

Ham. Judiciary 3/11/83

Senate File 336

SENATE FILE 336

Judiciary and Law Enforcement: Hammond, Chair; Schroeder and Varn.

to Pass 4/6/83

FILED

BY COMMITTEE ON JUDICIARY
Approved 3/2 (p. 589)

Passed Senate, Date 3-8-83 (p. 668) Passed House, Date 4-14-83 (p. 1329)
Vote: Ayes 43 Nays 5 Vote: Ayes 94 Nays 5

Approved May 25, 1983
Referred Senate as amended by House
4-19-83 (p. 1310)
45-0

A BILL FOR

- 1 An Act regulating the activities of loan brokers and providing
- 2 penalties.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 336

H-3745

- 1 Amend Senate File 336 as passed by the Senate,
- 2 as follows:
- 3 1. Page 1, by striking line 6 and inserting in
- 4 lieu thereof the following: "for consideration to
- 5 be paid by the borrower before the loan broker or
- 6 broker has obtained a loan for the borrower or has
- 7 made a commitment to make a loan, agrees to do either
- 8 of".

H-3745 FILED APRIL 13, 1983 BY HAMMOND of Story
Adopted 4/14/83 (p. 1329)

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 - 2 as follows:
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 - 4 lieu thereof the following: "for consideration to
 - 5 be paid by the borrower before the loan broker or
 - 6 broker has obtained a loan for the borrower or has
 - 7 made a commitment to make a loan, agrees to do either
 - 8 of".

S-3592 FILED RECEIVED FROM THE HOUSE
APRIL 18, 1983 *Senate concurred 4/19/83 (p. 1310)*

1 Section 1. NEW SECTION. 535C.1 TITLE. This chapter
2 may be cited as the "Iowa Loan Brokers Act".

3 Sec. 2. NEW SECTION. 535C.2 DEFINITIONS. As used in
4 this chapter, unless the context otherwise requires:

5 1. "Loan broker" or "broker" means a person who, in return
6 for consideration from a borrower, agrees to do either of
7 the following:

8 a. Obtain a loan for the borrower or assist the borrower
9 in obtaining a loan.

10 b. Consider making a loan to the borrower.

11 2. "Loan" means an agreement to advance money or property
12 in return for the promise that payments will be made for use
13 of the money or property.

14 3. "Loan brokerage agreement" or "agreement" means a
15 written agreement in which a broker agrees to do either of
16 the following:

17 a. Obtain a loan for the borrower or assist the borrower
18 in obtaining a loan.

19 b. Consider making a loan to the borrower.

20 4. "Borrower" means a person who seeks the services of
21 a loan broker.

22 5. "Administrator" means the commissioner of insurance
23 or the deputy appointed under section 502.601.

24 Sec. 3. NEW SECTION. 535C.3 DISCLOSURE STATEMENT
25 REQUIRED.

26 1. At least seven days before the borrower signs an
27 agreement for the services of a loan broker, or at least seven
28 days before the borrower gives the broker any consideration,
29 whichever first occurs, the broker shall give the borrower
30 a written disclosure statement. The cover sheet of the
31 statement shall have printed, in at least ten point boldface
32 capital letters the title: "DISCLOSURES REQUIRED BY IOWA
33 LAW". The following statement, printed in at least ten point
34 type, shall appear under the title:

35 "The state of Iowa has not reviewed and does not approve,

1 recommend, endorse, or sponsor any loan brokerage agreement.
2 Neither has the state verified the information contained in
3 this disclosure. If you have questions, seek legal advice
4 before you sign a loan brokerage agreement."

5 Only the title and the statement shall appear on the cover
6 sheet.

7 2. The body of the document shall contain the following
8 information in the following order:

9 a. The name of the broker; names under which the broker
10 does, has done, or intends to do business; and the name of
11 a parent or affiliated company, if any.

12 b. Whether the broker does business as an individual,
13 partnership, corporation, or any other organizational form
14 of the broker's business.

15 c. How long the broker has done business.

16 d. The number of loan brokerage agreements the broker
17 has entered in the most recent calendar year.

18 e. The number of loans the broker has obtained for
19 borrowers in the most recent calendar year.

20 f. That a financial statement is on file with the
21 administrator.

22 g. A description of the services the broker agrees to
23 perform for the borrower.

24 h. The conditions under which the borrower is obligated
25 to pay the broker. This disclosure must be in boldface type.

26 i. Either subparagraph (1) or (2), as appropriate:

27 (1) "As required by Iowa law, this loan broker has secured
28 a bond by _____,

29 name and address of surety company

30 a surety authorized to do business in Iowa. Before signing
31 an agreement with the broker, you should check with the surety
32 company to determine the bond's current status."

33 (2) "As required by Iowa law, this loan broker has
34 established a trust account _____ with

35 number of the account

1 _____
2 name and address of the financial institution
3 Before signing an agreement with the broker, you should check
4 with the financial institution to determine the current status
5 of the trust account."

6 j. The names, business addresses, titles and principal
7 occupations for the past five years of all officers, directors,
8 or persons occupying a similar position responsible for the
9 broker's business activities.

10 k. Other information the administrator requires.

11 Sec. 4. NEW SECTION. 535C.4 SURETY BOND OR TRUST ACCOUNT
12 REQUIRED. A loan broker shall obtain a surety bond or
13 establish a trust account. The bond or account shall be in
14 the amount of ten thousand dollars and in favor of the state
15 of Iowa. The bond shall be issued by a surety company
16 authorized to do business in this state. The trust account
17 shall be established with a financial institution, as defined
18 in section 422.61, subsection 1, located in Iowa. The
19 administrator shall act as custodian of the bond or account
20 for borrowers entering loan brokerage agreements with the
21 loan broker. Only the administrator may disburse funds from
22 the trust account. A borrower, damaged by a broker's violation
23 of a loan brokerage agreement entered into with the borrower
24 or by the broker's violation of this chapter, may bring an
25 action against the bond or trust account and may receive
26 payment from the surety or trustee. The surety or trustee
27 is liable only for actual damages arising from a violation.
28 The aggregate liability of the surety or trustee from all
29 actions against a broker shall not exceed the amount of the
30 bond or trust account. The amount of the bond or account
31 shall be distributed pro rata among all borrowers bringing
32 actions against the bond or account within a time designated
33 by the administrator and whose claims are either settled in
34 favor of the borrower or otherwise found to be valid.

35 The administrator may adopt rules establishing the term

1 and length of the surety bond or trust account.

2 A broker who does not obtain a bond or establish an account
3 is guilty of a serious misdemeanor.

4 Sec. 5. NEW SECTION. 535C.5 FILING WITH THE
5 ADMINISTRATOR--PENALTY.

6 1. Before advertising or making other oral or written
7 representations, or acting as a loan broker in this state,
8 a loan broker shall file with the administrator copies of
9 the disclosure statement required under section 535C.3, the
10 most recent financial statement of the broker, and either
11 of the following:

12 a. The bond required under section 535C.4.

13 b. The formal notification from the financial institution
14 that the trust account required under section 535C.4 is
15 established.

16 2. The broker shall amend these filings no less than
17 annually and, in addition, shall file amendments within forty-
18 five days of any material change in the following:

19 a. The status of the bond or account.

20 b. The financial statement of the broker.

21 c. Information required by the disclosure statement.

22 A broker who does not file the copies required is guilty of
23 a serious misdemeanor.

24 3. The broker shall pay a fifty dollar filing fee with
25 the initial disclosure statement filed under subsection 1.
26 A twenty-five dollar fee shall be charged for each amendment
27 under subsection 2.

28 4. The administrator shall review the disclosure statement
29 for compliance with requirements imposed under this chapter.

30 5. The administrator may by order prohibit a broker from
31 advertising, making oral or written representations, or acting
32 as a loan broker if the order is found to be in the public
33 interest and either of the following apply:

34 a. The disclosure statement or financial statement on
35 file is incomplete in any material respect or contains any

1 statement which was, in light of the circumstances under which
2 it was made, false or misleading with respect to any material
3 fact.

4 b. The loan broker has willfully violated or willfully
5 failed to comply with any provision of this chapter.

6 6. The information contained or filed under this section
7 may be made available to the public under such rules as the
8 administrator prescribes.

9 Sec. 6. NEW SECTION. 535C.6 PENALTIES. A broker is
10 guilty of a serious misdemeanor for failure to do any of the
11 following:

12 1. Obtain and maintain a surety bond or establish and
13 maintain a trust account as required in section 535C.4.

14 2. Make accurate and timely filings as required in section
15 535C.5.

16 Sec. 7. NEW SECTION. 535C.7 WRITTEN AGREEMENTS REQUIRED.

17 A loan brokerage agreement shall be in writing and signed
18 by the broker and the borrower. The broker shall give the
19 borrower a copy of the agreement when the borrower signs the
20 agreement.

21 Sec. 8. NEW SECTION. 535C.8 WAIVER OF RIGHTS. A waiver
22 of this chapter by a borrower prior to or at the time of
23 entering into a loan brokerage agreement is contrary to public
24 policy and is void. An attempt by a loan broker to have a
25 borrower waive any rights given in this chapter is a violation
26 of this chapter.

27 Sec. 9. NEW SECTION. 535C.9 RULES. The administrator
28 may adopt rules according to chapter 17A as necessary or
29 appropriate to implement the purposes of this chapter.

30 Sec. 10. NEW SECTION. 535C.10 REMEDIES.

31 1. If a broker materially violates the loan brokerage
32 agreement, the borrower may, upon written notice, void the
33 agreement. In addition, the borrower may recover all moneys
34 paid the broker and may recover other damages including
35 reasonable attorney's fees. The broker materially violates

1 the agreement if the broker does any of the following:

2 a. Makes false or misleading statements relative to the
3 agreement.

4 b. Does not comply with the agreement or the obligations
5 arising from the agreement.

6 c. Does not either grant the borrower a loan or diligently
7 attempt to obtain a loan for the borrower.

8 d. Does not comply with the requirements of this chapter.

9 2. A violation of this chapter is a violation of the Iowa
10 consumer fraud Act, section 714.16.

11 3. Remedies under this chapter are in addition to other
12 remedies available in law or equity.

13 Sec. 11. NEW SECTION. 535C.11 APPLICABILITY. This
14 chapter does not apply to any activities or arrangements
15 expressly approved or regulated by any regulatory body or
16 officer acting under authority of this state, other than the
17 administrator, or of the United States.

18 Sec. 12. Section 714.16, subsection 2, Code 1983, is
19 amended by adding the following new paragraph:

20 NEW PARAGRAPH. A violation of a provision of sections
21 535C.1 through 535C.10 is an unlawful practice.

22 Sec. 13. Sections 1 through 11 of this Act are created
23 as a new chapter 535C.

24 EXPLANATION

25 This bill regulates loan brokers. It requires a loan
26 broker to make certain written disclosures to the borrower
27 at least seven days prior to the borrower signing an agreement
28 for services or giving the broker any consideration. The
29 broker is required to obtain a surety bond or establish a
30 trust account. The bill also requires the broker to make
31 certain filings. All loan brokerage agreements must be in
32 writing. Criminal penalties are imposed for certain violations
33 of the bill. The borrower is given a civil cause of action
34 for some violations.

35 Section 13 provides for a new chapter designated as 535C

1 regulating loan brokers. There are internal cross-references
2 within the new chapter to the new sections. The bill becomes
3 effective July 1 following its enactment.

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SENATE FILE 336

AN ACT
REGULATING THE ACTIVITIES OF LOAN BROKERS AND PROVIDING
PENALTIES.

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

Section 1. NEW SECTION. 535C.1 TITLE. This chapter may be cited as the "Iowa Loan Brokers Act".

Sec. 2. NEW SECTION. 535C.2 DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Loan broker" or "broker" means a person who, in return for consideration to be paid by the borrower before the loan broker or broker has obtained a loan for the borrower or has made a commitment to make a loan, agrees to do either of the following:

a. Obtain a loan for the borrower or assist the borrower in obtaining a loan.

b. Consider making a loan to the borrower.

2. "Loan" means an agreement to advance money or property in return for the promise that payments will be made for use of the money or property.

3. "Loan brokerage agreement" or "agreement" means a written agreement in which a broker agrees to do either of the following:

a. Obtain a loan for the borrower or assist the borrower in obtaining a loan.

b. Consider making a loan to the borrower.

4. "Borrower" means a person who seeks the services of a loan broker.

5. "Administrator" means the commissioner of insurance or the deputy appointed under section 502.601.

Sec. 3. NEW SECTION. 535C.3 DISCLOSURE STATEMENT REQUIRED.

1. At least seven days before the borrower signs an agreement for the services of a loan broker, or at least seven days before the borrower gives the broker any consideration, whichever first occurs, the broker shall give the borrower a written disclosure statement. The cover sheet of the statement shall have printed, in at least ten point boldface capital letters the title: "DISCLOSURES REQUIRED BY IOWA LAW". The following statement, printed in at least ten point type, shall appear under the title:

"The state of Iowa has not reviewed and does not approve, recommend, endorse, or sponsor any loan brokerage agreement. Neither has the state verified the information contained in this disclosure. If you have questions, seek legal advice before you sign a loan brokerage agreement."
Only the title and the statement shall appear on the cover sheet.

2. The body of the document shall contain the following information in the following order:

a. The name of the broker; names under which the broker does, has done, or intends to do business; and the name of a parent or affiliated company, if any.

b. Whether the broker does business as an individual, partnership, corporation, or any other organizational form of the broker's business.

c. How long the broker has done business.

d. The number of loan brokerage agreements the broker has entered in the most recent calendar year.

e. The number of loans the broker has obtained for borrowers in the most recent calendar year.

f. That a financial statement is on file with the administrator.

g. A description of the services the broker agrees to perform for the borrower.

h. The conditions under which the borrower is obligated to pay the broker. This disclosure must be in boldface type

1. Either subparagraph (1) or (2), as appropriate.

(1) "As required by Iowa law, this loan broker has secured a bond by _____ name and address of surety company a surety authorized to do business in Iowa. Before signing an agreement with the broker, you should check with the surety company to determine the bond's current status."

(2) "As required by Iowa law, this loan broker has established a trust account _____ with _____ number of the account

_____ name and address of the financial institution Before signing an agreement with the broker, you should check with the financial institution to determine the current status of the trust account."

j. The names, business addresses, titles and principal occupations for the past five years of all officers, directors, or persons occupying a similar position responsible for the broker's business activities.

k. Other information the administrator requires.

Sec. 4. NEW SECTION. 535C.4 SURETY BOND OR TRUST ACCOUNT REQUIRED. A loan broker shall obtain a surety bond or establish a trust account. The bond or account shall be in the amount of ten thousand dollars and in favor of the state of Iowa. The bond shall be issued by a surety company authorized to do business in this state. The trust account shall be established with a financial institution, as defined in section 422.61, subsection 1, located in Iowa. The administrator shall act as custodian of the bond or account

for borrowers entering loan brokerage agreements with the loan broker. Only the administrator may disburse funds from the trust account. A borrower, damaged by a broker's violation of a loan brokerage agreement entered into with the borrower or by the broker's violation of this chapter, may bring an action against the bond or trust account and may receive payment from the surety or trustee. The surety or trustee is liable only for actual damages arising from a violation. The aggregate liability of the surety or trustee from all actions against a broker shall not exceed the amount of the bond or trust account. The amount of the bond or account shall be distributed pro rata among all borrowers bringing actions against the bond or account within a time designated by the administrator and whose claims are either settled in favor of the borrower or otherwise found to be valid.

The administrator may adopt rules establishing the term and length of the surety bond or trust account.

A broker who does not obtain a bond or establish an account is guilty of a serious misdemeanor.

Sec. 5. NEW SECTION. 535C.5 FILING WITH THE ADMINISTRATOR--PENALTY.

1. Before advertising or making other oral or written representations, or acting as a loan broker in this state, a loan broker shall file with the administrator copies of the disclosure statement required under section 535C.3, the most recent financial statement of the broker, and either of the following:

a. The bond required under section 535C.4.

b. The formal notification from the financial institution that the trust account required under section 535C.4 is established.

2. The broker shall amend these filings no less than annually and, in addition, shall file amendments within forty-five days of any material change in the following:

- a. The status of the bond or account.
- b. The financial statement of the broker.
- c. Information required by the disclosure statement.

A broker who does not file the copies required is guilty of a serious misdemeanor.

3. The broker shall pay a fifty dollar filing fee with the initial disclosure statement filed under subsection 1. A twenty-five dollar fee shall be charged for each amendment under subsection 2.

4. The administrator shall review the disclosure statement for compliance with requirements imposed under this chapter.

5. The administrator may by order prohibit a broker from advertising, making oral or written representations, or acting as a loan broker if the order is found to be in the public interest and either of the following apply:

- a. The disclosure statement or financial statement on file is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

- b. The loan broker has willfully violated or willfully failed to comply with any provision of this chapter.

6. The information contained or filed under this section may be made available to the public under such rules as the administrator prescribes.

Sec. 6. NEW SECTION. 535C.6 PENALTIES. A broker is guilty of a serious misdemeanor for failure to do any of the following:

- 1. Obtain and maintain a surety bond or establish and maintain a trust account as required in section 535C.4.
- 2. Make accurate and timely filings as required in section 535C.5.

Sec. 7. NEW SECTION. 535C.7 WRITTEN AGREEMENTS REQUIRED. A loan brokerage agreement shall be in writing and signed by the broker and the borrower. The broker shall give the

borrower a copy of the agreement when the borrower signs the agreement.

Sec. 8. NEW SECTION. 535C.8 WAIVER OF RIGHTS. A waiver of this chapter by a borrower prior to or at the time of entering into a loan brokerage agreement is contrary to public policy and is void. An attempt by a loan broker to have a borrower waive any rights given in this chapter is a violation of this chapter.

Sec. 9. NEW SECTION. 535C.9 RULES. The administrator may adopt rules according to chapter 17A as necessary or appropriate to implement the purposes of this chapter.

Sec. 10. NEW SECTION. 535C.10 REMEDIES.

1. If a broker materially violates the loan brokerage agreement, the borrower may, upon written notice, void the agreement. In addition, the borrower may recover all moneys paid the broker and may recover other damages including reasonable attorney's fees. The broker materially violates the agreement if the broker does any of the following:

- a. Makes false or misleading statements relative to the agreement.
- b. Does not comply with the agreement or the obligations arising from the agreement.
- c. Does not either grant the borrower a loan or diligently attempt to obtain a loan for the borrower.
- d. Does not comply with the requirements of this chapter.

2. A violation of this chapter is a violation of the Iowa consumer fraud Act, section 714.16.

3. Remedies under this chapter are in addition to other remedies available in law or equity.

Sec. 11. NEW SECTION. 535C.11 APPLICABILITY. This chapter does not apply to any activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state, other than the administrator, or of the United States.

Sec. 12. Section 714.16, subsection 2, Code 1983, is amended by adding the following new paragraph:

NEW PARAGRAPH. A violation of a provision of sections 535C.1 through 535C.10 is an unlawful practice.

Sec. 13. Sections 1 through 11 of this Act are created as a new chapter 535C.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 336, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 25, 1983

TERRY E. BRANSTAD
Governor