

FEB 23 2005

COMMERCE, REGULATION & LABOR

HOUSE FILE 422  
BY VAN ENGELENHOVEN

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

**A BILL FOR**

1 An Act creating the Iowa high-cost mortgage Act.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HF 422

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1 Section 1. Section 535.2, subsection 2, paragraph a,  
2 unnumbered paragraph 1, Code 2005, is amended to read as  
3 follows:

4 The Except as limited in chapter 535D for high-cost  
5 mortgages, the following persons may agree in writing to pay  
6 any rate of interest, and a person so agreeing in writing  
7 shall not plead or interpose the claim or defense of usury in  
8 any action or proceeding, and the person agreeing to receive  
9 the interest is not subject to any penalty or forfeiture for  
10 agreeing to receive or for receiving the interest:

11 Sec. 2. Section 535.2, subsection 2, paragraph b,  
12 subparagraph (6), Code 2005, is amended to read as follows:

13 (6) With respect to any transaction referred to in  
14 paragraph "a" of this subsection with the exception of a high-  
15 cost mortgage transaction under chapter 535D, this subsection  
16 supersedes any interest-rate or finance-charge limitations  
17 contained in the Code, including but not limited to this  
18 chapter and chapters 321, 322, 524, 533, 534, 536A, and 537.

19 Sec. 3. Section 535B.7, subsection 1, paragraph a, Code  
20 2005, is amended to read as follows:

21 a. The licensee has violated a provision of this chapter  
22 or a rule adopted under this chapter or any other state or  
23 federal law applicable to the conduct of its business  
24 including but not limited to chapters 535, and 535A, and 535D.

25 Sec. 4. NEW SECTION. 535D.1 TITLE.

26 This chapter shall be known and may be cited as the "Iowa  
27 High-Cost Mortgage Act".

28 Sec. 5. NEW SECTION. 535D.2 DEFINITIONS.

29 As used in this chapter, unless the context otherwise  
30 requires:

31 1. "Accelerate" means a demand for immediate repayment of  
32 the entire balance of a residential mortgage loan.

33 2. "Borrower" means a person that seeks a high-cost  
34 mortgage or is obligated under a high-cost mortgage.

35 3. "High-cost mortgage" means a borrower credit

1 transaction made by or originated through a mortgage banker or  
2 mortgage broker licensed under chapter 535B that is secured by  
3 the borrower's principal dwelling, if any of the following  
4 apply with respect to such borrower credit transaction:

5 a. The transaction is secured by a first mortgage on the  
6 borrower's principal dwelling and the annual percentage rate  
7 on the credit, at closing, will exceed by more than eight  
8 percentage points the yield on treasury securities having  
9 comparable periods of maturity to the loan maturity on the  
10 fifteenth day of the month immediately preceding the month in  
11 which the application for the extension of credit is received  
12 by the lender.

13 b. The transaction is secured by a junior or subordinate  
14 mortgage on the borrower's principal dwelling and the annual  
15 percentage rate on the credit, at closing, will exceed by more  
16 than ten percentage points the yield on treasury securities  
17 having comparable periods of maturity to the loan maturity on  
18 the fifteenth day of the month immediately preceding the month  
19 in which the application for the extension of credit is  
20 received by the lender.

21 c. The total points and fees payable at or before the loan  
22 closing will exceed the greater of eight percent of the total  
23 loan amount or four hundred dollars. The four hundred dollar  
24 figure shall be adjusted annually on January 1 by the annual  
25 percentage change in the consumer price index that was  
26 reported on the preceding June 1.

27 4. "Lender" means a person that offers or extends a high-  
28 cost mortgage and is required to have a license pursuant to  
29 chapter 535B.

30 Sec. 6. NEW SECTION. 535D.3 PREPAYMENT PENALTY.

31 A prepayment penalty on a high-cost mortgage is prohibited  
32 under section 535.9.

33 Sec. 7. NEW SECTION. 535D.4 INCREASED INTEREST RATE  
34 AFTER DEFAULT -- PROHIBITED.

35 A high-cost mortgage shall not impose an interest rate

1 after default that is higher than the interest rate that  
2 applies before the default. However, a high-cost mortgage  
3 that is subject to a variable rate of interest, based on an  
4 index or rate of interest which is publicly available and is  
5 not under the control of the lender, may have an increase in  
6 the interest rate due to a change in the index for a variable  
7 rate mortgage.

8 Sec. 8. NEW SECTION. 535D.5 BALLOON PAYMENTS PROHIBITED.

9 1. A high-cost mortgage having a term of less than five  
10 years shall not include terms under which the aggregate amount  
11 of the regular periodic payments will not fully amortize the  
12 outstanding principal.

13 2. A high-cost mortgage shall not require a scheduled  
14 payment that is more than twice the amount of the average of  
15 earlier scheduled payments.

16 3. This section does not apply when the payment schedule  
17 is adjusted to account for the seasonal or irregular income of  
18 the borrower or if the purpose of the loan is a bridge loan  
19 made in connection with the acquisition or construction of a  
20 dwelling intended to become the borrower's principal dwelling.

21 Sec. 9. NEW SECTION. 535D.6 NEGATIVE AMORTIZATION  
22 PROHIBITED.

23 A high-cost mortgage shall not include terms for the  
24 outstanding principal balance to increase at any time over the  
25 course of the loan because the regular periodic payments do  
26 not cover the full amount of the interest due.

27 Sec. 10. NEW SECTION. 535D.7 REQUIRED DISCLOSURES.

28 1. A lender shall disclose to a borrower all of the  
29 following:

30 a. The annual percentage rate of the loan.

31 b. The amount of the regular monthly repayment.

32 2. A lender shall not finance, directly or indirectly, any  
33 portion of the points, fees, or other charges payable to the  
34 lender or any third party in an amount in excess of eight  
35 percent of the total loan amount, unless the following

1 disclosures are made to the borrower in conspicuous type size:

2 a. "You are not required to complete this agreement merely  
3 because you have received these disclosures or have signed the  
4 loan application."

5 b. "If you obtain this loan, the lender will have a  
6 mortgage on your home. You could lose your home or property,  
7 and any money you have put into it, if you do not meet your  
8 obligations under this loan."

9 c. "The timing and amount of payments on debts you already  
10 have contribute to the credit rating that is used to determine  
11 whether you may get a new loan and how much you will pay for  
12 that new loan. You should not accept any advice to ignore or  
13 delay making any payment on loans you already have, even if  
14 those loans will be paid off with the new loan."

15 d. "You may get into serious financial difficulties if you  
16 use this loan to pay off old debts and then run up other new  
17 debts."

18 3. The disclosures required by this section shall be given  
19 to the borrower no less than seventy-two hours prior to  
20 closing on the loan.

21 4. After providing the disclosures required by this  
22 section, a lender may not change the terms of the extension of  
23 credit if such changes make the disclosures inaccurate.  
24 However, a lender may provide new disclosures by telephone, if  
25 the borrower initiated the change in the terms of credit and  
26 at the closing under which the credit is extended:

27 a. The lender provides to the borrower the new written  
28 disclosures.

29 b. The lender and borrower certify in writing that the new  
30 disclosures were provided by telephone at least seventy-two  
31 hours prior to the closing.

32 Sec. 11. NEW SECTION. 535D.8 ARBITRATION CLAUSES.

33 An arbitration clause in a high-cost mortgage loan document  
34 is not valid unless it complies with the federal Arbitration  
35 Act, title 9 U.S.C.

1       Sec. 12. NEW SECTION. 535D.9 INSURANCE PROHIBITION.

2       A lender shall not offer, sell, or finance any insurance  
3 policy that insures, guarantees, or indemnifies the repayment  
4 of an outstanding balance of the high-cost mortgage in the  
5 event of loss of life, health, personal property, or income.

6       Sec. 13. NEW SECTION. 535D.10 LIMITATIONS ON  
7 REFINANCING.

8       1. A lender shall not refinance a high-cost mortgage made  
9 by the lender, or an affiliate of the lender, with another  
10 high-cost mortgage during the one-year period from the date of  
11 the closing on the prior high-cost mortgage.

12       2. This section does not apply if the scheduled finance  
13 charge for the balance of the prior existing high-cost  
14 mortgage exceeds the scheduled finance charge for the  
15 subsequent high-cost mortgage.

16       Sec. 14. NEW SECTION. 535D.11 HOME IMPROVEMENT  
17 CONTRACTS.

18       A lender shall not make a payment to a contractor under a  
19 home improvement contract from amounts extended as credit  
20 under a high-cost mortgage unless the instrument is payable to  
21 the borrower or jointly to the borrower and the contractor.

22       Sec. 15. NEW SECTION. 535D.12 ACCELERATION.

23       A high-cost mortgage shall not include terms that give the  
24 lender sole discretion to accelerate the indebtedness.

25       However, repayment of a loan may be accelerated as follows:

26       1. Upon default or pursuant to a due-on-sale provision or  
27 some other provision of the loan document unrelated to the  
28 payment schedule. If a defaulting borrower is entitled to a  
29 rebate of interest, the rebate shall be computed by any method  
30 that is not less favorable than the actuarial method. A  
31 lender may elect to apply a rebate of interest to reduce the  
32 principal owed on the loan.

33       2. Due to any action or inaction by the borrower that  
34 adversely affects the lender's security interest in the  
35 residence or any rights of the lender in such security.

1     Sec. 16. NEW SECTION. 535D.13 DOCUMENTS.

2     1. A lender shall provide to the borrower at least  
3 seventy-two hours prior to the closing of the loan all good  
4 faith estimates of all closing costs and fees and copies of  
5 all documents to be signed.

6     2. All lines, figures, forms, and blanks in the loan  
7 documents that regulate, govern, control, and authorize a  
8 mortgage must be filled in before the documents are signed.

9     3. A lender shall provide a complete set of all documents  
10 pertaining to the transaction, including copies of all  
11 executed documents and all documents to be recorded as  
12 follows:

- 13     a. At the time of the closing if done in person.
- 14     b. Within three business days from the date of closing if  
15 done by mail or any other format.

16     4. All documents shall be provided at no cost to the  
17 borrower.

18     Sec. 17. NEW SECTION. 535D.14 PAYMENT ABILITY OF  
19 BORROWER.

20     1. A lender shall not engage in a pattern or practice of  
21 extending credit to borrowers based on the borrower's  
22 collateral without regard to the borrower's repayment ability,  
23 including the borrower's current and expected income,  
24 obligations, and employment.

25     2. A lender shall not rely on a borrower's statement of  
26 income for purposes of this section if the borrower has no  
27 earned income.

28     Sec. 18. NEW SECTION. 535D.15 ENCOURAGING DEFAULT  
29 PROHIBITED.

30     A lender shall not recommend or encourage default or  
31 nonpayment on an existing loan or other debt prior to and in  
32 connection with the closing or planned closing of a high-cost  
33 mortgage that refinances all or any portion of such existing  
34 loan or debt.

35     Sec. 19. NEW SECTION. 535D.16 LATE PAYMENT CHARGES.

1 1. A lender shall not charge a borrower a late payment  
2 charge unless the loan documents specifically authorize the  
3 charge, the charge is not imposed unless the payment is past  
4 due for ten days or more, and the charge does not exceed four  
5 percent of the amount of the late payment.

6 2. A late payment charge shall not be imposed more than  
7 once with respect to a particular late payment.

8 3. If a late payment charge is deducted from a payment  
9 made on the mortgage and such deduction results in a  
10 subsequent default on a subsequent payment, a late payment  
11 charge may not be imposed for such default.

12 4. A lender may apply any payment made in the order of  
13 maturity to a prior period's payment due even if the result is  
14 late payment charges accruing on subsequent payments due.

15 Sec. 20. NEW SECTION. 535D.17 PAYOFF INFORMATION.

16 A lender shall not charge a fee for informing or  
17 transmitting to any person the balance due to pay off a high-  
18 cost mortgage or to provide a release upon prepayment. When  
19 such information is provided by facsimile or if it is provided  
20 upon request within sixty days of the fulfillment of a  
21 previous request, a lender may charge a processing fee up to  
22 ten dollars. Payoff balances shall be provided within a  
23 reasonable time but no more than five business days after the  
24 request is made.

25 Sec. 21. NEW SECTION. 535D.18 INFORMATION FOR BORROWERS.

26 A lender shall provide to the borrower, at no charge,  
27 information on financing or educational resources on  
28 financing. The lender shall do all of the following:

29 1. Post a notice that educational resources are available.  
30 The notice shall be posted in a public area of the office.

31 2. Provide a written list of educational opportunities or  
32 programs offered in the surrounding area including the program  
33 name and telephone number.

34 3. Make available a printed brochure or booklet on  
35 responsible lending and borrowing.

EXPLANATION

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This bill creates the "Iowa High-Cost Mortgage Act" in new Code chapter 535D.

The bill applies to lenders who are licensed mortgage bankers or brokers under Code chapter 535B that make high-cost mortgages. A "high-cost mortgage" is secured by the borrower's principal dwelling and is subject to a high rate of interest or a high percentage or amount of points and fees.

The bill provides prohibitions, restrictions, and guidelines for lenders and high-cost mortgages. The bill addresses prepayment penalties, increased interest upon default, balloon payments, negative amortization, required disclosures, arbitration clauses, insurance, refinancing, home improvement contracts, acceleration, documentation procedures, loan criteria, late payment charges, and payoff information.

A mortgage banker or broker can have the person's license, issued pursuant to Code chapter 535B, suspended or revoked by the superintendent of the division of banking for a violation of the new Code chapter.