

Approved Feb. 4, 1992

MINUTES OF THE SENATE COMMITTEE ON Federal and State Affairs

The Meeting was called to order by Senator Edward F. Reilly, Jr. at 11:00 a.m. on January 22, 1992 in room 254-E of the Capitol.

All members were present except:

Sen. Walker

Committee staff present:

Mary Galligan, Legislative Research Department  
Mary Torrence, Office of Revisor of Statutes  
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

Senator Reilly, Chairman, called the first meeting to order and welcomed committee members. He introduced two new senators to the committee - Senator Ward and Senator Webb. He also introduced staff members and new staff members, Jeanne Eudaley and Vicki Harth.

The Chairman introduced Mary Galligan who reviewed bills held over from last year. They are as follows:

Senate Bills 384, 408; House Bill 2212 and Senate Concurrent Resolution 1614.

Senator Morris moved SB 384 be not passed, and it was seconded by Senator McClure. After discussion, the motion passed.

The committee discussed Senate Bill 408, exclusions of the bill and testimony on the bill last session. Staff will check with Senator Francisco on the status of the bill before further action.

The committee discussed Senate Concurrent Resolution 1614 and hearings held last February. Senate Concurrent Resolution 1621 is a similar bill and staff will contact the Senate Governmental Organization Committee chairperson to determine the status of that bill.

Senate Bill 462 is a new bill assigned to this committee, and Mary Galligan explained provisions in that bill and stated that an identical bill has been introduced in the House (2302). It has been assigned to the House Federal and State Affairs Committee, and at this time, no hearings have been scheduled.

The Chairman reminded the committee of the Joint Committee meeting at 1:00 and members asked if a lottery machine will be available for them to see. The Chairman said he didn't think one would be available today, and asked staff to request a machine be made available for the next Joint Committee meeting.

Senator Vidricksen presented a proposal (Attachment 1) amending the parimutuel racing act, changing the rate of taxation and stated that testimony needs to be heard in this regard. Senator Vidricksen moved the proposal be introduced, and the motion was seconded by Senator Strick. Motion passed.

Senator Reilly introduced two proposals supported by the Real Estate Commission and briefly explained that one establishes a real estate appraisal board (Attachment 2) and the other relates

to licensing and misappropriation of the trust fund (Attachment 3). Senator Morris moved the two proposals be introduced, and the motion was seconded by Senator Vidricksen. Motion passed.

Meeting adjourned at 11:30.



PROPOSED BILL NO. \_\_\_\_\_

By xx

AN ACT amending the Kansas parimutuel racing act; relating to the tax on amounts wagered; amending K.S.A. 1991 Supp. 74-8823 and repealing the existing section.

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

Section 1. K.S.A. 1991 Supp. 74-8823 is hereby amended to read as follows: 74-8823. (a) There is hereby imposed a tax on the gross sum wagered by the parimutuel method as follows:

~~(1) Of the total daily takeout from parimutuel pools for horse races, a tax at the rate of 3/18;~~

~~(2) except as provided by subsection (a)(3), of the total daily takeout from parimutuel pools for greyhound races held at a racetrack facility for the racing of only greyhounds, a tax at the rate of: (A) 3/18 during the first four years when racing with parimutuel wagering is conducted at such facility; (B) 4/18 during the fifth year when racing with parimutuel wagering is conducted at such facility; and (C) 5/18 during the sixth and any subsequent year when racing with parimutuel wagering is conducted at such facility; and~~

~~(3) of the total daily takeout from parimutuel pools for greyhound races held at a dual racetrack facility or at a racetrack facility owned by a licensee whose license authorizes the construction of a dual racetrack facility, a tax at the rate of: (A) 3/18 during the first seven years when racing with parimutuel wagering is conducted at such facility; (B) 4/18 during the eighth and ninth years when racing with parimutuel wagering is conducted at such facility; and (C) 5/18 during the tenth and any subsequent year when racing with parimutuel wagering is conducted at such facility~~ at the rate of 3/18 of the total daily takeout from parimutuel pools.

(b) The tax imposed by this section shall be no less than 3% nor more than 6% of the total money wagered each day at a racetrack facility.

(c) The tax imposed by this section shall be remitted to the commission by each organization licensee by the next business day following the day on which the wagers took place. The commission shall promptly remit any such tax moneys received to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the state racing fund created by K.S.A. ~~1987~~ 1991 Supp. 74-8826 and amendments thereto.

(d) The commission shall audit and verify that the amount of tax received from each organization licensee hereunder is correct.

Sec. 2. K.S.A. 1991 Supp. 74-8823 is hereby repealed.

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

Section 1. K.S.A. 1991 Supp. 58-4104 is hereby amended to read as follows: 58-4104. (a) There is hereby established the real estate appraisal board which shall be attached to the commission for purposes of administrative functions.

(b) The board shall consist of seven members appointed by the governor. At least one member of the board shall represent the general public, at least two shall represent financial institutions and at least three shall be real estate appraisers. ~~No two real estate appraiser members shall be members of the same real estate appraisal organization.~~ Upon expiration of the terms of the first members appointed to the board and thereafter: (1) No real estate appraiser member of the board shall be eligible to serve unless such member is a state certified or licensed appraiser; and (2) at least one appraiser member shall be a certified general real property appraiser. Any member representing the general public shall not be affiliated with any financial institution or in the practice of real estate appraising.

(c) Members of the board shall serve for terms of three years except that, of the members first appointed to the board, two shall serve for terms of two years and two shall serve for terms of one year, as designated by the governor. Upon expiration of a member's term, the member shall continue to hold office until the appointment and qualification of a successor. No person shall serve as a member of the board for more than two consecutive terms.

(d) The governor may remove a member of the board for cause.

(e) The board shall hold meetings and hearings in the city of Topeka or at such times and places as it designates, on call of the chairperson or on request of two or more members.

(f) The members of the board shall select a chairperson from among the members to preside at board meetings.

(g) A quorum of the board shall be four members.

(h) Each member of the board shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto for attendance at any meeting of the board or any subcommittee meeting authorized by the board.

(i) The provisions of the Kansas sunset law apply to the real estate appraisal board established by this section, and the board is subject to abolition under that law.

Sec. 2. K.S.A. 1991 Supp. 58-4106 is hereby amended to read as follows: 58-4106. (a) The commission shall:

(1) Receive applications for certification and licensure and renewal of certificates and licenses;

(2) issue certificates and licenses after the board has approved applications for certification and licensure and renewal of certificates and licenses;

(3) maintain a registry of the names and addresses of persons certified and licensed under this act and transmit the registry to the appraisal subcommittee of the federal financial institutions examination council on an annual basis in accordance

with federal law;

(4) maintain all records submitted to it;

(5) collect fees prescribed pursuant to K.S.A. 1990-Supp. 58-4107 and amendments thereto;

(6) make such expenditures as are necessary to properly carry out the provisions of this act; and

(7) submit the board's annual budget, assisted by the board, to the department of administration.

(b) The commission may assist the board in such other manner as agreed upon by the board and commission.

Sec. 3. K.S.A. 1991 Supp. 58-4107 is hereby amended to read as follows: 58-4107. (a) The board shall adopt rules and regulations prescribing the fees provided for by this act in amounts necessary to administer and enforce this act, subject to the following:

(1) For application for certification or licensure, a fee not to exceed \$50.

(2) For any examination required for certification or licensure, a fee in an amount equal to the actual cost of the examination and administration thereof.

(3) For ~~original-certification-or-licensure~~, an original or renewed license as a state licensed real property appraiser, a fee not to exceed \$150 \$200.

(4) For an original or renewed certificate as a state certified residential real property appraiser, a fee not to exceed \$250.



(5) For an original or renewed certificate as a state certified general real property appraiser, a fee not to exceed \$300.

~~(4) For renewal of a certificate or license, a fee not to exceed \$100.~~

~~(5)~~ (6) For late renewal of a certificate or license, a late fee not to exceed \$50.

~~(6)~~ (7) For certification to another jurisdiction that an individual is certified or licensed, an amount not exceeding \$10.

~~(7)~~ (8) For approval of a course of instruction approved pursuant to K.S.A. 1990-Supp. 58-4105 and amendments thereto, an amount not to exceed \$100.

~~(8)~~ (9) For renewal of a course of instruction approved pursuant to K.S.A. 1990-Supp. 58-4105 and amendments thereto, an amount not to exceed \$25.

If a certificate or license is issued or renewed for a period other than one year, the fee shall be prorated to the nearest whole month.

(b) In addition to the certificate or license issued pursuant to this act, the board may offer to provide a wall certificate, which shall bear no expiration date, and may charge a fee of \$10 to each appraiser requesting the issuance of a wall certificate.

~~(b)~~ (c) The board may prescribe a fee not to exceed \$50 for registration of an appraiser pursuant to subsection (b) of K.S.A. 1990-Supp. 58-4103 and amendments thereto.

~~(e)~~ (d) The board may establish different classes of courses

of instruction for the purpose of establishing fees pursuant to subsection (a)~~(7)~~-and-~~(8)~~ (8) and (9) and may establish a different fee for each such class.

~~(d)~~ (e) In addition to the fees prescribed above, the commission shall collect any registry fee required pursuant to federal law. Such registry fees shall be transmitted by the commission to the appraisal subcommittee of the federal financial institutions examination council in accordance with federal law.

~~(e)~~ (f) Except as provided in subsection ~~(f)~~, (g), the commission shall collect all fees provided for by this act. No original or renewed certificate or license shall be issued unless all appropriate fees, including any federal registry fee, have been paid.

~~(f)~~ (g) If a testing service has been designated by the board to administer the examination, each applicant shall pay the examination fee to the testing service.

~~(g)~~ (h) The director of the commission shall remit to the state treasurer at least monthly all moneys received pursuant to this act. Upon receipt thereof the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit, other than amounts collected for federal registry fees or for civil fines imposed pursuant to K.S.A. 1990-Supp. 58-4118 and amendments thereto, shall be credited to the state general fund and the balance shall be credited to the appraiser fee fund, which is hereby created in the state treasury. All expenditures from such fund shall be made in accordance with

appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the commission or by a person or persons designated by the director.

(h) (i) All amounts collected for federal registry fees shall be credited totally to the federal registry clearing fund, which is hereby created in the state treasury. All disbursements from the federal registry clearing fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the commission or by a person or persons designated by the director. Amounts credited to the federal registry clearing fund under this section shall not be subject to any limitations imposed by any appropriations act of the legislature.

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Section 1. K.S.A. 1991 Supp. 58-3062 is hereby amended to read as follows: 58-3062. (a) No licensee, whether acting as an agent or a principal, shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) Misappropriate trust funds, convert trust funds to the licensee's personal use, or commingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a licensee from depositing in a trust account a sum not to exceed \$100 to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission, or pay a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the out-of-state licensee.

(5) Represent or attempt to represent a broker without the broker's express knowledge and consent.

Att. 3  
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- (6) Act in a dual capacity of agent and undisclosed principal in any transaction.
- (7) Guarantee or authorize any person to guarantee future profits that may result from the resale of property.
- (8) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.
- (9) Offer real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.
- (10) Induce any party to break any agency agreement or contract of sale or lease.
- (11) Solicit a listing or negotiate a sale, exchange or lease of real estate directly with an owner or lessor if the licensee knows that such owner or lessor has, with regard to the property, a written agency agreement granting an exclusive right to sell or lease to another broker.
- (12) Solicit an agency agreement or negotiate a sale, exchange or lease of real estate directly with a buyer or lessee if the licensee knows that such buyer or lessee has a written agency agreement granting exclusive representation to another broker.
- (13) Fail to obtain a written agency agreement, including a fixed date of expiration, signed by the party to be represented and by the licensee or fail to furnish a copy of the agreement to the principal within a reasonable time. A written agency

agreement may not be assigned, sold or otherwise transferred to another broker without the express written consent of all parties to the original listing agreement.

(14) If the licensee represents the seller or lessor, fail to disclose to a prospective buyer or lessee that: (A) The licensee is or will be acting as agent of the seller or lessor with the duty to represent the seller's or lessor's interest; (B) the licensee will not be the agent of the prospective buyer or lessee, and (C) information given to the licensee will be disclosed to the seller or lessor. The disclosure shall be made orally or in writing when the licensee agrees to assist the prospective buyer or lessee to locate and inspect property and shall be made in any contract for sale or lease and in any lot reservation agreement.

(15) If the licensee represents the buyer or lessee, fail to disclose to a prospective seller or seller's agent, or lessor or lessor's agent, that: (A) The licensee is or will be acting as agent of the buyer or lessee with the duty to represent the buyer's or lessee's interest; (B) the licensee will not be the agent of the seller or lessor; and (C) information given to the licensee will be disclosed to the buyer or lessee. The disclosure shall be made orally or in writing no later than the first showing of the property and shall be made in any contract for sale or lease and in any lot reservation agreement.

(16) If the licensee represents both the buyer and seller or both the lessor and lessee, the licensee shall immediately

disclose in writing: (A) That the licensee is acting as agent for both buyer and seller or for both lessor and lessee; and (B) the compensation arrangement. The disclosure shall be signed by both the buyer and the seller or both the lessor and lessee. In addition, the disclosure of the agency relationship between all licensees involved and the principals shall be included in any contract for sale or lease and in any lot reservation agreement.

(17) Offer or give prizes, gifts or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate.

(18) Enter into a listing agreement on real property in which the broker's commission is based upon the difference between the gross sales price and the net proceeds to the owner.

(19) Fail to see that financial obligations and commitments between the parties to an agreement to sell, exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved.

(20) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

(21) Include in any agency agreement an authorization to sign or initial any document on behalf of the licensee's principal in a real estate transaction or authorization to act as attorney-in-fact for the principal. The licensee shall not commit forgery or sign or initial any document on behalf of another person in a

real estate transaction unless authorized to do so by a duly executed power of attorney.

{21} (22) Engage in fraud or make any substantial misrepresentation.

{22} (23) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

{23} (24) Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the licensee will have in the real estate the licensee is purchasing or leasing.

{24} (25) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

{25} (26) Fail without just cause to surrender any document or instrument to the rightful owner.

{26} (27) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement.

{27} (28) Fail to deposit any check or cash received as an earnest money deposit or as a deposit on the purchase of a lot



within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement or lot reservation agreement.

~~(28)~~ (29) Fail in response to a request by the commission or the director to produce any document, book or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly, any real estate transaction or the licensee's real estate business.

~~(29)~~ (30) ~~Fail to submit a written bona fide offer to the licensee's principal when such offer is received prior to the principal's accepting an offer in writing and before the licensee has knowledge of such acceptance.~~ If the licensee represents the seller, fail to promptly submit any written offer to the licensee's principal when such offer is received prior to the closing of the sale or fail to promptly submit to the prospective buyer or buyer's agent any counteroffer made by the seller, including any back-up offers properly identified as such.

If the licensee represents the buyer, fail to promptly submit any written offer to the seller or seller's agent or fail to promptly submit to the licensee's principal any counteroffer made by the seller including any back-up offers properly identified as such.

~~(30)~~ (31) Refuse to appear or testify under oath at any hearing held by the commission.

~~(31)~~ (32) Demonstrate incompetency to act as a broker, associate broker or salesperson.

~~(32)~~ (33) 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 knew or should have known.

~~(33)~~ (34) Knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.

(b) Failure to comply with any requirement of subsection (a)(13), (14), (15) or (16) or their corollary rules and regulations shall not by itself render any agreement void or voidable nor shall it constitute a defense to any action to enforce such agreement or any action for breach of such agreement.

(c) The commission, by rules and regulations, may provide suggested forms of agency disclosure and agency agreements and such other prohibitions, limitations and conditions relating thereto as the commission may prescribe.

(d) No salesperson or associate broker shall:

(1) Accept a commission or other valuable consideration from anyone other than the salesperson's or associate broker's employing broker or the broker with whom the salesperson or associate broker is associated.

(2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or associate broker in the custody of the broker whom the salesperson or associate broker represents.

(e) No broker shall:

(1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker, except that nothing herein shall prohibit the payment of a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction.

(2) Fail to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

(3) Fail to properly supervise the activities of an associated or employed salesperson or associate broker.

(4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker.

(5) Fail to provide to the principal a written report every 30 days, along with a final report, itemizing disbursements made by the broker from advance listing fees.

(f) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker, unless otherwise specifically provided by written agreement of all parties to the purchase agreement, no listing broker shall:

(1) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties; or

(2) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.