

JAN 24 2005

COMMERCE, REGULATION & LABOR

HOUSE FILE 115  
BY SANDS

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 fees and penalties, and providing an  
3 effective date.

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

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

HF 115

1 Section 1. NEW SECTION. 535D.1 SHORT TITLE.

2 This chapter may be cited as the "Iowa Mortgage Originator  
3 Licensing Act".

4 Sec. 2. NEW SECTION. 535D.2 DEFINITIONS.

5 For purposes of this chapter, unless the context otherwise  
6 requires:

7 1. "Administrator" means the superintendent of banking of  
8 the department of commerce.

9 2. "Consumer reporting agency" has the same meaning as in  
10 the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et  
11 seq.

12 3. "First mortgage loan" means a loan of money secured by  
13 a first lien on residential real property and includes a  
14 refinancing of a contract of sale, an assumption of a prior  
15 loan, and a refinancing of a prior loan.

16 4. "Licensee" means, in addition to the definition in  
17 section 535B.1, any person that has been issued a mortgage  
18 originator license under this chapter.

19 5. "Mortgage banker" means a person who does one or more  
20 of the following:

21 a. Makes at least four first mortgage loans on residential  
22 real property located in this state in a calendar year.

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 c. 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 6. "Mortgage broker" means a person who arranges or  
35 negotiates, or attempts to arrange or negotiate, at least four

1 first mortgage loans or commitments for four or more such  
2 loans on residential real property located in this state in a  
3 calendar year.

4 7. "Mortgage loan" as used, and subject to, this section  
5 means a loan as defined in section 535.8, or a first mortgage  
6 loan as defined in section 535B.1.

7 8. "Mortgage originator" means a person who meets all of  
8 the following:

9 a. Engages in or originates mortgage loans or contract  
10 sales as, or on behalf of, a mortgage broker, professional  
11 contract seller, or mortgage banker in consideration of direct  
12 or indirect gain, profit, fees, or charges.

13 b. Is registered with or licensed by the administrator as  
14 required by this chapter.

15 c. Whose conduct of mortgage lending activities as noted  
16 in paragraph "d" is the responsibility of the licensee or  
17 registrant.

18 d. Whose responsibilities include direct contact with  
19 borrowers during the loan origination process, which can  
20 include soliciting, negotiating, acquiring, arranging, or  
21 making mortgage loans for others, obtaining personal or  
22 financial information, assisting with the preparation of loan  
23 applications or other documents, quoting loan rates or other  
24 terms, or providing required disclosures. "Mortgage  
25 originator" does not include a person whose job  
26 responsibilities on behalf of a licensee or registrant are to  
27 process mortgage loans or are solely clerical in nature.

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

33 10. "Person" means an individual, association, joint  
34 venture or joint stock company, partnership, limited  
35 partnership, business corporation, nonprofit corporation, or

1 any other group of individuals, however organized.

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

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

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

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

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

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

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

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

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

27 4. An insurance company organized under the laws of this  
28 state and subject to regulation by the commissioner of  
29 insurance.

30 5. An insurance producer licensed under chapter 522B.

31 6. A mortgage banker who makes, services, buys, or sells  
32 mortgage loans, underwrites the loans, and meets at least one  
33 of the following criteria:

34 a. The mortgage banker has been directly approved by the  
35 United States department of housing and urban development as a

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

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

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

30 d. The mortgage banker has been directly approved by the  
31 United States department of veterans affairs as a  
32 nonsupervised automatic lender. This paragraph does not  
33 include a person directly approved by the United States  
34 department of veterans affairs as a nonsupervised lender, or  
35 an agent of a nonsupervised lender.

1 7. A nonprofit organization qualifying for tax-exempt  
2 status under the Internal Revenue Code as defined in section  
3 422.3, which offers housing services to low and moderate  
4 income families.

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

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

17 Sec. 5. NEW SECTION. 535D.5 MORTGAGE ORIGINATOR  
18 LICENSING REQUIREMENTS.

19 1. An application for a license as a mortgage originator  
20 shall be submitted in writing to the administrator on forms  
21 provided by the administrator. The application shall be  
22 accompanied by a nonrefundable application fee of one hundred  
23 dollars and shall include the following:

24 a. The name and address of the applicant.

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

31 c. A statement as to whether the applicant has been  
32 subject to an adverse judgment for conversion, embezzlement,  
33 misappropriation of funds, fraud, misfeasance or malfeasance,  
34 or breach of fiduciary duty.

35 d. Any further information that the administrator

1 requires.

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

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

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

31 5. If a mortgage originator's employment is terminated,  
32 the mortgage broker or mortgage banker shall return the  
33 original mortgage originator's license to the administrator  
34 within five business days after the termination. A mortgage  
35 originator whose employment has been terminated by a mortgage

1 broker or mortgage banker may request the transfer of the  
2 mortgage originator's license to another mortgage broker or  
3 mortgage banker by submitting a relocation application, along  
4 with a fifteen dollar fee, to the administrator or may request  
5 the administrator to hold the license in escrow for a period  
6 not to exceed one year. A mortgage originator whose license  
7 is held in escrow shall cease activity as a mortgage  
8 originator while the license is in escrow.

9 6. A mortgage broker or mortgage banker may employ a  
10 mortgage originator on a temporary basis pending the transfer  
11 of the mortgage originator's license to the mortgage broker or  
12 mortgage banker, if the mortgage broker or mortgage banker  
13 receives written confirmation from the administrator that the  
14 mortgage originator is licensed under this chapter.

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

17 8. Upon the conclusion of an investigation required under  
18 this section, the administrator shall issue a mortgage  
19 originator license to the applicant if the administrator finds  
20 that all of the following conditions are met:

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

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

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

20    d. The applicant's character and general fitness command  
21 the confidence of the public and warrant belief that the  
22 applicant will conduct business as a mortgage originator  
23 honestly and fairly in compliance with this chapter.

24    e. (1) The applicant has successfully completed an  
25 examination approved by the administrator. Requirements for  
26 content and passage of the examination shall be determined by  
27 administrative rule of the administrator.

28    (2) An applicant who certifies on the application required  
29 by this section that the applicant has three years or more of  
30 experience as a mortgage originator as of the effective date  
31 of this Act shall be exempt from the examination required by  
32 subparagraph (1). A certification of the applicant's prior  
33 experience as a mortgage originator must also be made on the  
34 application by the mortgage broker or mortgage banker licensed  
35 under chapter 535B who employs the applicant. Failure to

1 comply with this certification of prior experience shall  
2 subject the applicant to immediate license suspension or  
3 revocation under section 535D.8.

4 Sec. 6. NEW SECTION. 535D.6 LICENSE RENEWAL APPLICATIONS  
5 AND CONTINUING EDUCATION.

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

10 a. The license renewal application is accompanied by a  
11 nonrefundable fee of one hundred dollars. If a check or other  
12 draft instrument is returned to the administrator for  
13 insufficient funds, the administrator shall notify the  
14 licensee by restricted certified mail that the license renewed  
15 in reliance on the check or other draft instrument will be  
16 canceled unless the licensee, within thirty days after receipt  
17 of the notice, submits the license renewal fee and a one  
18 hundred dollar penalty payment to the administrator. If the  
19 licensee does not submit a license renewal fee and penalty  
20 payment within that time period, or if any check or other  
21 draft instrument used to pay the license renewal fee or  
22 penalty payment is returned to the administrator for  
23 insufficient funds, the license shall be canceled immediately  
24 without a hearing and the licensee shall cease activity as a  
25 mortgage originator.

26 b. On January 1, 2007, and each year thereafter, the  
27 mortgage originator has completed, during the immediately  
28 preceding calendar year, at least twelve hours of continuing  
29 education in a course or program of study approved by the  
30 administrator.

31 c. The licensee continues to meet the requirements of  
32 section 535D.5, subsection 8, paragraphs "b", "c", and "d",  
33 regarding criminal offenses, judgments, and character.

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

1 2. If a license renewal application or license renewal fee  
2 is received by the administrator after April 30, the mortgage  
3 originator license shall not be considered renewed, and the  
4 licensee shall cease activity as a mortgage originator.

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

8 Sec. 7. NEW SECTION. 535D.7 RECORDS AND INFORMATION.

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

13 2. A person licensed under chapter 535B shall maintain  
14 records pertaining to business transacted pursuant to this  
15 chapter for four years.

16 3. The following information shall be kept confidential,  
17 notwithstanding chapter 22:

18 a. Information regarding the content or passage of a  
19 licensing examination required by this chapter, and any  
20 information leading to or arising from a licensing  
21 examination.

22 b. Information obtained from an investigation required by  
23 this chapter, and any information arising from or leading to  
24 such an investigation.

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

1 confidential and shall only be used in connection with an  
2 official investigation, proceeding, or action.

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

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

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

17 a. Obtained a license under this chapter by making a false  
18 or fraudulent representation of a material fact or an omission  
19 of a material fact required by state law, or making a  
20 substantial misrepresentation in a license application.

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

26 c. Engaged in conduct that constitutes improper,  
27 fraudulent, or dishonest dealings.

28 d. Failed to notify the administrator within thirty days  
29 after the licensee, or applicant, in a court of competent  
30 jurisdiction of this state or any other state, has been  
31 convicted of or plead guilty to a criminal offense involving  
32 theft, receiving stolen property, embezzlement, forgery,  
33 fraud, passing bad checks, money laundering, or drug  
34 trafficking, or any criminal offense involving money or  
35 securities.

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

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

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

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

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

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

26 Except as provided in this section, a license shall not be  
27 revoked or suspended except after notice and hearing in  
28 accordance with chapter 17A.

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

33 4. A revocation, suspension, or surrender of a license  
34 does not impair or affect the obligation of a preexisting  
35 lawful contract between the licensee and any person, including

1 a mortgagor.

2 Sec. 9. NEW SECTION. 535D.9 OPERATING WITHOUT A LICENSE.

3 A person who, without first obtaining a license under this  
4 chapter, engages in the business or occupation of, or  
5 advertises or holds the person out as, or claims to be, or  
6 temporarily acts as, a mortgage originator in this state is  
7 guilty of a class "D" felony and may be prosecuted by the  
8 attorney general or a county attorney.

9 Sec. 10. NEW SECTION. 535D.10 ADVERTISING.

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

19 Sec. 11. NEW SECTION. 535D.11 ENFORCEMENT.

20 1. a. For the purpose of this subsection, "administrator"  
21 means either the superintendent of banking or the official or  
22 agency charged with enforcing this chapter, or parts thereof,  
23 against the person under investigation.

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

30 c. The administrator, upon such hearing, may administer  
31 oaths, examine and cross-examine witnesses, receive evidence,  
32 and shall have the power to subpoena witnesses, compel their  
33 attendance, and require the production of all records or other  
34 documents which the administrator deems relevant to the  
35 inquiry. In case of a refusal of a person to comply with a

1 subpoena issued under this paragraph or to testify with  
2 respect to any matter relevant to the proceeding, on  
3 application of the administrator, the district court of Polk  
4 county may issue an order requiring the person to comply with  
5 the subpoena and to testify. A failure to obey an order of  
6 the court to comply with the subpoena may be punished by the  
7 court as a civil contempt. A cease and desist hearing need  
8 not observe any formal rules of pleading or evidence.

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

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

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

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

32 2. The administrator may request the attorney general to  
33 enforce this chapter. A civil enforcement action by the  
34 attorney general may be filed in equity in either the county  
35 in which the violation occurred or in Polk county. A civil

1 enforcement action by the attorney general may seek any or all  
2 of the following:

3 a. Temporary and permanent injunctive relief.

4 b. Restitution for a mortgagor aggrieved by a violation of  
5 this chapter.

6 c. Costs for the investigation and prosecution of the  
7 enforcement action including attorney fees.

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

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

13 The administrator may adopt rules pursuant to chapter 17A  
14 to administer and enforce this chapter.

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

16 An act or omission by the state pursuant to this chapter  
17 including, but no limited to, an examination, inspection,  
18 audit, or other financial oversight responsibility shall not  
19 subject the state to liability.

20 Sec. 14. EFFECTIVE DATE. This Act takes effect January 1,  
21 2006.

22 EXPLANATION

23 This bill creates a new Code chapter 535D that provides for  
24 the licensing and regulation of mortgage originators by the  
25 superintendent of banking of the department of commerce. The  
26 bill defines a "mortgage originator" as a person who engages  
27 in or originates residential mortgage loans or contract sales  
28 for money or other gain, is registered or licensed pursuant to  
29 this Code chapter, and who has responsibility for conducting a  
30 variety of mortgage lending activities but not including a  
31 person whose job responsibilities are to process mortgage  
32 loans or are solely clerical in nature. The bill does not  
33 apply to banks, savings banks, savings and loan associations,  
34 or credit unions, to consumer reporting agencies in  
35 substantial compliance with the federal Fair Credit Reporting

1 Act, to a political subdivision or any other governmental or  
2 public entity, to an insurance company organized under the  
3 laws of this state and regulated by the commissioner of  
4 insurance, to an insurance producer licensed under Code  
5 chapter 522B, to certain mortgage bankers, to nonprofit  
6 organizations qualifying for tax-exempt status, to an  
7 individual who makes three or less purchase money mortgages or  
8 contract sales a year with the individual's own funds, or to a  
9 person who is employed by a person who is exempt from this  
10 Code chapter.

11 The bill provides that the superintendent of banking shall  
12 oversee the application, licensing requirements, and  
13 investigation and examination of applicants, and the license  
14 renewal and continuing education requirements for a license  
15 issued pursuant to this Code chapter. The bill provides that  
16 an applicant with three or more years of experience as a  
17 mortgage originator as of the effective date of the bill is  
18 exempt from the examination requirements for a license.

19 The bill provides that the superintendent of banking, as  
20 the administrator of the Code chapter, may examine the records  
21 of a mortgage banker or broker licensed pursuant to Code  
22 chapter 535B and registered under the new Code chapter 535D or  
23 a licensee under new Code chapter 535D pertaining to business  
24 transacted under this chapter.

25 The bill provides for the conditions under which the  
26 superintendent of banking can suspend or revoke a license  
27 issued under this Code chapter and provides for notice,  
28 hearing, and appeal of such a decision to suspend or revoke.

29 The bill provides that a person who operates without a  
30 license required by the bill is guilty of a class "D" felony  
31 and may be prosecuted by the attorney general or a county  
32 attorney. A class "D" felony is punishable by confinement for  
33 no more than five years and a fine of at least \$750 but not  
34 more than \$7,500.

35 The bill provides that a licensee who advertises mortgage

1 originator services must give the name and address of at least  
2 one licensed office location and the license number of at  
3 least one mortgage originator in the advertisement.

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

18 The bill allows the superintendent of banking to adopt  
19 administrative rules to administer and enforce the Code  
20 chapter. The bill also provides that the state is not liable  
21 for any act or omission pursuant to the Code chapter.

22 The bill takes effect January 1, 2006.

23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35