

MAR 8 2004
Place On Calendar

Withdrawn
4/13/04

HOUSE FILE 2488
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 646)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act conferring additional enforcement authority on the real
2 estate commission, and providing penalties.

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

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HOUSE FILE 2488

H-8216

1 Amend House File 2488 as follows:
2 1. Page 2, line 9, by inserting after the word
3 "fees" the following: ", unless the person suspected
4 of violating a provision of section 543B.1 prevails in
5 any application for permanent injunctive relief".

By KURTENBACH of Story

H-8216 FILED MARCH 10, 2004

HF 2488

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1 Section 1. Section 543B.34, unnumbered paragraph 1, Code
2 2003, is amended to read as follows:

3 The real estate commission may upon its own motion and
4 shall upon the verified complaint in writing of any person, if
5 the complaint together with evidence, documentary or
6 otherwise, presented in connection with the complaint makes
7 out a prima facie case, request commission staff or any other
8 duly authorized representative or designee to investigate the
9 actions of any real estate broker, real estate salesperson, or
10 other person who assumes to act in either capacity within this
11 state, and may suspend or revoke a license issued under this
12 chapter at any time if the licensee has by false or fraudulent
13 representation obtained a license, or if the licensee or other
14 person assuming to act in the capacity of a real estate broker
15 or real estate salesperson, except for those actions exempt
16 pursuant to section 543B.7, is found to be guilty of any of
17 the following:

18 Sec. 2. Section 543B.34, Code 2003, is amended by adding
19 the following new unnumbered paragraph:

20 NEW UNNUMBERED PARAGRAPH. If an investigation pursuant to
21 this section reveals that an unlicensed person has assumed to
22 act in the capacity of a real estate broker or real estate
23 salesperson, the commission may issue a cease and desist
24 order, and may impose a civil penalty of up to the greater of
25 ten thousand dollars or ten percent of the real estate sale
26 price.

27 Sec. 3. NEW SECTION. 543B.49 INJUNCTIVE RELIEF.

28 1. In addition to the penalty and complaint provisions of
29 sections 543B.43, 543B.44, and 543B.48, an injunction may be
30 granted through an action in district court to prohibit a
31 person from engaging in an activity which violates the
32 provisions of section 543B.1. The action for injunctive
33 relief may be brought by an affected person. For the purposes
34 of this section, "affected person" means any person directly
35 impacted by the actions of a person suspected of violating the

1 provisions of section 543B.1, including but not limited to the
2 commission created in section 543B.8, a person who has
3 utilized the services of a person suspected of violating the
4 provisions of section 543B.1, or a private association
5 composed primarily of members practicing a profession for
6 which licensure is required pursuant to this chapter.

7 2. If successful in obtaining injunctive relief, the
8 affected person shall be entitled to actual costs and attorney
9 fees. For the purposes of this section, "actual costs" means
10 those costs other than attorney fees which were actually
11 incurred in connection with the action, including but not
12 limited to court and witness fees, investigative expenses,
13 travel expenses, legal research expenses, and other related
14 fees and expenses.

15 EXPLANATION

16 This bill confers additional enforcement authority upon the
17 real estate commission.

18 The bill provides that if an investigation conducted
19 pursuant to Code section 543B.34 reveals that an unlicensed
20 person has assumed to act in the capacity of a real estate
21 broker or real estate salesperson, other than a person whose
22 actions are exempt pursuant to Code section 543B.7 from the
23 provisions of Code chapter 543B, the commission may issue a
24 cease and desist order, and may impose a civil penalty of up
25 to the greater of \$10,000 or 10 percent of the real estate
26 sale price.

27 The bill also provides that an injunction may be granted
28 through an action in district court to prohibit a person from
29 engaging in an activity which violates the provisions of Code
30 section 543B.1. That section provides that a person shall
31 not, directly or indirectly, with the intention or upon the
32 promise of receiving any valuable consideration, offer,
33 attempt, agree to perform, or perform any single act as a real
34 estate broker whether as a part of a transaction or as an
35 entire transaction, or represent oneself as a real estate

1 broker, broker associate, or salesperson, without first
2 obtaining a license and otherwise complying with the
3 requirements of Code chapter 543B. The bill provides that the
4 action for injunctive relief may be brought by an affected
5 person, which the bill defines to mean any person directly
6 impacted by the actions of a person suspected of violating the
7 provisions of Code section 543B.1, including but not limited
8 to the real estate commission, a person who has utilized the
9 services of a person suspected of violating the provisions of
10 Code section 543B.1, or a private association composed
11 primarily of members practicing a profession for which
12 licensure pursuant to Code chapter 543B is required.

13 The bill provides that if successful in obtaining
14 injunctive relief, the affected person shall be entitled to
15 actual costs and attorney fees. The bill defines "actual
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KURTENBACH, CH.
HORBACH
QUIRK

HSB 646

COMMERCE, REGULATION & LABOR

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
COMMERCE, REGULATION
AND LABOR BILL BY
CHAIRPERSON JENKINS)

SUCCEEDS
SF 2488

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

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2 estate commission, and providing penalties.

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2 2003, is amended to read as follows:

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6 otherwise, presented in connection with the complaint makes
7 out a prima facie case, request commission staff or any other
8 duly authorized representative or designee to investigate the
9 actions of any real estate broker, real estate salesperson, or
10 other person who assumes to act in either capacity within this
11 state, and may suspend or revoke a license issued under this
12 chapter at any time if the licensee has by false or fraudulent
13 representation obtained a license, or if the licensee or other
14 person assuming to act in the capacity of a real estate broker
15 or real estate salesperson is found to be guilty of any of the
16 following:

17 Sec. 2. Section 543B.34, Code 2003, is amended by adding
18 the following new unnumbered paragraph:

19 NEW UNNUMBERED PARAGRAPH. If an investigation pursuant to
20 this section reveals that an unlicensed person has assumed to
21 act in the capacity of a real estate broker or real estate
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24 ten thousand dollars or ten percent of the real estate sale
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31 provisions of section 543B.1. The action for injunctive
32 relief may be brought by an affected person. For the purposes
33 of this section, "affected person" means any person directly
34 impacted by the actions of a person suspected of violating the
35 provisions of section 543B.1, including but not limited to the

1 commission created in section 543B.8, a person who has
2 utilized the services of a person suspected of violating the
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14 EXPLANATION

15 This bill confers additional enforcement authority upon the
16 real estate commission.

17 The bill provides that if an investigation conducted
18 pursuant to Code section 543B.34 reveals that an unlicensed
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29 promise of receiving any valuable consideration, offer,
30 attempt, agree to perform, or perform any single act as a real
31 estate broker whether as a part of a transaction or as an
32 entire transaction, or represent oneself as a real estate
33 broker, broker associate, or salesperson, without first
34 obtaining a license and otherwise complying with the
35 requirements of Code chapter 543B. The bill provides that the

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2 person, which the bill defines to mean any person directly
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4 provisions of Code section 543B.1, including but not limited
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