

Approved 2/21/86  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at  
Chairperson

11:00 a.m./~~p.m.~~ February 20, 1986 in room 254-E of the Capitol.

All members were present except:

Senator Hoferer and Senator Walker were excused.

Committee staff present:

J. Russell Mills, Jr., Legislative Research  
Emalene Correll, Legislative Research  
Mary Torrence, Assistant Revisor of Statutes  
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Gene Yockers, Kansas Real Estate Commission

Senator Arasmith moved that the Minutes of the Meeting of February 19, 1986, be approved. Seconded by Senator Strick. Motion carried.

SB538 - concerning the real estate recovery revolving fund.

The Chairman asked Mr. Gene Yockers to continue his presentation on this matter. The Committee then proceeded on to the next bill.

SB539 - concerning real estate brokers' and salespersons' license act.

Mr. Yockers continued on with the balloon version and explanation of SB539. Following his presentation the Chairman appointed a Subcommittee: Senator Martin, Chairman; Senator Daniels and Senator Vidricksen. The Chairman requested that they review the major policy changes in the two real estate bills, SB538 and SB539, with some of the attorneys who are members of the Senate, regarding the legal implications.

SB594 - concerning no private right of action under real estate licensure act.

The Chairman distributed copies of a statement from Karen McClain, of the Kansas Association of Realtors, asking support of SB594. The Subcommittee of Senators Martin, Daniels and Vidricksen is also to study this. Ms. Mc Clain's statement is attached. (Attachment 1)

The Chairman asked that the Subcommittee report back to this Committee on Friday, February 28, 1986, if possible.

The meeting was adjourned at noon.



Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
FROM: KAREN MCCLAIN, DIRECTOR, GOVERNMENTAL AFFAIRS  
DATE: FEBRUARY 20, 1986  
SUBJECT: SB 594

On behalf of the Kansas Association of REALTORS®, I am here to ask you to pass SB 594 favorably.

The effect of the bill is to prevent the use of the Kansas Real Estate Brokers' and Salespersons' License Act from being used as the basis of a private cause of action against real estate agents.

The issue was raised due to a case out of Wyandotte County, where the purchasers of residential real estate sued the seller and broker for damages for misrepresentation, alleging that they were informed that the house was served by sanitary sewers when, in fact, it was served by a septic system. All public documents indicated the house was served by sewers. The court absolved the seller of any responsibility and held the broker totally responsible, on the basis that since the broker was a professional, he "knew or should have know" that the house was on a septic tank system, rather than on a sewer. In its jury instructions, the court quoted K.S.A. 58-3062(a)(31) of the license law, which states that, "No licensee shall fail to disclose, or ascertain and disclose, to any person with whom the licensee is dealing, any material information which relates to the property with which the licensee is dealing and which such licensee know or should have known."

This is the first time that provisions of the License Law have been utilized directly by a court in a suit by a private citizen against a licensee and, there-

Sen. Fed. & State Affairs  
2/20/86 Attachment 1

fore, sets a dangerous precedent for any provision of the License Law to be used by attorneys in private causes of action.

We know that the standard of "knew or should have known" is a negligence standard which can be and is used against all professionals, whether they are doctors, lawyers, engineers, etc. Case law establishes plenty of precedent for such a standard. What happened in this case was that the phrase was quoted in the context of a state statute, which creates an even higher standard than that at common law, and has very dramatic impacts on juries. In this case \$17,500 of punitive damages were awarded, in addition to the \$10,000 in actual damages.

Once again we feel that this is a dangerous precedent, that goes far beyond the intent of the License Law, which was created so that the Kansas Real Estate Commission could regulate those persons who are in the business of selling real estate in the state of Kansas.

I refer you to the legal opinions on the subject which were given by our legal counsel, Gerald Goodell, which are still in your file folders, I presume. Mr. Goodell points out in those opinions that the license law was not intended to be used for private causes of action, and that by including this preamble that we have proposed, we are not taking away any private causes of action which already exist in case law.

The prohibitions which are present in K.S.A. 58-3062 have corollary causes of action in case law. What we are trying to avoid by this bill is this use of the license law in civil cases, thus injecting standards into litigation which have no place there.

Accordingly, we ask that you pass SB 594 out of this committee favorably.