

Approved 3-7-91  
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Sen. Bill Morris at  
ViceChairperson

11:00 a.m./p.m. on March 5, 1991 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

Emalene Correll, Legislative Research Department  
Mary Galligan, Legislative Research Department  
Mary Torrence, Office of Revisor of Statutes  
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Mr. Jim Conant, Acting Director, Department of Revenue, ABC Division  
Mr. Jim Kaup, League of Kansas Municipalities

Continued hearing on: SB 232 - Grounds for revocation or suspension of license of club or drinking establishment.

Mr. Jim Conant, ABC, gave testimony in support of the bill. (Attachment 1) He said they have worked cooperatively with Lawrence officials. The district attorney in that area has said he didn't have grounds to take action on the case in point. The impact of using the nuisance ordinance would be that the licensee would be barred from using premises. If he has been criminally convicted, that could be used by the ABC. This bill doesn't attempt to give the licensee control of the surrounding area, rather it broadens responsibility.

Proposed amendments from Senator Winter were distributed. (Attachment 2) His accompanying statement said the amendments were proposed to make it clear that revocation could occur only after a willful failure to act and after habitual violations. The range would be reduced to 500 feet. Mr. Conant said they would still support the bill with any of these provisions. Section 3 should apply to drinking establishments as well. The language that was referenced mentioned townships; that would not be applicable in bill.

Mr. Jim Kaup, League of Kansas Municipalities, gave testimony in support of the bill. (Attachment 3)

He said that an owner would not have authority over a fight across the road, though often the security officer is an off-duty law enforcement officer. The bill creates authority for the ABC.

There was a motion by Senator Strick to kill the bill. There was no second.

A motion was made by Senator Bond and seconded by Senator Vidricksen to delete subsection (j). The motion carried.

It was stated that Section 3 is important, in that it would make the ABC aware of repeated problems.

A conceptual motion was made by Senator Bond and seconded by Senator McClure that P. 2, Lns. 35-38 should reference immediate entry "when occupied" and that "township" be deleted on P. 3, Ln. 1. The motion carried.

A motion was made by Senator Daniels and seconded by Senator Anderson that P. 2, Ln. 43 also include "drinking establishments." The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs,  
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on March 5, 1991

A motion was made by Senator Bond and seconded by Senator Yost that the bill be recommended favorably as amended. The motion carried.

Action on: SB 6 - Procedure for state acquisition of historic property.

A motion was made by Senator Anderson and seconded by Senator Bond to recommend the bill favorably and request that it be placed on the consent calendar. The motion carried.

Discussion on: SB 245 - Increases maximum amount of contributions a charitable organization can receive without being registered.

Staff noted the Assistant Attorney General had requested a revision in her testimony of February 26 to correct a printing error; on P. 2, Ln. 1 language be struck as follows: "if all such organization's fundraising functions are carried on by persons who are unpaid for such services."

A letter to the Chairman from the Assistant Attorney General was distributed. It addressed suggested changes by the Secretary of State which had been requested at the February 26 hearing. (Attachment 4)

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

A conceptual motion was made by Senator Walker and seconded by Senator Bond that would provide that during the initial licensing period continuing education requirements would be retained at 50 hours. The motion carried. He provided a balloon of the changes to the revisor. (Attachment 5)

A motion was made by Senator Yost and seconded by Senator Strick to strike some language in subsections (i) and (j) as shown and define that "Employee, as used in this Act, is a person who regularly derives not less than 75% of his compensation from the partnership, sole proprietorship, association or corporation which owns the property being marketed." (Attachment 6) The motion carried.

A motion was made by Senator Strick and seconded by Senator Yost to recommend the bill favorably as amended. The motion carried.

A request was made by Senator Yost for introduction of a bill amending K.S.A. 59-22a01 regarding the case of a will or a trust. (Attachment 7)

A motion was made by Senator Anderson and seconded by Senator Bond to introduce the bill. The motion carried.

The minutes of the February 28, 1991, meeting were approved.

The meeting was adjourned at 12:00 noon.





KANSAS DEPARTMENT OF REVENUE  
*Division of Alcoholic Beverage Control*  
Topeka, Kansas 66612-1584

MEMORANDUM

TO: The Honorable Edward F. Reilly, Chairman  
Senate Committee on Federal and State Affairs

FROM: Jim Conant, Acting Director  
Alcoholic Beverage Control Division

DATE: February 28, 1991

SUBJECT: Senate Bill 232

---

I appreciate the opportunity to appear before you today in support of Senate Bill 232. This bill would enhance the ABC Division's ability to thoroughly evaluate an applicant or licensee's qualifications and potential to operate an on-premise establishment in a manner which is not detrimental to the community in which it is located.

When the ABC Division issues a license for a club or drinking establishment, our administrative control over the licensee is generally limited to regulating activity which occurs inside the premises. In some cases, however, the manner in which these businesses are operated, i.e., the type of entertainment offered or the particular age or interests of the groups targeted as clientele, results in problems which spill out into the surrounding neighborhoods. Section 1 of the bill would allow the Division to evaluate the impact of a club or drinking establishment on the community and take action against the license when the impact is clearly negative.

In Section 2, the bill clarifies the right of all law enforcement officials to have immediate access to club and drinking establishment premises. While it has traditionally been ABC's position that the statute is intended to grant 24-hour a day access, the proposed amendment to K.S.A. 1990 Supp. 41-2613 clearly removes any doubt regarding the interpretation of this law.

Perhaps the most promising aspect of the bill is found in New Section 3. This section allows the governing body of a city, township or county to have a voice in the state licensing process, before the types of activity addressed in Section 1 of the bill become a source of continuing problems for the community. Cities and counties may currently exercise some control in this area by enacting licensing and zoning laws at the local level. This section would provide local governing bodies with an additional opportunity to express the community's concern over the location or conduct of premises subject to state licensing.

I would be happy to answer any questions you may have.

Senate F&SA  
3-5-91  
Att. 1

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

March 5, 1991

COMMITTEE ASSIGNMENTS

CHAIRMAN: JUDICIARY  
VICE-CHAIRMAN: WAYS AND MEANS  
MEMBER: JOINT COMMITTEE ON ECONOMIC  
DEVELOPMENT  
JOINT COMMITTEE ON SPECIAL CLAIMS  
AGAINST THE STATE  
ECONOMIC DEVELOPMENT  
KANSAS JUDICIAL COUNCIL

WINT WINTER, JR.

SENATOR, SECOND DISTRICT  
DOUGLAS COUNTY  
737 INDIANA  
BOX 189  
LAWRENCE, KANSAS 66044

STATE CAPITOL, ROOM 120-S  
TOPEKA, KS 66612-1594  
(913) 296-7364

LEGISLATIVE HOTLINE:  
1-800-432-3924

MEMORANDUM

TO: Senator Ed Reilly, Chairman  
Federal and State Affairs Committee

FROM: Senator Wint Winter, Jr. *Wint*

RE: SB-232 Amendment

Following the hearing last week on SB-232, and in light of the concerns of several conferees, we propose the following amendments to the bill which will tighten up the language and make clear that the revocation or suspension can only be after a willfull and intentional failure to act and that the habitual violations must be attributable to a particular facility. Finally, we reduce the range or distance from 1,000 feet to 500 feet.

Please distribute the balloon version to your members and suggest that the bill be amended accordingly. It is my sincere hope that the amended version of the bill be passed.

Thanks for your help!

WW:gc

CC: Shirley Martin-Smith  
Mike Wildgen - Attn: Dave Corliss  
Jim Conant - ABC

Senate F&SA  
3-5-91  
Att. 2

1 establishment or caterer and has been found guilty of a violation of  
 2 article 10 of chapter 44 of the Kansas Statutes Annotated under a  
 3 decision or order of the civil rights commission which has become  
 4 final or such licensee has been found guilty of a violation of K.S.A.  
 5 21-4003 and amendments thereto.

6 (j) ~~The licensee operates the licensed premises in a manner which~~  
 7 ~~creates, fosters, causes, attracts or otherwise allows conditions or~~  
 8 ~~conduct to exist within 1,000 feet of the licensed premises which in~~  
 9 ~~their totality repeatedly or habitually over a reasonable period of~~  
 10 ~~time constitute a danger or harm to public safety, health and welfare,~~  
 11 ~~regardless of whether such conditions are intentionally created, fos-~~  
 12 ~~tered, caused, attracted or otherwise permitted by the operator of~~  
 13 ~~the licensed premises. Conditions or conduct which constitute a dan-~~  
 14 ~~ger or harm to public safety, health and welfare include any one~~  
 15 ~~or more of the following: Disorderly conduct, assault, aggravated~~  
 16 ~~assault, battery, aggravated battery, vehicular battery, criminal tres-~~  
 17 ~~pass, vandalism, theft, possession or dealing in illegal controlled~~  
 18 ~~substances, illegal possession of alcoholic liquor, consumption of al-~~  
 19 ~~coholic liquor in public places, unlawful use of weapons, or actions~~  
 20 ~~or conduct constituting offenses under article 34 or 35 of chapter~~  
 21 ~~21 of the Kansas Statutes Annotated and amendments thereto. Con-~~  
 22 ~~ditions or conduct described in this section shall have the meanings~~  
 23 ~~ascribed to them in the appropriate state law. \*~~

24 Sec. 2. K.S.A. 1990 Supp. 41-2613 is hereby amended to read  
 25 as follows: 41-2613. The right of immediate entry to and inspection  
 26 at any time of any premises licensed as a club or drinking estab-  
 27 lishment or any premises where alcoholic liquor is sold by a licensee  
 28 or holder of a temporary permit, or any premises subject to the  
 29 control of any licensee or temporary permit holder, at any time by  
 30 any duly authorized officer or agent of the director, or by any law  
 31 enforcement officer, shall be a condition on which every license or  
 32 temporary permit is issued, and the application for, and acceptance  
 33 of, any license or temporary permit shall conclusively be deemed  
 34 to be the consent of the applicant and licensee or permit holder to  
 35 such immediate entry and inspection. Such right of immediate entry  
 36 and inspection as provided in this section is not limited to hours of  
 37 operation when the club or drinking establishment is open for busi-  
 38 ness but shall also apply during hours when the club is not open  
 39 for business. Such consent shall not be revocable during the term  
 40 of the license or temporary permit. Refusal of such entry shall be  
 41 grounds for revocation of the license or temporary permit.

42 New Sec. 3. (a) When application for licensure or renewal of  
 43 such license as a club is received by the director, the director shall

willfully  
 permits  
 500

Provided, that revocation or suspension under this subsection must be preceded by a finding of the director that patrons, employees or owners of the licensed premises have willfully caused or allowed the dangerous or harmful conditions or conduct to exist repeatedly or habitually over a reasonable period of time.



**League  
of Kansas  
Municipalities**

**Municipal  
Legislative  
Testimony**

**PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186**

**TO:** Senate Committee on Federal and State Affairs  
**FROM:** Jim Kaup, League General Counsel  
**RE:** SB 232; Revocation and Suspension of State-Issued  
Private Club and Drinking Establishment Licenses  
**DATE:** March 5, 1991

By action of the League's state legislative committee on February 21, the League appears in support of SB 232, introduced by Senator Winter at the request of the City of Lawrence.

**Section 1. The "Good Neighbor" Amendment.** The following comments take into account the League's understanding of the proposed amendment to 1990 Supp. 41-2611, with further amendments as proposed by Senator Winter on February 28. Based upon the questions asked by Senators at the February 28 hearing on SB 232, it is obvious that this Committee understands that the proposed statutory "good neighbor" requirements of private club and drinking establishment licensees can be addressed, at least somewhat, by current local government legal authority. Specifically, cities and counties can maintain public nuisance actions against business establishments which promote, encourage or otherwise make possible the type of repeated or habitual criminal conduct that is addressed under Section 1 of SB 232. Further, it is at least arguable that a city or county can use its home rule authority to place a legal duty upon a business owner or operator to see that certain criminal conduct does not occur on the premises of the business establishment, or within some defined proximity from the establishment, all subject to constitutional standards of reasonableness.

However, the one thing which cities and counties cannot do by local law, or by bringing a public nuisance action in district court, is to revoke or suspend a state-issued license. To restate this, while cities can make the proposed prohibited conduct of Section 1 of SB 232 a violation of local law, what they cannot do is make such conduct the grounds for revocation or suspension of the state-issued license which the private club or business establishment must have in order to operate. The addition of such a provision in state law, such as is proposed by Section 1 of SB 232, is going to get the attention of the licensee. Simply put, Section 1 presents a threat to the livelihood of the licensee, therefore it creates an incentive for the licensee to take measures against the types of threats to public safety and welfare which are set out in Section 1.

**Section 2. Right of Immediate Entry.** The League also supports Section 2 of SB 232 which appears to us to merely be a clarification of the current statutory right of entry and inspection under 1990 Supp. 41-2613. While the League is doubtful that any court would read the current law so narrowly as to conclude that law enforcement officers can make entry to and inspection of a licensed premise only during business hours, the proposed clarification to the law would certainly prevent such an unfortunate interpretation.

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Att. 3

**Section 3. Local Government Notification of Licensure or Renewal.** The sale of alcoholic beverages is a matter of joint state-local lawmaking and regulation. Given this general fact, and longstanding tradition in Kansas, it would appear reasonable to require ABC to notify cities, townships and counties, when so requested, that an application for state licensure or license renewal has been made for premises within the jurisdiction of that particular local government unit. The interests of local governments on this point are, we believe, self-evident, and we hope that neither ABC nor the Legislature views Section 3 as anything other than a legitimate and necessary amendment to current state law.

The League respectfully requests this Committee's favorable consideration of SB 232.





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 27, 1991

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

The Honorable Edward F. Reilly, Jr.  
Chair  
Senate Committee on Federal and State Affairs  
Room 255E  
State Capitol  
Topeka, KS

RE: S.B. 245

Dear Senator Reilly:

At the hearing yesterday, I saw the Secretary of State's proposed changes for the first time. Obviously, with time as short as it was, I did not have time to make comments. I would like to do so at this time. I discussed these briefly with Sherman Parks, Jr.

There is no objection to the addition of "and their families" on page one, line 30.

However, there could be problems with the other two changes. In most organizations, "membership" confers some benefit other than the "privilege" of paying dues. For example, the member receives discounts, newsletters, status in a profession.

In the past two years, I have encountered several charities which call all donors "members." These "members" receive no benefit other than the privilege of donating. Two or three times a year, the charities have a "membership drive" in which people are encouraged to pay "membership fees" which are nothing more than charitable donations. Since virtually all of the money collected by these charities was from "member" donations, they would not be required to register under the Secretary of State's proposal.

Senate F&SA  
3-5-91  
Att. 4

Although registration is not a foolproof method of regulating, it does give us an initial "handle" on these organizations.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL  
ROBERT T. STEPHAN

A handwritten signature in cursive script, appearing to read "D. Jeanne Kutzley".

D. Jeanne Kutzley  
Assistant Attorney General  
Consumer Protection Division

DJK:tk  
J/SB245/TXTATTY

1 tivity of such railroad or other public utility or affiliated or subsidiary  
2 corporation thereof.

3 (i) The sale or lease of real estate by an employee of a corporation  
4 which owns or leases such real estate, if such employee owns not  
5 less than 5% of the stock of such corporation.

6 (j) The sale or lease of new homes by a person, partnership,  
7 association or domestic corporation who constructed such homes, but  
8 the provisions of this act shall apply to the sale or lease of any such  
9 homes by any employee of such person, partnership or association  
10 or by any employee of such corporation who owns less than 5% of  
11 the stock of such corporation.

12 (k) The lease of real estate for agricultural purposes.

13 Sec. 2. K.S.A. 1990 Supp. 58-3046a is hereby amended to read  
14 as follows: 58-3046a. (a) Any person who applies for an original license  
15 in this state as a salesperson shall submit evidence, satisfactory to  
16 the commission, of attendance of a principles of real estate course,  
17 of not less than 30 hours of instruction, approved by the commission  
18 and received within the 12 months immediately preceding the filing  
19 of application for salesperson's license. The commission may require  
20 the evidence to be furnished to the commission with the original  
21 application for license or it may require the applicant to furnish the  
22 evidence to the testing service designated by the commission as a  
23 prerequisite to taking the examination required by K.S.A. 58-3039  
24 and amendments thereto. *If the evidence is furnished to the testing  
25 service, the instruction shall have been received within 12 months  
26 immediately preceding the date of the examination.*

27 (b) Any person who applies for an original license in this state  
28 as a broker shall submit evidence, satisfactory to the commission, of  
29 attendance of 24 hours of instruction, approved by the commission  
30 and received within the 12 months immediately preceding the filing  
31 of application for broker's license. Such hours shall be in addition  
32 to any hours of instruction used to meet the requirements of sub-  
33 section (c) ~~or, (d) or (e)~~. The commission may require the evidence  
34 to be furnished to the commission with the original application for  
35 license, or it may require the applicant to furnish the evidence to  
36 the testing service designated by the commission as a prerequisite  
37 to taking the examination provided in K.S.A. 58-3039 and amend-  
38 ments thereto. *If the evidence is furnished to the testing service,  
the instruction shall have been received within 12 months imme-  
diately preceding the date of the examination.*

section (c) or (d).

subsection (d).

39 (c) *Except as provided in subsections (d) and (e), at or prior to*  
40 *each renewal date established by the commission, any person who*  
41 *is licensed in this state as a broker on or after July 1, 1982, and*

5.2

any person licensed in this state as a salesperson on or after July 1, 1982, and prior to July 1, 1988, or as a salesperson shall submit evidence, satisfactory to the commission, of attendance of courses of not less than 12 hours of additional instruction approved by the commission at or prior to each renewal date established by the commission as follows:

(1) For each license renewal prior to July 1, 1987, four hours of additional instruction received during any annual renewal period and eight hours of additional instruction received during any biennial renewal period. Such evidence shall not be required at the first license renewal of a salesperson whose original license expires less than six months after issuance.

(2) For each license renewal after July 1, 1987, six hours of additional instruction received during any annual renewal period and 12 hours of additional instruction received during any biennial renewal period. Such evidence shall not be required at the first license renewal of a salesperson whose original license expires less than six months after issuance and received during the renewal period.

(d) Any person who obtains ~~obtains~~ an original license in this state as a salesperson after July 1, 1988, and before July 1, 1991, shall submit evidence, satisfactory to the commission, of attendance of courses of instruction approved by the commission at or prior to each renewal date established by the commission as follows:

Any person who obtains an original license in this state as a salesperson after July 1, 1988, shall submit evidence.

(1) At or prior to the first license renewal, 30 50 hours of instruction received after the date of licensure. Such evidence shall not be required until the second license renewal if the original license expires less than six months after issuance.

At or prior to the second license renewal, 20 hours of instruction received during the renewal period. Such evidence shall not be required until the third license renewal if the original license expires less than six months after issuance.

(3) (2) At or prior to each license renewal thereafter, six hours of additional instruction received during any annual renewal period and 12 hours of additional instruction received during any biennial the renewal period.

Hours required by subparts (1) and (2) of this subsection are based on an annual renewal period. If the first license renewal is biennial, 50 hours of instruction received during the renewal shall be required. Such evidence shall not be required at second license renewal if the original license expires less than six months after issuance. If the first license renewal is annual and the second license renewal is biennial, 26 hours

1 of instruction received during the second renewal period shall  
2 be required. Such evidence shall not be required until the third  
3 license renewal if the original license expires less than six  
4 months after issuance.

5 Any salesperson who obtains a broker's license in this state prior  
6 to completing the 50 hours of instruction required by this subsection  
7 shall submit the same evidence to renew the broker's license that  
8 would have been required to renew the salesperson's license.

9 ~~(e) Any person who obtains an original license in this state as a  
10 salesperson on or after July 1, 1991, shall submit evidence, satis-  
11 factory to the commission, of attendance of courses of instruction  
12 approved by the commission at or prior to each renewal date es-  
13 tablished by the commission as follows:~~

14 ~~(1) At or prior to the first license renewal, 30 hours of instruction  
15 received after the date of licensure. Such evidence shall not be  
16 required until the second license renewal if the original license ex-  
17 pires less than six months after issuance.~~

18 ~~(2) At or prior to each license renewal thereafter, 12 hours of  
19 additional instruction received during the renewal period.~~

20 ~~Any sales person who obtains a broker's license in this state prior  
21 to completing the 30 hours of instruction required by this subsection  
22 shall submit the same evidence to renew the broker's license that  
23 would have been required to renew the salesperson's license.~~

24 ~~(f)~~ Any person who accumulated hours of instruction which were  
25 reported to the commission by January 1, 1983, and are on record  
26 with the commission shall receive credit for those hours to apply  
toward requirements of subsection (c).

28 ~~(f)~~ ~~(g)~~ The commission shall adopt rules and regulations to: (1)  
29 Prescribe minimum curricula and standards for all courses offered  
30 to fulfill education requirements of this act, (2) designate a course  
31 of study to fulfill any specific requirement, (3) prescribe minimum  
32 qualifications for instructors of approved courses and (4) monitor  
33 courses and withdraw approval of courses and instructors.

34 ~~(g)~~ ~~(h)~~ For the purpose of this section, one hour of instruction  
35 shall mean 50 minutes of classroom instruction or the equivalent  
36 thereof in correspondence study as determined by the commission.

37 ~~(h)~~ ~~(i)~~ Courses of instruction required by this section shall be  
38 courses approved by the commission either before or after their  
39 completion.

40 ~~(i)~~ ~~(j)~~ The commission shall publish annually a list of educational  
41 institutions and entities and the courses offered by them in this state  
42 which are approved by the commission.

43 ~~(j)~~ ~~(k)~~ No license shall be issued or renewed unless the applicable

delete

(e)

(f)

(g)

(h)

(i)

(j)

1 tivity of such railroad or other public utility or affiliated or subsidiary  
2 corporation thereof.

3 (i) The sale or lease of real estate by an employee of a corporation  
4 which owns or leases such real estate, ~~if such employee owns not~~  
5 ~~less than 5% of the stock of such corporation.~~

6 (j) The sale or lease of new homes by a person, partnership,  
7 association or domestic corporation who constructed such homes, ~~but~~  
8 ~~the provisions of this act shall apply to the sale or lease of any such~~  
9 ~~homes by any employee of such person, partnership or association~~  
10 ~~or by any employee of such corporation who owns less than 5% of~~  
11 ~~the stock of such corporation.~~

12 (k) The lease of real estate for agricultural purposes.

13 Sec. 2. K.S.A. 1990 Supp. 58-3046a is hereby amended to read  
14 as follows: 58-3046a. (a) Any person who applies for an original license  
15 in this state as a salesperson shall submit evidence, satisfactory to  
16 the commission, of attendance of a principles of real estate course,  
17 of not less than 30 hours of instruction, approved by the commission  
18 *and received within the 12 months immediately preceding the filing*  
19 *of application for salesperson's license.* The commission may require  
20 the evidence to be furnished to the commission with the original  
21 application for license or it may require the applicant to furnish the  
22 evidence to the testing service designated by the commission as a  
23 prerequisite to taking the examination required by K.S.A. 58-3039  
24 and amendments thereto. *If the evidence is furnished to the testing*  
25 *service, the instruction shall have been received within 12 months*  
26 *immediately preceding the date of the examination.*

27 (b) Any person who applies for an original license in this state  
28 as a broker shall submit evidence, satisfactory to the commission, of  
29 attendance of 24 hours of instruction, approved by the commission  
30 and received within the 12 months immediately preceding the filing  
31 of application for broker's license. Such hours shall be in addition  
32 to any hours of instruction used to meet the requirements of sub-  
33 section (c) ~~or~~, (d) *or* (e). The commission may require the evidence  
34 to be furnished to the commission with the original application for  
35 license, or it may require the applicant to furnish the evidence to  
36 the testing service designated by the commission as a prerequisite  
37 to taking the examination provided in K.S.A. 58-3039 and amend-  
38 ments thereto. *If the evidence is furnished to the testing service,*  
39 *the instruction shall have been received within 12 months imme-*  
40 *diately preceding the date of the examination.*

41 (c) *Except as provided in subsections (d) and (e), at or prior to*  
42 *each renewal date established by the commission, any person who*  
43 *is licensed in this state as a broker on or after July 1, 1982, and*

"Employee" , as used in this Act, is a person who regularly derives not less than 75% of their compensation from the partnership, <sup>sole proprietorship</sup> ~~partnership~~ association or corporation which owns the property being marketed.

(b) In the case of a will or a trust ~~<or other governing instrument>~~, if a federal estate tax deduction is not allowable at the time of a decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in section 2055(a) of the ~~{internal revenue code}~~ ~~<Internal Revenue Code>~~ of 1986, to meet the requirements of ~~{subsections 2055(e)(2)(A) or (B) of the internal revenue code}~~ ~~<section 170(f)(3)(B), or 2055(e)(2) of the Internal Revenue Code>~~ of 1986, then in order that such deduction shall nevertheless be allowable under section ~~{2055(e)(3)}~~ ~~<2055(a)>~~ of the ~~{internal revenue code}~~ ~~<Internal Revenue Code>~~ of 1986, any judge, on application of any trustee, executor, administrator or any interested party may:

(1) With the written consent of the charitable beneficiaries, the noncharitable beneficiaries not under any legal disability and duly appointed guardians or guardians ad litem acting on behalf of any beneficiaries under legal disability or conservator; or

(2) upon a finding that the interest of such beneficiaries is substantially preserved,

~~order {an amendment to, or construction of, the trust so that the remainder interest is in a trust which is a charitable remainder annuity trust, a charitable remainder unitrust, as those terms are described in section 664 of the internal revenue code of 1986, or a pooled income fund, as that term is described in section 642(e)(5) of the internal revenue code of 1986, or so that any other interest of a charitable beneficiary is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property, to be determined yearly, in accordance with the provisions of section 2055(e)(2)(B) of the internal revenue code}~~ ~~<a change to the governing instrument by reformation, amendment, construction, or otherwise, which changes a reformable interest into a qualified interest within the meaning of section 2055(e)(3) of the Internal Revenue Code>~~ of 1986. In every such proceeding, the attorney general, as representative of the public interest, shall be notified and given an opportunity to be heard.