

APR 12 1973

Place On Calendar

Sen. Commerce 5/8, Pass 5/10

HOUSE FILE 647

BY COMMITTEE ON COMMERCE

Passed House, Date 5-2-73 (1120) Passed Senate, Date 5-21-73 (1348)  
 Vote: Ayes 85 Nays 2 Vote: Ayes 44 Nays 0  
 Approved 6-14-73

## A BILL FOR

1 An Act relating to subdivided land and providing penalties.  
 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. DEFINITIONS. As used in this  
2 Act, unless the context otherwise indicates:

3 1. "Subdivided land" means any improved or unimproved  
4 land divided or proposed to be divided for the purpose of  
5 sale or lease into five or more lots or parcels, or additions  
6 thereto, or parts thereof; however, subdivided land does not  
7 apply to a subdivision subject to section three hundred six  
8 point fifteen (306.15) or chapter four hundred nine (409)  
9 of the Code nor to the leasing of apartments, offices, stores,  
10 or similar space within an apartment building, industrial  
11 building, or commercial building unless an undivided interest  
12 in the land is granted as a condition precedent to occupying  
13 space in said structure. Subdivided land shall not include  
14 any subdivisions of land located within the state of Iowa.

15 2. "Subdivider" means any person, firm, partnership,  
16 company, corporation, or association engaging directly or  
17 through an agent in the business of selling or leasing  
18 subdivided land, or of offering such land for sale or lease,  
19 to the public in this state.

20 3. "Commission" means the Iowa real estate commission  
21 as established by chapter one hundred seventeen (117) of the  
22 Code.

23 4. "Advertisement" means the attempt by, dissemination,  
24 solicitation, or circulation to induce directly or indirectly  
25 any person to enter into any obligation or acquire any title  
26 or interest in land offered for sale or lease, to the public  
27 in this state.

28 5. "Sale" means any sale, offer for sale, or attempt to  
29 sell or lease any land, to the public in this state, for cash  
30 or on credit.

31 Sec. 2. NEW SECTION. PROVISIONS GOVERNING SALE OR LEASE  
32 OF SUBDIVIDED LANDS. No subdivider shall sell or lease  
33 subdivided land, or offer such land for sale or lease, or  
34 advertise such land for sale or lease to the public within  
35 this state unless he has filed with the commission an applica-

1 tion which shall include an offering statement. No subdivider  
2 shall engage in business in this state until the application  
3 and the offering statement have been accepted and he has been  
4 registered as a subdivider with the commission. The  
5 application shall contain the following:

6 1. The name of the owner and of the subdivider.

7 2. The address of the principal office of the owner and  
8 of the subdivider, wherever situated, and the addresses of  
9 the principal office and all branch offices of the owner and  
10 of the subdivider within this state.

11 3. The name of the person, firm, partnership, company,  
12 corporation, or association holding legal or equitable title  
13 to the land for sale or lease for the purpose of offering  
14 such land or part thereof to the general public.

15 4. A statement as to whether the owner or the subdivider,  
16 or if such owner or subdivider be other than an individual,  
17 the name of any partner, principal, officer, director, or  
18 branch manager thereof or any owner of more than a five per-  
19 cent interest in the business, who has been convicted of any  
20 criminal offense in connection with any transaction involving  
21 the sale or lease, or offer for sale or lease, of subdivided  
22 land, or who has been enjoined or restrained by order of any  
23 court from selling or leasing, or offering for sale or lease,  
24 any subdivided land in any state or county, or who has been  
25 enjoined or restrained by any court from continuing any prac-  
26 tices in connection therewith.

27 5. The complete description of the land offered for sub-  
28 division by lots, plots, blocks, or sales, with or without  
29 streets, together with plats certified to by a duly registered  
30 land surveyor accompanied by a certificate attached thereto  
31 showing the date of the completion of the survey and of the  
32 making of the plat and the name of the subdivision for the  
33 purpose of identification of the subdivided land or any part  
34 thereof.

35 6. Copies of plats of all of the land being filed by the

1 subdivider which plats must have already been recorded by  
2 the proper recording office in the state in which the land  
3 is located.

4 7. A complete opinion either of an attorney admitted to  
5 practice law in this state, or a certificate from a duly  
6 incorporated title search company or an opinion of an attorney  
7 admitted or licensed to practice law in the state wherein  
8 the lands are situated, reciting in detail all of the liens,  
9 encumbrances, and clouds upon the title to such land, and  
10 any other defects of title, which may render the title to  
11 such land unmarketable.

12 8. The provisions, covenants, terms, and conditions upon  
13 which it is the intention of the owner and the subdivider  
14 to sell or lease such subdivided land, accompanied by proposed  
15 forms of contracts contemplated for execution and delivery  
16 upon the consummation of sales or leases.

17 9. If the subdivided land sought to be filed comes within  
18 the purview of the Interstate Land Sales Full Disclosure Act  
19 (Title 15, United States Code Section 1701 et seq.) the sub-  
20 divider must furnish a copy of the accepted report filed with  
21 the department of housing and urban development. If the sub-  
22 division comes under the regulation of the real estate laws  
23 of the state where the land is located and that state requires  
24 a state offering statement or public report, the subdivider  
25 must also include a copy of said state report.

26 10. The subdivider, if a corporation, must register to  
27 do business in the state of Iowa as a foreign corporation  
28 with the secretary of state and furnish a copy of the  
29 certificate of authority to do business in the state of Iowa.  
30 If not a corporation, the subdivider must comply with the  
31 provisions of chapter five hundred forty-seven (547) of the  
32 Code, by filing a proper trade name with the Polk county  
33 recorder. The provisions of this subsection shall also apply  
34 to any person, partnership, firm, company, corporation, or  
35 association, other than the subdivider, which is engaged by

1 or through the subdivider for the purpose of advertising or  
2 selling the land involved in the filing.

3 11. Such other information as the commission may require,  
4 which shall be filed pursuant to the provisions of this Act.

5 12. The offering statement must contain all of the fol-  
6 lowing:

7 a. The names, addresses, and business background of the  
8 subdivider as required in subsections one (1), two (2), three  
9 (3) and four (4) of this section. If such subdivider is a  
10 partnership or corporation, the names, addresses, and business  
11 background of each of the partners, officers, and principal  
12 stockholders, the nature of their fiduciary relationship and  
13 their past, present, or anticipated financial relationship  
14 to the subdivider.

15 b. A complete description of the land and copies of the  
16 plat in which the land is located as required in subsections  
17 five (5) and six (6) of this section and a certified financial  
18 statement by a certified public accountant of the assets and  
19 liabilities of the subdivider as of a date not more than six  
20 months prior to the date of the filing, in such detail as  
21 the commission may require.

22 c. Information concerning public improvements, including  
23 without limitation, streets, storm sewers, street lighting,  
24 water supply, and sewage treatment and disposal facilities  
25 in existence or planned on the subdivision, and the estimated  
26 cost, date of completion, and responsibility for construction  
27 of improvements to be made which are referred to in connection  
28 with the sale or lease, or offering for sale or lease, of  
29 the subdivision or any unit or lot thereon.

30 d. Each of the terms and conditions under which each such  
31 unit or lot is offered for sale and such opinion or  
32 certificates as required in subsections seven (7) and eight  
33 (8) of this section.

34 e. A statement as to the exact terms of any guarantees  
35 or promises of refund or exchange which are to be used by

1 the subdivider. The guarantee or promise of refund or  
2 exchange, if any, must be contained in the body of any  
3 contracts used by the subdivider and cannot be in any separate  
4 document. Said guarantee or promise of refund or exchange  
5 must appear in bold-faced type in the contract.

6 f. If the refund privilege, pursuant to paragraph e of  
7 this subsection, is predicated in any way upon the requiring  
8 by the subdivider of an inspection by the purchaser prior  
9 to requesting a refund or exchange pursuant to the guarantee  
10 provisions, the offering statement and the sale contract  
11 itself must set out in detail all pertinent information in  
12 regard to the inspection trip and in regard to claiming a  
13 refund or exchange pursuant to the guarantee after the  
14 inspection trip.

15 g. Such additional information as the commission may  
16 require as being necessary or appropriate in the public inter-  
17 est or for the protection of purchasers or lessees.

18 h. A vicinity sketch of sufficient scale to show the  
19 entire tract of land, surrounding property ownership, and  
20 road access.

21 Sec. 3. NEW SECTION. OFFERING STATEMENT; CONTENTS;  
22 PROHIBITIONS.

23 1. There may be omitted from the offering statement any  
24 of the information required under subsections six (6), nine  
25 (9), ten (10) and twelve (12) of section two (2) of this Act  
26 which the commission may by a properly promulgated rule and  
27 regulation designate as being unnecessary or inappropriate  
28 for the protection of the public interest or a purchaser.

29 2. No offer to sell or lease subdivided land by any means  
30 of advertisement shall be made unless a copy of such adver-  
31 tisement has first been filed with the commission. All such  
32 advertisements shall state that an offering statement has  
33 been filed with the commission and that a copy of such  
34 statement is available from the subdivider upon request.

35 3. Except as provided in subsection one (1) of this sec-

1 tion, no offer to sell or lease subdivided land shall be made  
2 unless such offer is accompanied by a copy of the current  
3 offering statement filed pursuant to this Act.

4 4. The first page of the offering statement employed in  
5 the sale or lease, or offer for sale or lease, of subdivided  
6 land shall contain a legible statement printed in at least  
7 sixteen point bold type which shall be at least four point  
8 type larger than the body of the document that the filing  
9 of the verified statement and offering statement with the  
10 commission does not constitute approval of the sale or lease,  
11 or offer for sale or lease, by the state, commission or any  
12 officer thereof, or that the state, commission or any officer  
13 thereof, has in any way passed upon the merits of such  
14 offering.

15 5. No sale or lease of subdivided land shall be made  
16 unless accompanied or preceded by the delivery to the  
17 prospective purchaser of an offering statement complying with  
18 the provisions of this section.

19 6. No offering statement shall be changed or amended  
20 unless a copy of such change or amendment has first been filed  
21 with the commission.

22 7. The subdivider shall, within thirty days after the  
23 first day of July of each year, file with the commission a  
24 current offering statement setting forth all changes which  
25 have taken place during the preceding year with respect to  
26 any information required to be set forth in such offering  
27 statement. Only a current offering statement shall be used  
28 to sell or lease, or offer to sell or lease, any subdivided  
29 land.

30 8. A fee of one hundred dollars shall be paid, plus ten  
31 dollars for each one hundred lots, units, parcels, portions,  
32 or interest included in the current offering statement.

33 Sec. 4. NEW SECTION. INSPECTION POWER OF COMMISSION AND  
34 ATTORNEY GENERAL; UNLAWFUL PRACTICES; PENALTIES.

35 1. The commission or the attorney general at the request

1 of the commission may cause an investigation and inspection  
2 to be made of any subdivided land proposed to be offered for  
3 sale or lease in this state pursuant to this Act and may make  
4 a report of the findings thereon.

5 2. Where an inspection is to be made of subdivided land  
6 situated outside of this state and offered for sale in this  
7 state, said inspection as authorized by subsection one (1)  
8 of this section shall be made at the expense of the subdivider.  
9 After the application required by section two (2) of this  
10 Act is filed and after the filing fee required by section  
11 eight (8) of this Act is received the commission may decide  
12 whether or not an inspection pursuant to this subsection is  
13 to be made. If the commission requires an inspection, the  
14 commission, or the attorney general at the request of the  
15 commission shall so notify the subdivider and the subdivider  
16 shall remit to the commission an amount equivalent to the  
17 round trip cost of travel from this state to the location  
18 of the project, as estimated by the commission or the attorney  
19 general and a further amount estimated to be necessary to  
20 cover the additional expenses of such inspection but not to  
21 exceed fifty dollars a day for each day incurred in the  
22 examination of the project. The costs of any subsequent  
23 inspections deemed necessary shall be paid for by the  
24 subdivider. At the completion of any inspection trip the  
25 commission or the attorney general shall furnish the subdivider  
26 a statement as to the costs of the inspection trip and should  
27 said costs be less than the amount advanced by the subdivider  
28 to the commission or the attorney general the remaining balance  
29 will be refunded to the subdivider.

30 3. It shall be unlawful for the subdivider to change the  
31 financial structure of any offering after the submission  
32 thereof to the commission without first notifying the  
33 commission in writing of such intention.

34 4. Where improvements are to be made in connection with  
35 the sale or lease, or offering for sale or lease, of the sub-

1 division or any unit, parcel, or lot thereon, the owner or  
2 subdivider shall either furnish to the commission a performance  
3 bond executed by a surety company authorized to do business  
4 in the state and which has given consent to be sued in this  
5 state with sufficient surety for the benefit and protection  
6 of purchasers of units, parcels, or lots, in such amount and  
7 subject to such terms as the commission deems necessary for  
8 the protection of such purchasers with respect to construction  
9 of such improvements, or place in an escrow account in a  
10 depository acceptable to the commission, that portion of the  
11 sums paid or advanced by purchasers which the commission deems  
12 necessary for the protection of such purchasers with respect  
13 to construction of such improvements.

14 5. Where the land to be subdivided is subject to a  
15 mortgage, lien, or encumbrance securing or evidencing the  
16 payment of money, other than taxes levied or assessments made,  
17 or where the interest of the owner, the subdivider or an agent  
18 is held under option or contract of purchase or in trust,  
19 it shall be unlawful to sell any land in such subdivision  
20 unless a provision in such mortgage, lien, encumbrance, option,  
21 contract, or trust agreement, or a provision in an agreement  
22 supplementary thereto, enables the vendor to convey valid  
23 title to each parcel so sold or leased free of such mortgage,  
24 lien, encumbrance, option, contract, or trust agreement upon  
25 completion of all payments and the performance of all the  
26 terms and conditions required to be made and performed by  
27 the vendee under the agreement of sale.

28 Where the consideration price for a lot sold has been  
29 amortized to an extent that the balance due and owing  
30 thereunder equals an amount required to release such lot or  
31 lots from any existing mortgage, lien, encumbrance, tax,  
32 assessment, option, contract, or trust agreement, and the  
33 initial cost for said land has not been paid for by the owner  
34 or subdivider, all moneys thereafter received by the owner  
35 or subdivider shall be segregated and kept in a separate

1 account as a trust which shall be applied toward the clearance  
2 of title of the land intended to be conveyed to the purchaser.  
3 Certified or verified copies of documents containing such  
4 provisions shall be filed with the commission prior to the  
5 sale or lease, or offer of sale or lease, or advertisement  
6 for sale or lease, of any part of the subdivision.

7 Sec. 5. NEW SECTION. PENALTIES.

8 1. Any person, firm, partnership, corporation, company,  
9 or association representing in any manner that the state,  
10 the commission or any officer thereof has recommended or  
11 acquiesced in the recommendation of the purchase of any  
12 subdivided land offered for sale or lease, in advertising  
13 or offering such subdivided land for sale or lease, shall  
14 be guilty of a misdemeanor and shall be punished by a fine  
15 of not more than one thousand dollars, or by imprisonment  
16 in the county jail for not more than one year or by both such  
17 fine and imprisonment.

18 2. Any person, officer, director, agent, or employee of  
19 a person, company, firm, partnership, association, or cor-  
20 poration offering to sell or lease, or selling or leasing,  
21 subdivided land prior to the filing of the offering statement  
22 and the application required by this Act shall be guilty of  
23 a misdemeanor and punished by a fine not to exceed two thousand  
24 dollars or by imprisonment in the county jail for a term not  
25 to exceed one year, or by both such fine and imprisonment.

26 3. Except as provided in subsection two (2) of this  
27 section, every person, officer, director, agent, or employee  
28 of a person, company, firm, partnership, corporation, or  
29 association who authorizes, directs, or aids in the  
30 publication, advertisement, distribution, or circulation of  
31 any device, scheme, or artifice for obtaining money or property  
32 by means of any false pretense, representation, or promise  
33 concerning any subdivided land offered for sale or lease,  
34 and every person, officer, director, agent, or employee of  
35 a company, firm, partnership, corporation, or association

1 who makes or attempts to make fictitious or pretended purchases  
2 or sales of subdivided lands in this state, or in any other  
3 respect willfully violates or fails to comply with any of  
4 the provisions of this Act, or omits or neglects to obey,  
5 observe, or comply with any order, permit, decision, demand,  
6 or requirement of the commission under the provisions of this  
7 Act, is guilty of a misdemeanor and shall be punished by a  
8 fine not to exceed two thousand dollars or by imprisonment  
9 in the county jail for a term not to exceed one year or by  
10 both such fine and imprisonment, and if such person is a  
11 licensee under chapter one hundred seventeen (117) of the  
12 Code, the commission also may revoke or suspend his license  
13 in the manner provided in such chapter.

14 Sec. 6. NEW SECTION. SALES BY BROKERS. It shall be  
15 unlawful for any subdivider to sell or lease, or offer for  
16 sale or lease, any subdivided land located without this state  
17 except through a real estate broker or salesman duly licensed  
18 in this state. The provision of section one hundred seventeen  
19 point seven (117.7), subsection one (1) of the Code, exempting  
20 regular employees of the owner of real estate from the  
21 licensing requirements of chapter one hundred seventeen (117)  
22 of the Code, shall not in any way apply to the sale of any  
23 subdivided land regulated by this Act and subdividers covered  
24 by this Act may not avail themselves of the provisions of  
25 section one hundred seventeen point seven (117.7), subsection  
26 one (1) of the Code, but must pursuant to this subsection  
27 sell only through licensed Iowa brokers and licensed salesmen.

28 Sec. 7. NEW SECTION. PROSECUTION.

29 1. The attorney general shall prosecute all violations  
30 of this Act. Prosecutions shall be instituted by the attorney  
31 general upon the written request of the commission. In all  
32 criminal proceedings the attorney general may appear before  
33 any court or any grand jury and exercise all the powers and  
34 perform all the duties in respect to such actions or pro-  
35 ceedings which the county attorney would otherwise be

1 authorized or required to exercise or perform. In lieu thereof  
2 the attorney general may transmit evidence, proof, and  
3 information pertaining to such offense to the county attorney  
4 of the county in which the alleged violation occurred, and  
5 such county attorney shall prosecute for such violation.  
6 In any such proceeding in which the attorney general has  
7 appeared, the county attorney shall only exercise such powers  
8 and perform such duties as are required of him by the attorney  
9 general. The attorney general shall, within ten days after  
10 a conviction for a violation of any provision of this Act,  
11 file with the commission a detailed report showing the date  
12 of the conviction, name of the person convicted, and the  
13 specific nature of the charge.

14 2. Whenever it appears to the commission that any person,  
15 officer, director, agent, or employee of a company, firm,  
16 partnership, association, or corporation offering to sell  
17 or lease, or selling or leasing, subdivided land, has committed  
18 or is about to commit a violation of this chapter or any rule,  
19 regulation, or order issued by the commission hereunder, the  
20 commission may apply to the district court of the county in  
21 which the principal office of the subdivider is located or  
22 if such subdivider has no such office in this state then to  
23 the district court of Polk county for an order enjoining such  
24 subdivider or such officer, director, agent, or employee  
25 thereof from violating or continuing to violate this chapter  
26 or any such rule, regulation or order, and for such other  
27 equitable relief as the nature of the case and the interests  
28 of the public may require.

29 3. Any false statement contained in any statement filed  
30 with the commission pursuant to the requirements of this Act,  
31 or in any affidavit attached thereto, shall constitute a vio-  
32 lation of this Act.

33 4. In any action brought under the provisions of this  
34 Act, the attorney general is entitled to recover costs for  
35 the use of this state.



FISCAL NOTE  
HOUSE FILE 647

Date prepared March 19, 1973

Requested by Committee on Commerce.

Prepared in regard to H.F. 647 - An Act relating to subdivided land and providing penalties. Following is the fiscal effect in dollars of the legislative proposal as required by House Rule 48.

No estimate is available of the revenue to be generated under this bill. According to the provisions of the bill, the filing fee is based in part on the number of lots, units, parcels, portions, or interests included. Under the current system, this information is not readily available. During FY 1972 there were a total of 99 filings.

As an example of the revenue involved under this bill, figures for the month of February 1973, which may not be representative of the entire year, are as follows: The Real Estate Commission received seven initial filings involving a total of 23,712 lots and nine additions to a prior filing involving 31,659 lots. This would generate revenue under the proposed bill of \$14,975 and \$800 under the present law. These filings would also produce an estimated revenue in the following year in renewal fees of \$6,000 approximately.

The administrative expenses involved would not increase significantly over the present method.

Filed  
April 23, 1973

GERRY D. RANKIN  
Legislative Fiscal Director

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H-415

- 1 Amend House File 647 as follows:  
2 1. Page 2, lines 7 and 8, by striking the words  
3 "three hundred six point fifteen (306.15)" and in-  
4 sserting in lieu thereof "three hundred six point  
5 twenty-one (306.21)".  
6 2. Page 6, line 25, by striking the following:  
7 "ten (10) and twelve (12)" and inserting in lieu  
8 thereof the following: "and ten (10)".

H-415 Filed and adopted  
May 2, 1973

By BITTLE of Polk  
HILL of Polk

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H-420A

- 1 Amend House File 647 as follows:  
2 1. Page 4, by striking lines 4 through 6 and  
3 inserting in lieu thereof the following:  
4 "7. An opinion of an attorney admitted to  
5 practice law in this state, a policy of title  
6 insurance issued by a title insurer licensed to  
7 do business in the state where the subdivided  
8 land is located, or an opinion of an attorney".

H-420B

- 9 2. Page 9, by striking lines 28 through 35.  
10 3. Page 10, by striking lines 1 and 2.

H-420 Filed  
H-420A adopted  
H-420B withdrawn  
May 2, 1973

By HILL of Polk