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MAR 2 1979

HOUSE FILE 658

Place On Calendar

By COMMITTEE ON COMMERCE

(Formerly House File 329)

Passed House, Date 3-28-79 (8/11/79) Passed Senate, Date _____
Vote: Ayes 91 Nays _____ Vote: Ayes _____ Nays _____
Approved 6/10/79

A BILL FOR

1 An Act to authorize real property loans secured by
2 alternative mortgage instruments.

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

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1 Section 1. Title twenty-three (XXIII), Code 1979, is
2 amended by adding sections two (2) through six (6) of this
3 Act as a new chapter.

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

6 1. "Lender" means a bank, savings and loan association
7 or credit union which is organized under the laws of this
8 state or of the United States and which is authorized to en-
9 gage in business in this state.

10 2. "Mortgage instruments" means and includes all docu-
11 ments which are evidence of the existence of a loan and of
12 the obligations of the lender and the borrower.

13 3. "Regulatory agency" means as follows:

14 a. With respect to banks, the superintendent of banking.

15 b. With respect to savings and loan associations, the
16 supervisor of savings and loan associations.

17 c. With respect to credit unions, the administrator of
18 the credit union department.

19 Sec. 3. NEW SECTION. ALTERNATIVE MORTGAGE INSTRUMENTS.

20 1. A lender may make permanent loans or combined construc-
21 tion and permanent loans secured by first liens on real prop-
22 erty which are graduated payment mortgages, variable rate
23 mortgages or reverse annuity mortgages, provided that these
24 loans shall be subject to the provisions of this chapter and
25 to rules issued by the regulatory agency. The provisions
26 of this chapter supersede any conflicting provisions of
27 chapters five hundred twenty-four (524), five hundred thirty-
28 three (533) and five hundred thirty-four (534) of the Code
29 with respect to repayment and amortization of real property
30 loans. Loans which are made under this chapter are subject
31 to other laws of this state which are applicable to a lender,
32 except to the extent the provisions of this chapter conflict
33 with those laws, in which event the provisions of this chapter
34 shall govern.

35 2. A "graduated payment mortgage" is a mortgage which

1 secures a loan having scheduled payments which begin at a
2 level lower than that necessary to fully amortize the loan
3 within its term, and which gradually increase to a
4 predetermined level after which the amount of each payment
5 remains constant. The period during which the payments may
6 increase, the rate of increase and the interest rate shall
7 be fixed for the entire term of the loan at the time of its
8 origination. The period during which the payments may increase
9 shall not exceed ten years, the rate of increase shall not
10 exceed three percent annually over a ten-year period, three
11 and one-half percent annually over a nine-year period, four
12 and one-half percent annually over an eight-year period, five
13 and one-half percent annually over a seven-year period, six
14 and one-half percent annually over a six-year period or seven
15 and one-half percent annually over a period of five years
16 or less, and the amount of each payment shall not be changed
17 more often than once each year with the first change to occur
18 not less than twelve months after the due date of the first
19 scheduled payment on the loan.

20 3. A "variable rate mortgage" is a mortgage which secures
21 a loan bearing an interest rate which fluctuates in direct
22 relation to a reference index, resulting in future payments
23 which may be of an amount not known at the time the loan is
24 made. Interest rate adjustments may not be made more
25 frequently than once each year, on fixed dates specified in
26 the loan agreement and commencing not less than twelve months
27 after the due date of the first scheduled payment on the loan.
28 The borrower shall receive not less than sixty days notice
29 prior to the effective date of any rate change. The notice
30 shall specify the new interest rate and, after giving effect
31 to the interest rate adjustment, the new dollar amount of
32 each periodic payment or the new term of the loan should the
33 borrower elect to extend the loan. Upon receipt of a notice
34 of an interest rate increase, a borrower shall be entitled,
35 by notifying the lender not less than thirty days prior to

1 the effective date of the increase, to require that in lieu
2 of an increase in the amount of any scheduled periodic payment
3 on the loan the term of the loan be extended by a period
4 sufficient to eliminate or reduce the increase in the periodic
5 payment amount, provided that the cumulative net effect of
6 all such extensions shall be a maximum of one-third of the
7 original term of the loan. A decrease in the interest rate
8 of the loan shall be applied by the lender first to a reduction
9 of any previously extended loan maturity and then to a
10 reduction of periodic payment amounts. The smallest adjustment
3445- 11 which may be made in the rate shall be one-twentieth of one
12 percent and the greatest adjustment in the rate which may
13 be made at any one time shall be one-half of one percent.
14 Changes in the reference index which are not reflected in
15 the loan interest rate, either at the option of the lender
16 in the case of increases or because the change exceeds the
17 smallest or greatest adjustment permitted by this paragraph,
18 may be accumulated by the lender in the case of increases
19 and shall be accumulated by the lender in the case of decreases
20 and may, in the case of increases, or shall, in the case of
21 decreases, be taken at a later time or used to offset other
22 changes. The maximum net increase in the interest rate over
23 the life of the loan shall be two and one-half percent. The
24 reference index to which the interest rate is tied shall be
25 an index published by the United States government and approved
3445- 26 for use under this subsection by the regulatory agency.

27 4. A "reverse annuity mortgage" is a mortgage on one-
28 family or two-family residential real property which secures
29 a loan having no periodic principal payments due the lender,
30 and the proceeds of which are either paid to the borrower
31 on a periodic basis or used by the lender to purchase an
32 annuity having periodic payments to the borrower. The loan
33 may become due either on a specific date or upon the occurrence
34 of a specific event, provided that the lender shall refinance,
3445- 35 at the request of an original borrower and at a then-current

1 market interest rate, any loan secured by a reverse annuity
2 mortgage which comes due on a specific date prior to the sale
3 or gift of an interest in the real property. Loans secured
4 by reverse annuity mortgages may be made only upon the real
5 property described in this subsection, and only upon compliance
6 by the lender with sections three (3), four (4) and five (5)
7 of this Act.

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8 5. A regulatory agency may promulgate rules necessary
9 to administer or enforce this chapter.

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10 Sec. 4. NEW SECTION. REVERSE ANNUITY MORTGAGE LOANS.

11 1. A lender may make reverse annuity mortgage loans upon
12 the execution by borrowers of mortgage instruments that meet
13 the requirements of this chapter. The aggregate outstanding
14 balances of all loans evidenced by these instruments shall
15 not exceed one-fourth of the maximum amount which the lender
16 is permitted by law to invest in conventional home purchase-
17 money mortgages, and, in addition, shall be considered to
18 be conventional home mortgages for purposes of that limitation.

19 2. Mortgage instruments evidencing a reverse annuity
20 mortgage loan shall not be used by a lender unless the
21 instruments have been approved by the regulatory agency.

22 3. The instruments submitted for approval under this sec-
23 tion must satisfy the requirements of section five (5) of
24 this Act. The instruments may include provisions not re-
25 quired by this chapter, but the regulatory agency may
26 disapprove a provision which is inconsistent with the
27 provisions of this chapter or with the intents and purposes
28 of this chapter.

29 4. A substantive revision of an approved form shall not
30 be made except upon the prior written approval of the
31 regulatory agency.

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32 Sec. 5. NEW SECTION. CONDITIONS. Mortgage instruments
33 evidencing a reverse annuity mortgage loan shall contain
34 provisions to ensure all of the following:

35 1. The unpaid balance of the loan, whether inclusive or

1 exclusive of interest, will be unamortized and repayable in
2 full upon the borrower's death, or upon the prior sale of
3 the property securing the loan, subject to the obligation
4 of the lender to refinance under section three (3), subsection
5 four (4) of this Act. The unpaid balance of the loan shall
6 not exceed ninety-five percent of the value of the property
7 given as security. If the loan is made to joint borrowers,
8 it may be repayable upon the death of the last surviving bor-
9 rower, or upon the prior sale of the property.

10 2. If the lender is to act as agent for the borrower in
11 the purchase of an annuity for the borrower from a life
12 insurance company, the lender must be expressly authorized
3445 13 by the borrower to act as the borrower's agent.

14 3. Annuities paid to borrowers may be either for life
15 or for a specified term. Annuity contracts with life insurance
16 companies may call for immediate payment or may defer payment
17 for a specified number of years. If deferred, the lender
18 may make payments on an annuity to the borrower as loan ad-
19 vances during the deferral period, provided that the maximum
20 loan balance reached at the end of the deferral period does
21 not exceed ninety-five percent of the property value at the
22 end of the deferral period.

23 4. If an annuity is purchased from an insurance company,
24 the annuity contract must provide that the insurance company
25 make interest payments on the loan directly to the lender.

26 5. Full disclosure must be made to the borrower regard-
27 ing the gross and net annuity to be received, and the amount
3445 28 of the debt that will be collected on death or on the prior
29 sale of the property. Where the debt rises over time, the
30 borrower must be given the complete monthly debt schedule.

31 6. The loan may be prepaid, and the mortgage released,
32 at any time without penalty.

33 7. The interest rate payable by the borrower shall not
34 3445 vary during the term of the loan.

35 Sec. 6. NEW SECTION. DISCLOSURE. A lender shall not

1 offer to make reverse annuity mortgage loans until the lender
2 has complied with all of the following:

3 1. The lender shall cause to be prepared a pamphlet con-
4 taining the following information:

5 a. The nature and effect of the loan.

6 b. An example, using a typical loan situation, which de-
7 scribes the gross and net annuity the borrower would receive,
8 and the amount of debt to be collected on death or a prior
9 sale of the property.

3445-10 c. The obligations of the borrower, should the term of
11 the loan expire prior to the death of the borrower.

12 The lender shall not make the pamphlet available to the
13 general public until it has been approved by the regulatory
14 agency. The regulatory agency shall not approve a pamphlet
15 unless it provides full and accurate disclosure of the in-
16 formation required by this subsection.

17 2. The lender shall make available to a prospective bor-
18 rower the pamphlet required by subsection one (1) of this
19 section, and shall discuss the information contained in the
20 pamphlet with the prospective borrower before giving the
21 borrower a loan application form.

3450-22 Sec. 7. NEW SECTION. ENFORCEMENT. An agency of this
23 state which is required by the laws of this state to regulate
24 a lender shall enforce the provisions of this chapter with
25 respect to the lender. The regulatory agency may petition
26 the district court for Polk county in an action in equity
27 to obtain such relief as may be necessary to obtain compliance
28 with this chapter.

29 Sec. 8. This Act takes effect January first following
30 its enactment.

31 EXPLANATION

32 This bill would enable banks, savings and loan associations
33 and credit unions doing business in this state to make loans
34 which are secured by what are becoming known as alternative
35 mortgage instruments. This bill contains authority for the

1 use of three types of mortgages: graduated payment mortgages,
2 variable rate mortgages, and reverse annuity mortgages.

3 Conventional mortgages which have been used in this state
4 require the borrower to repay the loan principal plus interest
5 in a series of equal periodic payments over the term of the
6 loan, and the interest rate is fixed during the entire term
7 of the mortgage. The alternative mortgage instruments which
8 would be authorized by this Act contain variations from the
9 conventional mortgage.

10 A graduated payment mortgage contains a schedule under
11 which the borrower's periodic payment increases in amount
12 from time to time. This bill would authorize these contracts,
13 but section 3, subsection 2 limits the amount of increase
14 in payment which may be required and the frequency of the
15 change in payment amount.

16 A variable rate mortgage is a contract whereby the interest
17 rate is changed from time to time according to some reference
18 index, such as is done under the temporary Iowa usury law.
19 Section 3, subsection 3 would regulate the terms of variable
20 rate mortgages as follows:

21 1. Interest adjustments could not be made more often than
22 once a year.

23 2. The borrower must be given 60 days advance notice of
24 the increase in the loan payment amount.

25 3. The borrower must have the option to extend the term
26 of the loan to as much as one-third the original loan term
27 in lieu of having the periodic payment increase.

28 4. The maximum change at any one time would be one-half
29 of one percent, and the maximum over the life of the loan
30 would be two and one-half percent.

31 A reverse annuity mortgage loan is, generally speaking,
32 a loan according to which the lender makes periodic payments
33 of principal to the borrower, and the borrower is obligated
34 to repay the loan in a lump sum at the end of the term of
35 the loan. The effect of this type of loan is, generally

1 speaking, that it enables a person who owns a home to use
2 the equity in that home as security for a contract which
3 provides the homeowner with a monthly income. At the end
4 of the contract term, the homeowner either repays to the
5 lender the principal advanced in the form of monthly payments
6 to the borrower, plus interest, or the home given as security
7 is sold and the loan plus interest is paid for out of the
8 proceeds of sale.

9 This bill would permit reverse annuity mortgage loans,
10 but the following conditions would exist:

11 1. The state agency which regulates the particular type
12 of lender is required to approve all instruments which would
13 be used in the loan transaction.

14 2. The aggregate outstanding balances of all reverse loans
15 which the lender has made could not exceed 25 percent of the
16 maximum amount the lender is permitted by law to invest in
17 conventional mortgage loans.

18 3. The lender may purchase annuity contracts from life
19 insurance companies for the purpose of providing the periodic
20 payments to the borrower.

21 4. The loan would be repayable upon the death of the
22 borrower or upon a prior sale of the property given as
23 security.

24 5. The lender, prior to offering reverse annuity loans,
25 must prepare and obtain approval of a pamphlet which fully
26 discloses the nature of a reverse annuity loan and its ef-
27 fects. In addition, at the time of discussing a reverse an-
28 nuity loan with a prospective borrower the lender must fully
29 discuss with the person the nature and effects of a reverse
30 annuity loan.

31 Graduated payment mortgages and variable rate mortgages
32 could be used for any loan secured by a first lien on real
33 property. Reverse annuity loans could be made only on one-
34 family or two-family residential property.

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LSB 1672H 68

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HOUSE FILE 658

H-3445

1 Amend House File 658 as follows:

2 1. Page 1, by inserting after line 18 the follow-
3 ing:

4 "4. "Standard mortgage instrument" means a mortgage
5 which contains a fixed interest rate, and which
6 provides for equal payments and full amortization.

7 5. "Graduated payment mortgage" means the type
8 of mortgage described in section four (4) of this
9 Act.

10 6. "Variable rate mortgage" means the type of
11 mortgage described in section seven (7) of this Act.

12 7. "Reverse annuity mortgage" means the type of
13 mortgage described in section eleven (11) of this
14 Act."

15 2. Page 1, by striking line 35 and inserting in
16 lieu thereof the following:

17 "2. Each prospective borrower who is offered an
18 alternative mortgage instrument by a lender must also
19 be offered a standard mortgage instrument by the
20 lender.

21 3. A lender offering to make a loan secured by
22 an alternative mortgage instrument shall obtain and
23 retain in the loan application file a certification
24 signed by the prospective borrower that the borrower
25 received the disclosure materials specified in this
26 chapter for the type of mortgage instrument used,
27 and that the disclosure was made prior to the time
28 the borrower made the election to accept the al-
29 ternative mortgage instrument.

30 Sec. 4. NEW SECTION. GRADUATED PAYMENT MORTGAGE-
31 -TERMS. A graduated payment mortgage is a mortgage
32 which".

33 3. Page 2, by inserting after line 19 the follow-
34 ing:

35 "Sec. 5. NEW SECTION. CONVERSION OF GRADUATED
36 PAYMENT MORTGAGE. The borrower under a graduated
37 payment mortgage has the right to convert at any time
38 to a standard mortgage instrument, if at the time
39 of exercising the option to convert the borrower
40 qualifies for the standard mortgage instrument under
41 the lender's ordinary underwriting standards.
42 Penalties or fees otherwise permitted by law upon
43 prepayment of a loan shall not be assessed by the
44 lender upon conversion of a graduated payment mortgage
45 if the borrower chooses to convert the graduated
46 payment mortgage at the interest rate specified in
47 the graduated payment mortgage and for the remainder
48 of the term of the graduated payment mortgage.

49 Sec. 6. NEW SECTION. DISCLOSURE FOR GRADUATED
50 PAYMENT MORTGAGE. Prior to the closing of a loan

1 secured by a graduated payment mortgage, the lender
2 shall deliver to the prospective borrower written
3 materials which explain in reasonably simple terms
4 the graduated payment mortgage offered and a standard
5 mortgage instrument for the same principal amount.
6 These materials shall include all of the following:
7 a. A side-by-side comparison of differing interest
8 rates and other terms.
9 b. Payment schedules for both the graduated payment
10 mortgage and the standard mortgage, and the total
11 payment in dollars over the full term of each type
12 of loan.
13 c. A description of the conversion option which
14 is available to the borrower under section three (3)
15 of this Act.
16 d. A statement prominently displayed that the
17 borrower has the option to elect a standard mortgage
18 instrument rather than a graduated payment mortgage."
19 4. Page 2, by striking line 20 and inserting in
20 lieu thereof the following:
21 "Sec. 7. NEW SECTION. VARIABLE RATE MORTGAGE-
22 -TERMS. A variable rate mortgage is a mortgage which
23 secures".
24 5. Page 3, line 11, by striking the word "one-
25 twentieth" and inserting in lieu thereof the word
26 "one-tenth".
27 6. Page 3, by striking lines 25 and 26 and
28 inserting in lieu thereof the following: "the
29 reference index which is used under section five
30 hundred thirty-five point two (535.2), subsection
31 three (3), of the Code for purposes of determining
32 the usury rate for this state."
33 7. Page 3, by inserting after line 26 the follow-
34 ing:
35 "Sec. 8. NEW SECTION. PREPAYMENT OF VARIABLE
36 RATE MORTGAGE. Within sixty days after the borrower
37 is given notice of a change in the interest rate under
38 a variable rate mortgage, the borrower is entitled,
39 if the change is an increase in the interest rate,
40 to prepay the loan, either in full or in part, without
41 penalty. If the borrower elects to prepay under this
42 section, the borrower waives for the year the right
43 under section seven (7) of this Act to extend the
44 maturity date of the loan.
45 Sec. 9. NEW SECTION. RATE CHANGE NOTICE FOR
46 VARIABLE RATE MORTGAGE. The notice of interest rate
47 change given by the lender under section seven (7)
48 of this Act shall include all of the following
49 information:
50 1. The current interest rate and new interest

1 rate under the loan.

2 . 2. The old and new index rates.

3 3. The amount of accumulated but unused rate
4 changes, if any.

5 4. The current monthly payment, the new monthly
6 payment if the rate change is placed into effect,
7 and the remaining maturity of the loan.

8 5. If the rate change is an increase, a description
9 of the options which the borrower has upon receipt
10 of the notice, including the new payment and the new
11 maturity date of the loan if the borrower elects to
12 extend the loan to the maximum period permitted under
13 section seven (7) of this Act.

14 6. If the rate change is a decrease, a description
15 of the manner in which the decrease is to be applied.

16 Sec. 10. NEW SECTION. DISCLOSURES FOR VARIABLE
17 RATE MORTGAGE. Prior to the closing of a loan secured
18 by a variable rate mortgage, the lender shall deliver
19 to the prospective borrower written materials which
20 explain in reasonably simple terms the variable rate
21 mortgage offered and a comparable standard mortgage
22 instrument. These written materials shall include
23 all of the following:

24 1. A side-by-side comparison of differing interest
25 rates and other terms.

26 2. Payment schedules for both types of instruments,
27 including a "worst case" schedule for the variable
28 rate mortgage which shows every maximum increase at
29 the time it could first occur, the highest possible
30 payment during the loan term, and the total payment
31 in dollars over the full term of each loan, with a
32 statement that the total payment for the variable
33 rate mortgage would be greater in the event of election
34 of the borrower to extend the loan.

35 3. Information regarding the index used.

36 4. A description of the borrower's options in
37 the event of an increase in the interest rate.

38 5. A statement, prominently displayed, that
39 borrowers have the option to elect a standard mortgage
40 instrument.

41 6. A statement that if the prospective borrower
42 has questions regarding the disclosures, the borrower
43 may contact the regulatory agency of this state which
44 regulates the lender. Each lender shall also disclose
45 the name and address and telephone number of the
46 particular individual who is designated by the
47 regulatory agency of this state to respond to inquiries
48 under this paragraph for the type of lender making
49 the disclosure."

50 8. Page 3, by striking line 27 and inserting in

Page Four
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- 1 lieu thereof the following:
- 2 "Sec. 11. NEW SECTION. REVERSE ANNUITY MORTGAGES.
- 3 A reverse annuity mortgage is a mortgage on one-".
- 4 9. By striking page 3, line 34 through page 4,
- 5 line 3, and inserting in lieu thereof the following:
- 6 "of a specific event. Loans secured".
- 7 10. Page 4, line 6, by striking the words and
- 8 figures "three (3), four (4) and five (5)" and
- 9 inserting in lieu thereof the words and figures "twelve
- 10 (12), thirteen (13) and fourteen (14)".
- 11 11. Page 4, by striking lines 8 through 10 and
- 12 inserting in lieu thereof the following:
- 13 "Sec. 12. NEW SECTION. QUALIFICATIONS FOR REVERSE
- 14 ANNUITY MORTGAGE PLANS."
- 15 12. Page 4, by inserting after line 31 the
- 16 following:
- 17 "5. Loan applicants shall not be bound for seven
- 18 days after the loan commitment is made."
- 19 13. Page 4, by striking line 32 and inserting
- 20 in lieu thereof the following:
- 21 "Sec. 13. NEW SECTION. TERMS AND CONDITIONS OF
- 22 REVERSE ANNUITY MORTGAGES. Mortgage instruments".
- 23 14. Page 5, lines 4 and 5, by striking the words
- 24 and figures "section three (3), subsection four (4)
- 25 of this Act" and inserting in lieu thereof the words
- 26 "this section".
- 27 15. Page 5, line 13, by inserting after the word
- 28 "agent" the words "and the annuity must be purchased
- 29 from a life insurance company which is authorized
- 30 to issue annuities in this state".
- 31 16. Page 5, by striking lines 26 through 30.
- 32 17. Page 5, line 33, by inserting after the word
- 33 "borrower" the words "shall be fixed at the time of
- 34 loan origination and".
- 35 18. Page 5, by inserting after line 34 the
- 36 following:
- 37 "____. The loan may become due either on a specific
- 38 date or upon the occurrence of a specific event,
- 39 provided that the lender shall refinance, at the
- 40 request of the borrower and at a market interest rate
- 41 which is current as of the date the loan becomes due,
- 42 a loan secured by a reverse annuity mortgage which
- 43 becomes due prior to a sale or gift of an interest
- 44 in the real property."
- 45 19. Page 5, by striking line 35 and inserting
- 46 in lieu thereof the following:
- 47 "Sec. 14. NEW SECTION. DISCLOSURE FOR REVERSE
- 48 ANNUITY MORTGAGES. A lender shall not".
- 49 20. Page 6, line 10, by inserting after the word
- 50 "The" the words "rights and".

- 1 21. Page 6, by inserting after line 21 the
2 following:
3 "3. At the time of loan commitment, the lender
4 shall deliver to the borrower written materials
5 explaining in reasonably simple language the terms
6 of the loan being offered. These materials shall
7 include all of the following:
8 a. The schedule and an explanation of payments
9 to be received by borrower, and whether or not property
10 taxes and insurance are to be deducted from the
11 payments.
12 b. A schedule of the outstanding debt which would
13 exist during the term of the loan.
14 c. The repayment date of the loan, if the loan
15 is a fixed-term loan, and a description of any event
16 which causes the loan to become due, including but
17 not limited to a sale of the property or the death
18 of one or more of the mortgagors.
19 d. The method of repayment, and the repayment
20 schedule, if any.
21 e. All contractual contingencies, including but
22 not limited to lack of home maintenance and other
23 default provisions, which may result in a forced sale
24 of the property.
25 f. The interest rate and the total amount of
26 interest payable on the loan.
27 g. The effective interest rate and the amount
28 of interest earned or expected to be earned on
29 purchased annuities, based on standard mortality
30 tables.
31 h. The name and address of the insurance company
32 from which the annuity is to be purchased, if any.
33 i. The initial loan fees and charges.
34 j. A description of the prepayment and refinancing
35 features of the loan.
36 k. A statement that the mortgage may have tax
37 and estate-planning consequences and may effect levels
38 of or eligibility for certain governmental benefits,
39 grants or pensions, and that the borrower is advised
40 to explore these matters with appropriate authorities
41 or with an attorney.
42 4. The lender shall obtain a statement signed
43 by the borrower which acknowledges receipt of the
44 disclosure required by subsection three (3), paragraph
45 e, of this section."
46 22. Page 6, by inserting after line 28 the
47 following:
48 "A regulatory agency may promulgate rules as
49 necessary to administer or enforce this chapter."
50 23. By renumbering sections and subsections and

MARCH 16, 1979
PAGE THIRTY THREE

Page Six
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1 correcting internal references in the bill.

H-3445 FILED adopted 3/28 (p. 1199) BY CHIODO of Polk
MARCH 15, 1979

Sen. Commerce 4/3 Do Pass per 2411 4/5 (1078)

HOUSE FILE 658

By COMMITTEE ON COMMERCE

(As Amended and Passed by the House)

Passed House, Date 5-10-79 (p. 2281) Passed Senate, Date 4-15-79 (p. 1244)

Vote: Ayes 98 Nays 0 Vote: Ayes 48 Nays 0

Approved June 10, 1979

*Motion to reconsider 1266 11/18 4/23
Repassed Senate as further amended
5-11-79 (p. 1705)
47-1*

A BILL FOR

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2 alternative mortgage instruments.
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_____ House Amendments
* Stricken Language

1 Section 1. Title twenty-three (XXIII), Code 1979, is
34'' - 2 amended by adding sections two (2) through six (6) of this
3 Act as a new chapter.

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

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7 or credit union which is organized under the laws of this
8 state or of the United States and which is authorized to en-
9 gage in business in this state.

10 2. "Mortgage instruments" means and includes all docu-
11 ments which are evidence of the existence of a loan and of
12 the obligations of the lender and the borrower.

13 3. "Regulatory agency" means as follows:

14 a. With respect to banks, the superintendent of banking.

15 b. With respect to savings and loan associations, the
16 supervisor of savings and loan associations.

17 c. With respect to credit unions, the administrator of
18 the credit union department.

19 4. "Standard mortgage instrument" means a mortgage which
20 contains a fixed interest rate, and which provides for equal
21 payments and full amortization.

22 5. "Graduated payment mortgage" means the type of mort-
23 gage described in section four (4) of this Act.

24 6. "Variable rate mortgage" means the type of mortgage
25 described in section seven (7) of this Act.

26 7. "Reverse annuity mortgage" means the type of mortgage
27 described in section eleven (11) of this Act.

28 Sec. 3. NEW SECTION. ALTERNATIVE MORTGAGE INSTRUMENTS.

29 1. A lender may make permanent loans or combined construc-
30 tion and permanent loans secured by first liens on real prop-
31 erty which are graduated payment mortgages, variable rate
32 mortgages or reverse annuity mortgages, provided that these
33 loans shall be subject to the provisions of this chapter and
34 to rules issued by the regulatory agency. The provisions
35 of this chapter supersede any conflicting provisions of

1 chapters five hundred twenty-four (524), five hundred thirty-
2 three (533) and five hundred thirty-four (534) of the Code
3 with respect to repayment and amortization of real property
4 loans. Loans which are made under this chapter are subject
5 to other laws of this state which are applicable to a lender,
6 except to the extent the provisions of this chapter conflict
7 with those laws, in which event the provisions of this chapter
8 shall govern.

9 2. Each prospective borrower who is offered an alterna-
10 tive mortgage instrument by a lender must also be offered
11 a standard mortgage instrument by the lender.

12 3. A lender offering to make a loan secured by an al-
13 ternative mortgage instrument shall obtain and retain in the
14 loan application file a certification signed by the prospec-
15 tive borrower that the borrower received the disclosure ma-
16 terials specified in this chapter for the type of mortgage
17 instrument used, and that the disclosure was made prior to
18 the time the borrower made the election to accept the al-
19 ternative mortgage instrument.

20 Sec. 4. NEW SECTION. GRADUATED PAYMENT MORTGAGE--TERMS.

21 A graduated payment mortgage is a mortgage which secures a
3411-22 loan having scheduled payments which begin at a level lower
23 than that necessary to fully amortize the loan within its
24 term, and which gradually increase to a predetermined level
25 after which the amount of each payment remains constant.
26 The period during which the payments may increase, the rate
27 of increase and the interest rate shall be fixed for the
28 entire term of the loan at the time of its origination. The
29 period during which the payments may increase shall not exceed
30 ten years, the rate of increase shall not exceed three percent
31 annually over a ten-year period, three and one-half percent
32 annually over a nine-year period, four and one-half percent
33 annually over an eight-year period, five and one-half percent
34 annually over a seven-year period, six and one-half percent
35 annually over a six-year period or seven and one-half percent

1 annually over a period of five years or less, and the amount
2 of each payment shall not be changed more often than once
3 each year with the first change to occur not less than twelve
4 months after the due date of the first scheduled payment on
5 the loan.

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6 Sec. 5. NEW SECTION. CONVERSION OF GRADUATED PAYMENT
7 MORTGAGE. The borrower under a graduated payment mortgage
8 has the right to convert at any time to a standard mortgage
9 instrument, if at the time of exercising the option to con-
10 vert the borrower qualifies for the standard mortgage in-
11 strument under the lender's ordinary underwriting standards.
12 Penalties or fees otherwise permitted by law upon prepayment
13 of a loan shall not be assessed by the lender upon conver-
14 sion of a graduated payment mortgage if the borrower chooses
15 to convert the graduated payment mortgage at the interest
16 rate specified in the graduated payment mortgage and for the
17 remainder of the term of the graduated payment mortgage.

18 Sec. 6. NEW SECTION. DISCLOSURE FOR GRADUATED PAYMENT
19 MORTGAGE. Prior to the closing of a loan secured by a
20 graduated payment mortgage, the lender shall deliver to the
21 prospective borrower written materials which explain in rea-
22 sonably simple terms the graduated payment mortgage offered
23 and a standard mortgage instrument for the same principal
24 amount. These materials shall include all of the following:

25 a. A side-by-side comparison of differing interest rates
26 and other terms.

27 b. Payment schedules for both the graduated payment mort-
28 gage and the standard mortgage, and the total payment in dol-
29 lars over the full term of each type of loan.

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30 c. A description of the conversion option which is avail-
31 able to the borrower under section three (3) of this Act.

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32 d. A statement prominently displayed that the borrower
33 has the option to elect a standard mortgage instrument rather
34 than a graduated payment mortgage.

35 Sec. 7. NEW SECTION. VARIABLE RATE MORTGAGE--TERMS.

1 A variable rate mortgage is a mortgage which secures a loan
2 bearing an interest rate which fluctuates in direct relation
3 to a reference index, resulting in future payments which may
4 be of an amount not known at the time the loan is made.
5 Interest rate adjustments may not be made more frequently
6 than once each year, on fixed dates specified in the loan
7 agreement and commencing not less than twelve months after
8 the due date of the first scheduled payment on the loan.
9 The borrower shall receive not less than sixty days notice
10 prior to the effective date of any rate change. The notice
11 shall specify the new interest rate and, after giving effect
12 to the interest rate adjustment, the new dollar amount of
13 each periodic payment or the new term of the loan should the
14 borrower elect to extend the loan. Upon receipt of a notice
15 of an interest rate increase, a borrower shall be entitled,
16 by notifying the lender not less than thirty days prior to
17 the effective date of the increase, to require that in lieu
18 of an increase in the amount of any scheduled periodic payment
19 on the loan the term of the loan be extended by a period
20 sufficient to eliminate or reduce the increase in the periodic
21 payment amount, provided that the cumulative net effect of
22 all such extensions shall be a maximum of one-third of the
23 original term of the loan. A decrease in the interest rate
24 of the loan shall be applied by the lender first to a reduction
25 of any previously extended loan maturity and then to a
26 reduction of periodic payment amounts. The smallest adjustment
27 which may be made in the rate shall be one-tenth of one percent
28 and the greatest adjustment in the rate which may be made
29 at any one time shall be one-half of one percent. Changes
30 in the reference index which are not reflected in the loan
31 interest rate, either at the option of the lender in the case
32 of increases or because the change exceeds the smallest or
33 greatest adjustment permitted by this paragraph, may be
34 accumulated by the lender in the case of increases and shall
35 be accumulated by the lender in the case of decreases and

1 may, in the case of increases, or shall, in the case of
2 decreases, be taken at a later time or used to offset other
3 changes. The maximum net increase in the interest rate over
4 the life of the loan shall be two and one-half percent. The
5 reference index to which the interest rate is tied shall be
344 6 the reference index which is used under section five hundred
7 thirty-five point two (535.2), subsection three (3), of the
8 Code for purposes of determining the usury rate for this
9 state.

10 Sec. 8. NEW SECTION. PREPAYMENT OF VARIABLE RATE MORT-
11 GAGE. Within sixty days after the borrower is given notice
12 of a change in the interest rate under a variable rate mort-
13 gage, the borrower is entitled, if the change is an increase
14 in the interest rate, to prepay the loan, either in full or
15 in part, without penalty. If the borrower elects to pre-
16 pay under this section, the borrower waives for the year the
17 right under section seven (7) of this Act to extend the
18 maturity date of the loan.

19 Sec. 9. NEW SECTION. RATE CHANGE NOTICE FOR VARIABLE
20 RATE MORTGAGE. The notice of interest rate change given by
21 the lender under section seven (7) of this Act shall include
22 all of the following information:

23 1. The current interest rate and new interest rate un-
24 der the loan.

25 2. The old and new index rates.

26 3. The amount of accumulated but unused rate changes,
27 if any.

28 4. The current monthly payment, the new monthly payment
29 if the rate change is placed into effect, and the remaining
30 maturity of the loan.

31 5. If the rate change is an increase, a description of
32 the options which the borrower has upon receipt of the notice,
33 including the new payment and the new maturity date of the
34 loan if the borrower elects to extend the loan to the maximum
35 period permitted under section seven (7) of this Act.

1 6. If the rate change is a decrease, a description of
2 the manner in which the decrease is to be applied.

3 Sec. 10. NEW SECTION. DISCLOSURES FOR VARIABLE RATE
4 MORTGAGE. Prior to the closing of a loan secured by a variable
5 rate mortgage, the lender shall deliver to the prospective
6 borrower written materials which explain in reasonably simple
7 terms the variable rate mortgage offered and a comparable
8 standard mortgage instrument. These written materials shall
9 include all of the following:

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10 1. A side-by-side comparison of differing interest rates
11 and other terms.

12 2. Payment schedules for both types of instruments, in-
13 cluding a "worst case" schedule for the variable rate mort-
14 gage which shows every maximum increase at the time it could
15 first occur, the highest possible payment during the loan
16 term, and the total payment in dollars over the full term
17 of each loan, with a statement that the total payment for
18 the variable rate mortgage would be greater in the event of
19 election of the borrower to extend the loan.

20 3. Information regarding the index used.

21 4. A description of the borrower's options in the event
22 of an increase in the interest rate.

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23 5. A statement, prominently displayed, that borrowers
24 have the option to elect a standard mortgage instrument.

25 6. A statement that if the prospective borrower has
26 questions regarding the disclosures, the borrower may contact
27 the regulatory agency of this state which regulates the lender.
28 Each lender shall also disclose the name and address and
29 telephone number of the particular individual who is designated
30 by the regulatory agency of this state to respond to inquiries
31 under this paragraph for the type of lender making the
32 disclosure.

33 Sec. 11. NEW SECTION. REVERSE ANNUITY MORTGAGES. A
34 reverse annuity mortgage is a mortgage on one-family or two-
35 family residential real property which secures a loan having

1 no periodic principal payments due the lender, and the proceeds
2 of which are either paid to the borrower on a periodic basis
3 or used by the lender to purchase an annuity having periodic
4 payments to the borrower. The loan may become due either
5 on a specific date or upon the occurrence of a specific event.
6 Loans secured by reverse annuity mortgages may be made only
7 upon the real property described in this subsection, and only
8 upon compliance by the lender with sections twelve (12),
9 thirteen (13) and fourteen (14) of this Act.

10 Sec. 12. NEW SECTION. QUALIFICATIONS FOR REVERSE ANNUITY
11 MORTGAGE PLANS.

12 1. A lender may make reverse annuity mortgage loans upon
13 the execution by borrowers of mortgage instruments that meet
14 the requirements of this chapter. The aggregate outstanding
15 balances of all loans evidenced by these instruments shall
16 not exceed one-fourth of the maximum amount which the lender
17 is permitted by law to invest in conventional home purchase-
18 money mortgages, and, in addition, shall be considered to
19 be conventional home mortgages for purposes of that limitation.

20 2. Mortgage instruments evidencing a reverse annuity
21 mortgage loan shall not be used by a lender unless the
22 instruments have been approved by the regulatory agency.

23 3. The instruments submitted for approval under this sec-
34/1 - 24 tion must satisfy the requirements of section five (5) of
25 this Act. The instruments may include provisions not re-
26 quired by this chapter, but the regulatory agency may
27 disapprove a provision which is inconsistent with the
28 provisions of this chapter or with the intents and purposes
29 of this chapter.

30 4. A substantive revision of an approved form shall not
31 be made except upon the prior written approval of the
32 regulatory agency.

33 5. Loan applicants shall not be bound for seven days after
34 the loan commitment is made.

35 Sec. 13. NEW SECTION. TERMS AND CONDITIONS OF REVERSE

1 ANNUITY MORTGAGES. Mortgage instruments evidencing a reverse
2 annuity mortgage loan shall contain provisions to ensure all
3 of the following:

4 1. The unpaid balance of the loan, whether inclusive or
5 exclusive of interest, will be unamortized and repayable in
6 full upon the borrower's death, or upon the prior sale of
7 the property securing the loan, subject to the obligation
34// -8 of the lender to refinance under this section. The unpaid
9 balance of the loan shall not exceed ninety-five percent of
10 the value of the property given as security. If the loan
11 is made to joint borrowers, it may be repayable upon the death
12 of the last surviving borrower, or upon the prior sale of
13 the property.

14 2. If the lender is to act as agent for the borrower in
15 the purchase of an annuity for the borrower from a life
16 insurance company, the lender must be expressly authorized
17 by the borrower to act as the borrower's agent and the annuity
18 must be purchased from a life insurance company which is
19 authorized to issue annuities in this state.

20 3. Annuities paid to borrowers may be either for life
21 or for a specified term. Annuity contracts with life insurance
22 companies may call for immediate payment or may defer payment
23 for a specified number of years. If deferred, the lender
24 may make payments on an annuity to the borrower as loan ad-
25 vances during the deferral period, provided that the maximum
26 loan balance reached at the end of the deferral period does
27 not exceed ninety-five percent of the property value at the
28 end of the deferral period.

29 4. If an annuity is purchased from an insurance company,
30 the annuity contract must provide that the insurance company
31 make interest payments on the loan directly to the lender.

* 32 5. The loan may be prepaid, and the mortgage released,
33 at any time without penalty.

34 6. The interest rate payable by the borrower shall be
35 fixed at the time of loan origination and shall not vary

1 during the term of the loan.

2 7. The loan may become due either on a specific date or
3 upon the occurrence of a specific event, provided that the
4 lender shall refinance, at the request of the borrower and
5 at a market interest rate which is current as of the date
6 the loan becomes due, a loan secured by a reverse annuity
7 mortgage which becomes due prior to a sale or gift of an
8 interest in the real property.

9 Sec. 14. NEW SECTION. DISCLOSURE FOR REVERSE ANNUITY
10 MORTGAGES. A lender shall not offer to make reverse annuity
11 mortgage loans until the lender has complied with all of the
12 following:

13 1. The lender shall cause to be prepared a pamphlet con-
14 taining the following information:

15 a. The nature and effect of the loan.

16 b. An example, using a typical loan situation, which de-
17 scribes the gross and net annuity the borrower would receive,
18 and the amount of debt to be collected on death or a prior
19 sale of the property.

20 c. The rights and obligations of the borrower, should
21 the term of the loan expire prior to the death of the borrower.

22 The lender shall not make the pamphlet available to the
23 general public until it has been approved by the regulatory
24 agency. The regulatory agency shall not approve a pamphlet
25 unless it provides full and accurate disclosure of the in-
26 formation required by this subsection.

27 2. The lender shall make available to a prospective bor-
28 rower the pamphlet required by subsection one (1) of this
29 section, and shall discuss the information contained in the
30 pamphlet with the prospective borrower before giving the
31 borrower a loan application form.

32 3. At the time of loan commitment, the lender shall deliver
33 to the borrower written materials explaining in reasonably
34 simple language the terms of the loan being offered. These
35 materials shall include all of the following:

1 a. The schedule and an explanation of payments to be
2 received by borrower, and whether or not property taxes and
3 insurance are to be deducted from the payments.

4 b. A schedule of the outstanding debt which would exist
5 during the term of the loan.

6 c. The repayment date of the loan, if the loan is a fixed-
7 term loan, and a description of any event which causes the
8 loan to become due, including but not limited to a sale of
9 the property or the death of one or more of the mortgagors.

10 d. The method of repayment, and the repayment schedule,
11 if any.

12 e. All contractual contingencies, including but not limited
13 to lack of home maintenance and other default provisions,
14 which may result in a forced sale of the property.

15 f. The interest rate and the total amount of interest
16 payable on the loan.

17 g. The effective interest rate and the amount of interest
18 earned or expected to be earned on purchased annuities, based
19 on standard mortality tables.

20 h. The name and address of the insurance company from
21 which the annuity is to be purchased, if any.

22 i. The initial loan fees and charges.

23 j. A description of the prepayment and refinancing features
24 of the loan.

25 k. A statement that the mortgage may have tax and estate-
26 planning consequences and may effect levels of or eligibility
27 for certain governmental benefits, grants or pensions, and
28 that the borrower is advised to explore these matters with
29 appropriate authorities or with an attorney.

30 4. The lender shall obtain a statement signed by the bor-
31 rower which acknowledges receipt of the disclosure required
32 by subsection three (3), paragraph e, of this section.

33 Sec. 15. NEW SECTION. ENFORCEMENT. An agency of this
34 state which is required by the laws of this state to regulate
35 a lender shall enforce the provisions of this chapter with

1 respect to the lender. The regulatory agency may petition
2 the district court for Polk county in an action in equity
3 to obtain such relief as may be necessary to obtain compliance
4 with this chapter.

5 A regulatory agency may promulgate rules as necessary to
6 administer or enforce this chapter.

7 Sec. 16. This Act takes effect January first following
8 its enactment.

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S-3411

1 Amend House File 658 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 1, line 2, by striking the word and figure
4 "six (6)" and inserting in lieu thereof the word and
5 figure "fifteen (15)".

6 2. Page 2, line 22, by inserting after the word
7 "payments" the words "to be made directly by the
8 borrower".

9 3. Page 3, by inserting after line 5 the following:

10 "In connection with a loan which is secured by
11 a graduated payment mortgage, the borrower may pledge
12 funds held in a savings account owned by the borrower
13 as additional security for the loan. Portions of
14 the principal and earnings of the pledged savings
15 account shall be subject to withdrawal by and payment
16 to the lender on a periodic basis as supplements to
17 loan payments made directly by the borrower. In the
18 event of default by the borrower, a portion of the
19 balance of the pledged savings account may be used
20 for the purpose of curing the default if so provided
21 in the loan agreement, but in any event the balance
22 of the pledged savings account shall be used to reduce
23 the outstanding balance due on the loan upon
24 foreclosure."

25 4. Page 3, by inserting after line 29 the
26 following:

27 "If the loan agreement which is offered provides
28 for a pledged savings account as additional security
29 for the loan, then the disclosure under this paragraph
30 also shall include a schedule of the withdrawals to
31 be made from the savings account as supplemental
32 mortgage payments, the interest rate applicable to
33 the pledged savings account, and a description of
34 the contractual rights of the lender and the borrower
35 with respect to the pledged savings account."

36 5. Page 3, line 31, by striking the word and
37 figure "three (3)" and inserting in lieu thereof the
38 word and figure "five (5)".

39 6. Page 5, line 6, by striking the words "the
40 reference index which" and inserting in lieu thereof
41 the words "the same reference index as that which".

42 7. Page 6, line 7, by inserting after the word
43 "mortgage" the words "which is".

44 8. Page 6, lines 23 and 24, by striking the words
45 "borrowers have" and inserting in lieu thereof the
46 words "the borrower has".

47 9. Page 7, line 24, by striking the word and
48 figure "five (5)" and inserting in lieu thereof the
49 word and figure "thirteen (13)".

50 10. Page 8, line 8, by striking the words "under

PAGE 2

1 this section" and inserting in lieu thereof the words
2 and figure "as provided in subsection seven (7) of
3 this section".

SENATE AMENDMENT TO
HOUSE FILE 658

4062

1 Amend House File 658 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 1, line 2, by striking the word and figure
4 "six (6)" and inserting in lieu thereof the word and
5 figure "fifteen (15)".

6 2. Page 2, line 22, by inserting after the word
7 "payments" the words "to be made directly by the
8 borrower".

9 3. Page 3, by inserting after line 5 the following:

10 "In connection with a loan which is secured by
11 a graduated payment mortgage, the borrower may pledge
12 funds held in a savings account owned by the borrower
13 as additional security for the loan. Portions of
14 the principal and earnings of the pledged savings
15 account shall be subject to withdrawal by and payment
16 to the lender on a periodic basis as supplements to
17 loan payments made directly by the borrower. In the
18 event of default by the borrower, a portion of the
19 balance of the pledged savings account may be used
20 for the purpose of curing the default if so provided
21 in the loan agreement, but in any event the balance
22 of the pledged savings account shall be used to reduce
23 the outstanding balance due on the loan upon
24 foreclosure."

25 4. Page 3, by inserting after line 29 the
26 following:

27 "If the loan agreement which is offered provides
28 for a pledged savings account as additional security
29 for the loan, then the disclosure under this paragraph
30 also shall include a schedule of the withdrawals to
31 be made from the savings account as supplemental
32 mortgage payments, the interest rate applicable to
33 the pledged savings account, and a description of
34 the contractual rights of the lender and the borrower
35 with respect to the pledged savings account."

36 5. Page 3, line 31, by striking the word and
37 figure "three (3)" and inserting in lieu thereof the
38 word and figure "five (5)".

39 6. Page 5, line 6, by striking the words "the
40 reference index which" and inserting in lieu thereof
41 the words "the same reference index as that which".

42 7. Page 6, line 7, by inserting after the word
43 "mortgage" the words "which is".

44 8. Page 6, lines 23 and 24, by striking the words
45 "borrowers have" and inserting in lieu thereof the
46 words "the borrower has".

47 9. Page 7, line 24, by striking the word and
48 figure "five (5)" and inserting in lieu thereof the
49 word and figure "thirteen (13)".

50 10. Page 3, line 3, by striking the words "under
Page Two
1 this section" and inserting in lieu thereof the words
2 and figure "as provided in subsection seven (7) of
3 this section".

HOUSE FILE 658

4389

1 Amend amendment H-4062 to House File 658 as
2 amended, passed and reprinted by the House as follows:

3 1. Page 2, by inserting after line 3 the
4 following:

5 "_____. Page 11, by striking lines 7 and 8 and
6 inserting in lieu thereof the following:

7 "Sec. 16. Acts of the Sixty-seventh General
8 Assembly, 1978 Session, chapter one thousand one
9 hundred ninety (1190), section twelve (12), sub-
10 section two (2), paragraph c, as amended effective
11 July 1, 1979, by Senate File 158, 1979 Session,
12 section twenty-two (22), is further amended effective
13 July 1, 1979, to read as follows:

14 c. If the purpose of the loan is to enable the
15 borrower to purchase a single-family or two-family
16 dwelling - for his or her residence, the any provision
17 of a loan agreement shall not contain any provision
18 which prohibits the borrower from transferring his or
19 her interest in the property to a third party for use
20 by the third party as his or her residence, and shall
21 not contain or any provision which requires or permits
22 the lender to make a change in the interest rate, the
23 repayment schedule or the term of the loan as a result
24 of a transfer by the borrower of his or her interest
25 in the property to a third party for use by the third
26 party as his or her residence shall not be enforceable
27 except as provided in the following sentence. If the
28 lender on reasonable grounds believes that its security
29 interest or the likelihood of repayment is impaired,
30 based solely on criteria which is not more restrictive
31 than that used to evaluate a new mortgage loan appli-
32 cation, the lender may accelerate the loan, or to
33 offset any such impairment, may adjust the interest
34 rate, the repayment schedule or the term of the loan.
35 A provision of a loan agreement which violates this
36 paragraph is void.

H-4389 FILED, ADOPTED (p. 2281) BY CHIODO of Polk
MAY 10, 1979 SCHROEDER of Pottawattamie
EVANS of Grundy

HOUSE AMENDMENT TO SENATE AMENDMENT
TO HOUSE FILE 658

S-3798

1 Amend Senate amendment H-4062 to House File 658
2 as amended, passed and reprinted by the House as
3 follows:
4 1. Page 2, by inserting after line 3 the following:
5 "____. Page 11, by striking lines 7 and 8 and
6 inserting in lieu thereof the following:
7 "Sec. 16. Acts of the Sixty-seventh General
8 Assembly, 1978 Session, chapter one thousand one
9 hundred ninety (1190), section twelve (12), subsection
10 two (2), paragraph c, as amended effective July 1,
11 1979, by Senate File 158, 1979 Session, section twenty-
12 two (22), is further amended effective July 1, 1979,
13 to read as follows:
14 c. If the purpose of the loan is to enable the
15 borrower to purchase a single-family or two-family
16 dwelling, for his or her residence, the any provision
17 of a loan agreement shall not contain any provision
18 which prohibits the borrower from transferring his
19 or her interest in the property to a third party for
20 use by the third party as his or her residence, and
21 shall not contain or any provision which requires
22 or permits the lender to make a change in the interest
23 rate, the repayment schedule or the term of the loan
24 as a result of a transfer by the borrower of his or
25 her interest in the property to a third party for
26 use by the third party as his or her residence shall
27 not be enforceable except as provided in the following
28 sentence. If the lender on reasonable grounds believes
29 that its security interest or the likelihood of
30 repayment is impaired, based solely on criteria which
31 is not more restrictive than that used to evaluate
32 a new mortgage loan application, the lender may
33 accelerate the loan, or to offset any such impairment,
34 may adjust the interest rate, the repayment schedule
35 or the term of the loan. A provision of a loan
36 agreement which violates this paragraph is void.

S-3798 FILED
MAY 10, 1979

RECEIVED FROM THE HOUSE

Senate concurred 5/11 (p. 1705)

HOUSE FILE 658

AN ACT

TO AUTHORIZE REAL PROPERTY LOANS SECURED BY ALTERNATIVE MORTGAGE INSTRUMENTS.

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

Section 1. Title twenty-three (XXIII), Code 1979, is amended by adding sections two (2) through fifteen (15) of this Act as a new chapter.

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

1. "Lender" means a bank, savings and loan association or credit union which is organized under the laws of this state or of the United States and which is authorized to engage in business in this state.
2. "Mortgage instruments" means and includes all documents which are evidence of the existence of a loan and of the obligations of the lender and the borrower.
3. "Regulatory agency" means as follows:
 - a. With respect to banks, the superintendent of banking.
 - b. With respect to savings and loan associations, the supervisor of savings and loan associations.
 - c. With respect to credit unions, the administrator of the credit union department.
4. "Standard mortgage instrument" means a mortgage which contains a fixed interest rate, and which provides for equal payments and full amortization.
5. "Graduated payment mortgage" means the type of mortgage described in section four (4) of this Act.
6. "Variable rate mortgage" means the type of mortgage described in section seven (7) of this Act.

7. "Reverse annuity mortgage" means the type of mortgage described in section eleven (11) of this Act.

Sec. 3. NEW SECTION. ALTERNATIVE MORTGAGE INSTRUMENTS.

1. A lender may make permanent loans or combined construction and permanent loans secured by first liens on real property which are graduated payment mortgages, variable rate mortgages or reverse annuity mortgages, provided that these loans shall be subject to the provisions of this chapter and to rules issued by the regulatory agency. The provisions of this chapter supersede any conflicting provisions of chapters five hundred twenty-four (524), five hundred thirty-three (533) and five hundred thirty-four (534) of the Code with respect to repayment and amortization of real property loans. Loans which are made under this chapter are subject to other laws of this state which are applicable to a lender, except to the extent the provisions of this chapter conflict with those laws, in which event the provisions of this chapter shall govern.

2. Each prospective borrower who is offered an alternative mortgage instrument by a lender must also be offered a standard mortgage instrument by the lender.

3. A lender offering to make a loan secured by an alternative mortgage instrument shall obtain and retain in the loan application file a certification signed by the prospective borrower that the borrower received the disclosure materials specified in this chapter for the type of mortgage instrument used, and that the disclosure was made prior to the time the borrower made the election to accept the alternative mortgage instrument.

Sec. 4. NEW SECTION. GRADUATED PAYMENT MORTGAGE--TERMS. A graduated payment mortgage is a mortgage which secures a loan having scheduled payments to be made directly by the borrower which begin at a level lower than that necessary to fully amortize the loan within its term, and which gradually

increase to a predetermined level after which the amount of each payment remains constant. The period during which the payments may increase, the rate of increase and the interest rate shall be fixed for the entire term of the loan at the time of its origination. The period during which the payments may increase shall not exceed ten years, the rate of increase shall not exceed three percent annually over a ten-year period, three and one-half percent annually over a nine-year period, four and one-half percent annually over an eight-year period, five and one-half percent annually over a seven-year period, six and one-half percent annually over a six-year period or seven and one-half percent annually over a period of five years or less, and the amount of each payment shall not be changed more often than once each year with the first change to occur not less than twelve months after the due date of the first scheduled payment on the loan.

In connection with a loan which is secured by a graduated payment mortgage, the borrower may pledge funds held in a savings account owned by the borrower as additional security for the loan. Portions of the principal and earnings of the pledged savings account shall be subject to withdrawal by and payment to the lender on a periodic basis as supplements to loan payments made directly by the borrower. In the event of default by the borrower, a portion of the balance of the pledged savings account may be used for the purpose of curing the default if so provided in the loan agreement, but in any event the balance of the pledged savings account shall be used to reduce the outstanding balance due on the loan upon foreclosure.

Sec. 5. NEW SECTION. CONVERSION OF GRADUATED PAYMENT MORTGAGE. The borrower under a graduated payment mortgage has the right to convert at any time to a standard mortgage instrument, if at the time of exercising the option to convert the borrower qualifies for the standard mortgage in-

strument under the lender's ordinary underwriting standards. Penalties or fees otherwise permitted by law upon prepayment of a loan shall not be assessed by the lender upon conversion of a graduated payment mortgage if the borrower chooses to convert the graduated payment mortgage at the interest rate specified in the graduated payment mortgage and for the remainder of the term of the graduated payment mortgage.

Sec. 6. NEW SECTION. DISCLOSURE FOR GRADUATED PAYMENT MORTGAGE. Prior to the closing of a loan secured by a graduated payment mortgage, the lender shall deliver to the prospective borrower written materials which explain in reasonably simple terms the graduated payment mortgage offered and a standard mortgage instrument for the same principal amount. These materials shall include all of the following:

- a. A side-by-side comparison of differing interest rates and other terms.
- b. Payment schedules for both the graduated payment mortgage and the standard mortgage, and the total payment in dollars over the full term of each type of loan.

If the loan agreement which is offered provides for a pledged savings account as additional security for the loan, then the disclosure under this paragraph also shall include a schedule of the withdrawals to be made from the savings account as supplemental mortgage payments, the interest rate applicable to the pledged savings account, and a description of the contractual rights of the lender and the borrower with respect to the pledged savings account.

- c. A description of the conversion option which is available to the borrower under section five (5) of this Act.
- d. A statement prominently displayed that the borrower has the option to elect a standard mortgage instrument rather than a graduated payment mortgage.

Sec. 7. NEW SECTION. VARIABLE RATE MORTGAGE--TERMS. A variable rate mortgage is a mortgage which secures a loan

bearing an interest rate which fluctuates in direct relation to a reference index, resulting in future payments which may be of an amount not known at the time the loan is made. Interest rate adjustments may not be made more frequently than once each year, on fixed dates specified in the loan agreement and commencing not less than twelve months after the due date of the first scheduled payment on the loan. The borrower shall receive not less than sixty days notice prior to the effective date of any rate change. The notice shall specify the new interest rate and, after giving effect to the interest rate adjustment, the new dollar amount of each periodic payment or the new term of the loan should the borrower elect to extend the loan. Upon receipt of a notice of an interest rate increase, a borrower shall be entitled, by notifying the lender not less than thirty days prior to the effective date of the increase, to require that in lieu of an increase in the amount of any scheduled periodic payment on the loan the term of the loan be extended by a period sufficient to eliminate or reduce the increase in the periodic payment amount, provided that the cumulative net effect of all such extensions shall be a maximum of one-third of the original term of the loan. A decrease in the interest rate of the loan shall be applied by the lender first to a reduction of any previously extended loan maturity and then to a reduction of periodic payment amounts. The smallest adjustment which may be made in the rate shall be one-tenth of one percent and the greatest adjustment in the rate which may be made at any one time shall be one-half of one percent. Changes in the reference index which are not reflected in the loan interest rate, either at the option of the lender in the case of increases or because the change exceeds the smallest or greatest adjustment permitted by this paragraph, may be accumulated by the lender in the case of increases and shall be accumulated by the lender in the case of decreases and

may, in the case of increases, or shall, in the case of decreases, be taken at a later time or used to offset other changes. The maximum net increase in the interest rate over the life of the loan shall be two and one-half percent. The reference index to which the interest rate is tied shall be the same reference index as that which is used under section five hundred thirty-five point two (535.2), subsection three (3), of the Code for purposes of determining the usury rate for this state.

Sec. 8. NEW SECTION. PREPAYMENT OF VARIABLE RATE MORTGAGE. Within sixty days after the borrower is given notice of a change in the interest rate under a variable rate mortgage, the borrower is entitled, if the change is an increase in the interest rate, to prepay the loan, either in full or in part, without penalty. If the borrower elects to prepay under this section, the borrower waives for the year the right under section seven (7) of this Act to extend the maturity date of the loan.

Sec. 9. NEW SECTION. RATE CHANGE NOTICE FOR VARIABLE RATE MORTGAGE. The notice of interest rate change given by the lender under section seven (7) of this Act shall include all of the following information:

1. The current interest rate and new interest rate under the loan.
2. The old and new index rates.
3. The amount of accumulated but unused rate changes, if any.
4. The current monthly payment, the new monthly payment if the rate change is placed into effect, and the remaining maturity of the loan.
5. If the rate change is an increase, a description of the options which the borrower has upon receipt of the notice, including the new payment and the new maturity date of the loan if the borrower elects to extend the loan to the maximum period permitted under section seven (7) of this Act.

6. If the rate change is a decrease, a description of the manner in which the decrease is to be applied.

Sec. 10. NEW SECTION. DISCLOSURES FOR VARIABLE RATE MORTGAGE. Prior to the closing of a loan secured by a variable rate mortgage, the lender shall deliver to the prospective borrower written materials which explain in reasonably simple terms the variable rate mortgage which is offered and a comparable standard mortgage instrument. These written materials shall include all of the following:

1. A side-by-side comparison of differing interest rates and other terms.

2. Payment schedules for both types of instruments, including a "worst case" schedule for the variable rate mortgage which shows every maximum increase at the time it could first occur, the highest possible payment during the loan term, and the total payment in dollars over the full term of each loan, with a statement that the total payment for the variable rate mortgage would be greater in the event of election of the borrower to extend the loan.

3. Information regarding the index used.

4. A description of the borrower's options in the event of an increase in the interest rate.

5. A statement, prominently displayed, that the borrower has the option to elect a standard mortgage instrument.

6. A statement that if the prospective borrower has questions regarding the disclosures, the borrower may contact the regulatory agency of this state which regulates the lender. Each lender shall also disclose the name and address and telephone number of the particular individual who is designated by the regulatory agency of this state to respond to inquiries under this paragraph for the type of lender making the disclosure.

Sec. 11. NEW SECTION. REVERSE ANNUITY MORTGAGES. A reverse annuity mortgage is a mortgage on one-family or two-

family residential real property which secures a loan having no periodic principal payments due the lender, and the proceeds of which are either paid to the borrower on a periodic basis or used by the lender to purchase an annuity having periodic payments to the borrower. The loan may become due either on a specific date or upon the occurrence of a specific event. Loans secured by reverse annuity mortgages may be made only upon the real property described in this section, and only upon compliance by the lender with sections twelve (12), thirteen (13) and fourteen (14) of this Act.

Sec. 12. NEW SECTION. QUALIFICATIONS FOR REVERSE ANNUITY MORTGAGE PLANS.

1. A lender may make reverse annuity mortgage loans upon the execution by borrowers of mortgage instruments that meet the requirements of this chapter. The aggregate outstanding balances of all loans evidenced by these instruments shall not exceed one-fourth of the maximum amount which the lender is permitted by law to invest in conventional home purchase-money mortgages, and, in addition, shall be considered to be conventional home mortgages for purposes of that limitation.

2. Mortgage instruments evidencing a reverse annuity mortgage loan shall not be used by a lender unless the instruments have been approved by the regulatory agency.

3. The instruments submitted for approval under this section must satisfy the requirements of section thirteen (13) of this Act. The instruments may include provisions not required by this chapter, but the regulatory agency may disapprove a provision which is inconsistent with the provisions of this chapter or with the intents and purposes of this chapter.

4. A substantive revision of an approved form shall not be made except upon the prior written approval of the regulatory agency.

5. Loan applicants shall not be bound for seven days after the loan commitment is made.

Sec. 13. NEW SECTION. TERMS AND CONDITIONS OF REVERSE ANNUITY MORTGAGES. Mortgage instruments evidencing a reverse annuity mortgage loan shall contain provisions to ensure all of the following:

1. The unpaid balance of the loan, whether inclusive or exclusive of interest, will be unamortized and repayable in full upon the borrower's death, or upon the prior sale of the property securing the loan, subject to the obligation of the lender to refinance as provided in subsection seven (7) of this section. The unpaid balance of the loan shall not exceed ninety-five percent of the value of the property given as security. If the loan is made to joint borrowers, it may be repayable upon the death of the last surviving borrower, or upon the prior sale of the property.

2. If the lender is to act as agent for the borrower in the purchase of an annuity for the borrower from a life insurance company, the lender must be expressly authorized by the borrower to act as the borrower's agent and the annuity must be purchased from a life insurance company which is authorized to issue annuities in this state.

3. Annuities paid to borrowers may be either for life or for a specified term. Annuity contracts with life insurance companies may call for immediate payment or may defer payment for a specified number of years. If deferred, the lender may make payments on an annuity to the borrower as loan advances during the deferral period, provided that the maximum loan balance reached at the end of the deferral period does not exceed ninety-five percent of the property value at the end of the deferral period.

4. If an annuity is purchased from an insurance company, the annuity contract must provide that the insurance company make interest payments on the loan directly to the lender.

5. The loan may be prepaid, and the mortgage released,

at any time without penalty.

6. The interest rate payable by the borrower shall be fixed at the time of loan origination and shall not vary during the term of the loan.

7. The loan may become due either on a specific date or upon the occurrence of a specific event, provided that the lender shall refinance, at the request of the borrower and at a market interest rate which is current as of the date the loan becomes due, a loan secured by a reverse annuity mortgage which becomes due prior to a sale or gift of an interest in the real property.

Sec. 14. NEW SECTION. DISCLOSURE FOR REVERSE ANNUITY MORTGAGES. A lender shall not offer to make reverse annuity mortgage loans until the lender has complied with all of the following:

1. The lender shall cause to be prepared a pamphlet containing the following information:

- a. The nature and effect of the loan.
- b. An example, using a typical loan situation, which describes the gross and net annuity the borrower would receive, and the amount of debt to be collected on death or a prior sale of the property.
- c. The rights and obligations of the borrower, should the term of the loan expire prior to the death of the borrower.

The lender shall not make the pamphlet available to the general public until it has been approved by the regulatory agency. The regulatory agency shall not approve a pamphlet unless it provides full and accurate disclosure of the information required by this subsection.

2. The lender shall make available to a prospective borrower the pamphlet required by subsection one (1) of this section, and shall discuss the information contained in the pamphlet with the prospective borrower before giving the borrower a loan application form.

3. At the time of loan commitment, the lender shall deliver to the borrower written materials explaining in reasonably simple language the terms of the loan being offered. These materials shall include all of the following:

- a. The schedule and an explanation of payments to be received by borrower, and whether or not property taxes and insurance are to be deducted from the payments.
- b. A schedule of the outstanding debt which would exist during the term of the loan.
- c. The repayment date of the loan, if the loan is a fixed-term loan, and a description of any event which causes the loan to become due, including but not limited to a sale of the property or the death of one or more of the mortgagors.
- d. The method of repayment, and the repayment schedule, if any.
- e. All contractual contingencies, including but not limited to lack of home maintenance and other default provisions, which may result in a forced sale of the property.
- f. The interest rate and the total amount of interest payable on the loan.
- g. The effective interest rate and the amount of interest earned or expected to be earned on purchased annuities, based on standard mortality tables.
- h. The name and address of the insurance company from which the annuity is to be purchased, if any.
- i. The initial loan fees and charges.
- j. A description of the prepayment and refinancing features of the loan.
- k. A statement that the mortgage may have tax and estate-planning consequences and may effect levels of or eligibility for certain governmental benefits, grants or pensions, and that the borrower is advised to explore these matters with appropriate authorities or with an attorney.

4. The lender shall obtain a statement signed by the borrower which acknowledges receipt of the disclosure required by subsection three (3), paragraph e, of this section.

Sec. 15. NEW SECTION. ENFORCEMENT. An agency of this state which is required by the laws of this state to regulate a lender shall enforce the provisions of this chapter with respect to the lender. The regulatory agency may petition the district court for Polk county in an action in equity to obtain such relief as may be necessary to obtain compliance with this chapter.

A regulatory agency may promulgate rules as necessary to administer or enforce this chapter.

Sec. 16. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section twelve (12), subsection two (2), paragraph c, as amended effective July 1, 1979, by Senate File 158, 1979 Session, section twenty-two (22), is further amended effective July 1, 1979, to read as follows:

c. If the purpose of the loan is to enable the borrower to purchase a single-family or two-family dwelling, for his or her residence, ~~the any provision of a loan agreement shall not contain any provision~~ which prohibits the borrower from transferring his or her interest in the property to a third party for use by the third party as his or her residence, ~~and shall not contain or~~ any provision which requires or permits the lender to make a change in the interest rate, the repayment schedule or the term of the loan as a result of a transfer by the borrower of his or her interest in the property to a third party for use by the third party as his or her residence shall not be enforceable except as provided in the following sentence. If the lender on reasonable grounds believes that its security interest or the likelihood of repayment is impaired, based solely on criteria which is not more restrictive than that used to evaluate a new mortgage

loan application, the lender may accelerate the loan, or to offset any such impairment, may adjust the interest rate, the repayment schedule or the term of the loan. A provision of a loan agreement which violates this paragraph is void.

FLOYD H. MILLEN
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 658, Sixty-eighth General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved June 10, 1979

ROBERT D. RAY
Governor