

# House Study Bill 551

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY  
GENERAL BILL)

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

## A BILL FOR

1 An Act specifying a duty of agency applicable to licensed  
2 mortgage brokers and making penalties applicable.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5345DP 82  
5 rn/nh/5

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1 1 Section 1. NEW SECTION. 535B.18 DUTY OF AGENCY.  
1 2 1. A licensee acting in the capacity of a mortgage broker  
1 3 pursuant to section 535B.1, subsection 5, shall be considered  
1 4 to have created an agency relationship with the borrower in  
1 5 all cases and shall perform all of the following duties:  
1 6 a. Act in the borrower's best interest and in good faith  
1 7 toward borrowers, and not compromise a borrower's right or  
1 8 interest in favor of another person's right or interest,  
1 9 including a right or interest of the licensee. A licensee  
1 10 shall not accept, give, or charge any undisclosed compensation  
1 11 or realize any undisclosed remuneration, either through direct  
1 12 or indirect means, that inures to the benefit of the licensee  
1 13 on an expenditure made for the borrower.  
1 14 b. Carry out all lawful instructions provided or issued by  
1 15 the borrower.  
1 16 c. Disclose to a borrower all material facts of which the  
1 17 licensee has knowledge which might reasonably affect the  
1 18 borrower's rights, interests, or ability to receive the  
1 19 borrower's intended benefit from the mortgage loan, but not  
1 20 facts which are reasonably susceptible to the knowledge of the  
1 21 borrower.  
1 22 d. Use reasonable care in the performance of duties.  
1 23 e. Account to the borrower for all the borrower's money  
1 24 and property received as agent.  
1 25 2. a. This section shall not be construed to prohibit a  
1 26 licensee from contracting for or collecting a fee for services  
1 27 rendered which was disclosed and agreed to by the borrower in  
1 28 advance of the provision of such services.  
1 29 b. This section shall not be construed as requiring a  
1 30 licensee to obtain a loan for the borrower containing terms or  
1 31 conditions not available to the licensee in the licensee's  
1 32 usual course of business, or to obtain a loan for the borrower  
1 33 from a mortgage lender with whom the licensee does not have a  
1 34 business relationship.

### EXPLANATION

2 1 This bill confers upon licensed mortgage brokers a duty of  
2 2 agency.  
2 3 The bill provides that a licensee acting in the capacity of  
2 4 a mortgage broker pursuant to Code section 535B.1, subsection  
2 5 5, shall be considered to have created an agency relationship  
2 6 with a borrower in all cases. The bill specifies duties a  
2 7 licensee shall perform pursuant to the agency relationship,  
2 8 including acting in a borrower's best interest and in good  
2 9 faith, not compromising a borrower's right or interest in  
2 10 favor of another person or licensee, and not accepting,  
2 11 giving, or charging any undisclosed compensation or realizing  
2 12 any undisclosed remuneration that inures to the licensee's  
2 13 benefit on an expenditure made for the borrower. Additional  
2 14 duties include carrying out all lawful instructions provided  
2 15 or issued by a borrower, disclosing all material facts of  
2 16 which the licensee has knowledge which might reasonably affect  
2 17 a borrower's rights, interests, or ability to receive the  
2 18 intended benefit from the mortgage loan, but not facts which  
2 19 are reasonably susceptible to the knowledge of a borrower,

2 20 using reasonable care in the performance of duties, and  
2 21 accounting for all the borrower's money and property received  
2 22 as agent.

2 23     The bill states that the duty of agency shall not be  
2 24 construed to prohibit a licensee from contracting for or  
2 25 collecting a fee for services rendered which was disclosed and  
2 26 agreed to by the borrower in advance of the provision of the  
2 27 services, and shall also not be construed to require a  
2 28 licensee to obtain a loan for the borrower containing terms or  
2 29 conditions not available to the licensee in the usual course  
2 30 of business, or to obtain a loan for the borrower from a  
2 31 mortgage lender with whom the licensee does not have a  
2 32 business relationship.

2 33     A violation of the bill's provisions subjects a licensee to  
2 34 the disciplinary provisions of Code chapter 535B, including  
2 35 license suspension and revocation, and imposition of civil  
3 1 penalties in an amount not to exceed \$5,000 per violation.

3 2 LSB 5345DP 82

3 3 rn/nh/5.1