

CHAPTER 61

REGULATION OF LENDERS AND LENDING PRACTICES

S.F. 355

AN ACT relating to mortgage lending by establishing licensing requirements applicable to mortgage loan originators; making specified modifications to existing licensing provisions relating to mortgage bankers and brokers, regulated loans, and industrial loans; and providing penalties and effective dates.

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

DIVISION I
MORTGAGE LOAN ORIGINATORSSection 1. NEW SECTION. 535D.1 TITLE.

This chapter shall be known and may be cited as the “Iowa Secure and Fair Enforcement for Mortgage Licensing Act”.

Sec. 2. NEW SECTION. 535D.2 LEGISLATIVE FINDINGS AND PURPOSE.

The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this state’s consumers, its economy, the neighborhoods and communities of this state, and the housing and real estate industry. The general assembly finds that accessibility to mortgage credit is vital to the state’s citizens. The general assembly also finds that it is essential for the protection of the citizens of this state and the stability of the state’s economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The general assembly further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this chapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, or fraudulent practices on the part of mortgage loan originators.

Sec. 3. NEW SECTION. 535D.3 DEFINITIONS.

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

1. “Clerical or support duties” means, subsequent to the receipt of a residential mortgage loan application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
2. “Depository institution” means a depository institution as defined in 12 U.S.C. § 1813(c) and a credit union organized under the laws of this state, another state, or the United States.
3. “Federal banking agencies” means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.
4. “Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
5. “Individual” means a natural person.
6. “Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 535B, 536, 536A, or this chapter.
7. “Loss mitigation efforts” means, when a residential mortgage loan borrower is in default or default is reasonably foreseeable, working with the borrower on behalf of the residential

mortgage loan servicer to modify either temporarily or permanently the obligation or otherwise mitigate loss on an existing residential mortgage loan.

8. "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include any of the following:

a. An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 535D.4, subsection 2.

b. An individual who only performs real estate brokerage activities and is licensed in accordance with state law, unless the individual is compensated by a lender, a mortgage broker, or mortgage loan originator or by any agent of such lender, mortgage broker, or mortgage loan originator.

c. An individual solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D).

d. An individual employed by a residential mortgage loan servicer if the individual is involved solely in loss mitigation efforts.

9. "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.

10. "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.

11. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction.

d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

e. Offering to engage in any activity, or act in any capacity, described in paragraphs "a" through "d".

12. "Registered mortgage loan originator" means a mortgage loan originator who is an employee of a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

13. "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in section 103(v) of the federal Truth in Lending Act or on residential real estate.

14. "Residential real estate" means any real property located in this state, upon which is constructed or intended to be constructed a dwelling as defined in section 103(v) of the federal Truth in Lending Act.

15. "Superintendent" means the superintendent of banking appointed pursuant to section 524.201.

16. "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 4. NEW SECTION. 535D.4 LICENSE AND REGISTRATION REQUIRED.

1. On or after January 1, 2010, an individual shall not engage in the business of a mortgage

loan originator with respect to any residential real estate located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

2. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license pursuant to this section, and registers with and maintains a valid unique identifier issued by the nationwide mortgage licensing system and registry.

3. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

Sec. 5. NEW SECTION. 535D.4A EXEMPTIONS.

This chapter does not apply to any of the following:

1. A registered mortgage loan originator when acting for an employer described in section 535D.3, subsection 11.¹

2. An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

3. An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

4. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

5. A licensed manufactured housing retailer selling mobile, manufactured, or modular homes, if the retailer only assists the consumer in filling out a loan application and does not offer or negotiate loan rates or terms, and does not do any counseling with consumers about residential mortgage loan rates or terms and does not receive any payment or fee from any company or individual for assisting the consumer.

Sec. 6. NEW SECTION. 535D.5 LICENSE AND REGISTRATION — APPLICATION AND ISSUANCE.

1. An applicant for licensure shall submit an application on a form prescribed by the superintendent.

2. The superintendent may enter into a contract with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

3. For the purpose of participating in the nationwide mortgage licensing system and registry, the superintendent may adopt rules which waive or modify, in whole or in part, requirements of this chapter and replace them with requirements reasonably necessary to participate in the nationwide mortgage licensing system and registry.

4. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including all of the following:

a. Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

b. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the superintendent to obtain an independent credit re-

¹ See chapter 179, §42 herein

port obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act; and information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

c. Any other information requested by the superintendent.

5. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection 4, the superintendent may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agency, or to or from any other source so directed by the superintendent.

Sec. 7. NEW SECTION. 535D.6 CONDITIONS OF LICENSURE.

An applicant for licensure as a mortgage loan originator shall demonstrate qualifications as follows:

1. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

2. The applicant has not been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensure; or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. A pardon of a conviction shall not constitute a conviction for purposes of this subsection.

3. The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of this chapter. For purposes of this subsection, a person has shown that the person is not financially responsible when the person has shown a disregard in the management of their own financial condition. The superintendent shall not deny a license on the sole basis of an applicant's credit score. A determination that an individual has not shown financial responsibility may include but not be limited to current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens or filings; foreclosures within the past three years; or a pattern of seriously delinquent accounts within the past three years.

4. The applicant has completed the prelicensing education requirements pursuant to section 535D.7.

5. The applicant has passed a written test that meets the requirements of section 535D.8.

6. The applicant has met the surety bond requirement or paid into a recovery fund as required pursuant to section 535D.14.

7. There are no other grounds to deny the applicant a license pursuant to rules adopted by the superintendent. Such rules may include discretionary grounds for license denial.

Sec. 8. NEW SECTION. 535D.7 PRELICENSING EDUCATION OF LOAN ORIGINATORS.

1. An applicant for licensure shall complete at least twenty hours of prelicensing education approved in accordance with subsection 2, which shall include at a minimum the following:

a. Three hours of federal laws and regulations pertaining to residential mortgage loan origination.

b. Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. Prelicensing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

3. A prelicensing education course that is approved by the nationwide mortgage licensing system and registry, and is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity, shall meet the requirements of this section.

4. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

5. Prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

Sec. 9. NEW SECTION. 535D.8 TEST REQUIREMENTS.

1. An applicant for licensure shall pass a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

2. A written test shall not be treated as a qualified written test for purposes of subsection 1 unless the test, in the determination of the nationwide mortgage licensing system and registry, adequately measures the applicant's knowledge and comprehension in appropriate subject areas including the following:

- a. Ethics.
- b. Federal laws and regulations pertaining to residential mortgage loan origination.
- c. State laws and regulations pertaining to residential mortgage loan origination.
- d. Other relevant federal and state laws and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

3. Nothing in this section shall prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

4. An applicant shall not be considered to have passed a qualified written test unless the applicant achieves a test score of not less than seventy-five percent correct answers to questions. An applicant who fails to achieve a test score of not less than seventy-five percent correct answers to questions may retake the test three consecutive times with each consecutive retake occurring at least thirty days after the preceding test. After three consecutive failed tests, an individual shall be required to wait at least six months before taking the test again. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall be required to retake and successfully pass the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Sec. 10. NEW SECTION. 535D.9 STANDARDS FOR LICENSE RENEWAL AND NON-RENEWAL.

1. The minimum standards for license renewal for a mortgage loan originator include the following:

- a. The mortgage loan originator continues to meet the conditions for licensure under section 535D.6.
- b. The mortgage loan originator has satisfied the annual continuing education requirements described in section 535D.10.
- c. The mortgage loan originator has paid all required fees for renewal of the license.

2. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall not be renewed. The superintendent may adopt rules for the reinstatement of a license not renewed pursuant to this subsection consistent with the standards established by the nationwide mortgage licensing system and registry.

Sec. 11. NEW SECTION. 535D.10 CONTINUING EDUCATION.

1. A licensed mortgage loan originator shall annually complete at least eight hours of educa-

tion approved in accordance with subsection 2, which shall include at a minimum the following:

- a. Three hours of federal laws and regulations pertaining to residential mortgage loan origination.
- b. Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
- c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. Continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

3. A continuing education course that is approved by the nationwide mortgage licensing system and registry and is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity, shall meet the requirements of this section.

4. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

5. A licensed mortgage loan originator, other than an originator subject to license nonrenewal pursuant to section 535D.9, subsection 2, or making up continuing education pursuant to subsection 9 of this section may only receive credit for a continuing education course in the year in which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

6. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

7. Completion of continuing education requirements that have been approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of continuing education requirements in this state.

8. A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

9. A person meeting the requirements of section 535D.9, subsection 1, paragraphs "a" and "c", may make up any deficiency in continuing education as established by rule of the superintendent.

Sec. 12. NEW SECTION. 535D.11 DUTIES AND POWERS OF SUPERINTENDENT.

In addition to any other duties imposed upon the superintendent by law, the superintendent shall require mortgage loan originators to be licensed and registered, as provided in this chapter, through the nationwide mortgage licensing system and registry. In order to carry out this requirement the superintendent may participate in the nationwide mortgage licensing system and registry. For this purpose, the superintendent may establish by rule requirements as necessary, including but not limited to the following:

1. Applicant background checks for criminal history through fingerprint or other databases or through civil or administrative records; applicant background checks for credit history; or applicant background checks for any other information as deemed necessary by the nationwide mortgage licensing system and registry.

2. The payment of application and renewal fees for licenses through the nationwide mortgage licensing system and registry and any additional fees as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent, incurred in the discharge of duties imposed by this chapter.

3. Establishment of licensure renewal or reporting dates.

4. Requirements for amending or surrendering a license or any other such activities as the superintendent deems necessary for participation in the nationwide mortgage licensing system and registry.

Sec. 13. NEW SECTION. 535D.12 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION — CHALLENGE PROCESS.

The superintendent shall establish a process by rule whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the superintendent.

Sec. 14. NEW SECTION. 535D.13 DISCIPLINARY ACTION AND CIVIL ENFORCEMENT AUTHORITY.

1. The superintendent may, pursuant to chapter 17A, take disciplinary action against a licensed mortgage loan originator if the superintendent finds any of the following:

a. The licensee has violated a provision of this chapter or a rule adopted pursuant to this chapter or any other state or federal law or regulation applicable to the conduct of the licensee's business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the superintendent to refuse to issue the original license.

c. The licensee fails at any time to meet the requirements of section 535D.6 or 535D.9, or withholds information or makes a material misstatement in an application for a license or renewal of a license.

d. The licensee has violated an order of the superintendent.

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

a. Revoke a license.

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

c. Impose a period of probation under specified conditions.

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

e. Issue a citation and warning concerning licensee behavior.

f. Order a licensee to cease and desist from conducting business or from any harmful activities or violations of law or rule.

g. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license or issue an order to immediately cease and desist from conducting business or from any harmful activities or violations of law or rule pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of an emergency suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

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

5. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a mortgagor.

6. The superintendent may issue an order to a person who is not licensed under this chapter to require compliance with this chapter, including to cease and desist from conducting business or from any harmful activities or violations of law or rule, may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation, and may order the person to pay restitution.

7. Before issuing an order under subsection 6, the superintendent shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.

8. A person aggrieved by the imposition of a civil penalty under subsection 6 may seek judicial review pursuant to section 17A.19.

9. An action to enforce an order under this section may be joined with an action for an injunction.

Sec. 15. NEW SECTION. 535D.14 SURETY BOND REQUIRED OR RECOVERY FUND.

1. a. A mortgage loan originator shall be covered by a surety bond in accordance with this section unless the superintendent establishes a recovery fund pursuant to subsection 4 into which the mortgage loan originator makes payments. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to chapter 535B, 536, or 536A, the surety bond of such person can be used in lieu of the mortgage loan originator's surety bond requirement.

b. The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection 2. The surety bond shall be in a form as prescribed by the superintendent. The superintendent may, pursuant to rule, determine requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.

2. The bond shall be maintained in an amount that reflects the dollar value of loans originated as determined by the superintendent.

3. When an action is commenced on a licensee's bond the superintendent may require the filing of a new bond. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

4. If the superintendent determines it is not feasible to establish surety bonding requirements that reflect the dollar amount of loans originated by a mortgage loan originator, as provided in subsection 1508(d)(6) of the federal Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289(1508), the superintendent may establish by rule a recovery fund to be paid into by mortgage loan originators. The rules shall provide for the amounts to be paid into the fund by mortgage loan originators. In the event the superintendent establishes a recovery fund, the fund shall be established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the superintendent and used for the purposes of compensating members of the public for losses caused by licensees. In addition, the superintendent may use moneys from the fund for the purpose of investigating and prosecuting violations of this chapter or any other state or federal law, rule, or regulation applicable to the conduct of a licensee's business. Notwithstanding section 12C.7, interest earned on amounts deposited in the fund, if established, shall be credited to the fund. Any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

Sec. 16. NEW SECTION. 535D.15 CONFIDENTIALITY.

1. Except as otherwise provided in section 1512 of the federal Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289(1512), the requirements under any federal law or chapter 22 or 692 regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with any state or federal regulatory official with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or chapter 22 or 692.

2. The superintendent may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.

3. Information or material that is subject to privilege or confidentiality under subsection 1 shall not be subject to any of the following:

a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or this state.

b. Subpoena or discovery, or admission into evidence, in any private civil action or adminis-

trative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, that privilege.

4. This section supersedes any provision of chapter 22 relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 of this section that is inconsistent with subsection 1.

5. This section shall not apply with respect to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that are included in the nationwide mortgage licensing system and registry for access by the public.

Sec. 17. NEW SECTION. 535D.16 INVESTIGATION AND EXAMINATION AUTHORITY.

The superintendent may conduct investigations and examinations as follows:

1. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the superintendent may access, receive, and use any relevant books, accounts, records, files, documents, information, or evidence including but not limited to:

a. Criminal, civil, and administrative history information, which is accessible to licensing authorities.

b. Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the federal Fair Credit Reporting Act.

c. Any other documents, information, or evidence the superintendent deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

2. For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the superintendent may review, investigate, or examine any licensee, individual, or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The superintendent may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the superintendent deems relevant to the inquiry.

3. Each licensee, individual, or person subject to this chapter shall make available to the superintendent upon request the books and records relating to the operations of such licensee, individual, or person. The superintendent shall have access to such books and records and interview the officers, principals, mortgage loan originators, employers, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this chapter concerning their business.

4. Each licensee, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the superintendent in order to carry out the purposes of this section including but not limited to the following:

a. Accounting compilations.

b. Information lists and data concerning loan transactions in a format prescribed by the superintendent.

c. Such other information deemed necessary to carry out the purposes of this section.

5. In making any examination or investigation authorized by this chapter, the superintendent may control access to any documents and records of the licensee or person under examination or investigation. The superintendent may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, an individual or person shall not remove or attempt to remove any of the documents or records except pursuant to a court order or with

the consent of the superintendent. Unless the superintendent has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents or records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

6. In order to carry out the purposes of this section, the superintendent may:

a. Retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations.

b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section.

c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter.

d. Accept and rely on examination or investigation reports made by other government officials, within or without this state.

e. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the superintendent.

7. The authority of this section shall remain in effect, whether such a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

8. A licensee, individual, or person subject to investigation or examination under this section shall not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Sec. 18. NEW SECTION. 535D.17 PROHIBITED ACTS AND PRACTICES.

It is a violation of this chapter for a person or individual subject to this chapter to engage in any of the following activities:

1. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

2. Engage in any unfair or deceptive practice toward any person.

3. Obtain property by fraud or misrepresentation.

4. Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

5. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.

6. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.

7. Fail to make disclosures as required by this chapter or any other applicable state or federal law including regulations thereunder.

8. Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.

9. Make, in any manner, any false or deceptive statement or representation.

10. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the superintendent or another governmental agency.

11. Make any payment, threat, or promise, directly or indirectly, to any person for the pur-

poses of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

12. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.

13. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

14. Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

Sec. 19. NEW SECTION. 535D.18 REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.

The superintendent shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry subject to the confidentiality provisions of section 535D.15.

Sec. 20. NEW SECTION. 535D.19 UNIQUE IDENTIFIER SHOWN.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or internet websites, and any other documents as established by rule, regulation, or order of the superintendent.

Sec. 21. NEW SECTION. 535D.20 OPERATING WITHOUT A LICENSE — PENALTY.

A person who, without first obtaining a license under this chapter, engages in the business or occupation of, or advertises or holds the person out as, or claims to be, or temporarily acts as, a mortgage loan originator in this state is guilty of a class “D” felony and may be prosecuted by the attorney general or a county attorney.

Sec. 22. NEW SECTION. 535D.21 ADMINISTRATIVE AUTHORITY.

The superintendent shall have broad administrative authority to administer, interpret, and enforce this chapter and to promulgate rules implementing this chapter.

Sec. 23. NEW SECTION. 535D.22 COMPLIANCE WITH FEDERAL LAW.

If the United States department of housing and urban development determines in writing that any provision of this chapter or its application to any person or circumstance is invalid under Title V of the federal Housing and Economic Recovery Act of 2009,² Pub. L. No. 110-289, the superintendent is authorized to adopt rules which waive or modify, in whole or in part, requirements of this chapter as necessary to achieve a determination by the United States department of housing and urban development that this state is in compliance with the federal law.

Sec. 24. TRANSITION PROVISIONS. If an individual registrant who was registered under chapter 535B before January 1, 2010, meets the qualifications for licensure in section 535D.6, subsections 1, 2, 3, 6, and 7, as enacted by this Act, but has not completed the prelicensing education requirements pursuant to section 535D.7, as enacted by this Act, or passed a written test that meets the requirements of section 535D.8, as enacted by this Act, by January 1, 2010, the superintendent may issue the individual a temporary mortgage loan originator license under chapter 535D, as enacted by this division of this Act. The temporary mortgage loan originator license shall expire on December 31, 2010, and beginning January 1, 2011, the individual must meet all of the qualifications for licensure specified in section 535D.6, as enacted by this Act, to obtain a license.

Sec. 25. EFFECTIVE DATE. This division of this Act takes effect July 1, 2009.

² According to enrolled Act; the year “2008” probably intended

DIVISION II
MORTGAGE
BANKERS AND BROKERS

Sec. 26. Section 535B.1, subsection 2, Code 2009, is amended by striking the subsection.

Sec. 27. Section 535B.1, subsections 4 and 5, Code 2009, are amended to read as follows:

4. "Mortgage banker" means a person who does one or more of the following:

a. Makes at least four mortgage loans on residential real property located in this state in a calendar year.

b. Originates at least four mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.

c. Services at least four mortgage loans on residential real property located in this state. However, a natural person, who services less than fifteen mortgage loans on residential real estate within the state and who does not sell or transfer mortgage loans, is exempt from this paragraph if that person is otherwise exempt from the provisions of this chapter.

"Mortgage banker" does not include a person whose job responsibilities on behalf of a licensee or individual registrant are to process mortgage loans, are solely clerical in nature, or otherwise do not involve direct contact with loan applicants who is a licensed mortgage loan originator under chapter 535D.

5. "Mortgage broker" means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year. "Mortgage broker" does not include a person whose job responsibilities on behalf of a licensee or individual registrant are to process mortgage loans, are solely clerical in nature, or otherwise do not involve direct contact with loan applicants who is a licensed mortgage loan originator under chapter 535D.

Sec. 28. Section 535B.4, subsection 7, Code 2009, is amended to read as follows:

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

Sec. 29. Section 535B.7, Code 2009, is amended to read as follows:

535B.7 DISCIPLINARY ACTION.

1. The administrator may, pursuant to chapter 17A, take disciplinary action against a licensee or individual registrant if the administrator finds any of the following:

a. The licensee or individual registrant has violated a provision of this chapter or a rule adopted under this chapter or any other state or federal law applicable to the conduct of its business including but not limited to chapters 535 and 535A.

b. A fact or condition exists which, if it had existed at the time of the original application for the license or individual registration, would have warranted the administrator to refuse originally to issue the license or individual registration.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee or individual registrant has violated an order of the administrator.

2. The administrator may impose one or more of the following disciplinary actions against a licensee or individual registrant:

a. Revoke a license or individual registration.

b. Suspend a license or individual registration until further order of the administrator or for a specified period of time.

- c. Impose a period of probation under specified conditions.
- d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.
- e. Issue a citation and warning respecting licensee or individual registrant behavior.
- f. Order the licensee or individual registrant to pay restitution.

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

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

5. A licensee may surrender a license and an individual registrant may surrender an individual registration by delivering to the administrator written notice of surrender, but a surrender does not affect the licensee's or individual registrant's civil or criminal liability for acts committed before the surrender.

6. A revocation, suspension, or surrender of a license or individual registration does not impair or affect the obligation of a preexisting lawful contract between the licensee or individual registrant and any person, including a mortgagor.

Sec. 30. **NEW SECTION. 535B.7A PROHIBITED ACTS.**

It is a violation of this chapter for a licensee to engage in any of the prohibited acts or practices in section 535D.16.³

Sec. 31. Section 535B.8, Code 2009, is amended to read as follows:

535B.8 OPERATING WITHOUT A LICENSE OR REGISTRATION.

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

Sec. 32. Section 535B.9, subsection 1, Code 2009, is amended to read as follows:

1. An applicant for a license shall file with the administrator a bond furnished by a surety company authorized to do business in this state, together with evidence of whether the applicant is seeking to transact business as a mortgage broker or as a mortgage banker. The **Until such time as the superintendent pursuant to administrative rule determines a bond amount that reflects the dollar value of loans originated, the bond shall be in the amount of one hundred thousand dollars.** The bond shall be continuous in nature until canceled by the surety with not less than thirty days' notice in writing to the mortgage broker or mortgage banker and to the administrator indicating the surety's intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

Sec. 33. Section 535B.10, subsection 2, Code 2009, is amended to read as follows:

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

Sec. 34. Section 535B.14, Code 2009, is amended to read as follows:

535B.14 RULEMAKING AUTHORITY.

The administrator may adopt, amend, or repeal rules to aid in the administration and en-

³ See chapter 179, §43 herein

forcement of this chapter, including rules providing the grounds for denial of an individual registration ~~a license~~ based on information received as a result of a background check, character and fitness grounds, and any other grounds for which an individual registrant or a licensee may be disciplined.

Sec. 35. Section 535B.17, Code 2009, is amended to read as follows:

535B.17 POWERS AND DUTIES OF THE ADMINISTRATOR — WAIVER AUTHORITY.

In addition to any other duties imposed upon the administrator by law, the administrator may participate in a multistate automated licensing system for mortgage bankers, mortgage brokers, and individual registrants mortgage loan originators. For this purpose, the administrator may establish by rule or order new requirements as necessary, including but not limited to requirements that license applicants and individual registrants submit to fingerprinting and criminal history checks, and pay fees therefor.

Sec. 36. NEW SECTION. 535B.18 MORTGAGE CALL REPORTS.

Each licensee shall submit to the nationwide mortgage licensing system and registry, as defined in section 535D.3, reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

Sec. 37. Section 535B.4A, Code 2009, is repealed.

Sec. 38. Section 535B.9A, Code 2009, is repealed.

Sec. 39. EFFECTIVE DATES.

1. The sections of this division of this Act amending section 535B.9 and enacting sections 535B.7A and 535B.18 take effect July 1, 2009.

2. The sections of this division of this Act amending sections 535B.1, 535B.4, 535B.7, 535B.8, 535B.10, 535B.14, and 535B.17 to eliminate the classification of “individual registrant” and repealing sections 535B.4A and 535B.9A take effect January 1, 2010.

DIVISION III REGULATED AND INDUSTRIAL LOANS

Sec. 40. Section 536.3, Code 2009, is amended by striking the section and inserting in lieu thereof the following:

536.3 BOND.

An applicant for a license shall file with the superintendent a bond furnished by a surety company authorized to do business in this state. Until such time as the superintendent through the administrative rule process determines a bond amount that reflects the dollar value of loans originated, the bond shall be in the amount of twenty-five thousand dollars. The bond shall be continuous in nature until canceled by the surety with not less than thirty days’ notice in writing to the licensee and to the superintendent indicating the surety’s intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant’s faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

Sec. 41. Section 536.6, subsection 1, Code 2009, is amended to read as follows:

1. If the superintendent ~~shall find~~ finds at any time that the bond is insecure or exhausted or otherwise of doubtful validity or collectibility, an additional bond to be approved by the superintendent, with one or more sureties and of the character specified in section 536.3, ~~in the a sum of not more than twenty-five thousand dollars~~ not to exceed that amount determined pursuant to section 536.3, shall be filed by the licensee within ten days after written demand upon the licensee by the superintendent.

Sec. 42. Section 536.11, Code 2009, is amended by adding the following new subsection: NEW SUBSECTION. 3. Each licensee making residential mortgage loans shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require. For purposes of this subsection, “nationwide mortgage licensing system and registry” and “residential mortgage loan” mean the same as defined in section 535D.3.

Sec. 43. NEW SECTION. 536.30 POWERS AND DUTIES OF THE SUPERINTENDENT — NATIONWIDE SYSTEM.

In addition to any other duties imposed upon the superintendent by law, the superintendent may require applicants and licensees to be licensed through the nationwide mortgage licensing system and registry as defined in section 535D.3. In order to carry out this requirement, the superintendent may participate in the nationwide mortgage licensing system and registry. For this purpose, the superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting, criminal history checks, and pay fees therefor.

Sec. 44. Section 536A.7A, subsection 1, Code 2009, is amended to read as follows:

1. An applicant for a license shall file with the superintendent a bond furnished by a surety company authorized to do business in this state. The Until such time as the superintendent pursuant to administrative rule determines a bond amount that reflects the dollar value of the loans originated, the bond shall be in the amount of twenty-five thousand dollars. The bond shall be continuous in nature until canceled by the surety with not less than thirty days’ notice in writing to the applicant and to the superintendent indicating the surety’s intention to cancel the bond on a specific date. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant’s faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

Sec. 45. Section 536A.14, Code 2009, is amended by adding the following new subsection: NEW SUBSECTION. 3. Each licensee making residential mortgage loans shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require. For purposes of this subsection, “nationwide mortgage licensing system and registry” and “residential mortgage loan” mean the same as defined in section 535D.3.

Sec. 46. NEW SECTION. 536A.32 POWERS AND DUTIES OF THE SUPERINTENDENT — NATIONWIDE SYSTEM.

In addition to any other duties imposed upon the superintendent by law, the superintendent may require applicants and licensees to be licensed through the nationwide mortgage licensing system and registry as defined in section 535D.3. In order to carry out this requirement, the superintendent may participate in the nationwide mortgage licensing system and registry. For this purpose, the superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting, criminal history checks, and pay fees therefor.

Sec. 47. EFFECTIVE DATE. This division of this Act takes effect July 1, 2009.

CHAPTER 62IOWA VETERANS HOME —
MEMBER RIGHTS AND RESPONSIBILITIES

S.F. 407

AN ACT relating to the rights and responsibilities of Iowa veterans home members.

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

Section 1. Section 35D.15, Code 2009, is amended to read as follows:

35D.15 RULES ENFORCED — POWER TO SUSPEND AND ~~EXPULSION~~ DISCHARGE MEMBERS.

1. The commandant shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and ~~expel~~ discharge any person from the home for infraction of the rules when the commandant determines that the health, safety, or welfare of the residents of the home is in immediate danger and other reasonable alternatives have been exhausted. The suspension and ~~expulsion~~ discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with chapter 17A.

2. a. The commandant shall, with the input and recommendation of the interdisciplinary resident care committee, involuntarily discharge a member for any of the following reasons:

(1) The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(a) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(b) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

(i) Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

(ii) By having been placed on probation by the Iowa veterans home for a second offense.

Notwithstanding the member meeting the criteria for discharge under this subparagraph (1), if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the interdisciplinary resident care committee and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under this subparagraph (1) if the member's actions or behavior jeopardizes the life or safety of other members or staff.

(2) The member refuses to utilize the resources available to address issues identified in the member's collaborative care plan, and all of the following conditions are met:

(a) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(b) The member has been notified of the member's commission of three offenses and the member has been placed on probation by the Iowa veterans home for a second offense.

Notwithstanding the member meeting the criteria for discharge under this subparagraph (2), if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the interdisciplinary resident care committee and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member's actions or behavior jeopardizes the life or safety of other members or staff.

(3) The member's medical or life skills needs have been met to the extent possible through the services provided by the Iowa veterans home and the member no longer requires a residential or nursing level of care, as determined by the interdisciplinary resident care committee.

(4) The member requires a level of licensed care not provided at the Iowa veterans home.

b. (1) If a member is discharged under this subsection, the discharge plan shall include