

FEB 19 2002

COMMERCE AND REGULATION

HOUSE FILE 2412

BY CHIODO, HATCH, KREIMAN,
and FALLON

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to consumer credit transactions secured by an
2 interest in real or personal property used as a primary
3 dwelling, making related changes, and providing a penalty.

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

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HF 2412

1 Section 1. Section 535.2, subsection 2, paragraph a,
2 subparagraph (2), Code 2001, is amended by striking the
3 subparagraph.

4 Sec. 2. Section 535.2, subsection 2, paragraph a,
5 subparagraph (5), Code 2001, is amended to read as follows:

6 (5) A person borrowing money or obtaining credit for
7 business or agricultural purposes, or a person borrowing money
8 or obtaining credit ~~in an amount which exceeds twenty-five~~
9 ~~thousand dollars~~ for personal, family, or household purposes
10 in a transaction that is not subject to the provisions of
11 chapter 537. As used in this paragraph, "agricultural
12 purpose" means as defined in section 535.13, and "business
13 purpose" includes but is not limited to a commercial, service,
14 or industrial enterprise carried on for profit and an
15 investment activity.

16 Sec. 3. Section 535.2, subsection 2, paragraph b,
17 subparagraph (6), Code 2001, is amended to read as follows:

18 (6) With respect to any transaction referred to in
19 paragraph "a" of this subsection, this subsection supersedes
20 any interest-rate or finance-charge limitations contained in
21 ~~the Code, including but not limited to this chapter and~~
22 ~~chapters 321, 322, 524, 533, 534, and 536A, and 537.~~

23 Sec. 4. Section 535.8, subsection 2, paragraph a, Code
24 2001, is amended to read as follows:

25 a. A lender may collect, in connection with ~~a~~ an original
26 loan made pursuant to a written agreement executed by the
27 borrower on or after July 1, ~~1983~~ 2002, or in connection with
28 a loan made pursuant to a written commitment by the lender
29 mailed or delivered to the borrower on or after that date, ~~a~~
30 ~~loan-processing-fee~~ points, however denominated, including but
31 not limited to points, processing fees, discount fees, loan
32 charges, or origination fees, in an amount which does not
33 exceed two percent of an amount which is equal to the loan
34 principal; ~~except that to the extent of an assumption by as~~
35 provided in section 537.2501, subsection 1, paragraph "e",

1 subparagraph (5), in which case the points shall not exceed
2 two percent of the amount financed. Where a new borrower
3 assumes the obligation to make payments under a prior loan, or
4 to the extent that the loan principal is used to refinance a
5 prior loan between the same borrower and the same lender, the
6 lender may collect a ~~loan-processing~~ fee which does not exceed
7 an amount which is a reasonable estimate of the expenses of
8 processing the loan assumption or refinancing but which does
9 not exceed one percent of the unpaid balance of the loan that
10 is assumed or refinanced. In addition, a lender may collect
11 from a borrower, a seller of property, another lender, or any
12 other person, or from any combination of these persons, in
13 contemplation of or in connection with a loan, a commitment
14 fee, closing fee, or both, that is agreed to in writing by the
15 lender and the persons from whom the charges are to be
16 collected. A loan fee collected under this paragraph is
17 compensation to the lender solely for the use of money,
18 notwithstanding any provision of the agreement to the
19 contrary. However, a loan fee collected under this paragraph
20 shall be disregarded for purposes of determining the maximum
21 charge permitted by section 535.2 or 535.9, subsection 2. The
22 collection in connection with a loan of a loan origination
23 fee, closing fee, commitment fee, or similar charge is
24 prohibited other than expressly authorized by this paragraph
25 or a payment reduction fee authorized by subsection 3.

26 Sec. 5. Section 537.1102, subsection 2, Code 2001, is
27 amended by adding the following new paragraph:

28 NEW PARAGRAPH. h. Curb the incidence of predatory lending
29 which threatens homeownership, and which appears to be
30 primarily targeted toward elderly and other vulnerable
31 borrowers, and which further threatens the viability of
32 communities in which such lending occurs.

33 Sec. 6. Section 537.1301, Code 2001, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 5A. "Broker" means a person who arranges

1 or negotiates, or offers to arrange or negotiate, or issues or
2 offers to issue any of the following:

3 a. A loan for placement with a lender.

4 b. Four or more consumer credit transactions or
5 commitments for four or more consumer credit transactions.

6 c. More than one transaction subject to the federal Home
7 Ownership and Equity Protection Act of 1994, 15 U.S.C. §
8 1602(aa) et seq., and related regulation Z.

9 Sec. 7. Section 537.1301, subsection 12, paragraph a,
10 subparagraph (5), Code 2001, is amended to read as follows:

11 (5) With respect to a sale of goods or services, the
12 amount financed does not exceed twenty-five thousand dollars,
13 unless a security interest is or will be acquired in real
14 property or in personal property used or expected to be used
15 as the principal dwelling of the consumer. For purposes of
16 this section, a security interest includes an interest in such
17 property that arises solely by operation of law.

18 Sec. 8. Section 537.1301, subsection 14, paragraph a,
19 subparagraph (5), Code 2001, is amended to read as follows:

20 (5) The amount financed does not exceed twenty-five
21 thousand dollars, unless a security interest is or will be
22 acquired in real property or in personal property used or
23 expected to be used as the principal dwelling of the consumer.
24 For purposes of this section, a security interest includes an
25 interest in such property that arises solely by operation of
26 law.

27 Sec. 9. Section 537.1301, subsection 14, paragraph b,
28 subparagraph (2), Code 2001, is amended to read as follows:

29 (2) A debt which is secured by a first lien on real
30 property and which is incurred primarily for the purpose of
31 acquiring that real property, ~~or refinancing a contract for~~
32 ~~deed to that real property,~~ or constructing on that real
33 property a building containing one or more dwelling units.

34 Sec. 10. Section 537.1301, subsection 14, paragraph c,
35 subparagraph (2), Code 2001, is amended to read as follows:

1 (2) Loan proceeds used to refinance or pay a prior loan
2 owed by the same borrower are incurred for the same purposes
3 and in the same proportion as the principal of the loan
4 refinanced or paid. If this provision is the basis for
5 excluding a transaction from the definition of consumer loan
6 under paragraph "b", subparagraph (2), the refinancing
7 transaction is excluded only where all of the following
8 conditions are met:

9 (a) New advances are not made as part of the refinancing.

10 (b) The refinancing is by the same creditor and secured by
11 the same property.

12 (c) The terms of the refinanced loan are no less favorable
13 to the consumer than the terms of the original loan. "Terms"
14 includes the interest rate, the annual percentage rate, the
15 amount of closing costs and fees, penalties including
16 prepayment penalties, the term of payment, and the monthly
17 payment.

18 Sec. 11. Section 537.1301, Code 2001, is amended by adding
19 the following new subsections:

20 NEW SUBSECTION. 17A. "Dwelling" means a residential
21 structure that contains one to four units, whether or not that
22 structure is attached to real property, and includes an
23 individual condominium unit, mobile home, manufactured home or
24 trailer, if such a structure is used as a residence.

25 NEW SUBSECTION. 21A. "Home loan" means both mortgages and
26 other loans secured by an interest in a dwelling.

27 NEW SUBSECTION. 38A. "Same creditor" means a person who
28 is both the originator of the first consumer loan, the holder
29 of a subsequent consumer loan, if the consumer loan for
30 refinancing or consolidating the consumer debt is different,
31 and includes successors and assigns.

32 Sec. 12. Section 537.2202, Code 2001, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 3. Where a sale is documented as open-end
35 credit but the features and terms or other circumstances

1 demonstrate that the sale does not meet the definition of
2 open-end credit, the sale will not be treated according to the
3 rules for open-end credit under this chapter, but the
4 transaction will be treated according to the true nature of
5 the transaction, under this chapter and any other applicable
6 chapter, including chapter 535. Factors to be considered
7 include, but are not limited to, the amount of money the
8 consumer originally requested, the amount of the first advance
9 or the highest outstanding balance or the amount of the total
10 available credit. The full amount of the available credit is
11 considered only to the extent that it is reasonable to expect
12 that the consumer might use the full amount of credit.

13 Sec. 13. Section 537.2402, Code 2001, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 3. Where a loan is documented as open-end
16 credit but the features and terms or other circumstances
17 demonstrate that the loan does not meet the definition of
18 open-end credit, the loan is subject to the rules for open-end
19 credit under this chapter and any other applicable chapter,
20 including chapter 535. Factors to be considered include, but
21 are not limited to, the amount of money the consumer
22 originally requested, the amount of the first advance or the
23 highest outstanding balance or the amount of the total
24 available credit. The full amount of the credit line is
25 considered only to the extent that it is reasonable to expect
26 that the consumer might use the full amount of credit.

27 Sec. 14. Section 537.2501, subsection 1, paragraph e, Code
28 2001, is amended by adding the following new subparagraph:

29 NEW SUBPARAGRAPH. (5) With respect to a consumer credit
30 transaction secured by an interest in real estate or personal
31 property used or expected to be used as the consumer's primary
32 dwelling which also constitutes a loan as defined in section
33 535.8, subsection 1, and in which the amount financed exceeds
34 twenty-five thousand dollars, the creditor may impose no more
35 than two points, by whatever name denominated, including, but

1 not limited to, points, processing fees, discount fees, loan
2 charges, or origination fees, in an amount which does not
3 exceed two percent of the amount financed.

4 Sec. 15. Section 537.2501, subsection 2, Code 2001, is
5 amended to read as follows:

6 2. An additional charge may be made for insurance written
7 in connection with the transaction, except for a home loan, as
8 follows:

9 Sec. 16. Section 537.2501, Code 2001, is amended by adding
10 the following new subsection:

11 NEW SUBSECTION. 2A. A creditor making a home loan shall
12 not finance, directly or indirectly, any credit life, credit
13 disability, credit unemployment, or credit property insurance,
14 or any other life or health insurance or casualty insurance,
15 or any payments directly or indirectly for any debt
16 cancellation or suspension agreement or contract, except that
17 insurance premiums or debt cancellation fees calculated and
18 paid on a monthly basis shall not be considered financed by
19 the creditor.

20 Sec. 17. NEW SECTION. 537.2504A FLIPPING PROHIBITED IN
21 HOME LOANS.

22 1. For purposes of this section, "flipping a loan" means
23 the making of a home loan to a consumer that refinances an
24 existing loan secured by real or personal property used as a
25 dwelling when the refinanced loan does not have reasonable,
26 tangible net benefit to the consumer, considering all of the
27 circumstances, including the terms of both the existing and
28 refinanced loans, the cost of the refinanced loan, and the
29 consumer's circumstances.

30 2. A creditor, broker, or assignee shall not engage in or
31 participate in the unfair practice of flipping a loan secured
32 by real estate or personal property used or intended to be
33 used as a consumer's principal dwelling.

34 3. The following types of refinancing of home loans shall
35 be presumed to be flipping a loan:

1 a. The primary tangible benefit is an interest rate lower
2 than the interest rate or rates on debts satisfied or
3 refinanced in connection with the home loan, and it will take
4 more than four years for the consumer to recoup the costs of
5 the points and fees and other closing costs through savings
6 resulting from the lower interest rate.

7 b. The home loan refinances an existing home loan that is
8 a special mortgage originated, subsidized, or guaranteed by or
9 through a state, tribal or local government, or nonprofit
10 organization, which either bears a below-market interest rate
11 at the time the home loan was originated, or has nonstandard
12 payment terms beneficial to the consumer, such as payments
13 that vary with income, are limited to a percentage of income,
14 or where no payments are required under specified conditions,
15 and where, as a result of the refinancing, the consumer will
16 lose one or more of the benefits of the special mortgage.

17 c. More than fifty percent of the prior debt being
18 refinanced bears a lower interest rate under the existing home
19 loan than under the refinanced home loan.

20 Sec. 18. Section 537.2509, Code 2001, is amended to read
21 as follows:

22 537.2509 RIGHT TO PREPAY.

23 1. Subject to the provisions on prepayment and minimum
24 charge under section 537.2510, the consumer may prepay in full
25 the unpaid balance of a consumer credit transaction, other
26 than a consumer lease or a consumer rental purchase agreement,
27 at any time, without penalty.

28 2. For transactions which are high-cost, high-fee mortgage
29 transactions as defined by the federal Home Ownership and
30 Equity Protection Act of 1994, 15 U.S.C. § 1602(aa) et seq.,
31 and federal reserve board regulations enacted pursuant
32 thereto, this prohibition on prepayment penalties applies to
33 alternative mortgages as defined by 12 U.S.C. § 3802.

34 Sec. 19. Section 537.3308, Code Supplement 2001, is
35 amended to read as follows:

1 537.3308 BALLOON PAYMENTS.

2 1. Except as provided in subsection subsections 2 and 3,
3 if any scheduled payment of a consumer credit transaction is
4 more than twice as large as the average of earlier scheduled
5 payments, the consumer has the right to refinance the amount
6 of that payment at the time it is due without penalty, as
7 provided in section 537.2504. The terms of the refinancing
8 shall be no less favorable to the consumer than the terms of
9 the original transaction.

10 2. This section does not apply to any of the following:

11 a. A consumer lease.

12 b. A transaction pursuant to open end credit.

13 c. A transaction to the extent that the payment schedule
14 is adjusted to the seasonal or irregular income or scheduled
15 payments of obligations of the consumer.

16 d. A transaction of a class defined by rule of the
17 administrator as not requiring for the protection of the

18 consumer a right to refinance as provided in this section.

19 e. A consumer loan in which the amount financed exceeds
20 five thousand dollars and is secured by an interest in land.

21 f. A consumer rental purchase agreement.

22 g. A consumer loan secured by a certificate of title in a
23 motor vehicle.

24 3. Balloon payments resulting from negatively amortizing
25 repayment terms are prohibited.

26 Sec. 20. NEW SECTION. 537.3308A NEGATIVE AMORTIZATION
27 PROHIBITED.

28 Except in a reverse mortgage, a consumer credit transaction
29 shall not include payment terms under which the outstanding
30 principal balance will increase at any time over the course of
31 the consumer credit transaction because the regular periodic
32 payments do not cover the full amount of the interest due.

33 Sec. 21. NEW SECTION. 537.3312 UNFAIR HOME LOAN

34 PRACTICES BY BROKERS PROHIBITED.

35 1. A broker shall not arrange or issue a home loan that

1 violates the provisions of this chapter, section 714.16,
2 chapter 535, 15 U.S.C. § 1601 et seq., or 12 U.S.C. § 2601, or
3 rules or regulations adopted pursuant to any such statute.

4 2. A broker shall not arrange or issue a home loan if the
5 broker does not reasonably believe at the time the home loan
6 is consummated that the consumer will be able to make the
7 scheduled payments to repay the home loan, including any
8 reasonably anticipated increases under a home loan that
9 provides a period of a lower introductory interest rate and
10 balloon payments, based upon a consideration of the consumer's
11 current and expected income, current obligations, employment
12 status, and other financial resources, other than the
13 consumer's equity in the home that secures repayment of the
14 debt.

15 A consumer shall be presumed to be able to repay the
16 obligation if, at the time the home loan is consummated, or at
17 the time of the first rate adjustment under a home loan with a
18 lower introductory interest rate, both of the following apply:

19 a. The consumer's scheduled monthly payments on the home
20 loan, including principal, interest, taxes, insurance and
21 assessments, combined with the scheduled payments for all
22 other debt, do not exceed fifty percent of the consumer's
23 documented and verified monthly gross income.

24 b. The consumer has sufficient residual income, as defined
25 in the guidelines established in 38 C.F.R. § 36.5447(e) and VA
26 form 26-6393 to pay essential monthly expenses after paying
27 the scheduled payments and any additional debt.

28 This subsection applies only to consumers whose income, as
29 reported on the application that the broker submits to
30 lenders, is no greater than one hundred twenty percent of the
31 median family income for Iowa, as defined by the director of
32 the United States office of management and budget. For
33 purposes of this section, the median family income shall be
34 derived from the most recent estimates made available by the
35 United States department of housing and urban development, at

1 the time the application is received. For purposes of
2 determining median income, only the income of the consumer
3 shall be considered.

4 3. A broker shall not arrange or issue a home loan with an
5 interest rate higher than appropriate for the consumer for the
6 purpose of increasing the broker's compensation.

7 Sec. 22. Section 537.5201, subsection 1, unnumbered
8 paragraph 1, Code 2001, is amended to read as follows:

9 The consumer, other than a lessee in a consumer rental
10 purchase agreement, or a consumer who has entered into a home
11 loan subject to this chapter, has a cause of action to recover
12 actual damages and in addition a right in an action other than
13 a class action to recover from the person violating this
14 chapter a penalty in an amount determined by the court, but
15 not less than one hundred dollars nor more than one thousand
16 dollars, if a person has violated the provisions of this
17 chapter relating to any of the following:

18 Sec. 23. Section 537.5201, Code 2001, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 1A. a. A person found by a preponderance
21 of the evidence to have violated this chapter with respect to
22 a home loan subject to this chapter shall be liable to the
23 consumer or other person obligated on the home loan for all of
24 the following:

25 (1) Actual damages, including consequential and incidental
26 damages. The borrower shall not be required to demonstrate
27 reliance in order to receive actual damages.

28 (2) Liquidated damages equal to the finance charges agreed
29 to in the home loan agreement, plus ten percent of the amount
30 financed.

31 (3) Punitive damages, when the violation was malicious or
32 reckless.

33 (4) Costs and reasonable attorney fees.

34 b. A consumer or other person obligated on the home loan
35 may be granted injunctive, declaratory, and such other

1 equitable relief as the court deems appropriate in an action
2 to enforce compliance with this chapter.

3 c. The intentional violation of any provision of this
4 chapter, or any related rule or regulation, renders the home
5 loan agreement voidable, and the creditor shall have no right
6 to collect, receive, or retain any principal, interest, or
7 other charges whatsoever with respect to the loan, and the
8 consumer may recover any payments made under the agreement.

9 d. The right of rescision granted under 15 U.S.C. § 1602 et
10 seq. for violations of that law and all other remedies
11 provided under this chapter shall be available to a consumer
12 and any other person obligated on the home loan by way of
13 recoupment against a party foreclosing on the home loan or
14 collecting on the home loan, at any time during the term of
15 the home loan.

16 e. The remedies provided in this section are not intended
17 to be the exclusive remedies available to a consumer.

18 Sec. 24. NEW SECTION. 654.17 RECOUPMENT.

19 For any borrower who has the right of rescision pursuant to
20 15 U.S.C. § 1601 et seq., the right shall be available by way
21 of recoupment against a party foreclosing on a home loan, as
22 defined in section 537.1301, or collecting on the home loan,
23 at any time during the term of the home loan.

24 Sec. 25. Section 654.25, Code 2001, is amended to read as
25 follows:

26 654.25 APPLICATION OF OTHER STATUTES.

27 If the plaintiff has elected foreclosure without
28 redemption, chapter 628 does not apply. A provision in a
29 mortgage permitted by section 628.26 or 628.27 shall not be
30 construed as an agreement by the mortgagee not to elect
31 foreclosure without redemption. The election may be made in
32 any petition filed on or after June 4, 1987. The election for
33 foreclosure without redemption is not a waiver of the
34 plaintiff's rights under section 654.6 except as provided in
35 section 654.26.

1 For any borrower who has the right of rescision pursuant to
2 15 U.S.C. § 1601 et seq., the right shall be available by way
3 of recoupment against a party seeking to foreclose under this
4 alternative procedure on the home loan, as defined in section
5 537.1301, or collecting on the home loan, at any time during
6 the term of the home loan.

7 EXPLANATION

8 This bill amends various provisions under Code chapter 537,
9 the consumer credit code, and related Code sections in other
10 Code chapters, to address practices commonly known as
11 predatory lending.

12 The bill amends Code section 537.1102 to provide that one
13 of the stated purposes of the Act is to curb predatory
14 lending.

15 The bill amends Code section 537.1301, subsections 12 and
16 14, to provide that the \$25,000 limit that otherwise applies
17 on transactions under the uniform consumer credit code does
18 not apply when a consumer's dwelling is used to secure a
19 transaction. The bill also amends subsection 14 regarding
20 refinancing by the same creditor.

21 The bill also adds several new definitions to Code section
22 537.1301: "broker", "dwelling", "home loan", and "same
23 creditor".

24 The bill amends Code sections 537.2202 and 537.2404 to
25 limit the treatment of a transaction as open-end credit when
26 the features and circumstances demonstrate that it is not
27 open-end credit.

28 Code section 537.2501 provides that if a consumer credit
29 transaction is secured by an interest in a consumer's
30 dwelling, the creditor may impose no more than two points.
31 The bill also prohibits a creditor from charging for single-
32 premium credit insurance written in connection with home
33 loans.

34 New Code section 537.2504A prohibits flipping in home loan
35 transactions. The section defines "flipping" to be the making

1 of a home loan to a borrower that refinances an existing home
2 loan secured by a dwelling when the new loan does not give the
3 consumer a net benefit considering all of the circumstances.
4 Certain kinds of refinancing are presumed to be flipping, and
5 are listed in the Code section.

6 Code section 537.2509 provides that a consumer may prepay
7 the unpaid balance on a consumer credit transaction other than
8 a consumer lease without penalty, and the bill amends this
9 provision to apply to "alternative mortgages" as defined under
10 federal law.

11 New Code section 537.3308A prohibits negative
12 amortizations. Code section 537.3308 is amended to prohibit
13 balloon payments resulting from negatively amortizing
14 repayment terms.

15 New Code section 537.3312 prohibits unfair practices by
16 brokers, including arranging or issuing any home loan that
17 violates the consumer credit code and related laws, arranging
18 or issuing any home loan that the broker does not think the
19 consumer can pay, and arranging or issuing any home loan with
20 an interest rate higher than appropriate for the consumer for
21 the purpose of increasing the broker's compensation.

22 The bill amends Code section 537.5201 also to provide that
23 a consumer who has entered into a home loan subject to Code
24 chapter 537 has a cause of action if certain Code sections are
25 violated.

26 The bill amends Code section 537.5201 specifically to
27 provide remedies for a consumer whose rights under the Code
28 chapter have been violated with respect to a home loan. The
29 consumer may recover actual damages, liquidated damages,
30 punitive damages when the violation was malicious or reckless,
31 and costs and reasonable attorney fees. Equitable relief is
32 also available, as is the right of rescission under federal
33 law.

34 Related amendments are made in Code chapters 535 and 654 to
35 reflect the changes made in Code chapter 537.