

February 16, 1967
Passed on File
Commerce 2-17, Page 4-26

Senate File 261
By HAGEDORN, BENDA, RENO
and DeHART

Passed Senate, Date 6-16-67 Passed House, Date 6-23-67
Vote: Ayes 42 Nays 2 Vote: Ayes 67 Nays 10

Passed Approved
Senate as amended
by House 7-1-67
51-0

Motion to reconsider filed 6-23-67
tabled 7-1-67

A BILL FOR

An Act relating to trust accounts to be maintained by real estate brokers.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. Chapter one hundred seventeen (117), Code 1966,
2 is hereby amended by adding the following section:

3 "Trust Accounts.

4 (1) Each broker shall maintain a common trust account in a
5 bank for the deposit of all down payments, earnest money de-
6 posits, or other trust funds received by the broker or his
7 salesmen on behalf of his principal.

8 (2) Each broker shall notify the commission of the name of
9 the bank or banks in which said trust account is maintained
10 and also the name of the account on forms provided therefor.

11 (3) Each broker shall authorize the commission to examine
12 said trust account and shall obtain the certification of the
13 bank attesting to said trust account and consenting to the
14 examination and audit of said account by a duly authorized
15 representative of the commission. Said certification and con-
16 sent shall be furnished on forms prescribed by the commission.

17 (4) Each broker shall only deposit trust funds received
18 on real estate or business opportunity transactions as defined
19 in Section one hundred seventeen point six (117.6), Code 1966,
20 in said common trust account and shall not commingle his personal
21 funds or other funds in said trust account with the exception
22 that a broker may deposit and keep a sum not to exceed one

23 hundred (100) dollars in said account from his personal funds,
24 which sum shall be specifically identified and deposited to
25 cover bank service charges relating to said trust account.

26 (5) A broker may maintain more than one trust account pro-
27 vided the commission is advised of said account as specified
28 in Sections two (2) and three (3) above."

1 Amend Senate File 261 by striking from line
2 twenty-six (26) the word "accound" and inserting in lieu
3 thereof the word "account".

Filed and adopted
June 16, 1967

By CLARKE

1 Amend Senate File 261 as follows:
2 1. Section 1:
3 a. By striking in paragraph three (3), line
4 eleven (11), the word "commission" and inserting
5 the words "auditor of state".
6 b. By striking in paragraph three (3), line
7 fifteen (15) the word "commission" and inserting
8 "auditor of state".
9 2. By adding the following section:
10 This Act, being deemed of immediate importance,
11 shall take effect after its passage, approval and
12 publication in The Grundy Register, a newspaper
13 published at Grundy Center, Iowa, and in the
14 Storm Lake Pilot-Tribune, a newspaper published
15 at Storm Lake, Iowa.

Filed and adopted
July 1, 1967

1 Amend Senate File 261 as follows:
2 1. Section one (1), paragraph three (3), line eleven (11),
3 by striking the word "commission" and inserting the words
4 "auditor of state".
5 2. Further amend section one (1), paragraph three (3),
6 line fifteen (15) by striking the word "commission" and
7 inserting "auditor of state".

Filed - *Lat* 6-23-67
June 22, 1967

FISCHER of Grundy.

1 Amend Senate File 261 by striking the period at the end
2 of line ten (10) of Section 1 and adding the following:
3 "and file with the commission at the same time a surety
4 bond in the principal amount of five thousand dollars (\$5,000.00)
5 executed by such broker as principal, and a surety authorized to
6 do business in this state as surety and in such form as shall
7 be approved by the commission. Said bond shall provide that
8 the obligor therein will pay any judgment or judgments which
9 may be recovered against such broker for loss or damage
10 arising from his acts or conduct as a real estate broker or
11 his salesmen in a total or aggregate amount of not more than
12 five thousand dollars (\$5,000.00) in any license year. No
13 member of the commission or any employee thereof shall be
14 eligible to act as agent for the writing of any bond required
15 herein and neither shall any such person be eligible to receive
16 any emolument or commission therefor."

Filed - *Lat*
June 26, 1967

SULLIVAN of Woodbury.
FISCHER of Grundy.

1 Amend SF 261 by striking all following the enactment clause and
2 substituting the following:

3 Section 1. Chapter one hundred seventeen point thirty-four
4 (117.34), Code 1966 is hereby amended by adding the following
5 section following section one hundred seventeen point thirty-
6 four, seven (117.34 (7)).

7 Failing to deposit in a custodial trust or escrow account all
8 moneys belonging to others coming into the hands of the licensee
9 in compliance with the following requirements:

10 (1) All deposits or other moneys accepted by every person,
11 copartnership, corporation or association holding a real estate
12 broker license under the provisions of this act must be retained
13 by such real estate broker pending consummation or termination
14 of the transaction involved, and shall be accounted for in the
15 full amount thereof at the time of the consummation or termination.

16 (2) Every real estate salesman promptly on receipt by him of
17 a deposit or other moneys on any transaction in which he is en-
18 on behalf of his broker-employer shall pay over the deposit or
19 moneys to the real estate broker. other

20 (3) Under no circumstances shall a broker permit any advance
21 payment of funds belonging to others to be deposited in the broker'
22 business or personal account or be comingled with any funds he
23 have on deposit belonging to him. may

24 (4) Every real estate broker shall immediately deposit such
25 moneys, of whatever kind or nature, belong to others in a separate
26 custodial or trust fund account maintained by the real estate
27 broker with some bank or recognized depository until the trans-
28 involved is consummated or terminated at which time the real es-
29 broker shall account for the full amount received. tate

30 (5) Every real estate broker shall keep records of all funds
31 deposited therein, which records shall indicate clearly the date
32 and from whom he received money, the dates deposited, the dates
33 of withdrawals, and other pertinent information concerning the
34 transaction, and shall show clearly for whose account the money is
35 deposited and to whom the money belongs. All such records shall
36 be subject to inspection by the commission or duly authorized
37 representative of the commission. Such separate custodial or
38 fund account shall designate the real estate broker as trustee,
39 such account must provide for withdrawal of funds without previous
40 notice. and

41 Section 2. Amend Chapter 117.34 by renumbering sections 117.34
42 117.34 (9), 117.34 (10) and 117.34 (11) following Section 1. (8),

Filed and lost ✓
June 23, 1967

MILLER of Page.

1 Amend the title by striking the period (.) after
2 the word "brokers" and inserting the following:

3 "and providing for the establishment and manage-
4 ment of the real estate recovery fund."

5 Further amend Senate File 261 by adding thereto
6 the following new sections:

7 Section 1. Chapter one hundred seventeen (117),
8 Code 1966, is hereby amended by adding thereto sections two
9 (2) through ten (10) of this Act.

10 Section 2. The Iowa real estate commission shall
11 establish and maintain a real estate recovery fund from
12 which any person aggrieved by an act, representation, trans-
13 action, or conduct of a duly licensed real estate broker or
14 real estate salesman, which is in violation of the provisions
15 of this chapter or the regulations promulgated pursuant
16 thereto, may recover by order of the district court of the
17 county where the violation occurred, an amount of not more
18 than ten thousand (10,000) dollars for damages sustained by
19 the act, representation, transaction, or conduct.

20 Sec. 3. Effective January 1, 1968, when any person
21 makes application for an original license to practice as a
22 real estate broker or as a real estate salesman, the applicant
23 shall pay, in addition to his original license fee, a fee of
24 fifteen (15) dollars for deposit in the real estate recovery
25 fund. Every real estate broker and every real estate sales-
26 man when renewing his license for 1968 shall pay, in addition
27 to his license renewal fee, a fee of fifteen (15) dollars
28 for deposit in the real estate recovery fund. In the event
29 that the real estate commission does not issue the license,
30 this fee shall be returned to the applicant.

31 Sec. 4. If on December 31, 1968 or on December 31
32 of any year thereafter, the balance remaining in the real
33 estate recovery fund is less than one hundred thousand
34 (100,000) dollars, every real estate broker and salesman,
35 when renewing his license during the following calendar
36 year, shall pay in addition to his license renewal fee a
37 fee of ten (10) dollars for deposit in the real estate
38 recovery fund.

39 Sec. 5.

40 1. No action for a judgment which subsequently
41 results in an order for collection from the real estate
42 recovery fund shall be started later than two (2) years
43 from the accrual of the cause of action thereon. When any
44 aggrieved person commences action for a judgment which may
45 result in collection from the real estate recovery fund, the
46 aggrieved person shall notify the Iowa real estate commission
47 in writing to this effect at the time of the commencement
48 of such action. The commission shall have the right to
49 intervene in and defend any such action.

50 2. When any aggrieved person recovers a valid judg-
51 ment in any court of competent jurisdiction against any real
52 estate broker or real estate salesman for any act, represen-
53 tation, transaction, or conduct which is in violation of the
54 provisions of this chapter or the regulations promulgated
55 pursuant thereto, and which occurred on or after July 1,
56 1967, the aggrieved person may, upon the termination of all
57 proceedings including reviews and appeals in connection
58 with the judgment, file a verified claim in the court in
59 which the judgment was entered and, upon ten (10) days
60 written notice to the real estate commission, may apply to
61 the court for an order directing payment out of the real

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62 estate recovery fund of the amount unpaid upon the judg-
63 ment, subject to the limitations specified in this section.

64 3. The court shall proceed upon such application
65 in a summary manner and upon the hearing thereof, the
66 aggrieved person shall be required to show:

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67 a. He is not a spouse of the debtor or the
68 personal representative of such spouse.

69 b. He has complied with all the requirements of
70 this section.

71 c. He has obtained a judgment as set out in sub-
72 section two (2) of this section, stating the amount thereof
73 and the amount owing thereon at the date of the application.

74 d. He has caused to be issued a writ of execution
75 upon said judgment and the officer executing the same has
76 made a return showing that no personal or real property of
77 the judgment debtor liable to be levied upon in satisfaction
78 of the judgment could be found, or that the amount realized
79 on the sale of such property, or of such property as were
80 found, under said execution, was insufficient to satisfy
81 the judgment, stating the amount so realized and the balance
82 remaining due on the judgment after application thereon
83 of the amount realized.

84 e. He has caused the judgment debtor to make dis-
85 covery under oath pursuant to the Code of Iowa and the
86 Rules of Civil Procedure concerning his property.

87 f. He has made all reasonable searches and
88 inquiries to ascertain whether the judgment debtor is
89 possessed of real or personal property or other assets
90 liable to be sold or applied in satisfaction of the
91 judgment.

92 g. That by such search, he has discovered no
93 personal or real property or other assets liable to be
94 sold or applied, or that he has discovered certain of
95 such property or assets, describing such, owned by the
96 judgment debtor and liable to be so applied, and that
97 he has taken all necessary action and proceedings for
98 the realization thereof, and that the amount thereby
99 realized was insufficient to satisfy the judgment, stating
100 the amount so realized and the balance remaining due on
101 the judgment after application of the amount realized.

102 4. Whenever the aggrieved person satisfies the
103 court that it is not practicable to comply with one (1)
104 or more of the requirements enumerated in subsection
105 three (3), paragraphs d, e, f, and g, of this section
106 and that the aggrieved person has taken all reasonable
107 steps to collect the amount of the judgment or the
108 unsatisfied part thereof and has been unable to collect
109 the same, the court may in its discretion dispense with
110 the necessity for complying with such requirements.

111 5. The court shall make an order directed to the
112 Iowa real estate commission requiring payment from the
113 real estate recovery fund of whatever sum it shall find
114 to be payable upon the claim, pursuant to the pro-
115 visions of and in accordance with the limitations contained
116 in this section, if the court is satisfied, upon the
117 hearing, of the truth of all matters required to be shown
118 by the aggrieved person by subsection three (3) of this
119 section and that the aggrieved person has fully pursued
120 and exhausted all remedies available to him for recover-
121 ing the amount awarded by the judgment of the court.

122 6. Should the commission pay from the real estate
 123 recovery fund any amount in settlement of a claim or
 124 toward satisfaction of a judgment against a licensed
 125 real estate broker or real estate salesman, the license
 126 of the broker or salesman shall be automatically ter-
 127 minated upon the issuance of a court order authorizing
 128 payment from the real estate recovery fund. No such
 129 broker or salesman shall be eligible to receive the new
 130 license until he has repaid in full, plus interest at the
 131 rate of four (4) percent per year, the amount paid from
 132 the real estate recovery fund on his account. A discharge
 133 in bankruptcy shall not relieve any person from the
 134 penalties and disabilities provided in this subsection.

135 7. If, at any time, the money deposited in the
 136 real estate recovery fund is insufficient to satisfy
 137 any duly authorized claim or portion thereof, the
 138 commission shall, when sufficient money has been
 139 deposited in the fund, satisfy such unpaid claims or
 140 portions thereof, in the order that such claims or portions
 141 thereof were originally filed, plus accumulated interest
 142 at the rate of four (4) percent per year.

143 Sec. 6. The sums received by the commission pursuant
 144 to any provisions of this Act shall be deposited in the
 145 state treasury and held in a special fund to be known as
 146 the real estate recovery fund, and shall be held by the
 147 commission in trust for carrying out the provisions of
 148 this Act. The funds may be invested and reinvested
 149 in the same manner as funds of the state, and the interest
 150 from the investments shall be deposited to the credit of
 151 the real estate recovery fund and shall be available for
 152 the same purposes as all other money deposited in the
 153 fund.

154 Sec. 7. It shall be unlawful for any person or
 155 his agent to file with the commission any notice, state-
 156 ment, or other document required under the provisions
 157 of this Act which is false or untrue or contains any
 158 material misstatement of fact. Any such filing shall
 159 constitute a misdemeanor.

160 Sec. 8. When the commission receives notice, as
 161 provided in section four (4) of this Act, the commission
 162 may enter an appearance, file an answer, appear at the
 163 court hearing, appropriate on behalf of and in the name
 164 of the defendant, and take recourse through any appropriate
 165 method of review on behalf of and in the name of the
 166 defendant.

167 Sec. 9. When, upon the order of the court, the
 168 commission has paid from the real estate recovery
 169 fund any sum to the judgment creditor, the commission
 170 shall be subrogated to all of the rights of the judg-
 171 ment creditor and the judgment creditor shall assign
 172 all his right, title, and interest in the judgment to
 173 the commission on the judgment shall be deposited to the
 174 fund.

175 Sec. 10. The failure of an aggrieved person to
 176 comply with the provisions of this Act shall constitute
 177 a waiver of any rights hereunder.