

Approved 2-5-90
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Senator Lana Oleen at
Chairperson

1:35 ~~a.m.~~/p.m. on January 22, 1990 in room 531-N of the Capitol.

All members were present except: Senator Francisco

Committee staff present: Julian Efird - Research
Fred Carman - Revisor

Conferees appearing before the committee:

A motion was made by Senator Strick to approve minutes of the January 16 & 17 meetings; seconded by Senator Kanan. Motion carried.

Bills considered for action by the committee are as follows:

SB 366 - Public records not required to be open.

Chairman Oleen suggested action be withheld until Senator Vidricksen can report on a meeting held regarding the issue. Senator Vidricksen was delayed.

SB 224 - Excavation construction, maintenance and repair

Senator Strick expressed the need for another hearing on the issue and there were no objections from members. The bill will be held for later consideration.

SB 232 - Kansas Commission on hispanic affairs.

Ray Siehndel, Human Resources Department, stated the Advisory Committee has no interest in supporting the bill at this time as changes have occurred and the agency is functioning very smoothly. Celso Ramirez of the Department stated the Board feels no involvement is necessary as they want to be active in communities and support their programs.

SB 232 will be held in committee to ascertain there is no further interest.

SB 320 - Creating a division of surveys, mapping and geodetic control in the Department of Administration.

A motion was made by Senator Bogina to report SB 320 adversely; seconded by Senator Strick. Motion carried.

SB 379 - Regulation and licensure of private investigators and polygraph examiners.

A motion was made by Senator Bogina to report SB 379 adversely; seconded by Senator Kanan. Motion carried.

HB 2491 - Polygraphists licensure and regulation.

A motion was made by Senator Bogina to report HB 2491 adversely; seconded Senator Strick. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION,
room 531-N, Statehouse, at 1:35 ~~xxx~~ p.m. on January 22, 1990

HB 2589 - Polygraphists: repeal statutes relating to licensure and regulation

Julian Efird told the committee that an interim study was held on this matter and this bill restores regulations to those set forth three years ago. The committee feels this bill is not controversial and should be passed. It had been placed on the House Consent Calendar prior to assignment to Senate Governmental Organization Committee.

A motion was made by Senator Bogina to recommend favorably HB 2589 and be placed on the Consent Calendar; seconded by Senator Kanan. Motion carried.

SB 241 - Licensure of auctioneers.

Chairman Oleen briefed the Committee on the meeting held with some auctioneers and Senator Frank Gaines on January 18. The Kansas Livestock Association is opposed to this legislation and an auctioneer also expressed his opposition. Several auctioneers and Ron Hein of the Auctioneer Association support the bill. Committee members were asked to give attention to the ballooned copy of SB 241 with a suggested amendment, which was in response to one of KLA's concerns. (Attachment 1)

Senator Gaines wanted another hearing on the bill so that all auctioneers could have another opportunity to speak to the legislation. Chairman Oleen stated she has concerns that should be addressed: the co-mingling of monies, lack of uniformity in collection of state sales tax, and the increased responsibility on the part of auctioneers. As there appears to be interest in this legislation, Senator Doyen proposed further hearings be scheduled. Chairman Oleen agreed to schedule another hearing on the bill next week.

Meeting adjourned. The next meeting will be January 29, 1990.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE 1/22/90

NAME	COMPANY / ORGANIZATION	ADDRESS
Danna Gonzales Rogers	DHR - HISPANIC AFFAIRS	1309 SW TOPERA TOPERA, KS
Jim McHaff	Kansas AFL-CIO	Topoka
Karen Sniffow	KDHR	Topoka
Charles J. Xarice	DHR - KACHA	Topoka
Joe A. Fre	DHR - KACHA	Topoka
Rachel Salwan Sanyalung	DHR - Kacha	Topoka
Michael Lechner	DHR - KDC	Topoka
Margita Gubekau	"Kansas"	Topoka
Jimmy Adams	Kansas Auctioneers Full Company	Topoka
Tom Lindsay	Kansas Auctioneers	Shawnee
Jim Albertson	Kansas Auctioneers	Roadland park
Ra H. H. H.	Kansas Auctioneers Ass'n	Topoka
Dan Jull	Kansas Auctioneers Ass'n	Topoka
30 Sabal	KDHR	Topoka

SENATE BILL No. 241

By Committee on Local Government

2-9

16 AN ACT enacting the auctioneers license law; providing for the
17 licensure of auctioneers; creating the board of auctioneers and
18 providing for the powers, duties and functions thereof; declaring
19 certain acts to be unlawful and providing penalties for violations;
20 amending K.S.A. ~~1988~~ Supp. 75-3170a and repealing the existing
21 section. 1989
22

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

24 New Section 1. Sections 1 to 12, inclusive, and amendments
25 thereto shall be known and may be cited as the auctioneers license
26 law.

27 New Sec. 2. As used in the auctioneers license law, unless the
28 context otherwise requires:

29 (a) "Auction" means the public sale of real property or personal
30 property, or both, in which the sale price of the property offered
31 is increased by bids until the highest accepted bidder becomes the
32 purchaser.

33 (b) "Auctioneer" means any person who offers, negotiates or at-
34 tempts to negotiate a listing contract, sale, purchase or exchange of
35 goods, chattels, merchandise, real or personal property, or of any
36 other commodity which may lawfully be kept or offered for sale by
37 or at public auction, or who sells the same at auction;

38 (c) "Board" means the board of auctioneers created under section
39 3;

40 (d) "Goods" means any chattels, goods, merchandise, real or per-
41 sonal property, or commodities of any form or type which may be
42 lawfully kept or offered for sale;

43 (e) "Person" includes an individual, association, partnership and
44 corporation.

560.
ATTACH-1
1/22/90

Sen G.O.
ATTACH-1
1/22/90

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45 New Sec. 3. (a) There is hereby created the board of auctioneers.
 46 The board shall consist of five members appointed by the governor.
 47 The members of the board immediately prior to their date of ap-
 48 pointment shall have been residents of this state for at least five
 49 years and shall be of good reputation, and at least three members
 50 of the board shall have been engaged in the vocation of auctioneering
 51 for at least five years and shall be knowledgeable in the auction
 52 profession.

53 (b) The terms of the members appointed to the board shall be
 54 for three years and until their successors are appointed and qualified
 55 except that of the members first appointed to the board one shall 1991
 56 be appointed for a term ending June 30, ~~1990~~ two shall be appointed 1992
 57 for terms ending June 30, ~~1991~~ and two shall be appointed for terms 1993
 58 ending June 30, ~~1992~~ as designated by the governor. Before the
 59 expiration of the term of a member, the governor shall appoint a
 60 successor whose term begins on July 1 following the appointment.
 61 If a vacancy on the board exists for any cause, the governor for that
 62 vacant position shall make an appointment to become immediately
 63 effective for the unexpired term. Whenever there is a member to
 64 be appointed to the board, the Kansas auctioneers association may
 65 submit to the governor a list of at least three names for each such
 66 member to be appointed, and the governor shall consider the names
 67 on such list prior to making the appointment.

68 (c) The first meeting of the board shall be at a time and place
 69 designated by the governor. The first member of the board appointed
 70 by the governor shall act as temporary chairperson of the board. At
 71 the first meeting of the board and annually thereafter, the board
 72 shall elect a chairperson and a vice-chairperson from among the
 73 members of the board. A majority of the members of the board shall
 74 constitute a quorum for the transaction of business. Meetings sub-
 75 sequent to the first meeting of the board shall be at a time and
 76 place specified by the call of the chairperson or of a majority of the
 77 members of the board.

78 (d) Members of the board attending meetings of the board, or
 79 attending a subcommittee meeting thereof authorized by the board,
 80 shall be paid compensation, subsistence allowances, mileage and
 81 other expenses as provided in K.S.A. 75-3223, and amendments

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82 thereto.

83 New Sec. 4. (a) On and after January 1, ~~1990~~ ¹⁹⁹¹, it shall be unlawful
84 for any person to act as an auctioneer or to advertise or to assume
85 to act as an auctioneer unless such person holds a valid license issued
86 by the board of auctioneers.

87 (b) A violation of this section is a class B misdemeanor.

88 New Sec. 5. (a) Auctioneer licenses shall be granted only to
89 persons who are found to be of good repute, trustworthy and com-
90 .petent to transact the business of an auctioneer in such a manner
91 as to safeguard the interest of the public.

92 (b) The board is authorized to require information from every
93 applicant to determine the applicant's honesty and truthfulness.

94 (c) An examination, conducted by the board or its authorized
95 representative shall be held four times each year, and an examination
96 fee of not to exceed \$100 as established by rules and regulations of
97 the board shall be collected from each applicant for auctioneer.
98 Examination fees shall be nonrefundable and shall defray the ex-
99 penses of processing the application and of conducting the exami-
100 nation. The examination shall include questions on ethics,
101 mathematics, principles of land economics and a general knowledge
102 of the statutes of Kansas relating to the bulk sales law, ~~deeds,~~ ^{chattel} mort-
103 gages, contracts of sale, agency, leases, auctions, brokerage and the
104 provisions of this act.

105 (d) No examination shall be required for the renewal of any
106 current or future license, unless such license has been revoked,
107 suspended or is allowed to expire without renewal. In any of these
108 cases, the board may require the applicant to take and pass the
109 written examination before a new license may be issued.

110 (e) The provisions of subsection (c) requiring applicants to pass
111 a written examination to obtain a license shall not apply to an auc-
112 tioneer furnishing satisfactory proof to the board that the auctioneer
113 actively engaged in the auction business for a period of at least one
114 year prior to July 1, ~~1989~~ ¹⁹⁹⁰, ~~and that the auctioneer has been an~~

115 ~~auctioneer in at least five auctions of either real or personal property~~
116 ~~during this period of time.~~ Such an applicant shall file an application ¹⁹⁹⁰
117 and proof with the board no later than October 1, ~~1989~~ ¹⁹⁹⁰, and the
118 application and proof shall be accompanied by a license fee in ac-

119 cordance with the provisions of this act.

120 New Sec. 6. (a) In addition to the other qualifications provided
121 for by this act, every applicant for an auctioneer's license shall be
122 at least 18 years of age and shall have graduated from an accredited
123 high school or obtained the equivalent thereof. Every application
124 for a license shall be submitted on forms prepared by the board.

125 (b) Every applicant shall furnish pertinent background data as
126 outlined on the application forms furnished by the board.

127 (c) The issuance fee for each auctioneer's license shall be not
128 more than \$50 and the annual renewal fee for each license shall be
129 not more than \$50, as such fees are established by the board by
130 rules and regulations. All licenses shall expire on June 30 of each
131 year. In the absence of any reason or condition which might warrant
132 the refusal of the renewing of the license, and upon receipt of the
133 written request of the applicant and the annual fee, the board shall
134 issue a renewal license for each ensuing year.

135 (d) The board shall prepare and deliver to each licensee a license
136 certificate and pocket card. The certificate shall be displayed con-
137 spicuously at all times in the office of the licensee.

138 New Sec. 7. Any nonresident applicant who is a licensed auc-
139 tioneer in ~~and who resides in~~ another state or country where the
140 qualifications prescribed at the time of licensing were, in the opinion
141 of the board, equal to those prescribed in this state at the date of
142 application, and where reciprocal licensing privileges satisfactory to
143 the board are granted to licensees and residents of this state may
144 be granted a license without an examination. A fee ~~of not to exceed~~ equivalent to the fee prescribed in section 6(c)
145 ~~\$100 in addition to the fees set out in section 5~~ shall be collected
146 from each applicant meeting the above requirements.

147 New Sec. 8. (a) Every auctioneer licensed under this act shall
148 maintain a designated office or location where such auctioneer may
149 be reached or may be served with legal documents. The board shall
150 be notified by the licensed auctioneer of any change of such des-
151 ignated office or location within 30 days subsequent to such change.

152 (b) The board may adopt rules and regulations as necessary to
153 administer the provisions of this act.

154 New Sec. 9. The board may refuse to grant a license or may
155 suspend or revoke the license of an auctioneer for any of the following

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156 causes:

- 157 (a) Attempting to obtain or obtaining a license through false or
 158 fraudulent representation;
- 159 (b) making any misrepresentation;
- 160 (c) pursuing a continued and flagrant course of misrepresentation
 161 or making false promises through agents or advertising or otherwise;
- 162 (d) failing to account for or to remit, within a reasonable time,
 163 any money belong[] to others that comes into the licensee's possession, _____ ing
 164 commingling funds of others with the licensee's own or failing to
 165 keep such funds of others in an escrow or trustee account;
- 166 (e) paying valuable consideration to any person for services per-
 167 formed which were known to the licensee to be in violation of this
 168 act;
- 169 (f) being convicted in a court of competent jurisdiction of this or
 170 any other state of a criminal offense involving moral turpitude, fraud
 171 or a felony;
- 172 (g) violation of any rule and regulation adopted by the board;
- 173 (h) failure to furnish voluntarily at the time of execution copies
 174 of all written instruments prepared by the auctioneer;
- 175 (i) any conduct of an auctioneer which demonstrates bad faith,
 176 dishonesty, incompetency or untruthfulness;
- 177 (j) any other conduct that constitutes improper, fraudulent or
 178 dishonest dealings.

179 New Sec. 10. Any person making a complaint against a licensee
 180 shall submit the complaint to the board in verified form. Upon
 181 receipt of a properly verified complaint, the board shall send a copy
 182 of the complaint to the affected licensee by certified mail, return
 183 receipt requested, and the licensee shall answer the complaint in
 184 writing within 20 days of receipt of the complaint. The licensee shall
 185 mail a copy of the response of the licensee to the board and the
 186 complainant. Upon receipt of the licensee's response or lapse of 20
 187 days, the board shall make investigation of the underlying allegations
 188 of the complaint, and upon a finding of probable cause to believe
 189 a cause for suspension or revocation of a license under section 9 and
 190 amendments thereto exists, may order a hearing for the licensee to
 191 appear and show cause why the licensee should not be disciplined
 192 under section 9 and amendments thereto.

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193 New Sec. 11. (a) The auctioneers license law shall not apply to:

194 (1) Sales at auction conducted by or under the direction of any
195 public authority or pursuant to any judicial order or decree.

196 (2) Sales at auction of any real or personal property conducted
197 exclusively by an individual who personally owns such real or per-
198 sonal property and who did not acquire such real or personal property
199 for resale. This subsection is applicable only to individuals. It does
200 not apply to any other "persons" as defined in section 1, nor does
201 it apply to any officer, director or employee thereof.

202 (3) ~~Any person licensed under federal law relating to packers and~~
203 ~~shippers and the auctioneering of livestock.~~

204 (4) A sale conducted by or on behalf of any political party, church
205 or charitable corporation or association if the individual conducting
206 the sale receives no compensation and does not, by advertising or
207 otherwise, hold oneself out as being available to engage in the sale
208 of goods or real estate at auction.

209 (5) Any person licensed under the real estate brokers' and sa-
210 lespersons' license act so long as such person is not conducting an
211 auction.

212 (6) Any person licensed under the vehicle dealers and manufac-
213 turers licensing act while engaged in performing the duties such
214 person is authorized to perform under the vehicle dealers and man-
215 ufacturers licensing act.

216 (7) Notwithstanding the provisions of this section, no licensee
217 under this act shall be exempted from any of the provisions of this
218 act in connection with or by reason of participation in any sale
219 excepted under this section.

220 New Sec. 12. Proceedings under the auctioneers license law shall
221 be conducted in accordance with the Kansas administrative procedure
222 act. Judicial review and civil enforcement of agency actions under
223 the auctioneers license law shall be in accordance with the act for
224 judicial review and civil enforcement of agency actions.

225 New Sec. 13. The board shall remit all moneys received by or
226 for the board from fees, charges or penalties to the state treasurer
227 at least monthly. Upon receipt of any such remittance the state
228 treasurer shall deposit the entire amount thereof in the state treasury.
229 Twenty percent of such amount shall be credited to the state general

Sales of livestock by:

(i) any person licensed as a public livestock market pursuant to K.S.A. Section 47-101 et. seq., and any person employed as an auctioneer by such public livestock market; and

(ii) any person registered with the Packers and Stockyards Administration of the United States Department of Agriculture as a livestock dealer pursuant to the Packers and Stockyards Act, 1921 (7 U.S.C. §181 et. seq.) unless such livestock dealer is selling livestock at auction.

230 fund and the balance shall be credited to the board of auctioneers
 231 fee fund. All expenditures from the board of auctioneers fee fund
 232 shall be made in accordance with appropriation acts upon warrants
 233 of the director of accounts and reports issued pursuant to vouchers
 234 approved by the chairperson of the board or by a person or persons
 235 designated by the chairperson.

236 Sec. 14. K.S.A. ~~1988~~ Supp. 75-3170a is hereby amended to read
 237 as follows: 75-3170a. (a) The 20% credit to the state general fund
 238 required by *section 13 and by* K.S.A. 1-204, 2-2609, 2-3008, 9-1703,
 239 16-609, 16a-2-302, 17-1271, 17-2236, 17-5609, 17-5610, 17-5612, 17-
 240 5701, 20-1a02, 20-1a03, 34-102b, 44-324, 44-926, 47-820, 49-420, 55-
 241 131, 55-155, 55-609, 55-711, 55-901, 58-3074, 65-6b10, 65-1718, 65-
 242 1817a, 65-2011, 65-2418, 65-2855, 65-2911, 65-4610, 66-1.155, 66-
 243 1503, 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-2902a,
 244 74-3903, 74-5805, 74-7009, 74-7506, 75-1119b, 75-1308 and 75-1509
 245 and K.S.A. ~~1987~~ 1988 Supp. 65-5413, 65-5513, 84-9-411 and 84-9-
 246 413, and ~~acts amendatory of any of the foregoing including~~
 247 ~~amendments by other sections of this act is~~ *amendments thereto,*
 248 to reimburse the state general fund for accounting, auditing, budg-
 249 eting, legal, payroll, personnel and purchasing services, and any and
 250 all other state governmental services, which are performed on behalf
 251 of the state agency involved by other state agencies which receive
 252 appropriations from the state general fund to provide such services.

253 (b) Nothing in this act or in the sections amended by this act
 254 or referred to in subsection (a) of this section, shall be deemed to
 255 authorize remittances to be made less frequently than is authorized
 256 under K.S.A. 75-4215, and amendments thereto.

257 (c) Notwithstanding any provision of any section referred to in
 258 or amended by this act or referred to in subsection (a) of this section,
 259 whenever in any fiscal year such 20% credit to the state general
 260 fund in relation to any particular fee fund is \$200,000, in that fiscal
 261 year the 20% credit no longer shall apply to moneys received from
 262 sources applicable to such fee fund and for the remainder of such
 263 year the full 100% so received shall be credited to such fee fund,
 264 except as otherwise provided in subsection (d) of this section.

265 (d) Notwithstanding any provision of K.S.A. 2-2609 and 2-3008,
 266 and amendments thereto, or any provision of any section referred

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267 to in subsection (a) of this section, the 20% credit to the state general
268 fund no longer shall apply to moneys received from sources appli-
269 cable to the grain research and market development agencies funds,
270 as specified for each such fund by this subsection, and for the re-
271 mainder of a fiscal year the full 100% of the moneys so received
272 shall be credited to the appropriate fund of such funds, whenever
273 in any fiscal year:

274 (1) With respect to the Kansas wheat commission fund, such 20%
275 credit to the state general fund in relation to such fund in that fiscal
276 year is equal to that portion of \$100,000 that bears the same pro-
277 portion to \$100,000 as the amount credited to the Kansas wheat
278 commission fund during the preceding fiscal year bears to the total
279 of the amounts credited to the Kansas wheat commission fund, the
280 Kansas corn commission fund, the Kansas grain sorghum commission
281 fund and the Kansas soybean commission fund during the preceding
282 fiscal year;

283 (2) with respect to the Kansas corn commission fund, such 20%
284 credit to the state general fund in relation to such fund in that fiscal
285 year is equal to that portion of \$100,000 that bears the same pro-
286 portion to \$100,000 as the amount credited to the Kansas corn com-
287 mission fund during the preceding fiscal year bears to the total of
288 the amounts credited to the Kansas wheat commission fund, the
289 Kansas corn commission fund, the Kansas grain sorghum commission
290 fund and the Kansas soybean commission fund during the preceding
291 year;

292 (3) with respect to the Kansas grain sorghum commission fund,
293 such 20% credit to the state general fund in relation to such fund
294 in that fiscal year is equal to that portion of \$100,000 that bears the
295 same proportion to \$100,000 as the amount credited to the Kansas
296 grain sorghum commission fund during the preceding fiscal year
297 bears to the total of the amounts credited to the Kansas wheat
298 commission fund, the Kansas corn commission fund, the Kansas grain
299 sorghum commission fund and the Kansas soybean commission fund
300 during the preceding fiscal year; and

301 (4) with respect to the Kansas soybean commission fund, such
302 20% credit to the state general fund in relation to such fund in that
303 fiscal year is equal to that portion of \$100,000 that bears the same

304 proportion to \$100,000 as the amount credited to the Kansas soybean
305 commission fund during the preceding fiscal year bears to the total
306 of the amounts credited to the Kansas wheat commission fund, the
307 Kansas corn commission fund, the Kansas grain sorghum commission
308 fund and the Kansas soybean commission fund during the preceding
309 fiscal year.

310 (e) As used in this section, "grain research and market devel-
311 opment agencies" means the Kansas wheat commission, the Kansas
312 corn commission, the Kansas grain sorghum commission and the
313 Kansas soybean commission. Such agencies have been created to
314 fund appropriate research projects: to conduct campaigns of devel-
315 opment, education and publicity; and to find new markets or maintain
316 existing markets for commodities and products made from those
317 commodities, among their other duties. Such grain research and
318 market development agencies shall be funded by an assessment col-
319 lected from the grower at the time of the sale of such commodity
320 by the first purchaser. The assessment shall be sent to the proper
321 grain research and market development agency.

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322 Sec. 15. K.S.A. ~~1988~~ Supp. 75-3170a is hereby repealed.

323 Sec. 16. This act shall take effect and be in force from and after
324 its publication in the statute book.

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