

FILED MAR 11 1999

SENATE FILE 404
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SF 240)

Passed Senate, ^(p.772) Date 3/24/99 Passed House, Date 3/30/99 ^(p.941)
Vote: Ayes 48 Nays 0 Vote: Ayes 98 Nays 0
Approved April 14, 1999

A BILL FOR

1 An Act relating to a relationship involving real estate licensees
2 and real estate clients, and establishing restrictions on the
3 payment of commissions or other consideration.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SF 404

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1 Section 1. Section 543B.34, subsection 9, Code 1999, is
2 amended to read as follows:

3 9. ~~a.~~ Paying a commission or other valuable consideration
4 or any part of a such commission or consideration for
5 performing any of the acts specified in this chapter to a
6 person who is not a licensed broker or salesperson under this
7 chapter or who is not engaged in the real estate business in
8 another state or foreign country, or paying a commission or
9 other valuable consideration for performing any of the acts
10 specified in this chapter to a licensee knowing that the
11 licensee will pay a portion of or all of such commission or
12 consideration to a person or party who is not licensed
13 pursuant to this chapter, provided that the provisions of this
14 section shall not be construed to prohibit the payment of
15 earned commissions or consideration to any of the following:

16 ~~(1)~~ a. The estate or heirs of a deceased real estate
17 licensee when such licensee had a valid real estate license in
18 effect at the time the commission or consideration was earned.

19 ~~(2)~~ b. A citizen of another country acting as a referral
20 agent if that country does not license real estate brokers and
21 if the Iowa licensee paying the commission or compensation
22 consideration obtains and maintains reasonable written
23 evidence that the payee is a citizen of the other country, is
24 not a resident of this country, and is in the business of
25 brokering real estate in that other country.

26 ~~(3)---A-corporation-pursuant-to-paragraph-"b".~~

27 ~~b.---A-broker-may-pay-a-commission-to-a-corporation-which-is~~
28 ~~wholly-owned,-or-owned-with-a-spouse,-by-a-salesperson-or~~
29 ~~broker-associate-employed-by-or-otherwise-associated-with-the~~
30 ~~broker,-if-all-of-the-following-conditions-are-met:~~

31 ~~(1)---The-corporation-does-not-engage-in-real-estate~~
32 ~~transactions-as-a-third-party-agent-or-in-any-other-activity~~
33 ~~requiring-a-license-under-this-chapter.~~

34 ~~(2)---The-employing-broker-is-not-relieved-of-any-obligation~~
35 ~~to-supervise-the-employed-licensee-or-any-other-requirements-of~~

1 ~~this chapter or the rules adopted pursuant to this chapter.~~
2 ~~(3)--The employed broker associate or salesperson is not~~
3 ~~relieved from any personal civil liability for any licensed~~
4 ~~activities by interposing the corporate form.~~

5 Sec. 2. NEW SECTION. 543B.60A RESTRICTIONS ON PAYMENT OF
6 COMMISSION TO OTHERS.

7 1. A person or licensee shall not require that a person,
8 party, client, or customer negotiate a listing or purchase
9 agreement or contract of real estate through a particular
10 broker or group of brokers, salesperson or group of
11 salespersons, or agent or group of agents.

12 2. A licensee shall not pay a commission, or portion of a
13 commission, or other valuable consideration to a person or
14 other licensee as described in subsection 1.

15 3. A violation of this section shall be considered a
16 violation under section 543B.34, subsection 4. In addition to
17 any other penalty applicable, a license to practice the
18 profession of real estate broker or salesperson may be revoked
19 or suspended for a violation of this section.

20 4. For purposes of this section, "person" means an
21 individual, corporation, association, partnership, or other
22 legal entity.

23 EXPLANATION

24 This bill relates to the relationship between a real estate
25 licensee and a client, and the payment of a commission,
26 portion of a commission, or other valuable consideration to
27 certain persons.

28 This bill amends Code section 543B.34 and provides that the
29 real estate commission may suspend or revoke a real estate
30 license if the licensee is found to be guilty of paying a
31 commission or other valuable consideration for performing any
32 acts of a real estate broker or salesperson to another
33 licensed person knowing that such person will pay a portion or
34 all of such commission or consideration to a person who is not
35 licensed by the real estate commission.

1 The bill also amends Code section 543B.34 by striking
2 language which permits a real estate broker to pay a
3 commission to a corporation which is wholly owned, or owned
4 with a spouse, by a salesperson or broker associate employed
5 by or otherwise associated with the broker.

6 The bill creates new Code section 543B.60A and provides
7 that a person or licensee shall not require that a person,
8 party, client, or customer negotiate a listing or purchase
9 agreement or contract of real estate through a particular
10 broker or group of brokers, salesperson or group of
11 salespersons, or agent or group of agents.

12 A licensee who violates this section would be subject to
13 license suspension or revocation. Additionally, a person
14 found guilty of a first offense would be guilty of a simple
15 misdemeanor.

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SENATE FILE 404

S-3135

- 1 Amend Senate File 404 as follows:
2 1. By striking page 1, line 26, through page 2,
3 line 4, and inserting the following:
4 "(3) A corporation pursuant to paragraph "b".
5 b. A broker may pay a commission to a corporation
6 which is wholly owned, or owned with a spouse, by a
7 salesperson or broker associate employed by or
8 otherwise associated with the broker, if all of the
9 following conditions are met:
10 (1) The corporation does not engage in real estate
11 transactions as a third-party agent or in any other
12 activity requiring a license under this chapter.
13 (2) The employing broker is not relieved of any
14 obligation to supervise the employed licensee or any
15 other requirement of this chapter or the rules adopted
16 pursuant to this chapter.
17 (3) The employed broker associate or salesperson
18 is not relieved from any personal civil liability for
19 any licensed activities by interposing the corporate
20 form."
21 2. Page 2, line 7, by striking the words "person
22 or".
23 3. Page 2, by inserting after line 14 the
24 following:
25 "3. A licensee shall not request a referral fee
26 after a bona fide offer to purchase is accepted.
27 4. A licensee shall not request a referral fee
28 after a bona fide listing agreement has been signed."
29 4. Page 2, by striking lines 20 through 22.
30 5. By renumbering as necessary.

By JOANN JOHNSON

S-3135 FILED MARCH 24, 1999

ADOPTED

(p. 773)

1 Section 1. Section 543B.34, subsection 9, Code 1999, is
2 amended to read as follows:

3 9. ~~a.~~ Paying a commission or other valuable consideration
4 or any part of a such commission or consideration for
5 performing any of the acts specified in this chapter to a
6 person who is not a licensed broker or salesperson under this
7 chapter or who is not engaged in the real estate business in
8 another state or foreign country, or paying a commission or
9 other valuable consideration for performing any of the acts
10 specified in this chapter to a licensee knowing that the
11 licensee will pay a portion of or all of such commission or
12 consideration to a person or party who is not licensed
13 pursuant to this chapter, provided that the provisions of this
14 section shall not be construed to prohibit the payment of
15 earned commissions or consideration to any of the following:

16 (1) a. The estate or heirs of a deceased real estate
17 licensee when such licensee had a valid real estate license in
18 effect at the time the commission or consideration was earned.

19 (2) b. A citizen of another country acting as a referral
20 agent if that country does not license real estate brokers and
21 if the Iowa licensee paying the commission or compensation
22 consideration obtains and maintains reasonable written
23 evidence that the payee is a citizen of the other country, is
24 not a resident of this country, and is in the business of
25 brokering real estate in that other country.

26 (3) A corporation pursuant to paragraph "b".

27 b. A broker may pay a commission to a corporation which is
28 wholly owned, or owned with a spouse, by a salesperson or
29 broker associate employed by or otherwise associated with the
30 broker, if all of the following conditions are met:

31 (1) The corporation does not engage in real estate
32 transactions as a third-party agent or in any other activity
33 requiring a license under this chapter.

34 (2) The employing broker is not relieved of any obligation
35 to supervise the employed licensee or any other requirement of

1 this chapter or the rules adopted pursuant to this chapter.

2 (3) The employed broker associate or salesperson is not
3 relieved from any personal civil liability for any licensed
4 activities by interposing the corporate form.

5 Sec. 2. NEW SECTION. 543B.60A RESTRICTIONS ON PAYMENT OF
6 COMMISSION TO OTHERS.

*7 1. A licensee shall not require that a person, party,
8 client, or customer negotiate a listing or purchase agreement
9 or contract of real estate through a particular broker or
10 group of brokers, salesperson or group of salespersons, or
11 agent or group of agents.

12 2. A licensee shall not pay a commission, or portion of a
13 commission, or other valuable consideration to a person or
14 other licensee as described in subsection 1.

15 3. A licensee shall not request a referral fee after a
16 bona fide offer to purchase is accepted.

17 4. A licensee shall not request a referral fee after a
18 bona fide listing agreement has been signed.

19 5. A violation of this section shall be considered a
20 violation under section 543B.34, subsection 4. In addition to
21 any other penalty applicable, a license to practice the
22 profession of real estate broker or salesperson may be revoked
23 or suspended for a violation of this section.

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AN ACT
RELATING TO A RELATIONSHIP INVOLVING REAL ESTATE LICENSEES
AND REAL ESTATE CLIENTS, AND ESTABLISHING RESTRICTIONS
ON THE PAYMENT OF COMMISSIONS OR OTHER CONSIDERATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 543B.34, subsection 9, Code 1999, is amended to read as follows:

9. a. Paying a commission or other valuable consideration or any part of a such commission or consideration for performing any of the acts specified in this chapter to a person who is not a licensed broker or salesperson under this chapter or who is not engaged in the real estate business in another state or foreign country, or paying a commission or other valuable consideration for performing any of the acts specified in this chapter to a licensee knowing that the licensee will pay a portion of or all of such commission or consideration to a person or party who is not licensed pursuant to this chapter, provided that the provisions of this section shall not be construed to prohibit the payment of earned commissions or consideration to any of the following:

(1) The estate or heirs of a deceased real estate licensee when such licensee had a valid real estate license in effect at the time the commission or consideration was earned.

(2) A citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Iowa licensee paying the commission or compensation consideration obtains and maintains reasonable written evidence that the payee is a citizen of the other country, is not a resident of this country, and is in the business of brokering real estate in that other country.

(3) A corporation pursuant to paragraph "b".

b. A broker may pay a commission to a corporation which is wholly owned, or owned with a spouse, by a salesperson or broker associate employed by or otherwise associated with the broker, if all of the following conditions are met:

(1) The corporation does not engage in real estate transactions as a third-party agent or in any other activity requiring a license under this chapter.

(2) The employing broker is not relieved of any obligation to supervise the employed licensee or any other requirement of this chapter or the rules adopted pursuant to this chapter.

(3) The employed broker associate or salesperson is not relieved from any personal civil liability for any licensed activities by interposing the corporate form.

Sec. 2. NEW SECTION. 543B.60A RESTRICTIONS ON PAYMENT OF COMMISSION TO OTHERS.

1. A licensee shall not require that a person, party, client, or customer negotiate a listing or purchase agreement or contract of real estate through a particular broker or group of brokers, salesperson or group of salespersons, or agent or group of agents.

2. A licensee shall not pay a commission, or portion of a commission, or other valuable consideration to a person or other licensee as described in subsection 1.

3. A licensee shall not request a referral fee after a bona fide offer to purchase is accepted.

4. A licensee shall not request a referral fee after a bona fide listing agreement has been signed.

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5. A violation of this section shall be considered a violation under section 543B.34, subsection 4. In addition to any other penalty applicable, a license to practice the profession of real estate broker or salesperson may be revoked or suspended for a violation of this section.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 404, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved *April 14* 1999

THOMAS J. VILSACK
Governor