20 has violated any of the provisions of this chapter or any
6 21 other state or federal law, rule, or regulation applicable to
6 22 the conduct of its business.

6 23 c. The licensee, or an owner, partner, member,
6 24 shareholder, officer, director, or manager of the licensee,
6 25 has engaged in fraud or deceit in procuring the issuance of a
6 26 license or renewal under this chapter.

6 27 d. The licensee, or an owner, partner, member,
6 28 shareholder, officer, director, or manager of the licensee,
6 29 has engaged in unfair conduct.

6 30 e. The licensee is insolvent, or has filed for bankruptcy,
6 31 receivership, or assignment for the benefit of creditors.

6 32 f. The licensee fails to post the bond required by the
6 33 provisions of this chapter or the superintendent receives
6 34 notice that the required bond has been canceled.

6 35 2. The superintendent may impose one or more of the

7 1 following disciplinary actions against a licensee:

7 2 a. Revoke a license.

7 3 b. Suspend a license until further order of the
7 4 superintendent for a specified period of time.

7 5 c. Impose a period of probation under specified
7 6 conditions.

7 7 d. Impose civil penalties in an amount not to exceed five
7 8 thousand dollars for each violation.

7 9 e. Issue a citation and warning respecting licensee
7 10 behavior.

7 11 f. Order the licensee to pay restitution.

7 12 3. The superintendent may order an emergency suspension of
7 13 a licensee's license pursuant to section 17A.18A. A written
7 14 order containing the facts or conduct which warrants the
7 15 emergency action shall be timely sent to the licensee by
7 16 restricted certified mail. Upon issuance of the suspension
7 17 order, the licensee must also be notified of the right to an
7 18 evidentiary hearing. A suspension proceeding shall be
7 19 promptly instituted and determined.

7 20 4. Except as provided in this section, a license shall not
7 21 be revoked or suspended except after notice and a hearing
7 22 thereon in accordance with chapter 17A.

7 23 5. A licensee may surrender a license by delivering to the
7 24 superintendent written notice of surrender, but a surrender
7 25 does not affect the licensee's civil or criminal liability for
7 26 acts committed before the surrender.

7 27 6. A revocation, suspension, or surrender of a license
7 28 does not impair or affect the obligation of a preexisting
7 29 lawful contract between the licensee and any person, including
7 30 a debtor.

7 31 Sec. 11. NEW SECTION. 533A.17 VIOLATIONS == INJUNCTIONS
7 32 == CIVIL PENALTIES.

7 33 1. If the superintendent believes that a person has
7 34 engaged in, or is about to engage in, an act or practice that
7 35 constitutes or will constitute a violation of this chapter,

8 1 the superintendent may apply to the district court for an
8 2 order enjoining such act or practice. Upon a showing by the
8 3 superintendent that such person has engaged, or is about to
8 4 engage, in any such act or practice, the district court shall
8 5 grant an injunction.

8 6 2. The superintendent may investigate or initiate
8 7 complaints against persons who are not licensed under this
8 8 chapter to determine whether the person is violating this
8 9 chapter.

8 10 3. In addition to or as an alternative to applying to the
8 11 district court for an injunction, the superintendent may issue
8 12 an order to a person who is not licensed under this chapter to
8 13 require compliance with this chapter, may impose a civil
8 14 penalty against such person for any violation of this chapter
8 15 in an amount up to five thousand dollars for each violation,
8 16 and may order the person to pay restitution.

8 17 4. Before issuing an order under this section, the
8 18 superintendent shall provide the person written notice and the
8 19 opportunity to request a hearing. The hearing must be
8 20 requested within thirty days after receipt of the notice and
8 21 shall be conducted in the same manner as provided for in
8 22 disciplinary proceedings involving a licensee under this
8 23 chapter.

8 24 5. A person aggrieved by the imposition of a civil penalty
8 25 under this section may seek judicial review pursuant to
8 26 section 17A.19.

8 27 6. An action to enforce an order under this section may be
8 28 joined with an action for an injunction.

8 29 Sec. 12. Section 533D.3, subsection 1, Code 2007, is
8 30 amended to read as follows:

8 31 1. A person shall not operate a delayed deposit services
8 32 business in this state unless the person is physically located
8 33 in this state and licensed by the superintendent as provided
8 34 in this chapter.

8 35 Sec. 13. Section 533D.12, Code 2007, is amended by

9 1 striking the section and inserting in lieu thereof the
9 2 following:

9 3 533D.12 DISCIPLINARY ACTION.

9 4 1. The superintendent may, after notice and hearing
9 5 pursuant to chapter 17A, take disciplinary action against a
9 6 licensee if the superintendent finds any of the following:

9 7 a. The licensee or any of its officers, directors,
9 8 shareholders, partners, or members has violated this chapter,
9 9 any rule adopted by the superintendent, or any other state or
9 10 federal law applicable to the conduct of its business.

9 11 b. The licensee has failed to pay a license fee required
9 12 under this chapter or to maintain in effect the bond or bonds
9 13 required under this chapter.

9 14 c. A fact or condition existing which, if it had existed
9 15 at the time of the original application for the license, would
9 16 have resulted in the denial of issuance of a license.

9 17 d. The licensee has abandoned its place of business for a
9 18 period of sixty days or more.

9 19 e. The licensee fails to pay an administrative penalty or
9 20 the cost of investigation as ordered by the superintendent.

9 21 f. The licensee has violated an order of the
9 22 superintendent.

9 23 2. The superintendent may impose one or more of the
9 24 following disciplinary actions against a licensee:

9 25 a. Revoke a license.

9 26 b. Suspend a license until further order of the
9 27 superintendent or for a specified period of time.

9 28 c. Impose a period of probation under specified
9 29 conditions.

9 30 d. Impose civil penalties in an amount not to exceed five
9 31 thousand dollars for each violation.

9 32 e. Issue a citation and warning respecting licensee
9 33 behavior.

9 34 f. Order the licensee to pay restitution.

9 35 3. The superintendent may order an emergency suspension of

10 1 a licensee's license pursuant to section 17A.18A. A written
10 2 order containing the facts or conduct which warrants the
10 3 emergency action shall be timely sent to the licensee by
10 4 restricted certified mail. Upon issuance of the suspension
10 5 order, the licensee must also be notified of the right to an
10 6 evidentiary hearing. A suspension proceeding shall be
10 7 promptly instituted and determined.

10 8 4. Except as provided in this section, a license shall not
10 9 be revoked or suspended except after notice and a hearing
10 10 thereon in accordance with chapter 17A.

10 11 5. A licensee may surrender a license by delivering to the
10 12 superintendent written notice of surrender, but a surrender
10 13 does not affect the licensee's civil or criminal liability for
10 14 acts committed before the surrender.

10 15 6. A revocation, suspension, or surrender of a license
10 16 does not impair or affect the obligation of a preexisting
10 17 lawful contract between the licensee and any person, including
10 18 a debtor.

10 19 Sec. 14. Section 535.8, subsection 1, Code 2007, is
10 20 amended by striking the subsection and inserting in lieu
10 21 thereof the following:

10 22 1. DEFINITIONS. For purposes of this section, unless the
10 23 context otherwise requires:

10 24 a. "Lender" means a person who makes or originates a loan;
10 25 a person who is identified as a lender on the loan documents;
10 26 a person who arranges, negotiates, or brokers a loan; and a
10 27 person who provides any goods or services as an incident to or
10 28 as a condition required for the making or closing of the loan.

10 29 b. "Loan" means a loan of money which is wholly or in part
10 30 to be used for the purpose of purchasing real property which
10 31 is a single-family or a two-family dwelling occupied or to be
10 32 occupied by the borrower. A loan includes the refinancing of
10 33 a contract or sale, and the refinancing of a prior loan,
10 34 whether or not the borrower also was the borrower under the
10 35 prior loan, and the assumption of a prior loan.

11 1 Sec. 15. Section 535B.2, Code 2007, is amended to read as
11 2 follows:

11 3 535B.2 EXEMPTIONS.

11 4 This chapter, except for sections 535B.3, 535B.11, 535B.12,
11 5 and 535B.13, does not apply to any of the following:

11 6 1. A bank, bank holding company, savings bank, savings and
11 7 loan association, or credit union organized under the laws of
11 8 this state, another state, or the United States, or a
11 9 subsidiary ~~or affiliate of~~ owned or controlled by such a bank,
11 10 bank holding company, savings bank, savings and loan
11 11 association, or credit union.

11 12 2. A loan company licensed under chapter 536 or 536A.

11 13 3. An insurance company or a subsidiary or affiliate of an
11 14 insurance company organized under the laws of this state,
11 15 another state, or the United States, and subject to regulation
11 16 by the commissioner of insurance.

11 17 4. Mortgage lenders or mortgage bankers maintaining an
11 18 office in this state whose principal business in this state is
11 19 conducted with or through mortgage lenders or mortgage bankers
11 20 otherwise exempt under this section and which maintain a place
11 21 of business in this state.

11 22 ~~5. An insurance producer licensed under chapter 522B.~~

11 23 ~~6.~~ 5. An individual who is employed by a person otherwise
11 24 exempt under this section, or who ~~is under an exclusive~~
~~11 25 contract with,~~ by contract, operates exclusively on behalf of
11 26 a person otherwise exempt under this section to the extent
11 27 that the individual is acting within the scope of the
11 28 individual's employment or exclusive contract with the exempt
11 29 person and is acting within the scope of the exempt person's
11 30 charter, license, authority, approval, or certificate.

11 31 ~~7.~~ 6. A real estate broker licensed under chapter 543B
11 32 while engaged in practice as a real estate broker.

11 33 ~~8.~~ 7. A nonprofit organization qualifying for tax-exempt
11 34 status under the Internal Revenue Code as defined in section
11 35 422.3 which offers housing services to low and moderate income

12 1 families.

12 2 Sec. 16. Section 535B.3, subsections 1 and 3, Code 2007,
12 3 are amended to read as follows:

12 4 1. A person exempt under section 535B.2, subsection 4 or ~~6~~
12 5 7, shall register with the administrator.

12 6 3. The registrant, except a nonprofit organization exempt
12 7 under section 535B.2, subsection ~~6~~ 7, shall pay an annual
12 8 registration fee of one hundred dollars.

12 9 Sec. 17. Section 535B.4, subsections 6 and 7, Code
12 10 Supplement 2007, are amended to read as follows:

12 11 6. Licenses granted under this chapter expire on the next
12 12 ~~June 30~~ December 31 after their issuance.

12 13 7. Applications for renewals of licenses and individual
12 14 registrations under this chapter must be filed with the
12 15 administrator before ~~June 1~~ December 1 of the year of
12 16 expiration on forms prescribed by the administrator. A
12 17 renewal application must be accompanied by a fee of two
12 18 hundred dollars for a license to transact business solely as a
12 19 mortgage broker, and four hundred dollars for a license to
12 20 transact business as a mortgage banker. The fee to renew an
12 21 individual registration shall be the fee determined pursuant
12 22 to section 535B.4A. The administrator may assess a late fee
12 23 of ten dollars per day for applications or registrations
12 24 accepted for processing after ~~June~~ December 1.

12 25 Sec. 18. Section 535B.4, Code Supplement 2007, is amended
12 26 by adding the following new subsection:

12 27 NEW SUBSECTION. 9. In addition to the application and
12 28 renewal fees provided for in subsections 4 and 7, the
12 29 administrator may assess application and renewal fees for each
12 30 branch location of the licensee, sponsor fees, and change of
12 31 sponsor fees.

12 32 Sec. 19. Section 535B.4A, Code 2007, is amended to read as
12 33 follows:

12 34 535B.4A INDIVIDUAL REGISTRATION REQUIREMENTS == FEES.

12 35 1. A natural person who is a mortgage banker or mortgage

13 1 broker and who is employed by, under contract with, or is an
13 2 agent of a licensee under section 535B.4 shall apply for an
13 3 individual registration with the administrator and shall
13 4 register annually with the administrator. The administrator
13 5 shall collect registration fees necessary to cover the costs
13 6 associated with the annual registrations ~~made pursuant to this~~
~~13 7 section, including but not limited to sponsor fees and change~~
13 8 of sponsor fees.

13 9 2. Beginning January 1, 2009, each applicant for an
13 10 individual registration must meet the education and training
13 11 requirements adopted by the administrator by rule. The
13 12 education and training requirements may include a post-high
13 13 school education requirement or a requirement that the
13 14 applicant have successfully completed accredited courses
13 15 covering specified subject matters. The administrator may
13 16 incorporate any education and training criteria recommended by
13 17 federal law, or by other financial regulators, self-regulatory
13 18 organizations, or financial industry organizations.

13 19 3. Beginning January 1, 2009, each applicant for an
13 20 individual registration must have passed an examination
13 21 prescribed by the administrator within two years immediately
13 22 prior to making the application to the administrator. An
13 23 applicant who fails the examination once shall be allowed to
13 24 take the examination up to two additional times, provided at
13 25 least one month has elapsed since the applicant last took the
13 26 examination. An applicant shall pay any fees associated with
13 27 the examination.

13 28 ~~2.~~ 4. An individual registrant who ~~registers~~ applies for
13 29 an individual registration pursuant to this section ~~for the~~
~~13 30 first time~~ shall submit to a national criminal history check
13 31 through the federal bureau of investigation prior to being
13 32 registered. The administrator may submit the registrant's
13 33 fingerprints to the federal bureau of investigation by the
13 34 department of public safety through the state criminal history
13 35 repository for the purpose of a national criminal history

14 1 check. The results of a criminal history check conducted
14 2 pursuant to this subsection shall not be considered a public
14 3 record under chapter 22. The administrator shall collect fees
14 4 necessary to cover the costs associated with criminal history
14 5 checks conducted pursuant to this section.

14 6 ~~3.~~ 5. A person shall not be eligible for licensing
14 7 pursuant to section 535B.4 unless all individual registrants
14 8 employed by, under contract with, or who are agents of the
14 9 person have successfully completed the registration and
14 10 criminal background check required by this section.

14 11 ~~4.~~ 6. The registration of an individual registrant
14 12 pursuant to this section is not assignable.

14 13 ~~5.~~ 7. The registration of an individual registrant
14 14 pursuant to this section expires on ~~June 30~~ December 31
14 15 following the date of registration.

14 16 ~~6.~~ 8. An individual registrant who fails to comply with
14 17 the requirements of section 535B.9A shall not be ~~registered~~
14 18 renewed or the registration of the individual registrant may
14 19 be suspended or revoked by the administrator.

14 20 Sec. 20. Section 535B.7, subsection 2, Code 2007, is
14 21 amended by adding the following new paragraph:

14 22 NEW PARAGRAPH. f. Order the licensee or individual
14 23 registrant to pay restitution.

14 24 Sec. 21. Section 535B.8, Code 2007, is amended to read as
14 25 follows:

14 26 535B.8 OPERATING WITHOUT A LICENSE OR REGISTRATION.

14 27 A person, who without first obtaining a license or
14 28 individual registration under this chapter, engages in the
14 29 business or occupation of, or advertises or holds the person
14 30 out as, or claims to be, or temporarily acts as, a mortgage
14 31 banker or mortgage broker in this state is guilty of a class
14 32 "D" felony and may be prosecuted by the attorney general or a
14 33 county attorney.

14 34 Sec. 22. Section 535B.9, subsection 1, Code 2007, is
14 35 amended to read as follows:

15 1 1. An applicant for a license shall file with the
15 2 administrator a bond furnished by a surety company authorized
15 3 to do business in this state, together with evidence of
15 4 whether the applicant is seeking to transact business as a
15 5 mortgage broker or as a mortgage banker. The bond shall be in
15 6 the amount of ~~fifty thousand dollars~~ one hundred thousand
15 7 dollars. The bond shall be continuous in nature until
15 8 canceled by the surety with not less than thirty days' notice
15 9 in writing to the mortgage broker or mortgage banker and to
15 10 the administrator indicating the surety's intention to cancel
15 11 the bond on a specific date. The bond shall be for the use of
15 12 the state and any persons who may have causes of action
15 13 against the applicant. The bond shall be conditioned upon the
15 14 applicant's faithfully conforming to and abiding by this
15 15 chapter and any rules adopted under this chapter and shall
15 16 require that the surety pay to the state and to any persons
15 17 all moneys that become due or owing to the state and to the
15 18 persons from the applicant by virtue of this chapter.

15 19 Sec. 23. Section 535B.10, subsection 2, Code 2007, is
15 20 amended to read as follows:

15 21 2. For the purposes of discovering violations of this
15 22 chapter or any related rules or for securing information
15 23 lawfully required under this chapter, the administrator may at
15 24 any time and as often as the administrator deems necessary,
15 25 but in no event less frequently than once during each two-year
15 26 period, investigate the business and examine the books,
15 27 accounts, records, and files used by a licensee or individual
15 28 registrant.

15 29 Sec. 24. Section 535B.10, subsection 6, paragraph b, Code
15 30 2007, is amended to read as follows:

15 31 b. The administrator may furnish information relating to
15 32 the supervision of licensees and registrants to the federal
15 33 agencies or federally related entities listed in subsection 3,
15 34 the federal deposit insurance corporation, the federal reserve
15 35 system, the office of the comptroller of the currency, the

16 1 office of thrift supervision, the national credit union
16 2 administration, the federal home loan bank, ~~and~~ a financial
16 3 institution regulatory ~~authorities~~ authority of any other
16 4 ~~states~~ state, a professional licensing authority of this state
16 5 or any other state, or a law enforcement agency, or to any
16 6 official or supervising examiner of such regulatory
16 7 authorities.

16 8 Sec. 25. Section 536.3, Code 2007, is amended to read as
16 9 follows:

16 10 536.3 BOND.

16 11 The applicant shall also at the same time file with the
16 12 superintendent a bond to be approved by the superintendent in
16 13 which the applicant shall be the obligor, with one or more
16 14 sureties, in the sum of ~~one~~ twenty=five thousand dollars. The
16 15 said bond shall run to the state for the use of the state and
16 16 of any person or persons who may have a cause of action
16 17 against the obligor of said bond under the provisions of this
16 18 chapter. Such bond shall be conditioned that said obligor
16 19 will faithfully conform to and abide by the provisions of this
16 20 chapter and of all rules and regulations lawfully made by the
16 21 superintendent hereunder, and will pay to the state and to any
16 22 such person or persons any and all moneys that may become due
16 23 or owing to the state or to such person or persons from said
16 24 obligor under and by virtue of the provisions of this chapter.

16 25 Sec. 26. Section 536.6, unnumbered paragraph 1, Code 2007,
16 26 is amended to read as follows:

16 27 If the superintendent shall find at any time that the bond
16 28 is insecure or exhausted or otherwise of doubtful validity or
16 29 collectibility, an additional bond to be approved by the
16 30 superintendent, with one or more sureties and of the character
16 31 specified in section 536.3, in the sum of not more than ~~one~~
16 32 twenty=five thousand dollars, shall be filed by the licensee
16 33 within ten days after written demand upon the licensee by the
16 34 superintendent.

16 35 Sec. 27. Section 536.9, Code 2007, is amended by striking

17 1 the section and inserting in lieu thereof the following:

17 2 536.9 DISCIPLINARY ACTION.

17 3 1. The superintendent may, after notice and hearing
17 4 pursuant to chapter 17A, take disciplinary action against a
17 5 licensee if the superintendent finds any of the following:

17 6 a. The licensee has violated a provision of this chapter
17 7 or a rule adopted under this chapter or any other state or
17 8 federal law, rule, or regulation applicable to the conduct of
17 9 its business.

17 10 b. A fact or condition exists which would have warranted
17 11 the superintendent to refuse to originally issue the license.

17 12 c. The licensee has failed to pay the annual license fee
17 13 or to maintain in effect the bond or bonds required under the
17 14 provisions of this chapter.

17 15 d. The licensee is insolvent.

17 16 e. The licensee has violated an order of the
17 17 superintendent.

17 18 2. The superintendent may impose one or more of the
17 19 following disciplinary actions against a licensee:

17 20 a. Revoke a license.

17 21 b. Suspend a license until further order of the
17 22 superintendent or for a specified period of time.

17 23 c. Impose a period of probation under specified
17 24 conditions.

17 25 d. Impose civil penalties in an amount not to exceed five
17 26 thousand dollars for each violation.

17 27 e. Issue a citation and warning respecting licensee
17 28 behavior.

17 29 f. Order the licensee to pay restitution.

17 30 3. The superintendent may order an emergency suspension of
17 31 a licensee's license pursuant to section 17A.18A. A written
17 32 order containing the facts or conduct which warrants the
17 33 emergency action shall be timely sent to the licensee by
17 34 restricted certified mail. Upon issuance of the suspension
17 35 order, the licensee must also be notified of the right to an

18 1 evidentiary hearing. A suspension proceeding shall be
18 2 promptly instituted and determined.

18 3 4. Except as provided in this section, a license shall not
18 4 be revoked or suspended except after notice and a hearing
18 5 thereon in accordance with chapter 17A.

18 6 5. A licensee may surrender a license by delivering to the
18 7 superintendent written notice of surrender, but a surrender
18 8 does not affect the licensee's civil or criminal liability for
18 9 acts committed before the surrender.

18 10 6. A revocation, suspension, or surrender of a license
18 11 does not impair or affect the obligation of a preexisting
18 12 lawful contract between the licensee and any person, including
18 13 a borrower.

18 14 Sec. 28. Section 536.11, unnumbered paragraph 2, Code
18 15 2007, is amended to read as follows:

18 16 Each licensee shall annually on or before the fifteenth day
18 17 of ~~March~~ April file a report with the superintendent giving
18 18 such relevant information as the superintendent reasonably may
18 19 require concerning the business and operations during the
18 20 preceding calendar year of the licensed places of business
18 21 conducted by such licensee within the state. Such report
18 22 shall be made under oath and shall be in the form prescribed
18 23 by the superintendent who shall make and publish annually an
18 24 analysis and recapitulation of such reports.

18 25 Sec. 29. Section 536.12, Code 2007, is amended to read as
18 26 follows:

18 27 536.12 RESTRICTIONS ON PRACTICES.

18 28 1. No licensee shall conduct the business of making loans
18 29 under the provisions of this chapter within any office, room,
18 30 suite or place of business in which any other business is
18 31 solicited or engaged in, or in association or conjunction
18 32 therewith, except as may be authorized in writing by the
18 33 superintendent upon the superintendent's finding that the
18 34 character of such other business is such that the granting of
18 35 such authority would not facilitate evasions of this chapter

19 1 or of the rules lawfully made by the superintendent hereunder.

19 2 2. No licensee shall make any loan provided for by this
19 3 chapter under any other name or at any other place of business
19 4 than that named in the license.

19 5 3. No licensee shall take any instrument in which blanks
19 6 are left to be filled in after execution.

19 7 4. No licensee shall agree to obtain or arrange a
19 8 residential mortgage for a potential borrower from a third
19 9 person, unless the licensee also has a mortgage broker license
19 10 and complies with all of the provisions of chapter 535B.

19 11 Sec. 30. Section 536.16, unnumbered paragraph 1, Code
19 12 2007, is amended to read as follows:

19 13 Notwithstanding other provisions of this chapter to the
19 14 contrary, a person who neither has an office physically
19 15 located in this state nor engages in face-to-face solicitation
19 16 in this state, if authorized by another state to make loans in
19 17 that state at a rate of finance charge in excess of the rate
19 18 provided in chapter 535, shall not be subject to ~~the following~~
~~19 19 provisions of this chapter:~~ section 536.10 to the extent it
19 20 requires the superintendent to make an examination of the
19 21 affairs, place of business, and records of the person on a
19 22 periodic basis.

19 23 Sec. 31. Section 536.16, subsections 1 through 4, Code
19 24 2007, are amended by striking the subsections.

19 25 Sec. 32. NEW SECTION. 536A.7A BONDS.

19 26 1. An applicant for a license shall file with the
19 27 superintendent a bond furnished by a surety company authorized
19 28 to do business in this state. The bond shall be in the amount
19 29 of twenty-five thousand dollars. The bond shall be continuous
19 30 in nature until canceled by the surety with not less than
19 31 thirty days notice in writing to the applicant and to the
19 32 superintendent indicating the surety's intention to cancel the
19 33 bond on a specific date. The bond shall be for the use of the
19 34 state and any persons who may have causes of action against
19 35 the applicant. The bond shall be conditioned upon the

20 1 applicant's faithfully conforming to and abiding by this
20 2 chapter and any rules adopted under this chapter and shall
20 3 require that the surety pay to the state and to any persons
20 4 all moneys that become due or owing to the state and to the
20 5 persons from the applicant by virtue of this chapter.

20 6 2. In lieu of filing a bond, the applicant may pledge an
20 7 alternative form of collateral acceptable to the
20 8 superintendent, if the alternative collateral provides
20 9 protection to the state and any aggrieved person that is
20 10 equivalent to that provided by a bond.

20 11 Sec. 33. Section 536A.14, unnumbered paragraph 1, Code
20 12 2007, is amended to read as follows:

20 13 Each licensee shall annually on or before the fifteenth day
20 14 of ~~March~~ April file with the superintendent a report in
20 15 writing showing the results of the operation of its industrial
20 16 loan business for the previous calendar year, which reports
20 17 shall contain:

20 18 Sec. 34. Section 536A.18, Code 2007, is amended by
20 19 striking the section and inserting in lieu thereof the
20 20 following:

20 21 536A.18 DISCIPLINARY ACTION.

20 22 1. The superintendent may, after notice and hearing
20 23 pursuant to chapter 17A, take disciplinary action against a
20 24 licensee if the superintendent finds any of the following:

20 25 a. That the licensee has failed to pay the annual license
20 26 fee required by this chapter or to maintain in effect the bond
20 27 or bonds required under this chapter.

20 28 b. That the licensee has violated any of the provisions of
20 29 this chapter or a rule adopted under this chapter or any other
20 30 state or federal law, rule, or regulation applicable to the
20 31 conduct of its business.

20 32 c. That the licensee has refused to submit to the
20 33 examination required by this chapter.

20 34 d. That the licensee has neglected or refused for a period
20 35 of more than thirty days to pay a final judgment rendered

21 1 against it in the courts of this state.

21 2 e. That the licensee has become insolvent.

21 3 f. A fact or condition exists which would have warranted
21 4 the superintendent to refuse to originally issue the license.

21 5 g. The licensee has violated an order of the
21 6 superintendent.

21 7 2. The superintendent may impose one or more of the
21 8 following disciplinary actions against a licensee:

21 9 a. Revoke a license.

21 10 b. Suspend a license until further order of the
21 11 superintendent or for a specified period of time.

21 12 c. Impose a period of probation under specified
21 13 conditions.

21 14 d. Impose civil penalties in an amount not to exceed five
21 15 thousand dollars for each violation.

21 16 e. Issue a citation and warning respecting licensee
21 17 behavior.

21 18 f. Order the licensee to pay restitution.

21 19 3. The superintendent may order an emergency suspension of
21 20 a licensee's license pursuant to section 17A.18A. A written
21 21 order containing the facts or conduct which warrants the
21 22 emergency action shall be timely sent to the licensee by
21 23 restricted certified mail. Upon issuance of the suspension
21 24 order, the licensee must also be notified of the right to an
21 25 evidentiary hearing. A suspension proceeding shall be
21 26 promptly instituted and determined.

21 27 4. Except as provided in this section, a license shall not
21 28 be revoked or suspended except after notice and a hearing
21 29 thereon in accordance with chapter 17A.

21 30 5. A licensee may surrender a license by delivering to the
21 31 superintendent written notice of surrender, but a surrender
21 32 does not affect the licensee's civil or criminal liability for
21 33 acts committed before the surrender.

21 34 6. A suspension, revocation, relinquishment, or expiration
21 35 of a license shall not invalidate, impair, or affect the

22 1 legality of obligations of any preexisting contracts, or
22 2 prevent the enforcement or collection thereof.

22 3 7. Judicial review of the actions of the superintendent
22 4 may be sought in accordance with the terms of the Iowa
22 5 administrative procedure Act, chapter 17A.

22 6 Sec. 35. Section 536A.23, subsection 1, Code 2007, is
22 7 amended by adding the following new paragraph:

22 8 NEW PARAGRAPH. e. Obtain or arrange a residential
22 9 mortgage loan for a potential borrower from a third person,
22 10 unless the industrial loan company also has a mortgage broker
22 11 license and complies with all provisions of chapter 535B.

22 12 Sec. 36. Section 558.70, subsection 4, Code Supplement
22 13 2007, is amended to read as follows:

22 14 4. This section applies to a contract seller who entered
22 15 into four or more residential real estate contracts in the
22 16 three hundred sixty-five days previous to the contract seller
22 17 signing the contract disclosure statement. For purposes of
22 18 this subsection, two or more entities sharing a common owner
22 19 or manager are considered a single contract seller. This
22 20 section does not apply to a person or organization listed in
22 21 section 535B.2, subsections 1 through 7 6.

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22 25

PATRICK J. MURPHY

22 26

Speaker of the House

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22 28

22 29

22 30

JOHN P. KIBBIE

22 31

President of the Senate

22 32

22 33 I hereby certify that this bill originated in the House and
22 34 is known as House File 2556, Eighty-second General Assembly.

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MARK BRANDSGARD

23 4

Chief Clerk of the House

23 5 Approved _____, 2008

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23 8

23 9 CHESTER J. CULVER

23 10 Governor