

By file... 3/21/85

MAR 8 1985

Place On Calendar

HOUSE FILE 531

BY COMMITTEE ON SMALL BUSINESS AND COMMERCE

(Formerly House Study Bill 255)

Passed House, Date 3-19-85 (p. 374) Passed Senate, Date _____

Vote: Ayes 90 Nays 4 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act prohibiting certain practices by a financial insti-
2 tution which makes or offers to make a real estate
3 mortgage loan, requiring certain disclosures, and pro-
4 viding penalties.

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

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HF 531

1 Section 1. Section 535A.1, subsection 3, Code 1985, is
2 amended to read as follows:

3 3. "Financial institution" means any bank, credit union,
4 insurance company, mortgage banking company or savings and
5 loan association, industrial loan company, or like institution
6 or any other person who makes mortgage loans and which
7 operates or has a place of business in this state.

8 Sec. 2. NEW SECTION. 535A.9 TYING ARRANGEMENTS
9 PROHIBITED -- PENALTY.

10 1. A financial institution which makes or offers to make
11 real estate mortgage loans shall not:

12 a. Grant or offer to grant a loan or a loan with
13 preferential terms on the prior condition, agreement, or
14 understanding that the borrower has or will contract with any
15 specific person or organization for any of the following:

16 (1) Services of a real estate agent or broker.

17 (2) Real estate development or property management
18 services.

19 (3) Insurance services as an agent, broker, or
20 underwriter.

21 (4) Building materials or construction services.

22 (5) Legal services rendered to the borrower, except where
23 the mortgage is expected to be sold to a secondary mortgage
24 purchaser and the secondary mortgage purchaser requires that
25 legal services be provided by a specific person or
26 organization.

27 b. Use confidential credit information for solicitation
28 purposes either directly or indirectly by an affiliate
29 subsidiary.

30 c. Attempt or permit a real estate or insurance subsidiary
31 to attempt to create the impression in its advertising or in
32 any communication that the customers of the subsidiary shall
33 have priority access to the funds of the financial institution
34 or are entitled to preferential interest rates or other terms.

35 d. Engage in real estate brokerage or insurance brokerage

1 in the same physical structure without separate office space
2 that clearly identifies the subsidiary as being separate and
3 distinct in its operation from the financial institution.

4 2. If a financial institution makes or offers to make a
5 real estate mortgage loan to a borrower arising out of a
6 listing given or a sale made by a real estate licensee who is
7 affiliated with the financial institution, the loan
8 application shall prominently display the following notice:

9 NOTICE

10 FREEDOM OF CHOICE OF LENDER

11 "It is unlawful for a lender of mortgage funds to
12 condition the granting of a mortgage loan, or any
13 other financial service, upon the use by the borrower
14 of a real estate licensee who is affiliated with the
15 lender. You are free to obtain a mortgage loan on
16 the property described in your application from a
17 lender of your choice."

18 3. If a financial institution directly or indirectly owns
19 an interest in real property being offered for sale, such
20 interest shall be disclosed in writing to the purchaser prior
21 to the signing of the offer to buy by the purchaser.

22 4. This section may be enforced by filing an action in
23 district court in any county in which the financial
24 institution or an agent is located to recover damages incurred
25 or obtain injunctive relief. The action may be commenced by
26 any of the following:

27 a. A borrower or prospective borrower.

28 b. Any other person who as a result of a violation of this
29 chapter is injured or will be injured including, but not
30 limited to, another financial institution, or a person engaged
31 in the selling of real estate, insurance, legal services, real
32 estate development or management services, building materials,
33 or construction services.

34 c. The attorney general's office on behalf of a person
35 included in either paragraph "a" or "b".

1 5. A person having substantial control over an enterprise
2 or transaction who knowingly and willfully engages in conduct
3 prohibited in this section is guilty of a serious misdemeanor.

4 Sec. 3. A financial institution which makes or offers to
5 make real estate mortgage loans and also engages in real
6 estate brokerage or insurance brokerage in the same physical
7 structure on the effective date of this Act shall have one
8 year from the effective date of this Act to comply with
9 section 535A.9, subsection 1, paragraph "d".

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EXPLANATION

11 This bill prohibits a financial institution that makes or
12 offers to make real estate mortgage loans from engaging in
13 certain practices which either give preferential treatment or
14 imply that preferential treatment may be given to a person who
15 obtains services ancillary to the mortgage loan from specific
16 persons. The bill also requires certain disclosure
17 information. Violations are enforceable in district court for
18 money damages and injunctive relief. A knowing and willful
19 violation is a serious misdemeanor.

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HOUSE FILE 531

H-3371

1 Amend House File 531 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 535A.1, subsection 3, Code
5 1985, is amended to read as follows:

6 3. "Financial institution" means any bank, credit
7 union, insurance company, mortgage banking company or
8 savings and loan association, industrial loan company,
9 or like institution or any other person who makes
10 mortgage loans and which operates or has a place of
11 business in this state. "Financial institution" does
12 not include an individual who makes less than five
13 mortgage loans a year.

14 Sec. 2. Section 535A.6, Code 1985, is amended to
15 read as follows:

16 535A.6 AGGRIEVED PARTY.

17 Any person who has been aggrieved as a result of a
18 violation of sections 535A.1 to ~~535A.8~~ 535A.9 and
19 220.6, subsection 4, may bring an action in the
20 district court of the county in which the violation
21 occurred or in the county where the financial
22 institution involved is located.

23 Upon a finding that a financial institution has
24 committed a violation of either section 535A.2, or
25 535A.4, or 535A.9 the court may award actual damages,
26 court costs and attorney fees.

27 Sec. 3. Section 535A.7, Code 1985, is amended to
28 read as follows:

29 . 535A.7 CRIMINAL PENALTY.

30 Any person who knowingly engages in a practice
31 which violates the provisions of section 535A.2, or
32 535A.4 or 535A.9 is guilty of a serious misdemeanor.

33 Sec. 4. NEW SECTION. 535A.9 TYING ARRANGEMENTS
34 PROHIBITED.

35 1. A financial institution which makes or offers
36 to make real estate mortgage loans shall not:

37 a. Grant or offer to grant a loan on the prior
38 condition, that the borrower is required to contract
39 with any specific person or organization for either of
40 the following:

41 (1) Services of a real estate agent or broker.

42 (2) Insurance services as an agent, broker, or
43 underwriter.

44 b. Use confidential credit status information for
45 solicitation purposes either directly or indirectly by
46 an affiliate subsidiary.

47 c. Attempt or permit a real estate or insurance
48 subsidiary to attempt to create the impression in its
49 advertising or in any communication that the customers
50 of the subsidiary shall have priority access to the

H-3371
Page Two

1 funds of the financial institution or are entitled to
2 preferential interest rates or other terms.
3 2. This section does not apply to the Iowa housing
4 finance authority or a program operated pursuant to
5 chapter 220."
6 2. Title page, lines 3 and 4 by striking the
7 words "providing penalties" and inserting the
8 following: "making penalties applicable".

H-3371 FILED MARCH 18, 1985 BY SWARTZ of Marshall
HOLVECK of Polk
Adopted 2/19/85 (p. 874)

H-3356 HOUSE FILE 531

1 Amend House File 531 as follows:
2 1. Page 1, line 7, by inserting after the word
3 "state." the following: "Financial institution" does
4 not include an individual who makes less than five
5 mortgage loans a year."

H-3356 FILED MARCH 14, 1985 BY KREMER of Buchanan
Filed 2/19/85 (p. 894)

House File 531

COMMERCE: Hutchins, Chair; Gronstal and Nystrom

HOUSE FILE 531

BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

(As Amended and Passed by the House March 19, 1985)

Re Passed House, Date 5-3-85 (p. 2290) Passed Senate, Date 4-17-85 (p. 1443)

Vote: Ayes 94 Nays 0 Vote: Ayes 44 Nays 0

Approved May 31, 1985

A BILL FOR

- 1 An Act prohibiting certain practices by a financial insti-
- 2 tution which makes or offers to make a real estate
- 3 mortgage loan, requiring certain disclosures, and
- 4 making penalties applicable.

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

S-3766

HOUSE FILE 531

- 1 Amend House File 531 as amended, passed and
- 2 and reprinted by the House as follows:
- 3 1. Page 2, line 2, by inserting after the word
- 4 "information" the following: "that is used for
- 5 qualifying a person for the purchase of real prop-
- 6 erty".

S-3766 Filed April 16, 1985

By HUTCHINS

Adopted 4/17/85 (p. 1443)

SENATE AMENDMENT TO HOUSE FILE 531

H-3916

- 1 Amend House File 531 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 2, line 2, by inserting after the word
- 4 "information" the following: "that is used for
- 5 qualifying a person for the purchase of real prop-
- 6 erty".

H-3916 FILED APRIL 19, 1985

RECEIVED FROM THE SENATE

House concurred 5/2/85

1 Section 1. Section 535A.1, subsection 1, Code 1985, is
2 amended to read as follows:

3 3. "Financial institution" means any bank, credit union,
4 insurance company, mortgage banking company or savings and
5 loan association, industrial loan company, or like institution
6 or any other person who makes mortgage loans and which
7 operates or has a place of business in this state. "Financial
8 institution" does not include an individual who makes less
9 than five mortgage loans a year.

10 Sec. 2. Section 535A.6, Code 1985, is amended to read as
11 follows:

12 535A.6 AGGRIEVED PARTY.

13 Any person who has been aggrieved as a result of a
14 violation of sections 535A.1 to 535A.8 535A.9 and 220.6,
15 subsection 4, may bring an action in the district court of the
16 county in which the violation occurred or in the county where
17 the financial institution involved is located.

18 Upon a finding that a financial institution has committed a
19 violation of either section 535A.2, or 535A.4, or 535A.9 the
20 court may award actual damages, court costs and attorney fees.

21 Sec. 3. Section 535A.7, Code 1985, is amended to read as
22 follows:

23 535A.7 CRIMINAL PENALTY.

24 Any person who knowingly engages in a practice which
25 violates the provisions of section 535A.2, or 535A.4 or 535A.9
26 is guilty of a serious misdemeanor.

27 Sec. 4. NEW SECTION. 535A.9 TYING ARRANGEMENTS
28 PROHIBITED.

29 1. A financial institution which makes or offers to make
30 real estate mortgage loans shall not:

31 a. Grant or offer to grant a loan on the prior condition,
32 that the borrower is required to contract with any specific
33 person or organization for either of the following:

- 34 (1) Services of a real estate agent or broker.
35 (2) Insurance services as an agent, broker, or

1 underwriter.

2 b. Use confidential credit status information for
3 solicitation purposes either directly or indirectly by an
4 affiliate subsidiary.

5 c. Attempt or permit a real estate or insurance subsidiary
6 to attempt to create the impression in its advertising or in
7 any communication that the customers of the subsidiary shall
8 have priority access to the funds of the financial institution
9 or are entitled to preferential interest rates or other terms.

10 2. This section does not apply to the Iowa housing finance
11 authority or a program operated pursuant to chapter 220.

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HSB 255

Study Bill 255

SMALL BUSINESS AND COMMERCE

Small Business and Commerce: Swartz, Chair; Holveck and Rensink.

Handwritten: HSB 531

HOUSE FILE 531

BY (PROPOSED COMMITTEE ON SMALL BUSINESS AND COMMERCE BILL)

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

A BILL FOR

1 An Act prohibiting certain practices by a financial insti-
2 tution which makes or offers to make a real estate
3 mortgage loan requiring certain disclosures, and pro-
4 viding penalties.

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

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1 Section 1. NEW SECTION. 535A.9 TYING ARRANGEMENTS

2 PROHIBITED -- PENALTY.

3 1. A financial institution which makes or offers to make
4 real estate mortgage loans shall not:

5 a. Grant or offer to grant a loan or a loan with
6 preferential terms on the prior condition, agreement, or
7 understanding that the borrower has or will contract with any
8 specific person or organization for any of the following:

9 (1) Services of a real estate agent or broker.

10 (2) Real estate development or property management
11 services.

12 (3) Insurance services as an agent, broker, or
13 underwriter.

14 (4) Building materials or construction services.

15 (5) Legal services rendered to the borrower.

16 b. Use confidential credit information for solicitation
17 purposes either directly or indirectly by an affiliate
18 subsidiary.

19 c. Advertise jointly with an affiliate real estate or
20 insurance subsidiary.

21 d. Attempt or permit a real estate or insurance subsidiary
22 to attempt to create the impression in its advertising or in
23 any communication that the customers of the subsidiary shall
24 have priority access to the funds of the financial institution
25 or are entitled to preferential interest rates or other terms.

26 e. Engage in real estate brokerage or insurance brokerage
27 in the same physical structure without separate office space
28 that clearly identifies the subsidiary as being separate and
29 distinct in its operation from the financial institution.

30 2. If a financial institution makes or offers to make a
31 real estate mortgage loan to a borrower arising out of a
32 listing given or a sale made by a real estate licensee who is
33 affiliated with the financial institution, the loan
34 application shall prominently display the following notice:

35

NOTICE

1 make real estate mortgage loans and also engages in real
2 estate brokerage or insurance brokerage in the same physical
3 structure on the effective date of this Act shall have one
4 year from the effective date of this Act to comply with
5 section 535A.9, subsection 1, paragraph "e".

6

EXPLANATION

7 This bill prohibits a financial institution that makes or
8 offers to make real estate mortgage loans from engaging in
9 certain practices which either give preferential treatment or
10 imply that preferential treatment may be given to a person who
11 obtains services ancillary to the mortgage loan from specific
12 persons. The bill also requires certain disclosure
13 information. Violations are enforceable in district court for
14 money damages and injunctive relief. A knowing and willful
15 violation is a serious misdemeanor.

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Sec. 2. Section 535A.6, Code 1985, is amended to read as follows:

535A.6 AGGRIEVED PARTY.

Any person who has been aggrieved as a result of a violation of sections 535A.1 to 535A.8 535A.9 and 220.6, subsection 4, may bring an action in the district court of the county in which the violation occurred or in the county where the financial institution involved is located.

Upon a finding that a financial institution has committed a violation of either section 535A.2, or 535A.4, or 535A.9 the court may award actual damages, court costs and attorney fees.

Sec. 3. Section 535A.7, Code 1985, is amended to read as follows:

535A.7 CRIMINAL PENALTY.

Any person who knowingly engages in a practice which violates the provisions of section 535A.2, or 535A.4 or 535A.9 is guilty of a serious misdemeanor.

Sec. 4. NEW SECTION. 535A.9 TYING ARRANGEMENTS PROHIBITED.

1. A financial institution which makes or offers to make real estate mortgage loans shall not:

a. Grant or offer to grant a loan on the prior condition, that the borrower is required to contract with any specific person or organization for either of the following:

- (1) Services of a real estate agent or broker.
- (2) Insurance services as an agent, broker, or underwriter.

b. Use confidential credit status information that is used for qualifying a person for the purchase of real property for solicitation purposes either directly or indirectly by an affiliate subsidiary.

c. Attempt or permit a real estate or insurance subsidiary to attempt to create the impression in its advertising or in any communication that the customers of the subsidiary shall have priority access to the funds of the financial institution or are entitled to preferential interest rates or other terms.

HOUSE FILE 531

AN ACT

PROHIBITING CERTAIN PRACTICES BY A FINANCIAL INSTITUTION WHICH MAKES OR OFFERS TO MAKE A REAL ESTATE MORTGAGE LOAN, REQUIRING CERTAIN DISCLOSURES, AND MAKING PENALTIES APPLICABLE.

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

Section 1. Section 535A.1, subsection 3, Code 1985, is amended to read as follows:

3. "Financial institution" means any bank, credit union, insurance company, mortgage banking company or savings and loan association, industrial loan company, or like institution or any other person who makes mortgage loans and which operates or has a place of business in this state. "Financial institution" does not include an individual who makes less than five mortgage loans a year.

2. This section does not apply to the Iowa housing finance authority or a program operated pursuant to chapter 220.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 531, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 31, 1985

TERRY E. BRANSTAD
Governor