

Senate Study Bill 3104

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