

Approved 2/87

MAR 20 1987

HOUSE FILE 613

BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

Place On Calendar

(Formerly House Study Bill 249)

Passed House, Date 2-20-87 (p. 928) Passed Senate, Date _____

Vote: Ayes 93 Nays 0 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the licensing and examination of first
2 mortgage bankers and mortgage brokers, and regulation of other
3 mortgage lenders, and providing penalties.

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

HOUSE FILE 613

H-3460

1 Amend amendment H-3432 to House File 613 as follows:
2 1. Page 1, by striking line 47 through page 2, line
3 3, and inserting the following: "subject to limited
4 examination by the administrator to investigate
5 complaints or alleged violations about the licensee
6 made to the administrator. Such investigation or
7 examination by the administrator shall be restricted to
8 acquiring information from the licensee relevant to the
9 alleged violations."

H-3460 FILED MARCH 30, 1987 BY CHAPMAN of Linn
ADOPTED (p. 928)

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1 Section 1. NEW SECTION. 535B.1 DEFINITIONS.

2 As used in this chapter unless the context otherwise
3 requires:

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

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

8 b. Originates at least four first mortgage loans on resi-
9 dential real property located in this state in a calendar year
10 and sells four or more such loans in the secondary market.

11 c. Services first mortgage loans on residential real
12 property located in this state.

13 2. "Mortgage broker" means a person who arranges or nego-
14 tiates, or attempts to arrange or negotiate, at least four
15 first mortgage loans or commitments for four or more such
16 loans on residential real property located in this state in a
17 calendar year.

18 3. "Residential real property" means real property, which
19 is an owner-occupied single-family or two-family dwelling,
20 located in this state, occupied or used or intended to be
21 occupied or used for residential purposes, including an
22 interest in any real property covered under chapter 499B.

23 4. "Person" means an individual, an association, joint
24 venture or joint stock company, partnership, limited
25 partnership, business corporation, nonprofit corporation, or
26 any other group of individuals however organized.

27 5. "Licensee" means a person licensed under this chapter;
28 however, any individual who is acting solely as an employee or
29 agent of a mortgage banker or broker licensed under this Act
30 need not be separately licensed.

31 6. "Administrator" means the superintendent of the
32 division of savings and loan of the department of commerce.

33 7. "First mortgage loan" means a loan of money secured by
34 a first lien on residential real property and includes a
35 refinancing of a contract of sale, an assumption of a prior

1 loan, and a refinancing of a prior loan.

2 Sec. 2. NEW SECTION. 535B.2 EXEMPTIONS.

3 This chapter, except for sections 535B.10, 535B.11,
4 535B.12, and 535B.13, does not apply to any of the following:

- 5 1. A national bank.
- 6 2. A federally chartered savings and loan.
- 7 3. A federally chartered credit union.
- 8 4. A loan company licensed under chapter 536 or 536A.
- 9 5. A bank organized under chapter 524.
- 10 6. A savings and loan association organized under chapter
11 534.
- 12 7. A credit union organized under chapter 533.
- 13 8. A bank, savings and loan association, or credit union
14 organized or chartered under the laws of any other state
15 provided the financial institution has a place of business in
16 Iowa.

17 Sec. 3. NEW SECTION. 535B.3 GENERAL LICENSING REQUIRE-
18 MENTS.

- 19 1. A person shall not act as a mortgage banker or mortgage
20 broker in this state or use the title "mortgage banker" or
21 "mortgage broker" without first obtaining a license from the
22 administrator.
- 23 2. License applicants shall submit to the administrator an
24 application on forms provided by the administrator. The forms
25 shall include, at a minimum, all addresses at which business
26 is to be conducted, the names and titles of each director and
27 principal officers of the business, and a description of the
28 activities of the applicant in such detail as the
29 administrator may require.
- 30 3. The applicant shall also submit a recently prepared
31 certified financial statement.
- 32 4. The applicant for an initial license shall submit a fee
33 in the amount of five hundred dollars.
- 34 5. Licenses granted under this chapter are not assignable.
- 35 6. Licenses granted under this chapter expire on the next

1 June 30 after their issuance.

2 7. Applications for renewals of licenses under this
3 chapter must be filed with the administrator before June 1 of
4 the year of expiration and must be accompanied by a fee of two
5 hundred dollars.

6 Sec. 4. NEW SECTION. 535B.4 GRANTING AND DENIAL OF
7 LICENSE.

8 1. Upon the filing of an application for a license, if the
9 administrator finds that the financial responsibility,
10 character, and general fitness of the applicant and of the
11 members thereof if the applicant is a partnership,
12 association, or other organization and of the officers,
13 directors, and principal employees if the applicant is a
14 corporation, are such as to warrant belief that the business
15 will be operated honestly, soundly, and efficiently in the
16 public interest consistent with the purposes of this chapter,
17 the administrator shall issue the applicant a license to
18 engage in mortgage lending, brokering, and servicing. The
19 administrator shall approve or deny an application for a
20 license within ninety days after the filing of the application
21 for a license.

22 2. If the administrator does not so find, the license
23 shall not be issued, and the administrator shall notify the
24 applicant in writing of the denial and the reasons for the
25 denial.

26 Sec. 5. NEW SECTION. 535B.5 LICENSING OF FOREIGN
27 CORPORATION.

28 An applicant that is a foreign corporation must be
29 authorized to do business in this state. A foreign
30 corporation shall file with the license application both of
31 the following:

32 1. An irrevocable consent, duly acknowledged, that suits
33 and actions may be commenced against that licensee in the
34 courts of this state by service of process in the usual manner
35 provided for by the statutes and court rules of this state.

1 2. Proof of authorization to do business in this state.

2 Sec. 6. NEW SECTION. 535B.6 SUSPENSION OR REVOCATION OF
3 LICENSE.

4 1. The administrator may, pursuant to chapter 17A, suspend
5 or revoke any license issued pursuant to this chapter if the
6 administrator finds any of the following:

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

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

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

18 2. The administrator may order an emergency suspension of
19 a licensee's license pursuant to section 17A.18, subsection 3.
20 A written order containing the facts or conduct which warrant
21 the emergency action shall be timely sent to the licensee by
22 restricted certified mail. Upon issuance of the suspension
23 order, the licensee must also be notified of the right to an
24 evidentiary hearing. A suspension proceeding shall be
25 promptly instituted and determined.

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

29 3. A licensee may surrender a license by delivering to the
30 administrator written notice of surrender, but a surrender
31 does not affect the licensee's civil or criminal liability for
32 acts committed before the surrender.

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

1 a mortgagor.

2 Sec. 7. NEW SECTION. 535B.7 OPERATING WITHOUT A LICENSE.

3 A person, who without first obtaining a license under this
4 chapter, engages in the business or occupation of, or adver-
5 tises or holds the person out as, or claims to be, or
6 temporarily acts as, a mortgage banker or mortgage broker in
7 this state is guilty of a class "D" felony and may be
8 prosecuted by the attorney general or a county attorney.

9 Sec. 8. NEW SECTION. 535B.8 BONDS REQUIRED OF LICENSE
10 APPLICANT.

11 An applicant for a license shall file with the administra-
12 tor a bond in the amount of fifty thousand dollars, furnished
13 by a surety company authorized to do business in this state.
14 The bond shall be for the use of the state and any persons who
15 may have causes of action against the applicant. The bond
16 shall be conditioned upon the applicant's faithfully
17 conforming to and abiding by this chapter and any rules
18 adopted under this chapter and shall require that the surety
19 pay to the state and to any persons all moneys that become due
20 or owing to the state and to the persons from the applicant by
21 virtue of this chapter.

22 Sec. 9. NEW SECTION. 535B.9 INVESTIGATIONS AND EXAMINA-
23 TIONS.

24 1. For the purposes of discovering violations of this
25 chapter or any rules adopted under this chapter or for secur-
26 ing information lawfully required under this chapter, the
27 administrator may at any time and as often as the adminis-
28 trator deems necessary, investigate the business and examine
29 the books, accounts, records, and files used by a licensee.

30 In conducting an examination, the administrator may rely on
31 current reports made by the licensee which have been prepared
32 for the following federal agencies or federally related
33 entities:

34 a. United States department of housing and urban
35 development.

- 1 b. Federal housing administration.
- 2 c. Federal national mortgage association.
- 3 d. Government national mortgage association.
- 4 e. Federal home loan mortgage corporation.
- 5 f. Veterans administration.

6 2. With respect to mortgage lenders or mortgage bankers
7 who are specifically exempted from this chapter but are
8 subject to sections 535B.10, 535B.11, and 535B.12, the powers
9 of examination and investigation concerning compliance with
10 sections 535B.10, 535B.11, and 535B.12 shall be exercised by
11 the official or agency to whose supervision the exempted
12 person is subject. If the administrator receives a complaint
13 or other information concerning noncompliance with this
14 chapter by an exempted person, the administrator shall inform
15 the official or agency having supervisory authority over that
16 person. The administrator may obtain information about an
17 exempted person from the official or agency having supervisory
18 authority over that person.

19 3. The total charge for an examination or investigation
20 shall be paid by the licensee to the administrator within
21 thirty days after the administrator has requested payment.
22 The administrator may by rule provide for a charge for late
23 payment of the fee. The amount of the fee shall be based on
24 the actual costs of the examination as determined by the
25 administrator. Examination reports and correspondence
26 regarding these reports shall be kept confidential except as
27 provided in this subsection, notwithstanding chapter 22. The
28 administrator may release the reports and correspondence in
29 the course of an enforcement proceeding or a hearing held by
30 the administrator. The administrator may also provide this
31 information to the attorney general for purposes of enforcing
32 this chapter or the consumer fraud Act.

33 Sec. 10. NEW SECTION. 535B.10 ORIGINATING MORTGAGES.

34 A licensee or other mortgage lender shall not do any of the
35 following in the course of offering to a residential mortgage

1 borrower any form of commitment to a specific interest rate,
2 specific range of interest rates, or locked-in interest rate
3 for a set period:

- 4 1. Use deception.
- 5 2. Make a false promise.
- 6 3. Make a misrepresentation.

7 An offer of commitment includes an oral or written offer.
8 A residential mortgage borrower includes, but is not limited
9 to, a borrower who is refinancing a residential first
10 mortgage.

11 Sec. 11. NEW SECTION. 535B.11 SERVICING MORTGAGES AND
12 PAYOFFS.

13 A licensee or other mortgagee who services mortgages on
14 residential real estate located in this state shall do all of
15 the following:

16 1. Disburse required funds paid by the mortgagor and held
17 in escrow for the payment of real estate taxes and insurance
18 payments no later than their final due date.

19 2. Pay penalties incurred by the mortgagor due to the
20 licensee's or mortgagee's failure to meet the due dates
21 referred to in subsection 1 unless the licensee or mortgagee
22 can show that the failure was due solely to the fact that the
23 mortgagor received a statement of the amount due more than
24 fifteen days before the due date and has failed to remit it to
25 the licensee or mortgagee.

26 3. Perform a complete escrow analysis yearly. A clear and
27 legible copy of the yearly analysis shall be promptly mailed
28 to the mortgagor. If there is a change in the payment amount,
29 the analysis shall be mailed at least twenty days before the
30 effective date of the change. The summary shall contain all
31 of the following information:

- 32 a. The name and address of the mortgagee.
- 33 b. The name and address of the mortgagor.
- 34 c. A summary of escrow account activity during the year
35 which includes all of the following:

1 (1) The balance of the escrow account at the beginning of
2 the year.

3 (2) The aggregate amount of deposits to the escrow account
4 during the year.

5 (3) The aggregate amount of withdrawals from the escrow
6 account for each of the following categories:

7 (a) Payments against loan principal.

8 (b) Payments against interest.

9 (c) Payments against real estate taxes.

10 (d) Payments for real property insurance premiums.

11 (e) All other withdrawals.

12 (4) A summary of loan principal for the year as follows:

13 (a) The amount of principal outstanding at the beginning
14 of the year.

15 (b) The aggregate amount of payments against principal
16 during the year.

17 (c) The amount of principal outstanding at the end of the
18 year.

19 Compliance with sections 524.905, 533.16, 534.206, and
20 536A.20 shall constitute compliance with this subsection.

21 4. Handle payoff, discharge, or release of a mortgage
22 promptly by sending completed documentation including, but not
23 limited to, releases of liens to the mortgagor or the mort-
24 gator's representative within thirty days of receipt of a
25 written request.

26 5. Answer in writing, within five business days of
27 receipt, any written request for payoff information received
28 from a mortgagor or the mortgagor's designated representative.

29 6. Execute and deliver a release after payoff and within
30 thirty days after receipt of correct payment. If the licensee
31 or mortgagee fails to execute and deliver a release of lien to
32 the mortgagor or the mortgagor's designated representative,
33 the mortgagor or the mortgagor's designated representative may
34 notify in writing the administrator and any other official to
35 whom the mortgagee is primarily subject. The administrator

1 shall promptly mail by certified mail to the licensee or
2 mortgagee a notice stating that the licensee or mortgagee must
3 both release the mortgage and deliver the release to the
4 administrator within fifteen days of receipt of said notice or
5 face a penalty as provided in this section. If the licensee
6 or mortgagee fails to make the release and deliver it to the
7 administrator, the administrator may assess a penalty not to
8 exceed fifty dollars for each day of delinquency after the
9 fifteen days.

10 7. A licensee or other mortgagee who makes a first
11 mortgage loan pursuant to a written agreement executed by the
12 borrower on or after July 1, 1987, and who is in possession or
13 control of the abstract of title to the property, shall
14 transfer the abstract of title to the borrower no later than
15 thirty business days after the date on which all instruments
16 pertaining to the making of such first mortgage loan,
17 including but not limited to all clearance documents, have
18 been filed for record.

19 8. A person in the possession or control of an abstract of
20 title to property located in the state of Iowa, which property
21 secures a first mortgage loan made pursuant to a written
22 agreement executed by the borrower before July 1, 1987, shall
23 transfer the abstract of title to the borrower, or any person
24 designated by the borrower, no later than twenty business days
25 after receipt of written demand for transfer of the abstract
26 of title. If a person fails to transfer the abstract of title
27 pursuant to this section, the borrower may authorize the
28 preparation of an abstract of title to the property, and the
29 borrower shall have the right to recover the reasonable costs
30 of preparation, plus attorney fees, and court costs incurred
31 in any action to recover the costs.

32 Sec. 12. NEW SECTION. 535B.12 PAYMENT PROCESSING.

33 A licensee or other mortgagee shall not assess a late
34 charge if full payment is received before the date late
35 charges are authorized in the mortgage documents and shall

1 process all periodic payments in full within twenty-four hours
2 of receipt or within the next banking or business day.

3 Sec. 13. NEW SECTION. 535B.13 ENFORCEMENT.

4 1. The administrator has cease and desist powers as
5 follows:

6 a. For the purposes of this subsection, "administrator"
7 means either the superintendent of savings and loans or the
8 official or agency charged with enforcing this chapter, or
9 parts thereof, against the person under investigation.

10 b. If the administrator has reason to believe that a
11 person has been or is in violation of this chapter or rules
12 adopted under this chapter, after notice and hearing, the ad-
13 ministrator may order a person to cease and desist from vio-
14 lating any provision of this chapter or rules adopted under
15 this chapter.

16 c. The administrator, upon such hearing, may administer
17 oaths, examine and cross-examine witnesses, receive evidence,
18 and shall have the power to subpoena witnesses, compel their
19 attendance, and require the production of all records or other
20 documents which the administrator deems relevant to the
21 inquiry. In case of a refusal of a person to comply with a
22 subpoena issued under this section or to testify with respect
23 to any matter relevant to the proceeding, on application of
24 the administrator, the district court of Polk county may issue
25 an order requiring the person to comply with the subpoena and
26 to testify. A failure to obey an order of the court to comply
27 with the subpoena may be punished by the court as a civil
28 contempt. A cease and desist hearing need not observe any
29 formal rules of pleading or evidence.

30 d. If after the hearing, the administrator finds that the
31 person charged has violated this chapter or rules adopted
32 under this chapter, the administrator shall issue written
33 findings, a copy of which shall be served upon the person
34 charged with the violations, along with an order requiring the
35 person to cease and desist from engaging in the violations.

1 e. A person aggrieved by a cease and desist order of the
2 administrator may obtain judicial review of the order and the
3 administrator may obtain an order of the Polk county district
4 court for the enforcement of the cease and desist order.

5 f. A proceeding for review must be initiated within thirty
6 days after the aggrieved person receives the cease and desist
7 order. If no proceeding is initiated, the administrator may
8 obtain a decree of the Polk county district court for enforce-
9 ment of the cease and desist order.

10 g. A person who violates a cease and desist order of the
11 administrator may, after notice and hearing, and upon further
12 order of the administrator, be subject to a penalty of not
13 more than five thousand dollars for each act or violation of
14 the cease and desist order.

15 2. The administrator may request the attorney general to
16 enforce the provisions of this chapter. A civil enforcement
17 action by the attorney general may be filed in equity in
18 either the county in which the violation occurred or Polk
19 county. A civil enforcement action by the attorney general
20 may seek, but is not limited to, any or all of the following:

21 a. Temporary and permanent injunctive relief.

22 b. Restitution for a mortgage applicant or mortgagor
23 aggrieved by a violation of this chapter.

24 c. A penalty of up to ten thousand dollars for each
25 violation of this chapter.

26 d. Costs for the investigation and prosecution of the
27 enforcement action including attorneys fees.

28 3. This chapter does not limit the power of the attorney
29 general to determine that any other practice is unlawful under
30 the Iowa consumer fraud Act, section 714.16, and to file an
31 action under that section.

32 Sec. 14. NEW SECTION. 535B.14 RULEMAKING AUTHORITY.

33 The administrator may adopt, amend, or repeal rules to aid
34 in the administration and enforcement of this chapter.

35 Sec. 15. NEW SECTION. 535B.15 LIABILITY OF STATE.

1 An act or omission by the state pursuant to this chapter
2 including, but not limited to, an examination, inspection,
3 audit, or other financial oversight responsibility shall not
4 subject the state to liability.

5 EXPLANATION

6 This bill establishes licensing and regulatory standards
7 for first mortgage bankers and mortgage brokers which are not
8 presently supervised, licensed, or chartered under Iowa or
9 federal law. The bill also establishes standards for
10 servicing and originating first mortgage loans applicable to
11 all persons engaging in such activity.

12 Section 1 provides key definitions.

13 Section 2 exempts previously regulated persons from the
14 licensing portions of the bill.

15 Sections 3 and 4 establish licensing standards and
16 procedures to be applied by the superintendent of savings and
17 loan.

18 Section 5 provides special requirements for licensing
19 foreign corporations.

20 Section 6 establishes grounds for revocation of a
21 previously issued license.

22 Section 7 establishes penalties for operating without a
23 license.

24 Section 8 requires a license applicant to file a \$50,000
25 bond for the protection of the state, mortgage applicants, and
26 mortgagors.

27 Section 9 establishes standards and procedures for
28 investigations and examinations of licensees and other
29 mortgage lenders.

30 Section 10 imposes restrictions on licensees and other
31 mortgagees regarding certain loan origination procedures,
32 including interest rate commitments.

33 Section 11 imposes restrictions and obligations on
34 licensees and other mortgagees in the course of servicing
35 mortgages, payoffs, and other relations with mortgagors.

1 Section 12 requires that licensees and other mortgagees
2 process payments within 24 hours of receipt or within the next
3 banking or business day, and restricts assessment of late
4 charges.

5 Section 13 contains enforcement provisions including
6 administrative cease and desist orders and action by the
7 attorney general to enforce the chapter and obtain restitution
8 for aggrieved mortgage applicants or mortgagors.

9 Section 14 grants the superintendent of the division of
10 savings and loan of the department of commerce rulemaking
11 authority to aid in the enforcement and administration of the
12 bill.

13 Section 15 protects the state from liability for any acts
14 or omissions committed pursuant to the bill, including, but
15 not limited to, examinations, inspections, audits, and other
16 financial oversight responsibilities.

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HOUSE FILE 613

H-3432

1 Amend House File 613 as follows:

2 1. Page 2, by striking lines 3 through 16 and
3 inserting the following:

4 "This chapter, except for sections 535B.10,
5 535B.11, and 535B.12, does not apply to any of the
6 following:

7 1. A national bank.

8 2. A federally chartered savings and loan
9 association.

10 3. A federally chartered savings bank.

11 4. A federally chartered credit union.

12 5. A loan company licensed under chapter 536 or
13 536A.

14 6. A bank organized under chapter 524.

15 7. A savings and loan association or savings bank
16 organized under chapter 534.

17 8. A credit union organized under chapter 533.

18 9. A wholly owned subsidiary of an organization
19 listed in subsections 1 through 8 if the listed
20 organization has its principal place of business in
21 Iowa.

22 10. A bank, savings and loan association, or
23 credit union organized or chartered under the laws of
24 any other state provided the financial institution has
25 a place of business in Iowa.

26 11. Mortgage lenders of mortgage bankers
27 maintaining an office in this state whose principal
28 business in this state is conducted with or through
29 mortgage lenders or mortgage bankers otherwise exempt
30 under this section."

31 2. Page 5, by inserting after line 23 the
32 following:

33 "1. Within one hundred twenty days after the end
34 of a licensee's fiscal year, the licensee shall file
35 financial statements which are certified by an
36 independent accounting firm."

37 3. Page 5, line 29 by inserting after the word
38 "licensee." the following: "However, if the financial
39 statement required by subsection 1 shows that the
40 licensee satisfies the minimum net worth requirement
41 necessary to be an approved mortgagee by the United
42 States department of housing and urban development
43 pursuant to its guidelines, as amended, the licensee
44 is not subject to an investigation or examination as
45 described in this subsection.

34 46 3. Notwithstanding subsection 2, all licensees are
47 subject to a limited examination by the administrator
48 to investigate any specific complaint or alleged
49 violation about a licensee made to the administrator.
50 Such investigation or examination by the administrator

H-3432

Page Two

1 shall be restricted to acquiring the information from
2 the licensee necessary to resolve the specific
3 complaint or relevant to the alleged violation."

4 4. Page 5, by striking line 30 and inserting the
5 following:

6 "4. In conducting any examination under this
7 section, the administrator may rely on".

8 5. By striking page 6, line 33 through page 7,
9 line 10.

10 6. Page 8, by striking lines 21 through 25.

11 7. Page 8, line 26 by striking the word "five"
12 and inserting the following: "ten".

13 8. Page 8, line 30 by striking the word "thirty"
14 and inserting the following: "forty-five".

15 9. Page 9, line 9 by inserting after the word
16 "days." the following: "The administrator may waive
17 the penalty if the administrator finds the failure was
18 not intentional and resulted from bona fide error
19 notwithstanding the maintenance of procedures
20 reasonably adapted to avoid error."

21 10. Page 9, by striking lines 10 through 31 and
22 inserting the following:

23 "6. If a person in connection with a first
24 mortgage loan has possession of an abstract of title
25 and fails to deliver the abstract to the borrower
26 within twenty calendar days of the borrower's request
27 made by certified mail return receipt requested in
28 connection with a proposed sale of the property, then
29 the borrower may authorize the preparation of a new
30 abstract of title to the property and the person
31 failing to deliver the original abstract shall pay to
32 the borrower the reasonable costs of preparation. If
33 the borrower brings an action against the person
34 failing to deliver to recover such payment and in the
35 action recovers the payment, then the borrower shall
36 also be entitled to recover attorney fees and court
37 costs incurred in the action."

38 11. Page 10, by striking lines 1 and 2 and
39 inserting the following: "post all periodic payments
40 in full within two business days of receipt."

41 12. Page 11, line 20 by striking the words ", but
42 is not limited to,".

43 13. Page 11, line 22, by striking the words
44 "mortgage applicant or".

45 14. Page 11, by striking lines 24 and 25.

46 15. By renumbering and relettering as necessary.

H-3432 FILED MARCH 26, 1987 BY CHAPMAN of Linn

Adopted as amended by 3460 3/30/87 (p 928)

Gen. Commerce 4/1/87

House File 613

COMMERCE: Kinley, Chair; Priebe and Rife

Amended per 5546 - St. Paul 3/24 (p. 1517)

HOUSE FILE 613

BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

(As Amended and Passed by the House March 30, 1987)

Passed House, Date 4/14/88 (p. 1928) Passed Senate, Date 4/14/88 (p. 1530)

Vote: Ayes 95 Nays 0 Vote: Ayes 45 Nays 0

Approved May 3, 1988
Proposed Senate 4/14/88 (p. 1540)
46-0

A BILL FOR

1 An Act relating to the licensing and examination of first
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House Amendments ~~_____~~
Deleted Language *

1 Section 1. NEW SECTION. 535B.1 DEFINITIONS.

2 As used in this chapter unless the context otherwise
3 requires:

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

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

8 b. Originates at least four first mortgage loans on resi-
9 dential real property located in this state in a calendar year
10 and sells four or more such loans in the secondary market.

11 c. Services first mortgage loans on residential real
12 property located in this state.

13 2. "Mortgage broker" means a person who arranges or nego-
14 tiates, or attempts to arrange or negotiate, at least four
15 first mortgage loans or commitments for four or more such
16 loans on residential real property located in this state in a
17 calendar year.

18 3. "Residential real property" means real property, which
19 is an owner-occupied single-family or two-family dwelling,
20 located in this state, occupied or used or intended to be
21 occupied or used for residential purposes, including an
22 interest in any real property covered under chapter 499B.

23 4. "Person" means an individual, an association, joint
24 venture or joint stock company, partnership, limited
25 partnership, business corporation, nonprofit corporation, or
26 any other group of individuals however organized.

27 5. "Licensee" means a person licensed under this chapter;
28 however, any individual who is acting solely as an employee or
29 agent of a mortgage banker or broker licensed under this Act
30 need not be separately licensed.

31 6. "Administrator" means the superintendent of the
32 division of savings and loan of the department of commerce.

33 7. "First mortgage loan" means a loan of money secured by
34 a first lien on residential real property and includes a
35 refinancing of a contract of sale, an assumption of a prior

1 loan, and a refinancing of a prior loan.

2 Sec. 2. NEW SECTION. 535B.2 EXEMPTIONS.

3 This chapter, except for sections 535B.10, 535B.11, and
4 535B.12, does not apply to any of the following:

- 5 1. A national bank.
- 6 2. A federally chartered savings and loan association.
- 7 3. A federally chartered savings bank.
- 8 4. A federally chartered credit union.
- 9 5. A loan company licensed under chapter 536 or 536A.
- 10 6. A bank organized under chapter 524.
- 11 7. A savings and loan association or savings bank
12 organized under chapter 534.
- 13 8. A credit union organized under chapter 533.
- 14 9. A wholly owned subsidiary of an organization listed in
15 subsections 1 through 8 if the listed organization has its
16 principal place of business in Iowa.
- 17 10. A bank, savings and loan association, or credit union
18 organized or chartered under the laws of any other state
19 provided the financial institution has a place of business in
20 Iowa.
- 21 11. Mortgage lenders of mortgage bankers maintaining an
22 office in this state whose principal business in this state is
23 conducted with or through mortgage lenders or mortgage bankers
24 otherwise exempt under this section.

25 Sec. 3. NEW SECTION. 535B.3 GENERAL LICENSING REQUIRE-
26 MENTS.

27 1. A person shall not act as a mortgage banker or mortgage
28 broker in this state or use the title "mortgage banker" or
29 "mortgage broker" without first obtaining a license from the
30 administrator.

31 2. License applicants shall submit to the administrator an
32 application on forms provided by the administrator. The forms
33 shall include, at a minimum, all addresses at which business
34 is to be conducted, the names and titles of each director and
35 principal officers of the business, and a description of the

1 activities of the applicant in such detail as the
2 administrator may require.

3 3. The applicant shall also submit a recently prepared
4 certified financial statement.

5 4. The applicant for an initial license shall submit a fee
6 in the amount of five hundred dollars.

7 5. Licenses granted under this chapter are not assignable.

8 6. Licenses granted under this chapter expire on the next
9 June 30 after their issuance.

10 7. Applications for renewals of licenses under this
11 chapter must be filed with the administrator before June 1 of
12 the year of expiration and must be accompanied by a fee of two
13 hundred dollars.

14 Sec. 4. NEW SECTION. 535B.4 GRANTING AND DENIAL OF
15 LICENSE.

16 1. Upon the filing of an application for a license, if the
17 administrator finds that the financial responsibility,
18 character, and general fitness of the applicant and of the
19 members thereof if the applicant is a partnership,
20 association, or other organization and of the officers,
21 directors, and principal employees if the applicant is a
22 corporation, are such as to warrant belief that the business
23 will be operated honestly, soundly, and efficiently in the
24 public interest consistent with the purposes of this chapter,
25 the administrator shall issue the applicant a license to
26 engage in mortgage lending, brokering, and servicing. The
27 administrator shall approve or deny an application for a
28 license within ninety days after the filing of the application
29 for a license.

30 2. If the administrator does not so find, the license
31 shall not be issued, and the administrator shall notify the
32 applicant in writing of the denial and the reasons for the
33 denial.

34 Sec. 5. NEW SECTION. 535B.5 LICENSING OF FOREIGN
35 CORPORATION.

1 An applicant that is a foreign corporation must be
2 authorized to do business in this state. A foreign
3 corporation shall file with the license application both of
4 the following:

5 1. An irrevocable consent, duly acknowledged, that suits
6 and actions may be commenced against that licensee in the
7 courts of this state by service of process in the usual manner
8 provided for by the statutes and court rules of this state.

9 2. Proof of authorization to do business in this state.

10 Sec. 6. NEW SECTION. 535B.6 SUSPENSION OR REVOCATION OF
11 LICENSE.

12 1. The administrator may, pursuant to chapter 17A, suspend
13 or revoke any license issued pursuant to this chapter if the
14 administrator finds any of the following:

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

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

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

26 2. The administrator may order an emergency suspension of
27 a licensee's license pursuant to section 17A.18, subsection 3.
28 A written order containing the facts or conduct which warrant
29 the emergency action shall be timely sent to the licensee by
30 restricted certified mail. Upon issuance of the suspension
31 order, the licensee must also be notified of the right to an
32 evidentiary hearing. A suspension proceeding shall be
33 promptly instituted and determined.

34 Except as provided in this section, a license shall not be
35 revoked or suspended except after notice and a hearing thereon

1 in accordance with chapter 17A.

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

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

10 Sec. 7. NEW SECTION. 535B.7 OPERATING WITHOUT A LICENSE.

11 A person, who without first obtaining a license under this
12 chapter, engages in the business or occupation of, or adver-
13 tises or holds the person out as, or claims to be, or
14 temporarily acts as, a mortgage banker or mortgage broker in
15 this state is guilty of a class "D" felony and may be
16 prosecuted by the attorney general or a county attorney.

17 Sec. 8. NEW SECTION. 535B.8 BONDS REQUIRED OF LICENSE
18 APPLICANT.

19 An applicant for a license shall file with the administra-
20 tor a bond in the amount of fifty thousand dollars, furnished
21 by a surety company authorized to do business in this state.
22 The bond shall be for the use of the state and any persons who
23 may have causes of action against the applicant. The bond
24 shall be conditioned upon the applicant's faithfully
25 conforming to and abiding by this chapter and any rules
26 adopted under this chapter and shall require that the surety
27 pay to the state and to any persons all moneys that become due
28 or owing to the state and to the persons from the applicant by
29 virtue of this chapter.

30 Sec. 9. NEW SECTION. 535B.9 INVESTIGATIONS AND EXAMINA-
31 TIONS.

32 1. Within one hundred twenty days after the end of a
33 licensee's fiscal year, the licensee shall file financial
34 statements which are certified by an independent accounting
35 firm.

1 2. For the purposes of discovering violations of this
2 chapter or any rules adopted under this chapter or for secur-
3 ing information lawfully required under this chapter, the
4 administrator may at any time and as often as the adminis-
5 trator deems necessary, investigate the business and examine
6 the books, accounts, records, and files used by a licensee.
7 However, if the financial statement required by subsection 1
8 shows that the licensee satisfies the minimum net worth
9 requirement necessary to be an approved mortgagee by the
10 United States department of housing and urban development
11 pursuant to its guidelines, as amended, the licensee is not
12 subject to an investigation or examination as described in
13 this subsection.

14 3. Notwithstanding subsection 2, all licensees are subject
15 to limited examination by the administrator to investigate
16 complaints or alleged violations about the licensee made to
17 the administrator. Such investigation or examination by the
18 administrator shall be restricted to acquiring information
19 from the licensee relevant to the alleged violations.

20 4. In conducting any examination under this section, the
21 administrator may rely on current reports made by the licensee
22 which have been prepared for the following federal agencies or
23 federally related entities:

24 a. United States department of housing and urban
25 development.

26 b. Federal housing administration.

27 c. Federal national mortgage association.

28 d. Government national mortgage association.

29 e. Federal home loan mortgage corporation.

30 f. Veterans administration.

31 5. With respect to mortgage lenders or mortgage bankers
32 who are specifically exempted from this chapter but are
33 subject to sections 535B.10, 535B.11, and 535B.12, the powers
34 of examination and investigation concerning compliance with
35 sections 535B.10, 535B.11, and 535B.12 shall be exercised by

1 the official or agency to whose supervision the exempted
2 person is subject. If the administrator receives a complaint
3 or other information concerning noncompliance with this
4 chapter by an exempted person, the administrator shall inform
5 the official or agency having supervisory authority over that
6 person. The administrator may obtain information about an
7 exempted person from the official or agency having supervisory
8 authority over that person.

9 6. The total charge for an examination or investigation
10 shall be paid by the licensee to the administrator within
11 thirty days after the administrator has requested payment.
12 The administrator may by rule provide for a charge for late
13 payment of the fee. The amount of the fee shall be based on
14 the actual costs of the examination as determined by the
15 administrator. Examination reports and correspondence
16 regarding these reports shall be kept confidential except as
17 provided in this subsection, notwithstanding chapter 22. The
18 administrator may release the reports and correspondence in
19 the course of an enforcement proceeding or a hearing held by
20 the administrator. The administrator may also provide this
21 information to the attorney general for purposes of enforcing
22 this chapter or the consumer fraud Act.

* 23 Sec. 10. NEW SECTION. 535B.11 SERVICING MORTGAGES AND
24 PAYOFFS.

25 A licensee or other mortgagee who services mortgages on
26 residential real estate located in this state shall do all of
27 the following:

28 1. Disburse required funds paid by the mortgagor and held
29 in escrow for the payment of real estate taxes and insurance
30 payments no later than their final due date.

31 2. Pay penalties incurred by the mortgagor due to the
32 licensee's or mortgagee's failure to meet the due dates
33 referred to in subsection 1 unless the licensee or mortgagee
34 can show that the failure was due solely to the fact that the
35 mortgagor received a statement of the amount due more than

1 fifteen days before the due date and has failed to remit it to
2 the licensee or mortgagee.

3 3. Perform a complete escrow analysis yearly. A clear and
4 legible copy of the yearly analysis shall be promptly mailed
5 to the mortgagor. If there is a change in the payment amount,
6 the analysis shall be mailed at least twenty days before the
7 effective date of the change. The summary shall contain all
8 of the following information:

9 a. The name and address of the mortgagee.

10 b. The name and address of the mortgagor.

11 c. A summary of escrow account activity during the year
12 which includes all of the following:

13 (1) The balance of the escrow account at the beginning of
14 the year.

15 (2) The aggregate amount of deposits to the escrow account
16 during the year.

17 (3) The aggregate amount of withdrawals from the escrow
18 account for each of the following categories:

19 (a) Payments against loan principal.

20 (b) Payments against interest.

21 (c) Payments against real estate taxes.

22 (d) Payments for real property insurance premiums.

23 (e) All other withdrawals.

24 (4) A summary of loan principal for the year as follows:

25 (a) The amount of principal outstanding at the beginning
26 of the year.

27 (b) The aggregate amount of payments against principal
28 during the year.

29 (c) The amount of principal outstanding at the end of the
30 year.

31 Compliance with sections 524.905, 533.16, 534.206, and
32 536A.20 shall constitute compliance with this subsection.

*33 4. Answer in writing, within ten business days of receipt,
34 any written request for payoff information received from a
35 mortgagor or the mortgagor's designated representative.

1 5. Execute and deliver a release after payoff and within
2 forty-five days after receipt of correct payment. If the
3 licensee or mortgagee fails to execute and deliver a release
4 of lien to the mortgagor or the mortgagor's designated
5 representative, the mortgagor or the mortgagor's designated
6 representative may notify in writing the administrator and any
7 other official to whom the mortgagee is primarily subject.
8 The administrator shall promptly mail by certified mail to the
9 licensee or mortgagee a notice stating that the licensee or
10 mortgagee must both release the mortgage and deliver the
11 release to the administrator within fifteen days of receipt of
12 said notice or face a penalty as provided in this section. If
13 the licensee or mortgagee fails to make the release and
14 deliver it to the administrator, the administrator may assess
15 a penalty not to exceed fifty dollars for each day of
16 delinquency after the fifteen days. The administrator may
17 waive the penalty if the administrator finds the failure was
18 not intentional and resulted from bona fide error
19 notwithstanding the maintenance of procedures reasonably
20 adapted to avoid error.

21 6. If a person in connection with a first mortgage loan
22 has possession of an abstract of title and fails to deliver
23 the abstract to the borrower within twenty calendar days of
24 the borrower's request made by certified mail return receipt
25 requested in connection with a proposed sale of the property,
26 then the borrower may authorize the preparation of a new
27 abstract of title to the property and the person failing to
28 deliver the original abstract shall pay to the borrower the
29 reasonable costs of preparation. If the borrower brings an
30 action against the person failing to deliver to recover such
31 payment and in the action recovers the payment, then the
32 borrower shall also be entitled to recover attorney fees and
33 court costs incurred in the action.

34 Sec. 11. NEW SECTION. 535B.12 PAYMENT PROCESSING.

35 A licensee or other mortgagee shall not assess a late

1 charge if full payment is received before the date late
2 charges are authorized in the mortgage documents and shall
3 post all periodic payments in full within two business days of
4 receipt.

5 Sec. 12. NEW SECTION. 535B.13 ENFORCEMENT.

6 1. The administrator has cease and desist powers as
7 follows:

8 a. For the purposes of this subsection, "administrator"
9 means either the superintendent of savings and loans or the
10 official or agency charged with enforcing this chapter, or
11 parts thereof, against the person under investigation.

12 b. If the administrator has reason to believe that a
13 person has been or is in violation of this chapter or rules
14 adopted under this chapter, after notice and hearing, the ad-
15 ministrator may order a person to cease and desist from vio-
16 lating any provision of this chapter or rules adopted under
17 this chapter.

18 c. The administrator, upon such hearing, may administer
19 oaths, examine and cross-examine witnesses, receive evidence,
20 and shall have the power to subpoena witnesses, compel their
21 attendance, and require the production of all records or other
22 documents which the administrator deems relevant to the
23 inquiry. In case of a refusal of a person to comply with a
24 subpoena issued under this section or to testify with respect
25 to any matter relevant to the proceeding, on application of
26 the administrator, the district court of Polk county may issue
27 an order requiring the person to comply with the subpoena and
28 to testify. A failure to obey an order of the court to comply
29 with the subpoena may be punished by the court as a civil
30 contempt. A cease and desist hearing need not observe any
31 formal rules of pleading or evidence.

32 d. If after the hearing, the administrator finds that the
33 person charged has violated this chapter or rules adopted
34 under this chapter, the administrator shall issue written
35 findings, a copy of which shall be served upon the person

1 charged with the violations, along with an order requiring the
2 person to cease and desist from engaging in the violations.

3 e. A person aggrieved by a cease and desist order of the
4 administrator may obtain judicial review of the order and the
5 administrator may obtain an order of the Polk county district
6 court for the enforcement of the cease and desist order.

7 f. A proceeding for review must be initiated within thirty
8 days after the aggrieved person receives the cease and desist
9 order. If no proceeding is initiated, the administrator may
10 obtain a decree of the Polk county district court for enforce-
11 ment of the cease and desist order.

12 g. A person who violates a cease and desist order of the
13 administrator may, after notice and hearing, and upon further
14 order of the administrator, be subject to a penalty of not
15 more than five thousand dollars for each act or violation of
16 the cease and desist order.

17 2. The administrator may request the attorney general to
18 enforce the provisions of this chapter. A civil enforcement
19 action by the attorney general may be filed in equity in
20 either the county in which the violation occurred or Polk
21 county. A civil enforcement action by the attorney general

*22 may seek any or all of the following:

23 a. Temporary and permanent injunctive relief.

*24 b. Restitution for a mortgagor aggrieved by a violation of
25 this chapter.

*26 c. Costs for the investigation and prosecution of the
27 enforcement action including attorneys fees.

28 3. This chapter does not limit the power of the attorney
29 general to determine that any other practice is unlawful under
30 the Iowa consumer fraud Act, section 714.16, and to file an
31 action under that section.

32 Sec. 13. NEW SECTION. 535B.14 RULEMAKING AUTHORITY.

33 The administrator may adopt, amend, or repeal rules to aid
34 in the administration and enforcement of this chapter.

35 Sec. 14. NEW SECTION. 535B.15 LIABILITY OF STATE.

SENATE AMENDMENT TO HOUSE FILE 613

H-6464

1 Amend House File 613, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 2, by inserting after line 13, the
4 following:

5 "9. An insurance company organized under the laws
6 of this state and subject to regulation by the
7 commissioner of insurance."

8 2. Page 2, line 14, by striking the figure "9"
9 and inserting the following: "10".

10 3. Page 2, line 15, by striking the figure "8"
11 and inserting the following: "9".

12 4. Page 2, line 17, by striking the figure "10"
13 and inserting the following: "11".

14 5. Page 2, line 17, by striking the words "or
15 credit union" and inserting the following: "credit
16 union, or insurance company".

17 6. Page 2, line 19, by inserting after the word
18 "institution" the following: "or insurance company".

19 7. Page 2, line 21, by striking the figure "11"
20 and inserting the following: "12".

21 8. Page 2, line 24, by inserting after the word
22 "section" the following: "and which maintain a place
23 of business in this state".

24 9. Page 2, by inserting after line 24, the
25 following:

26 "Sec. ____ . NEW SECTION. 535B.3 REGISTRATION.

27 1. A person exempt under section 535B.2,
28 subsection 10, 11, or 12, shall register with the
29 administrator.

30 2. A registrant shall submit to the administrator
31 a registration statement on forms provided by the
32 administrator. The forms shall include all addresses
33 at which business is to be conducted, the names and
34 titles of each director and principal officer of the
35 business, and a description of the activities of the
36 applicant in such detail as the administrator may
37 require.

38 3. The registrant shall pay a fifty-dollar
39 registration fee.

40 4. A registration under this chapter is not
41 assignable."

42 10. Page 5, line 21, by striking the word "a" and
43 inserting the following: "one of the following:

44 a. A current certified financial statement
45 evidencing a net worth of one million dollars or more.

46 b. A".

47 11. Page 7, by striking lines 6 through 8, and
48 inserting the following: "person."

49 12. By renumbering, relettering, or redesignating
50 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6464 FILED APRIL 14, 1988

CONCURRED AS AMENDED *by 6471 (p. 1925)*

HOUSE FILE 613

H-6471

1 Amend the Senate amendment, H-6464, to House File
2 613, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, line 42, by striking the figure "21"
5 and inserting the following: "20".

By CHAPMAN of Linn

H-6471 FILED APRIL 14, 1988

ADOPTED (p. 1725)

HOUSE FILE 613

S-5688

- 1 Amend the amendment, S-5546, to House File 613, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 1, line 5, by striking the word
5 "incorporated" and inserting the following:
6 "organized".
7 2. Page 1, by inserting after line 9, the
8 following:
9 "____". Page 2, line 15, by striking the figure "8"
10 and inserting the following: "9".
11 3. By renumbering as necessary.

S-5688

Filed March 30, 1988

Adopted 4/14 (p. 1534)

BY GEORGE KINLEY

HOUSE FILE 613

S-5989

- 1 Amend House File 613, as amended, passed, and re-
2 printed by the House, as follows:
3 1. Page 5, line 21, by striking the word "a" and
4 inserting the following: "one of the following:
5 a. A current certified financial statement
6 evidencing a net worth of one million dollars or more.
7 b. A".

S-5989

Filed April 14, 1988

ADOPTED
(p. 1534)

BY GEORGE R. KINLEY

HOUSE FILE 613

S-5546

1 Amend House File 613, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 2, by inserting after line 13, the
4 following:

5 "9. An insurance company incorporated under the
6 laws of this state and subject to regulation by the
7 commissioner of insurance."

8 2. Page 2, line 14, by striking the figure "9"
9 and inserting the following: "10".

10 3. Page 2, line 17, by striking the figure "10"
11 and inserting the following: "11".

12 4. Page 2, line 17, by striking the words "or
13 credit union" and inserting the following: "credit
14 union, or insurance company".

15 5. Page 2, line 19, by inserting after the word
16 "institution" the following: "or insurance company".

17 6. Page 2, line 21, by striking the figure "11"
18 and inserting the following: "12".

19 7. Page 2, line 24, by inserting after the word
20 "section" the following: "and which maintain a place
21 of business in this state".

22 8. Page 2, by inserting after line 24, the
23 following:

24 "Sec. ____ . NEW SECTION. 535B.3 REGISTRATION.

25 1. A person exempt under section 535B.2,
26 subsection 10, 11, or 12, shall register with the
27 administrator.

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29 a registration statement on forms provided by the
30 administrator. The forms shall include all addresses
31 at which business is to be conducted, the names and
32 titles of each director and principal officer of the
33 business, and a description of the activities of the
34 applicant in such detail as the administrator may
35 require.

36 3. The registrant shall pay a fifty-dollar
37 registration fee.

38 4. A registration under this chapter is not
39 assignable."

40 9. Page 7, by striking lines 6 through 8, and
41 inserting the following: "person."

42 10. By renumbering and correcting internal
43 references as necessary.

S-5546

Filed March 24, 1988

Adopted as amended by 5083 4/14 (p. 1536)

BY COMMITTEE ON COMMERCE
WILLIAM PALMER, Chairperson

HOUSE AMENDMENT TO
SENATE AMENDMENT TO
HOUSE FILE 613

S-6027

1 Amend the Senate amendment, H-6464, to House File
2 613, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, line 42, by striking the figure "21"
5 and inserting the following: "20".

S-6027

Filed April 14, 1988

ADOPTED

RECEIVED FROM THE HOUSE

(p. 1574)

SMALL BUSINESS AND COMMERCE

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL/
JUDICIAL DEPARTMENT BILL)

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

A BILL FOR

1 An Act relating to the licensing and examination of first
2 mortgage bankers and mortgage brokers, and regulation of other
3 mortgage lenders, and providing penalties.

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

- 5
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SUB COMMITTEE ASSIGNMENTS

CHAIR: *Colin [unclear] Parker - Corrected* *Small Business*
COMMITTEE: *Small Business & Commerce*
3/9/87 *3-10-87*

1 Section 1. NEW SECTION. 535B.1 DEFINITIONS.

2 As used in this chapter unless the context otherwise
3 requires:

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

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

8 b. Originates at least four first mortgage loans on resi-
9 dential real property located in this state in a calendar year
10 and sells four or more such loans in the secondary market.

11 c. Services first mortgage loans on residential real
12 property located in this state.

13 2. "Mortgage broker" means a person who arranges or nego-
14 tiates, or attempts to arrange or negotiate, at least four
15 first mortgage loans or commitments for four or more such
16 loans on residential real property located in this state in a
17 calendar year.

18 3. "Residential real property" means real property, which
19 is an owner-occupied single or two family dwelling, located in
20 this state, occupied or used or intended to be occupied or
21 used for residential purposes, including an interest in any
22 real property covered under chapter 499B.

23 4. "Person" means an individual, an association, joint
24 venture or joint stock company, partnership, limited
25 partnership, business corporation, nonprofit corporation, or
26 any other group of individuals however organized.

27 5. "Licensee" means a person licensed under this chapter;
28 however, any individual who is acting solely as an employee or
29 agent of a mortgage banker, or broker, licensed under this Act
30 need not be separately licensed.

31 6. "Administrator" means the superintendent of the
32 division of savings and loan of the department of commerce.

33 7. "First mortgage loan" means a loan of money secured by
34 a first lien on residential real property and includes a
35 refinancing of a contract of sale, an assumption of a prior

1 loan, and a refinancing of a prior loan.

2 Sec. 2. NEW SECTION. 535B.2 EXEMPTIONS.

3 This chapter, except for sections 535B.10, 535B.11,
4 535B.12, and 535B.13 does not apply to any of the following:

- 5 1. A national bank.
- 6 2. A federally chartered savings and loan.
- 7 3. A federally chartered credit union.
- 8 4. A loan company licensed under chapter 536 or 536A.
- 9 5. A bank organized under chapter 524.
- 10 6. A savings and loan association organized under chapter
11 534.

12 7. A credit union organized under chapter 533.

13 8. A bank, savings and loan association, or credit union
14 organized or chartered under the laws of any other state
15 provided the financial institution has a place of business in
16 Iowa.

17 Sec. 3. NEW SECTION. 535B.3 GENERAL LICENSING REQUIRE-
18 MENTS.

19 1. A person shall not act as a mortgage banker or mortgage
20 broker in this state or use the title "mortgage banker" or
21 "mortgage broker" without first obtaining a license from the
22 administrator.

23 2. License applicants shall submit to the administrator an
24 application on forms provided by the administrator. The forms
25 shall include, at a minimum, all addresses at which business
26 is to be conducted, the names and titles of each director and
27 principal officers of the business, and a description of the
28 activities of the applicant in such detail as the
29 administrator may require.

30 3. The applicant shall also submit a recently prepared
31 certified financial statement.

32 4. The applicant for an initial license shall submit a fee
33 in the amount of five hundred dollars.

34 5. Licenses granted under this chapter are not assignable.

35 6. Licenses granted under this chapter expire on the next

241

1 June 30 after their issuance.

2 7. Applications for renewals of licenses under this
3 chapter must be filed with the administrator before June 1 of
4 the year of expiration and must be accompanied by a fee of two
5 hundred dollars.

6 Sec. 4. NEW SECTION. 535B.4 GRANTING AND DENIAL OF
7 LICENSE.

8 1. Upon the filing of an application for a license, if the
9 administrator finds that the financial responsibility,
10 character, and general fitness of the applicant and of the
11 members thereof if the applicant is a partnership,
12 association, or other organization and of the officers,
13 directors, and principal employees if the applicant is a
14 corporation, are such as to warrant belief that the business
15 will be operated honestly, soundly, and efficiently in the
16 public interest consistent with the purposes of this chapter,
17 the administrator shall issue the applicant a license to
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19 administrator shall approve or deny an application for a
20 license within ninety days after the filing of the application
21 for a license.

22 2. If the administrator does not so find, the license
23 shall not be issued, and the administrator shall notify the
24 applicant in writing of the denial and the reasons for the
25 denial.

26 Sec. 5. NEW SECTION. 535B.5 LICENSING OF FOREIGN
27 CORPORATION.

28 An applicant that is a foreign corporation must be
29 authorized to do business in this state. A foreign
30 corporation shall file with the license application both of
31 the following:

32 1. An irrevocable consent, duly acknowledged, that suits
33 and actions may be commenced against that licensee in the
34 courts of this state by service of process in the usual manner
35 provided for by the statutes and court rules of this state.

1 2. Proof of authorization to do business in this state.
2 Sec. 6. NEW SECTION. 535B.6 SUSPENSION OR REVOCATION OF
3 LICENSE.

4 1. The administrator may, pursuant to chapter 17A, suspend
5 or revoke any license issued pursuant to this chapter if the
6 administrator finds any of the following:

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

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

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

18 2. The administrator may order an emergency suspension of
19 a licensee's license pursuant to section 17A.8, subsection 3.
20 A written order containing the facts or conduct which warrant
21 the emergency action shall be timely sent to the licensee by
22 restricted certified mail. Upon issuance of the suspension
23 order, the licensee must also be notified of the right to an
24 evidentiary hearing. A suspension proceeding shall be
25 promptly instituted and determined.

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

29 3. A licensee may surrender a license by delivering to the
30 administrator written notice of surrender, but a surrender
31 does not affect the licensee's civil or criminal liability for
32 acts committed before the surrender.

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

1 a mortgagor.

2 Sec. 7. NEW SECTION. 535B.7 OPERATING WITHOUT A LICENSE.

3 A person, who without first obtaining a license under this
4 chapter, engages in the business or occupation of, or adver-
5 tises or holds the person out as, or claims to be, or
6 temporarily acts as, a mortgage banker or mortgage broker in
7 this state is guilty of a class "D" felony and may be
8 prosecuted by the attorney general or a county attorney.

9 Sec. 8. NEW SECTION. 535B.8 BONDS REQUIRED OF LICENSE
10 APPLICANT.

11 An applicant for a license shall file with the administra-
12 tor a bond in the amount of fifty thousand dollars, furnished
13 by a surety company authorized to do business in this state.
14 The bond shall be for the use of the state and any persons who
15 may have causes of action against the applicant. The bond
16 shall be conditioned upon the applicant's faithfully
17 conforming to and abiding by this chapter and any rules
18 adopted under this chapter and shall require that the surety
19 pay to the state and to any persons all moneys that become due
20 or owing to the state and to the persons from the applicant by
21 virtue of this chapter.

22 Sec. 9. NEW SECTION. 535B.9 INVESTIGATIONS AND EXAMINA-
23 TIONS.

24 1. For the purposes of discovering violations of this
25 chapter or any rules adopted under this chapter or for secur-
26 ing information lawfully required under this chapter, the
27 administrator may at any time and as often as the adminis-
28 trator deems necessary, investigate the business and examine
29 the books, accounts, records, and files used by a licensee.

30 In conducting an examination, the administrator may rely on
31 current reports made by the licensee which have been prepared
32 for the following federal agencies or federally related
33 entities:

34 a. United States department of housing and urban
35 development.

- 1 b. Federal housing administration.
- 2 c. Federal national mortgage association.
- 3 d. Government national mortgage association.
- 4 e. Federal home loan mortgage corporation.
- 5 f. Veterans administration.

6 2. With respect to mortgage lenders or mortgage bankers
7 who are specifically exempted from this chapter but are
8 subject to sections 535B.10, 535B.11, and 535B.12, the powers
9 of examination and investigation concerning compliance with
10 sections 535B.10, 535B.11, and 535B.12 shall be exercised by
11 the official or agency to whose supervision the exempted
12 person is subject. If the administrator receives a complaint
13 or other information concerning noncompliance with this
14 chapter by an exempted person, the administrator shall inform
15 the official or agency having supervisory authority over that
16 person. The administrator may obtain information about an
17 exempted person from the official or agency having supervisory
18 authority over that person.

19 3. The total charge for an examination or investigation
20 shall be paid by the licensee to the administrator within
21 thirty days after the administrator has requested payment.
22 The administrator may by rule provide for a charge for late
23 payment of the fee. The amount of the fee shall be based on
24 the actual costs of the examination as determined by the
25 administrator. Examination reports and correspondence
26 regarding these reports shall be kept confidential except as
27 provided in this subsection, notwithstanding chapter 22. The
28 administrator may release the reports and correspondence in
29 the course of an enforcement proceeding or a hearing held by
30 the administrator. The administrator may also provide this
31 information to the attorney general for purposes of enforcing
32 this chapter or the consumer fraud Act.

33 Sec. 10. NEW SECTION. 535B.10 ORIGINATING MORTGAGES.

34 A licensee or other mortgage lender shall not do any of the
35 following in the course of offering to a residential mortgage

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1 borrower any form of commitment to a specific interest rate,
2 specific range of interest rates, or locked-in interest rate
3 for a set period:

- 4 1. Use deception.
- 5 2. Make a false promise.
- 6 3. Make a misrepresentation.

7 An offer of commitment includes an oral or written offer.
8 A residential mortgage borrower includes, but is not limited
9 to, a borrower who is refinancing a residential first
10 mortgage.

11 Sec. 11. NEW SECTION. 535B.11 SERVICING MORTGAGES AND
12 PAYOFFS.

13 A licensee or other mortgagee who services mortgages on
14 residential real estate located in this state shall do all of
15 the following:

16 1. Disburse required funds paid by the mortgagor and held
17 in escrow for the payment of real estate taxes and insurance
18 payments no later than their final due date.

19 2. Pay penalties incurred by the mortgagor due to the
20 licensee's or mortgagee's failure to meet the due dates
21 referred to in subsection 1 unless the licensee or mortgagee
22 can show that the failure was due solely to the fact that the
23 mortgagor received a statement of the amount due more than
24 fifteen days before the due date and has failed to remit it to
25 the licensee or mortgagee.

26 3. Perform a complete escrow analysis yearly. A clear and
27 legible copy of the yearly analysis shall be promptly mailed
28 to the mortgagor. If there is a change in the payment amount,
29 the analysis shall be mailed at least twenty days before the
30 effective date of the change. The summary shall contain all
31 of the following information:

- 32 a. The name and address of the mortgagee.
- 33 b. The name and address of the mortgagor.
- 34 c. A summary of escrow account activity during the year
35 which includes all of the following:

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1 (1) The balance of the escrow account at the beginning of
2 the year.

3 (2) The aggregate amount of deposits to the escrow account
4 during the year.

5 (3) The aggregate amount of withdrawals from the escrow
6 account for each of the following categories:

7 (a) Payments against loan principal.

8 (b) Payments against interest.

9 (c) Payments against real estate taxes.

10 (d) Payments for real property insurance premiums.

11 (e) All other withdrawals.

12 (4) A summary of loan principal for the year as follows:

13 (a) The amount of principal outstanding at the beginning
14 of the year.

15 (b) The aggregate amount of payments against principal
16 during the year.

17 (c) The amount of principal outstanding at the end of the
18 year.

19 Compliance with sections 524.905, 533.16, 534.206, and 536A.20
20 shall constitute compliance with this subsection.

21 4. Handle payoff, discharge, or release of a mortgage
22 promptly by sending completed documentation including, but not
23 limited to, releases of liens to the mortgagor or the mort-
24 gator's representative within thirty days of receipt of a
25 written request.

26 5. Answer in writing, within five business days of
27 receipt, any written request for payoff information received
28 from a mortgagor or the mortgagor's designated representative.

29 6. Execute and deliver a release after payoff and within
30 thirty days after receipt of correct payment. If the licensee
31 or mortgagee fails to execute and deliver a release of lien to
32 the mortgagor or the mortgagor's designated representative,
33 the mortgagor or the mortgagor's designated representative may
34 notify in writing the administrator and any other official to
35 whom the mortgagee is primarily subject. The administrator

1 shall promptly mail by certified mail to the licensee or
2 mortgagee a notice stating that the licensee or mortgagee must
3 both release the mortgage and deliver the release to the
4 administrator within fifteen days of receipt of said notice or
5 face a penalty as provided in this section. If the licensee
6 or mortgagee fails to make the release and deliver it to the
7 administrator, the administrator may assess a penalty not to
8 exceed fifty dollars for each day of delinquency after the
9 fifteen days.

10 7. A licensee or other mortgagee who makes a first
11 mortgage loan pursuant to a written agreement executed by the
12 borrower on or after July 1, 1987, and who is in possession or
13 control of the abstract of title to the property, shall
14 transfer the abstract of title to the borrower no later than
15 thirty business days after the date on which all instruments
16 pertaining to the making of such first mortgage loan,
17 including but not limited to all clearance documents, have
18 been filed for record.

19 8. A person in the possession or control of an abstract of
20 title to property located in the state of Iowa, which property
21 secures a first mortgage loan made pursuant to a written
22 agreement executed by the borrower before July 1, 1987, shall
23 transfer the abstract of title to the borrower, or any person
24 designated by the borrower, no later than twenty business days
25 after receipt of written demand for transfer of the abstract
26 of title. If a person fails to transfer the abstract of title
27 pursuant to this section, the borrower may authorize the
28 preparation of an abstract of title to the property, and the
29 borrower shall have the right to recover the reasonable costs
30 of preparation, plus attorney fees, and court costs incurred
31 in any action to recover the costs.

32 Sec. 12. NEW SECTION. 535B.12 PAYMENT PROCESSING.

33 A licensee or other mortgagee shall not assess a late
34 charge if full payment is received before the date late
35 charges are authorized in the mortgage documents and shall

1 process all periodic payments in full within twenty-four hours
2 of receipt or within the next banking or business day.

3 Sec. 13. NEW SECTION. 535B.13 ENFORCEMENT.

4 1. The administrator has cease and desist powers as
5 follows:

6 a. For the purposes of this subsection, "administrator"
7 means either the superintendent of savings and loans or the
8 official or agency charged with enforcing this chapter, or
9 parts thereof, against the person under investigation.

10 b. If the administrator has reason to believe that a
11 person has been or is in violation of this chapter or rules
12 adopted under this chapter, after notice and hearing, the ad-
13 ministrator may order a person to cease and desist from vio-
14 lating any provision of this chapter or rules adopted under
15 this chapter.

16 c. The administrator, upon such hearing, may administer
17 oaths, examine and cross-examine witnesses, receive evidence,
18 and shall have the power to subpoena witnesses, compel their
19 attendance, and require the production of all records or other
20 documents which the administrator deems relevant to the
21 inquiry. In case of a refusal of a person to comply with a
22 subpoena issued under this section or to testify with respect
23 to any matter relevant to the proceeding, on application of
24 the administrator, the district court of Polk county may issue
25 an order requiring the person to comply with the subpoena and
26 to testify. A failure to obey an order of the court to comply
27 with the subpoena may be punished by the court as a civil
28 contempt. A cease and desist hearing need not observe any
29 formal rules of pleading or evidence.

30 d. If after the hearing, the administrator finds that the
31 person charged has violated this chapter or rules adopted
32 under this chapter, the administrator shall issue written
33 findings, a copy of which shall be served upon the person
34 charged with the violations, along with an order requiring the
35 person to cease and desist from engaging in the violations.

1 e. A person aggrieved by a cease and desist order of the
2 administrator may obtain judicial review of the order and the
3 administrator may obtain an order of the Polk county district
4 court for the enforcement of the cease and desist order.

5 f. A proceeding for review must be initiated within thirty
6 days after the aggrieved person receives the cease and desist
7 order. If no proceeding is initiated, the administrator may
8 obtain a decree of the Polk county district court for enforce-
9 ment of the cease and desist order.

10 g. A person who violates a cease and desist order of the
11 administrator may, after notice and hearing, and upon further
12 order of the administrator, be subject to a penalty of not
13 more than five thousand dollars for each act or violation of
14 the cease and desist order.

15 2. The administrator may request the attorney general to
16 enforce the provisions of this chapter. A civil enforcement
17 action by the attorney general may be filed in equity in
18 either the county in which the violation occurred or Polk
19 county. A civil enforcement action by the attorney general
20 may seek, but is not limited to, any or all of the following:

21 a. Temporary and permanent injunctive relief.

22 b. Restitution for a mortgage applicant or mortgagor
23 aggrieved by a violation of this chapter.

24 c. A penalty of up to ten thousand dollars for each
25 violation of this chapter.

26 d. Costs for the investigation and prosecution of the
27 enforcement action including attorneys fees.

28 3. This chapter does not limit the power of the attorney
29 general to determine that any other practice is unlawful under
30 the Iowa consumer fraud Act, section 714.16, and to file an
31 action under that section.

32 Sec. 14. NEW SECTION. 535B.14 RULEMAKING AUTHORITY.

33 The administrator may adopt, amend, or repeal rules to aid
34 in the administration and enforcement of this chapter.

35 Sec. 15. NEW SECTION. 535B.15 LIABILITY OF STATE.

1 An act or omission by the state pursuant to this chapter
2 including, but not limited to, an examination, inspection,
3 audit, or other financial oversight responsibility shall not
4 subject the state to liability.

5 EXPLANATION

6 This bill establishes licensing and regulatory standards
7 for first mortgage bankers and mortgage brokers which are not
8 presently supervised, licensed, or chartered under Iowa or
9 federal law. The bill also establishes standards for
10 servicing and originating first mortgage loans applicable to
11 all persons engaging in such activity.

12 Section 1 provides key definitions.

13 Section 2 exempts previously regulated persons from the
14 licensing portions of the bill.

15 Sections 3 and 4 establish licensing standards and
16 procedures to be applied by the superintendent of savings and
17 loan.

18 Section 5 provides special requirements for licensing
19 foreign corporations.

20 Section 6 establishes grounds for revocation of a
21 previously issued license.

22 Section 7 establishes penalties for operating without a
23 license.

24 Section 8 requires a license applicant to file a \$50,000
25 bond for the protection of the state, mortgage applicants, and
26 mortgagors.

27 Section 9 establishes standards and procedures for
28 investigations and examinations of licensees and other
29 mortgage lenders.

30 Section 10 imposes restrictions on licensees and other
31 mortgagees regarding certain loan origination procedures,
32 including interest rate commitments.

33 Section 11 imposes restrictions and obligations on
34 licensees and other mortgagees in the course of servicing
35 mortgages, payoffs, and other relations with mortgagors.

1 Section 12 requires that licensees and other mortgagees
2 process payments within 24 hours of receipt or within the next
3 banking or business day, and restricts assessment of late
4 charges.

5 Section 13 contains enforcement provisions including
6 administrative cease and desist orders and action by the
7 attorney general to enforce the chapter and obtain restitution
8 for aggrieved mortgage applicants or mortgagors.

9 Section 14 grants the superintendent of the division of
10 savings and loan of the department of commerce rulemaking
11 authority to aid in the enforcement and administration of the
12 bill.

13 Section 15 protects the state from liability for any acts
14 or omissions committed pursuant to the bill, including, but
15 not limited to, examinations, inspections, audits, and other
16 financial oversight responsibilities.

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HOUSE FILE 613

AN ACT

RELATING TO THE LICENSING AND EXAMINATION OF FIRST MORTGAGE BANKERS AND MORTGAGE BROKERS, AND REGULATION OF OTHER MORTGAGE LENDERS, AND PROVIDING PENALTIES.

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

Section 1. NEW SECTION. 535B.1 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Mortgage banker" means a person who does one or more of the following:
 - a. Makes at least four first mortgage loans on residential real property located in this state in a calendar year.
 - b. Originates at least four first mortgage loans on residential real property located in this state in a calendar year and sells four or more such loans in the secondary market.
 - c. Services first mortgage loans on residential real property located in this state.
2. "Mortgage broker" means a person who arranges or negotiates, or attempts to arrange or negotiate, at least four first mortgage loans or commitments for four or more such loans on residential real property located in this state in a calendar year.
3. "Residential real property" means real property, which is an owner-occupied single-family or two-family dwelling, located in this state, occupied or used or intended to be occupied or used for residential purposes, including an interest in any real property covered under chapter 499B.
4. "Person" means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

5. "Licensee" means a person licensed under this chapter; however, any individual who is acting solely as an employee or agent of a mortgage banker or broker licensed under this Act need not be separately licensed.

6. "Administrator" means the superintendent of the division of savings and loan of the department of commerce.

7. "First mortgage loan" means a loan of money secured by a first lien on residential real property and includes a refinancing of a contract of sale, an assumption of a prior loan, and a refinancing of a prior loan.

Sec. 2. NEW SECTION. 535B.2 EXEMPTIONS.

This chapter, except for sections 535B.11, 535B.12, and 535B.13, does not apply to any of the following:

1. A national bank.
2. A federally chartered savings and loan association.
3. A federally chartered savings bank.
4. A federally chartered credit union.
5. A loan company licensed under chapter 536 or 536A.
6. A bank organized under chapter 524.
7. A savings and loan association or savings bank organized under chapter 534.
8. A credit union organized under chapter 533.
9. An insurance company organized under the laws of this state and subject to regulation by the commissioner of insurance.
10. A wholly owned subsidiary of an organization listed in subsections 1 through 9 if the listed organization has its principal place of business in Iowa.
11. A bank, savings and loan association, credit union, or insurance company organized or chartered under the laws of any other state provided the financial institution or insurance company has a place of business in Iowa.
12. Mortgage lenders of mortgage bankers maintaining an office in this state whose principal business in this state is conducted with or through mortgage lenders or mortgage bankers otherwise exempt under this section and which maintain a place of business in this state.

Sec. 3. NEW SECTION. 535B.3 REGISTRATION.

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1. A person exempt under section 535B.2, subsection 10, 11, or 12, shall register with the administrator.

2. A registrant shall submit to the administrator a registration statement on forms provided by the administrator. The forms shall include all addresses at which business is to be conducted, the names and titles of each director and principal officer of the business, and a description of the activities of the applicant in such detail as the administrator may require.

3. The registrant shall pay a fifty-dollar registration fee.

4. A registration under this chapter is not assignable.

Sec. 4. NEW SECTION. 535B.4 GENERAL LICENSING REQUIREMENTS.

1. A person shall not act as a mortgage banker or mortgage broker in this state or use the title "mortgage banker" or "mortgage broker" without first obtaining a license from the administrator.

2. License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.

3. The applicant shall also submit a recently prepared certified financial statement.

4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.

5. Licenses granted under this chapter are not assignable.

6. Licenses granted under this chapter expire on the next June 30 after their issuance.

7. Applications for renewals of licenses under this chapter must be filed with the administrator before June 1 of the year of expiration and must be accompanied by a fee of two hundred dollars.

Sec. 5. NEW SECTION. 535B.5 GRANTING AND DENIAL OF LICENSE.

1. Upon the filing of an application for a license, if the administrator finds that the financial responsibility, character, and general fitness of the applicant and of the members thereof if the applicant is a partnership, association, or other organization and of the officers, directors, and principal employees if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of this chapter, the administrator shall issue the applicant a license to engage in mortgage lending, brokering, and servicing. The administrator shall approve or deny an application for a license within ninety days after the filing of the application for a license.

2. If the administrator does not so find, the license shall not be issued, and the administrator shall notify the applicant in writing of the denial and the reasons for the denial.

Sec. 6. NEW SECTION. 535B.6 LICENSING OF FOREIGN CORPORATION.

An applicant that is a foreign corporation must be authorized to do business in this state. A foreign corporation shall file with the license application both of the following:

1. An irrevocable consent, duly acknowledged, that suits and actions may be commenced against that licensee in the courts of this state by service of process in the usual manner provided for by the statutes and court rules of this state.

2. Proof of authorization to do business in this state.

Sec. 7. NEW SECTION. 535B.7 SUSPENSION OR REVOCATION OF LICENSE.

1. The administrator may, pursuant to chapter 17A, suspend or revoke any license issued pursuant to this chapter if the administrator finds any of the following:

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

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

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

2. The administrator may order an emergency suspension of a licensee's license pursuant to section 17A.10, subsection 3. A written order containing the facts or conduct which warrant the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

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

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

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

Sec. 8. NEW SECTION. 535B.8 OPERATING WITHOUT A LICENSE.

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

Sec. 9. NEW SECTION. 535B.9 BONDS REQUIRED OF LICENSE APPLICANT.

An applicant for a license shall file with the administrator one of the following:

a. A current certified financial statement evidencing a net worth of one million dollars or more.

b. A bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the state and any persons who may have causes of action against the applicant. The bond shall be conditioned upon the applicant's faithfully conforming to and abiding by this chapter and any rules adopted under this chapter and shall require that the surety pay to the state and to any persons all moneys that become due or owing to the state and to the persons from the applicant by virtue of this chapter.

Sec. 10. NEW SECTION. 535B.10 INVESTIGATIONS AND EXAMINATIONS.

1. Within one hundred twenty days after the end of a licensee's fiscal year, the licensee shall file financial statements which are certified by an independent accounting firm.

2. For the purposes of discovering violations of this chapter or any rules adopted under this chapter or for securing information lawfully required under this chapter, the administrator may at any time and as often as the administrator deems necessary, investigate the business and examine the books, accounts, records, and files used by a licensee. However, if the financial statement required by subsection 1 shows that the licensee satisfies the minimum net worth requirement necessary to be an approved mortgagee by the United States department of housing and urban development pursuant to its guidelines, as amended, the licensee is not subject to an investigation or examination as described in this subsection.

3. Notwithstanding subsection 2, all licensees are subject to limited examination by the administrator to investigate

complaints or alleged violations about the licensee made to the administrator. Such investigation or examination by the administrator shall be restricted to acquiring information from the licensee relevant to the alleged violations.

4. In conducting any examination under this section, the administrator may rely on current reports made by the licensee which have been prepared for the following federal agencies or federally related entities:

- a. United States department of housing and urban development.
- b. Federal housing administration.
- c. Federal national mortgage association.
- d. Government national mortgage association.
- e. Federal home loan mortgage corporation.
- f. Veterans administration.

5. With respect to mortgage lenders or mortgage bankers who are specifically exempted from this chapter but are subject to sections 535B.11, 535B.12, and 535B.13, the powers of examination and investigation concerning compliance with sections 535B.11, 535B.12, and 535B.13 shall be exercised by the official or agency to whose supervision the exempted person is subject. If the administrator receives a complaint or other information concerning noncompliance with this chapter by an exempted person, the administrator shall inform the official or agency having supervisory authority over that person.

6. The total charge for an examination or investigation shall be paid by the licensee to the administrator within thirty days after the administrator has requested payment. The administrator may by rule provide for a charge for late payment of the fee. The amount of the fee shall be based on the actual costs of the examination as determined by the administrator. Examination reports and correspondence regarding these reports shall be kept confidential except as provided in this subsection, notwithstanding chapter 22. The administrator may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by

the administrator. The administrator may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act.

Sec. 11. NEW SECTION. 535B.11 SERVICING MORTGAGES AND PAYOFFS.

A licensee or other mortgagee who services mortgages on residential real estate located in this state shall do all of the following:

1. Disburse required funds paid by the mortgagor and held in escrow for the payment of real estate taxes and insurance payments no later than their final due date.

2. Pay penalties incurred by the mortgagor due to the licensee's or mortgagee's failure to meet the due dates referred to in subsection 1 unless the licensee or mortgagee can show that the failure was due solely to the fact that the mortgagor received a statement of the amount due more than fifteen days before the due date and has failed to remit it to the licensee or mortgagee.

3. Perform a complete escrow analysis yearly. A clear and legible copy of the yearly analysis shall be promptly mailed to the mortgagor. If there is a change in the payment amount, the analysis shall be mailed at least twenty days before the effective date of the change. The summary shall contain all of the following information:

- a. The name and address of the mortgagee.
- b. The name and address of the mortgagor.
- c. A summary of escrow account activity during the year which includes all of the following:

- (1) The balance of the escrow account at the beginning of the year.
- (2) The aggregate amount of deposits to the escrow account during the year.
- (3) The aggregate amount of withdrawals from the escrow account for each of the following categories:
 - (a) Payments against loan principal.
 - (b) Payments against interest.
 - (c) Payments against real estate taxes.

(d) Payments for real property insurance premiums.

(e) All other withdrawals.

(4) A summary of loan principal for the year as follows:

(a) The amount of principal outstanding at the beginning of the year.

(b) The aggregate amount of payments against principal during the year.

(c) The amount of principal outstanding at the end of the year.

Compliance with sections 524.905, 533.16, 534.206, and 536A.20 shall constitute compliance with this subsection.

4. Answer in writing, within ten business days of receipt, any written request for payoff information received from a mortgagor or the mortgagor's designated representative.

5. Execute and deliver a release after payoff and within forty-five days after receipt of correct payment. If the licensee or mortgagee fails to execute and deliver a release of lien to the mortgagor or the mortgagor's designated representative, the mortgagor or the mortgagor's designated representative may notify in writing the administrator and any other official to whom the mortgagee is primarily subject. The administrator shall promptly mail by certified mail to the licensee or mortgagee a notice stating that the licensee or mortgagee must both release the mortgage and deliver the release to the administrator within fifteen days of receipt of said notice or face a penalty as provided in this section. If the licensee or mortgagee fails to make the release and deliver it to the administrator, the administrator may assess a penalty not to exceed fifty dollars for each day of delinquency after the fifteen days. The administrator may waive the penalty if the administrator finds the failure was not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid error.

6. If a person in connection with a first mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty calendar days of

the borrower's request made by certified mail return receipt requested in connection with a proposed sale of the property, then the borrower may authorize the preparation of a new abstract of title to the property and the person failing to deliver the original abstract shall pay to the borrower the reasonable costs of preparation. If the borrower brings an action against the person failing to deliver to recover such payment and in the action recovers the payment, then the borrower shall also be entitled to recover attorney fees and court costs incurred in the action.

Sec. 12. NEW SECTION. 535B.12 PAYMENT PROCESSING.

A licensee or other mortgagee shall not assess a late charge if full payment is received before the date late charges are authorized in the mortgage documents and shall post all periodic payments in full within two business days of receipt.

Sec. 13. NEW SECTION. 535B.13 ENFORCEMENT.

1. The administrator has cease and desist powers as follows:

a. For the purposes of this subsection, "administrator" means either the superintendent of savings and loans or the official or agency charged with enforcing this chapter, or parts thereof, against the person under investigation.

b. If the administrator has reason to believe that a person has been or is in violation of this chapter or rules adopted under this chapter, after notice and hearing, the administrator may order a person to cease and desist from violating any provision of this chapter or rules adopted under this chapter.

c. The administrator, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of all records or other documents which the administrator deems relevant to the inquiry. In case of a refusal of a person to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, on application of

the administrator, the district court of Polk county may issue an order requiring the person to comply with the subpoena and to testify. A failure to obey an order of the court to comply with the subpoena may be punished by the court as a civil contempt. A cease and desist hearing need not observe any formal rules of pleading or evidence.

d. If after the hearing, the administrator finds that the person charged has violated this chapter or rules adopted under this chapter, the administrator shall issue written findings, a copy of which shall be served upon the person charged with the violations, along with an order requiring the person to cease and desist from engaging in the violations.

e. A person aggrieved by a cease and desist order of the administrator may obtain judicial review of the order and the administrator may obtain an order of the Polk county district court for the enforcement of the cease and desist order.

f. A proceeding for review must be initiated within thirty days after the aggrieved person receives the cease and desist order. If no proceeding is initiated, the administrator may obtain a decree of the Polk county district court for enforcement of the cease and desist order.

g. A person who violates a cease and desist order of the administrator may, after notice and hearing, and upon further order of the administrator, be subject to a penalty of not more than five thousand dollars for each act or violation of the cease and desist order.

2. The administrator may request the attorney general to enforce the provisions of this chapter. A civil enforcement action by the attorney general may be filed in equity in either the county in which the violation occurred or Polk county. A civil enforcement action by the attorney general may seek any or all of the following:

- a. Temporary and permanent injunctive relief.
- b. Restitution for a mortgagor aggrieved by a violation of this chapter.
- c. Costs for the investigation and prosecution of the enforcement action including attorney's fees.

3. This chapter does not limit the power of the attorney general to determine that any other practice is unlawful under the Iowa consumer fraud Act, section 714.16, and to file an action under that section.

Sec. 14. NEW SECTION. 535B.14 RULEMAKING AUTHORITY.

The administrator may adopt, amend, or repeal rules to aid in the administration and enforcement of this chapter.

Sec. 15. NEW SECTION. 535B.15 LIABILITY OF STATE.

An act or omission by the state pursuant to this chapter including, but not limited to, an examination, inspection, audit, or other financial oversight responsibility shall not subject the state to liability.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 613, Seventy-second General Assembly.

JOSEPH O'BERN
Chief Clerk of the House

Approved *May 3*, 1988

TERRY E. BRANSTAD
Governor