

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on March 3, 2004 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Bill Wolff, Legislative Research
Terri Muchmore, Legislative Research
Ken Wilke, Office of the Revisor of Statutes
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:

Senator Barbara Allen
Bill Yanek, KS. Assoc. of Realtors
Jerry Wells, LID
Larrie Ann Lower

Others attending:

See Attached List.

The Chair asked for a motion to approve the Minutes of Feb. 10th, 11th, 12th, 23rd, 24th.

Senator Barnett made a motion to approve. Senator Buhler seconds. Motion passes.

The Chair then opened the hearing on **SB 542 Prohibiting the use of social security numbers on health insurance cards and prescription drug cards.**

Senator Allen testified as a proponent of the bill. (Attachment 1) The Senator stated that the bill is about providing for the safety and security of individuals insured in the state of Kansas. This bill would prohibit any entity that offers any type of accident and sickness policy, or prescription drug coverage, to individuals residing in Kansas, from printing an insured's social security number (SSN) on the magnetic strip or other encoded information on the policy card., after January 1, 2006.

The SSN is the most widely used identifier of a person's identity in the country. If the policy card falls into the wrong hands, the thief can easily obtain all kinds of personal information about you, steal your identity, access your financial information and obtain a driver's license in your name.

Jerry Wells, KID spoke in support of the bill. (Attachment 2) and stated that the Commissioner strongly supported Senator Allens' bill.

Larrie Ann Lower presented testimony on the bill. (Attachment 3) Her organization represents HMO's. Her members recognize the importance of the bill and KAHP member companies are in the process of changing the numbers used on cards from social security numbers to other unique identifying numbers.

It is also the understanding of KAHP that the federal government through HIPPA, is at some point going to address this issue by implementing a unique patient health identifier program. Therefore they believe the legislation is unnecessary.

KAHP is also requesting additional language in the bill which states that if a federal law is implemented any entity that complies with federal law will be deemed in compliance with this act.

If the legislation is determined necessary KAHP requests that the implementation date be changed to July 1, 2006. This would facilitate a smooth transition for those companies that operate in the Kansas City area to have the same implementation date as a similar Missouri law.

The Chair asked Senator Allen if she had any problem with the inclusion of the Federal law language as part of the bill? She did not have a problem at this point, and felt it could be okay. The Kansas Insurance Department indicated they had checked and there was nothing imminent on the Fed moving on this

CONTINUATION SHEET

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on March 3, 2004 in Room 234-N of the Capitol.

particular issue.

Written testimony from the Hein law firm was mentioned in support of the bill. (Attachment 4). The hearing was closed on **SB 542**.

The hearing was opened on **SB 534—commercial real estate; co-brokerage agreement**, and asked Doctor Wolff to give a brief overview of the bill.

Dr. Wolff stated that the bill concerns real estate brokers and salespersons and the first amendment in the bill is in Sect. 1. The current law sets out all the acts that are prohibited to licensees. There is a new paragraph 27 on page 4 of the bill. The language says that licensees would be prohibited from entering into contracts with persons not licensed by the commission to perform services requiring a license.

The next amendment is new section 2 on page 6 which would insert new language into the licensure act particularly for commercial real-estate transaction. It would allow the licensee to co-operate with and share commissions or other compensation for services with a licensee who has a foreign license(A real estate licensee in good standing in another state).

Bill Yanek testified in support of **SB 534** (Attachment 5). Under current law, Kansas licensees are prohibited from co-brokering with licensees outside the State of Kansas. Increasingly, the real estate marketplace is becoming interstate by nature.

The bill would allow commercial real estate brokers to co-broker transactions with foreign licensees, in good standing of another state or country.

Robert Sutterman testified regarding some areas of interest he had on the bill. He is licensed in the area of Securities, with his own business dealer-broker firm. There are individuals coming into the State doing business when real estate is involved and those deals are done without using a local affiliate, because we are not allowed to share fees in this state. He is totally in support of the bill. It is a very necessary bill not only for people in real estate but also business brokers.

The hearing was then closed on **SB 534**.

Meeting adjourned at 10:21 A.M.

The next meeting is scheduled for Thursday March 4, 2004

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 9-3-04

Name:

Representing:

BILL YANEK

KS Assn of REALTORS

DEREK RAMSAY

Kansas City Regional Assn. of Realtors

Jerry Wells

KID.

Bill Sneed

AAHP-HIAA

Home Ann Lower

KAMP

Bob Suderman

IBBA

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

CHAIR: ELECTIONS AND LOCAL GOVERNMENT
MEMBER: ASSESSMENT AND TAXATION
JUDICIARY

BARBARA P. ALLEN
SENATOR, EIGHTH DISTRICT
JOHNSON COUNTY
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STATE CAPITOL, ROOM 120-S
TOPEKA, KANSAS 66612-1504
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March 3, 2004

Re: SB 542

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to testify today on SB 542. This bill is about providing for the safety and security of individuals insured in the state of Kansas.

It would prohibit any entity that offers any type of accident and sickness policy, or prescription drug coverage, to individuals residing in Kansas, from printing an insured's social security number (SSN) on their policy card, or from making an insured's SSN available by reading the magnetic strip or other encoded information on the policy card, after January 1, 2006.

The reason for this legislation is clear. The SSN is the most widely used identifier of a person's identity in this country. Many people carry their insurance cards in their wallet or purse. In most instances, the insured's SSN is printed right on the policy card. If the policy card falls into the wrong hands, the thief can easily obtain all kinds of personal information about you, steal your identity, access your financial information, and obtain a driver's license in your name.

I'm told most of the entities affected by this bill are already moving in the direction of removing the SSN from their policy cards. So, you might ask, why is this legislation needed? The answer is today, on most health insurance and prescription drug cards, the insured's SSN still appears on the card. SB 542 will send a strong signal to the citizens of Kansas that we care about their personal privacy. It will also ensure that the insurance companies and HMO's in Kansas remove the SSN from their health and drug cards in a timely manner.

Attached to my testimony is a copy of a letter I recently received from AdvancePCS, the Pharmacy Benefits Manager for the State of Kansas. The letter specifically states that the 2004 Prescription

Senate FI & I Committee

Meeting Date: 3-3-04

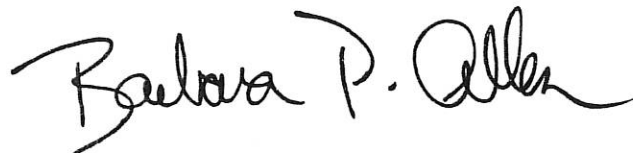
Attachment No.: 1

Benefit Identification Card offers new security enhancements in the form of an Alternative Member ID. Members presenting the card to their retail pharmacist will have their computer profiles updated to indicate the new ID number.

The time frame for implementation of this bill is January 1, 2006. This will allow affected companies 22 months to make the necessary changes to their computer systems. However, I'm told many companies will have these changes implemented by this Fall. I would encourage you to stick with the implementation date stated in the bill.

I have attached for your review research obtained from NCSL. Nine states - Arizona, Arkansas, Colorado, Georgia, Hawaii, North Dakota, Utah, Virginia, and West Virginia - have passed laws restricting the use of SSN's as identification numbers on drivers licenses, health cards, or as student numbers. Missouri has already passed legislation that will prohibit the use of an insured's SSN on health insurance and drug cards.

Thank you for the opportunity to testify today on SB 542. I would appreciate your support, and would be happy to answer questions!



Barbara P. Allen
Senator, District 8



Dear State of Kansas Employee:

Enclosed is your new 2004 Prescription Benefit Identification Card. Your new ID card offers new security enhancements in the form of an Alternative Member ID.

Please use this new card for all of your prescription needs. If you currently carry an AdvancePCS ID card, it should be discarded and replaced with the enclosed card. Even if you have received a new card recently, this card should be used for your prescription purchases.

Members utilizing retail pharmacies should present this new card to your pharmacist during your next visit. Doing so will ensure computer profiles are updated to indicate your new member ID number.

For additional information relating to your 2004 State of Kansas prescription plan, plan summary, access to useful forms or managing your mail prescription refills online, please visit www.kse.advancrx.com.

Thank you,

AdvancePCS

Nine states-Arizona, Arkansas, Colorado, Georgia, Hawaii, North Dakota, Utah, Virginia and West Virginia-passed laws restricting their use as identification numbers on driver's licenses, health cards or as student numbers.

Arizona

H.B. 2429

Signed by governor 5/1/03, Chapter 137

<http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/legtext/46leg/1r/laws/0137.htm>

States that beginning on January 1, 2005 a person or entity may not do the following:

- 1) Communicate an individual's Social Security number and make it available to the general public.
- 2) Print an individual's Social Security number on any card required for the individual to receive products or services provided by the person or entity.
- 3) Require an individual's Social Security number over the Internet unless the connection is secure or the Social Security number is encrypted.
- 4) Require the transmission of an individual's Social Security number to access an Internet Web site, unless a password or unique identification is also required to access the Internet site.
- 5) Print an individual's Social Security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document.

Arkansas

H.B. 1034

Signed by governor 2/14/03, Act 108

<http://www.arkleg.state.ar.us/ftproot/acts/2003/public/act108.pdf>

Prohibits institutions of higher education from using students' or employees' Social Security numbers on identification cards.

student i.d.'s

H.B. 2234

Signed by governor 3/27/03, Act 836

<http://www.arkleg.state.ar.us/ftproot/acts/2003/public/act836.pdf>

Eliminates the provisions that allow the use of a person's Social Security number as a driver's license number.

DL

Colorado

H.B. 1175

Signed by governor 4/17/03, Chapter 148

http://www.state.co.us/gov_dir/leg_dir/olls/sl2003a/sl_148.htm

Requires each institution of higher education to assign a unique identifying number to each student enrolled at the institution starting July 1, 2003. Prohibits the use of a student's Social Security number as the unique identifying number.

student i.d.

Georgia

H.B. 721

Signed by governor 5/31/03, Act 188

http://www.legis.state.ga.us/legis/2003_04/fulltext/hb721.htm

Prohibits insurers from using an insured's Social Security number for any purpose or in any manner on health insurance identification card.

HEALTH INSURANCE CARD

Hawaii

S.B. 1406

Signed by governor 4/16/03, Act 15

<http://www.capitol.hawaii.gov/sessioncurrent/bills/sb1406.htm>

Deletes the requirement that commercial driver's licenses include the licensee's Social Security number on the license.

North Dakota

H.B. 1443

Signed by governor 3/26/03

<http://www.state.nd.us/lr/assembly/58-2003/bill-text/DBJN0300.pdf>

Eliminates the use of Social Security numbers on driver's licenses.

Utah

H.B. 181

Signed by governor 3/17/03, Chapter 188

<http://www.le.state.ut.us/~2003/bills/hbillenr/hb0181.htm>

Modifies the Insurance Code. Amends provisions related to health insurance.

Prohibits certain accident and health insurers and certain programs offered under the Public Employees' Benefit and Insurance Program Act from displaying Social Security numbers on cards required for an individual to access services. Provides exceptions.

Requires insurers to comply with the security requirements by July 1, 2004 but permits certain extensions until March 1, 2005.

Virginia

H.B. 1593

Signed by governor 3/16/03, Chapter 306

<http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0306>

Eliminates the optional use of Social Security numbers as driver's license numbers for licenses issued or renewed on or after July 1, 2003.

H.B. 1744

Signed by governor 4/2/03, Chapter 974

<http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0974>

Prohibits agency-issued identification cards, student identification cards or license certificates issued or replaced after July 1, 2003, from displaying an individual's entire Social Security number. Provides exceptions from the general prohibition for the following circumstances: (i) certain licensing and identification cards issued by the Department of Motor Vehicles issued prior to July 1, 2003, which are required to be replaced no later than July 1, 2006, (ii) voter registration cards, which are required to be replaced by the December 31 next following the decennial redistricting from the 2010 census, (iii) insurance licenses issued by the State Corporation Commission, which shall be replaced no later than 12 months after the creation and implementation in all states of a national insurance producer identification number, and (iv) road tax licenses issued by the Department of Motor Vehicles to motor carriers under the terms of the International Fuel Tax Agreement.

H.B. 2063

Signed by governor 3/23/03, Chapter 927

<http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0927>

Prohibits the display of a data subject's entire Social Security number on any student or employee identification card by public agencies on and after July 1, 2006.

H.B. 2175

Signed by governor 3/23/03, Chapter 914

<http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0914>

Limits the appearance of Social Security numbers on identification cards and parcels. Punishes the distribution or possession with intent to distribute another's personal identifying information or the distribution of the means by which personal information may be stolen. Creates a mechanism whereby a victim may expunge a

HEALTH
insurance
CARD



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 542— IDENTITY THEFT
March 3, 2004

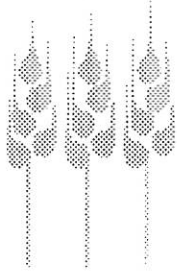
Madam Chair and Members of the Committee:

Identity theft is a huge problem in this country. There is no question that deleting the social security number from uniform prescription drug information cards removes one more opportunity for thieves to access information used to steal identity. Moreover, prescription and medical cards are for the most part carried by the most vulnerable in our society—the elderly.

The Commissioner of Insurance, Sandy Praeger, strongly supports Senator Allen's bill.

Jerry Wells
Director of Government Affairs

*Senate FI&I Committee
March 3, 2004
Attachment 2*



Kansas Association of Health Plans

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**Testimony before the
Senate Financial Institutions and Insurance Committee
Testimony on SB 542
March 3, 2004**

Madam Chair and members of the Committee. Thank you for allowing me to appear before you today. I am Larrie Ann Lower, Executive Director of the Kansas Association of Health Plans (KAHP).

The KAHP is a nonprofit association dedicated to providing the public information on managed care health plans. Members of the KAHP are Kansas licensed health maintenance organizations, preferred provider organizations and other entities that are connected to managed care. KAHP members serve most all of the Kansans enrolled in a Kansas licensed HMO. KAHP members also serve the Kansans enrolled in HealthWave and medicaid managed care and also many of the Kansans enrolled in PPO's and self insured plans. We appreciate the opportunity to provide comment on SB 542.

SB 542 prohibits the use of social security numbers on insurance cards and prescription drug cards by insurance companies including HMO'S, pharmacy benefit managers and third party administrators. The members of KAHP recognize the importance of maintaining the privacy of our insureds' social security numbers. At this time all of the KAHP member companies are in the process of changing the numbers used on cards from social security numbers to other unique identifying numbers. It is also our understanding that the federal government through HIPAA, is at some point going to address this issue by implementing a unique patient health identifier program. Therefore, we believe this legislation is unnecessary.

However, if you determine the legislation is necessary we request that the implementation date be changed to July 1, 2006 and a section be added that says:

If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, any person or entity that complies with the federal law shall be deemed in compliance with this act.

These changes would allow the health insurance companies that operate in the Kansas City area to have the same implementation date as a similar Missouri law and would protect the plans from conflicting laws in the event the federal government implements a national unique patient health identifier program.

I'll be happy to answer any questions you may have.

Senate FI & I Committee

Meeting Date: March 3, 2004

Attachment No.: 3

HEIN LAW FIRM, CHARTERED

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Ronald R. Hein

Attorney-at-Law

Email: rhein@heinlaw.com

Testimony re: SB 542
Senate Financial Institutions and Insurance Committee
Presented by Ronald R. Hein
on behalf of
Kansas Pharmacy Coalition
March 3, 2004

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association and the Kansas Federation of Chain Pharmacies.

The KPC believes that this or any other legislation designed to remove social security numbers from data which is, unfortunately, sometimes available to the public, is sound public policy. Not only do we support SB 542, but, at some point, further changes might be warranted to insure that the social security number is not only not identified on the card, but that it isn't utilized at all.

We also want to express our appreciation to Sen. Allen for contacting us prior to introducing this legislation and seeking to address any concerns we might have had.

Although there may be concerns about the specifics of the bill with which we are not familiar, and about which we express no position, we urge you to approve SB 542..

Thank you very much for permitting me to submit this written testimony.

Senate F I & I Committee

Meeting Date: Mar 03 2004

Attachment No.: 4



TO: SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: March 3, 2004
SUBJECT: Senate Bill 534

The Kansas Association of REALTORS® supports Senate Bill 534.

Under current law, Kansas licensees are not able to co-broker real estate transactions with real estate licensees who are licensed outside the State of Kansas. K.S.A. 58-3062 c (1) states that: "No broker shall: Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker."

Increasingly, the commercial real estate marketplace is becoming interstate by nature. It is common for KAR commercial real estate brokers to receive offers to co-broker deals from across the country. Unfortunately, our licensees are limited to only transacting on a referral / referral fee basis. If a commercial real estate broker engages in any brokerage activities (e.g. negotiates, assists in or directs the procuring of prospects) that broker violates Kansas law.

SB 534 would allow commercial real estate brokers to co-broker transactions with foreign licensees, who are defined as a real estate licensees, in good standing of another state or country. Such transactions would be subject to the execution of a broker cooperation agreement.

Under SB 534, broker cooperation agreements would require:

1. The real estate transaction deals only in commercial real estate.
2. The foreign or out of state licensee agrees to comply with all Kansas laws and regulations.
3. The foreign or out of state licensee submits to the jurisdiction of Kansas courts and the Kansas Real Estate Commission.
4. All escrow funds are held in Kansas.
5. A copy of the broker cooperation agreement is provided to the Kansas Real Estate Commission within five business days of execution.

The Kansas Association of REALTORS® urges favorable passage of SB 534.



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Senate F I & I Committee

Meeting Date: 3-03-04

Attachment No.: 5



March 3, 2004

Senator Ruth Teichman
Chair, Senate Financial Institutions and Insurance Committee
Topeka, Kansas

Dear Senator Teichman:

On behalf of the Kansas Association of REALTORS®, thank you for your consideration of SB 534. I write this letter to you as President of the Kansas Association of REALTORS®, as well as a practicing commercial real estate broker of 20 years.

KAR and the Kansas Real Estate Commission are asking for changes to Section 58-3062, to clean up what is, and has been a problem with our license law. Clarifying this issue will serve to help the State of Kansas economically as well as clarifying a standard of practice common in commercial real estate in Kansas.

Three years ago I was a broker/agent with a large national commercial real estate brokerage firm located in Dallas. It was very common for a Dallas broker to come into Kansas with his client to look for a new location for his business. When a transaction was consummated we (the local office) would send a commission check to our Dallas office. **THAT ACT** was illegal under our current law.

If the real estate commission decides to enforce the license law, the Kansas broker's license is at risk. You can see how this situation might dissuade brokers in Kansas from working with out of state brokers, when we *should be* encouraging out of state brokers to bring all the business they can into Kansas.

I encourage you to pass this bill. When passed, it can only help the financial situation of the State of Kansas. If you have any questions, please contact me at 913-219-7430. Thank you for your consideration.

Sincerely,

Daniel Sight, CCIM
Sight Commercial Realty, Inc.
2004 KAR President



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5-2 5-2

Co-brokerage agreement with out-of-state licensee illegal because no state license reciprocity prohibited it.

Connecticut's highest court affirmed the ruling of a trial court that a Connecticut broker's agreement to split the commission with a broker licensed in another jurisdiction was not legal under Connecticut law. In 1996, Stein and Co., a licensed real estate brokerage in Illinois, and Dow and Condon, a Connecticut-licensed real estate brokerage, agreed to work together to acquire a site for a Federal Express facility in Connecticut. The agreement called for Stein to receive 80 percent of the commission and Dow to receive 20 percent. The agreement stated that Stein would handle all communications with Federal Express and negotiate with all potential

This case clearly demonstrates why the RCA is working so hard to ensure passage of progressive license reciprocity legislation in every state.

Whitney Peyton, CCIIM, 2004 Chair, RCA Advisory Board

landlords, while Dow was to select potential sites for the facility.

In 1997, Stein entered into a commission agreement with Brookfield Development Corp. that called for a commission of \$408,000 to be paid in two installments, half due at closing and the other half at the time of occupancy. In 1998, Brookfield and Federal Express located a suitable property and sent Stein half of the commission, stating in a letter that the rest would be paid in accordance with the commission agreement. Brookfield never paid the other half of the commission, so Dow filed a lawsuit. The trial court ruled that the co-brokerage agreement between Dow and Stein was an illegal contract

under Connecticut law and therefore ruled in favor of Brookfield. Dow appealed.

The Supreme Court of Connecticut affirmed the ruling of the trial court. The court found that the state's real estate license law bars an unlicensed party from bringing a lawsuit in the state's courts for a real estate commission. Another section of the law bars a Connecticut real estate licensee from splitting a commission with an unlicensed individual. The trial court had ruled that because Dow had violated the state's license law through its commission-splitting agreement with Stein, it was not entitled to recover the remaining commission from Brookfield. The appeals

court agreed that the co-brokerage agreement was an illegal commission-splitting agreement because one of the participants was not licensed in Connecticut and so affirmed the lower court's ruling.

Editor's Note: The Connecticut Association of REALTORS® filed an *amicus curiae* brief in favor of the brokerage's position. The RCA also continues to work diligently to pass commercial license reciprocity in all states so that transactions like this one are legal and parties can receive earned compensation. To read a complete summary, go to <http://www.realtor.org/letter.hw.nsf/pages/1103.dow>.

To read a complete summary of this decision, visit The Letter of the Law, NAR's online legal newsletter, at Realtor.org/letterlw. Only for registered users of REALTOR.org.

S C O R E C A R D

Legislation: Summary of content	Last action	Status
<p>Bankruptcy reform proposals. Reduces automatic stay from creditors to 90 days for properties valued at over \$4 million; allows eviction of residential tenants who file bankruptcy if rent is not current; limits time that retail tenants may decide to assume or reject leases to 60 days; requires debtors to repay fees or assessments in homeowners' associations.</p> <p>NAR position. Supports bankruptcy reforms for commercial real estate.</p>	<p>The House passed a bankruptcy reform bill (H.R. 975), which contained all NAR-supported positions.</p>	<p>H.R. 975 has been referred to the Senate. However, the Senate did not act on the bill and its future seems uncertain.</p>
<p>Tort reform. Seeks to slow the escalation of property and liability insurance premiums and reduce large damage awards by trying more class-action cases in federal courts.</p> <p>NAR position. Supports proposals that would move some classes of cases into federal court and prevent "venue shopping."</p>	<p>The Class Action Fairness Act of 2003 (H.R. 1115), which promotes greater fairness in interstate class-action suits, passed the House in June.</p>	<p>The Senate will likely vote on the bill during the new session as legislators made some language changes to accommodate undecided Senators.</p>
<p>Leasehold improvement depreciation. Seeks to lower the depreciable life of tenant leasehold improvements in nonresidential buildings from the current 39 years.</p> <p>NAR position. The depreciation period should be reduced to more accurately reflect the true useful life of tenant improvements in the marketplace.</p>	<p>The House version of the American Jobs Creation Act (H.R. 2896) includes a provision that would reduce the depreciable life of tenant improvements to 15 years. The Senate companion bill does not contain a leasehold provision.</p>	<p>Because the primary thrust of H.R. 2896 is to institute reforms in international tax regulations affecting multinational corporations, the leasehold depreciation provision may be dropped in conference.</p>