

HSB 685

Succeeded By  
S' O 2500

COMMERCE AND REGULATION

Ketting Ch.  
Bradley  
Chido

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
COMMERCE AND REGULATION BILL  
BY CHAIRPERSON HANSEN)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act to amend Iowa Code chapter 535B to include individuals  
2 that act as mortgage bankers or mortgage brokers.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 535B.1, subsection 3, Code 2001, is  
2 amended to read as follows:

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

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

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

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

23 ~~b. Originates at least four first mortgage loans on~~  
24 ~~residential real property located in this state in a calendar~~  
25 ~~year and sells four or more such loans in the secondary~~  
26 ~~market.~~

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

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

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

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

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

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

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

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

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

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

31 NEW SUBSECTION. 17. A person, including a natural person  
32 serving in the capacity as an employee, agent, or independent  
33 contractor of a mortgage banker or mortgage broker, whose  
34 responsibilities are clerical or administrative functions,  
35 including but not limited to gathering information, requesting

1 information, word processing, soliciting general interest in  
2 mortgage loans, sending correspondence, and assembling files.

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

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

7 1. A person exempt under section 535B.2, subsection 10,  
8 11, ~~12~~ or 13, but not including any employee of such person,  
9 shall register with the administrator.

10 Sec. 8. Section 535B.4, Code 2001, is amended to read as  
11 follows:

12 535B.4 GENERAL LICENSING REQUIREMENTS.

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

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

24 3. For all applicants, other than natural persons serving  
25 in the capacity of employee, agent, or contractor, and meeting  
26 the definition of mortgage banker and mortgage broker in  
27 section 535B.1, subsections 4 and 5, the following apply:

28 3- a. The applicant shall ~~also~~ submit a recently prepared  
29 certified financial statement.

30 4- b. The applicant for an initial license shall submit a  
31 fee in the amount of five hundred dollars.

32 5- c. Licenses granted under this chapter are not  
33 assignable.

34 6- d. Licenses granted under this chapter expire on the  
35 next June 30 after their issuance.

1 7- e. Applications for renewals of licenses under this  
2 chapter must be filed with the administrator before June 1 of  
3 the year of expiration and must be accompanied by a fee of two  
4 hundred dollars for a license to transact business solely as a  
5 mortgage broker, and four hundred dollars for a license to  
6 transact business as a mortgage banker.

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

13 Sec. 9. Section 535B.6, Code 2001, is amended to read as  
14 follows:

15 535B.6 LICENSING OF FOREIGN CORPORATION ENTITY.

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

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

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

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

28 The administrator may order an emergency suspension of a  
29 licensee's license pursuant to section 17A.18A. A written  
30 order containing the facts or conduct which warrants the  
31 emergency action shall be timely sent to the licensee by  
32 restricted certified mail, as defined in section 618.15. Upon  
33 issuance of the suspension order, the licensee must also be  
34 notified of the right to an evidentiary hearing. A suspension  
35 proceeding shall be promptly instituted and determined.

1 Sec. 11. Section 535B.10, subsection 1, Code 2001, is  
2 amended to read as follows:

3 1. Within one hundred twenty days after the end of a  
4 licensee's fiscal year, the licensee, other than natural  
5 persons serving in the capacity of employee, agent, or  
6 contractor and meeting the definition of mortgage banker and  
7 mortgage broker in section 535B.1, subsections 4 and 5, shall  
8 file financial statements which that are certified by an  
9 independent accounting firm except that financial statements  
10 filed by a licensee who is a natural person shall be certified  
11 by the licensee.

12 Sec. 12. Section 535B.11, unnumbered paragraph 1, Code  
13 2001, is amended to read as follows:

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

17 Sec. 13. Section 535B.12, Code 2001, is amended to read as  
18 follows:

19 535B.12 PAYMENT PROCESSING.

20 A licensee or other mortgagee or other person that services  
21 mortgages on residential real estate located in this state  
22 shall not assess a late charge if full payment is received  
23 before the date late charges are authorized in the mortgage  
24 documents and shall post all periodic payments in full within  
25 two business days of receipt.

26 Sec. 14. NEW SECTION. 535B.17 MORTGAGE BANKERS AND  
27 BROKERS BOARD.

28 1. A state mortgage bankers and brokers board is  
29 established and shall be composed of the administrator, who  
30 shall be an ex officio nonvoting member and chairperson, and  
31 five other members, appointed by the governor, who shall be  
32 chosen from various regions of the state. No more than three  
33 members of the board shall be mortgage bankers or mortgage  
34 brokers. In case of a vacancy in the board, other than one  
35 resulting from a vacancy in the office of the administrator,

1 the governor shall appoint a new member to fill such vacancy  
2 for the unexpired term.

3 2. The regular term of office of each member, other than  
4 the administrator, shall be contemporaneous with the regular  
5 term of office of the administrator as defined in section  
6 524.201, subsection 2, and each member shall hold office for  
7 such term and until the member's successor shall have been  
8 appointed by the governor.

9 3. A member of the state mortgage bankers and brokers  
10 board, other than the administrator, shall not receive a  
11 salary but is entitled to reimbursement for actual expenses  
12 incurred by the member in connection with the member's duties.  
13 Each member of the board may also be eligible to receive  
14 compensation as provided in section 7E.6.

15 4. The state mortgage bankers and brokers board shall act  
16 with the administrator in an advisory capacity concerning all  
17 matters pertaining to the conduct of the administration of the  
18 provisions of this chapter and shall perform such other duties  
19 as are specifically provided for by the laws of this state.

20 5. The state mortgage bankers and brokers board shall meet  
21 at least six times in each calendar year, on such dates and at  
22 such places at the board may designate, and shall meet at such  
23 other times as the board may deem necessary, or when called by  
24 the chairperson of the board, or any two members of the board.

25 Sec. 15. EFFECTIVE DATE. This Act takes effect January 1,  
26 2003.

27 EXPLANATION

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

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

32 The bill deletes exemptions under Code section 535B.2 for  
33 insurance companies and certain mortgage lenders, and adds  
34 exemptions for state and federal agencies, persons selling  
35 real property and holding mortgages as security for a separate

1 monetary obligation, mortgages held to secure mechanic's  
2 liens, clerical or administrative employees of mortgage  
3 bankers or brokers, and persons designated by rule or order of  
4 the superintendent of banking. A related change is made to  
5 Code section 535B.3 to reflect the deletion of an exemption.

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

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

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

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

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

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

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

31 The bill takes effect January 1, 2003.

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3/20/02 Rereferred To: Commerce

FEB 21 2002  
Place On Calendar

HOUSE FILE 2500  
BY COMMITTEE ON COMMERCE  
AND REGULATION

(SUCCESSOR TO HSB 685)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act to amend Iowa Code chapter 535B to include individuals  
2 that act as mortgage bankers or mortgage brokers.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2500

1 Section 1. Section 535B.1, subsection 3, Code 2001, is  
2 amended to read as follows:

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

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

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

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

23 ~~b. Originates at least four first mortgage loans on~~  
24 ~~residential real property located in this state in a calendar~~  
25 ~~year and sells four or more such loans in the secondary~~  
26 ~~market.~~

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

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

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

10 Sec. 4. Section 535B.2, unnumbered paragraph 1, Code 2001,  
11 is amended to read as follows:

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

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

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

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

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

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

31 NEW SUBSECTION. 17. A person, including a natural person  
32 serving in the capacity as an employee, agent, or independent  
33 contractor of a mortgage banker or mortgage broker, whose  
34 responsibilities are clerical or administrative functions,  
35 including but not limited to gathering information, requesting

1 information, word processing, soliciting general interest in  
2 mortgage loans, sending correspondence, and assembling files.

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

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

7 1. A person exempt under section 535B.2, subsection 10,  
8 11, ~~12~~, or 13, but not including any employee of such person,  
9 shall register with the administrator.

10 Sec. 8. Section 535B.4, Code 2001, is amended to read as  
11 follows:

12 535B.4 GENERAL LICENSING REQUIREMENTS.

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

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

24 3. For all applicants, other than natural persons serving  
25 in the capacity of employee, agent, or contractor, and meeting  
26 the definition of mortgage banker and mortgage broker in  
27 section 535B.1, subsections 4 and 5, the following apply:

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

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

32 ~~5.~~ c. Licenses granted under this chapter are not  
33 assignable.

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

1 7- e. Applications for renewals of licenses under this  
2 chapter must be filed with the administrator before June 1 of  
3 the year of expiration and must be accompanied by a fee of two  
4 hundred dollars for a license to transact business solely as a  
5 mortgage broker, and four hundred dollars for a license to  
6 transact business as a mortgage banker.

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

13 Sec. 9. Section 535B.6, Code 2001, is amended to read as  
14 follows:

15 535B.6 LICENSING OF FOREIGN CORPORATION ENTITY.

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

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

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

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

28 The administrator may order an emergency suspension of a  
29 licensee's license pursuant to section 17A.18A. A written  
30 order containing the facts or conduct which warrants the  
31 emergency action shall be timely sent to the licensee by  
32 restricted certified mail, as defined in section 618.15. Upon  
33 issuance of the suspension order, the licensee must also be  
34 notified of the right to an evidentiary hearing. A suspension  
35 proceeding shall be promptly instituted and determined.

1 Sec. 11. Section 535B.10, subsection 1, Code 2001, is  
2 amended to read as follows:

3 1. Within one hundred twenty days after the end of a  
4 licensee's fiscal year, the licensee, other than natural  
5 persons serving in the capacity of employee, agent, or  
6 contractor and meeting the definition of mortgage banker and  
7 mortgage broker in section 535B.1, subsections 4 and 5, shall  
8 file financial statements which that are certified by an  
9 independent accounting firm except that financial statements  
10 filed by a licensee who is a natural person shall be certified  
11 by the licensee.

12 Sec. 12. Section 535B.11, unnumbered paragraph 1, Code  
13 2001, is amended to read as follows:

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

17 Sec. 13. Section 535B.12, Code 2001, is amended to read as  
18 follows:

19 535B.12 PAYMENT PROCESSING.

20 A licensee or other mortgagee or other person that services  
21 mortgages on residential real estate located in this state  
22 shall not assess a late charge if full payment is received  
23 before the date late charges are authorized in the mortgage  
24 documents and shall post all periodic payments in full within  
25 two business days of receipt.

26 Sec. 14. NEW SECTION. 535B.17 MORTGAGE BANKERS AND  
27 BROKERS BOARD.

28 1. A state mortgage bankers and brokers board is  
29 established and shall be composed of the administrator, who  
30 shall be an ex officio nonvoting member and chairperson, and  
31 five other members, appointed by the governor, who shall be  
32 chosen from various regions of the state. No more than three  
33 members of the board shall be mortgage bankers or mortgage  
34 brokers. In case of a vacancy in the board, other than one  
35 resulting from a vacancy in the office of the administrator,

1 the governor shall appoint a new member to fill such vacancy  
2 for the unexpired term.

3 2. The regular term of office of each member, other than  
4 the administrator, shall be contemporaneous with the regular  
5 term of office of the administrator as defined in section  
6 524.201, subsection 2, and each member shall hold office for  
7 such term and until the member's successor shall have been  
8 appointed by the governor.

9 3. A member of the state mortgage bankers and brokers  
10 board, other than the administrator, shall not receive a  
11 salary but is entitled to reimbursement for actual expenses  
12 incurred by the member in connection with the member's duties.  
13 Each member of the board may also be eligible to receive  
14 compensation as provided in section 7E.6.

15 4. The state mortgage bankers and brokers board shall act  
16 with the administrator in an advisory capacity concerning all  
17 matters pertaining to the conduct of the administration of the  
18 provisions of this chapter and shall perform such other duties  
19 as are specifically provided for by the laws of this state.

20 5. The state mortgage bankers and brokers board shall meet  
21 at least six times in each calendar year, on such dates and at  
22 such places as the board may designate, and shall meet at such  
23 other times as the board may deem necessary, or when called by  
24 the chairperson of the board, or any two members of the board.

25 Sec. 15. EFFECTIVE DATE. This Act takes effect January 1,  
26 2003.

27 EXPLANATION

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

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

32 The bill deletes exemptions under Code section 535B.2 for  
33 insurance companies and certain mortgage lenders, and adds  
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35 real property and holding mortgages as security for a separate

1 monetary obligation, mortgages held to secure mechanic's  
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4 the superintendent of banking. A related change is made to  
5 Code section 535B.3 to reflect the deletion of an exemption.

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7 employees of exempt persons need not register with the  
8 superintendent of banking.

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10 natural persons on the forms, and to provide for rules on  
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16 618.15, which means any form of certified mail which carries  
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24 The bill amends Code sections 535B.11 and 535B.12 to  
25 regulate other persons who service mortgages.

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

31 The bill takes effect January 1, 2003.

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