

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATIONThe meeting was called to order by Representative Jim Braden at
Chairperson9:00 ~~a.m.~~ on March 23, 1984 in room 519S of the Capitol.All members were present. ~~except:~~

Committee staff present:

Wayne Morris, Legislative Research Department
Tom Severn, Legislative Research Department
Don Hayward, Revisor of Statutes' Office
Nancy Wolff, Secretary to the Committee

Conferees appearing before the committee:

Todd Sherlock, Kansas Realtors Association
Terry Cobb, Kirk & Company Realtors
Paul Bicknell, Department of Kansas Employment Securities

Hearings were held on House Bill 3089 which would define 'real estate agent' and exempt the same from the provisions of the Kansas employment security law.

Todd Sherlock, Kansas Realtors Association, testified in support of House Bill 3089 and introduced Terry Cobb, a Topeka realtor, who testified in support of the legislation. (Exhibit I)

Paul Bicknell, Chief of Contributions for the Department of Kansas Employment Securities Fund, presented testimony and draft language for possible consideration on the part of the committee. (Exhibit II) He stated that this language would be preferred by his Department over the language as contained in the bill.

The testimony by Mr. Bicknell concluded the hearings on House Bill 3089.

Representative Rolfs made a motion that Senate Bill 467 be removed from the table for discussion. Representative Frey seconded the motion. The motion carried.

Senate Bill 467 would amend two statutes relating to the valuation of personal property for taxation purposes.

Representative Rolfs withdrew his motion of March 22 that Senate Bill 467 be reported favorable for passage as amended and Representative Lowther withdrew the second.

The Chairman called for discussion of the original motion of Representative Miller that Senate Bill 467 be amended on line 45 by striking the words "industry or". That motion was seconded by Representative Leach.

Representative Leach made a substitute motion to conceptually amend Senate Bill 467 in line 44 so that the language would read: "director may use, where it is determined appropriate, an indicator, index or factor which is reasonably applicable to a specific industry or property affected". Representative Wagnon seconded the motion. The motion failed.

The Chairman then called for the vote on the original motion that Senate Bill 467 be amended on line 45 by striking the words "industry or". The motion carried.

Representative Wunsch made a motion that Senate Bill 467 be conceptually amended in line 52, by adding after the period: "In no case shall the fair market value now attributed to existing machinery and equipment be exceeded unless it can be clearly established by the director that such machinery and equipment may be sold for more than such existing valuation." Representative

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATION,
room 519S, Statehouse, at 9:00 a.m./~~pm~~ on March 23, 1984

King seconded the motion. The motion failed. Representative Wunsch was recorded as voting "Yes".

Representative Rolfs made a motion that Senate Bill 467 be reported favorable as amended and Representative Frey seconded the motion. The motion carried. Representative Jarchow voted "No".

The meeting was adjourned.

DATE: 3-23-84

GUEST REGISTER

HOUSE

ASSESSMENT & TAXATION
COMMITTEE

NAME	ORGANIZATION	ADDRESS
Tony Cobb	Ks Assn. of Realtors	37 th + Buhalpura Pys
Tom Stenwede	LI	"
JANET STUBBS	H BAK	TOPEKA
Christy Young	Topeka Chamber	Topeka
Theresa Shiel	Intern	Topeka
Chris McKenzie	League of Municipalities	Topeka
Basil Covey	KRTA	Topeka
R. Skoog	KCATV	Topeka
Frances Kastner	Ks Food Dealers Assn	Topeka
Wayne Maichel	Ka. AFL-CIO	Topeka
Ron Calbert	U.F.U.	NEWTON
Nancy Kantola	Kans. Co-op Council	Topeka
Brian Vandermum	"	"
RON GACHES	KANSAS CHAMBER	TOPEKA
DAN MORGAN	AGC of Kansas	"
BILL EDDS	REVENUE	"
HARLEY DUNCAN	"	"
Janice Marcum	"	"
D. Ferrell	Budget	"



KANSAS ASSOCIATION OF REALTORS®

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Topeka, Kansas 66611
Telephone 913/267-3610

HOUSE ASSESSMENT AND TAXATION COMMITTEE

Mr. Chairman and members of the Committee, my name is Terry Cobb and I represent the Kansas Association of REALTORS. Our association requests that House Bill 3089 be seriously considered and passed by this committee. The bill simply allows real estate salespeople in the state of Kansas to practice their profession as independent contractors for state taxation purposes.

The concept of real estate salespeople as independent contractors is nothing new. For years, ^{some} salespeople have had a written contract with their broker which would enable such an employment status. In fact, this type of relationship has worked very well between the broker and salesperson throughout the years. As an independent contractor, the salesperson is not, ^{normally} required to meet any type of sales quota nor is he (or she) directed or in any way obligated to work under any specific demands of his broker.

Lately, however, it has come to the attention of our Association that the state Department of Human Resources has taken exception to our definition of an "independent contractor". Attached to this testimony is a typical line of questioning from individuals connected with the Kansas Employment Security Fund. We have had a number of brokers in the state that have been questioned on their employment arrangements. Our several thousand brokers across the state are concerned that they may be forced to pay for unemployment compensation benefits for their "independent contractor" salespersons.

We feel that our brokers and salespersons do indeed have a legitimate independent contractor relationship that should not be subject to the taxation provisions normally encountered in an employer/employee relationship. In fact, the United States Congress agrees with us. In 1982, Congress passed and the president signed a measure which, for federal tax purposes, defines real estate salespeople

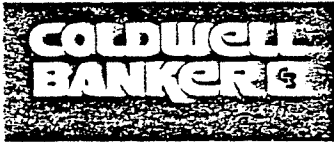
as independent contractors if three simple tests are met. Those tests are outlined in House Bill 3089 and require real estate agent to be licensed under the Kansas license law and receive remuneration from real estate commissions, rather than the number of hours worked. Finally, the salesperson and the broker must have a written contract between the two stating that the salesperson will work as an independent contractor. Included in the back of this testimony is the federal law which Realtors would like to see Kansas conform to.

The pertinent sections of House Bill 3089 which you should be concerned with include page 13, section (Q). This section adds "qualified real estate agents" to the list of who is not included under the list of "employment" for unemployment security law purposes. The term "qualified real estate agent" is defined on page 19 of the act and includes the three tests mentioned. This, members of the Committee, constitutes House Bill 3089. It is not as complicated or as cumbersome as it looks. It does not do anything that we in the real estate profession are not already doing. It does, however, give us some piece of mind because it will statutorily include real estate salespersons under the list of those who are not considered "employed" for employment security law purposes.

In essence, we ask this Committee to codify what Congress has already mandated for federal tax purposes. Should we have this same legislation on the state level, we will be in conformity with federal tax law and our brokers and salespersons will know where they stand for tax purposes with both levels of government.

In short, this bill is one that will take the confusion away from many real estate brokers, while conforming our state tax policies with that of federal tax policies. With the passage of this bill, our industry will see no financial gain nor will the method of operating real estate companies differ in any regard. House Bill 3089's primary function is to statutorily define for us what we already know--that real estate salespeople are ^{for the most part} independent contractors in the state of Kansas.

I will attempt to answer any questions you may have.



1109 KANSAS PLAZA
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BUS. (318) 275-7421

THE REAL ESTATE
SHOPPE, INC.

March 9, 1983

Mr. Jim Mayer
Kansas Association of Realtors
3644 S.W. Burlingame Road
Topeka, KS 66611

Dear Jim:

Following are some of the statements and questions asked by Jerry Cloud of the Kansas Employment Security Fund of Sandy Edwards and me during our meeting on March 2, 1982. Our attorney, Ward Loyd, and our accountant, Rodney VanNorden, were also present.

1. Do your salespeople pay for their own business cards? Do the corporate officers pay for their business cards?
2. Do your salespeople have a continuing relationship with your firm or can they be licensed to sell one home and then quit?
3. Do you give instructions and assistance to your salespeople on writing up listings, contracts, etc.? Do you tell them how they could do it better?
4. Who pays for yard signs? Who pays for the name riders on signs?
5. If a prospective client walks into the office and no one is there except the secretary, does she call someone to come in?
6. Do salespeople pay for advertising or does the corporation?
7. What do you furnish for a salesperson? A desk, phone, space, etc.?
8. Do the salespeople use office stationary, copier, copy paper, etc.?
9. Are salespeople required to be in the office at certain times?
10. Are salespeople required to take floortime?
11. Who controls the licenses?
12. Does the Corporation pay for schooling, travel to schooling, etc.?

Page 2

Mr. Jim Mayer

March 9, 1983

13. Does the Corporation pay for telephone & long distance calls?
14. Can a salesperson be licensed in more than one office?
15. Can a person licensed as a Broker-Associate hang out their own shingle in front of our office?
16. Do salespeople carry their own liability insurance?
17. If you broker-owners were not there the office could not function.
18. Does Gordon O'Dell (salesperson) operate in real estate sales in conjunction with his other business?
19. Do you have any salespeople that do not ever come in?
20. Do your salespeople have a dress code?
21. How are commissions paid? Are they paid from the Trust Account?
Is the trust account like a common cash box?
22. Salespeople do not have a substantial investment other than their car.
23. You are active officers of the Corporation.
24. Does your secretary/receptionist have designated hours?
25. Is there any liability on the part of the salespeople if they terminate?
26. Can you terminate the salespeople?
27. Can the salespeople use your attorney for help in drawing contracts, etc.?
28. Do you have an attorney?
29. Who signs the listing agreements and do they have to be approved?
30. Do closing statements and contracts have to be signed or approved by the Broker?
31. If someone brought suit for wrongdoing, who would they sue? Agent, Broker, Corporation?
32. If a prospective client comes into the office, do you decide who will work with him?
33. Do the Salespeople have a key to the office? Who paid for the keys?

Very truly yours,

Kay B. Cooper

Kay B. Cooper

furnished. For purposes of this section, the term "status determination date" means January 1, May 1, July 1, and October 1 of each year.

(2) PERIOD DURING WHICH CERTIFICATE REMAINS IN EFFECT.—An earned income eligibility certificate which takes effect under this section for any calendar year shall continue in effect with respect to the employee during such calendar year until revoked by the employee or until another such certificate takes effect under this section.

(3) CHANGE OF STATUS.—

(A) REQUIREMENT TO REVOKE OR FURNISH NEW CERTIFICATE.—If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of—

(i) making the employee ineligible for the credit provided by section 43 for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee,

the employee shall, within 10 days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by paragraph (1)(B) for a later certificate and shall be made in such form as the Secretary shall by regulations prescribe.

(B) CERTIFICATE NO LONGER IN EFFECT.—If, after an employee has furnished an earned income eligibility certificate under this section which certifies that such a certificate is in effect with respect to the spouse of the employee, such a certificate is no longer in effect with respect to such spouse, then the employee may furnish the employer with a new earned income eligibility certificate.

(4) FORM AND CONTENTS OF CERTIFICATE.—Earned income eligibility certificates shall be in such form and contain such other information as the Secretary may by regulations prescribe.

(5) TAXABLE YEAR DEFINED.—The term "taxable year" means the last taxable year of the employee under subtitle A beginning in the calendar year in which the wages are paid.

Source: New.

Amendments:	Sec. as amended effective:	P.L. 95-600, § 105(b)(1), (g)(2):
P.L. 95-600, § 105(b)(1), (g)(2)	Added Code Sec. 3507, above, applicable to remuneration paid after June 30, 1978.
P.L. 96-222, § 101(a)(2)(D)	
P.L. 96-222, § 101(a)(2)(D):		
Amended Section 105(g)(2) of P.L. 95-600 to change the effective date of Code Sec. 3507 from June 30, 1978, to June 30, 1979.		

[Caution: Code Sec. 3508, below, as added by P.L. 97-248, applies to services performed after December 31, 1982.—CCH.]

[Sec. 3508]

SEC. 3508. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

[Sec. 3508(a)]

(a) GENERAL RULE.—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

- (1) the individual performing such services shall not be treated as an employee, and
- (2) the person for whom such services are performed shall not be treated as an employer.

[Sec. 3508(b)]

(b) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED REAL ESTATE AGENT.—The term "qualified real estate agent" means any individual who is a sales person if—

- (A) such individual is a licensed real estate agent,

Sec. 3508

Federal Law on independent contractors.

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

(2) **DIRECT SELLER.**—The term "direct seller" means any person if—

(A) such person—

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) **COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.**—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

Source: New.

Amendments:

P.L. 97-248, § 269(a)

Sec. as amended effective:

P.L. 97-248, § 269(a):

Added Code Sec. 3508 to read as above, applicable to services performed after December 31, 1982.

[Caution: Code Sec. 3509, below, as added by P.L. 97-248, is effective on the date of enactment, except that its provisions do not apply to any assessment made before January 1, 1983.—CCH.]

[Sec. 3509]

SEC. 3509. DETERMINATION OF EMPLOYER'S LIABILITY FOR CERTAIN EMPLOYMENT TAXES.

[Sec. 3509(a)]

(a) **IN GENERAL.**—If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

(1) **WITHHOLDING TAXES.**—Tax under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee.

(2) **EMPLOYEE SOCIAL SECURITY TAX.**—Taxes under subchapter A of chapter 21 with respect to such employee shall be determined as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.

[Sec. 3509(b)]

(b) **EMPLOYER'S LIABILITY INCREASED WHERE EMPLOYER DISREGARDS REPORTING REQUIREMENTS.**—

(1) **IN GENERAL.**—In the case of an employer who fails to meet the applicable requirements of section 6041(a), 6041A, or 6051 with respect to any employee, unless such failure is due to

Kansas Auctioneers Association

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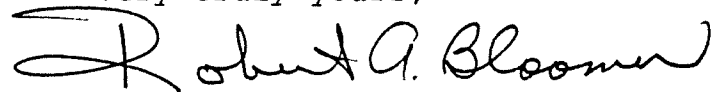
March 20, 1984

Mr. E. Todd Sherlock, Director
Governmental Affairs
Kansas Association of REALTORS
3644 SW Burlingame Road
Topeka, Kansas 66611

Dear Mr. Sherlock:

This letter is to advise you that the Kansas Auctioneers Association supports House Bill 3089 as introduced through the Kansas Association of REALTORS. If there is anything we can do to help in getting this much needed legislation passed, please let us know.

Very truly yours,



Robert A. Bloomer
Chairman, Law & Legislation
Committee, Kansas Auctioneers
Association

RAB/bp

CC: To all Officers &
Directors of K.A.A.



Proposed Draft Language

K.S.A. 44-703(i)(4) The term "employment" shall not include:

(Q) Services performed as a qualified real estate agent ~~or as a direct sales~~; for the purpose of this subsection;

(i) the individual performing such services shall not be treated as an employee, and

(ii) the person for whom such services are performed shall not be treated as an employer.

K.S.A. 44-703

(ff) "Qualified real estate agent" means any individual who is a salesperson if:

(1) such individual is a licensed real estate agent as provided for under the real estate brokers' and salespersons' license act of this State,

(2) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked,

(3) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for unemployment tax purposes, and

(4) such individual is not an active officer of a corporate real estate firm for whom the services are performed.