

Senate Study Bill 3111 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
INSURANCE AND FINANCIAL
SERVICES BILL)

A BILL FOR

1 An Act relating to mortgage administration and mortgage
2 servicers.

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

1 Section 1. Section 535B.1, Code 2024, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 1A. "*Branch office*" means any location,
4 other than a licensee's principal place of business or a remote
5 location, where the licensee, the licensee's employees, or the
6 licensee's independent contractors maintain a physical presence
7 to engage in business as a mortgage banker or a mortgage
8 broker.

9 NEW SUBSECTION. 8A. "*Principal place of business*" means
10 a licensee's primary business office as designated on the
11 licensee's application for licensure.

12 NEW SUBSECTION. 11A. "*Remote location*" means a physical
13 location in the United States, other than a licensee's
14 principal place of business or a branch office, where a
15 licensee's employee or an independent contractor of the
16 licensee is authorized by the licensee to engage in business as
17 a mortgage banker or mortgage broker.

18 Sec. 2. Section 535B.4, subsection 2, paragraph a, Code
19 2024, is amended to read as follows:

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

28 Sec. 3. Section 535B.4, subsections 9 and 10, Code 2024, are
29 amended to read as follows:

30 9. A licensee ~~may~~ shall not establish a branch ~~locations~~
31 office outside of the United States.

32 10. In addition to the application and renewal fees provided
33 for in subsections 4 and 7, the administrator may assess
34 application and renewal fees for each branch ~~location~~ office of
35 the licensee, sponsor fees, and change of sponsor fees.

1 Sec. 4. Section 535B.11, subsection 3, paragraph a, Code
2 2024, is amended by striking the paragraph and inserting in
3 lieu thereof the following:

4 a. Perform an annual escrow analysis for each escrow
5 account. A clear and legible copy of the annual escrow
6 analysis shall be delivered to the mortgagor within thirty
7 calendar days of the end of the escrow account computation
8 year, as defined in 12 C.F.R. §1024.17, to which disclosure
9 relates, and shall include the information required for annual
10 escrow account statements under 12 C.F.R. §1024.17.

11 Sec. 5. Section 535B.11, subsection 4, Code 2024, is amended
12 to read as follows:

13 4. ~~Answer As required by 12 C.F.R. §1026.36, answer in~~
14 ~~writing, within ten business days of receipt,~~ any written
15 request for payoff information received from a mortgagor or the
16 mortgagor's designated representative.

17 Sec. 6. Section 535B.16, Code 2024, is amended to read as
18 follows:

19 **535B.16 Notice to administrator.**

20 A licensee or registrant maintaining ~~an~~ a branch office in
21 the state shall notify the administrator in writing at least
22 thirty days before closing or otherwise ceasing operations at
23 any branch office in the state.

24 Sec. 7. NEW SECTION. **535B.21 Remote work.**

25 A licensee may authorize work at a remote location provided
26 all of the following requirements are met:

27 1. In-person customer interaction does not occur at the
28 residence of an employee or an independent contractor.

29 2. The licensee's physical records are not maintained at a
30 remote location.

31 3. The licensee establishes, supervises, and enforces
32 written policies and procedures to ensure that all employees
33 and independent contractors working from a remote location
34 comply with all applicable state and federal laws and rules.

35 4. The licensee maintains the computer system used to

1 enable employees and independent contractors to work from a
2 remote location, and all customer information is maintained in
3 accordance with the licensee's written information technology
4 security plan and all applicable state and federal laws and
5 rules.

6 5. Employees and independent contractors who work from
7 a remote location only access the licensee's secure systems
8 directly from an out-of-office device using a virtual private
9 network or comparable system that requires a password or
10 other form of authentication to access, and ensures a secure
11 connection.

12 6. The licensee has the ability to remotely lock or erase
13 the licensee-related contents of any out-of-office device,
14 or otherwise remotely limit access to the licensee's secure
15 systems.

16 7. The licensee ensures the installation and maintenance of
17 all appropriate security updates, patches, or other alterations
18 to the security of all devices used at remote locations to
19 access the licensee's computer system.

20 8. The licensee ensures that all customer interactions
21 and communications regarding customers comply with federal
22 and state information security requirements, including but
23 not limited to the federal Gramm-Leach-Bliley Act of 1999,
24 15 U.S.C. §6801 et seq., and the federal standards for
25 safeguarding customer information in 16 C.F.R. pt. 314.

26 9. The licensee annually certifies that all employees
27 and independent contractors working from a remote location
28 comply with this section. The licensee shall make written
29 documentation of the certification available to the
30 administrator upon request.

31 10. The record of a mortgage loan originator working from a
32 remote location that is contained in the nationwide mortgage
33 licensing system and registry designates a licensed location as
34 the mortgage loan originator's official work location.

35 Sec. 8. NEW SECTION. 535B.22 Definitions.

1 As used in this subchapter unless the context otherwise
2 provides:

3 1. "*Administrator*" means the superintendent of the division
4 of banking of the department of insurance and financial
5 services.

6 2. "*Allowable assets for liquidity*" means any of the
7 following assets that may be used to satisfy the liquidity
8 requirements under section 535B.24:

9 a. Unrestricted cash and cash equivalents.

10 b. Unencumbered investment grade assets held for sale or
11 trade, including agency mortgage-backed securities, obligations
12 of government-sponsored enterprises, and United States treasury
13 obligations.

14 3. "*Board of directors*" means the formal body established
15 by a covered institution that is responsible for corporate
16 governance and compliance with sections 535B.24 and 535B.25.

17 4. "*Corporate governance*" means the structure of a covered
18 institution and how the covered institution is managed,
19 including but not limited to the corporate rules, policies,
20 processes, and practices used to oversee and manage the covered
21 institution.

22 5. "*Covered institution*" means a mortgage servicer that
23 services, or subservices for others, two thousand or more
24 residential mortgage loans and loans being interim serviced
25 prior to sale, excluding whole loans owned, as of the most
26 recent calendar year end as reported on the nationwide mortgage
27 licensing system mortgage call report.

28 6. "*External audit*" means a formal report prepared by an
29 independent certified public accountant expressing an opinion
30 on whether a company's financial statements are presented
31 fairly, in all material respects, in accordance with the
32 applicable financial reporting framework, and includes an
33 evaluation of the company's internal control structure.

34 7. "*Government-sponsored enterprise*" means the federal
35 national mortgage association or the federal home loan mortgage

1 corporation.

2 8. *"Interim serviced prior to sale"* means the activity of
3 collecting a limited number of contractual mortgage payments
4 immediately after origination on loans held for sale, but no
5 longer than a period of ninety days prior to the loans being
6 sold into the secondary market.

7 9. *"Internal audit"* means independent and objective
8 assurance and consulting performed internally by a company
9 to evaluate and improve the effectiveness of the company's
10 operations, risk management, internal controls, and governance
11 processes.

12 10. *"Mortgage-backed security"* means a financial instrument,
13 including but not limited to a debt security, collateralized by
14 residential mortgages.

15 11. *"Mortgage call report"* means the quarterly or annual
16 report of residential real estate loan origination, servicing,
17 and financial information filed by companies licensed in the
18 nationwide mortgage licensing system and registry.

19 12. *"Mortgage servicer"* or *"servicer"* means a person that
20 performs, under the terms of a servicing contract, the routine
21 administration of residential mortgage loans on behalf of the
22 owner or owners of the related mortgages.

23 13. *"Mortgage servicing rights"* means the contractual right
24 to service a residential mortgage loan on behalf of the owner
25 of the associated mortgage in exchange for the compensation
26 specified in the applicable servicing contract.

27 14. *"Mortgage servicing rights investor"* means a person
28 that invests in and owns mortgage servicing rights and relies
29 on subservicers to administer mortgage loans on behalf of the
30 person.

31 15. *"Nationwide mortgage licensing system and registry"* means
32 the same as defined in section 535D.3.

33 16. *"Operating liquidity"* means the financial resources
34 necessary for a person to perform the person's normal business
35 operations, including but not limited to payment of rent,

1 salaries, interest expenses, and other typical expenses
2 associated with operating the business.

3 17. "*Person*" means a natural person, an association,
4 joint venture or joint stock company, partnership, limited
5 partnership, business corporation, nonprofit corporation, or
6 any other group of individuals however organized.

7 18. "*Reverse annuity mortgage loan*" means the same as
8 defined in section 528.2.

9 19. "*Risk management assessment*" means a functional
10 evaluation performed under a risk management program, and the
11 report provided to the covered institution's board of directors
12 under a relevant governance protocol.

13 20. "*Risk management program*" means written policies and
14 procedures commensurate with a covered institution's size and
15 complexity designed to identify, measure, monitor, and mitigate
16 risk.

17 21. "*Servicing liquidity*" or "*liquidity*" means the
18 financial resources necessary to manage the risk arising
19 from servicing functions required in acquiring and financing
20 mortgage servicing rights; hedging costs, including margin
21 calls, associated with the mortgage servicing rights asset
22 and financing facilities; and advances or costs of advance
23 financing for principal, interest, taxes, insurance, and any
24 other servicing related advances.

25 22. "*Subservicer*" means a person that performs, under the
26 terms of a subservicing contract, routine administration of
27 residential mortgage loans as the agent of a servicer or of a
28 mortgage servicing rights investor.

29 23. "*Tangible net worth*" means total equity less the
30 receivables due from related entities, and less goodwill and
31 other intangibles, and less pledged assets.

32 24. "*Whole loan*" means a loan where a mortgage and the
33 underlying credit risk is owned and held on a balance sheet of
34 the person possessing all ownership rights of the mortgage.

35 Sec. 9. NEW SECTION. 535B.23 **Applicability.**

1 1. This subchapter shall apply to covered institutions.
2 For entities within a holding company or an affiliated group
3 of companies, this subchapter shall apply at the covered
4 institution level.

5 2. This subchapter shall not apply to persons exempt from
6 licensing under section 535B.2.

7 Sec. 10. NEW SECTION. **535B.24 Financial condition.**

8 1. This section shall not apply to servicers that solely
9 own or conduct servicing on reverse annuity mortgage loans, or
10 to the reverse annuity mortgage loan portfolio administered by
11 a covered institution.

12 2. A covered institution shall maintain capital and
13 liquidity in compliance with this section, and all financial
14 data shall be determined in accordance with generally accepted
15 accounting principles.

16 3. A covered institution may satisfy subsection 2 by
17 complying with the capital, net worth ratio, and liquidity
18 standards of the federal housing finance agency's eligibility
19 requirements for enterprise single-family sellers or
20 servicers, regardless of whether the servicer is approved for
21 government-sponsored enterprise servicing.

22 4. A covered institution shall maintain the written
23 policies and procedures necessary to implement the capital and
24 liquidity requirements under this section. The policies and
25 procedures must include a sustainable written methodology to
26 comply with subsection 3, and shall be made available to the
27 administrator upon request.

28 5. *a.* A covered institution shall maintain sufficient
29 allowable assets for operating liquidity, in addition to the
30 amounts required for servicing liquidity, to sustain normal
31 business operations.

32 *b.* The covered institution shall develop, establish, and
33 implement written policies and procedures, using sustainable
34 documented methodologies, to maintain operating liquidity.
35 The policies and procedures shall be made available to the

1 administrator upon request.

2 6. A covered institution shall have a written cash
3 management plan and a written business operating plan
4 commensurate with the complexity of the covered institution
5 that ensures normal business operations.

6 Sec. 11. NEW SECTION. 535B.25 **Corporate governance.**

7 1. A covered institution shall establish and maintain a
8 board of directors that is responsible for oversight of the
9 covered institution. If a government-sponsored enterprise
10 or government national mortgage association has not approved
11 a covered institution to service loans, or has approved an
12 alternative to a board of directors, the covered institution
13 may establish a similar oversight committee for purposes of
14 exercising oversight and fulfilling the responsibilities under
15 subsection 2.

16 2. The board of directors, or a similar oversight committee
17 approved under subsection 1, shall do all of the following:

18 a. Establish a written corporate governance framework that
19 includes appropriate internal controls to monitor and assess
20 compliance with the corporate governance framework.

21 b. Make a copy of the corporate governance framework
22 available to the administrator upon request.

23 c. Monitor and ensure that the covered institution
24 complies with the corporate governance framework and with this
25 subchapter.

26 d. Perform accurate and timely regulatory reporting,
27 including filing the covered institution's mortgage call
28 report.

29 e. Establish internal audit requirements that are
30 appropriate for the size, complexity, and risk profile of the
31 covered institution, and ensure appropriate independence to
32 provide an unbiased evaluation of the covered institution's
33 internal control structure, risk management, and corporate
34 governance.

35 f. Ensure the covered institution establishes and maintains

1 a risk management program that identifies, measures, monitors,
2 and controls risk commensurate with the covered institution's
3 size and complexity. The risk management program must
4 include appropriate processes and models to measure, monitor,
5 and mitigate financial risks and changes to the covered
6 institution's risk profile and assets being serviced. The risk
7 management program shall address all of the following:

8 (1) The potential that a borrower or counterparty fails to
9 perform on an obligation.

10 (2) The potential that the covered institution is unable to
11 meet the covered institution's obligations as the obligations
12 come due as a result of an inability to liquidate assets or to
13 obtain adequate funding.

14 (3) The potential that the covered institution cannot
15 easily unwind or offset specific exposures.

16 (4) The risk resulting from inadequate or failed internal
17 processes, people, or systems; or from external events.

18 (5) The risk to the covered institution's condition
19 resulting from adverse movements in market rates or prices.

20 (6) The risk of regulatory sanctions, fines, penalties,
21 or losses resulting from the covered institution's failure to
22 comply with applicable laws and rules or other supervisory
23 requirements that apply to the covered institution.

24 (7) The potential that legal proceedings against the
25 covered institution may result in unenforceable contracts,
26 lawsuits, legal sanctions, or adverse judgements that
27 may disrupt or otherwise negatively affect the covered
28 institution's operations or condition.

29 (8) The risk to earnings and capital arising from negative
30 publicity regarding the covered institution's business
31 practices.

32 3. A covered institution shall undergo an annual external
33 audit and shall make the external audit available to the
34 administrator upon request. An external audit shall include,
35 at a minimum, all of the following:

- 1 *a.* An evaluation of the company's internal control
2 structure.
- 3 *b.* A review of the company's annual financial statements,
4 including the balance sheet, statement of operations,
5 and income statement, and cash flows, including notes and
6 supplemental schedules prepared in accordance with generally
7 accepted accounting principles.
- 8 *c.* A computation of the company's tangible net worth.
- 9 *d.* Validation of the company's mortgage servicing rights
10 valuation and reserve methodology, if applicable.
- 11 *e.* Verification the company has adequate fidelity and errors
12 and omissions insurance.
- 13 *f.* Testing of the company's controls related to risk
14 management activities, including compliance and stress testing,
15 if applicable.

16 4. A covered institution shall conduct an annual risk
17 management assessment and shall make the risk management
18 assessment available to the administrator upon request. A
19 risk management assessment shall include issue findings and
20 the response or action taken to address each issue. A covered
21 institution shall maintain ongoing documentation of risk
22 management activities and shall include the documentation in
23 the risk management assessment.

24 Sec. 12. CODE EDITOR DIRECTIVE. The Code editor shall
25 divide chapter 535B into subchapters and shall designate
26 sections 535B.1 through 535B.21, including sections amended
27 or enacted in this Act, as subchapter I entitled "Mortgage
28 Banking, Mortgage Brokers, and Closing Agents", and sections
29 535B.22 through 535B.25, as enacted in this Act, as subchapter
30 II entitled "Covered Institutions".

31

EXPLANATION

32 The inclusion of this explanation does not constitute agreement with
33 the explanation's substance by the members of the general assembly.

34 This bill relates to mortgage administration and mortgage
35 servicers.

1 The bill requires applicants for a mortgage banker, a
2 mortgage broker, or a closing agent license to submit to the
3 administrator an application on the provided forms containing,
4 in addition to other information laid out by the bill, the
5 address of the applicant's principal place of business and of
6 all branch offices where business is to be conducted, rather
7 than all addresses as required under current law. "Principal
8 place of business" and "branch office" are defined in the bill.

9 Current law requires a licensee or other mortgagee who
10 services mortgages on residential real estate located in
11 the state to answer in writing, within 10 business days,
12 any written request for payoff information received from a
13 mortgagor or the mortgagor's designated representative. The
14 bill requires the licensee or other mortgagee to answer as
15 required by 12 C.F.R. §1026.36.

16 The bill allows a licensee to authorize employees or
17 independent contractors (contractors) to work from a remote
18 location, as defined by the bill, provided that in-person
19 customer interaction does not occur at the residence of an
20 employee or contractor; physical records are not maintained
21 at the remote location; the licensee establishes and enforces
22 policies and procedures to ensure employees and contractors
23 comply with all applicable state and federal laws and rules;
24 the licensee maintains the computer system used by remote
25 employees and contractors and all customer information
26 is maintained in accordance with the licensee's written
27 information technology security plan, and all applicable state
28 and federal laws; remote employees and contractors access the
29 licensee's secure systems directly from an out-of-office device
30 using a virtual private network that requires authentication;
31 the licensee has the ability to remotely lock or erase
32 licensee-related contents of any device, or remotely limit
33 access to the licensee's secure systems; the licensee ensures
34 the installation and maintenance of appropriate alterations
35 to the security of all devices used at remote locations;

1 the licensee ensures that all communications regarding
2 customers comply with federal and state information security
3 requirements; and the licensee annually certifies that all
4 employees and contractors working from a remote location comply
5 with the requirements of the bill. In addition, the record of
6 a mortgage loan originator working from a remote location that
7 is contained in the nationwide mortgage licensing system and
8 registry must designate a licensed location as the mortgage
9 loan originator's official work location.

10 The bill requires a covered institution (institution)
11 to maintain capital and liquidity, with all financial data
12 determined in accordance with generally accepted accounting
13 principles. "Covered institution" is defined in the bill.
14 An institution may comply with the capital and liquidity
15 requirement by meeting the capital, net worth, and liquidity
16 standards set forth in the federal housing finance agency's
17 eligibility requirements for enterprise single-family
18 seller-servicers. An institution shall maintain written
19 policies and procedures implementing the capital and liquidity
20 requirements, including a sustainable written methodology
21 for satisfying the requirements; make the written policies
22 and procedures available to the administrator upon request;
23 maintain sufficient allowable assets for operating liquidity;
24 and have written cash management and business operating plans
25 that match the complexity of the institution and ensure normal
26 business operations. "Administrator" is defined in the bill as
27 the superintendent of the division of banking of the department
28 of insurance and financial services.

29 The bill requires an institution to establish and maintain
30 a board of directors, or, if approved, a similar body, to be
31 responsible for oversight of the covered institution. The
32 board of directors, or similar body, must establish a written
33 corporate governance framework; make the corporate governance
34 framework available to the administrator upon request;
35 monitor and ensure the covered institution complies with the

1 corporate governance framework and with the provisions of
2 the bill; perform accurate and timely regulatory reporting,
3 including filing the mortgage call report; establish internal
4 audit requirements that are appropriate for the institution,
5 and ensure appropriate independence to provide an unbiased
6 evaluation of the institution's internal control structure,
7 risk management, and governance; make the results of internal
8 audits available to the administrator upon request; and ensure
9 the institution establishes and maintains a risk management
10 program that identifies, measures, monitors, and controls risk
11 commensurate with the institution's size and complexity. The
12 requirements for the risk management program are detailed in
13 the bill. An institution is required to undergo an annual
14 external audit and to conduct an annual risk management
15 assessment, and make the results of each available to the
16 administrator upon request. "External audit" and "risk
17 management assessment" are defined in the bill.

18 The bill makes conforming changes to Code sections 535B.4
19 and 535B.16.