

JAN 27 2006
COMMERCE, REGULATION & LABOR

HOUSE FILE 2151
BY UPMEYER

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

A BILL FOR

1 An Act creating the home loan protection Act, and providing a
2 penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

HF 2151

1 Section 1. NEW SECTION. 535D.1 TITLE -- PURPOSE.

2 1. This chapter shall be known and may be cited as the
3 "Home Loan Protection Act".

4 2. This chapter shall be liberally construed to effectuate
5 its purpose of protecting the homes and the equity of
6 individual borrowers. This chapter is to be construed as a
7 consumer protection statute for all purposes.

8 Sec. 2. NEW SECTION. 535D.2 DEFINITIONS.

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

11 1. "Affiliate" means any company that controls, is
12 controlled by, or is under common control with another company
13 as set forth in 12 U.S.C. § 1841 et seq.

14 2. "Annual percentage rate" means the annual percentage
15 rate for a loan calculated according to the provisions of the
16 federal Truth in Lending Act, 12 C.F.R. pt. 226.

17 3. "Bona fide discount points" means an amount knowingly
18 paid by a borrower for the express purpose of reducing, and
19 which in fact does result in a bona fide reduction of, the
20 interest rate applicable to a home loan; provided the
21 undiscounted interest rate for the home loan does not exceed
22 the conventional mortgage rate by two percentage points for a
23 home loan secured by a first lien, or by three and one-half
24 percentage points for a home loan secured by a subordinated
25 lien.

26 4. "Borrower" means any natural person obligated to repay
27 a home loan, including a coborrower, cosigner, or guarantor.

28 5. "Brokering" means to act as a mortgage broker in
29 connection with a home loan.

30 6. "Conventional mortgage rate" means the most recently
31 published annual yield on conventional mortgages published by
32 the board of governors of the federal reserve system, as
33 published in statistical release H.15 or any publication that
34 may supersede it, as of the applicable time set forth in 12
35 C.F.R. § 226.32(a)(1)(i).

1 7. "Conventional prepayment penalty" means any prepayment
2 penalty or fee that may be collected or charged in a home
3 loan, and that is authorized by law other than this chapter,
4 provided the home loan does not do either of the following:

5 a. Have an annual percentage rate that exceeds the
6 conventional mortgage rate by more than two percentage points.

7 b. Permit any prepayment fees or penalties that exceed two
8 percent of the amount prepaid.

9 8. "Creditor" means the same as "lender" as set forth in
10 24 C.F.R. § 3500.2. "Creditor" also means a mortgage broker.

11 9. "Excluded points and fees" means, in connection with a
12 home loan, up to and including one percent of the total loan
13 amount attributable to bona fide fees paid to a federal or
14 state government agency that insures payment of some portion
15 of a home loan plus an amount not to exceed two percent of the
16 total loan amount attributable to bona fide discount points or
17 a conventional prepayment penalty. In no case shall the total
18 excluded points and fees in connection with a home loan exceed
19 three percent of the total loan amount.

20 10. "Flipping" means making a home loan to a borrower that
21 refinances an existing home loan and the new loan does not
22 have reasonable, tangible net benefit to the borrower
23 considering all of the circumstances, including, but not
24 limited to, the terms of both the new and refinanced loans,
25 the cost of the new loan, and the borrower's circumstances.

26 11. "High-cost home loan" means a home loan in which the
27 terms of the loan meet or exceed one or more thresholds.

28 12. "Home loan" means an extension of credit, including an
29 open-end credit plan, in which all of the following apply:

30 a. The loan does not exceed the maximum original principal
31 obligation as set forth in and from time to time adjusted
32 according to the provisions of 12 U.S.C. § 1454(a)(2).

33 b. The loan is considered a federally related mortgage
34 loan as set forth in 24 C.F.R. § 3500.2.

35 c. The loan is neither a reverse mortgage transaction nor

1 a loan primarily for business, agricultural, or commercial
2 purposes.

3 13. "Manufactured home" means the same as set forth in 24
4 C.F.R. § 3280.2.

5 14. "Mortgage broker" means the same as set forth in 24
6 C.F.R. § 3500.2.

7 15. a. "Points and fees" means any of the following:

8 (1) All items included in the definition of finance charge
9 in 12 C.F.R. § 226.4(a) and 12 C.F.R. § 226.4(b) except
10 interest or the time price differential.

11 (2) All real estate-related fees described in 12 C.F.R. §
12 226.32(b)(1)(iii), which includes fees for title insurance,
13 abstracts of title, credit reports, or appraisals.

14 (3) All compensation paid directly or indirectly to a
15 mortgage broker from any source, including a mortgage broker
16 that originates a loan in its own name in a table-funded
17 transaction.

18 (4) The cost of all premiums financed by a creditor,
19 directly or indirectly for any credit life, credit disability,
20 credit unemployment, or credit property insurance, or any
21 other life or health insurance, or any payments financed by
22 the creditor directly or indirectly for any debt cancellation
23 or suspension agreement or contract, except that insurance
24 premiums or debt cancellation or suspension fees calculated
25 and paid in full on a monthly basis shall not be considered
26 financed by the creditor.

27 (5) The maximum prepayment fees and penalties that may be
28 charged or collected under the terms of the loan documents.

29 (6) All prepayment fees or penalties that are incurred by
30 the borrower if the loan refinances a previous loan originated
31 or currently held by the same creditor or an affiliate of the
32 creditor.

33 (7) For open-end loans, "points and fees" are calculated
34 by adding the total points and fees known at or before
35 closing, including the maximum prepayment penalties which may

1 be charged or collected under the terms of the loan document,
2 plus the minimum additional fees the borrower would be
3 required to pay to draw down an amount equal to the total
4 credit line.

5 b. "Points and fees" does not include any of the
6 following:

7 (1) Taxes, filing fees, recording, or other charges and
8 fees paid or to be paid to public officials for determining
9 the existence of or for perfecting, releasing, or satisfying a
10 security interest.

11 (2) Bona fide and reasonable fees paid to a person other
12 than the creditor or an affiliate of the creditor for any of
13 the following: fees for tax payment services; fees for flood
14 certification; fees for pest infestation or flood
15 determination; appraisal fees; fees for inspections performed
16 prior to closing; credit reports; surveys; attorney fees, if
17 the borrower has the right to select the attorney from an
18 approved list or otherwise; notary fees; escrow charges, so
19 long as not otherwise included under paragraph "a",
20 subparagraph (1); title insurance premiums; or fire and hazard
21 insurance and flood insurance premiums, provided that the
22 conditions in 12 C.F.R. § 226.4(d)(2) are met.

23 16. "Threshold" means any of the following items, as
24 defined:

25 a. "Rate threshold" means, for a home loan, the annual
26 percentage rate equals or exceeds the rate set forth in 12
27 C.F.R. § 226.32(a)(1)(i), without regard to whether the home
28 loan may be considered a "residential mortgage transaction" or
29 an extension of "open-end credit" as those terms are set forth
30 in 12 C.F.R. § 226.2.

31 b. "Total points and fees threshold" means:

32 (1) For loans in which the total loan amount is twenty
33 thousand dollars or more, the total points and fees payable in
34 connection with the home loan less any excluded points and
35 fees exceed five percent of the total loan amount.

1 (2) For loans in which the total loan amount is less than
2 twenty thousand dollars, the total points and fees payable in
3 connection with the home loan less any excluded points and
4 fees exceed the lesser of one thousand dollars or eight
5 percent of the total loan amount.

6 17. "Total loan amount" means the principal of the loan
7 minus those points and fees that are included in the principal
8 amount of the loan. For open-end loans, the total loan amount
9 shall be calculated using the total line of credit allowed
10 under the home loan at closing.

11 Sec. 3. NEW SECTION. 535D.3 PROHIBITED ACTS AND
12 PRACTICES.

13 1. A creditor making a home loan shall not finance,
14 directly or indirectly, any credit life, credit disability,
15 credit unemployment, or credit property insurance, or any
16 other life or health insurance, or any payments directly or
17 indirectly for any debt cancellation or suspension agreement
18 or contract, except that insurance premiums or debt
19 cancellation or suspension fees calculated and paid in full on
20 a monthly basis shall not be considered financed by the
21 creditor.

22 2. A creditor shall not knowingly or intentionally engage
23 in the act or practice of flipping a home loan.

24 3. A creditor shall not recommend or encourage default on
25 an existing loan or other debt prior to and in connection with
26 the closing or planned closing of a home loan that refinances
27 all or any portion of such existing loan or debt.

28 4. A creditor shall not impose a late payment charge
29 unless the loan documents specifically authorize the charge,
30 the charge is not imposed unless the payment is past due for
31 ten days or more, and the charge does not exceed five percent
32 of the amount of the late payment. A late payment charge
33 shall not be imposed more than once with respect to a
34 particular late payment. If a late payment charge is deducted
35 from a payment made on the home loan and such deduction

1 results in a subsequent default on a subsequent payment, a
2 late payment charge shall not be imposed for such default. A
3 creditor may apply any payment made in the order of maturity
4 to a prior period's payment due even if the result is late
5 payment charges accruing on subsequent payments due.

6 5. The terms of a home loan shall not include a provision
7 that permits the creditor, in its sole discretion, to
8 accelerate the indebtedness. This subsection does not
9 prohibit acceleration of a loan in good faith due to the
10 borrower's failure to abide by the material terms of the loan.

11 6. A creditor shall not charge a fee for informing or
12 transmitting to any person the balance due to pay off a home
13 loan or to provide a release upon prepayment. Payoff balances
14 shall be provided within a reasonable time but in any event no
15 more than five business days after the request.

16 Sec. 4. NEW SECTION. 535D.4 HIGH-COST HOME LOANS.

17 A high-cost home loan is subject to the following
18 additional limitations and prohibited practices:

19 1. A creditor shall not directly or indirectly finance any
20 points or fees.

21 2. Prepayment fees or penalties shall not be included in
22 the loan documents.

23 3. A scheduled payment shall not be for more than twice
24 the amount of the average of earlier scheduled payments. This
25 subsection does not apply when the payment schedule is
26 adjusted to the seasonal or irregular income of the borrower.

27 4. The loan shall not include payment terms under which
28 the outstanding principal balance or accrued interest will
29 increase at any time over the course of the loan because the
30 regularly scheduled periodic payments do not cover the full
31 amount of interest due.

32 5. The loan shall not contain a provision that increases
33 the interest rate after default. This subsection does not
34 apply to interest rate changes in a variable rate loan
35 otherwise consistent with the provisions of the loan

1 documents, provided the change in the interest rate is not
2 triggered by the event of default or the acceleration of the
3 indebtedness.

4 6. The loan shall not include terms under which more than
5 two periodic payments required under the loan are consolidated
6 and paid in advance from the loan proceeds provided to the
7 borrower.

8 7. A creditor shall not make a loan without first
9 receiving certification from a counselor with a third-party
10 nonprofit organization approved by the United States
11 department of housing and urban development, a housing
12 financing agency of this state, or the regulatory agency that
13 has jurisdiction over the creditor, that the borrower has
14 received counseling on the advisability of the loan
15 transaction.

16 8. A loan shall not be extended to a borrower unless a
17 reasonable creditor would believe at the time the loan is
18 closed that the borrower residing in the home will be able to
19 make the scheduled payments associated with the loan based
20 upon a consideration of the borrower's current and expected
21 income, current obligations, employment status, and other
22 financial resources, other than the borrower's equity in the
23 collateral that secures the repayment of the loan. There is a
24 rebuttable presumption that the borrower residing in the home
25 is able to make the scheduled payments to repay the obligation
26 if, at the time the loan is consummated, the borrower's total
27 monthly debts, including amounts under the loan, do not exceed
28 fifty percent of the borrower's monthly gross income as
29 verified by tax returns, payroll receipts, and other third-
30 party income verification.

31 9. A creditor shall not pay a contractor under a home-
32 improvement contract from the proceeds of the loan, unless the
33 following conditions are met:

34 a. The creditor is presented with a signed and dated
35 completion certificate issued by the contractor showing that

1 the home improvements have been completed.

2 b. The instrument is payable to the borrower or jointly to
3 the borrower and the contractor, or, at the election of the
4 borrower, through a third-party escrow agent in accordance
5 with terms established in a written agreement signed by the
6 borrower, the creditor, and the contractor prior to the
7 disbursement.

8 10. A creditor shall not charge the borrower any fees or
9 other charges to modify, renew, extend, or amend the loan.

10 11. All loan documents that create a debt or pledge
11 property as collateral shall contain the following notice on
12 the first page in a conspicuous manner: "Notice: This is a
13 high-cost home loan subject to special rules under state law.
14 Purchasers or assignees of this high-cost home loan may be
15 liable for all claims and defenses by the borrower with
16 respect to the home loan."

17 Sec. 5. NEW SECTION. 535D.5 RIGHT TO CURE.

18 1. If a creditor asserts that a borrower is in default and
19 that grounds for acceleration exist and requires the payment
20 in full of all sums secured by the security instrument, the
21 borrower, or anyone authorized to act on the borrower's
22 behalf, shall have the right at any time, up to the time title
23 to the home is transferred by means of foreclosure by judicial
24 proceeding and sale or otherwise, to cure the default and
25 reinstate the home loan by tendering the amount or performance
26 as specified in this section.

27 2. Before a foreclosure action is filed or any other
28 action is taken to seize or transfer ownership of the home,
29 the creditor shall deliver a written notice to the borrower of
30 the right to cure the default which shall include all of the
31 following:

32 a. The nature of the default claimed on the home loan, and
33 the borrower's right to cure the default by paying the sum of
34 money required to cure the default, provided that a partial
35 payment made or tendered in response to the notice must be

1 accepted. If the amount necessary to cure the default will
2 change due to the application of a daily interest rate or the
3 addition of late fees, the notice shall give sufficient
4 information to enable the borrower to calculate the amount at
5 any point within thirty days from the date of the notice.

6 b. The date, not less than thirty days after the date of
7 the notice, by which the borrower must cure the default to
8 avoid acceleration and initiation of foreclosure or other
9 action to seize the home. The notice shall include the name,
10 address, and phone number of a person to whom the borrower
11 shall tender payment.

12 c. A statement that if the borrower does not cure the
13 default by the date specified the creditor may take steps to
14 terminate the borrower's ownership in the property by
15 requiring payment in full of the home loan and commencing a
16 foreclosure action or other action to seize the home.

17 d. The name, address, and phone number of the creditor and
18 the creditor's representative that a borrower may contact if
19 the borrower disagrees with the creditor's assertion that a
20 default has occurred or with the creditor's calculation of the
21 amount required to cure the default.

22 3. A borrower shall not be required to pay any of the
23 following:

24 a. A charge, fee, or penalty to exercise the right to cure
25 a default under this section.

26 b. Attorney fees relating to the borrower's default
27 incurred prior to the filing of a foreclosure action or other
28 action to seize or transfer ownership of the home. After an
29 action has been filed, the borrower may be liable for attorney
30 fees that are reasonable and actually incurred by the
31 creditor, based on a reasonable hourly rate and a reasonable
32 number of hours.

33 4. If the borrower cures the default after an action to
34 foreclose or otherwise seize or transfer ownership of the home
35 is filed, the creditor shall take the necessary steps to

1 terminate the foreclosure or other action.

2 Sec. 6. NEW SECTION. 535D.6 PURCHASE OR ASSIGNMENT OF
3 HIGH-COST HOME LOAN -- CLAIMS.

4 1. A person who purchases or is otherwise assigned a high-
5 cost home loan is subject to all affirmative claims and any
6 defenses with respect to the loan that the borrower could
7 assert against the original creditor of the loan, provided
8 that this subsection shall not apply if the purchaser or
9 assignee demonstrates by a preponderance of the evidence that
10 all of the following conditions apply:

11 a. The purchaser or assignee has in place at the time of
12 the purchase or assignment of the subject loan, policies that
13 expressly prohibit its purchase or acceptance of assignment of
14 any high-cost home loans.

15 b. The purchaser or assignee requires by contract that a
16 seller or assignor of home loans represents and warrants to
17 the purchaser or assignee either of the following:

18 (1) The seller or assignor will not sell or assign any
19 high-cost home loans to the purchaser or assignee.

20 (2) The seller or assignor is a beneficiary of a
21 representation and warranty from a previous seller or assignor
22 to that effect.

23 c. The seller or assignor exercises reasonable due
24 diligence at the time of purchase or assignment of home loans
25 or within a reasonable period of time after the purchase or
26 assignment of such home loans, intended by the purchaser or
27 assignee to prevent the purchaser or assignee from purchasing
28 or taking assignment of any high-cost home loans, provided
29 further that reasonable due diligence shall provide for
30 sampling and shall not require loan-by-loan review.

31 2. A borrower acting only in an individual capacity may
32 assert claims that the borrower could assert against a
33 creditor of the home loan against any subsequent holder or
34 assignee of the home loan limited to amounts required to
35 reduce or extinguish the borrower's liability under the home

1 loan plus amounts required to recover costs, including
2 reasonable attorney fees. Such claims shall be limited to the
3 following:

4 a. Within five years of the closing of a high-cost home
5 loan, a claim of a violation of this chapter in connection
6 with the loan, brought as an original action.

7 b. At any time during the term of a high-cost home loan,
8 after an action to collect on the home loan or foreclose on
9 the collateral securing the home loan has been initiated or
10 the debt arising from the home loan has been accelerated or
11 the home loan has become sixty days in default, any defense,
12 claim or counterclaim, or action to enjoin foreclosure or
13 preserve or obtain possession of the home that secures the
14 loan.

15 3. The provisions of this section shall be effective
16 notwithstanding any other provision of law, provided that
17 nothing in this section shall be construed to limit the
18 substantive rights, remedies, or procedural rights available
19 to a borrower against any creditor, assignee, or holder under
20 any other law. The rights conferred on borrowers by
21 subsections 1 and 2 are independent of each other and do not
22 limit each other.

23 **Sec. 7. NEW SECTION. 535D.7 ENFORCEMENT -- PENALTY.**

24 1. The originating or brokering of a home loan that
25 violates a provision of this chapter is a violation of the
26 chapter.

27 2. Any person found by a preponderance of the evidence to
28 have violated this chapter shall be liable to the borrower for
29 the following:

30 a. Actual damages, including consequential and incidental
31 damages. The borrower shall not be required to demonstrate
32 reliance in order to receive actual damages.

33 b. For a violation of section 535D.3 or 535D.4, statutory
34 damages equal to two times the finance charges paid under the
35 loan and forfeiture of the remaining interest under the loan.

1 c. Punitive damages, when the violation was malicious or
2 reckless.

3 d. Costs, including reasonable attorney fees.

4 3. A borrower may be granted injunctive, declaratory, or
5 other equitable relief as the court deems appropriate in an
6 action to enforce compliance with this chapter.

7 4. The right of rescision granted under 15 U.S.C. § 1601 et
8 seq., for a violation of that law shall be available to a
9 borrower by way of recoupment against a party foreclosing on
10 the home loan or collecting on the loan, at any time during
11 the term of the loan. Nothing in this chapter shall be
12 construed to limit recoupment rights available to the borrower
13 under any other law.

14 5. The remedies provided in this section are not intended
15 to be the exclusive remedies available to a borrower nor must
16 the borrower exhaust any administrative remedies provided
17 under this chapter or any other applicable law before
18 proceeding under this section.

19 6. Any person, including members, officers, and directors
20 of the creditor, who knowingly violates this chapter is guilty
21 of a serious misdemeanor.

22 7. A creditor acting in good faith, who fails to comply
23 with the provisions of this chapter, shall not be deemed to
24 have violated this chapter if the creditor establishes that
25 either:

26 a. Within thirty days of the loan closing, and prior to
27 receiving any notice that the creditor violated this chapter,
28 the creditor has made appropriate restitution to the borrower,
29 and appropriate adjustments are made to the loan.

30 b. Within sixty days of the loan closing and prior to
31 receiving any notice that the creditor violated this chapter,
32 and the violation was not intentional but resulted from a bona
33 fide error notwithstanding the maintenance of procedures
34 reasonably adapted to avoid such errors, the borrower is
35 notified of the violation, appropriate restitution is made to

1 the borrower, and appropriate adjustments are made to the
2 loan. A "bona fide error" includes clerical, calculation,
3 computer malfunction and programming, and printing errors. An
4 error of legal judgment with respect to a creditor's
5 obligations under this chapter is not a bona fide error.

6 8. The remedies provided in this section are cumulative.

7 9. Whether a borrower is acting individually or on behalf
8 of others similarly situated, any provision of a home loan
9 document that requires a borrower to assert any claim or
10 defense in a forum that is less convenient, more costly, or
11 more dilatory for the resolution of a dispute than a judicial
12 forum established in this state where the borrower may
13 otherwise properly bring a claim or defense or limits in any
14 way any claim or defense the borrower may have is
15 unconscionable and void.

16 10. It is a violation of this chapter for any person to
17 attempt in bad faith to avoid the application of this chapter
18 by dividing any loan transaction into separate parts or
19 structuring a home loan transaction as an open-end loan for
20 the purpose of evading the provisions of this chapter when the
21 loan would have been a high-cost home loan if the loan had
22 been structured as a closed-end loan or engaging in any other
23 subterfuge with the intent of evading any provision of this
24 chapter.

25 Sec. 8. NEW SECTION. 535D.8 ATTORNEY GENERAL
26 ENFORCEMENT.

27 The attorney general and the county attorneys of this state
28 shall have jurisdiction to enforce this chapter through their
29 general regulatory powers and through civil process.

30 Sec. 9. NEW SECTION. 535D.9 NONEXCLUSIVE RIGHTS.

31 The rights conferred by this chapter are independent of and
32 in addition to any other rights conferred by law.

33 Sec. 10. NEW SECTION. 535D.10 APPLICABILITY.

34 1. This chapter shall apply to all transactions relating
35 to homes located in Iowa and governed by this chapter. This

1 chapter shall apply to all loans originated or entered into on
2 or after July 1, 2006.

3 2. If a conflict exists between this chapter and another
4 Code provision, including a conflict with a provision
5 contained in chapter 535, this chapter shall supersede the
6 other provision.

7 Sec. 11. Section 535.2, subsection 2, paragraph b,
8 subparagraph (6), Code 2005, is amended to read as follows:

9 (6) With respect to any transaction referred to in
10 paragraph "a" of this subsection, this subsection supersedes
11 any interest-rate or finance-charge limitations contained in
12 the Code, including but not limited to this chapter and
13 chapters 321, 322, 524, 533, 534, 536A, and 537. However,
14 this subsection shall not supersede the limitations contained
15 in chapter 535D.

16 EXPLANATION

17 This bill creates a new Code chapter known as the "Home
18 Loan Protection Act". The bill is based on federal
19 legislation designed to apply to all creditors that make real
20 estate loans, including home equity loans. The bill prohibits
21 various creditor practices in making and refinancing certain
22 consumer home loans. When making home loans, a creditor is
23 restricted in all of the following areas: financing insurance
24 premiums or debt cancellation fees; "flipping" a home loan
25 (i.e., refinancing a home loan with no net benefit to a
26 borrower); encouraging default on an existing loan prior to
27 closing on a refinancing loan; imposing a late payment charge;
28 and accelerating indebtedness. Additional restrictions apply
29 to creditors that make loans meeting certain thresholds known
30 as "high-cost" home loans. The bill provides for its
31 enforcement and remedies. Any person who knowingly violates
32 the bill is guilty of a serious misdemeanor. A serious
33 misdemeanor is punishable by confinement for no more than one
34 year and a fine of at least \$250 but not more than \$1,500.

35