

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 29, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Russell Mills, Legislative Research
Dennis Hodgins, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
John Beverlin, Committee Secretary

Conferees appearing before the committee:

Robin Jennison, Governmental Services
Sherry Diel, Executive Director, Kansas Real Estate Commission
Bill Yanek
Phil Wilkes, Administrator, Charitable Gaming, Department of Revenue

Chairperson Brungardt called the meeting to order and asked the committee for approval of previous minutes.

The minutes for the January 13, January 14, January 15, and January 20 meetings were approved on a motion by Senator Teichman, seconded by Senator Clark and motion carried.

Chairperson Brungardt asked the committee for bill introductions.

Senator Vratil asked the committee to introduce a bill referred to as the Fairness in Private Construction Contract Act.

Senator Vratil made a motion to introduce the bill. Senator Barnett seconded the motion. The bill was introduced.

Senator Betts asked the committee to introduce three bills. The first bill concerned minority and small business owners, the second concerned environmental TIF legislation, and the third concerned domestic battery.

Senator Betts made a motion to introduce the bills. Senator Clark seconded the motion. The bills were introduced.

Chairperson Brungardt asked Robin Jennison to the podium for further bill introductions.

Mr. Jennison requested that the committee introduce a bill to increase the take out percentage in parimutuel pools from 22 percent to 25 percent.

Senator Clark made a motion to introduce the bill. Senator Teichman seconded the motion. The bill was introduced.

Chairperson Brungardt asked Sherry Diel to the podium for further bill introductions.

Ms. Diel requested that the committee introduce a bill concerning disciplinary actions against real estate licensees (Attachment 1).

Senator Teichman made a motion to introduce the bill. Senator Vratil seconded the motion. The bill was introduced.

Chairperson Brungardt asked Bill Yanek to the podium.

Mr. Yanek presented an amendment to the bill introduced by Ms. Diel (Attachment 2). He stated that the Real

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Estate Commission had no problem with his amendment.

Senator Teichman made a motion to amend the bill. The motion was seconded by Senator Vratil. The bill was amended.

Chairperson Brungardt called the committee to take action on **SB 295, KU hospital authority; agricultural remediation board; terms of members thereon, expiration dates**. He asked Theresa Kiernan to review the bill for the Committee.

Senator Barnett made a motion to recommend SB 295 favorable for passage. The motion was seconded by Senator Clark. SB 295 was recommended favorable for passage.

Chairperson Brungardt welcomed Phil Wilkes to the podium.

Mr. Wilkes provided a department overview of charitable gaming (Attachment 3).

Chairperson Brungardt asked the committee for questions.

Senator Lyon asked whether there was a definition of bingo.

Mr. Wilkes answered that it was in the statutes, but was pretty basic.

Senator O' Connor asked for a reason in the decline of bingo at churches.

Mr. Wilkes said that bingo at churches was primarily a social event at rural area Catholic Churches. He stated the population in these areas were declining. He further stated that bingo organization in northeast Kansas had dropped drastically for this reason.

Senator Lyon asked Mr. Wilkes what he thought would happen if the state stopped regulating bingo.

Mr. Wilkes answered that there would be an increase in prizes to the point where there would be just a few large bingo organizations. He stated there would be an increase in cheating on bingo.

Senator O' Connor asked for the prize limit.

Mr. Wilkes stated that 25 games could be held per gaming session. He stated the total for all 25 games is 1200 dollars. He explained that regular games could not be over 50 dollars each and special games could not be over 500 dollars each.

Senator O' Connor asked how long the current 1200 dollar limit had been around.

Mr. Wilkes answered since 1978. He further stated that in the year 2000, two new games were introduced that substantially increased the total for the session. He explained that an establishment could have two progressive games per session with a limit of 1000 dollars each. They could then have 20 regular games with a payout of 50 dollars each. He explained that the total payout for the session then could be increased to 3000 dollars.

Chairperson Brungardt thanked Mr. Wilkes. He then called the committee to take action on **SB 290, Revising the membership of the capitol areal plaza authority**. He asked Ms. Kiernan to provide the committee with a quick review of the bill.

Chairperson Brungardt asked the committee for questions.

Senator O' Connor asked what the authority did.

Ms. Kiernan answered that the authority approved additions and changes to the capitol area plaza.

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Chairperson Brungardt stated essentially the authority was a review board of things that would effect the area.

Senator Clark stated that the bill causes conflict in separation of powers. The problem exists with the city government official that is appointed by the mayor. He wanted to know whether that appointee was an executive branch appointee.

Ms. Kiernan stated that she was not certain.

Senator Clark stated he wished for the question to be answered before action was taken on the bill.

Senator Vratil asked whether the issue could be resolved by having the representative of Topeka appointed by the governor.

Senator Clark answered that he believed that was possible.

Chairperson Brungardt asked the committee if there was sufficient concern to revisit the issue.

Committee members answered yes.

Chairperson Brungardt asked the staff to find answers to the problems with **SB 290**. He then adjourned the meeting.

The meeting was adjourned at 11:45 a.m. The next meeting is scheduled for February 3, 2004, at 10:30 a.m. in room 231-N.



KANSAS

KANSAS REAL ESTATE COMMISSION
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

To: Chairperson Brungardt and Members of the Senate Federal & State Affairs
Committee
From: Sherry C. Diel, Executive Director
RE: Request for Introduction of Bill
Date: January 29, 2004

Thank you for the opportunity to address your committee. The Kansas Real Estate Commission is requesting introduction of legislation to amend K.S.A. 58-3043, 58-3050, and 58-3062. The Commission believes the amendments are minor improvements that will clarify the Commission's authority in granting applications for licensure and disciplining licensees. The requested amendments contained in the bill draft are as follows:

Page 1—Proposed Addition of K.S.A. 58-3043(a)(4): The amendment would clarify that the Commission may consider on a renewal application whether the applicant's conduct would have an effect on the person's honesty, trustworthiness, integrity or competence to transact the business of real estate. This standard is clearly applicable for original licensure pursuant to K.S.A. 58-3039(g). However, for purposes of renewal, the Commission must rely on K.S.A. 58-3043(a)(4) under the category of "such other matters as the commission deems pertinent".

Page 3—Proposed Addition of K.S.A. 58-3050(a)(6) and (7): The amendments would clarify that the Commission has authority to take disciplinary action against a licensee if the licensee's real estate license issued by another jurisdiction was revoked, suspended, or placed on probation. The proposed language would also allow disciplinary action to be taken if a professional or occupational license held by the licensee in Kansas or another jurisdiction was suspended, revoked, or placed on probation. The Commission has encountered instances where a licensee's securities license or law license was revoked for reasons that would raise concerns of whether the person should be allowed to work in the real estate field.

Page 5—Proposed Addition to K.S.A. 58-3062(a): The proposed amendment would clarify that a licensee who functions as a transaction broker is subject to the "prohibited acts" section of the real estate license law.

Senate Federal and State Affairs Com.

THREE TOWNSITE PLAZA STE 200, 120 SE 6TH AVE., TOPEKA, KS 66606

Date: JANUARY 29, 2004

Voice 785-296-3411

Fax 785-296-1771

<http://www.accesskan.com>

Attachment: #

1

Page 7—Proposed Deletion of K.S.A. 58-3062(a)(11): The amendment would repeal the limited prohibition on a licensee offering gifts and gratuities. The current language has proven to be very difficult for the Commission to enforce. The current language appears to be contradictory and no clear definition exists for what constitutes a “broker service”. Kansas is in the extreme minority of states that prohibit or significantly limit the offering of gifts and gratuities. Jurisdictions that have lifted the prohibition have not reported any significant problems. Paying compensation to an unlicensed person or providing rebates would still be prohibited.

Page 7—Proposed Addition to K.S.A. 58-3062(a)(11): Clarifies that any licensee is prohibited from paying compensation to an unlicensed person for performing activities that require a real estate license. Under current law, the Commission must point to several statutes to serve as a basis for taking disciplinary action.

Page 12—Proposed Addition to K.S.A. 58-3062(b)(4): The proposed amendment would clarify that a salesperson or associate broker is prohibited from paying compensation to another person for performing a licensed real estate activity. The payment of compensation to a salesperson or associate broker should come directly from their supervising broker. This would prohibit salespersons or associate brokers from participating in side agreements to share commissions with each other. The exception clarifies that a team leader may continue to pay compensation to their affiliated team members with the written consent of the supervising broker.

Page 12—Proposed Addition to K.S.A. 58-3062(b)(5): The proposed amendment would clarify that the Commission has authority to discipline a salesperson or associate broker from conducting real estate activities outside the knowledge and consent of their supervising broker. Under current law, the Commission must rely on several statutes as a basis for authority to discipline a licensee for working their own deals without the supervising broker’s knowledge.

Thank you, and I would be happy to answer any questions or concerns.



TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FROM: BILL YANEK, DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: JANUARY 29, 2004
RE: KANSAS ASSOCIATION OF REALTORS® BILL INTRODUCTION REQUEST

The Kansas Association of REALTORS® respectfully requests introduction of legislation that would allow Kansas real estate licensees engaging in commercial real estate brokerage to co-broker commercial real estate transactions with an out of state broker. The out of state broker would be subject to the terms of a written Broker Cooperation Agreement.

Attached is a model interstate brokerage statute that defines in more detail the model provisions of a Broker Cooperation Agreement.



785.267.3610
VOICE

800.366.0069
TOLL FREE

785.267.1867
FAX

Senate Federal and State Affairs Com.
Date: JANUARY 29, 2004
Attachment: # 2

MODEL INTERSTATE BROKERAGE STATUTE

A real estate licensee of this State may cooperate with and, or share commissions or other compensation for licensed services related to non-residential real estate (as defined below), with a real estate licensee in good standing of any other state in the United States or of any province of Canada, or of any other sovereign nation ("Foreign Licensee"), and a Foreign Licensee shall be permitted to perform licensed services in this State and/or with respect to non-residential real estate in this State, under the following conditions:

- (1) The non-residential real estate is real estate in this State which is not improved with a single family residence ("Non-Residential Real Estate");
- (2) The Foreign Licensee must cooperate with a licensee of this State in the non-residential real estate transaction or transactions, as evidenced by execution of and compliance with a Broker Cooperation Agreement which contains, at a minimum, provisions which address the following issues:
 - (a) The Foreign Licensee agrees to comply with all applicable laws and regulations of this State;
 - (b) The Foreign Licensee submits to the jurisdiction of the courts of this State and the applicability of the laws and regulations of this State for the conduct of the foreign Licensee with respect to non-residential real estate and any and all claims related thereto;
 - (c) The Foreign Licensee gives its written irrevocable written consent to service of process upon it by valid service upon the Secretary of State of this State and upon the Secretary of State of this state or province of the Foreign Licensee's real estate licensure;
 - (d) All escrow funds, including without limitation earnest deposits and security deposits, concerning the Non-Residential Real estate shall be held in this State in the trust account of a resident licensee of this State;
 - (e) A description of how any and all compensation earned on the Non-Residential Real Estate transaction or transactions shall be shared between or among the Foreign Licensee and the licensees of this State;
 - (f) The Foreign Licensee and the licensee of this State shall agree to each keep the other informed of all showings and negotiations for Non-Residential Real Estate; and
 - (g) The Foreign Licensee and the licensee of this State shall agree to timely furnish to the other copies of all documents related to the Non-Residential Real Estate transaction(s) which are required by this State's law to be retained by its licensees, including without limitation, agency disclosure, offers, counter-offers, purchase and sale contracts, leases and closing statements.

- (3) A copy of the Broker Cooperation Agreement shall be provided to the Real Estate Commission of this State within 5 business days of the execution by the Foreign Licensee and the licensee of this State.

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Updated 8/15/03



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
CHARITABLE GAMING

KATHLEEN SEBELIUS, GOVERNOR

January 29, 2004

Testimony to the Senate Federal and State Affairs Committee
10:30 a.m., Room 231
Phil Wilkes, Administrator of Charitable Gaming

Bingo in Kansas - History, Current Status and Trends

Chairman Brungardt and Members of the Committee:

History

The Kansas Constitution was amended in 1974 to permit the licensing of nonprofit religious, charitable, fraternal, educational and veterans organizations to conduct bingo games. This was the first type of gaming legalized in the state. In 1975, Senate Bill 116 was passed and provided for the licensing, regulation and taxation of bingo by the Department of Revenue. Legislation making significant enhancements to bingo was passed in 1977, 1982, 1984,

In 1995, the Kansas Constitution was amended again to permit bingo licensees to sell pull-tabs (called "instant bingo") at bingo games.

In 2000, the Legislature made a number of substantial changes to the bingo laws, including authorizing two new types of bingo games (mini and progressive), shifting the payment of the bingo enforcement tax on bingo paper from the organizations to the distributors, eliminating the sales tax on bingo, authorizing up to four free drawings per year, phasing out the use of "hard cards" in all but very limited situations, and creating the position of Administrator of Charitable Gaming to coordinate all bingo-related activities within the Department of Revenue.

There are bingo enforcement or excise taxes on each of the two types of bingo. The tax on traditional or call bingo is \$.002 per face sold by distributors to the licensed organizations. The tax on instant bingo or pull-tabs is one percent of the face or retail value of the tickets in each game sold by distributors to the licensed organizations. Two-thirds of the revenue from these taxes goes into the state general fund and is available for unrestricted appropriation by the Legislature. From the other one-third, \$20,000 per year goes to the State Problem Gambling Fund and the rest to the Department of Revenue for the administration and enforcement of bingo. License and registration fees and fines of about \$21,000 per year also go to the Department for the same purposes.

The Administrator of Charitable Gaming monitors the collection of taxes and performs audits of distributors and organizations using procedures established by the Legislative Division of Post Audit.

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Senate Federal and State Affairs Com.

DOCKING STATE OFFICE BUILDING, ROOM 214, 915 SW HARRISON ST., T
Voice 785-296-6127 Fax 785-296-7185 <http://www.ksreve>
E-mail: bingo@kdor.state.ks.us

Date: **JANUARY 29, 2004**
Attachment: # **3**

Current Status

There are currently 368 licensed nonprofit organizations. Approximately 20% of these licensed nonprofit organizations conduct their bingo games at the 28 registered premises owned by for-profit businesses which rent facilities and equipment to licensed nonprofit organizations on a daily basis. There are also 15 registered distributors of bingo supplies. Ten of these distributors also own registered premises and sell bingo supplies primarily to the organizations renting facilities from them. Four of the distributors are national or regional and have their main offices outside of Kansas.

The bingo enforcement taxes generated about \$656,000 in FY03. This amounts to an average of \$2,070 per licensed organization that played bingo more than twice during the year. License fees and fines generated another \$22,000 for the year. About \$450,000 of the tax revenues went to the state general fund. The remaining funds available to the Department of Revenue paid for salaries, travel expenses and administrative expenses for the administrator and two field agents. About half of the Department's 24 field agents actually do bingo inspections, but the total time spent is equivalent to two full-time positions.

A total of 254 game compliance inspections and audit visits were made during FY03. This amounts to about 67% of all licensed organizations or about 94% of those that play once a week or more. Fines were imposed on three licensed organizations (totaling \$350) and two registered premises (totaling \$300). Forty-three warnings were issued. The most common violations were records that were deficient or unavailable and failure to file monthly reports.

During FY03, the Administrator completed audits of all fifteen distributors.

Trends

The number of licensed organizations has dropped steadily from 634 at the end of FY85 to 378 at the end of FY03, a decline of 40%. During that time, churches, schools and charitable organizations declined more than veterans and fraternal organizations. However, the total number of licensed organizations has leveled off in the past year. The current breakdown of licensees by category of organization is as follows:

Churches	25	(7%)
Schools	4	(1%)
Charitable	60	(16%)
Veterans	154	(42%)
Fraternal	124	(34%)

The bingo enforcement tax revenues from traditional or call bingo steadily increased from 1975 to 1994 (18% from 1985 to 1994), when instant bingo or pull-tabs were legalized. Since 1994, the tax revenues from traditional or call bingo have declined from \$959,000 to \$506,000 (-47%) and the tax revenues from instant bingo or pull-tabs have increased from \$119,000 to \$140,000 (+18%), for an overall decline in tax revenue from \$1,077,000 to \$656,000 (-39%). However, the overall decline was only 3% in the past year after declining 12% and 13% respectively in FY01 and FY02.

The decrease in licensees is partially due the continued decline in the number of veterans and fraternal organizations with sufficient numbers of members to conduct bingo games. There has also been a decrease in the number of players, particularly in the rural areas and northeastern portion of the state.