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SENATE FILE 277
BY BOLKCOM

STATE GOVERNMENT

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the home loan protection Act, and providing a
2 penalty.

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

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SF 277
STATE GOVERNMENT

1 Section 1. NEW SECTION. 535D.1 TITLE -- PURPOSE.

2 1. This chapter shall be known and may be cited as the
3 "Home Loan Protection Act".

4 2. This chapter shall be liberally construed to effectuate
5 its purpose of protecting the homes and the equity of
6 individual borrowers. This chapter is to be construed as a
7 consumer protection statute for all purposes.

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

9 As used in this chapter, unless the context otherwise
10 requires:

11 1. "Affiliate" means any company that controls, is
12 controlled by, or is under common control with another company
13 as set forth in 12 U.S.C. § 1841 et seq.

14 2. "Annual percentage rate" means the annual percentage
15 rate for a loan calculated according to the provisions of the
16 federal Truth in Lending Act, 12 C.F.R. pt. 226.

17 3. "Bona fide discount points" means an amount knowingly
18 paid by a borrower for the express purpose of reducing, and
19 which in fact does result in a bona fide reduction of, the
20 interest rate applicable to a home loan; provided the
21 undiscounted interest rate for the home loan does not exceed
22 the conventional mortgage rate by two percentage points for a
23 home loan secured by a first lien, or by three and one-half
24 percentage points for a home loan secured by a subordinated
25 lien.

26 4. "Borrower" means any natural person obligated to repay
27 a loan, including a coborrower, cosigner, or guarantor.

28 5. "Brokering" means to act as a mortgage broker in
29 connection with a home loan.

30 6. "Conventional mortgage rate" means the most recently
31 published annual yield on conventional mortgages published by
32 the board of governors of the federal reserve system, as
33 published in statistical release H.15 or any publication that
34 may supersede it, as of the applicable time set forth in 12
35 C.F.R. pt. 226.32(a)(1)(i).

1 7. "Conventional prepayment penalty" means any prepayment
2 penalty or fee that may be collected or charged in a home
3 loan, and that is authorized by law other than this chapter,
4 provided the home loan does not do either of the following:

5 a. Have an annual percentage rate that exceeds the
6 conventional mortgage rate by more than two percentage points.

7 b. Permit any prepayment fees or penalties that exceed two
8 percent of the amount prepaid.

9 8. "Creditor" means the same as "lender" as set forth in
10 24 C.F.R. § 3500.2. "Creditor" also means a mortgage broker.

11 9. "Excluded points and fees" means, in connection with a
12 home loan, up to and including one percent of the total loan
13 amount attributable to bona fide fees paid to a federal or
14 state government agency that insures payment of some portion
15 of a home loan plus an amount not to exceed two percent of the
16 total loan amount attributable to bona fide discount points or
17 a conventional prepayment penalty. In no case shall the total
18 excluded points and fees in connection with a home loan exceed
19 three percent of the total loan amount.

20 10. "Flipping" means making a home loan to a borrower that
21 refinances an existing home loan and the new loan does not
22 have reasonable, tangible net benefit to the borrower
23 considering all of the circumstances, including, but not
24 limited to, the terms of both the new and refinanced loans,
25 the cost of the new loan, and the borrower's circumstances.

26 11. "High-cost home loan" means a home loan in which the
27 terms of the loan meet or exceed one or more thresholds.

28 12. "Home loan" means an extension of credit, including an
29 open-end credit plan, in which all of the following apply:

30 a. The loan does not exceed the maximum original principal
31 obligation as set forth in and from time to time adjusted
32 according to the provisions of 12 U.S.C. § 1454(a)(2).

33 b. The loan is considered a federally related mortgage
34 loan as set forth in 24 C.F.R. § 3500.2.

35 c. The loan is neither a reverse mortgage transaction nor

1 a loan primarily for business, agricultural, or commercial
2 purposes.

3 13. "Manufactured home" means the same as set forth in
4 section 335.30.

5 14. "Mortgage broker" means the same as set forth in 24
6 C.F.R. § 3500.2.

7 15. a. "Points and fees" means any of the following:

8 (1) All items included in the definition of finance charge
9 in 12 C.F.R. § 226.4(a) and 12 C.F.R. § 226.4(b) except
10 interest or the time price differential.

11 (2) All real estate-related fees described in 12 C.F.R. §
12 226.32(b)(1)(iii), which includes fees for title insurance,
13 abstracts of title, credit reports, or appraisals.

14 (3) All compensation paid directly or indirectly to a
15 mortgage broker from any source, including a mortgage broker
16 that originates a loan in its own name in a table-funded
17 transaction.

18 (4) The cost of all premiums financed by a creditor,
19 directly or indirectly for any credit life, credit disability,
20 credit unemployment, or credit property insurance, or any
21 other life or health insurance, or any payments financed by
22 the creditor directly or indirectly for any debt cancellation
23 or suspension agreement or contract, except that insurance
24 premiums or debt cancellation or suspension fees calculated
25 and paid in full on a monthly basis shall not be considered
26 financed by the creditor.

27 (5) The maximum prepayment fees and penalties that may be
28 charged or collected under the terms of the loan documents.

29 (6) All prepayment fees or penalties that are incurred by
30 the borrower if the loan refinances a previous loan originated
31 or currently held by the same creditor or an affiliate of the
32 creditor.

33 (7) For open-end loans, "points and fees" are calculated
34 by adding the total points and fees known at or before
35 closing, including the maximum prepayment penalties which may

1 be charged or collected under the terms of the loan document,
2 plus the minimum additional fees the borrower would be
3 required to pay to draw down an amount equal to the total
4 credit line.

5 b. "Points and fees" does not include any of the
6 following:

7 (1) Taxes, filing fees, recording, or other charges and
8 fees paid or to be paid to public officials for determining
9 the existence of or for perfecting, releasing, or satisfying a
10 security interest.

11 (2) Bona fide and reasonable fees paid to a person other
12 than the creditor or an affiliate of the creditor for any of
13 the following: fees for tax payment services; fees for flood
14 certification; fees for pest infestation or flood
15 determination; appraisal fees; fees for inspections performed
16 prior to closing; credit reports; surveys; attorney fees, if
17 the borrower has the right to select the attorney from an
18 approved list or otherwise; notary fees; escrow charges, so
19 long as not otherwise included under paragraph "a",
20 subparagraph (1); title insurance premiums; or fire and hazard
21 insurance and flood insurance premiums, provided that the
22 conditions in 12 C.F.R. § 226.4(d)(2) are met.

23 16. "Threshold" means any of the following items, as
24 defined:

25 a. "Rate threshold" means, for a home loan, the annual
26 percentage rate equals or exceeds the rate set forth in 12
27 C.F.R. § 226.32(a)(1)(i), without regard to whether the home
28 loan may be considered a "residential mortgage transaction" or
29 an extension of "open-end credit" as those terms are set forth
30 in 12 C.F.R. § 226.2.

31 b. "Total points and fees threshold" means:

32 (1) For loans in which the total loan amount is twenty
33 thousand dollars or more, the total points and fees payable in
34 connection with the home loan less any excluded points and
35 fees exceed five percent of the total loan amount.

1 (2) For loans in which the total loan amount is less than
2 twenty thousand dollars, the total points and fees payable in
3 connection with the home loan less any excluded points and
4 fees exceed the lesser of one thousand dollars or eight
5 percent of the total loan amount.

6 17. "Total loan amount" means the principal of the loan
7 minus those points and fees that are included in the principal
8 amount of the loan. For open-end loans, the total loan amount
9 shall be calculated using the total line of credit allowed
10 under the home loan at closing.

11 Sec. 3. NEW SECTION. 535D.3 PROHIBITED ACTS AND
12 PRACTICES.

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

22 2. A creditor shall not knowingly or intentionally engage
23 in the act or practice of flipping a home loan.

24 3. A creditor shall not recommend or encourage default on
25 an existing loan or other debt prior to and in connection with
26 the closing or planned closing of a home loan that refinances
27 all or any portion of such existing loan or debt.

28 4. A creditor shall not impose a late payment charge
29 unless the loan documents specifically authorize the charge,
30 the charge is not imposed unless the payment is past due for
31 ten days or more, and the charge does not exceed five percent
32 of the amount of the late payment. A late payment charge
33 shall not be imposed more than once with respect to a
34 particular late payment. If a late payment charge is deducted
35 from a payment made on the home loan and such deduction

1 results in a subsequent default on a subsequent payment, a
2 late payment charge shall not be imposed for such default. A
3 creditor may apply any payment made in the order of maturity
4 to a prior period's payment due even if the result is late
5 payment charges accruing on subsequent payments due.

6 5. The terms of a home loan shall not include a provision
7 that permits the creditor, in its sole discretion, to
8 accelerate the indebtedness. This subsection does not
9 prohibit acceleration of a loan in good faith due to the
10 borrower's failure to abide by the material terms of the loan.

11 6. A creditor or servicer shall not charge a fee for
12 informing or transmitting to any person the balance due to pay
13 off a home loan or to provide a release upon prepayment.
14 However, when such information is provided by facsimile or if
15 it is provided upon request within sixty days of the
16 fulfillment of a previous request, a creditor or servicer may
17 charge a processing fee of up to ten dollars. Payoff balances
18 shall be provided within a reasonable time but in any event no
19 more than five business days after the request.

20 Sec. 4. NEW SECTION. 535D.4 HIGH-COST HOME LOANS.

21 A high-cost home loan is subject to the following
22 additional limitations and prohibited practices:

23 1. In connection with a high-cost home loan, a creditor
24 shall not directly or indirectly finance any points or fees.

25 2. Prepayment fees or penalties shall not be included in
26 the loan documents for a high-cost home loan.

27 3. A high-cost home loan shall not contain a scheduled
28 payment that is more than twice the amount of the average of
29 earlier scheduled payments. This subsection does not apply
30 when the payment schedule is adjusted to the seasonal or
31 irregular income of the borrower.

32 4. A high-cost home loan shall not include payment terms
33 under which the outstanding principal balance or accrued
34 interest will increase at any time over the course of the loan
35 because the regularly scheduled periodic payments do not cover

1 the full amount of interest due.

2 5. A high-cost home loan shall not contain a provision
3 that increases the interest rate after default. This
4 subsection does not apply to interest rate changes in a
5 variable rate loan otherwise consistent with the provisions of
6 the loan documents, provided the change in the interest rate
7 is not triggered by the event of default or the acceleration
8 of the indebtedness.

9 6. A high-cost home loan shall not include terms under
10 which more than two periodic payments required under the loan
11 are consolidated and paid in advance from the loan proceeds
12 provided to the borrower.

13 7. A creditor shall not make a high-cost home loan without
14 first receiving certification from a counselor with a third-
15 party nonprofit organization approved by the United States
16 department of housing and urban development, a housing
17 financing agency of this state, or the regulatory agency that
18 has jurisdiction over the creditor, that the borrower has
19 received counseling on the advisability of the loan
20 transaction.

21 8. A high-cost home loan shall not be extended to a
22 borrower unless a reasonable creditor would believe at the
23 time the loan is closed that the borrower residing in the home
24 will be able to make the scheduled payments associated with
25 the loan based upon a consideration of the borrower's current
26 and expected income, current obligations, employment status,
27 and other financial resources, other than the borrower's
28 equity in the collateral that secures the repayment of the
29 loan. There is a rebuttable presumption that the borrower
30 residing in the home is able to make the scheduled payments to
31 repay the obligation if, at the time the loan is consummated,
32 the borrower's total monthly debts, including amounts under
33 the loan, do not exceed fifty percent of the borrower's
34 monthly gross income as verified by tax returns, payroll
35 receipts, and other third-party income verification.

1 9. A creditor shall not pay a contractor under a home-
2 improvement contract from the proceeds of a high-cost home
3 loan, unless the following conditions are met:

4 a. The creditor is presented with a signed and dated
5 completion certificate issued by the contractor showing that
6 the home improvements have been completed.

7 b. The instrument is payable to the borrower or jointly to
8 the borrower and the contractor, or, at the election of the
9 borrower, through a third-party escrow agent in accordance
10 with terms established in a written agreement signed by the
11 borrower, the creditor, and the contractor prior to the
12 disbursement.

13 10. A creditor shall not charge a borrower any fees or
14 other charges to modify, renew, extend, or amend a high-cost
15 home loan or to defer any payment due under the terms of a
16 high-cost home loan.

17 11. All high-cost home loan documents that create a debt
18 or pledge property as collateral shall contain the following
19 notice on the first page in a conspicuous manner: "Notice:
20 This is a high-cost home loan subject to special rules under
21 state law. Purchasers or assignees of this high-cost home
22 loan may be liable for all claims and defenses by the borrower
23 with respect to the home loan."

24 Sec. 5. NEW SECTION. 535D.5 PURCHASE OR ASSIGNMENT OF
25 HIGH-COST HOME LOAN -- CLAIMS.

26 1. A person who purchases or is otherwise assigned a high-
27 cost home loan is subject to all affirmative claims and any
28 defenses with respect to the loan that the borrower could
29 assert against the original creditor of the loan, provided
30 that this subsection shall not apply if the purchaser or
31 assignee demonstrates by a preponderance of the evidence that
32 all of the following conditions apply:

33 a. The purchaser or assignee has in place at the time of
34 the purchase or assignment of the subject loan, policies that
35 expressly prohibit its purchase or acceptance of assignment of

1 any high-cost home loans.

2 b. The purchaser or assignee requires by contract that a
3 seller or assignor of home loans represents and warrants to
4 the purchaser or assignee either of the following:

5 (1) The seller or assignor will not sell or assign any
6 high-cost home loans to the purchaser or assignee.

7 (2) The seller or assignor is a beneficiary of a
8 representation and warranty from a previous seller or assignor
9 to that effect.

10 c. The seller or assignor exercises reasonable due
11 diligence at the time of purchase or assignment of home loans
12 or within a reasonable period of time after the purchase or
13 assignment of such home loans, intended by the purchaser or
14 assignee to prevent the purchaser or assignee from purchasing
15 or taking assignment of any high-cost home loans, provided
16 further that reasonable due diligence shall provide for
17 sampling and shall not require loan-by-loan review.

18 2. A borrower acting only in an individual capacity may
19 assert claims that the borrower could assert against a
20 creditor of the home loan against any subsequent holder or
21 assignee of the home loan limited to amounts required to
22 reduce or extinguish the borrower's liability under the home
23 loan plus amounts required to recover costs, including
24 reasonable attorney fees. Such claims shall be limited to the
25 following:

26 a. Within five years of the closing of a high-cost home
27 loan, a claim of a violation of this chapter in connection
28 with the loan, brought as an original action.

29 b. At any time during the term of a high-cost home loan,
30 after an action to collect on the home loan or foreclose on
31 the collateral securing the home loan has been initiated or
32 the debt arising from the home loan has been accelerated or
33 the home loan has become sixty days in default, any defense,
34 claim or counterclaim, or action to enjoin foreclosure or
35 preserve or obtain possession of the home that secures the

1 loan.

2 3. The provisions of this section shall be effective
3 notwithstanding any other provision of law, provided that
4 nothing in this section shall be construed to limit the
5 substantive rights, remedies, or procedural rights available
6 to a borrower against any creditor, assignee, or holder under
7 any other law. The rights conferred on borrowers by
8 subsections 1 and 2 are independent of each other and do not
9 limit each other.

10 Sec. 6. NEW SECTION. 535D.6 ENFORCEMENT -- PENALTY.

11 1. The originating or brokering of a home loan that
12 violates a provision of this chapter is a violation of the
13 chapter.

14 2. Any person found by a preponderance of the evidence to
15 have violated this chapter shall be liable to the borrower for
16 the following:

17 a. Actual damages, including consequential and incidental
18 damages. The borrower shall not be required to demonstrate
19 reliance in order to receive actual damages.

20 b. For a violation of section 535D.3 or 535D.4, statutory
21 damages equal to two times the finance charges paid under the
22 loan and forfeiture of the remaining interest under the loan.

23 c. Punitive damages, when the violation was malicious or
24 reckless.

25 d. Costs, including reasonable attorney fees.

26 3. A borrower may be granted injunctive, declaratory, or
27 other equitable relief as the court deems appropriate in an
28 action to enforce compliance with this chapter.

29 4. The right of rescission granted under 15 U.S.C. § 1601 et
30 seq., for a violation of that law shall be available to a
31 borrower by way of recoupment against a party foreclosing on
32 the home loan or collecting on the loan, at any time during
33 the term of the loan. Nothing in this chapter shall be
34 construed to limit recoupment rights available to the borrower
35 under any other law.

1 5. The remedies provided in this section are not intended
2 to be the exclusive remedies available to a borrower nor must
3 the borrower exhaust any administrative remedies provided
4 under this chapter or any other applicable law before
5 proceeding under this section.

6 6. Any person, including members, officers, and directors
7 of the creditor, who knowingly violates this chapter is guilty
8 of a serious misdemeanor.

9 7. A creditor acting in good faith, who fails to comply
10 with the provisions of this chapter, shall not be deemed to
11 have violated this chapter if the creditor establishes that
12 either:

13 a. Within thirty days of the loan closing, and prior to
14 receiving any notice that the creditor violated this chapter,
15 the creditor has made appropriate restitution to the borrower,
16 and appropriate adjustments are made to the loan.

17 b. Within sixty days of the loan closing and prior to
18 receiving any notice that the creditor violated this chapter,
19 and the violation was not intentional but resulted from a bona
20 fide error notwithstanding the maintenance of procedures
21 reasonably adapted to avoid such errors, the borrower is
22 notified of the violation, appropriate restitution is made to
23 the borrower, and appropriate adjustments are made to the
24 loan. A "bona fide error" includes clerical, calculation,
25 computer malfunction and programming, and printing errors. An
26 error of legal judgment with respect to a creditor's
27 obligations under this chapter is not a bona fide error.

28 8. The remedies provided in this section are cumulative.

29 9. Whether a borrower is acting individually or on behalf
30 of others similarly situated, any provision of a home loan
31 document that requires a borrower to assert any claim or
32 defense in a forum that is less convenient, more costly, or
33 more dilatory for the resolution of a dispute than a judicial
34 forum established in this state where the borrower may
35 otherwise properly bring a claim or defense or limits in any

1 way any claim or defense the borrower may have is
2 unconscionable and void.

3 10. It is a violation of this chapter for any person to
4 attempt in bad faith to avoid the application of this chapter
5 by dividing any loan transaction into separate parts or
6 structuring a home loan transaction as an open-end loan for
7 the purpose of evading the provisions of this chapter when the
8 loan would have been a high-cost home loan if the loan had
9 been structured as a closed-end loan or engaging in any other
10 subterfuge with the intent of evading any provision of this
11 chapter.

12 Sec. 7. NEW SECTION. 535D.7 ATTORNEY GENERAL
13 ENFORCEMENT.

14 The attorney general and the county attorneys of this state
15 shall have jurisdiction to enforce this chapter through their
16 general regulatory powers and through civil process.

17 EXPLANATION

18 This bill creates a new Code chapter known as the "Home
19 Loan Protection Act". The bill is based on federal
20 legislation designed to apply to all creditors that make real
21 estate loans, including home equity loans. The bill prohibits
22 various creditor practices in making and refinancing certain
23 consumer home loans. When making home loans, a creditor is
24 restricted in all of the following areas: financing insurance
25 premiums or debt cancellation fees; "flipping" a home loan
26 (i.e., refinancing a home loan with no net benefit to a
27 borrower); encouraging default on an existing loan prior to
28 closing on a refinancing loan; imposing a late payment charge;
29 and accelerating indebtedness. Additional restrictions apply
30 to creditors that make loans meeting certain thresholds known
31 as "high-cost" home loans. The bill provides for its
32 enforcement and remedies. Any person who knowingly violates
33 the bill is guilty of a serious misdemeanor. A serious
34 misdemeanor is punishable by confinement for no more than one
35 year and a fine of at least \$250 but not more than \$1,500.