

Approved: 4-4-97  
Date

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

The meeting was called to order by Chairman Al Lane at 9:10 a.m. on March 13, 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: Art Brown, Mid-America Lumbermens Assn.  
Mike Haynes, Kansas Appraisal Board Director

Others attending: See attached list

The minutes for February 18, 19, 20 and 21 were passed out to the committee. They will be corrected or approved at the next meeting.

Chairman Lane announced that his intern, Ward Cook, had been appointed as an intern in Pat Roberts' office in Washington, D. C., for five weeks this summer. Ward is a student at Kansas University and has been a big help in Rep. Lane's office this session.

**Action on: HB 2155 - Drug screening program for certain state officers and employees and applicants for state employment.**

The bill was amended yesterday to return the stricken language to the bill and strike all italics, except for section (g). Rep. Boston made a motion to further amend the bill on page 2, to add a section (h) (see Attachment 1). It was seconded by Rep. Mason. The motion passed 8 yeas - 7 nays.

Rep. Geringer made a motion to pass out the bill with the amendments. It was seconded by Rep. Beggs. A substitute motion was made by Rep. Grant to pass out the amended bill with no recommendation. It was seconded by Rep. Pauls. It failed on a vote of 7 yeas - 8 nays.

Rep. Swenson made a motion to table the amended bill. It was seconded by Rep. Grant. The motion carried on a vote of 8 yeas - 7 nays.

Rep. Mason introduced Lynn McBride, from El Dorado, who is Executive Director of the Central Kansas Prison Ministry and the Wichita Area Coordinator of Prison Fellowship Ministries.

**Action on: SB 2501 - County appraisers; vacancies; qualifications.**

Rep. Grant made a motion to remove all language in HB 2501 and substitute SB 142, as amended by the Senate Committee of the Whole, and change the title. Rep. Storm seconded the motion. The motion carried. Rep. Grant made a motion to pass out the bill favorably as amended. It was seconded by Rep. Storm. The motion carried.

**Hearing on: SB 136 - Allowing employers to perform criminal background checks on independent contractors.**

Art Brown, Mid-America Lumbermens Association, appeared as a proponent of the bill. They feel that the passage of this bill would offer their customers more protection and decrease their risk of liability when they provide independent contractors as installers for their customers. (see Attachment 2)

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

**Hearing on: SB 190 - Real estate appraisers' licenses or certificates.**

Mike Haynes, Director of the Kansas Appraisal Board, appeared as a proponent of the bill. It was requested

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S  
Statehouse, at 9:10 a.m. on March 13, 1997.

by the Kansas Appraisal Board and has the support of the Attorney General's Office. The bill would expand the authority of the Real Estate Appraisal Board. The bill would allow the Board to place conditions or limits on an appraiser's certificate or license, in addition to revoking or suspending the certificate or license, which is current law. The board indicates that the bill gives it more flexibility by making inspection of records easier. (see Attachment 3) He concluded his testimony by answering questions from the committee.

No others were present to testify for or against the bill and the hearing was closed.

The meeting was adjourned at 9:37 a.m.

The next meeting is scheduled for March 14, 1997.

# HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE: March 13, 1997

NAME	REPRESENTING
Lynn McBride	E Dorado Ks - - Guest - Central Ks <span style="float: right; font-size: small;">Prison W. VISTET</span>
Susan Baker	Hein + Weir
Mark Beck	KDOT
Bob Brown	Mid-America Lumberman
Mike Hagnis	KREAS
Laurel Murdie	LPA
B. Maman	Dept of Adm.
Scott Stone	KAPE
Dean Carlson	KDOT
Nancy Bogina	KDOT
Connie Hatemstine	KDOT
Charles Simmons	Dept. of Corrections
Colette Thomas	meade HS
Ron Ryckman	meade HS
Cassandra Goering	meade HS
Rita Goering	KFB
Tiffany McPheters	KFB
Heather Keller	Meade HS (with KFB)
Rubeinna Enns	Meade HS (with KFB)



1 or both. Discipline of a permanent classified employee shall be subject to  
 2 the limitations of K.S.A. 75-2949e or 75-2449f, and amendments thereto.

3 (d) Except in hearings before the state civil service board regarding  
 4 disciplinary action taken against the employee, the results of any test  
 5 administered as a part of a program authorized by this section shall be  
 6 confidential and shall not be disclosed publicly.

7 (e) The secretary of administration may adopt such rules and regu-  
 8 lations as necessary to carry out the provisions of this section.

9 (f) "Safety sensitive positions" means state law enforcement officers  
 10 who are authorized to carry firearms, state corrections officers, heads of  
 11 state agencies who are appointed by the governor and employees on the  
 12 governor's staff.

13 (g) All persons employed within a correctional institution, as defined  
 14 by K.S.A. 21-3826 and amendments thereto, may be subject to drug  
 15 screening based upon reasonable suspicion of illegal drug use.

16 Sec. 2. K.S.A. 1996 Supp. 75-4362 is hereby repealed.

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

(h) All persons employed by the  
 Kansas Department of Transportation  
 may be subject to drug screening  
 based upon reasonable suspicion of  
 illegal drug use.

*Business, Commerce  
 & Labor Committee  
 3/13/97  
 Attachment 1*



## MID-AMERICA LUMBERMENS ASSOCIATION

### *TESTIMONY FOR THE HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE*

*March 13, 1997*

*Senate Bill # 136*

*Mr. Chairman, members of the Business, Commerce, and Labor Committee, my name is Art Brown. I represent the retail lumber and building material dealers in the State of Kansas through the Mid-America Lumbermens Association. I am here before you today to testify as a proponent for Senate Bill # 136.*

*I feel that it is necessary to provide the Committee with some background on the need for this bill. This Committee passed House Bill 2988 during the 1996 session. HB 2988 allowed employers to do a criminal background check on prospective employees, at the employers expense. Due to a Legislative snafu, an amendment we wanted to offer to include independent contractors was not included in the final version of the bill. Chairperson Alicia Salisbury told us to bring this matter to her Committee the following session in the form of a bill, which is what we have done in the 97' session.*

*The reason we feel we need this bill is that in our business, we are noticing a great deal more usage of such services provided by independent contractors due to our customers demand. It is not enough anymore to sell the shingles, or the carpet, or the siding, consumers want us to be able to also provide installers for these products. Independent contractors fill this need for us and our customers. However, when we do provide such a service, we are exposing both our customers and ourselves to potential risk if a criminal act takes place at the site of the installation of product. To provide an example you can easily understand, we don't want to send a pedophile to install carpet at a day care center.*

*For these reasons; consumer protection and decreased*

*Business, Commerce  
& Labor Committee  
3/13/97*



*pg 2- testimony for the House Business Commerce & Labor Committee  
March 13, 1997, SB 136*

*exposure to any liability risk to our membership, we ask that we  
be allowed to do these background checks on prospective  
independent contractors.*

*There are a few points I wish to point out that were asked by the  
Senate Commerce Committee and the Senate as a whole that I feel  
are important for you to note:*

*1) Attached to this testimony, is an attorney's opinion, stating  
why this statute is needed. There was some concern in the Senate  
Commerce Committee as to why this law was needed, given the  
language in HB 2988. Along with this legal opinion, it is also  
felt there is just enough gray area in this matter, that a statute  
was needed to support this concept.*

*2) Also attached, and very important to note, is a form which  
indicates to that independent contractor that they know **IN ADVANCE**  
that the prospective employer will be doing this background check.  
There was a legitimate concern raised on the floor of the Senate  
which touched on the invasion of privacy to that independent  
contractor for which the background check is being made. That is  
the reason there were 2 votes against the bill. (The bill passed  
the Senate 37-2.) This concern did not arise in the Senate  
Commerce Committee, but I do bring it to this Committee's  
attention so that there is no doubt in your mind that the intent  
of this bill should be to advise prospective independent  
contractors in advance that we will proceed with this  
investigation.*

*3) All expenses incurred from this background check are to be  
borne by the employer. We note a potential fiscal note in the  
bill summary from Legislative Research. We are the prime sponsors  
of this Legislation. As such, we would tell you that as a  
membership we are willing to pay the costs necessitated by  
implementation of this bill. We do not expect the State to be  
involved in this activity in so far as funding is concerned.*



*pg 3- Testimony for the House Bussiness Commerce & Labor Committee  
March 13, 1997. SB 136*

*We also feel, that in the future, this Committee will be  
addressing other components regarding the disposition of  
independent contractors. We look at this as a good first step into  
an area that is complex and murky at best when the entire  
independent contractor matter is taken in full context.*

*For the above stated reasons, we ask that this Committee look  
favorably upon our request for passage of Senate Bill No. 136 out  
of this Committee.*

*I stand ready to answer any questions you may have about this  
issue, or address any comments you may have about this testimony.  
We thank you for allowing this time to share our views on this  
issue with you.*



**TRIPLETT. WOOLF & GARRETSON, LLP**

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Jeffrey E. Goering  
\* Admitted in Kansas & Texas

February 12, 1997

**VIA FACSIMILE**  
**941-1710**

*RE: K.S.A. 22-4710 (Supp. 1996)/SB 136*

You have asked me to address the issue of K.S.A. 22-4710 (Supp. 1996), and its applicability to an independent contractor relationship.

It should first be noted that this statute uses certain terms which are not defined in the statute itself. They include "employer," "prospective employer," "employment," and "job applicant."

It should also be noted that the relationship of employment between an employer and an employee is a different legal relationship than that created by an independent contractor relationship, which is generally considered a relationship between a principal and an agent. An independent contractor or agent is not an employee by definition, but contracts to perform specific tasks or services and who shall have control, in general, of the manner and means of performing those tasks or services. This is, in general, distinct from an employee, who is subject to the direction and control of the employer as to the specific method and manner in which the tasks or services are to be performed.

Therefore, K.S.A. 22-4710 (Supp. 1996) would be clarified by SB 136 to include independent contractor relationships to be clearly included within the statute. Without the amendment, a "job applicant" could arguably be either an employee applicant or an independent contractor applicant. In addition, an "employer" can also be an agent or a principal in an independent contractor relationship.

February 12, 1997  
Page 2

The referenced statute in its current form raises uncertainty as to whether the statute applies to the principal and agent in an independent contractor relationship at all. Due to potential criminal law consequences, it would be preferable to clarify whether the statute is intended to apply to independent contractor relationships.

If you have any questions about this letter, please contact me immediately.

Very truly yours,

TRIPLETT, WOOLF & GARRETSON, LLP

A handwritten signature in black ink, appearing to read "Eric B. Metz", is written over the typed name. The signature is fluid and cursive.

By Eric B. Metz

EBM:jdjw

cc: Mr. Art Brown (via facsimile - 913-234-5544)

## BACKGROUND CHECK

We are requesting the following information in order to conduct a background check prior to the final decision being made for you to be an independent contractor, acting as a representative of the company.

First Name	Middle Name	Last Name	Current Address	City
Please provide previous addresses for the last five years. If there are more than two, please use back side to record.			Previous Address	City
			Previous Address	City

Social Security No.	Date of Birth	Driver Lic #	Phone #
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Work Reference	Address	Phone Number
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Work Reference	Address	Phone Number
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Work Reference	Address	Phone Number
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## WORKER COMPENSATION COVERAGE

Please check either Section A or B and complete as indicated:

- A.  I will be providing proof of Workers Compensation insurance on an ongoing basis.  
 B.  I will not be providing proof of Workers Compensation insurance.

I, \_\_\_\_\_, doing my business as an independent contractor, under the company name of \_\_\_\_\_ do not come under the requirements of the State of Kansas for Workers Compensation Insurance due to the following exclusion:

- 1) I am a sole proprietor with no employees.
- 2) I am a sole proprietor with employees, but my gross annual payroll (not including myself or any family member) is under \$20,000.
- 3) I am a partner in a partnership with no employees.
- 4) I am a partner in a partnership with employees, but my annual payroll (not including partners or any family members) is under \$20,000.

I am aware that I and no one working for me or in my behalf is covered by Workers Compensation coverage. Thus, in the event of any injury to myself or anyone working for me or in my behalf, I agree to hold \_\_\_\_\_ harmless.

Upon change of this status, it is my responsibility to notify \_\_\_\_\_ immediately and provide proof of Workers Compensation coverage. If proof of Workers Compensation coverage is not provided I understand that I will be unable to start any additional contracts for \_\_\_\_\_.

## SIGNATURE

I acknowledge that all the above information is accurate and complete. I authorize Star Lumber and its representatives to perform a background check on me. I have received a copy of this agreement for my records.

Contractor Signature	Date
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1/97

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# MEMORANDUM

**TO:** Business, Commerce and Labor Committee  
**FROM:** Mike Haynes - Kansas Appraisal Board Director  
**SUBJECT:** K.S.A. 58-4118(a)(13) and (14)  
**DATE:** 3/12/97

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**K.S.A. 58-4118(a)** The Board may investigate the actions of a state certified or licensed appraiser and may revoke, condition, limit or suspend the certificate or license of the appraiser, or censure the appraiser, for any of the following acts or omissions:

NEW (13) disciplinary action in relation to appraisal work, including but not limited to denial, revocation or suspension of a license or certificate by another state, district or territory of the United States or another country:

NEW (14) receipt of an order of prohibition in relation to appraisal work, by consent or otherwise, issued by an agency of the federal government.

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**K.S.A. 58-4118(a)** has been changed to allow the Appraisal Board to put conditions on or limit (restrict) the license or certificate for a period of time. Currently, this statute only allows the Board to revoke or suspend a license or certificate. This new legislation will also allow the Board to require a licensed or certified appraiser to complete a specific requirement while still practicing (additional course-work or training) or restrict the appraiser from appraising specific properties over a particular timeframe.

**K.S.A. 58-4118(a)(13)** This legislation would give the Appraisal Board the authority to take disciplinary action against a Kansas licensed or certified appraiser who has violated the Kansas State Certified and Licensed Real Property Appraisers Act or the Uniform Standards of Professional Appraisal Practice in another state.

**K.S.A. 58-4118(a)(14)** This legislation would give the Appraisal Board the authority to take disciplinary action against a Kansas licensed or certified appraiser who has received an "Order" (Order of Prohibition) from any Federal Government Agency, which prohibits the appraiser from performing appraisals for federally related transactions.

**Note:** Under **K.S.A. 58-4118(d)** All administrative proceedings pursuant to this section shall be conducted in accordance with the Kansas administrative procedures act.

*Business, Commerce  
& Labor Committee  
3/13/97  
Attachment 3*

# MEMORANDUM

TO: Business Commerce and Labor Committee  
FROM: Mike Haynes - Kansas Appraisal Board Director  
SUBJECT: K.S.A. 58-4123(d).  
DATE: 3/12/97

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K.S.A. 58-4123(d)

NEW (d) The application for or acceptance of a license or certificate shall be deemed conclusively to be the consent of the applicant, licensee or certificate holder to the right of inspection of appraisal records, reports and supporting data by the board or the board's authorized representative, upon prior notice which shall not be less than three days, during normal business hours unless otherwise agreed. Each applicant [or appraiser] shall grant full access to all appraisal records, reports and supporting data which pertain to the application process [or to a complaint investigation]. Such inspection may be conducted by the board or the boards representative. Refusal of such inspection shall be grounds for denial, [suspension or revocation] of the license or certificate.

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All new applicants that apply for licensure or certification must list all of their appraisal reports by date and location on a experience log sheet which is included in the application. This proposed legislation would allow the Appraisal Board to verify that all the appraisals do actually exist and each appraisal report does pertain to the experience hours that are recorded on the application by the new applicant.

# Senate Bill No. 190

## (Summary)

Senate Bill #190 was requested by the Kansas Appraisal Board and has the support of the Attorney General's Office.

- 1) **On page #1, line #16** - the bill would allow the board to place conditions or limits on an appraisers certificate or license, in addition to revoking or suspending the certificate or license, which is current law.
- 2) **On page #2, line #14 through #19** - The bill would allow the board to take disciplinary action against an appraiser if there were a violation of either the Kansas State Certified and Licensed Real Property Appraisers Act or the Uniform Standards of Professional Appraisers Practice in another state or if an appraiser has received an order from any Federal government agency which prohibits that individual from performing appraisals for federally related transactions.
- 3) Currently, all new applicants that apply for licensure or certification must list all of their appraisal reports by date and location on an experience log sheet.

**On page #3, line #6 through #16** - Senate Bill #190 would allow the Appraisal Board to verify that the appraisals listed on the applicants log sheet do actually exist.

It was determined by the board that it was not necessary to include current licensed or certified appraisers in this verification procedure. Therefore, since K.S.A. 58-4123(d) has been changed with the strike-throughs.. the new language will now only apply to new applicants.

1 of records shall commence upon the date of the final disposition of such  
2 litigation.

3 (c) All records required to be maintained under the provisions of this  
4 act shall be made available by the appraiser for inspection and copying  
5 by the board on reasonable notice to the appraiser.

6 (d) *The application for or acceptance of a license or certificate shall*  
7 *be deemed conclusively to be the consent of the applicant, licensee or*  
8 *certificate holder to the right of inspection of appraisal records, reports*  
9 *and supporting data by the board or the board's authorized representa-*  
10 *tive, upon prior notice which shall not be less than three days, during*  
11 *normal business hours unless otherwise agreed. Each applicant ~~or ap-~~*  
12 *praiser shall grant full access to all appraisal records, reports and sup-*  
13 *porting data which pertain to the application process ~~or to a complaint~~*  
14 *investigation. Such inspection may be conducted by the board or the*  
15 *board's representative. Refusal of such inspection shall be grounds for*  
16 *denial ~~suspension or revocation~~ of the license or certificate.*

17 Sec. 3. K.S.A. 58-4118 and 58-4123 are hereby repealed.

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

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3-4