

Senate Study Bill 1022

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 1295DP 83
5 rn/nh/5

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1 1 Section 1. NEW SECTION. 535B.18 DUTY OF AGENCY.
1 2 1. A licensee or individual registrant acting in the
1 3 capacity of a mortgage broker pursuant to section 535B.1,
1 4 subsection 5, shall be considered to have created an agency
1 5 relationship with the borrower in all cases and shall perform
1 6 all of the following duties:
1 7 a. Act in good faith and with fair dealing toward
1 8 borrowers and place the borrower's interest ahead of the
1 9 interest of any other party, including the interest of the
1 10 licensee or individual registrant.
1 11 b. Not accept, give, or charge any undisclosed
1 12 compensation or realize any undisclosed remuneration, either
1 13 through direct or indirect means, that inures to the benefit
1 14 of the licensee or individual registrant in connection with
1 15 the licensee's or individual registrant's relationship with
1 16 the borrower.
1 17 c. Carry out all lawful instructions provided or issued by
1 18 the borrower.
1 19 d. Affirmatively disclose to a borrower all material facts
1 20 of which the licensee or individual registrant has knowledge
1 21 which might reasonably affect the borrower's rights,
1 22 interests, or ability to receive the borrower's intended
1 23 benefit from the mortgage loan.
1 24 e. Use reasonable care in the performance of duties.
1 25 f. Account to the borrower for all the borrower's money
1 26 and property received as agent.
1 27 2. a. This section shall not be construed to prohibit a
1 28 licensee or individual registrant from contracting for or
1 29 collecting a fee after services have been rendered which was
1 30 disclosed and agreed to by the borrower in advance of the
1 31 provision of such services.
1 32 b. This section shall not be construed as requiring a
1 33 licensee or individual registrant to obtain a loan for the
1 34 borrower containing terms or conditions not available in the
1 35 usual course of business to the licensee or individual
2 1 registrant, or to obtain a loan for the borrower from a
2 2 mortgage lender with whom the licensee or individual
2 3 registrant does not have a business relationship.
2 4 3. The duties and standards of care established in this
2 5 section shall not be waived or modified by contract or
2 6 otherwise.

EXPLANATION

2 8 This bill confers upon licensed mortgage brokers and
2 9 individual registrants a duty of agency.
2 10 The bill provides that a licensee or individual registrant
2 11 acting in the capacity of a mortgage broker pursuant to Code
2 12 section 535B.1, subsection 5, shall be considered to have
2 13 created an agency relationship with a borrower in all cases.
2 14 The bill specifies duties a licensee or individual registrant
2 15 shall perform pursuant to the agency relationship, including
2 16 acting in a borrower's best interest, in good faith, and with
2 17 fair dealing, and not accepting, giving, or charging any
2 18 undisclosed compensation or realizing any undisclosed
2 19 remuneration that inures to the licensee's or individual
2 20 registrant's benefit in connection with their relationship

2 21 with the borrower. Additional duties include carrying out all
2 22 lawful instructions provided or issued by a borrower,
2 23 affirmatively disclosing all material facts of which the
2 24 licensee or individual registrant has knowledge which might
2 25 reasonably affect a borrower's rights, interests, or ability
2 26 to receive the intended benefit from the mortgage loan, using
2 27 reasonable care in the performance of duties, and accounting
2 28 for all the borrower's money and property received as agent.

2 29 The bill states that the duty of agency shall not be
2 30 construed to prohibit a licensee or individual registrant from
2 31 contracting for or collecting a fee after services have been
2 32 rendered which was disclosed and agreed to by the borrower in
2 33 advance of the provision of the services, and shall also not
2 34 be construed to require a licensee or individual registrant to
2 35 obtain a loan for the borrower containing terms or conditions
3 1 not available to the licensee or individual registrant in the
3 2 usual course of business, or to obtain a loan for the borrower
3 3 from a mortgage lender with whom the licensee or individual
3 4 registrant does not have a business relationship. The bill
3 5 provides that the duty of agency and standards of care cannot
3 6 be waived or modified by contract or otherwise.

3 7 A violation of the bill's provisions subjects a licensee to
3 8 the disciplinary provisions of Code chapter 535B, including
3 9 license suspension and revocation, and imposition of civil
3 10 penalties in an amount not to exceed \$5,000 per violation.

3 11 LSB 1295DP 83

3 12 rn/nh/5.1