

Withdrawn
3/9/04

MAR 5 2003
Place On Calendar

HOUSE FILE 448
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 31)

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

A BILL FOR

1 An Act relating to the real estate commission and provisions
2 applicable to a licensed real estate broker and making
3 criminal penalties applicable.

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

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HOUSE FILE 448

H-1095

- 1 Amend House File 448 as follows:
- 2 1. By striking page 1, line 14 through page 2,
- 3 line 14.
- 4 2. Title page, line 1, by striking the words "the
- 5 real estate commission and".
- 6 3. By renumbering as necessary.

By OSTERHAUS of Jackson

H-1095 FILED MARCH 19, 2003

HOUSE FILE 448

H-1102

- 1 Amend House File 448 as follows:
 - 2 1. Page 1, by striking lines 1 through 3.
 - 3 2. Page 1, by striking lines 12 and 13.
 - 4 3. By renumbering as necessary.
- By SWAIM of Davis
EICHORN of Hamilton

H-1102 FILED MARCH 19, 2003

HF 448

1 Section 1. Section 543B.3, Code 2003, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 10. Auctions real property.

4 Sec. 2. Section 543B.7, subsection 1, Code 2003, is
5 amended to read as follows:

6 1. A person who, as owner, spouse of an owner, general
7 partner of a limited partnership, or lessor, or-prospective
8 purchaser, or through another engaged by such person on a
9 regular full-time basis, buys, sells, manages, or otherwise
10 performs any act with reference to property owned, rented,
11 leased, or to be acquired by such person.

12 Sec. 3. Section 543B.7, subsection 5, Code 2003, is
13 amended by striking the subsection.

14 Sec. 4. Section 543B.8, unnumbered paragraph 1, Code 2003,
15 is amended to read as follows:

16 A real estate commission is created within the professional
17 licensing and regulation division of the department of
18 commerce. The commission consists of ~~three~~ four members
19 licensed under this chapter and ~~two-members~~ one member not
20 licensed under this chapter and who shall represent the
21 general public. At least one of the licensed members shall be
22 a licensed real estate salesperson, except that if the
23 licensed real estate salesperson becomes a licensed real
24 estate broker during a term of office, that person may
25 complete the term, but is not eligible for reappointment on
26 the commission as a licensed real estate salesperson. A
27 licensed member shall be actively engaged in the real estate
28 business and shall have been so engaged for five years
29 preceding the appointment, the last two of which shall have
30 been in Iowa. Professional associations or societies of real
31 estate brokers or real estate salespersons may recommend the
32 names of potential commission members to the governor.
33 However, the governor is not bound by their recommendations.
34 A commission member shall not be required to be a member of
35 any professional association or society composed of real

1 estate brokers or salespersons. Commission members shall be
2 appointed by the governor subject to confirmation by the
3 senate. Appointments shall be for three-year terms and shall
4 commence and end as provided in section 69.19. A member shall
5 serve no more than three terms or nine years, whichever is
6 less. No more than one member shall be appointed from a
7 county. A commission member shall not hold any other elective
8 or appointive state or federal office. Vacancies shall be
9 filled for the unexpired term by appointment of the governor
10 and are subject to senate confirmation. A majority of the
11 commission members constitutes a quorum. The administrator of
12 the professional licensing and regulation division shall hire
13 and provide staff to assist the commission with implementing
14 this chapter.

15 Sec. 5. NEW SECTION. 543B.49 INJUNCTIVE RELIEF.

16 In addition to the penalty and complaint provisions of
17 sections 543B.43, 543B.44, and 543B.48, an injunction may be
18 granted through an action in district court to prohibit a
19 person from engaging in an activity which violates the
20 provisions of section 543B.1. The action for injunctive
21 relief may be brought by an affected person. For the purposes
22 of this section, "affected person" means any person directly
23 impacted by the actions of a person suspected of violating the
24 provisions of section 543B.1, including but not limited to the
25 commission created by this chapter, a person who has utilized
26 the services of a person suspected of violating the provisions
27 of section 543B.1, or a private association composed primarily
28 of members practicing a profession for which licensure is
29 required pursuant to this chapter.

30 EXPLANATION

31 This bill provides that conducting an auction of real
32 property shall be included within the definition of a real
33 estate broker, and deletes a provision that had previously
34 excluded specified auctioneer activities from the licensure
35 provisions.

1 The bill deletes the status of prospective purchaser from
2 the list of persons who qualify for an exception to the
3 licensure provisions if they act either directly or through
4 another individual engaged by the person to buy, sell, manage,
5 or otherwise perform any act with reference to property owned,
6 rented, leased, or to be acquired by them.

7 The bill provides that the membership of the real estate
8 commission established within the professional licensing and
9 regulation division of the department of commerce shall be
10 modified from three members licensed pursuant to Code chapter
11 543B and two members of the general public, to four licensed
12 members and one member of the general public.

13 The bill provides that in addition to existing penalty and
14 complaint provisions, an injunction may be granted through an
15 action in district court to prohibit a person from engaging in
16 an activity which violates the provisions of Code section
17 543B.1. That section provides that a person shall not,
18 directly or indirectly, with the intention or upon the promise
19 of receiving any valuable consideration, offer, attempt, agree
20 to perform, or perform any single act as a real estate broker
21 whether as a part of a transaction or as an entire
22 transaction, or represent oneself as a real estate broker,
23 broker associate, or salesperson, without first obtaining a
24 license and otherwise complying with the requirements of Code
25 chapter 543B. The bill provides that the action for
26 injunctive relief may be brought by an affected person, which
27 the bill defines to mean any person directly impacted by the
28 actions of a person suspected of violating the provisions of
29 Code section 543B.1, including but not limited to the real
30 estate commission, a person who has utilized the services of a
31 person suspected of violating the provisions of Code section
32 543B.1, or a private association composed primarily of members
33 practicing a profession for which licensure pursuant to Code
34 chapter 543B is required.

35

H-1259

1 Amend House File 448 as follows:

2 1. Page 2, by inserting after line 29 the
3 following:

4 "Sec. ____ . NEW SECTION. 545A.1 TITLE.

5 This chapter shall be known and may be cited as the
6 "Iowa Auction and Auctioneer Licensing Act".

7 Sec. ____ . NEW SECTION. 545A.2 DEFINITIONS.

8 1. "Associate auctioneer" means a person who acts
9 as an auctioneer, but who is under the direct
10 supervision of a licensed auctioneer or auction
11 service.

12 2. "Auction" means the sale of property, real or
13 personal, by public outcry, in which the sale price of
14 the property offered is increased until the highest
15 accepted bidder becomes the purchaser.

16 3. "Auction clerk" or "auction cashier" means a
17 person who, with or without receiving or collecting a
18 fee, commission, or other valuable consideration,
19 collects, accounts for, or distributes proceeds from
20 an auction.

21 4. "Auction service" means a person who engages in
22 the business of arranging, managing, sponsoring,
23 advertising, or conducting auctions.

24 5. "Auctioneer" means a person who, as a bid
25 caller, sells or offers to sell property with or
26 without receiving or collecting a fee, commission, or
27 other valuable consideration.

28 6. "Certified auction school" means a public or
29 private educational institution offering a curriculum
30 of auctioneer education and training approved by the
31 commission.

32 7. "Commission" means the Iowa auction and
33 auctioneer commission established in section 545A.3.

34 8. "Licensee" means a person licensed under this
35 chapter.

36 9. "Person" means as defined in section 4.1.

37 10. "Property" means anything of value, and
38 includes any interest in property, including any
39 benefit, privilege, claim, or right with respect to
40 anything of value, whether real or personal, tangible
41 or intangible, which may be kept or offered for sale.

42 11. "Secured party" means as defined in section
43 554.9102.

44 12. "Trust account" means an account in a
45 federally insured financial institution used for the
46 deposit and disbursement of the proceeds of an
47 auction.

48 Sec. ____ . NEW SECTION. 545A.3 IOWA AUCTION AND
49 AUCTIONEER COMMISSION ESTABLISHED -- MEMBERS --
50 DUTIES.

H-1259

HOUSE FILE 448

H-1228

1 Amend House File 448 as follows:

2 1. Page 1, by striking lines 18 and 19 and
3 inserting the following: "commerce. The commission
4 consists of ~~three~~ five members licensed under this
5 chapter and two members not".

6 2. Page 2, by inserting after line 14, the
7 following:

8 "Sec. ____ . Section 543B.15, subsection 8, Code
9 2003, is amended to read as follows:

10 8. To qualify for a license as a real estate
11 broker, a person shall complete at least sixty contact
12 hours of commission approved real estate education
13 within twenty-four months prior to taking the broker
14 examination. This education shall be in addition to
15 the required salesperson prelicense course. The
16 applicant shall have been a licensed real estate
17 salesperson actively engaged in real estate for a
18 period of at least twenty-four months preceding the
19 date of application, or shall have had experience
20 substantially equal to that which a licensed real
21 estate salesperson would ordinarily receive during a
22 period of twenty-four months, whether as a former
23 broker or salesperson, a manager of real estate, or
24 otherwise, or in lieu of the twenty-four months of
25 engagement as a licensed real estate salesperson and
26 in addition to completion of at least sixty contact
27 hours of commission approved real estate education and
28 the required salesperson prelicense course, shall have
29 completed at least thirty-six hours of continuing
30 education required for the initial renewal of a real
31 estate salesperson license."

32 3. Page 2, by inserting after line 29 the
33 following:

34 "Sec. ____ . EFFECTIVE DATE. Sections 1 and 3 of
35 this Act, relating to the auctioning of real estate,
36 take effect July 1, 2005."

37 4. Title page, line 2, by inserting after the
38 word "broker" the following: ", providing an
39 effective date,".

40 5. By renumbering as necessary.

By KURTENBACH of Story

H-1228 FILED APRIL 2, 2003

1 1. An Iowa auction and auctioneer commission is
2 established within the professional licensing and
3 regulation division of the department of commerce.

4 2. Members of the commission shall be appointed by
5 the governor and subject to confirmation by the senate
6 pursuant to section 2.32.

7 3. The commission shall consist of five voting
8 members as follows:

9 a. Four members who represent auctioneers, auction
10 clerks and auction cashiers, associate auctioneers,
11 and auction services. An individual appointed
12 pursuant to this paragraph must be a licensee.

13 b. One member who shall represent the public. An
14 individual appointed pursuant to this paragraph must
15 not be or have been a licensee under this chapter or
16 have engaged in any manner in the auction profession.

17 4. Members of the commission shall serve three-
18 year staggered terms as designated by the governor
19 consistent with this section and appointments to the
20 commission are subject to the requirements of sections
21 69.16, 69.16A, and 69.19. A member of the commission
22 shall serve no more than two consecutive terms, not
23 including any partial term which the member is
24 appointed to fill as the result of a vacancy.
25 Vacancies shall be filled by the governor for the
26 duration of the unexpired term in the same manner as
27 provided for other appointments.

28 5. A member of the commission is entitled to be
29 reimbursed for all actual and necessary expenses
30 incurred in performance of duties as a member. A
31 member of the commission shall also receive a per diem
32 as specified in section 7E.6 for each day spent in
33 performance of duties as a member.

34 6. A quorum shall consist of a majority of the
35 members of the commission.

36 7. Members of the commission shall elect a
37 chairperson and vice chairperson annually and other
38 officers as they determine.

39 8. The commission shall meet as often as
40 necessary, but at least once during each calendar
41 quarter. Meetings shall be set by a majority of the
42 commission or upon the call of the chairperson.

43 Sec. ____ . NEW SECTION. 545A.4 DUTIES OF THE
44 COMMISSION.

45 1. The commission shall adopt rules pursuant to
46 chapter 17A establishing licensing requirements and
47 other rules necessary to administer and enforce this
48 chapter. The commission shall consider proposed rules
49 recommended by a commission member, a member of the
50 general public, or a professional auction

1 organization. The commission may publish guidelines
2 to provide clarification and explanation of adopted
3 rules.

4 2. The commission shall maintain a registry of the
5 names and addresses of auctioneers, associate
6 auctioneers, auction clerks, and auction services
7 licensed under this chapter. The commission shall
8 retain records and application materials submitted to
9 the commission.

10 3. The commission shall establish the licensing
11 requirements for each type of license, provide
12 appropriate examinations, establish procedures for
13 grading examinations, receive and approve or
14 disapprove applications for licensing, and issue
15 licenses.

16 An applicant for an auctioneer, associate
17 auctioneer, auction clerk or auction cashier, or
18 auction service license shall provide evidence that
19 the applicant has working knowledge of current auction
20 marketing theories, practices, and techniques which
21 will enable the applicant to provide high-quality
22 service and protection to members of the public.

23 4. The commission shall establish continuing
24 education requirements for licensees and monitor
25 compliance with the established requirements. The
26 basic continuing education requirement for renewal of
27 a license shall be the completion, during the
28 immediately preceding licensure term, of the number of
29 classroom hours of instruction required by the
30 commission in courses or seminars approved by the
31 commission.

32 Participation in continuing education for license
33 renewal is mandatory, except for nonresident licensees
34 whose nonresident license is issued by reciprocity
35 with the nonresident's state of residence. A
36 nonresident licensee whose state does not have a
37 substantially similar licensing requirement shall
38 fulfill the mandatory continuing education
39 requirements established pursuant to this section.

40 Sec. ____ . NEW SECTION. 545A.5 LICENSE FEES.

41 1. The commission shall establish and collect a
42 reasonable fee for a license application, examination,
43 reexamination, issuance of a license, renewal of a
44 license, and any delinquency fee sufficient to pay for
45 the costs of administration and implementation of this
46 chapter. The fees shall include, but are not limited
47 to, amounts to cover the cost for the following items:

48 a. Per diem and necessary expenses for commission
49 members.

50 b. Office facilities, staff assistance, supplies,

1 and equipment of the commission.

2 2. Fees collected by the commission shall be
3 transmitted to the treasurer of state and shall be
4 deposited in the auctioneer recovery and education
5 fund established in section 545A.12. Moneys in the
6 fund are appropriated to and shall be used by the
7 commission consistent with this chapter.

8 Sec. ____ . NEW SECTION. 545A.6 LICENSE
9 REQUIREMENTS.

10 1. An application for a license, renewal of a
11 license, or an examination shall be made in writing to
12 the commission on forms approved by the commission.

13 2. Prior to the adoption of rules by the
14 commission, the commission may issue an interim
15 license to a qualified applicant. An interim license
16 shall not be issued or renewed following the adoption
17 of licensure rules by the commission.

18 3. Except as otherwise provided in this chapter, a
19 person shall not act as an auctioneer, associate
20 auctioneer, auction clerk or auction cashier, or
21 auction service in this state unless that person holds
22 a license issued under this chapter.

23 4. A person is eligible for an auctioneer's
24 license if the applicant satisfies all of the
25 following:

26 a. The applicant is at least eighteen years of
27 age.

28 b. The applicant is a citizen of the United States
29 or a legal alien.

30 c. The applicant does one of the following:

31 (1) Passes a written or oral examination offered
32 pursuant to section 545A.7 demonstrating the
33 applicant's knowledge of auctioneering and the laws
34 pertaining to auctioneering.

35 (2) Shows proof that the applicant has legally
36 performed as an auctioneer in at least five auctions
37 prior to the date of application.

38 (3) Shows proof that the applicant has
39 successfully completed a course of study at a
40 certified auction school.

41 5. A person is eligible for an associate
42 auctioneer's license if the applicant satisfies both
43 of the following:

44 a. The applicant is a citizen of the United States
45 or a legal alien.

46 b. The applicant is employed under the direct
47 supervision of an auctioneer or auction service
48 licensed pursuant to this chapter.

49 6. A person is eligible for an auction clerk or
50 auction cashier license if the applicant satisfies all

1 of the following:

2 a. The applicant is at least eighteen years of
3 age.

4 b. The applicant is a citizen of the United States
5 or a legal alien.

6 c. The applicant has not been convicted of a
7 felony.

8 d. The applicant does one of the following:

9 (1) Passes a written examination offered pursuant
10 to section 545A.7 demonstrating the applicant's
11 knowledge of the position of auction clerk or auction
12 cashier, acceptable accounting methodology, and the
13 laws pertaining to the position of auction clerk or
14 auction cashier.

15 (2) Shows proof that the applicant has
16 successfully completed a course of study at a
17 certified auction school.

18 (3) Shows proof that the applicant has legally
19 performed as an auction clerk or auction cashier in at
20 least five auctions within the previous five years
21 prior to application.

22 7. An auction service license may be issued for
23 the purpose of engaging in the business of arranging,
24 managing, sponsoring, advertising, or conducting
25 auctions, to a person who satisfies the requirements
26 both for licensure as an auctioneer and for licensure
27 as an auction clerk or auction cashier.

28 8. A licensed auction clerk or auction cashier,
29 and a licensed auction service, must hold an Iowa
30 retail sales tax permit.

31 Sec. ____ . NEW SECTION. 545A.7 EXAMINATION
32 REQUIREMENTS.

33 1. The commission shall prepare license
34 examinations for an auctioneer license, auction clerk
35 or auction cashier license, and auction service
36 license. The commission shall also prepare study and
37 reference materials on which the examinations are
38 based. The examination for auctioneers, auction
39 clerks or auction cashiers, and auction services must
40 be designed to establish the applicant's general
41 knowledge of the auction profession, the principles of
42 conducting an auction, and the laws of this state
43 pertaining to auctioneers, auction clerks or auction
44 cashiers, and auction services. The license
45 examination must be offered at least four times a year
46 at locations designated by the commission.

47 2. A person seeking to become eligible for an
48 auctioneer license, auction clerk or auction cashier
49 license, or auction service license by examination
50 must apply to the commission to take a license

1 examination. The application must be accompanied by
2 an examination fee. Upon the receipt of an
3 examination application with the required fee, the
4 commission shall furnish the applicant with study
5 materials and references on which the examination will
6 be based and a schedule specifying the dates and
7 places the examination will be offered. The applicant
8 may take the examination at any scheduled offering
9 within ninety days after receipt of the study
10 materials. If an applicant fails the examination, the
11 applicant may reapply to take the license examination
12 again. However, if the applicant fails the
13 examination twice within a one-year period, the
14 applicant must wait one year from the last date of
15 examination to reapply.

16 Sec. ____ . NEW SECTION. 545A.8 NONRESIDENT
17 LICENSE.

18 1. An auctioneer license, auction clerk or auction
19 cashier license, or auction service license from a
20 nonresident may be issued by the commission as
21 follows:

22 a. If the application is accompanied by a
23 certified copy of an auctioneer license, auction clerk
24 or auction cashier license, or auction service license
25 issued to the applicant by the applicant's state of
26 residence, and the commission has determined that the
27 applicant's state has substantially equivalent
28 licensing requirements, and only if the applicant's
29 state extends similar recognition and courtesies to
30 this state, the commission shall accept the license as
31 proof of the applicant's professional competence and
32 shall waive the course of study and examination
33 requirements of section 545A.7.

34 b. If an application is received from a
35 nonresident of this state where the applicant's state
36 of residency does not have an auctioneer license,
37 auction clerk or auction cashier license, or auction
38 service license requirement, the commission may issue
39 a nonresident license to the applicant if the
40 applicant meets the requirements of section 545A.6 and
41 all other application requirements.

42 2. The commission may issue a license to a
43 nonresident applicant for an associate auctioneer
44 license if the applicant meets the requirements of
45 section 545A.6 and all other application requirements.

46 3. A nonresident applying for a license pursuant
47 to this section shall file a written power of attorney
48 designating the secretary of state as the agent for
49 service of process in the event of any suit against
50 the nonresident person, and submitting to the

1 jurisdiction of the courts of this state. A
2 nonresident who has a duly appointed resident agent
3 for service of process as provided by law is not
4 required to designate the secretary of state as the
5 nonresident's agent. The secretary of state is
6 allowed to collect fees as provided by law for
7 designating resident agents. The secretary shall be
8 furnished with a copy of any designation of the
9 secretary of state or of a resident agent, with the
10 copy to be certified by the secretary of state.

11 4. A licensed nonresident auction clerk or auction
12 cashier and licensed nonresident auction service must
13 hold an Iowa sales tax permit.

14 Sec. ____ . NEW SECTION. 545A.9 LICENSE
15 CERTIFICATE.

16 1. A license certificate issued under this chapter
17 shall bear the signature or facsimile signature of a
18 member of the commission and a license number assigned
19 by the commission.

20 2. No less than ninety days prior to the
21 expiration of a licensee's license, the commission
22 shall issue a renewal notice to each licensee.

23 Sec. ____ . NEW SECTION. 545A.10 DENIAL,
24 SUSPENSION, OR REVOCATION OF LICENSE.

25 1. The rights of a holder of a license as a
26 licensed auctioneer, licensed associate auctioneer,
27 licensed auction clerk or auction cashier, or licensed
28 auction service may be revoked or suspended, or the
29 holder may be otherwise disciplined as provided in
30 this chapter. The commission may investigate the
31 actions of a licensee and may revoke or suspend the
32 rights of a licensee or otherwise discipline a
33 licensee for violation of this chapter or of a rule
34 adopted pursuant to this chapter. Violations shall
35 include, but are not limited to, the following acts or
36 omissions:

37 a. Procurement or attempt to procure a license
38 under this chapter by knowingly making a false
39 statement, submitting false information, refusing to
40 provide complete information in response to a question
41 in an application for license, or participating in any
42 form of fraud or misrepresentation.

43 b. Failure to meet the minimum qualifications
44 established by this chapter.

45 c. Continued and flagrant misrepresentations or
46 making false promises through agents, advertising, or
47 otherwise.

48 d. Failing to account for or remit, within a
49 reasonable time, any money or property belonging to
50 others that comes into the licensee's possession, or

1 commingling funds of others with the licensee's own or
2 failing to keep such funds of others in an escrow or
3 trust account.

4 e. Conviction, including a conviction based upon a
5 plea of guilt or nolo contendere, in a court of
6 competent jurisdiction of this state or any other
7 state of a crime which is substantially related to the
8 qualifications, functions, and duties of a person
9 engaged in the auction profession or involving moral
10 turpitude or a felony.

11 f. Failure or refusal without good cause to
12 exercise reasonable diligence in preparing an auction,
13 conducting an auction, or completing an auction.

14 g. A violation of the uniform commercial code,
15 chapter 554, in the conduct of an auction.

16 2. Before denying an application for a license or
17 before suspending or revoking any license, the
18 commission shall in all cases set the matter for a
19 hearing and shall, at least thirty days before the
20 date set for the hearing, notify in writing the
21 applicant or licensee of the charges made against the
22 applicant or licensee, or of the question to be
23 determined, including notice of when and where the
24 hearing will be held.

25 3. The applicant or licensee is entitled to an
26 opportunity to be present and to be heard in person or
27 by counsel and to have an opportunity to offer
28 evidence by oral testimony, by affidavit, or by
29 deposition.

30 4. Written notice may be served by delivery of the
31 notice personally to the applicant or licensee or by
32 mailing the notice by certified mail to the last known
33 mailing address of the applicant or licensee. If the
34 applicant or licensee is an associate auctioneer, the
35 commission shall also notify the auctioneer employing
36 the associate auctioneer by mailing the notice by
37 certified mail to the employing auctioneer's last
38 known address.

39 5. The hearing shall be conducted pursuant to
40 chapter 17A.

41 6. If, after hearing, the commission determines
42 that a license should be denied, revoked, or
43 suspended, the applicant or licensee has thirty days
44 in which to appeal the commission's decision to the
45 district court of the county in which the
46 disqualification or violation is alleged to have
47 occurred.

48 Sec. ____ . NEW SECTION. 545A.11 INACTIVE LICENSE.

49 A licensee who does not engage in any activity for
50 which a license under this chapter is required during

1 the year succeeding the expiration of the license
2 shall notify the commission to place the licensee on a
3 list of inactive licensees and the licensee shall not
4 be required to pay a license renewal fee for as long
5 as the licensee remains inactive and annually notifies
6 the commission of such inactive status. In order to
7 resume engaging in an activity for which a license
8 under this chapter is required, the licensee shall
9 notify the commission and remit the appropriate
10 renewal fee for the current renewal period.

11 Sec. ____ . NEW SECTION. 545A.12 AUCTIONEER
12 RECOVERY AND EDUCATION FUND ESTABLISHED -- PURPOSE.

13 1. a. An auctioneer recovery and education fund
14 is created in the state treasury under the control of
15 the commission.

16 b. In addition to the license fees collected
17 pursuant to this chapter, upon renewal of every
18 auction clerk or auction cashier and auction service
19 license, the commission, in its discretion and based
20 upon the needs of the commission, may assess every
21 licensee an amount not to exceed fifty dollars per
22 year to be deposited in the auctioneer recovery and
23 education fund.

24 c. In addition to the license fees collected
25 pursuant to this chapter, an applicant for an initial
26 license shall pay an additional amount of fifty
27 dollars, but upon renewal shall pay the same fee as
28 other licensees.

29 2. Moneys in the fund shall be used for the
30 following purposes:

31 a. Payment to a person aggrieved by a licensee as
32 the result of a violation of this chapter or rules
33 adopted pursuant to this chapter. Payment is to be
34 made upon the entry of a final order entered by the
35 commission or by a court. The commission is
36 authorized to pay to the aggrieved person or persons
37 an aggregate amount not to exceed fifty thousand
38 dollars against any one licensee, provided that the
39 licensee has refused to pay the claim within a period
40 of twenty days of entry of a final order and provided
41 further that the amount or amounts of money in
42 question are certain and liquidated.

43 b. The commission shall attempt to maintain a
44 minimum level of two hundred thousand dollars in the
45 fund for recovery and guaranty purposes. All moneys
46 in the fund may be invested in the same manner as
47 funds of the Iowa public employees' retirement system
48 and the interest from the investments shall be
49 deposited to the credit of the fund. Sufficient
50 liquidity shall be maintained so that moneys are

1 available to satisfy any and all claims, subject to
2 available funds, which may be processed through the
3 commission by means of administrative hearing as
4 outlined in this chapter.

5 c. The commission, in its discretion, may use any
6 funds in excess of the two hundred thousand dollar
7 level for any of the following purposes:

8 (1) To carry out the advancement of education and
9 research in the auction field for the benefit of
10 licensees, and for improving the efficiency of the
11 auction profession.

12 (2) To underwrite educational seminars and other
13 forms of education projects for the use and benefit
14 generally of licensees.

15 (3) To establish an auction chair or courses at
16 state institutions of higher learning for the purpose
17 of making the courses available to licensees and the
18 general public.

19 (4) To contract for particular research projects
20 relating to the auction profession.

21 (5) To sponsor, contract for, and to underwrite
22 any and all other educational and research projects of
23 a similar nature having to do with the advancement of
24 the auction profession.

25 (6) To cooperate with associations of auctioneers
26 and any other groups for the enlightenment and
27 advancement of licensees.

28 (7) To increase the level of the auctioneer
29 recovery and education fund above two hundred thousand
30 dollars.

31 (8) To augment the regular trust and agency
32 account of the commission.

33 3. a. If a licensee is found guilty of violation
34 of this chapter or of the rules adopted pursuant to
35 this chapter, and if the amount of money lost by the
36 aggrieved party or parties is in dispute or cannot be
37 determined accurately, the liability of the licensee
38 and the amount of damages shall be determined by the
39 district court in the county where the alleged
40 violation took place, provided that the commission has
41 previously determined that a violation has occurred
42 and a final order has been entered.

43 b. If a final order of the commission has been
44 entered and the rights of the licensee have been
45 finally adjudicated, the district court shall make a
46 finding as to the monetary damages to be awarded.

47 c. When a final order has been entered by the
48 district court, or after appeal, if any, and upon
49 certification to the commission, the aggrieved party
50 or parties shall be paid an amount or amounts in the

1 aggregate not to exceed fifty thousand dollars by the
2 commission, and the license held by the licensee
3 against whom the claim was made by the aggrieved party
4 shall be suspended at a minimum until the licensee has
5 reimbursed the auctioneer recovery and education fund
6 for all amounts paid to the aggrieved party as a
7 result of the violation.

8 d. Upon payment by the commission of any sum to
9 the aggrieved party, the commission shall be
10 subrogated to all rights of the aggrieved party to the
11 extent of the payment and the aggrieved party shall to
12 the extent of the payment assign such right, title,
13 and interest in the judgment to the commission.

14 e. A claim for monetary damages or relief from the
15 auctioneer recovery and education fund must be made in
16 writing on a proof of loss form submitted to the
17 commission within six months of the act of the
18 auctioneer giving rise to the loss. Failure to file
19 such claims within the six-month period shall bar the
20 claim. Additional evidence shall be submitted by the
21 claimant if required by the commission.

22 f. Notwithstanding any other provisions of this
23 chapter, an unreimbursed amount greater than fifty
24 thousand dollars shall not be paid by the commission
25 on account of any one licensee, regardless of the
26 length of time, the number of claims or claimants, or
27 the size of the claims, individually or in the
28 aggregate. Upon reimbursement of the fund by the
29 licensee for all amounts paid, future claims timely
30 filed with the commission regarding the licensee
31 concerning different matters may be received pursuant
32 to this section.

33 g. A claim shall not be approved under this
34 section for amounts which, in the aggregate, exceed
35 the maximum payable in effect at the time of the act
36 or acts of the licensee giving rise to the claims on
37 account of any one licensee. A statutory increase in
38 the established maximum shall not apply retroactively.

39 4. This section is not intended to substitute for,
40 circumvent, or duplicate other remedies existing at
41 law for claimants or potential claimants, but
42 constitutes a last resort for aggrieved persons who
43 would not, but for the provisions of this section, be
44 able to recover their losses by any other means
45 available. The commission shall have full discretion
46 to require that claimants exhaust all other remedies
47 prior to proceeding under this section.

48 Sec. ____ . NEW SECTION. 545A.13 PREEMPTION.

49 A political subdivision of this state shall not
50 levy or collect any license fee, tax, or other fee, or

1 require the licensing in any manner of any auctioneer,
2 associate auctioneer, auction clerk or auction
3 cashier, or auction service subject to this chapter.

4 Sec. ____ . NEW SECTION. 545A.14 TRUST ACCOUNT
5 REQUIREMENTS.

6 1. A licensee shall maintain a trust account as
7 provided in this section for the deposit and dispersal
8 of all proceeds collected on the behalf of another
9 person, including sales tax, if applicable. The
10 account shall be separate from all other trust
11 accounts of the holder and may be an interest-bearing
12 account. For purposes of this section, "licensee"
13 means a licensed auction clerk or auction cashier or
14 licensed auction service.

15 2. A licensee required to maintain a trust account
16 pursuant to this section shall report to the
17 commission the name and mailing address of the
18 financial institution where the trust account is
19 maintained and the trust account number. A consent
20 form shall also be furnished to the commission from
21 the licensee and the financial institution to permit
22 the examination and audit of the trust account by the
23 commission or the commission's representative.

24 3. Auction trust accounts shall be maintained as
25 follows:

26 a. A resident licensee shall maintain a trust
27 account in a federally insured financial institution
28 located in this state.

29 b. A nonresident licensee licensed in such
30 licensee's state of residence shall maintain a trust
31 account in this state in the same manner as provided
32 for a resident licensee under paragraph "a", or in a
33 federally insured financial institution in the
34 licensee's state of residence and the licensee shall
35 comply with subsection 2.

36 c. A nonresident licensee who is a resident of a
37 state that does not provide for the licensing of
38 auctioneers, auction clerks or auction cashiers, or
39 auction services must maintain an auction trust
40 account in a federally insured Iowa financial
41 institution and the licensee shall comply with
42 subsection 2.

43 4. An auction trust account may contain sufficient
44 personal funds of the licensee to maintain that
45 account.

46 Sec. ____ . NEW SECTION. 545A.15 INVESTIGATION OF
47 COMPLAINT -- ACTION.

48 The commission, upon its own motion, may, or on the
49 written and verified complaint of any person aggrieved
50 by the actions of an auctioneer, associate auctioneer,

1 auction clerk or auction cashier, or an auction
2 service in the conduct of an auction, shall,
3 investigate alleged violations and complaints of this
4 chapter by a licensed or unlicensed auctioneer,
5 associate auctioneer, auction clerk or auction
6 cashier, or auction service.

7 Sec. ____ . NEW SECTION. 545A.16 PENALTIES.

8 1. A person who acts as an auctioneer, associate
9 auctioneer, auction clerk or auction cashier, or
10 auction service without first obtaining a license
11 under this chapter commits a simple misdemeanor.

12 2. A person who violates any other provisions of
13 this chapter, or a rule adopted by the commission in
14 the administration of this chapter for which no other
15 penalty is provided, commits a simple misdemeanor.

16 3. The commission shall adopt rules providing for
17 civil penalties in amounts as permitted by state law
18 and as determined by the commission.

19 Sec. ____ . NEW SECTION. 545A.17 AUCTION
20 CONTRACTS.

21 1. A licensee and each seller of personal property
22 at an auction which is to be conducted or managed
23 within the state shall enter into a written contract.
24 A contract between a licensee and a seller of personal
25 property must be signed by all parties.

26 2. The written contract, at a minimum, shall
27 contain the following:

28 a. The auctioneer's, auction clerk's or auction
29 cashier's, or the auction service's name, trade or
30 business name, and the license number of the
31 auctioneer, auction clerk or auction cashier, or
32 auction service.

33 b. The name of the owner or consignor of the
34 property to be auctioned.

35 c. A general description of the property to be
36 sold.

37 d. Any restriction relating to conducting the
38 auction and a statement indicating whether the
39 auctioneer, auction clerk or auction cashier, or
40 auction service is authorized to purchase at the
41 auction.

42 e. A description of all services to be provided
43 and the fee for services, including whether a buyer's
44 premium will be assessed and, if so, the amount of the
45 buyer's premium.

46 f. A statement indicating which party is
47 responsible for advertising and other auction
48 expenses.

49 g. The date, location, and starting time of the
50 auction, if known.

H-1259.

Page 14

1 h. A statement as to the responsibilities of each
2 party for the auction.

3 i. A statement by the seller that the seller has
4 title or right to sell all property to be sold at
5 auction with identification of those items which are
6 subject to an encumbrance or lien and the disclosure
7 of the person or entity holding an encumbrance or
8 lien.

9 3. An owner or consignor of the property to be
10 auctioned shall be furnished with a copy of the
11 contract.

12 Sec. _____. NEW SECTION. 545A.18 ADVERTISING
13 REQUIREMENTS.

14 1. An auctioneer, auction clerk or auction
15 cashier, or auction service who advertises to hold,
16 conduct, or act as an auction clerk or auction cashier
17 at an auction within this state shall indicate in the
18 advertisement the name and license number of the
19 auctioneer, auction clerk or auction cashier, or
20 auction service.

21 2. This section does not pertain to advertisements
22 for an auction that is to be held in another state.

23 Sec. _____. NEW SECTION. 545A.19 EMPLOYMENT BY
24 AUCTION SERVICE.

25 A person licensed under this chapter shall not act
26 as an auctioneer, associate auctioneer, or auction
27 clerk or auction cashier for an auction service unless
28 the auction service is licensed under this chapter.

29 Sec. _____. NEW SECTION. 545A.20 EXEMPT
30 TRANSACTIONS.

31 This chapter does not apply to a person who engages
32 in any of the following:

33 1. An auction conducted by order of the court
34 pursuant to Title 11 of the United States Code
35 relating to bankruptcy.

36 2. An auction conducted by an employee of the
37 United States, or of this state or its political
38 subdivisions, in the course and scope of the
39 employee's employment.

40 3. An auction conducted by a charitable or
41 nonprofit organization, if the auctioneer receives no
42 compensation.

43 4. An auction conducted by an individual of that
44 individual's own property if the individual is not
45 engaged in the business of selling such property as an
46 auctioneer on a recurring basis.

47 5. A foreclosure auction of realty conducted
48 personally by a trustee under a deed of trust.

49 6. A foreclosure auction of personal property
50 conducted personally by the mortgagee, or other

H-1259

H-1259

Page 15

1 secured party, or an employee or agent of the
2 mortgagee or other secured party acting in the course
3 and scope of the employee's employment, if the
4 employee or agent is not engaged otherwise in the
5 auction business and if all property for sale at
6 auction is subject to a security agreement.

7 7. A sale conducted by sealed bid.

8 8. An auction conducted in a course of study for
9 auctioneers or auction clerks or auction cashiers and
10 conducted for student training purposes.

11 9. An auction conducted by a posted stockyard or
12 market agency as defined by the federal Packers and
13 Stockyard Act, 1921, as amended, 7 U.S.C. § 181 et
14 seq.

15 10. An auction of livestock conducted by a
16 nonprofit livestock trade association chartered in
17 this state if the auction involves only the sale of
18 livestock of the trade association's members.

19 11. An auction conducted by a charitable or
20 nonprofit organization chartered in this state if the
21 auction involves only the property of the organization
22 or its members and the auction is part of an event
23 that is organized under state or local authority.

24 12. A motor vehicle auction, including the auction
25 of wrecked, salvage, or abandoned vehicles.

26 Sec. ____ . INITIAL IOWA AUCTION AND AUCTIONEER
27 COMMISSION APPOINTMENTS. The initial members of the
28 Iowa auction and auctioneer commission shall be
29 appointed to the following terms:

30 1. Two members shall be appointed for a term of
31 three years.

32 2. Two members shall be appointed for a term of
33 two years.

34 3. One member shall be appointed for a term of one
35 year."

36 2. Title page, by striking lines 1 and 2 and
37 inserting the following: "An Act relating to the sale
38 of property, by making changes relating to the real
39 estate commission and provisions applicable to a
40 licensed real estate broker, by providing for the
41 licensing of auctioneers, and making".

By S. OLSON of Clinton

H-1259 FILED APRIL 2, 2003

Kurtenbach, Chair

Jacobs

Quirk

Submitted By **HSB 31**
SF **448**
COMMERCE, REGULATION & LABOR
HOUSE FILE _____

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

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

A BILL FOR

1 An Act relating to the definition and authorized activities of a
2 licensed real estate broker and making criminal penalties
3 applicable.

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

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1 Section 1. Section 543B.3, Code 2003, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 10. Establishes a pattern of engaging in
4 real estate sales, whether or not the real estate is owned by
5 the person. A person shall be presumed to have established a
6 pattern of engaging in real estate sales if the person engages
7 as principal or coprincipal in ten or more transactions during
8 any twelve-month period, unless the person is represented by a
9 licensed real estate broker or salesperson, or is an owner of
10 newly constructed, never-occupied real property.

11 NEW SUBSECTION. 11. Auctions real property.

12 Sec. 2. Section 543B.7, subsection 1, Code 2003, is
13 amended to read as follows:

14 1. A person who, as owner, spouse of an owner, general
15 partner of a limited partnership, or lessor, ~~or-prospective~~
16 ~~purchaser~~, or through another engaged by such person on a
17 regular full-time basis, buys, sells, manages, or otherwise
18 performs any act with reference to property owned, rented,
19 leased, or to be acquired by such person.

20 Sec. 3. Section 543B.7, subsection 5, Code 2003, is
21 amended by striking the subsection.

22 Sec. 4. Section 543B.7, Code 2003, is amended by adding
23 the following new unnumbered paragraph:

24 NEW UNNUMBERED PARAGRAPH. The exclusions to licensure
25 provided in this section shall not apply to a person who, in
26 the regular course of a business operated in the nature of a
27 property management or brokerage business, engages in repeated
28 and successive transactions of a like character for
29 compensation. The exclusions shall also not be utilized to
30 avoid falling within the definition of a real estate broker
31 pursuant to section 543B.3 for which a license must be
32 obtained pursuant to this chapter.

33

EXPLANATION

34 This bill provides that the definition of a real estate
35 broker for which licensure must be obtained pursuant to Code

1 chapter 543B shall include a person who establishes a pattern
2 of engaging in real estate sales, whether or not the real
3 estate is owned by the person. The bill provides that such a
4 pattern shall be presumed to exist if the person engages as
5 principal or coprincipal in 10 or more transactions during any
6 12-month period, unless the person is represented by a
7 licensed real estate broker or salesperson, or is an owner of
8 newly constructed, never-occupied real property. The bill
9 provides that conducting an auction of real property shall
10 also be included within the definition of a real estate
11 broker, and deletes a provision that had previously excluded
12 specified auctioneer activities from the licensure provisions.
13 The bill deletes the status of prospective purchaser from
14 the list of persons who qualify for an exception to the
15 licensure provisions if they act either directly or through
16 another individual engaged by the person to buy, sell, manage,
17 or otherwise perform any act with reference to property owned,
18 rented, leased, or to be acquired by them. The bill further
19 provides that the exclusions contained in Code section 543B.7
20 shall not apply to a person who, in the regular course of a
21 business operated in the nature of a property management or
22 brokerage business, engages in repeated and successive
23 transactions of a like character for compensation, and that
24 they may not be utilized to avoid falling within the
25 definition of a real estate broker.

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