

Approved 2.28.91  
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

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

11:00 a.m./~~p.m.~~ on February 27, 1991 in room 254-E of the Capitol.

All members were present ~~xxxxx~~

Committee staff present:

Mary Galligan, Legislative Research Department  
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Mr. Gene Yockers, Director, Kansas Real Estate Commission  
Ms. Karen France, Kansas Association of Realtors

A request was made for a committee bill introduction of bill draft 1 RS 0286, establishing the office of state auditor, providing for the functions, powers and duties thereof.

A motion was made by Senator Strick and seconded by Senator Daniels that the bill be introduced. The motion failed.

A request was made for a bill introduction for the Topeka Police Department to allow cities to receive 50% of moneys collected from drug tax assessments if the unstamped drugs are found by the result of an investigation conducted by a city law enforcement agency.  
(Attachment 1)

A motion was made by Senator Daniels and seconded by Senator Yost that the bill be introduced. The motion carried.

Hearing on: SB 194 - Amendments to Real Estate Brokers' and Salespersons' Licensure Act.

Mr. Gene Yockers, Kansas Real Estate Commission, presented testimony to explain the various provisions of the bill and the rationale for each. (Attachment 2)

Concern was expressed that this represented a loosening up of education requirements for realtors, that the first year is extremely critical. Mr. Yockers said the Commission had originally asked for the additional 20 hours of mandatory education but that it is too stringent for new people coming into the industry; it represents a large expense, and some are not renewing. Renewals are down about 13% since this requirement took effect.

He explained that the rebates related to title insurance are prohibited under the Unfair Trade Practices Act, that the Department of Insurance could take disciplinary action, though the Commission cannot at this time. Karen France said the Unfair Trade Practices Act defines exactly what constitutes a violation.

Mr. Yockers gave further explanation of the education requirements for a new realtor: must have 30 hours pre-licensing, and 30 hours post-licensing, as well as another 20 hours of electives. One who is seeking an appraiser's certification must have 165 additional hours.

Karen France, Kansas Association of Realtors, said they monitor the Real Estate Commission when complaints are heard. She said

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON Federal and State Affairs,  
room 254-E, Statehouse, at 11:00 a.m.~~pm~~ on February 27, 1991

the 30/20 hours is a hardship for people who are just in the business; some put their licenses on hold. The suggested change in the continuing education requirements would help the Commission in trying to administer the act.

There was discussion about money paid on a lot being considered earnest money. Mr. Yockers said it must be declared as such. Brokers have a right to have an interest-bearing account; either party can receive the interest; it must be agreed to by contract.

There are not enough auditors to audit brokers' trust accounts annually. Violations often aren't found--or a complaint isn't made--until a year is up.

Discussion on: SB 39 - Prearranged funeral agreements.

The Chairman said that the Secretary of State has decided he should be doing auditing since it is the public's money at stake. Apparently the Board of Mortuary Arts only audits when there has been a complaint.

Senator Bond offered to bring in language asking for a post audit of the Board of Mortuary Arts to find out what kind of job is being done.

The minutes of the February 26, 1991, meeting were approved.

The meeting was adjourned at 11:55 a.m.



I. Bill Summary:

K.S.A. 79-5211 should be amended to allow cities to receive 50% of moneys collected from drug tax assessments if the unstamped drugs are found by the result of an investigation conducted by a city law enforcement agency. If the seizure of drugs is the result of a joint investigation by two or more law enforcement agencies, the the funds should be distributed in equal portions to the county and cities involved unless the agencies agree to some other distribution and submit such agreement to the Department of Revenue prior to distribution. Added language should also specify that distributions made for law enforcement purposes be supplemental to spending for law enforcement rather than substitutive.

II. Fiscal and Administrative Impact:

Allowing cities to receive 50% of moneys collected from drug tax assessments would have no effect on the state general fund. Distributions to counties would decrease in relationship to total collections. Given the Department's stepped up efforts in regard to drug tax collections, however, the total distribution to counties would not be expected to decrease below current distributions.

III. Policy Implications/Background:

The 50% local share is currently distributed to counties even if the unstamped drugs were found within a city and the arrest was made by a city police department. It is unfair for city police departments to make drug arrests and receive no financial benefit while the county receives the distribution. Such a change would give cities more inventive to file cases with the Department.

Distributions currently made to counties are deposited in the county's general fund to be used solely for law enforcement purposes. There is currently nothing within K.S.A. 79-5211, however, which would prevent the county from deducting whatever amount of money received from drug tax assessments from the sheriff's operating budget.

IV. Impact on Other State Agencies:

Allowing cities to receive 50% of moneys collected from drug tax assessments would have no effect on state agencies.

Senate F&SA  
2-27-91  
Att. /

## PROPOSED LANGUAGE

**79-5211. Same; disposition of revenue.** All moneys received from the collection of taxes imposed under the provisions of K.S.A. 79-5201 et seq., and amendments thereto, and of delinquent taxes and penalties imposed thereunder, shall be remitted to the state treasurer who shall deposit the entire amount thereof in the state treasury and credit the same to the state general fund. The director of taxation shall remit 50% of all moneys received from the collection of assessments of delinquent taxes and penalties imposed pursuant to the provisions of K.S.A. 79-5201 et seq., and amendments thereto, as follows: (a) if the law enforcement agency which conducted the investigation is a county agency, the entire share shall be deposited in the county treasury and credited to a special law enforcement trust fund for use solely for law enforcement purposes; (b) if the law enforcement agency which conducted the investigation is a city agency, the entire share shall be deposited in the city treasury and credited to a special law enforcement trust fund for use solely for law enforcement purposes; and (c) if more than one law enforcement agency is substantially involved in the investigative process, the share shall be deposited in equal portions to the county and city treasuries and credited to the county and city special law enforcement trust funds to be used solely for law enforcement purposes unless an alternate distribution is mutually agreed upon by the law enforcement agencies involved and submitted to the director of taxation. Funds received by city and county treasurers from moneys collected from assessments of delinquent taxes and penalties under the provisions of K.S.A. 79-5201 et seq., shall not be considered to be a source of revenue to meet normal operating expenses of law enforcement agencies. ~~of the county wherein the unstamped marijuana or controlled substance is found and seized. Upon receipt of any such remittance, the county treasurer shall deposit the entire amount thereof to the credit of the county general fund for use solely for law enforcement purposes.~~

Senate Federal and State Affairs Committee  
February 27, 1991  
Senate Bill 194

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am the Director of the Kansas Real Estate Commission.

**Lines 15-17, page 1**

The exemption section of the statute. It is the feeling of the commission that any person who is licensed under the act should be subject to the provisions of the act. I will be giving you more explanation a little bit later.

**Lines 18-19 and 24-26, page 2**

This provides that the pre-license education requirement for new salespersons must have been within 12 months prior to the examination. This is presently covered by regulation and is the same as provided for the broker's pre-license course in subsection (b) of the statute.

**Beginning with line 41 on page 2**

The basic continuing education requirement for both brokers and salesperson is 12 hours during a two-year renewal period. This is covered under subsection (c). Much of the language which has been stricken in this bill refers to what the requirements *would* be if renewals were on an annual basis. Language which covered a period of time when the basic requirement was 4 hours (if on annual basis) and 8 hours (if biennial) has also been deleted.

Since July 1, 1988, the requirement for new salespersons has been 50 hours of education during the first renewal period; and after the 50 hours are obtained, they fall under the 12 hour requirement. Thirty of the 50 hours is a specific post-license course designed to give new licensees the type of education they need during this critical period. The commission believes that the 30 hour course is sufficient and that the additional 20 hours should not be required. This is the purpose of the amendment in subsection (e) and would be effective for licenses issued after July 1 of this year.

Subsection (d) on page 3 retains the 50-hour requirement for those licensed between the 1988 effective date and the date of the change.

**Lines 9-10 on page 5**

This ties to the exemption section which I mentioned I would explain more later.

This has been a gray area, and the Attorney General's office suggested that it be addressed by the legislature. Can a licensee avoid discipline by the commission by taking off the "agent hat" and putting on the "principal hat"? The amendments proposed (also see line 20 on page 8) are to establish or clarify that licensees may not act on their own behalf in a manner forbidden if they were acting as licensees.

**Lines 20-21 on page 5**

The amendment is to make reference to the federal and state fair housing acts, instead of updating the language as additional groups are covered.

**Lines 38-39, page 5**

The amendment gives the commission authority to commence an investigation or file a complaint against a real estate licensee within three years from the date of occurrence. Currently, we are unable to commence a complaint after one year except in specified situations.

**Lines 7-18 on page 8**

The new provision gives the commission the authority to direct brokers to remit money from the trust account to the real estate recovery revolving fund under certain conditions. The common problem is that brokers hold earnest money deposits that they have been unable to disburse because of an earnest money dispute and no one files a court action.

We understand, if it is not clear who the money belongs to, it cannot be paid to the state treasurer under the unclaimed property act. In most of these cases, that's the reason it remains in the trust account!

**Lines 10-11, page 10**

A licensee is prohibited from offering prizes, gifts or gratuities which are contingent on listing real estate -- or on the purchasing or leasing of real estate. A "listing agreement" is with the seller of the property. The change to "agency agreement" is to also cover a licensee's agreement with a buyer. The amendment also covers the sale of real estate in addition to purchase or lease.

**Lines 41-43 page 10 and 1-3 page 11**

Some brokers hold deposits on the purchase of lots which is not designated as earnest money. The amendment is to provide for the same deposit requirement as for earnest money.

**Lines 21-27 on page 11**

The rebates and inducements related to title insurance are already prohibited under the unfair or deceptive acts in the insurance code. The amendment would allow the real estate commission to take disciplinary action against real estate brokers who accept such rebates or inducements.

**Lines 27-37 on page 12**

The provisions in the new language are currently in regulation 86-3-21. However, the regulation is only applicable to real estate brokers who elect not to have trust accounts and whose contracts provide for earnest money to be held by a "third party" escrow agent. The provision requires the listing broker to deliver the contract and earnest money check to the escrow agent within five business days and to obtain a receipt from the escrow agent. The provisions are applicable to all contracts that provide for earnest money to be placed with a third party escrow agent.