

House Study Bill 73

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE, REGULATION AND
LABOR BILL BY CHAIRPERSON
B. HANSEN)

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

A BILL FOR

1 An Act providing for the licensing and regulation of mortgage
2 originators, providing penalties, and providing an effective
3 date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1606HC 80
6 av/pj/5

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1 1 Section 1. NEW SECTION. 535D.1 SHORT TITLE.
1 2 This chapter may be cited as the "Iowa Mortgage Originator
1 3 Licensing Act".
1 4 Sec. 2. NEW SECTION. 535D.2 DEFINITIONS.
1 5 For purposes of this chapter, unless the context otherwise
1 6 requires:
1 7 1. "Administrator" means the superintendent of banking of
1 8 the department of commerce.
1 9 2. "Consumer reporting agency" has the same meaning as in
1 10 the federal Fair Credit Reporting Act, 15 U.S.C. } 1681, et.
1 11 seq.
1 12 3. "First mortgage loan" means a loan of money secured by
1 13 a first lien on residential real property and includes a
1 14 refinancing of a contract of sale, an assumption of a prior
1 15 loan, and a refinancing of a prior loan.
1 16 4. "Licensee" means, in addition to the definition in
1 17 section 535B.1, any person that has been issued a mortgage
1 18 originator license under this chapter.
1 19 5. "Mortgage banker" means a person who does one or more
1 20 of the following:
1 21 a. Makes at least four first mortgage loans on residential
1 22 real property located in this state in a calendar year.
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. 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 6. "Mortgage broker" means a person who arranges or
1 35 negotiates, or attempts to arrange or negotiate, at least four
2 1 first mortgage loans or commitments for four or more such
2 2 loans on residential real property located in this state in a
2 3 calendar year.
2 4 7. "Mortgage loan" as used and subject to this section
2 5 means a loan as defined in section 535.8, or a first mortgage
2 6 loan as defined in section 535B.1.
2 7 8. "Mortgage originator" means a person who meets all of
2 8 the following:
2 9 a. Engages in or originates mortgage loans or contract
2 10 sales as, or on behalf of, a mortgage broker, professional
2 11 contract seller, or mortgage banker in consideration of direct
2 12 or indirect gain, profit, fees, or charges.
2 13 b. Is registered with or licensed by the administrator as
2 14 required by this chapter.
2 15 c. Whose conduct of mortgage lending activities as noted
2 16 in paragraph "d" is the responsibility of the licensee or
2 17 registrant.
2 18 d. Whose responsibilities include direct contact with
2 19 borrowers during the loan origination process, which can
2 20 include soliciting, negotiating, acquiring, arranging, or

2 21 making mortgage loans for others, obtaining personal or
2 22 financial information, assisting with the preparation of loan
2 23 applications or other documents, quoting loan rates or other
2 24 terms, or providing required disclosures. It does not mean a
2 25 person whose job responsibilities on behalf of a licensee or
2 26 registrant are to process mortgage loans or are solely
2 27 clerical in nature.

2 28 9. "Natural person" means an individual who is not an
2 29 association, joint venture or joint stock company,
2 30 partnership, limited partnership, business corporation,
2 31 nonprofit corporation, other business entity, or any other
2 32 group of individuals or business entities, however organized.

2 33 10. "Person" means an individual, association, joint
2 34 venture or joint stock company, partnership, limited
2 35 partnership, business corporation, nonprofit corporation, or
3 1 any other group of individuals, however organized.

3 2 11. "Registrant" means a person registered under section
3 3 535B.3.

3 4 12. "Residential real property" means real property, which
3 5 is an owner-occupied single-family or two-family dwelling,
3 6 located in this state, occupied or used or intended to be
3 7 occupied or used for residential purposes, including an
3 8 interest in any real property subject to chapter 499B.

3 9 Sec. 3. NEW SECTION. 535D.3 LICENSING REQUIREMENT.

3 10 A person, on the person's own behalf or on behalf of any
3 11 other person, shall not act as a mortgage originator without
3 12 first obtaining a license from the administrator. This
3 13 license shall include every office at which business is to be
3 14 conducted by the person as a mortgage originator.

3 15 Sec. 4. NEW SECTION. 535D.4 EXEMPTIONS.

3 16 This chapter does not apply to any of the following:

3 17 1. A bank, savings bank, savings and loan association, or
3 18 credit union organized under the laws of this state, another
3 19 state, or the United States, or a subsidiary or affiliate of a
3 20 bank, savings and loan association, or credit union.

3 21 2. A consumer reporting agency that is in substantial
3 22 compliance with the federal Fair Credit Reporting Act, 15
3 23 U.S.C. } 1681, et. seq.

3 24 3. A political subdivision, or any governmental or other
3 25 public entity, corporation, or agency of this state, another
3 26 state, or the United States.

3 27 4. A mortgage banker who makes, services, buys, or sells
3 28 mortgage loans, underwrites the loans, and meets at least one
3 29 of the following criteria:

3 30 a. The mortgage banker has been directly approved by the
3 31 United States department of housing and urban development as a
3 32 nonsupervised mortgagee with participation in the direct
3 33 endorsement program. This includes a person that has been
3 34 directly approved by the United State department of housing
3 35 and urban development as a nonsupervised mortgagee with
4 1 participation in the direct endorsement program and makes
4 2 loans in excess of the applicable loan limit set by the
4 3 federal national mortgage association, provided that the loans
4 4 in all respects, except loan amounts, comply with the
4 5 underwriting and documentation requirements of the United
4 6 States department of housing and urban development. This does
4 7 not include a mortgagee approved as a loan correspondent.

4 8 b. The mortgage banker has been directly approved by the
4 9 federal national mortgage association as a seller or servicer.
4 10 This includes a person that has been directly approved by the
4 11 federal national mortgage association as a seller or servicer
4 12 and makes loans in excess of the applicable loan limit set by
4 13 the federal national mortgage association, provided that the
4 14 loans in all respects, except loan amounts, comply with the
4 15 underwriting and documentation requirements of the federal
4 16 national mortgage association.

4 17 c. The mortgage banker has been directly approved by the
4 18 federal home loan mortgage corporation as a seller or
4 19 servicer. This includes a person that has been directly
4 20 approved by the federal home loan mortgage corporation as a
4 21 seller or servicer and makes loans in excess of the applicable
4 22 loan limit set by the federal national mortgage association,
4 23 provided that the loans in all respects, except loan amounts,
4 24 comply with the underwriting and documentation requirements of
4 25 the federal home loan mortgage corporation.

4 26 d. The mortgage banker has been directly approved by the
4 27 United States department of veterans affairs as a
4 28 nonsupervised automatic lender. This paragraph does not
4 29 include a person directly approved by the United States
4 30 department of veterans affairs as a nonsupervised lender, or
4 31 an agent of a nonsupervised lender.

4 32 5. A nonprofit organization qualifying for tax-exempt
4 33 status under the Internal Revenue Code as defined in section
4 34 422.3, which offers housing services to low and moderate
4 35 income families.

5 1 6. An individual who with the individual's own funds for
5 2 the individual's own investment makes a purchase money
5 3 mortgage or finances the contract sale of the individual's own
4 4 property, except that any person who enters into more than
5 5 three such investments or sales in any calendar year shall be
5 6 subject to all of the provisions of this chapter.

5 7 7. An individual who is employed by a person exempt from
5 8 this chapter is also exempt from the requirements of this
5 9 chapter to the extent that the individual is acting within the
5 10 scope of the individual's employment and within the scope of
5 11 the exempt person's charter, license, authority, approval, or
5 12 certificate.

5 13 Sec. 5. NEW SECTION. 535D.5 MORTGAGE ORIGINATOR
5 14 LICENSING REQUIREMENTS.

5 15 1. An application for a license as a mortgage originator
5 16 shall be submitted in writing to the administrator on forms
5 17 provided by the administrator. The application shall be
5 18 accompanied by a nonrefundable application fee of one hundred
5 19 dollars and shall include the following:

5 20 a. The name and address of the applicant.

5 21 b. A statement as to whether the applicant has been
5 22 convicted of or pleaded guilty to any criminal offense
5 23 involving theft, receiving stolen property, embezzlement,
5 24 forgery, fraud, passing bad checks, money laundering, drug
5 25 trafficking, or any criminal offense involving money or
5 26 securities.

5 27 c. A statement as to whether the applicant has been
5 28 subject to an adverse judgment for conversion, embezzlement,
5 29 misappropriation of funds, fraud, misfeasance or malfeasance,
5 30 or breach of fiduciary duty.

5 31 d. Any further information that the administrator
5 32 requires.

5 33 2. Upon the filing of the application and payment of the
5 34 application fee, the administrator shall investigate the
5 35 applicant. The investigation shall include a criminal records
6 1 check utilizing the fingerprints of the applicant and a civil
6 2 records check for adverse judgments against an applicant. If,
6 3 in order to issue a license to an applicant, investigation by
6 4 the administrator outside this state is necessary, the
6 5 administrator may require the applicant to advance sufficient
6 6 funds to pay the actual expenses of the investigation, if it
6 7 appears that these expenses will exceed one hundred dollars.
6 8 The administrator shall provide the applicant with an itemized
6 9 statement of the actual expenses that the applicant is
6 10 required to pay.

6 11 3. If an application for a license does not contain all of
6 12 the information required under subsection 1, and if that
6 13 information is not submitted to the administrator within
6 14 ninety days after the administrator requests the information
6 15 in writing, the administrator may consider the application
6 16 withdrawn.

6 17 4. The business of a mortgage originator shall principally
6 18 be transacted at an office of a licensed mortgage broker or
6 19 mortgage banker that employs the mortgage originator. The
6 20 original mortgage originator's license shall be deposited with
6 21 and maintained by the mortgage broker or mortgage banker who
6 22 employs the mortgage originator at the main office of the
6 23 mortgage broker or mortgage banker. A copy of the mortgage
6 24 originator's license shall be maintained and made available to
6 25 the public on request, at the office where the mortgage
6 26 originator principally transacts business.

6 27 5. If a mortgage originator's employment is terminated,
6 28 the mortgage broker or mortgage banker shall return the
6 29 original mortgage originator's license to the administrator
6 30 within five business days after the termination. A mortgage
6 31 originator whose employment has been terminated by a mortgage
6 32 broker or mortgage banker may request the transfer of the
6 33 mortgage originator's license to another mortgage broker or
6 34 mortgage banker by submitting a relocation application, along
6 35 with a fifteen dollar fee, to the administrator or may request
7 1 the administrator to hold the license in escrow for a period
7 2 not to exceed one year. A mortgage originator whose license
7 3 is held in escrow shall cease activity as a mortgage
7 4 originator while the license is in escrow.

7 5 6. A mortgage broker or mortgage banker may employ a
7 6 mortgage originator on a temporary basis pending the transfer
7 7 of the mortgage originator's license to the mortgage broker or

7 8 mortgage banker, if the mortgage broker or mortgage banker
7 9 receives written confirmation from the administrator that the
7 10 mortgage originator is licensed under this chapter.

7 11 7. Licenses granted under this chapter are not assignable
7 12 and cannot be franchised by contract or other means.

7 13 8. Upon the conclusion of an investigation required under
7 14 this section, the administrator shall issue a mortgage
7 15 originator license to the applicant if the administrator finds
7 16 that all of the following conditions are met:

7 17 a. The application is accompanied by the application fee.
7 18 If a check of other draft instrument is returned to the
7 19 administrator for insufficient funds, the administrator shall
7 20 notify the applicant by restricted certified mail that the
7 21 license issued in reliance on the check or other draft
7 22 instrument will be canceled unless the applicant, within
7 23 thirty days after receipt of the notice of insufficient funds,
7 24 submits the application fee and a one hundred dollar penalty
7 25 payment to the administrator. If the applicant does not
7 26 submit the application fee and penalty payment within that
7 27 time period, or if any check or other draft instrument used to
7 28 pay the fee or penalty payment is returned to the
7 29 administrator for insufficient funds, the mortgage originator
7 30 license shall be canceled immediately without a hearing and
7 31 the applicant shall cease activity as a mortgage originator.

7 32 b. The applicant has not been convicted of or pleaded
7 33 guilty to any criminal offense described in this section, or,
7 34 if the applicant has been convicted of or pleaded guilty to
7 35 such an offense, the applicant has proven to the
8 1 administrator, by a preponderance of the evidence, that the
8 2 applicant's activities and employment record since the
8 3 conviction show that the applicant is honest, truthful, and of
8 4 good reputation, and no basis exists in fact for believing
8 5 that the applicant will commit such an offense again.

8 6 c. The applicant has not been subject to an adverse
8 7 judgment for conversion, embezzlement, misappropriation of
8 8 funds, fraud, misfeasance or malfeasance, or breach of
8 9 fiduciary duty, or, if the applicant has been subject to such
8 10 judgment, the applicant has proven to the administrator, by a
8 11 preponderance of the evidence, that the applicant's activities
8 12 and employment record since the judgment show that applicant
8 13 is honest, truthful, and of good reputation, and no basis
8 14 exists in fact for believing that the applicant will be
8 15 subject to such a judgment again.

8 16 d. The applicant's character and general fitness command
8 17 the confidence of the public and warrant belief that the
8 18 applicant will conduct business as a mortgage originator
8 19 honestly and fairly in compliance with this chapter.

8 20 e. (1) The applicant has successfully completed an
8 21 examination approved by the administrator. Requirements for
8 22 content and passage of the examination shall be determined by
8 23 administrative rule of the administrator.

8 24 (2) An applicant who certifies on the application required
8 25 by this section that the applicant has one year or more of
8 26 experience as a mortgage originator as of the effective date
8 27 of this Act shall be exempt from the examination required by
8 28 subparagraph (1). A certification of the applicant's prior
8 29 experience as a mortgage originator must also be made on the
8 30 application by the mortgage broker or mortgage banker licensed
8 31 under chapter 535B who employs the applicant. Failure to
8 32 comply with this certification of prior experience shall
8 33 subject the applicant to immediate license suspension or
8 34 revocation under section 535D.8.

8 35 Sec. 6. NEW SECTION. 535D.6 LICENSE RENEWAL APPLICATIONS
9 1 AND CONTINUING EDUCATION.

9 2 1. A mortgage originator license issued under this chapter
9 3 may be renewed annually on or before April 30 if the
9 4 administrator finds that all of the following conditions are
9 5 met:

9 6 a. The license renewal application is accompanied by a
9 7 nonrefundable fee of one hundred dollars. If a check or other
9 8 draft instrument is returned to the administrator for
9 9 insufficient funds, the administrator shall notify the
9 10 licensee by restricted certified mail that the license renewed
9 11 in reliance on the check or other draft instrument will be
9 12 canceled unless the licensee, within thirty days after receipt
9 13 of the notice, submits the license renewal fee and a one
9 14 hundred dollar penalty payment to the administrator. If the
9 15 licensee does not submit a license renewal fee and penalty
9 16 payment within that time period, or if any check or other
9 17 draft instrument used to pay the license renewal fee or
9 18 penalty payment is returned to the administrator for

9 19 insufficient funds, the license shall be canceled immediately
9 20 without a hearing and the licensee shall cease activity as a
9 21 mortgage originator.

9 22 b. On January 1, 2005, and each year thereafter, the
9 23 mortgage originator has completed, during the immediately
9 24 preceding calendar year, at least six hours of continuing
9 25 education in a course or program of study approved by the
9 26 administrator.

9 27 c. The licensee continues to meet the requirements of
9 28 section 535D.5, subsection 8, paragraphs "b", "c", and "d",
9 29 regarding criminal offenses, judgments, and character.

9 30 d. The licensee's license is not subject to an order of
9 31 suspension or revocation by the administrator.

9 32 2. If a license renewal application or license renewal fee
9 33 is received by the administrator after April 30, the mortgage
9 34 originator license shall not be considered renewed, and the
9 35 licensee shall cease activity as a mortgage originator.

10 1 3. Subsection 2 does not apply if the licensee, no later
10 2 than May 31, submits the license renewal application and fee
10 3 and a one hundred dollar penalty payment to the administrator.

10 4 Sec. 7. NEW SECTION. 535D.7 RECORDS AND INFORMATION.

10 5 1. As often as the administrator deems necessary, the
10 6 administrator may examine the records of a registrant under
10 7 section 535B.3, or a licensee's records pertaining to business
10 8 transacted under this chapter.

10 9 2. A person licensed under chapter 535B shall maintain
10 10 records pertaining to business transacted pursuant to this
10 11 chapter for four years. A licensee shall not fail to comply
10 12 with this subsection.

10 13 3. The following information shall be kept confidential,
10 14 notwithstanding chapter 22:

10 15 a. Information regarding the content or passage of a
10 16 licensing examination required by this chapter, and any
10 17 information leading to or arising from a licensing
10 18 examination.

10 19 b. Information obtained from an investigation required by
10 20 this chapter, and any information arising from or leading to
10 21 such an investigation.

10 22 4. The information described in subsection 3 shall remain
10 23 confidential for all purposes except when it is necessary for
10 24 the administrator to take official action regarding the
10 25 affairs of a licensee or registrant, or in connection with
10 26 civil or criminal investigations or proceedings conducted by
10 27 the attorney general or a county attorney. The administrator
10 28 may share examination and investigation information with any
10 29 law enforcement agency or any other state or federal
10 30 regulatory agency. Any information shared with the attorney
10 31 general, a county attorney, or a law enforcement agency or
10 32 other state or federal regulatory agency shall remain
10 33 confidential and shall only be used in connection with an
10 34 official investigation, proceeding, or action.

10 35 5. All information contained on an application for a
11 1 license under this chapter, except social security numbers,
11 2 employer identification numbers, financial account numbers,
11 3 the identity of the institution where financial accounts are
11 4 maintained, personal financial information, fingerprint cards
11 5 and the information contained on such cards, and criminal
11 6 background information, is a public record as defined in
11 7 section 22.1.

11 8 Sec. 8. NEW SECTION. 535D.8 PROHIBITIONS AND SUSPENSION
11 9 OR REVOCATION OF LICENSE.

11 10 1. The administrator may, pursuant to chapter 17A, suspend
11 11 or revoke any license issued pursuant to this chapter if the
11 12 administrator finds that an applicant or a licensee has done
11 13 any of the following:

11 14 a. Obtained a license under this chapter by making a false
11 15 or fraudulent representation of a material fact or an omission
11 16 of a material fact required by state law, or making a
11 17 substantial misrepresentation in a license application.

11 18 b. Made false or misleading statements of material fact,
11 19 omissions of statements required by state law, or false
11 20 promises regarding a material fact, through advertising or
11 21 other means, or engaged in a continued course of
11 22 misrepresentations.

11 23 c. Engaged in conduct that constitutes improper,
11 24 fraudulent, or dishonest dealings.

11 25 d. Failed to notify the administrator within thirty days
11 26 after the licensee, or applicant, in a court of competent
11 27 jurisdiction of this state or any other state, has been
11 28 convicted of or plead guilty to a criminal offense involving
11 29 theft, receiving stolen property, embezzlement, forgery,

11 30 fraud, passing bad checks, money laundering, or drug
11 31 trafficking, or any criminal offense involving money or
11 32 securities.

11 33 e. Knowingly made, proposed, or solicited fraudulent,
11 34 false, or misleading statements on a mortgage document or on
11 35 any document related to a mortgage, including a mortgage
12 1 application, real estate appraisal, or real estate settlement
12 2 or closing document. For purposes of this paragraph,
12 3 "fraudulent, false, or misleading statements" does not include
12 4 mathematical errors, or any other bona fide error.

12 5 f. Knowingly instructed, solicited, proposed, or otherwise
12 6 caused a buyer to sign in blank a mortgage-related document.

12 7 g. In connection with an examination or investigation
12 8 conducted by the administrator under this chapter or chapter
12 9 535B, knowingly has done either of the following:

12 10 (1) Circumvented, interfered with, obstructed, or failed
12 11 to cooperate with the administrator, including making a false
12 12 or misleading statement, failing to produce records, or
12 13 intimidating or suborning a witness.

12 14 (2) Tampered with, altered, or manufactured any evidence.

12 15 2. The administrator may order an emergency suspension of
12 16 a licensee's license pursuant to section 17A.18A. A written
12 17 order containing the facts or conduct which warrants the
12 18 emergency action shall be timely sent to the licensee by
12 19 restricted certified mail. Upon issuance of the suspension
12 20 order, the licensee must also be notified of the right to an
12 21 evidentiary hearing. A suspension proceeding shall be
12 22 promptly instituted and decided.

12 23 Except as provided in this section, a license shall not be
12 24 revoked or suspended except after notice and hearing in
12 25 accordance with chapter 17A.

12 26 3. A licensee may surrender a license by delivering to the
12 27 administrator written notice of surrender, but a surrender
12 28 does not affect the licensee's civil or criminal liability for
12 29 acts committed before the surrender.

12 30 4. A revocation, suspension, or surrender of a license
12 31 does not impair or affect the obligation of a preexisting
12 32 lawful contract between the licensee and any person, including
12 33 a mortgagor.

12 34 Sec. 9. NEW SECTION. 535D.9 OPERATING WITHOUT A LICENSE.
12 35 A person who, without first obtaining a license under this
13 1 chapter, engages in the business or occupation of, or
13 2 advertises or holds the person out as, or claims to be, or
13 3 temporarily acts as, a mortgage originator in this state is
13 4 guilty of a class "D" felony and may be prosecuted by the
13 5 attorney general or a county attorney.

13 6 Sec. 10. NEW SECTION. 535D.10 ADVERTISING.
13 7 A licensee under this chapter shall disclose in any
13 8 printed, televised, broadcast, electronically transmitted, or
13 9 published advertisement, or electronic site accessible through
13 10 the internet, relating to the mortgage originator's services,
13 11 the name and street address of at least one of the mortgage
13 12 originator's licensed office locations and the number
13 13 designated on the license issued by the administrator to at
13 14 least one of the mortgage originators located at that licensed
13 15 office location.

13 16 Sec. 11. NEW SECTION. 535D.11 ENFORCEMENT.
13 17 1. a. For the purpose of this subsection, "administrator"
13 18 means either the superintendent of banking or the official or
13 19 agency charged with enforcing this chapter, or parts thereof,
13 20 against the person under investigation.

13 21 b. If the administrator has reason to believe that a
13 22 person has been or is in violation of this chapter or rules
13 23 adopted pursuant to this chapter, after notice and hearing,
13 24 the administrator may order a person to cease and desist from
13 25 violating this chapter or rules adopted pursuant to this
13 26 chapter.

13 27 c. The administrator, upon such hearing, may administer
13 28 oaths, examine and cross-examine witnesses, receive evidence,
13 29 and shall have the power to subpoena witnesses, compel their
13 30 attendance, and require the production of all records or other
13 31 documents which the administrator deems relevant to the
13 32 inquiry. In case of a refusal of a person to comply with a
13 33 subpoena issued under this paragraph or to testify with
13 34 respect to any matter relevant to the proceeding, on
13 35 application of the administrator, the district court of Polk
14 1 county may issue an order requiring the person to comply with
14 2 the subpoena and to testify. A failure to obey an order of
14 3 the court to comply with the subpoena may be punished by the
14 4 court as a civil contempt. A cease and desist hearing need
14 5 not observe any formal rules of pleading or evidence.

14 6 d. If after the hearing, the administrator finds that the
14 7 person charged has violated this chapter or rules adopted
14 8 pursuant to this chapter, the administrator shall issue
14 9 written findings, a copy of which shall be served upon the
14 10 person charged with the violations, along with an order
14 11 requiring the person to cease and desist from engaging in the
14 12 violations.

14 13 e. A person aggrieved by a cease and desist order of the
14 14 administrator may obtain judicial review of the order and the
14 15 administrator may obtain an order in either the county in
14 16 which the violation occurred or in Polk county district court
14 17 for the enforcement of the cease and desist order.

14 18 f. A proceeding for review must be initiated within thirty
14 19 days after the aggrieved person receives the cease and desist
14 20 order. If a proceeding is not initiated, the administrator
14 21 may obtain a decree in either the county in which the
14 22 violation occurred or in Polk county district court for
14 23 enforcement of the cease and desist order.

14 24 g. A person who violates a cease and desist order of the
14 25 administrator may, after notice and hearing, and upon further
14 26 order of the administrator, be subject to a penalty of not
14 27 more than five thousand dollars for each act or violation of
14 28 the cease and desist order.

14 29 2. The administrator may request the attorney general to
14 30 enforce this chapter. A civil enforcement action by the
14 31 attorney general may be filed in equity in either the county
14 32 in which the violation occurred or in Polk county. A civil
14 33 enforcement action by the attorney general may seek any or all
14 34 of the following:

14 35 a. Temporary and permanent injunctive relief.

15 1 b. Restitution for a mortgagor aggrieved by a violation of
15 2 this chapter.

15 3 c. Costs for the investigation and prosecution of the
15 4 enforcement action including attorney fees.

15 5 3. This chapter does not limit the power of the attorney
15 6 general to determine that any other practice is unlawful under
15 7 section 714.16, relating to consumer frauds, and to file an
15 8 action under that section.

15 9 Sec. 12. NEW SECTION. 535D.12 RULEMAKING AUTHORITY.

15 10 The administrator may adopt rules pursuant to chapter 17A
15 11 to administer and enforce this chapter.

15 12 Sec. 13. NEW SECTION. 535D.13 LIABILITY OF STATE.

15 13 An act or omission by the state pursuant to this chapter
15 14 including, but not limited to, an examination, inspection,
15 15 audit, or other financial oversight responsibility shall not
15 16 subject the state to liability.

15 17 Sec. 14. EFFECTIVE DATE. This Act takes effect January 1,
15 18 2004.

15 19 EXPLANATION

15 20 This bill creates a new Code chapter 535D that provides for
15 21 the licensing and regulation of mortgage originators by the
15 22 superintendent of banking of the department of commerce. The
15 23 bill defines a "mortgage originator" as a person who engages
15 24 in or originates residential mortgage loans or contract sales
15 25 for money or other gain, is registered or licensed pursuant to
15 26 this Code chapter, and who has responsibility for conducting a
15 27 variety of mortgage lending activities but not including a
15 28 person whose job responsibilities are to process mortgage
15 29 loans or are solely clerical in nature. The bill does not
15 30 apply to banks, savings banks, savings and loan associations,
15 31 or credit unions, to consumer reporting agencies in
15 32 substantial compliance with the federal Fair Credit Reporting
15 33 Act, to a political subdivision or any other governmental or
15 34 public entity, to certain mortgage bankers, to nonprofit
15 35 organizations qualifying for tax-exempt status, to an
16 1 individual who makes three or less purchase money mortgages or
16 2 contract sales a year with the individual's own funds, or to a
16 3 person who is employed by a person who is exempt from this
16 4 Code chapter.

16 5 The bill provides that the superintendent of banking shall
16 6 oversee the application, licensing requirements, and
16 7 investigation and examination of applicants, and the license
16 8 renewal and continuing education requirements for a license
16 9 issued pursuant to this Code chapter. The bill provides that
16 10 an applicant with one or more years of experience as a
16 11 mortgage originator as of the effective date of the bill is
16 12 exempt from the examination requirements for a license.

16 13 The bill provides that the superintendent of banking, as
16 14 the administrator of the Code chapter, may examine the records
16 15 of a mortgage banker or broker licensed pursuant to Code
16 16 chapter 535B and registered under the new Code chapter 535D or

16 17 a licensee under new Code chapter 535D pertaining to business
16 18 transacted under this chapter.

16 19 The bill provides for the conditions under which the
16 20 superintendent of banking can suspend or revoke a license
16 21 issued under this Code chapter and provides for notice,
16 22 hearing, and appeal of such a decision to suspend or revoke.

16 23 The bill provides that a person who operates without a
16 24 license required by the bill is guilty of a class "D" felony
16 25 and may be prosecuted by the attorney general or a county
16 26 attorney. A class "D" felony is punishable by confinement for
16 27 no more than five years and a fine of at least \$750 but not
16 28 more than \$7,500.

16 29 The bill provides that a licensee who advertises mortgage
16 30 originator services must give the name and address of at least
16 31 one licensed office location and the license number of at
16 32 least one mortgage originator in the advertisement.

16 33 The bill provides that the Code chapter can be enforced by
16 34 either the superintendent of banking or the official or agency
16 35 charged with enforcing this Code chapter. The administrator
17 1 can order a cease and desist order after notice and hearing to
17 2 a person in violation of the Code chapter. The bill provides
17 3 that violation of a cease and desist order may subject the
17 4 violator to a penalty of \$5,000 for each act or violation of
17 5 the order. The bill also provides that the attorney general
17 6 may be requested to enforce the chapter by seeking temporary
17 7 or permanent injunctive relief, restitution for a mortgagor,
17 8 or costs for the investigation and prosecution of the
17 9 enforcement action including attorney fees. The bill does not
17 10 limit any available remedies under Code section 714.16
17 11 concerning consumer frauds.

17 12 The bill allows the superintendent of banking to adopt
17 13 administrative rules to administer and enforce the Code
17 14 chapter. The bill also provides that the state is not liable
17 15 for any act or omission pursuant to the Code chapter.

17 16 The bill takes effect January 1, 2004.

17 17 LSB 1606HC 80

17 18 av/pj/5