

# House Study Bill 685

## Bill Text

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1 1 Section 1. Section [535B.1](#), subsection 3, Code 2001, is  
1 2 amended to read as follows:

1 3 3. "Licensee" means a person licensed under this chapter

1 4

~~however, any individual who is acting solely as an employee or~~

1 5

~~agent of a mortgage banker or broker licensed under this Act~~

1 6

~~need not be separately licensed~~

1 7 Sec. 2. Section [535B.1](#), subsection 4, Code 2001, is  
1 8 amended to read as follows:

1 9 4. "Mortgage banker" means a person, including a natural  
1 10 person serving in the capacity of employee, agent, or  
1 11 independent contractor of a person, who does one or more of  
1 12 the following, whether such activities are conducted from a  
1 13 location within or outside this state:

1 14 a.

~~Makes~~

~~Originates~~ at least four first mortgage loans on  
1 15 residential real property located in this state in a calendar  
1 16 year, with the expectation of compensation or gain that is  
1 17 determined according to the amount borrowed or the terms and  
1 18 conditions agreed to by the mortgage loan borrower. Such a  
1 19 person's primary job responsibilities include negotiating with  
1 20 a borrower or potential borrower for the purpose of  
1 21 establishing the terms and conditions of the mortgage loan,  
1 22 including loans originated and sold in the secondary market.  
1 23

~~b. Originates at least four first mortgage loans on~~

1 24

~~residential real property located in this state in a calendar~~

1 25

~~year and sells four or more such loans in the secondary~~

1 26

~~market.~~

1 27

~~c.~~

- b. Services at least four first mortgage loans on  
1 28 residential real property located in this state. However, a  
1 29 natural person, who services less than fifteen first mortgage  
1 30 loans on residential real estate within the state and who does  
1 31 not sell or transfer first mortgage loans, is exempt from this  
1 32 paragraph if that person is otherwise exempt from the  
1 33 provisions of this chapter.

1 34 Sec. 3. Section [535B.1](#), subsection 5, Code 2001, is  
1 35 amended to read as follows:

2 1 5. "Mortgage broker" means a person, including a natural  
2 2 person serving in the capacity of employee, agent, or  
2 3 independent contractor of a person, who arranges or  
2 4 negotiates, for compensation, or in the expectation of  
2 5 compensation, or attempts to arrange or negotiate, at least  
2 6 four first mortgage loans or commitments for four or more such  
2 7 loans on residential real property located in this state in a  
2 8 calendar year, whether such activities are conducted from a  
2 9 location within or outside of this state.

2 10 Sec. 4. Section [535B.2](#), unnumbered paragraph 1, Code 2001,  
2 11 to read as follows:

2 12 This chapter, except for sections 535B.3, 535B.11, 535B.12,  
2 13 and 535B.13, does not apply to any of the following or to an  
2 14 employee of any of the following:

2 15 Sec. 5. Section [535B.2](#), subsections 9 and 12, Code 2001,  
2 16 are amended by striking the subsections.

2 17 Sec. 6. Section [535B.2](#), Code 2001, is amended by adding  
2 18 the following new subsections:

2 19 NEW SUBSECTION. 14. A person who, as a seller of real  
2 20 property located in this state, receives one or more mortgages  
2 21 or deeds of trust as security for a separate monetary  
2 22 obligation.

2 23 NEW SUBSECTION. 15. An agency of any state or of the  
2 24 United States.

2 25 NEW SUBSECTION. 16. A person who receives a mortgage or  
2 26 deed of trust on real estate as security for an obligation  
2 27 payable on an installment or deferred payment basis and  
2 28 arising by reason of materials furnished or services rendered  
2 29 in the improvement of the real estate, or any lien created  
2 30 without the consent of the owner of the real estate.

2 31 NEW SUBSECTION. 17. A person, including a natural person  
2 32 serving in the capacity as an employee, agent, or independent  
2 33 contractor of a mortgage banker or mortgage broker, whose  
2 34 responsibilities are clerical or administrative functions,  
2 35 including but not limited to gathering information, requesting  
3 1 information, word processing, soliciting general interest in  
3 2 mortgage loans, sending correspondence, and assembling files.

3 3 NEW SUBSECTION. 18. Any other person designated by rule  
3 4 or order of the administrator.

3 5 Sec. 7. Section [535B.3](#), subsection 1, Code 2001, is  
3 6 amended to read as follows:

3 7 1. A person exempt under section 535B.2, subsection 10,  
3 8 11,

~~12,~~  
- or 13, but not including any employee of such person,

3 9 shall register with the administrator.

3 10 Sec. 8. Section [535B.4](#), Code 2001, is amended to read as  
3 11 follows:

3 12 535B.4 GENERAL LICENSING REQUIREMENTS.

3 13 1. A person shall not act as a mortgage banker or mortgage  
3 14 broker in this state or use the title "mortgage banker" or  
3 15 "mortgage broker" without first obtaining a license from the  
3 16 administrator.

3 17 2. License applicants shall submit to the administrator an  
3 18 application on forms provided by the administrator. The forms  
3 19 shall include, at a minimum, all addresses at which business  
3 20 is to be conducted, the name of each natural person or the

3 21 names and titles of each director and principal officers of  
3 22 the business, and a description of the activities of the  
3 23 applicant in such detail as the administrator may require.  
3 24 3. For all applicants, other than natural persons serving  
3 25 in the capacity of employee, agent, or contractor, and meeting  
3 26 the definition of mortgage banker and mortgage broker in  
3 27 section 535B.1, subsections 4 and 5, the following apply:  
3 28

~~3.~~

- a. The applicant shall

~~also~~

- submit a recently prepared  
3 29 certified financial statement.  
3 30

~~4.~~

- b. The applicant for an initial license shall submit a  
3 31 fee in the amount of five hundred dollars.  
3 32

~~5.~~

- c. Licenses granted under this chapter are not  
3 33 assignable.  
3 34

~~6.~~

- d. Licenses granted under this chapter expire on the  
3 35 next June 30 after their issuance.  
4 1

~~7.~~

- e. Applications for renewals of licenses under this  
4 2 chapter must be filed with the administrator before June 1 of  
4 3 the year of expiration and must be accompanied by a fee of two  
4 4 hundred dollars for a license to transact business solely as a  
4 5 mortgage broker, and four hundred dollars for a license to  
4 6 transact business as a mortgage banker.

4 7 4. Rules regarding applications for licenses and renewals  
4 8 of licenses for applicants, including natural persons serving  
4 9 in the capacity of employee, agent, or contractor, meeting the  
4 10 definition of mortgage banker and mortgage broker in section  
4 11 535B.1, subsections 4 and 5, shall be determined by the  
4 12 administrator.

4 13 Sec. 9. Section [535B.6](#), Code 2001, is amended to read as  
4 14 follows:

4 15 535B.6 LICENSING OF FOREIGN

~~CORPORATION~~

- ENTITY.

4 16 An applicant that is a foreign corporation or other entity  
4 17 that may qualify to conduct business in this state must be  
4 18 authorized to do business in this state. A foreign  
4 19 corporation or other such entity shall file with the license  
4 20 application both of the following:

4 21 1. An irrevocable consent, duly acknowledged, that suits  
4 22 and actions may be commenced against that licensee in the  
4 23 courts of this state by service of process in the usual manner  
4 24 provided for by the statutes and court rules of this state.

4 25 2. Proof of authorization to do business in this state.

4 26 Sec. 10. Section [535B.7](#), subsection 2, unnumbered  
4 27 paragraph 1, Code 2001, is amended to read as follows:

4 28 The administrator may order an emergency suspension of a  
4 29 licensee's license pursuant to section 17A.18A. A written  
4 30 order containing the facts or conduct which warrants the  
4 31 emergency action shall be timely sent to the licensee by

4 32 restricted certified mail, as defined in section 618.15. Upon  
4 33 issuance of the suspension order, the licensee must also be  
4 34 notified of the right to an evidentiary hearing. A suspension  
4 35 proceeding shall be promptly instituted and determined.  
5 1 Sec. 11. Section 535B.10, subsection 1, Code 2001, is  
5 2 amended to read as follows:  
5 3 1. Within one hundred twenty days after the end of a  
5 4 licensee's fiscal year, the licensee, other than natural  
5 5 persons serving in the capacity of employee, agent, or  
5 6 contractor and meeting the definition of mortgage banker and  
5 7 mortgage broker in section 535B.1, subsections 4 and 5, shall  
5 8 file financial statements

~~which~~

- that are certified by an  
5 9 independent accounting firm except that financial statements  
5 10 filed by a licensee who is a natural person shall be certified  
5 11 by the licensee.  
5 12 Sec. 12. Section 535B.11, unnumbered paragraph 1, Code  
5 13 2001, is amended to read as follows:  
5 14 A licensee or other mortgagee

~~who~~

- or other person that  
5 15 services mortgages on residential real estate located in this  
5 16 state shall do all of the following:  
5 17 Sec. 13. Section 535B.12, Code 2001, is amended to read as  
5 18 follows:  
5 19 535B.12 PAYMENT PROCESSING.  
5 20 A licensee or other mortgagee or other person that services  
5 21 mortgages on residential real estate located in this state  
5 22 shall not assess a late charge if full payment is received  
5 23 before the date late charges are authorized in the mortgage  
5 24 documents and shall post all periodic payments in full within  
5 25 two business days of receipt.  
5 26 Sec. 14. NEW SECTION. 535B.17 MORTGAGE BANKERS AND  
5 27 BROKERS BOARD.  
5 28 1. A state mortgage bankers and brokers board is  
5 29 established and shall be composed of the administrator, who  
5 30 shall be an ex officio nonvoting member and chairperson, and  
5 31 five other members, appointed by the governor, who shall be  
5 32 chosen from various regions of the state. No more than three  
5 33 members of the board shall be mortgage bankers or mortgage  
5 34 brokers. In case of a vacancy in the board, other than one  
5 35 resulting from a vacancy in the office of the administrator,  
6 1 the governor shall appoint a new member to fill such vacancy  
6 2 for the unexpired term.  
6 3 2. The regular term of office of each member, other than  
6 4 the administrator, shall be contemporaneous with the regular  
6 5 term of office of the administrator as defined in section  
6 6 524.201, subsection 2, and each member shall hold office for  
6 7 such term and until the member's successor shall have been  
6 8 appointed by the governor.  
6 9 3. A member of the state mortgage bankers and brokers  
6 10 board, other than the administrator, shall not receive a  
6 11 salary but is entitled to reimbursement for actual expenses  
6 12 incurred by the member in connection with the member's duties.  
6 13 Each member of the board may also be eligible to receive  
6 14 compensation as provided in section 7E.6.  
6 15 4. The state mortgage bankers and brokers board shall act  
6 16 with the administrator in an advisory capacity concerning all  
6 17 matters pertaining to the conduct of the administration of the  
6 18 provisions of this chapter and shall perform such other duties  
6 19 as are specifically provided for by the laws of this state.  
6 20 5. The state mortgage bankers and brokers board shall meet  
6 21 at least six times in each calendar year, on such dates and at  
6 22 such places at the board may designate, and shall meet at such

6 23 other times as the board may deem necessary, or when called by  
6 24 the chairperson of the board, or any two members of the board.  
6 25 Sec. 15. EFFECTIVE DATE. This Act takes effect January 1,  
6 26 2003.

6 27 EXPLANATION

6 28 This bill makes amendments to Code chapter 535B, regarding  
6 29 mortgage bankers and brokers.

6 30 The bill amends the definitions of "licensee", "mortgage  
6 31 banker", and "mortgage broker".

6 32 The bill deletes exemptions under Code section 535B.2 for  
6 33 insurance companies and certain mortgage lenders, and adds  
6 34 exemptions for state and federal agencies, persons selling  
6 35 real property and holding mortgages as security for a separate  
7 1 monetary obligation, mortgages held to secure mechanic's  
7 2 liens, clerical or administrative employees of mortgage  
7 3 bankers or brokers, and persons designated by rule or order of  
7 4 the superintendent of banking. A related change is made to  
7 5 Code section 535B.3 to reflect the deletion of an exemption.

7 6 The bill amends Code section 535B.3 to specify that  
7 7 employees of exempt persons need not register with the  
7 8 superintendent of banking.

7 9 The bill amends Code section 535B.4 to require the names of  
7 10 natural persons on the forms, and to provide for rules on  
7 11 licenses and renewals. The bill also reorganizes the section.

7 12 The bill amends Code section 535B.6 to provide that foreign  
7 13 entities other than foreign corporations may be licensed.

7 14 The bill amends Code section 535B.7 to refer to the  
7 15 definition of "restricted certified mail" in Code section  
7 16 618.15, which means any form of certified mail which carries  
7 17 on the face, in a conspicuous place the endorsement, "Deliver  
7 18 to addressee only", and for which the post office provides the  
7 19 mailer with a return receipt showing the date of delivery, the  
7 20 place of delivery, and person to whom delivered.

7 21 The bill amends Code section 535B.10 to provide that  
7 22 financial statements filed by licensees who are natural  
7 23 persons shall be certified by the licensee.

7 24 The bill amends Code sections 535B.11 and 535B.12 to  
7 25 regulate other persons who service mortgages.

7 26 The bill adds new Code section 535B.17, which creates a new  
7 27 mortgage bankers and brokers board, composed of the  
7 28 superintendent of banking and five other members appointed by  
7 29 the governor, who meet at least six times per year, to advise  
7 30 on matters pertaining to Code chapter 535B.

7 31 The bill takes effect January 1, 2003.

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