

Approved: March 19, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:15 a.m. on March 17, 1997 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Karen France, Ks. Asso. of Realtors
Jean Duncan, Dir. of Ks. Real Estate Commission (KREC)
Francis Thorne, Chair of KREC
Jim Bishop, Realtor, Pittsburgh, Ks.
Tom Byler, Realtor, Wellington
Debbie Beam, Realtor, Topeka
Bill Powell, Realtor, Wichita
Vi Fogerson, Realtor, Manhattan
B.J. Melvin, Realtor, Colby
Vernon Jarboe, Attorney, Realtor, Topeka

Others attending: See attached list

The minutes from 3/12 and 3/13 meetings were approved on a motion by Senator Donovan, seconded by Senator Oleen. Motion carried.

SB 140 - Enforcement of child support, uniform interstate family support act

Senator Bond spoke to the committee regarding a memo from Revisor Norman J. Furse which had been written in response to a memo from Senator Bond inquiring about matters concerning **SB 140** asking, specifically, was there a way to limit the effective date of **SB 140** and can we force the AG to bring an action challenging the mandates that are characterized by the words in **SB 140**? Revisor Furse concluded both were possible. (attachment 1) There was discussion about whether to write a resolution or make provisions in the bill and no formal consensus was reached at this time.

HB 2264 - BROKERAGE RELATIONSHIPS IN REAL ESTATE TRANSACTIONS

All of the following conferees are proponents of HB 2264 (BRRETA):

Conferee France appeared before the committee in an introductory capacity only, introducing the first conferee on **HB 2264**, Jean Duncan. Conferee Duncan stated that **HB 2264** amends the brokerage relationships in real estate transactions act (BRRETA) and the real estate brokers' and salespersons' license act, acts that would have been sunsetted July 1, 1997 through SB 710 passed in 1996. She presented an overview of the bill covering the following: transaction brokers, their roles and responsibilities; transaction procedures in various situations; temporary real estate sales license; permission to form a professional corporation; and a change from a Disclosure of Alternative Agency Relationships (DAAR) form to a Real Estate Brokerage Relationships brochure. (attachment 2) Discussion followed.

Conferee Thorne stated that a growing number of people are expressing a need to know who represents them in real estate transactions and stated that **HB 2264** is necessary to clarify that question for the consumer. No written testimony was submitted.

Conferee Bishop, 1997 Kansas Association of Realtors (KAR) President, presented testimony on a compromise that was worked out by KAR and a KREC Task Force which, in **HB 2264**, addresses most of the specific problems raised with BRRETA in 1996. (attachment 3)

Conferee Byler, a broker and member of the 1996 SB 710 Task Force, cited faults in the Brreta Bill and stated ways in which **HB 2264** will correct those faults. He covered much of the same subject matter as did Conferee Duncan. (attachment 4)

Conferee Beam testified that she felt **HB 2264** clearly defined the duties of the agent to the buyer and seller, dispelled the rumor that the bill is discriminatory against women by presenting statistical facts, spoke to the issue of disclosure, and addressed concerns regarding the imposition of fines. (attachment 5)

Conferee Powell, a small independent realtor, stated he felt that the majority of realtors "are in support of specific guidelines on agency which the BRRETA ACT accomplishes" in order to better serve clients and he delineated those guidelines which are in **HB 2264**. (attachment 6)

Conferee Fogerson, an independent realtor, opined about several "controversial issues" surrounding **HB 2264**, ie., discrimination, survey of membership, and fines. (attachment 7)

Conferee Melvin, Chair of Governmental Affairs, KAR, shared his background in regard to KAR and **HB 2264** and addressed some of the objections he has heard about regarding the bill. (attachment 8)

Conferee Jarboe, a practicing real estate law attorney, broker, KAR and Brreta task force member, gave a brief overview of his experience as a member of the task force committee. He related that the "clear intent of this proposal {**HB 2264**} is to rethink and provide certainty in relationships between real estate professionals, their customers and clients." He stated "where those relationships have traditionally been left to the vagaries of common law and debate among lawyers there will now be some direction and guidance." (attachment 9). There was discussion with clarification by Conferee Jarboe on questions from committee members.

Written testimony on **HB 2264** was given by: Rob Curtis, First Vice President of KAR; (attachment 10) John Green, Vice-President of Coldwell Banker Griffith and Blair; (attachment 11); and Dan Sight, Director of KAR. (attachment 12)

No action was taken on **HB 2264** since further testimony by Opponents will be heard at the next meeting.

Meeting adjourned by the Chair at 11:03 a.m.

The next scheduled meeting is Tuesday, March 18, 1997

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/17/97

NAME	REPRESENTING
De Ferguson	KAR + Independent agent
Bill Powell	WICHITA AREA ASSOC. OF REALTORS
Rob Curtis	KAR 1st VP
Michael C. McGinn	KAR Pres Elect
Karen Gehle	KAR CEO
B. J. Melvin	KAR
Sam Byler	TASK FORCE MEMBER
Francis K. Horne	KREC
JASON PETERSON	BEAD SMOOT
Debbie Blom	Orsby, Inc. Realtors Topeka
Ueno Tabor	Task Force Member
Jim Bishop	KAR PRESIDENT
Jean Gunn	KREC
Karen Francis	KAR
Kristin Baker	ACLU
Joseph Daker	SQE
John Beem	KAR + Local Real Estate office

MEMORANDUM

TO: President Dick Bond
FROM: Norman J. Furse, Revisor of Statutes
DATE: March 14, 1997
RE: SB 140

- I. Effective Date of Legislation. The question has been raised about whether the legislature could make a bill, or a part of a bill, effective upon the happening of a specific contingency. Our courts have held that it is not necessary to state a specific date for a bill to become effective as long as the time when the act, or a part thereof, becomes effective may be definitely ascertained. (*State v. Dumler*, 221 Kan. 386.) The *Dumler* court considered the provisions of K.S.A. 1978 Supp. 8-1336 which established maximum speed limits throughout the state with an absolute speed limit of 55 miles per hour in all locations. The statute also provided that if the Congress of the United States established "a maximum speed limit greater or less than the limit prescribed....the secretary of transportation may adopt a resolution, subject to the approval of the governor, establishing such speed limit as the maximum speed limit of this state." The *Dumler* court upheld the constitutionality of this statute explaining that the legislature has "enacted a law to become operational on the happening of a certain contingency or future event." A more recent example of an act becoming effective upon a contingency is found in 1996 SB 706 (L. 1996, ch. 172). The effective date of this enactment reads as follows: "This act shall take effect and be in force from and after its publication in the Kansas register and the issuance of the supreme court of the state of Kansas of its mandate in the case of *In the Matter of the Care and Treatment of LeRoy Hendriks*, case no. 73,039."

Conclusion: The effective date of a bill, or a part of a bill, may be made to depend on the coming into existence of some specific future fact, event or condition capable of identification or ascertainment.

- II. Attorney General Role. You have inquired about whether the legislature may direct the Attorney General to bring an action to challenge the mandate which the federal government has placed on the states as reflected in SB 140. K.S.A. 75-702 directs the attorney general "when required by the governor or either branch of the legislature" to appear for the state and "prosecute or defend...in any cause or matter,

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civil or criminal, in which this state may be a party or interested or when the constitutionality of any law of this state is at issue and when so directed shall seek final resolution of such issue in the supreme court of the state of Kansas." The Kansas Supreme Court has consistently held this provision to be mandatory. Legislative practice has been to use a single house resolution to trigger this provision of the statutes. See *State ex rel. Stephan v. Honorable Joan Finney*, 254 Kan. 632 (1994) where a mandamus and quo warranto action to determine the Governor's authority to negotiate compacts with Indian tribes was filed by the Attorney General pursuant to 1993 Senate Resolution No. 1844 directing the action under K.S.A. 75-702.

Conclusion: Either house of the legislature by a single house resolution may direct the Attorney General to appear for the state and "prosecute or defend...in any cause or matter, civil or criminal..." as so directed. (See attached K.S.A. 75-702.) A statute could also be enacted directing the Attorney General to undertake such a representation for a specific purpose as the statute may provide. Since K.S.A. 75-702 refers to seeking final resolution in the "supreme court of the state of Kansas" and the litigation in this case would most likely be in the federal courts, the better approach under the current circumstances might be to include a section in SB 140 directing the Attorney General to bring an action against the federal government in this matter and providing such other specifics as may be appropriate.

(27)

Statute # 75-702

Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES

Article 7.--ATTORNEY GENERAL

Title Duties in actions where state a party or interested; or when the constitutionality of a law is at issue.

The attorney general shall appear for the state, and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court, in which the state shall be interested or a party, and shall also, when required by the governor or either branch of the legislature, appear for the state and prosecute or defend, in any other court or before any officer, in any cause or matter, civil or criminal, in which this state may be a party or interested or when the constitutionality of any law of this state is at issue and when so directed shall seek final resolution of such issue in the supreme court of the state of Kansas.

History

History: L. 1879, ch. 166, S. 71; R.S. 1923, 75-702; L. 1975, ch. 431, S. 1; May 3.

Case Annotations

Source or prior law:

L. 1861, ch. 58, S. 43; G.S. 1868, ch. 102, S. 64.

Cross References to Related Sections:

Attorney general to invoke county or district attorney's assistance in certain criminal appeals, see 22-3612.

Research and Practice Aids:

Attorney General §YKY 6.

C.J.S. Attorney General S.S. 5, 6.

Am.Jur.2d Attorney General S.S. 6 to 10.

Law Review and Bar Journal References:

Parole eligibility of prisoners serving consecutive sentences in Kansas, Malcolm E. Wheeler, 21 K.L.R. 167, 176 (1973). "Collateral Challenges to Criminal Convictions," Keith G. Meyer and Larry W. Yackle, 21 K.L.R. 259, 316 (1973). "The New Mandamus--State ex rel. Stephan v. Kansas House of Representatives," Henry E.

Couchman, Jr., 33 K.L.R. 733, 740 (1985).

CASE ANNOTATIONS 1. Prosecution by county attorney in another county; objection of attorney general. Martin, Governor, v. The State, ex rel., 39 K. 576, 18 P. 472. 2.

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also see page 97



BILL GRAVES, GOVERNOR

KANSAS REAL ESTATE COMMISSION

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Topeka, KS 66603-3511

(913) 296-3411



JEAN DUNCAN, DIRECTOR

TO: THE SENATE JUDICIARY COMMITTEE
FROM: JEAN DUNCAN, DIRECTOR
DATE: MARCH 17, 1997
SUBJECT: HB 2264

Thank you for the opportunity to testify.

HB 2264 amends the brokerage relationships in real estate transactions act (BRRETA) and the real estate brokers' and salespersons' license act. The amendments are to become effective October 1, 1997.

The BRRETA amendments are based on legislation proposed by a task force which was appointed pursuant to 1996 SB 710. Through announcements in the Commission Newsletter, all real estate licensees had opportunity to obtain the task force draft report and to submit written comments or attend hearings which were held in Wichita, Dodge City and Lawrence. The final task force report was also available to all licensees.

SB 710 provided for the sunset of BRRETA on July 1, 1997 and reinstatement of the license act as it was prior to BRRETA. HB 2264 revives those sections, thereby extending current law until October 1, 1997.

To identify the sections:

Revived sections (which are repealed October 1, 1997)
3, 11, 13, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36,
37, 39, 41, 43, 45

BRRETA legislation proposed by the task force, with some modifications by the Real Estate Commission and amendments by the House Judiciary Committee

1, 23, 25, 27, 29, 31, 33, 35, 38, 40, 42, 44

For your information, at the end of my testimony I have indicated the modifications from the task force proposal which were made by the Commission prior to the introduction of HB 2264.

License act amendments due to BRRETA; also other amendments requested by the Real Estate Commission

2, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 17, 19, 21, 46

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New Section 1 provides for a new relationship under BRRETA: a transaction broker. This is a major change proposed by the task force. A transaction broker assists with a real estate transaction without being an agent of either party. However, it is important to note that a transaction broker has the same duty to disclose material facts as a seller's or buyer's agent.

A transaction broker does not promote the interests of either party. An agent has fiduciary duties; a transaction broker does not. Obligations and responsibilities of a transaction broker are spelled out in this section.

An example where a broker may choose to act as a transaction broker would be in a small town where the broker knows the seller and most prospective buyers. It is difficult for the broker to act as agent for one party because of his relationship with the other party. The seller just wants to sell; the buyer just wants to buy. They don't feel they need representation. The service that a transaction broker offers fits their needs.

How a transaction broker handles certain kinds of information is also set forth. On residential transactions, a transaction broker cannot disclose certain information without the consent of the parties--such as that a party is willing to pay more or accept less than the asking price; that they would agree to different financing terms; or their motivating factors. In the case of commercial transactions, the information may be disclosed unless prohibited by the parties. However, the broker may not disclose any information or personal confidences about a party which might place the other party at an advantage.

Situations where a licensee must act as a transaction broker will be covered under another section.

Until we get to Sec. 23, we will be looking at license act amendments.

Sec. 2 (p 4) permits a real estate broker or salesperson to organize as a professional corporation. Ties to section 14.

Sec. 4 (p 7)--58-3035. Definitions as used in the license act. Deletes "agency agreement" and "commercial or investment real estate property" because of BRRETA amendments.

Sec. 7 (p 10)--58-3039. Provides for issuance of a 6-month temporary license to new salespersons. The licensee must take the 30 hour post-license salesperson's course during the 6-month period before being issued a regular license. The course currently has to be taken by the first or second license renewal, and because of our staggered renewal system, can be between 7 and 29 months. The course is designed for new licensees and is needed as soon as possible. A temporary license solves the problem by not tying the course to license renewal.

Sec. 8 (p 12)--58-3042. Provides for licensure of individuals who perform real estate activities for a brokerage company. Under current law, a salesperson cannot be an officer of a corporation or a member of a partnership, association or limited liability company. The amendment eliminates that prohibition.

Sec. 9 (p 12)--58-3045. Renewal of licenses. Amended because of the new provision for temporary licenses. Contains some clean-up language. Provision for prorating fees is moved to 58-3063.

Sec. 10 (p 14)--58-3046a. Educational requirements. Current law provides that new salespersons take a 30-hour post license course. The new language in subsection (f) provides that the course be taken prior to expiration of the temporary license prescribed by section 7.

Sec. 12 (p 18)--58-3050. Removes references to BRRETA governing the sale or lease of real estate that is one to four residential units (all transactions to be covered by BRRETA).

Sec. 14 (p 25)--3062. Removes provisions covered by BRRETA. Includes other amendments:

On page 29. Under current law salespersons and associate brokers may receive commissions only from their supervising broker.

New language (A) permits receipt of compensation from another salesperson or associate broker who employs the licensee as a personal assistant. Both licensees must be licensed under the supervision of the same broker and they must have written agreement of the supervising broker.

New language (B) permits commissions to be paid to a professional corporation instead of the individual salesperson or associate broker. This is the reason for amending the professional corporation act under section 2.

Page 31. Subsection (d) deals with contracts which provide for earnest money to be held by someone other than a real estate broker. Currently, the listing broker must obtain a receipt from the escrow agent for the contract and earnest money. Paragraphs (2) and (3) are added to place the responsibility on a buyer's broker if the property is not listed and on a transaction broker if neither seller nor buyer has an agent. The commission is given authority to adopt regulations to provide that the contract must include notification of whether the escrow agent maintains a surety bond and notification that statutes governing the disbursement of earnest money held in trust accounts of real estate brokers do not apply to the transaction.

Sec. 15 (p 32)--58-3063. Fees. No increase in fees. Changes in (4)-(7) place fees on a 2-year basis instead of annual; (15) provides for a 6-month fee for temporary license, (1/4 of the 2-year fee). Provides for prorated fees in (b).

Sec. 17, 19 and 21. Removes references to BRRETA governing the sale or lease of real estate that is one to four residential units.

Sec. 23 (p 37)--58-30,101. Deletes the exemption of commercial or investment real estate property transactions from BRRETA. The task force and the commission believe that all transactions should be under BRRETA.

Provides that failure to comply with 58-30,103 or 58-30,110 (the sections on agency agreements and disclosing brokerage relationships) will not by itself render any agreement void or voidable. This language was in the license act prior to BRRETA and inadvertently omitted from BRRETA.

Sec. 25 (p 39)--58-30,102. Definitions as used in BRRETA.

The definition of disclosed dual agent is stricken. A major change proposed by the task force is the repeal of 58-30,108, the section permitting disclosed dual agency. The task force felt the term itself is an oxymoron.

Definition of "designated agent" is amended to include a designated agent for the seller. Under current law, a designated agent may only represent a buyer.

"Ministerial acts" is a new definition. These are acts that a licensee may perform without creating an agency.

The definition of "qualified third party" has been moved from other sections where the term is used.

"Transaction broker" is defined.

Sec. 27 (p 43)--58-30,103. The current section, captioned written agency agreements, is revised to include transaction brokerage relationships. Transaction broker agreements may be oral or in writing. A licensee working with a party is considered to be a transaction broker unless an agency relationship has been established or an offer of subagency has been accepted.

Agency agreements must be in writing. Under current law, the duties and obligations of a seller's or buyer's agent, as forth in sections 58-30,106 and 58-30,107, must be specified in the agency agreement. The amended language is to "refer to" the duties.

Agency agreements must also spell out any potential for licensees to act as a transaction broker or a designated agent. Time frames for obtaining written agency agreements are set forth.

Page 46. Subsection (o) relates to a situation where a seller's or landlord's agent knows that the buyer or tenant has an exclusive agency agreement with another agent. The seller's or landlord's agent is not permitted to contact the buyer or tenant and may not **initiate** negotiations. However, the new language permits the seller's or landlord's agent to negotiate directly with the buyer or tenant with the buyer's or tenant's informed consent. An example. A buyer comes to a new homes subdivision and the

buyer's agent is not with him. The buyer wants to write an offer and doesn't want to wait on his agent. Before any negotiations are begun, the buyer must sign a consent agreement. A consent agreement form will be adopted by the commission by rules and regulations.

Subsection (p) permits a buyer's or tenant's agent to present an offer to the seller or landlord if the seller's or landlord's agent is present.

Sec. 29 (p 47)--58-30,104 and Sec. 31 (p 48)--58-30,105. The sections on termination of agency relationships and compensation are amended to cover transaction brokers.

Sec. 33 (p 51)--58-30,106. Requirements of seller's or landlord's agent.

Sec. 35 (p 56)--58-30,107. Requirements of buyer's or tenant's agent.

Strikes the duty to "exercise reasonable skill and care for the client." The duty to promote the interests of the client with the utmost good faith, loyalty and fidelity is a higher standard. A transaction broker, who has no fiduciary duty, has the duty to exercise reasonable skill and care.

Also strikes the duty to seek a price and terms which are acceptable to the client, which would be covered in the written agency agreement with the client.

Permits an agent to perform ministerial acts for the customer.

Permits sellers and landlords to authorize their agent to cooperate with a transaction broker (or cooperate with and pay compensation to).

Permits buyers and tenants to authorize their agent to receive compensation from a transaction broker.

Sec. 38 (p 60)--58-30,109. This section covers transactions where **both** buyer and seller have agency agreements with the brokerage firm--commonly called in-house sales. [This section does not address an in-house sale where a broker's listing is sold to a buyer customer or where neither party is represented.]

Subsection (a) covers transactions where designated agents have **not** been appointed. The brokerage firm has a buyer client who wants to see a property listed by the firm. The firm may act as a transaction broker with informed consent of both parties--the firm ceases to act as agent for either party. The parties must sign a transaction broker addendum to the agency agreements (the buyer signs prior to writing the offer; the seller prior to signing the contract). A transaction broker addendum form will be adopted by the commission by rules and regulations. This will be an important form to ensure that the parties understand what they are giving up by not having representation.

Subsection (b) covers transactions where designated agents **have been** appointed. Current law provides only for designated agents for buyers; designated agents for sellers has been added. A designated agent has all of the duties and obligations of a seller's or buyer's agent and acts for the client to the exclusion of other affiliated licensees. The supervising broker acts as a transaction broker; a designated agent may seek advice or assistance from the broker. With designated agents, both seller and buyer continue to receive client-level services. Under the previous provision, subsection (a), both seller and buyer cease to be represented in the transaction--both buyer and seller are assisted by licensees acting as a transaction broker.

In some firms, supervising brokers actively list and sell property. Paragraph (2) addresses a situation where a designated agent's buyer client wants to see the supervising broker's own listing. This provision permits the supervising broker, with the written consent of the seller, to appoint another licensee to act as designated agent for the seller as to that specific buyer. The supervising broker then acts as a transaction broker.

Sec. 40 (p 63)--58-30,110). The disclosure of alternative agency relationships (DAAR form) is replaced by a brochure entitled real estate brokerage relationships. The task force viewed the brochure as being a much-simplified version of DAAR. The commission will prescribe language to describe a seller's agent, a buyer's agent and a transaction broker for inclusion in the brochure.

Licensees must furnish the brochure to a prospective buyer or seller at the first practical opportunity. The only acknowledgement of receipt will be in the contract for sale.

A licensee is not required to provide a copy of the brochure when the licensee is acting solely as a principal and not as an agent for another;

the communication from the licensee is a solicitation of business;

the transaction is regarding the sale of commercial property or the sale of residential property of more than four units;

the transaction is regarding the sale of property by public auction;

the licensee is only performing ministerial acts; or

the customer or client has already received the brochure from the licensee's brokerage firm.

Sec. 42 (p 64)--58-30,111. Imputed knowledge. Client is changed to "client or customer"; statutory agent to "statutory agent or transaction broker"; and misrepresentation to "misrepresentation or omission"

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Sec. 44 (p 65)--58-30,112. The commission is to provide sample forms of agency agreements.

Sec. 46 (p 65)--74-4202. Removes reference to BRRETA governing the sale or lease of real estate that is one to four residential units.

The commission respectfully requests that you recommend the bill for passage. Thank you.

MODIFICATIONS BY THE KANSAS REAL ESTATE COMMISSION
House Bill 2264

The Kansas Real Estate Commission made the following changes to the task force proposed legislation prior to the introduction of the bill:

Page 3, line 12: changed "without the informed consent" to "without the consent"

Page 4, line 20: added "or cooperate and pay compensation to other brokers"

Page 44, line 431: added

Page 45, line 22: added paragraph (3)

Page 46, line 11: new language for "o"

Page 51, line 37: deleted

Page 51, lines 40-43: deleted

Page 53, line 40-42: added

Page 56, line 21: deleted

Page 56, lines 24-27: deleted

Page 58, line 24: added "or from a transaction broker"

Page 61, lines 19-27: added

Page 64, line 4: changed "every" to "the initial"

SSW 3/17 att #3



Kansas Association of REALTORS®

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098
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FAX 913/267-1867



TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: JIM BISHOP, 1997 KAR PRESIDENT

DATE: MARCH 17, 1997

RE: HB 2264, BRRETA

As the 1997 President of the Kansas Association of REALTORS® I am asking for your support of HB 2264, the Brokerage Relationships in Real Estate Transactions Act (BRRETA) legislation. Our association has worked hard on legislation before you that overwhelmingly passed the House on a vote of 93 to 24 and has now come before the Senate.

The 1996 legislature, via a compromise worked out in the House Judiciary Committee, gave us a charge to go and work out a piece of legislation to handle the concerns brought to you by some of our members and other licensees. We have done as requested. We visited many communities throughout the state of Kansas. Our association comprises 7,000 of the 11,413 real estate licensees whose licenses are on an active status at the Kansas Real Estate Commission (KREC). Through the Task Force appointed by the KREC and working with the KREC we came up with a compromise that answers most of the specific problems raised with BRRETA last year.

1. The commercial brokers who last year were asking you to exempt them from BRRETA are in favor of this compromise which brings them under BRRETA, in large part, because they are exempted from the agency brochure requirement and also because of the creation of the Transaction Broker which the Task Force legislation recommended.
2. The new home construction contractors and the licensees who market their homes were asking you to repeal BRRETA because of their frustration over the inability to deal directly with buyers who were represented by buyer's agents who could not be found at the time the buyers were ready to buy. Most of the vocal new home construction contractors and agencies are now in favor of the recommended changes.
3. Many small firms opposed BRRETA last year because of the signature requirement on the DAAR form and the general frustration with the whole agency issue because of the close relationship many agents in small towns have with everyone in their town forced them into being "disclosed dual agents", a term they felt was an oxymoron. Those brokers are in support of this bill because of the simplified agency disclosure brochure and because the transaction broker concept more closely reflects their business relationships.

A representative sample of our members from all parts of the state representing all sizes of companies in both commercial and residential operations will present solid testimony to you today about how they are getting along with the BRRETA law and how the suggested improvements to the law would help them in their business.

We believe the legislation brought before you is an effective compromise and will work for all Kansas licensees and will be beneficial to the consumer. Please support HB 2264 and do not let BRRETA sunset.

*Senate Judiciary
attachment 3
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55. 3/17 28817



J. L. BYLER REAL ESTATE



219 WEST EIGHTH STREET . . . WELLINGTON, KANSAS 67152

AREA CODE 316-326-7488

March 17, 1997

TO: Sen. Tim Emert, Chairman and
Members of the Senate Judiciary Committee

FROM: Tom Byler, Member of the 1996 SB 710 Agency Task Force

RE: House Bill 2264 (amending BRRETA)

Last year I testified before this committee in an effort to repeal BRRETA. At that time it was my sincere belief that the overly zealous disclosures negatively affected economic and industrial development. The act was confusing and it attempted to legitimize "dual agency" which is a complete conflict of interest. Paramountly, BRRETA conflicted with common law and placed licensees in a legal predicament, since it did not clearly abrogate common law. Having served on the 1996 SB 710 Agency Task Force, I strongly believe that HB 2264 is progressive legislation for both the public and industry and has successfully addressed my concerns with the 1995 act. Coincidentally, the State of Florida, the second largest jurisdiction, is enacting legislation almost identical to this bill. I personally feel that this legislation will serve as a model for other states to emulate in the future.

HB 2264 accomplishes the following regarding brokerage relationships:

1. relieves commercial and auction transactions from any written disclosures prior to a contract,
2. prohibits the usage of "dual agency,"
3. creates a new "transaction broker" relationship for Kansas based upon Colorado license law which will enable a broker to supervise "designated agents" and will also solve agency dilemmas present in rural areas, commercial transactions and real estate auctions,
4. simplifies agency practices as the disclosures and consents that were necessary to make "dual agency" lawful were so

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attachment 4
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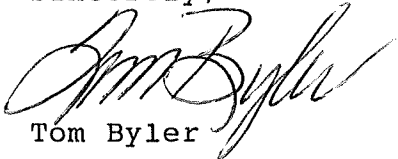
comprehensive and specific that the typical licensee could not undertake them as a matter of routine,

5. mandates a less intimidating disclosure brochure for consumer education of brokerage relationship choices in residential sales,
6. standardizes brokerage practices by not discriminating between commercial and residential transactions, except for the use of the disclosure brochure and limited confidentiality during a "transaction broker" relationship.

As amended, HB 2264 does not include any expressed language abrogating common law with respect to real estate relationships. However, it is my understanding that in instances where BRRETA could conceivably conflict with common law, the statutory language will prevail. Any narrative in the legislative intent of this bill clarifying this statutory prominence will certainly be helpful. Naturally, it is in the best interest of the consumer and licensee if the statute gives clear direction regarding relationships and liability. Licensees will still be subject to common law, where the statute is silent.

HB 2264 will refine practices which have been bewildering in the past. It is my belief that it is incumbent upon the Kansas Legislature to codify real estate relationship practices for the mutual benefit of the public and industry. If no action is taken to pass HB 2264, we are condoning the industry's confusion of agency practices to the public. I request that you give the Task Force Draft and HB 2264 every consideration for its passage.

Sincerely,



Tom Byler

Broker and 1996 Agency Task Force Member



S J. 3/17 act # 5

Crosley, Inc. REALTORS

2921 SW Wanamaker Dr., Ste. 50

Topeka, KS 66614

Office 273-7618

TESTIMONY IN FAVOR OF HB 2264

My name is Debbie Beam from Topeka. I am an independent business person. I have been in the business for 12 years. The past 6 years I have owned my own company. I am the broker and the only salesperson in the company. I sell primarily residential new construction along with some residential resales. I would like to address several myths that the opponents would have you believe make HB 2264 bad legislation and why I believe HB 2264 is not only good legislation but necessary for the good of the real estate industry in Kansas but also good for the Kansas consumers of real estate.

As a new construction salesperson, I must take issue with those new construction salespeople who oppose the changes in this law. I do not see nor does the builder I work for see the buyer's agent as the adversary. My builder has a product he wishes to sell and the buyer's agent hopefully has the buyer who wishes to buy that product. We work with all agents regardless of who they represent to sell the houses we build. The builder (as does any seller) has the ultimate decision as to whether he will take an offer on a property and if the terms and price are not to his liking he may reject the offer entirely or make a counteroffer. The commission is reflected on the seller's side of a closing statement but in reality, the buyer has agreed to pay the price for the house which includes that commission, so who really pays the commission -- the seller or the buyer? There is no commission if a buyer and a seller do not agree on terms; therefore, I believe the commission does come as a result of the transaction.

This act does not hamper my ability to provide good service to a buyer who understands that I do not represent him, I represent the builder. I could still work with a buyer and assist him by writing his offer but not giving him any advice on what to offer or how to structure that offer; I can assist him in obtaining the necessary financing and assist him in working with the builder. If the buyer wants representation, then I believe he is entitled to it and in my case he will have to go to another brokerage firm to get it. And yes this does mean that I will make only half of the commission if he buys one of my listings. But I have always felt that half a commission is better than no commission at all.

There has been at least one lawsuit that ultimately involved agency in the state of Kansas and it was right here in Topeka. And I believe that unless this act is passed there will be more and more of these agency cases because we will not have a law that clearly defines the duties of the agent to the buyer and seller. I believe this law defines each agency relationship more clearly than our

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previous agency law and gives all licensees the duties they must perform in order to represent buyers and sellers in the manner to which they are entitled to be represented.

Another issue I have heard raised is this act is discriminatory against women because mostly women sell residential real estate and this law exempts commercial real estate salespeople, i.e. men, from complying with this act. This is patently untrue, the only difference is that commercial salespeople are not required to present the brochure to their clients. My real estate license as well as every other license issued in Kansas says I can sell real estate. It does not say I am limited to selling residential real estate. I chose to sell residential real estate because I don't understand such things as triple net leases and cap rates nor do I choose to learn to understand them. If a client came to me and asked me to list a commercial property, I could because my license says I can sell real estate, any class of real estate. Every agent in Kansas with a real estate license can sell commercial, residential, or agricultural properties. The license does not define what kind of real estate we sell; we, as agents, define what type of real estate we want to sell, there are no limitations placed on us by the license law or because of our gender.

The Topeka Board of REALTORS represents approximately 401 licensees in the Shawnee County area. Of the 401 licensees, 221 are men and 180 are women. We have a Commercial Investment Division (CID) which has approximately 40 members (also included in the 401). Of the 40, 33 are men and 7 are women. Of the 40, 24 are primarily commercial (17 men, 7 women) and 16 sell both commercial and residential (16 men). Therefore, we have 204 male members selling residential and 173 female members selling residential real estate. As you can see from these numbers, we have more men than women who sell residential properties in our Board; so to say that this law discriminates against women is ludicrous. The opponents to this bill are just trying to confuse this issue. Please do not let that happen.

I don't feel the new law requires any more from us than has been required since 1988. We should have been disclosing who we represent since 1988 and most of us have been by having our own disclosure brochure or some form of written disclosure and also visiting with our clients and customers and discussing the agency options available to them. We have also had agency disclosure as part of our contracts since 1988. The only difference in this law is there will be a state mandated agency disclosure brochure which will assure that every agent is disclosing the same information, the same options available to the consumers of real estate. And it will again be required to disclose the agency relationships in the contract, nothing new from what we are currently doing. So, there is no additional paperwork requirement other than the same requirement which we should have been abiding by since 1988.

With regard to the issue of KREC making money on the possible fines to be levied from violations of this law, the KREC does not retain any of the revenue generated by the fines they impose, it all goes into the State general fund. We receive a quarterly newsletter from the KREC which lists the violations of the

license law and whatever punishment was levied. In the last quarterly newsletter, some licensees were fined because they did not have an agency agreement in writing in their files. Having an agency agreement in writing has been a license law requirement since 1988 and BRRETA did not become law until January, 1996. These licensees were fined as a result of a requirement in the law that has been in effect for 8 years, nothing to do with BRRETA.

I am the Civic Affairs Chairman for the Topeka Board of REALTORS and we surveyed are members on 4 occasions during the first 2 weeks of February. The overwhelming majority of our members surveyed indicated support for this legislation and at the February Board of Directors meeting we voted to publicly support this legislation. Last year our members were deeply divided over the BRRETA legislation due to differing views over dual agency and other issues. However, we are strongly united in support of HB 2264 which we believe provides multiple competitive choices for our members and more importantly, for real estate consumers.

I would like to thank you for the opportunity to present this testimony to you about these very important issues to my industry which will affect how we conduct our business over the next several years. As an individual practitioner, I would ask for your support of HB 2264 and for you to pass it out of Committee with a favorable recommendation to the full Senate.

Thank you.

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TO: SENATE JUDICIARY COMMITTEE
FROM: BILL POWELL
DATE: MARCH 17, 1997
RE: BRRETA ACT

My name is Bill Powell and I am from Wichita. I am a small independent business person. I have been in the Real Estate profession for 20 years and have served as President of the Wichita Assoc. of Realtors in 1990 and as President of the Kansas Assoc. of Realtors in 1993. There are 6 licensees in my firm, which by today's standards is considered a small Real Estate company. Our concentration is primarily residential sales.

I want to thank you for giving me and others the opportunity to testify in support of this very important Bill.

I am aware that you have received letters from some licensees that are not in support of this Bill but it is my firm belief that the overwhelming majority of our membership are in support of specific guidelines on agency which the BRRETA Act accomplishes, so that we can better serve our customers and clients. We now have with this Bill clear cut guidelines on Buyer Agency, the ability to have separate representation with the Buyer and Seller by two different agents within one firm, this being called Designated Agency, and the ability to act as a Transaction Broker, doing away with the potential conflict of interest of practicing Disclosed Dual Agency. All of these changes are, in my opinion, extremely beneficial to the Buying and Selling public which we all serve.

This legislation has no provisions in it that will increase our cost of doing business as some would lead you to believe. Just ask them! A small company like mine is not in any way affected adversely by this Bill as compared to a larger firm, so I can't see any reason why it would force small firms out of business. That scare tactic is just ludicrous! If it wasn't fair to all Real Estate practitioners, I wouldn't be here today!

A lot of the underlying concern about this Bill and the one that preceded it last year is the requirement by the licensee to disclose up front "at the first practical opportunity", the different forms of agency relationships, who we represent, and the options for the Buyer and Seller. In fact, we have been required since 1989 to disclose who we represent at the first meeting with potential Buyers of Real Estate. The problem with the old law was that we could do it verbally at this first encounter, and if we didn't, the Buying public was none the wiser as to our legal

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obligation. They were only left to finding out when they read it in the purchase agreement. My true feelings is that this disclosure responsibility was swept under the rug by most agents because we were not required to give Buyers printed information, which is required by the existing Act and the new Bill.

Now when an agent meets with a Buyer for the first time, the Buyer is informed as to the options of Agency representation in the purchase of Real Estate. And that, quite frankly, is what the opponents don't want! Some have chosen to not offer Buyer Agency in their firms, which is fine, but some of them don't want the Buyers to know that they have the right to be represented. Some who primarily sell only new homes and represent a builder feel that having to disclose agency options up front to potential Buyers is not a comfortable act and may in fact send Buyers running to find someone to represent them.

The concerns of the opposition is clearly financial! To keep the Buying public in the dark is fine with them. Please do what is right and pass this legislation that our cutomers and clients, your constituents, will all benefit from.

Again, I want to thank you for the opportunity to testify and if you have any questions that I can answer, I would be happy to!

Respectfully submitted,



Bill Powell, CRB
Broker
Camelot Realty, Inc.

March 17, 1997

My name is Vi Fogerson and I am from Manhattan. I am an independent business person and have been in the Real Estate profession for about twenty years. I work in a firm of ten agents. I sell mostly residential property. Occasionally I venture into the commercial market especially if I get the opportunity to be involved in a tax free exchange. Thank you for giving me the privilege of testifying before you today. I do appreciate your time.

BRRETA and how it affects us all as buyers, sellers, Realtors and anyone else whose profession affect Real Estate in Kansas is probably touched by this law. There are many issues that have been discussed both pro and con. I am here today to simply look at some of the issues that have been the most controversial. The issue of discrimination especially the male female question. We are all issued the same license and must all abide by the same laws. How can that discriminate?
BRRETA

does not effect that at all. In my opinion it has made us all better and more professional Realtors. The issue was also raised that we failed to survey our membership. This is also difficult for me to understand. I serve as Zone IV Vice President for the Kansas Association of Realtors. At a recent Board of Directors Meeting our Zone voted 100% in favor of this Bill. None of these Directors were from large boards and all came to the meeting instructed on how to vote by there local Boards. These directors were from Abilene, Junction City, Manhattan, Wamego, Marysville, Holton and Hiawathia just to name a few. Our Boards feel like they were well represented. There have also been complaints about fines. From the publication all Realtors receive from the Kansas Real Estate Commission it appeared to me the fines referred to were mostly related to a 1988 law that addressed agency contracts not being signed and that is not a result of BRRETA.

BRRETA is a good law. It's good for Kansas consumers and it is good for Kansas Realtors. Yes, it gives Realtors a little less liability but it gives the consumer the important knowledge of knowing who represents them in probably the largest investment they will make in their lifetime and they deserve that, don't you agree. Thank you.


Vi Fogerson

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BRRETA TESTIMONY
B. J. MELVIN
Chairperson, GOVERNMENTAL AFFAIRS
KANSAS ASSOCIATION OF REALTORS
FEBRUARY 18, 1997

I am B. J. Melvin and I've been in the Real Estate business for 26 years. There are six people in the firm. I do mostly agricultural and commercial sales. I appreciate the opportunity to share my feelings on the BRRETA Bill.

I would like to share a little of my background with you in regard to the Kansas Association of Realtors and this legislation. I was the 1992 President of the Kansas Association of Realtors and have served on its Executive Committee for seven years before becoming President. I am currently the Chairperson of the Association's Governmental Affairs Committee. I have been involved in the political arena with the Association since 1985 and have seen many bills come and go. I can assure you, this is not only an excellent bill for the real estate industry, but also for the consumer.

Agency has been a topic in the real estate industry since the late 80s. In 1994 we had an agency task force of which I was a member and vice-chair for the Association. This task force, along with the Real Estate Commission, helped to formulate the original BRRETA Act that took effect on January 1, of 1996. Because of an outcry from a few disgruntled licensees the legislature in 1996 chose to pass legislation that would sunset that act on July 1 of 1997. It is in response to that action that the Kansas Real Estate Commission formulated a task force to revise that bill in a way that would make it more workable for the practitioners and more easily understood by the consumer. This is the legislation that you have before you today and it represents many hours of discussion and research by many people across the state.

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BRRETA TESTIMONY CONTINUED

I know that you have received letters from both proponents and opponents. And I have taken it upon myself in the last several days to research in my end of the state, what the concerns of some of the opponents really are. I find that those who have written to a legislator have reacted to mail from other opponents telling them that is an infringement upon them to do business as independent business people. As I visited with these folks, I found that none of them had requested a copy of the bill and had not read the proposed legislation.

The objections that I have heard to this legislation range from "it's unnecessary paperwork" to "I have never been sued before, therefore, why do I need this now!" When in reality all this bill does is define the way real estate agents should have been doing business all along. It simply makes it clear that it is very difficult for any person to represent more than one party in a transaction. It also asks that an agent inform the prospective customer of the types of agency that are available in a real estate transaction. The agent may do this by simply handing the customer a brochure explaining agency at the first practical opportunity. The only written disclosure required in this legislation is that at the time of contracting and that can be handled simply with the addition of a paragraph in the contract.

I fail to see why any licensee who holds himself up to be a professional in our industry would have a problem with disclosing how the industry works and what rights of representation a potential customer would have in a transaction. It is my belief that anyone that would hide from this type of disclosure must have something to hide!

I would simply conclude by asking your support for this legislation not only for our industry but for the real estate consumers of our state. Thank you. Again I appreciate the opportunity to share my views of this important legislation with you.

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March 15, 1997

To: Senate Judiciary Committee

Mr. Chairman and Members of the Committee

I am an attorney practicing real estate law in Topeka. I also have a broker's license and am a member of the Kansas Association of REALTORS. I have been involved in the education of real estate professionals for approximately 15 years and was privileged to serve as a member of the BRETA task force requested by the legislature last year.

The task force was an educational experience involving numerous meetings, many hours of independent study, research and review of the subject. The outcome resulted from debates with seemingly no possible solution. The resulting compromises serve the industry and public well. The task force was balanced between those who disparaged BRETA, those how loved it and those who were unsure. In the end I was proud to have been a member and encourage you to give it the credence it deserves after long and careful study by a group active in the industry and concerned about a workable law.

As the only attorney on the task force I supported the provision that would have specifically provided repeal of the common law. In subsequent study I believe the common law is supplemented by passage of this proposal and repeal is not a good idea. Where a statute such as this operates in an area traditionally the province of common law, courts find the statute controls. Pursuant to K.S.A. 77-109 you have directed this result.

The clear intent of this proposal is to rethink and provide certainty in relationships between real estate professionals, their customers and clients. Where those relationships have traditionally been left to the vagaries of common law and debate among lawyers there will now be some direction and guidance. Upon passage of this proposal, liability is allocated between professional and consumer in a reasonable manner. Upon passage of this proposal, professionals and consumers should be able to understand their relationship in ways seemingly not true under the old law. Remedies for fraud and intentional misrepresentation are not lessened and in fact may be more clear because the duties are more clear.

I often have first person contact with licensees, buyers, sellers and others in this industry. All persons involved have been long confused by the relationship where you spend all your time working with someone only to find out they work for the other side of the transaction. This confusion is well documented by national studies. This law will permit licensees to operate legally in the way they have always acted anyway, albeit illegally. I urge your favorable consideration.

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March 15, 1997

For: The Judicial Senate Hearing Committee - March 17, 1997

My name is Rob Curtis. I write in support of HB 2264. I currently serve as First Vice President of the Kansas Association of Realtors. Also, I am President of Cedar Creek Realty, Inc., located in Olathe, Kansas. Our company is responsible for marketing a master planned community selling primarily new homes as well as those resale homes located in the Cedar Community. I have been licensed since 1969. Also, I have been a Realtor working as a salesperson, managing broker and an owner since 1969. Currently, Cedar Creek Realty has three independent contractor sales associates who only list and sell in Cedar Creek.

Because our industry is accustomed to working with buyers as sub-agents of the listing broker and seller, there has been a great deal of confusion in implementing the recent BRRETA law which requires our members to inform in writing both buyers and sellers who we represent in the sales transaction. Many of our members would like to see buyer agency go away entirely and return to the practice of representing sellers in a sub-agency relationship the way we did in the past. There is a misconception which exists that leads many of our members to believe that if BRRETA is allowed to sunset, buyer agency will go away. This is simply not going to happen because in the area where our company markets homes, approximately 37% of all sales are a result of corporations who transfer personnel into our area and require them to work with buyers agents. BRRETA does not in itself create or do away with buyer agency. Instead, it provides our members the manner in which we can all work together to provide the type of representation our buyers and sellers require. Both buyers and sellers need to know who is serving who in the purchase of real property.

On a more personal note, under the existing BRRETA law, our company practices only seller agency in the sales transaction. This is because we find disclosed dual agency to be very questionable and difficult to implement properly. In addition, the current provision for providing designated agency does not apply to our company situation with one office and three agents. We believe the new amendments to BRRETA with its provision of TRANSACTION BROKER will help our company do a better job in representing buyers and sellers. We understand we will be able to designate one of our agents as a "buyer's agent" and one of our other agents as a "seller's agent" to work with our customers and clients.

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Currently because we choose not to practice disclosed dual agency, we must tell a buyer we are unable to represent him as a "buyer's agent" and direct the buyer to select an agent not affiliated with our company to represent him in the sales transaction. In many situations where this occurs, we find that the buyer simply chooses another agent outside our company who knows very little about our community, new home construction, deed restrictions, specials, maintenance fees, sewers, future plats, etc. . . Therefore, having the ability to act as a Transaction Broker with designated buyer and seller agency will be highly beneficial to buyers and sellers in new home communities such as ours.

Therefore, our company supports the passage of the amendments to BRRETA which you are currently considering. If we wish to provide the public the best possible service in the best ethical and professional manner possible, passage of this amendment to BRRETA will help our members make this a reality.

Thank you.

A handwritten signature in black ink, appearing to read "Rob Curtis", written over a large, stylized circular flourish.

Rob Curtis
President
Cedar Creek Realty, Inc.



GRIFFITH & BLAIR,
REALTORS®
RESIDENTIAL REAL ESTATE

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Senate Judiciary Committee Hearings (HB2264)
March 17, 1997
Presented by John Green

I am John Green from Topeka. I am vice-president of the Coldwell Banker Griffith and Blair residential division and I am immediate past president of the Kansas Association of Realtors. I have owned or managed a real estate company for the past 16 years. I supervise 54 residential agents who are supporters of the current agency law and who support the legislation recommended by the Task Force.

Over 10 years ago, the federal government announced that over 75% of home buyers said that the agent they worked with represented them. The Federal Government and those of us testifying today know that in fact their agent represented the Seller. Our industry had to come to grips with the fact that in years past we made a living, and, sometimes a good living, by inadvertently being less than honest with the buying public. This was not intentional but rather a result of a lack of understanding about an agent's duties to the principal.

It wasn't easy, but, gradually over many years, most states adopted a position that real estate agents must inform the buyers and sellers on who they represented in the transaction. In the past, most real estate agencies only represented sellers. That is changing. Across the state, many agencies now are electing to also represent the buyers which has always been allowed by license law but very rarely practiced. Now the industry must take another step before it can truly establish credibility with the public and that is to inform the parties to a residential transaction that they have choices in regards to representation. Passage of House Bill 2264 will insure uniform application of what I refer to as "informed consent" regarding representation. I feel very comfortable with any law that mandates full agency disclosure, and I have concern about licensees who don't recognize the value to all of us when we inform the buyers and sellers.

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You will hear from the opponents that (BRRETA) discriminates against the small broker. They are, I assume, referring to the disclosure provisions that I previously mentioned. What are they calling discrimination? Disclosing to the seller who the agent works for but not telling the buyer. Don't let the opponents get away with this! Allow us through the passage of this bill to let our industry continue to improve our customer-client relationships.

I hear a great deal about the fact that some licensees say that only the officers and the "in" people within the Association want BRRETA in place and that neither the Kansas Association of Realtors nor the Kansas Real Estate Commission wanted to do a survey for fear they would get a negative response. Both entities did a survey, the best kind. The Association went to its members in the form of town hall meetings and the Real Estate Commission held a number of meetings across the state for the sole purpose of getting input from everyone. I attended all but two of the task force meetings, and I can assure you that they listened to everyone and did a miraculous job of trying to please as many as possible and still provide strong protection for the public. Last year the Legislature asked them to fix the problems which surfaced when BRRETA was implemented and they did. Please don't ignore them.

The Kansas Association of Realtors at its January meeting voted to support the Task Force's recommendations. There were only two members who voted against the motion to support. The Association's Board of Directors has over 140 members from across the state. Each member is selected by the local board to represent them. Yes, the Association represents 60% of the licensees in Kansas, but Association members sell, based on title activity, between 80 and 85% of all the real estate sold each year. Numbers of licensees doesn't mean a thing to me but rather I am interested in those doing the business and how much they are doing. The Association is in touch with our members, and it is with their blessing that we are here today.

In Topeka, buyer representation prior to BRRETA was between 25% and 30%. In 1996, alone, the number jumped to over 80%. Numbers don't lie. The increase in the number can be traced directly to the disclosure and DAAR form. When someone tells me this law doesn't benefit the public, I have to ask them to explain the sudden rise in buyer agency across the state. I never have gotten a response to that question.

Please give your support to House Bill 2264.

SIGHTCOMMERCIAL
REALTY, INC.

March 14, 1997

Dear Senate Judiciary Committee Members,

My name is Dan Sight and I am the owner of Sight Commercial Realty, Inc. in Overland Park, Kansas. I have owned my own business for three and one-half years and now employ four agents. I have been a real estate agent for 13 years. I served on the agency task force and I am a Director of KAR, 1994 President of the Johnson County Board of REALTORS, 1995 Kansas City CCIM Chapter President, 1995 Johnson County REALTOR of the year and 1994 Commercial REALTOR of the year.

Unfortunately, I am unable to attend this very important meeting. I am currently out of town. But, I wanted to make sure that you heard from me on a subject which I have been very involved with since June of 1996. This is a subject of which I have come to know more than I ever dreamed I would need to know.

I have been involved in organized real estate activities for a quite some time. Serving on the above task force was the most difficult job I have ever had, and the most thankless. I also felt that it was the most important task that I ever took on. I am a simplistic person and I approached this job hoping we could simplify this real estate agency law. I came to find out that it is anything but a simple law.

This is a subject where there is a myriad of ideas, thoughts and different situations. This law deals with commercial property, residential property, auctioneers, new home agents, buyers' agents, sellers' agents, transaction brokers, designated sellers' agents and designated buyers' agents.

We had to take the above situations into consideration when we met. The task force was made up of members from all segments of the business. It was a great group of people. We met on many occasions, and had many heated discussions. We went on the road to meet with REALTORS and licensees in Wichita, Dodge City and Lawrence.

I felt, as the sole commercial practitioner on the committee, a responsibility to come up with a law that worked for commercial brokers as well as residential. I went to Wichita in June to meet with the Kansas CCIM Chapter. I met in July with the Topeka CID group and the Kansas City CCIM Chapter. Most recently, I met last week and talked to the SIOR (Society of Industrial and Office REALTORS). I also sent out a survey asking commercial brokers to respond the proposed license law. I sent it to 224 commercial real

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SIGHTCOMMERCIAL
REALTY, INC.

estate practitioners in the State of Kansas. I received 64 responses (28.5%) and 89% of those were in favor of what we had proposed.

I felt that it was important to bring commercial transactions back into BRETТА. Right now we in effect have two real estate license laws for the State of Kansas, one for commercial, the other for residential. It is very confusing to licensees that work in the many small towns and cities in our State.

I know the real estate licensee law that we have before you is a good law. It is good for consumers in our state and it is good for licensees in our state. The bottom line is that whether consumers are buying their first house, their first building for their business or relocating a manufacturing plant, they are entitled to agency disclosure. They are also entitled to have an agency relationship that works for their particular situation. Replacing dual agency with transaction broker is an excellent way of handling a transaction where you are working with both parties.

The best explanation of dual agency I have come from a young man in Dodge City. He said he was trying to explain dual agency to a consumer, and she said, "Isn't that like a lawyer representing both the plaintiff and the defendant?" Lawyers cannot do that and neither should a real estate broker. It makes much more sense to represent the transaction.

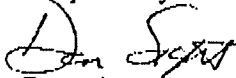
I have read that some people claim that this is a discriminatory law. "It is different for commercial and residential brokers. You know that commercial is predominately made up of men and residential of women." This is such a vague generalization. That is just not the case and should be dismissed as having no merit.

Some people claim that the KREC is just looking for more power and money. I find that to be an insult to Jean Duncan the Director of the KREC. We, as a State, are very fortunate to have such a quality, fair and honest person to serve in that capacity. She has no motives but to come up with a fair, honest and enforceable real estate law.

Lastly, I urge this committee and the Kansas Legislature to pass BRETТА 97 or House Bill 2264. I support this as a member of the agency task force, a real estate licensee, a KARE director, as Chair of the Governmental Affairs Committee at the Johnson County Board of REALTORS and most importantly as a small commercial REALTOR.

Thank you for the opportunity to have my thoughts given to this committee.


Respectfully submitted,


Dan Sight, CCIM

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Date: March 17, 1997
To: Senator Tim Emert, Chair Senate Judiciary Committee
From: Don Eusey, Partner Broker, Barrett, Eusey & Associates 
RE: Support for House Bill 2264

Having previously testified before the House Judiciary Committee, I am transmitting the essence of my testimony to you for consideration by the committee.

I have been a small business owner since 1981 and have been involved in real estate as a profession since 1986. My property management company currently has ten part time employees and I am a partner in a small brokerage firm with three full time sales associates.

I run a small business, in a small town, but this bill will be a big benefit for my community. I personally support this bill and I have been asked to convey the support of the Emporia Board of Realtors[®], which represents the eight main real estate brokerages in Emporia.

In my opinion, this Bill has the following benefits:

- It forces brokers and sales agents to be conscious of their agency relations in every transaction and to be careful not to compromise their principles' interests.

In the early eighties, brokers almost exclusively represented sellers. Buyers and sellers both understood this, and the brokers were able to work hard to represent their sellers. However, in small towns like Emporia there was a large potential for conflict of interest, since brokers often would sell their listings to friends, relatives and/or business associates. This bill will force brokers to consider their agency relationships carefully and to disclose them to their clients and customers.

- It provides increased disclosure to buyers.

Since 1988, real estate agents have been required to verbally inform customers that they represent the seller (or the lessor). In addition the sales contracts were required to include an acknowledgment of this simple verbal disclosure. The

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House Bill 2264

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proposed legislation would required that the disclosure be made by giving customer a brochure that explains agency in greater detail.

- It clearly defines the role and duties of real estate agents and provides limited liability from errors or omissions made by their principles or by third party experts.

In the past, real estate brokers have been liable for failure to disclose material deficiencies that "should have been known". Most real estate agents have little or no expertise in subterranean insects, structural engineering or heating and air conditioning. Brokers were often held liable for misrepresenting a property's condition, even after the property had been inspected by third party experts. This bill protects brokers from buyers who have relied upon third party experts or have refused to make necessary inspections.

Although I have been told that some real estate agents do not support this bill, I do not think that it places a undue or onerous amount of regulation on the real estate industry. This is not an attempt of the Kansas Real Estate Commission, the Kansas Association or of large brokerages to gain more "power". This is not a bill that favors commercial brokerages or residential brokerages.. It does not place a burden upon either residential or commercial practitioners. Nor does it increase regulation or paperwork, with the exception of providing a simple brochure to customers and making a note in the contract.

What this bill actually does is provide increased disclosure to both buyers and sellers regarding the role that brokers will take in a given transaction. And in addition, it helps brokers by providing more specific descriptions of the role and duties that they must fulfill.

At the present time, I believe that this bill provides significant benefits to the real estate industry and to their clients and customers. I urge you to vote to send it to the floor with a favorable recommendation.

1204



**Summerson-Burrows,
REALTORS®**

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Members of the Judiciary Committee:

I am Susan Bowers, a residential real estate agent with Prudential Summerson-Burrows in Overland Park. There are eighty-five agents in my firm. This is my nineteenth year in real estate. Thank you for the opportunity to present written testimony.

I wanted to discuss the merits of the Broker Relationships in Real Estate Transaction Act. The title of this act says it all: broker relationships in real estate transactions. This act dots the "i's" in professionalism. BRRETA clearly defines the duties and responsibilities each licensee is obligated to perform. The Kansas Real Estate Commission and the Kansas Association of REALTORS® did not *dream* the need for this act. In reality, the consumer caused a need for this type of legislation.

In the early 1980s, the Federal Trade Commission conducted a survey of people who had recently purchased homes. These people were asked who represented them in their real estate transaction. An overwhelming majority responded that their real estate agent represented them. At the time, this was not so. Agents primarily represented sellers. Thus, the Agency Disclosure Law was initiated. This law was designed for real estate licensees to explain their role in the transaction - Which party they represented while treating all parties fairly.

With this disclosure in effect, buyers - and in my market in Johnson County - large corporations (Sprint and Yellow Freight, specifically), asked for buyer representation. The corporations were guaranteeing these same employees a buyout on their homes when they left Johnson County. It was in the corporations' best interest for the buyer to make a prudent choice of property in the first place.

With this brief sketch of background on representation, it is important for all to understand - the public - the consumer - created the need for buyer representation. With choices of representation comes the need for legislation such as the BRRETA Act to define representation and the duties involved.

BRRETA achieves two very basic goals: 1) It requires the real estate licensee to inform the consumer of their choices in representation in the real estate transaction. And 2) It defines the licensee's role in each of the agency relationships.

As a member of the task force responsible for this House Bill 2264 before you, we traveled across the state to hear the pros and cons on this legislation. The opposition to this act desires to see BRRETA sunset. Most of the opponents have been in the business longer than myself. Over and over, we heard - "just let us do business the way we always have done it." BRRETA allows them to do business the way they have always done business legally! BRRETA allows these individuals to act as a transaction broker rather than an undisclosed dual agent. In small communities where everyone knows each other and their business, it would be difficult to represent one party or the other. As a transaction broker under BRRETA, the licensee must treat both parties fairly, without representation to either party in order to facilitate the transaction.

If BRRETA sunsets, there will be no disclosure to the consumer of their choice in representation. The only disclosure will be to tell them who the agent they are working with is working for. There will be only limited guidelines for the duties and responsibilities of a licensee in regards to agency. In closing, it is essential BRRETA be passed in order to protect both the consumer and the licensee.

Thank you,

Susan Bowers



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Date: March 14, 1997
 To: Members of Senate Judiciary Committee
 From: Mary A. Laham, Wichita, KS
 Re: BRRETA - House Bill 2264

I am Mary Laham from Wichita, KS. I currently work for a large brokerage firm in Wichita as a Branch Broker. Our company has over 150 licensed real estate brokers and agents specializing in commercial and residential real estate transactions. My office has over 40 agents, independent contractors, and engage primarily in residential sales.

I have been in the real estate industry over 30 years. I started with a small firm, then became co-owner of a mid-sized firm which later we sold and I became affiliated with medium to large firms. Through the years I have owned, leased and or sold commercial, farm and land, rural suburban, residential new homes and resale real estate. In today's world, as in all other industries, we need to specialize, which I have found my niche in residential resale and some new homes.

Like most people my age, we really do not relish change and I do relate to the opponents of this bill, BUT, if change is for the better then I will support it to the fullest extent, so now I am asking your support for the revisions to BRRETA which the task force your committee asked for last year has presented in HB2264.

To allow BRRETA to sunset would be very detrimental to consumers, mainly Buyers, as they also have a right to equal representation and should be notified of that right prior to entering into a legal binding purchase contract. A home is probably the largest expenditure most people will ever invest in and they should have professional assistance in this investment. We enter into a listing contract with Sellers which states we will work on their behalf, I can find no real reason why a Buyer should not have this same right to representation with the brokerage fees paid through the transaction, which enables both parties to negotiate through a real estate broker on an even playing field, not the old adjacent "well, we know the Seller will take asking price, what offer did you have in mind?" before writing a contract.

Yes, our office has lost commissions because of a "Disclosure of Alternative Agency Relationships" form has been presented to a Buyer and the Buyer realized they can obtain the services of another real estate agent or broker who will work on their behalf and that broker will be paid through the transaction, but, will assist them within their expertise to obtain an acceptable price and any pertinent information that a seller agent may not have been able to disclose to Buyer. My belief is "half of something is better than all of nothing" and if Seller's or buyer's do not feel good about the transaction, then it should not consummate regardless of guidance from others.

I was in a real estate related seminar last year where a real estate broker had shown her listing to a Buyer with whom she had sold many properties through the years. The Broker was very upset because, when she presented the Disclosure of Alternative Agency Relationships form to this Buyer, the buyer's response was "You mean I can have representation! You or someone can help me determine an acceptable price and terms for this property?" Needless to say, the broker was upset because this put her in a dual agency relationship or she would have to share part of the commission if the buyer elected to have representation from another broker, not really having any concern for the Buyer's interest.



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Also, the law helps with total disclosure by Sellers regarding material facts of their property. The "known or should have known" terminology has no common sense basis as Real Estate Brokers are not structural engineers, electricians, plumbers, etc.

I feel this law is very consumer friendly and regulates real estate brokers-agents to assist a buyer in a more professional manner. In my personal opinion, if BRRETA sunsets, it will set consumer advocacy and the real estate industry back into the dark ages.

In response to an opponent of this bill comments "Conflict of interest?" Is "**Buyer Beware**" better? Promotes "Red Tape?" The revisions are very "user friendly" and easy to read. "Increase Costs?" **BRRETA, done right, saves money and time for all parties.** Serves "Special Interest groups?" Customers and clients are my "Special Interest" groups. **Serving them makes my living!**

I would like to thank you again for the opportunity to speak on behalf of this bill and I will be glad to answer any questions you may have.

Mary



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March 17, 1997

Good morning. My name is Brian K. Jones, from Pittsburg. I own a small, independent real estate company that has been run by my family since 1905. I am a third generation Realtor with 19 years of residential real estate experience. I would like to thank you for allowing me the opportunity to testify in favor of **House Bill # 2264** and specifically the Brokerage Relationship in Real Estate Transaction Act, or **BRETTA**.

The five agents who work in my office feel comfortable using the disclosure of alternative agency relationship form and firmly believe it is in the best interest of the public. The changing of this form to a brochure will not have a bearing on how they work and will probably make it easier for the public to understand. My agents further feel the new Section #1 allowing them to be a transactional broker will allow them to put more sales together while serving the public in a fair and equitable manner.

The changes that have been made to the designated agent part of the law are greatly appreciated. This will allow me as a broker to still manage my agents and represent our clients to the fullest extent. Because of our firm's size, I was reluctant to use the designated agent option. But with the changes I feel we can now use this option to better serve our buyer and seller clients.

Lastly, if you decide to not vote favorably on this bill, do not let the current law sunset. Under current law and **House Bill 2264**, we as licensed real estate agents have protection from statements made and inspections performed from "qualified third parties".

If the licensee advised the client to obtain expert advice as to material matters about which the licensee knows, but the specifics of which are beyond my expertise (examples: mechanical, structural, termite inspections), no cause of action for any person can arise against me pertaining to such material matters. This protection encourages me to have my customers and clients perform as many inspections as they deem necessary in order to make an informed decision in the purchase or selling of their home.

In closing I ask for your support of **House Bill # 2264** and **BRETTA**, and thank you for your consideration on this legislation.