

Approved: 3/14/97
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:04 a.m. on February 19, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Richard Livingston, KS Coalition of Appraisers
Jim Mattes, Coalition of Kansas Appraisers
Joseph Krahn, KDOT
Chuck Stones, KS Bankers Assn.
Karen France, KS Assn. of Realtors
Galen Biery, Western Resources
T. C. Anderson, KS Society of CPA's
Jennie Crowder, Amer. Society of Appraisers
Rep. Doug Mays
Hal Hudson, Natl. Federation of Independent Business
Crosby Crosby
Paul Mohr, Worthless Check Recovery

Others attending: See attached list

Rep. McCreary made a motion to approve the minutes of January 28 and 31, 1997. It was seconded by Rep. Wilson. The minutes were approved as written.

Chairman Lane announced that hearings on **HB 2155** scheduled for today and **HB 2298** scheduled for Thursday, February 20, 1997, have been canceled and will be re-scheduled at a later date after turn-around. The committee will meet on Monday, February 24, if the caucuses for both parties are scheduled to meet that morning. Bills scheduled will be **HB 2462** and **HB 2292**.

Continued hearing on: **HB 2154 - Real estate appraisers, real estate-related transactions.**

Robert Livingston, Kansas Coalition of Appraisers, appeared in support of the bill. In his testimony he stated that unlicensed appraisers are not required by law to follow guidelines or answer to any authority, and they will continue to mislead the public. (see Attachment 1)

James Mattes, Chairman of the Coalition of Kansas Appraisers, appeared before the committee as the author and supporter of the bill. The Coalition of Kansas Appraisers is an organization that is composed of Real Estate Appraisers from across the State of Kansas. They have formed together to provide support for legislation that promotes a higher degree of professionalism and a more secure appraisal product for the community. (see Attachment 2) He concluded his testimony by answering questions from the committee.

Joseph Krahn, Chief of Bureau of Right-of-Way, Kansas Department of Transportation (KDOT), appeared to make a request of the committee to exempt the state and local units of government from the purview of this proposed legislation. (see Attachment 3)

Chuck Stones, Kansas Bankers Association, appeared to offer an amendment to the bill. Section 2 (e) exempts bank employees, which is in accordance with federal guidelines. But, the bill restricts this exemption by saying that the loan must be intended to be held by the bank for the life of the loan. They recommend deleting the language starting on page 3, line 17, starting with the word, "when" through line 28. (see Attachment 4)

Karen France, Director of Governmental Affairs, Kansas Association of Realtors, appeared before the committee to find out the intent and the application of the legislation. In her testimony, she listed several

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:04 a.m. on February 19, 1997.

questions that have been raised by members of the association that needed answers in clarifying their understanding of the bill. Members of her association had asked these questions and she did not know how to answer them. (see Attachment 5) She answered questions from the committee.

Written testimony from Ron Smith, Kansas Bar Association, was distributed to the committee requesting changes and amendments to the bill. (see Attachment 6)

Galen Biery, Western Resources, appeared to ask that if the bill cannot be rewritten to specifically address financial involvement by lending institutions, that transactions by public utilities be exempt. He stated in his testimony that the expense and time involved with complying with the requirements of the new law will create hardship for all utilities, including cities, counties, and the State. (see Attachment 7)

T. C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants, appeared to request an amendment to the bill that would exempt certified public accountants, who in the course of their practice estimate the value of real estate and real property. (see Attachment 8)

Chairman Lane read the fiscal note for the bill. The Kansas Real Estate Appraisal Board indicates that it cannot measure the increase in workload or expenditures at this time.

Jennie Crowder, representing the American Society of Appraisers, spoke from the audience that they are in favor of the bill.

No others were present to testify for or against the bill and Chairman Lane closed the hearing on the bill.

Hearing on: **HB 2205 - Civil remedy for worthless checks; defining intent to defraud and reasonable attorney fees.**

Rep. Doug Mays appeared before the committee to introduce the bill. He started hearing from business people in his district several years ago, that Judges were waiving the attorney fees for prosecution of bad checks. This applies to people who write bad checks on purpose, on a regular basis. The results are that attorneys are not taking bad check cases and there is no disincentive for people to quit writing bad checks.

Hal Hudson, State Director, Kansas Chapter, National Federation of Independent Business, appeared in support of the bill. Worthless checks are really bad news for small business owners. They need the help of a competent attorney to help them recover their loss and these attorneys need to be paid, not by the business owner, but the person who writes the worthless check. (see Attachment 9)

Crosby Crosby works for himself and for a company who does check collection and check protection. For the businessman who hires an attorney to prosecute persons who write worthless checks, the attorney must be appropriately compensated with reasonable attorney's fees from the bad check writer not the businessman. (see Attachment 10)

Paul J. Mohr is an attorney from Wichita who works for a check loss prevention company that provides electronic verification for merchants in the State, and they also try to collect on worthless checks. Merchants that have this sophisticated electronic equipment still get worthless checks. (see Attachment 11)

The hearing on **HB 2205** will be continued tomorrow, February 20, 1997.

The meeting was adjourned at 10:01 a.m.

The next meeting is scheduled for February 20, 1997.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE: February 19, 1997

NAME	REPRESENTING
JENNIE CROWDER ASA	AMERICAN SOCIETY OF APPRAISERS (OKA)
Mitrey Dameron	Kansas Bar Assn.
Joe Krahn	KDOT
Bill Watts	KDOT
Nancy Bogina	KDOT
Hal Hudson	NEIB/KS
Chuck Stones	KBA
T.O. Anderson	KSEPA
Kent Wilkins	personally
Crosby Crosby	personally
Jim MATTES	Coalition of Kansas Appraisers
Matthew Goddard	Heartland Community Bankers Assoc.
Rick Shepard	Citizen-Trust of Dennis Wilson
King Shepard	Citizen-Trust of Dennis Wilson
Jan Russo	atly
Alan Bible	law firm + checkrite of ^{Eastern} Kansas
JASON PATENBERGER	BRAD SMOOT
Gene Amos	Shawnee Area Chamber of Commerce
Paul Shelby	OJA

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE: February 19, 1997

NAME	REPRESENTING
KAREN FRANCE	KS Assoc of REALTORS
DAVID SPODGESS	KS FOOD DEALERS ASSOCI
DAN GRANT	NCCF

February 18, 1997

TO; House Committee on Business, Commerce, and Labor
FROM; Richard E. Livingston
RE; House Bill No. 2154

I see this bill a a preemptive remedy against some of the new loan programs being developed that may cause problems for the mortgage industry and the public. One of these programs is the Fast Tract system. This system works using the value range in a given city or subdivision, if the property is (estimated to be or sold) for a value which falls within the range given, the property is approved for the loan. There is no "uninterested third party". The buyer is being charged for an appraisal and yet receives nothing more than a computer generated value range for the area.

In 1989 the federal government began the process of requiring states to license appraisers. this step arose due to the failure of banks and savings and loans. These institutions were failing due to a large number of bad loans, some with appraisals some without. By 1996 the federal government had spent more than 800 billion dollars trying to rescue financial institutions. The licensed appraiser was to be a professional uninterested third party who after receiving 2000 hours of experience and 165 hours of appraisal related education would give an opinion of value on real estate. After amendments this law stated as Kansas law does that residential properties with values under \$250,000 and commercial properties under \$1,000,000 in value do not require appraisals by licensed appraisers. This would cause 90% of the loans in the state of Kansas not to require appraisals.

Most lenders and secondary market investors do require appraisals on all real estate loans. This according to the lenders is just good business sense and allows them to offer a better, more secure product and protect their investment.

Without this bill individuals will continue to act outside the legislative arm of our government and the appraisal board. Because unlicensed appraisers are not required by law to follow guidelines or answer to any authority, they will continue to mislead the public.

At the present time close to 30 states have some form of mandatory license law, we feel that Kansas residents deserve the same protection, and urge the passing of this bill.

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& Labor Committee
2/19/97
Attachment 1*

COALITION OF KANSAS APPRAISERS

February 19, 1997

To: House Committee on Business, Commerce and Labor
From: James A. Mattes, SRA, Chairman, Coalition of Kansas Appraisers
Re: House Bill # 2154

The Coalition of Kansas Appraisers is an organization that is composed of Real Estate Appraisers from across the State of Kansas. These appraisers represent various professional appraisal organizations, and have formed together to provide support to legislation that promotes a higher degree of professionalism and a more secure appraisal product for the community.

As the Chairman of the Coalition, I was instructed by our membership to write a bill that would amend the current Real Property Appraisers Act for what we feel is the protection of the general public and leveling of the playing field for all appraisers in the state.

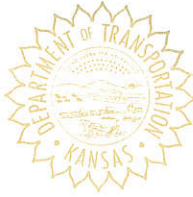
As currently written, federal law does not require that an appraisal done for a "federally related transaction" be accomplished by a state licensed or certified appraiser if that transaction is under \$250,000. When you, as the Kansas Legislature wrote the current "Appraisers Act", that transaction value was \$15,000. You were correct when you wrote the current law, but the rules are being changed by other entities. The \$250,000 deminis covers more than 90% of all real property in our state. We see this current bill a necessity to insure that the majority of real estate appraisals are accomplished by individuals who follow all of the Uniform Standards of Professional Practice and are governed by the rules and regulations of the Kansas Appraisal Commission that you have established.

Without this amendment, the State of Kansas has no recourse against the appraisers who could now legally appraise 90% of all property in the state. I intended with this bill to insure that all appraisers are regulated evenly and fairly. I did not intend to eliminate competition, but to insure that all appraisers are judged equally and with the same rules and regulations. Without equal regulation, the state cannot rid itself of bad appraisers who could cause financial chaos with another "bailout".

I also did not intend this bill to cover any other appraisal situations other than for financial transactions. The realtor who does a small number of appraisals for probate or other personal reasons is not covered by this bill. Unless that appraisal is used in a transaction by a financial institution. Also, the use of non licensed appraisers by the State Department of Transportation or local governing bodies for small condemnation work was not intended to be regulated by this bill. I am amicable to any change in the wording of this bill that may tend to solidify those meanings.

James A. Mattes, SRA
Chairman

*Business, Commerce
& Labor Committee
2/19/97
Attachment 2*



KANSAS DEPARTMENT OF TRANSPORTATION

Docking State Office Building
Topeka 66612-1568
(913) 296-3566
TTY (913) 296-3585
FAX (913) 296-1095

E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor of Kansas

TESTIMONY BEFORE THE
HOUSE COMMITTEE ON BUSINESS, COMMERCE, AND LABOR
Regarding H.B. 2154
Relating to the Certification and Licensure of Appraisers

February 18, 1997

Mr. Chairman and Committee Members:

My name is Joseph Krahn and I am Chief of KDOT's Bureau of Right of Way. We have six staff appraisers four of whom are licensed or certified. The other two individuals are also well qualified for the appraisal duties they perform. Although their job descriptions do not require that they be licensed or certified, they are both working toward that goal.

Our interpretation of the broad definitions in the bill indicates that the work of KDOT appraisers falls within the purview of the bill. There are also many highway improvement projects funded with federal and state money where the local units of government acquire the property interests needed to build the projects. Offers of just compensation are often prepared by individuals who are not licensed or certified appraisers. Both state and local projects would be adversely impacted by this bill as written.

When the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 was passed, state and local units of government were required to prepare an appraisal and have it reviewed by a review appraiser for every tract to be acquired for a project, even small temporary easements. This resulted in wasteful scenarios where the state or local unit of government would spend substantial sums of money on the appraisal and review in order to make a fifty or hundred dollar offer for a small temporary or permanent easement.

In response to concerns expressed by states and local units of government over this wasteful expenditure of public funds, federal regulations under the Uniform Act were changed to allow offers to be made without appraisals and review appraisals for uncomplicated acquisitions anticipated to be \$2,500 or less. Cities and counties

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Attachment 3*

have followed these procedures for several years with excellent results using staff personnel or local real estate professionals who are not licensed or certified appraisers. Recently, federal officials expressed a willingness to raise the waiver of appraisal ceiling. Kansas requested and received authority to raise the ceiling to \$7,500. We hope to realize a savings of both time and money under these procedures for the state and for local units of government.

Enactment of this bill as written would preclude utilization of the waiver of appraisal procedures unless the services of licensed or certified appraisers are used, contrary to the intent of the federal regulations.

We respectfully request that the committee exempt the state and local units of government from the purview of this proposed legislation. It is our understanding that the proponents of this legislation would not object to the exemption.

Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

913-232-3444 Fax - 913-232-3484 e-mail - kbacs@ink.org

TO: House Business, Commerce and Labor Committee
FROM: Chuck Stones, Director of Research

RE: HB 2154

Mr Chairman and Members of the Committee:

Thank you for the opportunity to submit testimony regarding HB 2154. The KBA does not have strong feelings regarding the policy matter contained in HB 2154. Banks are not directly affected by the policy decision involved. Appraisal fees are, in almost all cases, passed on to the customer in real estate transactions. We would hate to see these fees increase for our customers.

We do, however, recommend an amendment to the bill. Section 2 (e) exempts bank employees, which is in accordance with federal guidelines. But, the bill restricts this exemption by saying that the loan must be intended to held by the bank for the life of the loan. We strongly feel this is an overly restrictive requirement. For all practical purposes, buyers of loans in the secondary market require licensed appraisals. There may be occasions when banks within the same holding company or group may want to exchange loans for some reason. This requirement would restrict that ability. In addition we feel that the requirements of the secondary market should be governed by itself, not by a group of appraisers. We recommend deleting the language starting on page 3, line 17, starting with the word, "when" through line 28.

Appraisals done for banks, either by licensed or non-licensed personnel, are subject to guidelines set forth by the FDIC and the State Banking Department. These appraisals are subject to review during a bank examination. We and they feel this structure adequately protects the customer and the FDIC from faulty appraisals. The recommended deletions further restrict federal guidelines and place undue burden on the banks and unnecessary costs on our customers.

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Attachment 4*

(e) The provisions of paragraph (1) of subsection (a) shall not be applicable to financial institutions engaging in real estate-related financial transactions and otherwise subject to K.S.A. 58-4101, et seq., and amendments thereto., when the following conditions are met:

*(1) An employee of the financial institution conducts an appraisal as defined in subsection (a) of K.S.A. 58-4102, and amendments theret.; and
(2) when the loan that is the subject of such appraisal is not intended to be sold in the secondary market and is intended to be held by the financial institution for the life of the loan.*

If the financial institution disposes of such loan in the secondary market, such financial institution shall be required to obtain an appraisal by a state licensed or certified appraiser as required by paragraph (1) of subsection (a) and the employee of the financial institution conducting such appraisal shall not be otherwise considered to be an appraiser under the law unless such person is licensed or certified.

(f) The provisions of paragraph (1) of subsection (a) shall not be applicable to licensed real estate brokers when such brokers are performing comparative market analyses for the purpose of listing or selling real estate.

(g) The provisions of paragraph (1) of subsection (a) shall not be applicable to licensed attorneys to the extent that such attorneys are engaged in the practice of law as otherwise allowed by law.

Sec. 3. K.S.A. 58-4102 and 58-4103 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.



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Topeka, Kansas 66611-2098
Telephone 913/267-3610
Fax 913/267-1867

TO: HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE
FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS
DATE: FEBRUARY 18, 1997
RE: HB 2154, MANDATORY LICENSURE FOR REAL ESTATE APPRAISERS

Thank you for the opportunity to address this bill. We do not come as either proponents or opponents. We come, perhaps like the members of this committee to find out the intent and the application of this legislation.

Many of our members are in support of this bill, many are against it. Many are certified and licensed appraisers. Many of them are not licensed or certified because they do not perform appraisals which are federally related. Many of them do work which, by the definitions placed in this bill might or not be considered "appraisals" and which therefore, might require them to become licensed or certified. I appear today to inquire what the intent of this legislation is. Most of their questions turn on the issue of what exactly an appraisal is. Perhaps some clarification in the bill is all that is necessary. These are some of the questions:

1. An attorney is working on an estate or a divorce and calls a real estate broker and asks them what the going price is for a certain kind of property and could they give them a letter on it, to have in the file. Does this kind of work fall under the attorney exemption? It does not qualify as a comparative market analysis.

The definition of a "written appraisal" is a "written statement used in connection with a real estate-related transaction that is independently and impartially prepared by a licensed or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information". If you take out the language about being prepared by a licensed or certified appraiser, what my members are doing could be classified as a "written appraisal." My members indicate these are often provided at a nominal charge or for free. Would they now have to be licensed or certified to give this information?

2. Now, picture the same scenario, only change the person requesting the opinion to a judge. This clearly does not fall into the attorney exemption. Would a person now have to be licensed or certified?

3. District Judges often appoint real estate brokers to provide the information for a condemnation procedure, for example asking them to figure out the square footage cost per lot to run a natural gas line across 14 properties. A formal appraisal is never required, but a written opinion is. Would a person now have to be licensed or certified?

4. Another member does "broker's opinions" for banks in his town. They have them do them for in-house or portfolio loans. These loans are usually done in a very short amount of time for good customers of the bank, so they don't need the expertise of a certified appraiser. They need the information in a hurry and they want to save the customer some money. He always puts a large disclaimer on each broker's opinion warning the this is only one person's opinion and not to be used

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Attachment 5

in place of a certified appraisal. Would this bill mean this member would have to become licensed or certified in order to do this for his local banker?

5. Another member asks, why does everything have to be done by a certified or licensed appraiser? Why can't it be like the accounting profession? If you need very specialized work, you hire a CPA and you expect to pay for it because it requires extra schooling, testing and experience. If you need more basic accounting work performed, you can go to an accountant who isn't a CPA and the rates are not as high. You don't get the same level of service, but you get the level of service you need.

I did not know how to answer these questions when my members asked me. I place them before you to help us and you sort these issues out, so we can all participate in developing good legislation.



Legislative Testimony

**KANSAS BAR
ASSOCIATION**

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General Counsel
Art Thompson,
Public Services Director

TO: House Business, Labor and Commerce Committee
FROM: Ron Smith, KBA General Counsel
SUBJ: HB 2154
DATE: February 18, 1997

Requiring a "licensed" person to place valuations and assessments on property when heretofore it had not been required, if applied to various portions of the practice of law, will increase the cost of getting such valuations or assessments. The bill seems a bit out of perspective. Section 2(c) makes it a misdemeanor to appraise property without a license, yet the state does not make practicing law without a license a crime.

The argument is made that licensed real estate appraisers should appraise property, that somehow the licensing process itself is protective of the public. Kansas, however, historically and for many reasons has not been a licensing-happy state. Legislators have been reluctant to use license renewals as a trigger for such things as payment of child support. Many eastern states require lawyers represents all parties to a real estate buy-sell agreement, including residential real estate, on the theory that when one is creating legal rights, duties and obligations between two or more parties, that is the practice of law. Virginia in a recent Unauthorized Practice of Law opinion became the latest state to adopt such a position. Such rigidity has not been our tradition in Kansas and although I wish it were so (since it would enhance the practice of all my members), the reality is that many Realtors create sometimes complex provisions in standard buy-sell agreements without lawyers being involved. My point is a license is not magic. It will not always lead to better appraisals or valuations processes.

The bill does not speak to, or exempt, condemnation proceedings. Condemnation proceedings and eminent domain proceedings often use nonprofessionals to set the value of property which is being condemned. The definition of "appraiser" would limit condemnation proceedings to this new class of licensed appraiser. Under the act, a condemnation proceeding would appear to fall into the category of an appraiser assignment. These changes in the bill change the basis of a condemnation proceeding, and will add to the cost. Condemnation proceedings language is scattered liberally throughout the various chapters of the statutes. We suggest a new Section 3(a) that specifically exempts condemnation and eminent domain proceedings from the limitations of the act.

We are not here in a protectionist mode. If an attorney is appraising property, the attorney probably has a real estate license or some other license. The attorney exemption, page 3, line 33, what attorneys do in an estate, for example, is not "appraise" property but rather put a "value" on the property for estate purposes. Those valuations are then filed with the estate forms. If the IRS or the Kansas Department of Revenue challenges the valuation set on the property, it doesn't matter who did the valuation or whether a licensed person appraised the property. Compliance with this act is no defense to the valuation. The attorney must be prepared to defend that valuation with the tax authorities. However, *the attorney "practice of law" exemption in subsection (g) only applies to the requirements of subsection (a)(1), engaging in a "written appraisal" in connection with a real estate-related transaction.* The attorney's practice that includes valuations is not affected. This will lead to confusion as to what is or is not exempted. We suggest a better and broader attorney exemption by striking all of section 1(m) and create a new Section 3(b) that says:

"The provisions of this act shall not apply to services rendered by an attorney licensed to practice in this state in performing such attorney's professional duties as an attorney."

This language comes from and is consistent with the exemptions found in KSA § 58-3037, the Real Estate Brokers and Salespersons Licensing Act. Thank you.

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Attachment 6*

Legislative Committee on Business, Commerce, and Labor

February 19, 1997

Galen E. Biery
Assistant General Attorney
Western Resources, Inc.

Comments on HB 2154: Originally K.S.A. 58-4102 and ⁵8-4103 were enacted to protect the Federal Government when it was involved in any real estate related financial transaction. The laws helped prevent fraud and coordinated State requirements with Federal requirements. Lending institutions also benefited from the laws when the Federal Government was involved in a transaction.

It appears that the lending institutions and mortgage companies want the protection to extend to all real estate transactions to provide a level of comfort when the mortgage is sold on the secondary market. Unfortunately the amendments to the law as proposed under HB 2154 goes beyond protecting the financial institutions and extends to all real estate related transactions.

As a public utility, Western Resources acquires interests in real property, both in fee and by easement. HB 2154 would require that public utilities ~~to~~ use certified or licensed appraisers whenever they provided a written offer during the negotiations for land rights which provided a market explanation for the offer. With the acquisition of hundreds of properties each year the burden would be both time consuming and costly, especially for the many small easements which are acquired for an agreed amount often not related to the market.

This requirement would also apply to property acquired by condemnation. The Court appointed appraisers would have to be licensed or face committing a Class B Misdemeanor. Several counties in Kansas do not have licensed appraisers residing within the county, which is a requirement by law.

The expense and time involved with complying with the requirements of the new law will create hardship for all utilities, including cities, counties, and the State. If the bill cannot be rewritten to specifically address financial involvement by lending institutions, Western Resources respectfully requests that transactions by public utilities be exempt.

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2/19/97
Attachment 7*



Kansas Society of Certified Public Accountants

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460 / FAX 913-267-9278
February 19, 1997

Testimony on HB 2154

Chairman Lane and members of the House Business, Commerce and Labor Committee.

I am T.C. Anderson, Executive Director of the 2,500 member Kansas Society of Certified Public Accountants. I appear before you today to request an amendment to HB 2154 that would exempt CPAs, who in the course of their practice estimate the value of real estate and real property.

Our organization's interest in the licensing and certification of appraisers began in 1990 when at the mandate of the federal government such legislation was required of the states. At that time, Rep. Tom Walker, Chair of the House Governmental Organizations Committee, advised me he did not believe attorneys or CPAs were affected by the legislation since it only dealt with federally related transactions. At his request we did not testify.

Now we are talking about **any** real estate related transaction and the proposed legislation contains an exemption for attorneys, but not for CPAs.

For years Kansas CPAs have been estimating the value of real estate for clients in their estate and gift tax work, business valuations, personal financial planning and other management consulting engagements. Surely the Real Estate Appraisal Board did not intend to regulate the practice of accountancy through this legislation.

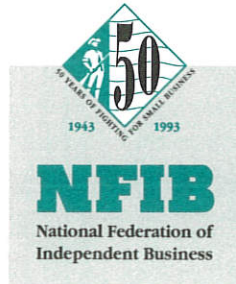
The CPAs in your communities are already licensed and regulated by the State Board of Accountancy. They must meet strict licensing, continuing education and professional ethical requirements in order to practice. These laws are designed to protect the public from fraud, incompetence and conflict of interest. To enforce this responsibility, the Board has been granted the authority to revoke the license of the CPA and to impose other forms of penalties. In addition, the State Board of Accountancy has regulatory authority over a CPA for all services provided to the public as a CPA. This includes valuations, management consulting and other non-traditional accounting services.

Neighboring states Colorado and Oklahoma have exempted CPAs from their state certified and license real property appraisers acts. I hope you will, also, by amending HB 2154 to include: ***"This Act shall not apply to CPAs licensed in this state, who incidental to performing business valuations, or in connection with estate planning, personal financial planning and other management consulting services, estimate the value of real estate and real property."***

Thank you for allowing me to appear today and I will stand for questions.

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Attachment 8*

LEGISLATIVE



The Voice of Small Business

TESTIMONY

**Testimony of Hal Hudson, State Director
Kansas Chapter, National Federation of Independent Business
Before the House Business, Commerce and Labor Committee
on House Bill 2205
Wednesday, February 19, 1997**

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to speak to you in support of House Bill 2205.

My name is Hal Hudson, and I am the State Director for the 8,000-member Kansas Chapter of the National Federation of Independent Business. Our membership covers a broad spectrum of all types of businesses, who have one thing in common -- they are small. While collectively they employ over 100,000 Kansans, over 80 percent of our members employ 15 or fewer persons.

Worthless checks are really bad news for small business owners. Usually small business owners wear many different hats. Often, they are working 60 to 80 hours a week to keep their doors open, earn a living, and provide jobs for their employees.

The last thing they need is a worthless check. And, after they have made a reasonable effort to recover the money owed them, without success, they need the help of someone to step in and pursue the collection, as allowed by law.

Understand that by the time these holders of the worthless check are ready to hire an attorney, it is likely that they already have paid for wages and materials that created the customer obligation. Now they need to stay on the job, not spend time locating a debtor and pursuing collection in the courtroom.

To put it bluntly, they need the help of a competent attorney who can help recover their loss. But, they should not have to pay the attorney's fees. The issuer of the worthless check should pay. After all, it is the issuer who has received goods or services, and it is the issuer who has created the collection problem.

The problem with existing Kansas law, is that it allows a judge to waive all or part of the attorney fees -- even though the law clearly states that the issuer of the worthless check is liable for the payment of such collection costs.

Since attorneys generally do not work pro bono on collection cases, one of two things happen: 1) either the business owner pays the attorney fees, or, 2) the attorney is reluctant to take a case into court.

Either way, the small business owner is put between the proverbial rock and a hard place.

The solution set forth in H.B. 2205 is straight forward, and it is fair. The issuer of the worthless check has incurred a debt, and has been provided ample opportunity to settle that debt long before it ever becomes a court case.

I urge you to report H.B. 2205 favorably, and to support its enactment.

*Business, Commerce
& Labor Committee*

2/19/97

Attachment 9

February 17, 1997

Dear Sir,

I'm asking you and other Kansas Legislators to pass House Bill 2205. This bill is urgently needed.

Like myself, business owners all over Kansas are being "Ripped-off" by bad check writers. Day after day these persons are coming into my business and basically stealing merchandise by not honoring the check(s) they wrote. The basic Kansas Check law offers some deterrent, but not enough. Those person who are not voluntarily honoring the returned check must be forced to do so through the legal system. This appears to be where some major breakdowns are occurring.


In many counties the District Attorney's office is already overwhelmed with higher priority cases than bad checks and in many cases I really don't want to make a "criminal" case out of it. **I just want the money due me.** Every day that I don't have the use of my money just continues to cost my business. It makes little or no sense to spend \$75 to \$100 dollars to collect a \$10 or \$50 dollar bad check. Yet, the only viable alternative to "**just giving up**" is to **seek civil justice by hiring an attorney.**

Now, **I'm asking for your support** because it has come to my attention that even if I might hire an attorney to proceed with civil action, the **attorney may not be appropriately compensated by the granting (or lack of) reasonable "attorney's fees."** This is becoming even a better deal for the bad check writer. He gets my product or services for free. . . the attorney does his job . . . and doesn't get paid either. **Until the bad check laws are very definitive,** and hit the bad check writer where it hurts . . . in his pocket book, **bad checks just legitimize "stealing."** Comparatively, how would you like to be the sixth patient scheduled for heart surgery only to have the hospital administer tell your heart surgeon that he is only getting paid for the first three surgeries?

An attorney may have many hours and a multitude of his staff working to file cases, make court appearances, negotiate settlements, skip-trace debtor to locate them and attempt to collect on the bad check . . . only to have to start over with an aid in execution, citation in contempt or an alias aid to best represent me and my business. I surly don't want to pay those expenses . . . remember I'm the victim. **Let those who want to cheat the system pay and pay equally!**

Let's make the Kansas Law work for the good guys . . . and discourage the bad check writers. The entire business world will be far better off! Pass HB2205!

Sincerely,


276-8676

*Business, Commerce
& Labor Committee
2/19/97
Attachment 10*

K.S.A. 60-2610

Paul J. Mohr
Wichita, Ks

H.B. 2205

1. Many courts start with presumption that worthless checkwriter should be protected.
2. Courts assume the Merchant is responsible for taking a bad check.
3. Many merchants have the most sophisticated equipment available to eliminate check loss and still incur tremendous losses.
4. Eliminating ability of court to waive attorney fees is how statute was passed originally and statute should be returned to original status.
5. Fraud requirement should be removed.
 - a) Burden of proof is greater than in criminal case.
 - b.) Colorado has no such requirement
 - c.) Missouri has no such requirement
6. Burden of Bad check losses should not be on the merchant.

B. Mohr
2/19/97
Att. 11