

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at
Chairperson

1:40 XXX
a.m./p.m. on Monday, March 4, 1985 in room 529-S of the Capitol.

All members were present except:

Senator Jack Steineger was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Office of the Revisor of Statutes
Nedra Springler, Substitute Secretary

Conferees appearing before the committee:

John Rathmel, Director, Workers' Compensation Division
Karen McClain, Kansas Association of Realtors

SB 176 - An act relating to the application of workmen's compensation act to qualified real estate agents.

The Chairman said the purpose of the meeting was for discussion and action on the bill. He noted the differences of opinions when SB 176 was heard and requested staff to review a draft of amendments to the bill (Attachment No. 1) which was an effort to alleviate these differences without creating problems for the Workers' Compensation Division.

Staff said the amendments on lines 55, 56, and 57 addressed the concern regarding the need for the Workers' Compensation Division to continue to make determinations concerning a real estate agent's status as an independent contractor or as an individual employee. By defining, for the purposes of this act, a "qualifying real estate agent", the Division would be able to check through its guidelines for an independent contractor which would eliminate the need to make a determination on the agent's status. H
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A member expressed concern that SB 176 provided no workers' compensation coverage for agents who suffered work-related injuries, the cost for which would eventually fall back on the taxpayer.

John Rathmel, Director, Workers' Compensation Division, said the amendments addressed the Division's concern expressed at the hearing on the bill and clarifies the independent contractor's status without the Division having to make a determination. He agreed with the concern expressed regarding the lack of coverage for agents but noted they still have the right to sue for work-related injuries. He further stated there may still be situations where agents do not qualify under the exemption because of gray areas between the broker and the insurance company which Workers' Compensation does not want to pay. He could not remember any litigation involving workers' compensation in this regard.

In further discussion, it was noted that the Insurance Department had not approved the amendments.

Senator Norvell moved that the amendments in Attachment No. 1 be adopted, seconded by Senator Feleciano. The motion carried.

In discussion on the bill, Senator Morris said it set a dangerous precedent and, if passed, there would be a proliferation of other people who feel they have similar working relationships and should be exempt. The bill defeats the purpose of the Workmen's Compensation Law which is to eliminate lawsuits. He called attention to misstatements in the second paragraph of a memorandum from the Kansas Association of Realtors (Attachment No. 2) regarding the 1983 Interim Report and the committee's decision not to take action on the real estate agent proposal. Senator Morris said the committee's decision was in 1984, and Ms. McClain had not corrected her statements in the memorandum. Ms. Karen McClain, representing the Association, said Senator Morris had called the differences to her attention, and she apologized for not retracting these statements.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
room 529-S, Statehouse, at 1:40 ~~XXX~~ p.m. on March 4, 1985.

Senator Yost moved to report SB 176, as amended, favorable for passage, seconded by Senator Norvell. In discussion, the three qualifying requirements were noted and the question was raised as to the responsible party if terms of the realtor/real estate agent contract were exceeded and an injury occurred. Mr. Rathmel said his Division would probably not have the power, under the bill, to review that case and it would go to court. He believed the bill would result in a common definition of independent contractor for all affected parties to use and the Division would not have to make determinations. He agreed that passage of the bill would result in other groups asking for the same exemption. Following further discussion, the vote on the motion was taken, and it carried.

The Chairman announced that the committee would meet March 5, 1985, at its usual time and place for the purpose of hearing a report on "Projects with Industry" to be given by Frankie Gibson.

The meeting was adjourned at 2:10 p.m.

SENATE BILL No. 176

By Senator Bogina

2-7

0017 AN ACT concerning the workmen's compensation act; relating
0018 to application of act to qualified real estate agents; amending
0019 K.S.A. 1984 Supp. 44-505 and repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1984 Supp. 44-505 is hereby amended to
0022 read as follows: 44-505. (a) Subject to the provisions of K.S.A.
0023 44-506 and amendments thereto, the workmen's compensation
0024 act shall apply to all employments wherein employers employ
0025 employees within this state except that such act shall not apply
0026 to: (1) Agricultural pursuits and employments incident thereto,
0027 other than those employments in which the employer is the
0028 state, or any department, agency or authority of the state; or (2)
0029 any employment, other than those employments in which the
0030 employer is the state, or any department, agency or authority of
0031 the state, wherein the employer had a total gross annual payroll
0032 for the preceding calendar year of not more than \$10,000 for all
0033 employees and wherein the employer reasonably estimates that
0034 such employer will not have a total gross annual payroll for the
0035 current calendar year of more than \$10,000 for all employees,
0036 except that no wages paid to an employee who is a member of the
0037 employer's family by marriage or consanguinity shall be in-
0038 cluded as part of the total gross annual payroll of such employer
0039 for purposes of this subsection; or (3) any employment, other
0040 than those employments in which the employer is the state, or
0041 any department, agency or authority of the state, wherein the
0042 employer has not had a payroll for a calendar year and wherein
0043 the employer reasonably estimates that such employer will not
0044 have a total gross annual payroll for the current calendar year of
0045 more than \$10,000 for all employees, except that no wages paid

Attachment No. 1
3/4/85

Senate Libr. Ind. &
Sm. Bus. 3-4-85
Attachment 1

0046 to an employee who is a member of the employer's family by
0047 marriage or consanguinity shall be included as a part of the total
0048 gross annual payroll of such employer for purposes of this sub-
0049 section; or (4) the employment of any firemen or firefighters who
0050 are members of a firemen's relief association for whom a valid
0051 statement of election to except such members from the provi-
0052 sions of the workmen's compensation act has been filed with the
0053 director by the governing body of such firemen's relief associa-
0054 tion as provided in K.S.A. 44-505d, *and amendments thereto; or*
0055 *(5) services performed by a qualified real estate agent. As used in*
0056 *this subsection, the term "qualified real estate agent" means*
0057 *any individual who is licensed by the Kansas real estate com-*
0058 *mission as a salesperson under the real estate brokers' and*
0059 *salespersons' license act and for whom: (A) Substantially all of*
0060 *the remuneration, whether or not paid in cash, for the services*
0061 *performed by such individual as a real estate salesperson is*
0062 *directly related to sales or other output, including the perform-*
0063 *ance of services, rather than to the number of hours worked; and*
0064 *(B) the services performed by the individual are performed*
0065 *pursuant to a written contract between such individual and the*
0066 *person for whom the services are performed and such contract*
0067 *provides that the individual will not be treated as an employee*
0068 *with respect to such services for state tax purposes.*
0069 (b) Each employer who employs employees in employments
0070 which are excepted from the provisions of the workmen's com-
0071 pensation act as provided in subsection (a) of this section, shall
0072 be entitled to come within the provisions of such act by: (1)
0073 Becoming a member in and by maintaining a membership in a
0074 qualified group-funded workers' compensation pool, as provided
0075 by K.S.A. 1983 1984 Supp. 44-581 to 44-591, inclusive, *and*
0076 *amendments thereto; or (2) filing with the director a written*
0077 *statement of election to accept thereunder. Such written state-*
0078 *ment of election shall be effective from the date of filing until*
0079 *such time as the employer files a written statement withdrawing*
0080 *such election with the director. All written statements of election*
0081 *or of withdrawal of election filed pursuant to this subsection*
0082 *shall be in such form as may be required by regulation of the*

by

as an independent contractor

For the purposes of this act a qualified real estate agent shall be deemed to be an independent contractor if such qualified real estate agent is

0083 director.

0084 (c) This act shall not apply in any case where the accident
0085 occurred prior to the effective date of this act. All rights which
0086 accrued by reason of any such accident shall be governed by the
0087 laws in effect at that time.

0088 Sec. 2. K.S.A. 1984 Supp. 44-505 is hereby repealed.

0089 Sec. 3. This act shall take effect and be in force from and
0090 after its publication in the statute book.

Attachment 2
3/4/85

KANSAS ASSOCIATION OF REALTORS®



Executive Offices:
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Topeka, Kansas 66611
Telephone 913/267-3610

TO: Members of the Senate Labor, Industry, and Small Business Committee
FROM: Karen McClain, Director of Governmental Affairs, Kansas Association of Realtors®
DATE: February 21, 1985
SUBJECT: SB 176

enclosed information

Please find enclosed information which might be helpful to you in your deliberations on SB 176, which the Labor, Industry, and Small Business Committee held hearings for on Monday, February 18.

I have enclosed a copy of the 1983 Interim Report which Senator Bill Morris made reference to at the hearing. As you can read from the report, the Social Committee on Labor and Industry actually came to no decision on whether real estate salespersons who are independent contractors should be specifically exempted from the Workmen's Compensation statutes. Due to the technicalities involved in the tax aspect, the Committee deferred the question, along with the questions as to the application to the Employment Security laws and Income Tax laws, to the Senate and House Committees on Assessment and Taxation. You should note that after this report was filed during the 1984 session, the legislature, in fact, passed SB 721 which specifically exempted qualified real estate salespersons from the Employment Security statutes.

I have also enclosed copies of two letters. One letter is from our Association to Fletcher Bell, asking whether a person who met the qualifications of a qualified real estate salesperson under the new language of the Unemployment Compensation statutes, would be an independent contractor, rather than an employee, under the Workmen's Compensation Statutes statutes.

The second letter is the response from Fletcher Bell's office, which basically, only provided a common law determination of independent contractor. The letter then indicates that the determination is on a case by case basis.

It is this case by case basis which causes problems. This is a typical scenario:

A broker who has salespersons in his office who have signed independent contractor agreements attempts to purchase Workmen's Compensation Insurance on the clerical employees that work in the same office. The insurance company refuses to insure those employees alone and requires that premiums also be paid to cover the salespersons. The reason the insurance company gives is, if one of the salespersons who had signed an independent contractor agreement was injured, made a Workmen's Compensation claim and the Workmen's Compensation Board found that the independent contractor relationship did not exist, the insurance company for the employees in the office would be liable for the Workmen's Compensation claim. The broker, then, out of fear of not having the employees in his office covered by Workmen's Compensation, which is clearly required by law, pays for the added, unnecessary coverage for the independent contractor salesmen.

If an exemption was specifically given in the statute for qualified real estate salespersons, who had signed independent contractor agreements, the problem described above would be solved. That salesperson would not be covered by Workmen's Compensation. The broker, not the insurance company, would be liable for injuries to the salesperson. The salesperson could utilize his tort remedies which are retained where the Worker's Compensation Statutes do not apply. The salesperson would not have their commission reduced due to the broker paying Workmen's Compensation premiums.

If you have any further questions, please don't hesitate to contact me.

Senate Lbr. Ind. &
Sm. Bus. 3-4-85
Attachment 2