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COMMERCE

SENATE FILE 2226  
BY BOLKCOM

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

**A BILL FOR**

1 An Act relating to high-cost home loans and making penalties  
2 applicable.

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

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COMMERCE

SC 2226

1 Section 1. NEW SECTION. 535D.1 DEFINITIONS.

2 For the purposes of this chapter unless the context  
3 otherwise requires:

4 1. "High-cost home loan" means a loan other than an open-  
5 end credit plan or a reverse mortgage transaction in which all  
6 of the following apply:

7 a. The principal amount of the loan is greater than  
8 fifteen thousand dollars and does not exceed two hundred  
9 thousand dollars.

10 b. The borrower is a natural person.

11 c. The debt is incurred by the borrower primarily for  
12 personal, family, or household purposes.

13 d. The loan is secured by a mortgage on residential real  
14 property or secured by collateral which has a mortgage lien  
15 interest in residential real property, which is or will be  
16 occupied by the borrower as the borrower's principal dwelling.

17 e. Without regard to whether the loan transaction is or  
18 may be a "residential mortgage transaction" as defined in 12  
19 C.F.R. § 226.2(a)(24), the loan at the time the loan is made  
20 is such that the loan is considered a "mortgage" under section  
21 152 of the home ownership and equity protection Act of 1994,  
22 Pub. L. No. 103-325, 15 U.S.C. § 1602(aa), and regulations  
23 adopted pursuant thereto.

24 2. "Lender" means any person who funds or negotiates the  
25 terms of a high-cost home loan or acts as a mortgage broker or  
26 lender, finance company, or retail installment seller with  
27 respect to a high-cost home loan.

28 Sec. 2. NEW SECTION. 535D.2 HIGH-COST HOME LOAN  
29 LIMITATIONS.

30 A high-cost home loan shall be subject to all of the  
31 following limitations:

32 1. A high-cost home loan shall not contain a provision  
33 which permits the lender to charge or collect prepayment fees  
34 or penalties more than thirty-six months after the loan  
35 closing or which exceed three percent of the amount prepaid

1 during the first twelve months, two percent of the amount  
2 prepaid during the second twelve months, or one percent of the  
3 amount prepaid during the third twelve months.

4 2. A high-cost home loan shall not contain a provision  
5 which permits the lender, in its sole discretion, to  
6 accelerate the indebtedness. This subsection does not apply  
7 when repayment of the loan has been accelerated by default,  
8 pursuant to a due-on-sale provision, or pursuant to some other  
9 provision of the loan documents unrelated to the payment  
10 schedule.

11 3. A high-cost home loan shall not contain a scheduled  
12 payment that is more than twice as large as the average of  
13 earlier scheduled payments. This subsection does not apply  
14 when the payment schedule is adjusted to the seasonal or  
15 irregular income of the borrower.

16 4. A high-cost home loan shall not contain a payment  
17 schedule with regular periodic payments that cause the  
18 principal balance to increase.

19 5. A high-cost home loan shall not contain a provision  
20 which increases the interest rate after default. This  
21 subsection does not apply to interest rate changes in a  
22 variable rate loan otherwise consistent with the provisions of  
23 the loan documents, provided the change in the interest rate  
24 is not triggered by the event of default or the acceleration  
25 of the indebtedness.

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

30 7. A lender shall not charge a borrower any fees to  
31 modify, renew, extend, or amend a high-cost home loan or to  
32 defer any payment due under the terms of a high-cost home  
33 loan, unless the fees are less than one-half of any fees that  
34 would be charged for a refinance or unless the borrower is in  
35 default.

1 8. A lender shall not make a high-cost home loan unless  
2 the borrower has been provided the following notice or a  
3 substantially similar notice, in writing, not later than the  
4 time that notice provided by 12 C.F.R. § 226.31(c), is  
5 required:

6 "NOTICE TO BORROWER

7 IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A MORTGAGE ON  
8 YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT  
9 INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.

10 MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED  
11 ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND  
12 FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-  
13 TO-VALUE REQUESTED, AND THE TYPE OF PROPERTY THAT WILL SECURE  
14 YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON  
15 WHICH LENDER OR BROKER YOU SELECT. YOU SHOULD SHOP AROUND AND  
16 COMPARE LOAN RATES AND FEES.

17 YOU SHOULD ALSO CONSIDER CONSULTING A QUALIFIED INDEPENDENT  
18 CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR  
19 REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN  
20 BEFORE YOU PROCEED. YOU SHOULD CONTACT THE UNITED STATES  
21 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR A LIST OF  
22 CREDIT COUNSELORS AVAILABLE IN YOUR AREA.

23 YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY  
24 BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR HAVE SIGNED A  
25 LOAN APPLICATION.

26 REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR  
27 RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR  
28 THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE  
29 SERVICES.

30 IN ADDITION, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO  
31 YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO  
32 IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS."

33 9. A lender shall not make a high-cost home loan unless  
34 the lender reasonably believes at the time the loan is made  
35 that one or more of the borrowers, when considered

1 individually or collectively, will be able to make the  
2 scheduled payments to repay the loan based upon a  
3 consideration of the borrower's current and expected income,  
4 current obligations, current employment status, and other  
5 financial resources, other than the borrower's equity in the  
6 dwelling which secures repayment of the loan. A borrower  
7 shall be presumed to be able to make the scheduled payments to  
8 repay the loan if, at the time the loan is consummated, the  
9 borrower's total monthly debts, including amounts owed under  
10 the loan, do not exceed fifty percent of the borrower's  
11 monthly gross income as verified by the credit application,  
12 the borrower's financial statement, a credit report, financial  
13 information provided to the lender by or on behalf of the  
14 borrower, or any other reasonable means. A presumption of  
15 inability to make the scheduled payments to repay the  
16 obligation shall not arise solely from the fact that, at the  
17 time the loan is made, the borrower's total monthly debts,  
18 including amounts owed under the loan, exceed fifty percent of  
19 the borrower's monthly gross income.

20 10. If the proceeds of the high-cost home loan are used to  
21 refinance an existing high-cost home loan held by the same  
22 lender as noteholder, the lender shall not directly or  
23 indirectly finance any of the following:

24 a. Any prepayment fees or penalties payable by the  
25 borrower.

26 b. Points and fees, excluding those provided for in 12  
27 C.F.R. § 226.4(c)(7), which in the aggregate are in excess of  
28 four percent of the total amount financed.

29 11. A lender shall not, within one year of the  
30 consummation of a high-cost home loan, charge a borrower  
31 points and fees in connection with a high-cost home loan if  
32 the proceeds of the high-cost home loan are used to refinance  
33 an existing high-cost home loan on which points were charged.  
34 A lender shall not, at any time, charge a borrower points and  
35 fees in addition to those allowed by 12 C.F.R. § 226.4(c)(7)

1 if the proceeds of the high-cost home loan are used to  
2 refinance an existing high-cost home loan, on which points  
3 were charged, held by the same lender as noteholder. However,  
4 points and fees in accordance with this section may be charged  
5 on any proceeds of a high-cost home loan which are in excess  
6 of the amount refinanced on the existing high-cost home loan.

7 12. A lender shall not pay a contractor under a home-  
8 improvement contract from the proceeds of a high-cost home  
9 loan other than by an instrument payable to the borrower or  
10 jointly to the borrower and the contractor, or at the election  
11 of the borrower, through a third-party escrow agent in  
12 accordance with terms established in a written agreement  
13 signed by the borrower, the lender, and the contractor prior  
14 to the disbursement.

15 13. A lender shall not refinance, replace, or consolidate  
16 a zero-interest-rate or low-interest-rate loan made by a  
17 governmental or nonprofit lender with a high-cost home loan.  
18 For purposes of this subsection, a low-interest-rate loan is  
19 defined as a loan that carries a current interest rate that is  
20 two percentage points or more below the current yield on  
21 United States treasury securities with a comparable maturity.

22 14. A lender shall not finance single premium credit life,  
23 credit accident, credit health, credit disability, or credit  
24 loss of income insurance in connection with a high-cost home  
25 loan.

26 15. A lender shall not make a high-cost home loan unless  
27 the lender has made available to the borrower a videotape, or  
28 other similar audio-video media format such as a digital video  
29 disc (DVD) or compact disc (CD), approved by the  
30 superintendent of banking, which explains the borrower's  
31 rights and responsibilities with regard to this chapter or  
32 high-cost home loans. A lender shall have available for  
33 viewing at least one copy of the video in the principal office  
34 and each branch office of the lender.

35 16. A lender shall not make a high-cost home loan subject

1 to a mandatory arbitration clause that is oppressive, unfair,  
2 unconscionable, or substantially in derogation of the rights  
3 of consumers. Arbitration clauses that comply with the  
4 standards set forth in the statement of principles of the  
5 national consumer dispute advisory committee of the American  
6 arbitration association in effect on June 24, 2003, shall be  
7 presumed not to violate this subsection.

8 17. A lender shall not charge a late payment fee on a  
9 high-cost home loan except in accordance with all of the  
10 following:

11 a. The late payment fee shall not be in excess of five  
12 percent of the amount of the payment past due or ten dollars,  
13 whichever is greater.

14 b. The late payment fee shall only be assessed for a  
15 payment past due fifteen days or more.

16 c. The late payment fee shall only be charged once with  
17 respect to a single late payment.

18 18. A lender shall not charge a borrower a fee in excess  
19 of ten dollars or actual costs, whichever is greater, per  
20 request for a written payoff calculation on a high-cost home  
21 loan for the first two requests by a borrower in a calendar  
22 year.

23 19. A lender shall not initiate a foreclosure or other  
24 judicial process to terminate a borrower's interest in  
25 residential real property subject to a high-cost home loan  
26 without first providing the borrower, at least thirty days  
27 prior to the initiation of any process, written notice of  
28 default and of the borrower's right to cure. The notice shall  
29 include a statement of the amount needed to be paid by the  
30 borrower in order to cure the default and the date by which  
31 the payment is due to cure the default. If the amount needed  
32 to be paid will change during the thirty-day notice period,  
33 the notice shall provide information sufficient to enable a  
34 calculation of the daily change.

35 20. A lender shall not recommend or encourage default on

1 an existing loan or other debt in connection with the closing  
2 of a high-cost home loan that refinances all or a portion of  
3 the existing loan or debt.

4 21. A lender shall not make a high-cost home loan that is  
5 an interest-only payment loan which allows the borrower, for  
6 at least part of the term of the loan, to make payments that  
7 are applied only to interest and not to principal.

8 Sec. 3. NEW SECTION. 535D.3 VIOLATIONS AND PENALTIES.

9 1. The making of a high-cost home loan which violates any  
10 provision of section 535D.2 is usurious and unlawful as an  
11 unfair practice under section 714.16, subsection 2, paragraph  
12 "a".

13 2. It is a violation of this chapter for any person who in  
14 bad faith attempts to avoid the application of this chapter by  
15 any of the following:

16 a. The structuring of a loan transaction as an open-end  
17 credit plan for the purpose and with the intent of evading the  
18 provisions of this chapter when the loan would have been a  
19 high-cost home loan if the loan had been structured as a  
20 closed-end loan.

21 b. Dividing any loan transaction into separate parts for  
22 the purpose and with the intent of evading the provisions of  
23 this chapter.

24 c. Any other such subterfuge.

25 3. The attorney general, the superintendent of banking, or  
26 any party to a high-cost home loan may bring a civil action  
27 against a person who has violated any provision of this  
28 chapter for injunctive relief, actual damages, reasonable  
29 attorney fees, costs, and any other remedy allowed by law.  
30 Any person seeking damages or penalties for a violation of  
31 this chapter may recover damages under either this section or  
32 under section 714.16, but not both.

33 Sec. 4. NEW SECTION. 535D.4 DEFENSES.

34 1. A lender of a high-cost home loan who, when acting in  
35 good faith, fails to comply with section 535D.2, shall not be

1 deemed to have violated this chapter if the lender establishes  
2 that either of the following apply:

3 a. Within thirty days of the loan closing the borrower is  
4 notified of the compliance failure, appropriate restitution is  
5 made, and whatever adjustments necessary are made to the loan,  
6 at the choice of the borrower, to do either of the following:

7 (1) Make the high-cost home loan satisfy the requirements  
8 of this chapter.

9 (2) Change the terms of the loan in a manner beneficial to  
10 the borrower so that the loan will no longer be considered a  
11 high-cost home loan subject to the provisions of this chapter.

12 b. The compliance failure was not intentional and resulted  
13 from a bona fide error notwithstanding the maintenance of  
14 procedures reasonably adopted to avoid such errors, and within  
15 sixty days after the discovery of the compliance failure, the  
16 borrower is notified of the compliance failure, appropriate  
17 restitution is made, and whatever adjustments necessary are  
18 made to the loan to either, at the choice of the borrower,  
19 make the high-cost home loan satisfy the requirements of  
20 section 533D.2 or change the terms of the loan in a manner  
21 beneficial to the borrower so that the loan will no longer be  
22 considered a high-cost home loan subject to the provisions of  
23 this chapter. For purposes of this paragraph, a "bona fide  
24 error" includes clerical, calculation, computer malfunction  
25 and programming, and printing errors.

26 2. A person who purchases or is otherwise assigned a high-  
27 cost home loan shall be subject to an action for violation of  
28 this chapter only if the violation for which the action or  
29 proceeding is brought is apparent on the face of the  
30 disclosure or the underlying promissory note.

31 3. For purposes of this section, "appropriate restitution"  
32 means the reimbursement by the lender of any points, fees,  
33 interest, or other charges made by the lender and received  
34 from the borrower necessary to put the borrower in the same  
35 position as the borrower would have been had the loan, as

1 adjusted in accordance with subsection 1, been originally  
2 made.

3 Sec. 5. NEW SECTION. 535D.5 APPLICABILITY.

4 1. For purposes of this chapter, any extension of credit  
5 shall be deemed to have been made in this state, and therefore  
6 subject to the provisions of this chapter, if the lender  
7 offers or agrees in this state to lend to a borrower, who is a  
8 resident of Iowa, on real property located within Iowa, or if  
9 such borrower accepts or makes the offer in Iowa to borrow,  
10 regardless of the situs of the contract as specified therein.

11 2. Any oral or written solicitation or communication to  
12 lend originating outside of this state, but forwarded to and  
13 received in this state by a borrower who is a resident of  
14 Iowa, shall be deemed to be an offer or agreement to lend in  
15 Iowa and, therefore, subject to this chapter.

16 3. Any oral or written solicitation or communication to  
17 borrow originating within this state, from a borrower who is a  
18 resident of Iowa, but forwarded to and received by a lender  
19 outside of Iowa, shall be deemed to be an acceptance or offer  
20 to borrow in Iowa.

21 4. Any oral or written offer, acceptance, solicitation, or  
22 communication to lend or borrow, made in this state to, or  
23 received in this state from a borrower who is not a resident  
24 of Iowa, shall be subject to the provisions of this chapter,  
25 applicable federal law, law of the situs of the contract, or  
26 law of the residence of the borrower, as the parties may  
27 elect.

28

#### EXPLANATION

29 This bill relates to the making of high-cost home loans in  
30 this state. The bill defines "high-cost home loan" as a loan  
31 where the principal amount is greater than \$15,000 but less  
32 than \$200,000, the borrower is a natural person, the debt is  
33 incurred primarily for personal, family, or household  
34 purposes, and the loan is secured by a mortgage or mortgage  
35 lien interest on residential real property which will be the

1 borrower's principal dwelling.

2 The bill restricts lenders of high-cost home loans from  
3 including certain provisions in a high-cost home loan. A  
4 high-cost home loan shall not contain a provision relating to  
5 the collection of certain prepayment fees or penalties and  
6 allowing a lender to accelerate the indebtedness except in  
7 certain circumstances. A high-cost home loan shall not  
8 contain a payment schedule that causes the principal balance  
9 to increase or a provision which increases the interest rate  
10 after default except in a variable rate loan. The bill  
11 restricts high-cost home loans from requiring two or more  
12 periodic payments to be consolidated and paid in advance to  
13 the borrower. The bill prohibits lenders from charging  
14 certain fees to modify, renew, extend, or amend a high-cost  
15 home loan or to defer any payment due and requires lenders to  
16 provide certain notices to borrowers as described by the bill.

17 The bill restricts lenders from providing high-cost home  
18 loans to borrowers who may not reasonably be able to make the  
19 scheduled payments. If a high-cost home loan is made to  
20 refinance an existing high-cost home loan with the same  
21 lender, the lender is prohibited from financing prepayment  
22 fees or penalties and certain points and fees. The bill  
23 prohibits lenders from charging a borrower points and fees for  
24 a high-cost home loan for one year if the proceeds are used to  
25 refinance an existing high-cost home loan. The bill requires  
26 lenders to pay proceeds from a high-cost home loan to a  
27 contractor only by an instrument payable to the borrower or  
28 jointly to the borrower and the contractor, or a third-party  
29 escrow agent as agreed by the borrower by written agreement.

30 The bill provides that a lender shall not refinance,  
31 replace, or consolidate a zero or low-interest-rate loan made  
32 by a governmental or nonprofit lender with a high-cost home  
33 loan. The bill prohibits a lender from financing certain  
34 types of insurance in connection with a high-cost home loan.  
35 The bill requires lenders to make available to borrowers of

1 high-cost home loans a video of the borrower's rights and  
2 responsibilities regarding the bill. Lenders are prohibited  
3 from including mandatory arbitration clauses in a high-cost  
4 home loan that are oppressive, unfair, unconscionable, or  
5 substantially in derogation of the rights of consumers.

6 The bill permits a lender to charge a late payment fee on  
7 high-cost home loans only under certain circumstances. The  
8 bill restricts lenders from charging fees in excess of \$10 or  
9 the actual costs for a written payoff calculation of a high-  
10 cost home loan. The bill restricts a lender of a high-cost  
11 home loan from initiating a foreclosure or other judicial  
12 process to terminate a borrower's interest in residential real  
13 property subject to a high-cost home loan without providing at  
14 least 30 days notice of default and right to cure to the  
15 borrower. The bill prohibits a lender from recommending or  
16 encouraging default in connection with a high-cost home loan  
17 and prohibits lenders from making a high-cost home loan an  
18 interest-only payment loan.

19 The bill provides that a violation of any of the provisions  
20 of new Code section 535D.2 is usurious and is unlawful as an  
21 unfair practice under Code section 714.16, subsection 2,  
22 paragraph "a". The attorney general has authority to  
23 investigate unfair practices and issue a civil penalty in an  
24 amount up to \$40,000 per violation. The bill prohibits any  
25 person to avoid application of new Code chapter 535D in bad  
26 faith by structuring or dividing a loan or through any other  
27 method. The attorney general, the superintendent of banking,  
28 and any other injured party to a high-cost home loan may bring  
29 a civil action for violations of new Code chapter 535D for  
30 injunctive relief, actual damages, reasonable attorney fees,  
31 costs, and any other remedy allowed by law. The bill  
32 restricts a person seeking damages from recovering damages  
33 either under new Code chapter 535D or as an unfair practice  
34 under Code section 714.16, but not both.

35 The bill provides lenders with certain defenses for

1 violations of new Code section 535D.2. A lender may avoid  
2 liability by either providing notice of the violation and  
3 appropriate restitution or by showing that the violation was  
4 not intentional and resulted from a bona fide error and making  
5 appropriate restitution. The bill defines "appropriate  
6 restitution" as the reimbursement of any points, fees,  
7 interest, or other charges made that places the borrower in  
8 the same position as if the violation had not occurred. The  
9 bill describes the applicability of new Code chapter 535D to  
10 certain extensions of credit, or oral or written solicitation  
11 to lend depending on where the offer to lend is made, the  
12 residence of the borrower, the location of the real property  
13 that is the subject of the loan, and the location of the  
14 acceptance of the offer.

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