

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Thursday, February 5, 2004, in Room 123-S of the Capitol.

All members were present except:
Senator Derek Schmidt (E)

Committee staff present:
Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Representative Doug Patterson
Bill Yanek, Kansas Association of Realtors (written)
Chris Wilson, Executive Director, Kansas Building Industry Association (written)
Scott Schneider, Great Plains Chapter of the American Society of Home Inspectors (ASHI)
Paul Meiers, Norton Y Schmidt Consulting Engineers, Kansas City
Jeff Barnes, Kansas Association of Real Estate Inspectors
Kerry Parham, President, Midwest Pro-ASHI Chapter
Brian Meitler, President, World Pest Control & Sunflower Services
Miki Mertz, Complete Home Inspection, Shawnee
Erik Hansen, National Property Inspections Of Kansas, Lenexa (written)
Gary Hodgden, President, Society of Professional Property Inspectors (written)
Thomas Swayne, TCS Building Inspection Services, Meriden (written)
Mark Hassman, Hassman Termite Pest, Salina (written)
John Bryon, Byron Home Inspection Services (written)
Tom Lauhon, American Residential Inspection, Shawnee (written)
Thomas Swayne, TCS Building Inspections, Inc. (written)
Erik Hansen, National Property Inspections of Kansas (written)
Gary Hodgden, President, Society of Professional Property Inspectors (written)
Mark Hassman, Chairman Government Affairs, Kansas Pest Control Association (written)
John Byron, President, Byron Home Inspection Services, Inc. (written)
Tom Lauhon, American Residential Inspections, Inc. (written)

Others attending: See attached list.

Final Action:

SB 256 - Victim compensation for residents who are victims of crimes committed outside of the United States

Chairman Vratil called for discussion and final action on **SB 256**. The Chair explained the bill, and said it was sponsored by Senator David Jackson.

Senator O'Connor made a motion to pass SB 256 out favorably, and the motion was seconded by Senator Umbarger

Before the vote on the motion, Senator Oleen asked Senator Jackson if there was any conflict between state law and U.S. military law. Senator Jackson responded that as far as he knew there was not. Senator Oleen said she would research this topic and find out before the bill goes to the Senate floor.

Chairman Vratil called for a vote on the motion. The motion carried, with Senator Pugh requesting his no vote be recorded. Senator Pugh explained his negative vote. He said there were a lot of tragedies out there, but he did not know how the state could indemnify people who go to foreign countries or cross U.S. borders and experience a tragic circumstance. Senator Pugh stated that he did not think the state could insure people around the world, but felt it could within the state's own borders under Kansas laws.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, February 5, 2004, in Room 123-S of the Capitol.

SB 316 - Requiring judges to sign executions and orders of sale

Chairman Vratil called for discussion and final action on **SB 316**. He explained that the bill concerned civil procedures, and shifts the requirement of clerks to sign executions and orders of sale back to judges.

Senator Oleen moved to pass SB 316 out favorably, seconded by Senator Goodwin, and the motion carried.

SB 317 - Eliminating the requirement that subpoenaed business records be held indefinitely by the clerk of the district court

Chairman Vratil called for discussion and final action on **SB 317**. He said the bill concerned civil procedure, and related to the subpoena of business records. He added it would allow Clerks of the Court, 30 days following termination of a case, to destroy any records which had not been introduced in evidence and are not required as part of the record.

The Chair stated the bill contained a form that takes up two full pages in the bill. In order to be consistent with the Committee's past practice, the Chair suggested an amendment be considered to delete the form on page 2 and 3.

Senator Goodwin made a motion to amend SB 317 by deleting everything after the sentence which ends on line 25 of page 2 through line 21 on page 4, retaining the first sentence of subsection (c) which is on line 24 and 25 of page 2. The motion was seconded by Senator Umbarger.

Committee discussion followed. Concern was expressed about removing a form that was consistent throughout the state especially for attorneys with small practices, reducing the volume of paper in the Statute Books, and forms being available in form books put out by the Kansas Judicial Council and the Kansas Bar Association.

The Chair called for a vote on the motion to amend by Senator Goodwin, and the motion carried.

Senator Umbarger made a motion to recommend SB 317 favorably as amended, seconded by Senator Donovan, and the motion carried.

HB 2100 - Home inspections; contractual language limiting liability

Chairman Vratil opened the hearing on **HB 2100**. Representative Doug Patterson testified in support of the bill which states that anyone involved in the home inspection business, such as home inspectors, termite inspectors, pool inspectors and other such persons conducting inspection activities based upon a good-faith reliance on their expertise by the consumer, can limit their scope of engagement but cannot disclaim their responsibility for negligent inspections undertaken. He stated that there would be no fiscal effect to the state in respect to **HB 2100**.

Representative Patterson pointed out the small type on page 2 of the standard inspection report form, and how it could be overlooked. He spoke briefly on issues concerning liability insurance. Representative Patterson said that the bill provides that disclaimers of responsibility of professionalism involving large consumer transactions are against public policy. He added that it requires home inspectors to use the same degree of care all citizens use in dealing with the consuming public and to insure themselves against errors. (Attachment 1)

Bill Yanek, Kansas Association of Realtors' Director of Governmental Relations, submitted written testimony in support of **HB 2100**. (Attachment 2)

Chris Wilson, Kansas Building Industry Association, submitted written testimony as a proponent of **HB 2100**. (Attachment 3)

Scott Schneider, representing the Great Plains Chapter of the American Society of Home Inspectors (ASHI), spoke in opposition to **HB 2100**. He stated that the bill restricts citizens' freedom to contract which is protected by the Fifth and Fourteenth Amendments of the U.S. Constitution. He made three

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, February 5, 2004, in Room 123-S of the Capitol.

points in his testimony: (1) the bill would alter the market place for the home buyer, (2) the proposed bill extends the remedy for a breach of contract far beyond any gain or profit realized by a home inspector, and (3) ASHI believes the bill unfairly singles out the smallest participant in the transaction to benefit the largest. ([Attachment 4](#))

Paul Meiers, Norton & Schmidt Consulting Engineers, testified in opposition to **HB 2100**. He stated that the proposed legislation was anti-small business, would hurt every Kansas homeowner and home buyer and undercut the Kansas economy. Mr. Meiers explained that the bill would wipe away any ability of home inspectors to protect themselves from excessive and vindictive lawsuits, and gives a green light to disgruntled homeowners to sue home inspectors based on whatever problems arise in a home in the future during the natural course of home ownership. He felt that **HB 2100** went against the goal of tort reform, and undermines the concept of personal responsibility and free market. ([Attachment 5](#))

Jeff Barnes, Kansas Association of Real Estate Inspectors, spoke in opposition of **HB 2100**. He stated that the bill is against existing public policy which allows a disclaimer or limitation of liability. He expressed two concerns with the bill, i.e. the potential for the cost of an inspection to increase, and the increased liability and cost would inevitably lead to delays in scheduling. Mr. Barnes added that inspections would take longer to complete, and have increased documentation. ([Attachment 6](#))

Kerry Parham, Midwest Pro-ASHI Chapter President, testified in opposition of **HB 2100** because it burdens trades people and professionals who provide needed services to assist prospective real property buyers to make informed decisions. He felt the main purpose of the bill was to eliminate an impediment to prosecution by trial attorneys; the true beneficiaries of the proposed legislation. Mr. Parham stated that if the bill were enacted it would wreck havoc among the home inspection industry forcing a lot of established and/or rural members out of the profession because the cost of doing business or the financial risk would be too great. He concluded by stating the home buyer's greatest protection against unqualified home inspectors was to choose "certified" members of ASHI. ([Attachment 7](#))

Brian Meitler, World Pest Control and Sunflower Services, spoke against **HB 2100**. He felt it would make inspection company's exposure to litigation increase dramatically. ([Attachment 8](#))

Miki Mertz, Complete Home Inspection, testified in opposition to **HB 2100**, saying the bill would change the job description of a home inspector. She explained that currently a home inspector is to examine, describe and recommend, but this bill would imply that a home inspector would now be required to provide a warranty on all systems of the house forever. She stated that a home inspection was not intended to be a guarantee of the future performance of the house. The inspector offered a professional opinion of the condition of the house at the time of the inspection. Ms. Mertz said she believed the intent of this bill was consumer protection, but was afraid it would actually hurt consumers. She recounted that home inspectors would not be able to get errors and omissions insurance in a state with unlimited liability, so there would be fewer inspectors willing to do business. She concluded that there are existing legal avenues to take when a home inspector is negligent or provides an unprofessional service, and that this bill was not necessary. ([Attachment 9](#))

Due to time constraints, the following opposition conferees submitted their testimony in writing:

Thomas Swayne, Owner, TCS Building Inspection Services, Inc. ([Attachment 10](#))
Erik Hansen, National Property Inspections of Kansas, Inc. ([Attachment 11](#))
Gary Hodgden, President, Society of Professional Property Inspectors. ([Attachment 12](#))
Mark Hassman, Chairman Government Affairs, Kansas Pest Control Assn. ([Attachment 13](#))
John Byron, President, Byron Home Inspection Services ([Attachment 14](#))
Tom Lauhon, American Residential Inspections, Inc. ([Attachment 15](#))

Due to the expiration of the allotted Committee meeting time, there was not time for any questions from Committee members. Chairman Vratil closed the hearing on **HB 2100**.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is February 9, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Thurs, Feb. 5, 2004

NAME	REPRESENTING
JAMES NAYLOR	GREAT PLAINS CHAPTER (KC METRO) of Amer Society of Home Inspectors
Miki Mertz	Great Plains ASHI
Thomas G. Lanhon	Great Plains ASHI
SCOTT SCHNEIDER	Great Plains ASHI
Paul Meiers	NORTON & Schmidt Const. Engr.
Gary Hodgley	SPPL
Steve Hodgson	SOCIETY OF PROFESSIONAL PROPERTY INSPECTORS
BILL YANEK	Kansas Assn of Realtors
KERRY PARHAM	Pres. Midwest Pro-ASHI
Jeff Barnes	Kansas Association of Real Estate Inspectors
Hal Hudson	KPCA
Brian Meitler	World Pest Control
Mark Hassman	KPCA
Kathy Potts	Medical Branch
Doug Patton	HB 2100 - Kansas House
LARRY MAGILL	Ks. ASSN OF INS AGENTS
Barb Conant	Ks. Trial Lawyers Assoc.
Joe Keen	House Master Home Insp.
Tom Swaine	TCS Building Inspections

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-5-04

NAME	REPRESENTING
Joff Botenberg	State Farm

HOUSE OF
REPRESENTATIVES

REPRESENTATIVE, 28TH DISTRICT
JOHNSON COUNTY
12712 EL MONTE
LEAWOOD, KANSAS 66209
(913) 897-6905



DOUG PATTERSON
MAJORITY WHIP

ROOM 174-W
STATE CAPITOL
TOPEKA, KANSAS 66612-1504
(785) 291-3500

VICE-CHAIR: JUDICIARY
MEMBER: COMMERCE AND LABOR
HEALTH AND HUMAN SERVICES
JT. COMMITTEE ON STATE
INDIAN AFFAIRS
HOUSE RULES COMMITTEE

February 4, 2004

Senator John Vratil
Members of the Senate Judiciary Committee

Re: Support of HB 2100, dealing with "Home Inspectors".

Dear Chairman Vratil and members of the Committee:

Currently, within the residential real estate sales practices, a cottage industry has developed called the "home inspector". Home inspectors are now an important component of any residential sales transaction. Home inspectors are relied upon by home buyers in making the decision to purchase their most expensive investment of a lifetime. Accordingly, the validity, integrity and trustworthiness of a home inspector's report is an absolute necessity in the residential sale transaction.

An overwhelming number of home inspectors represent very capable, competent and thorough professionals. They, like us all, infrequently make mistakes. Then, there are also some within the home inspection industry who are not competent to undertake their trade. The problem arises statewide concerning the contracts used, generally, by all home inspectors.

The general form of a home inspectors engagement contract provides that in the event that the home inspector negligently conducts the inspection within their scope of engagement, then notwithstanding their negligence, omission or commission, the home inspector will not be responsible for damages suffered by the buyers in relying upon the home inspectors report, but rather the sole and only recourse against the home inspector will be the return of the fee by the home inspector. This is unfair; it represents an unfair consumer practice and is against public policy. The Kansas court's however have held that such limitations are enforceable without legislation declaring such provisions contrary to public policy. See, *Moler v. Melzer*, 24 Kan. App. 2d 76, 942 P.2d 643 (Ks. App. 1997) and *Corral v. Rollins Protective Services, Co.*, 240 Kan. 678, 732 P.2d. 1260 (Kan., 1987).

HB 2100 simply states that anyone involved in the home inspection business such as the home inspectors, termite inspectors, pool inspectors and other such a person in conducting inspection activities based upon a good-faith reliance on their upon by the consumer, can limit their scope of engagement but cannot disclaim their responsibility for negligent inspections undertaken. There is no fiscal effect to the state with respect to HB 2100.

Senate Judiciary

2-05-04

Attachment 1

Testimony before the House Judiciary Committee demonstrated that many responsible and competent home inspectors maintain liability insurance to cover risks of negligent inspections undertaken by them. Affordable insurance is available to the home inspector. Given the fact that home inspectors typically do maintain professional liability insurance, the contractual limitation of liability is not necessary. In addition, in those instances where and inspector maintains insurance or would be required to obtain insurance as a result of the passage of this law, evidence before the committee indicated that insurance premiums for professional home inspector liability coverage equals between approximately \$2000 to \$2300 per year. Based upon the typical home inspectors annual business of 100 home inspections per year, the added insurance premium of \$100 per inspection could and should be passed on to the consumer. An additional \$25.00 to apply for the insurance coverage in addition to the typical \$250 home inspection fee is a small price for the consumer to pay to be assured that the home inspector is both capable and competent in undertaking their responsibility or maintains professional financial responsibility within the inspector's scope of work. Nothing in HB 2100 prohibits home inspectors to limit the scope of their work.

HB 2100 simply provides that such disclaimers of responsibility of professionalism involving such large consumer transactions are against public policy. It requires home inspectors to use the same degree of care all of us use in dealing with the consuming public and to insure ourselves against our errors. I should add that the Kansas Association of Realtors, HBA and KTLA supported this bill before the House Judiciary Committee.

Respectfully Submitted,



Doug Patterson



Home/Commercial Inspection Application

Inspector's Name: _____ Date of Birth ____/____/____

Do you want corporation coverage? Yes ____ No ____

If yes, what is the name of the corporation? _____

(If you are adding corporation coverage, please note there is an additional premium required – see payment information page)

Address: _____

City: _____ State: _____ Zip: _____

Home Phone () _____ Business Phone: () _____

Fax Number: () _____ E-MAIL Address: _____

1) Years of home inspection experience: _____

2) Years of commercial inspection experience: _____

3) Do you currently have E&O coverage? Yes ____ No ____

If Yes, what is the policy expiration date? _____ Name of Insurance Carrier? _____

(If Yes, a loss/run report from your existing carrier must be submitted.)

4) Are you currently designated with a professional organization? If yes, list your designation(s) and number(s).

Designation desired: () RREI: Residential Real Estate Inspector (residential home inspection)
() CREI: Commercial Real Estate Inspector (residential & commercial)

Please check the level of coverage you would like:

- | | <u>Introductory
Price</u> |
|------------------------------------------------------------------------------|-----------------------------------|
| () Level A Coverage ----- | \$2,575 \$2295* |
| <input type="checkbox"/> \$1,000,000 Errors & Omissions Insurance | |
| <input type="checkbox"/> \$1,000 Deductible | |
| <input type="checkbox"/> \$5,000 Fidelity Bond | |
| <input type="checkbox"/> Realtor Referral Indemnity | |
| () Level B Coverage ----- | \$2,350 \$2195* |
| <input type="checkbox"/> \$500,000 Errors & Omissions Insurance | |
| <input type="checkbox"/> \$1,000 Deductible | |
| <input type="checkbox"/> Realtor Referral Indemnity | |
| () Level C Coverage ----- | \$2,175 \$1995* |
| <input type="checkbox"/> \$300,000 Errors & Omissions Insurance | |
| <input type="checkbox"/> \$1,000 Deductible | |
| <input type="checkbox"/> Realtor Referral Indemnity | |

* Prices subject to change after 3/31/03.

HOME / COMMERCIAL INSPECTION
NEW HOME INSPECTOR APPLICATION

INSURANCE INFORMATION

IMPORTANT: You Must Answer all of the Following Questions:

1. What is desired effective date of insurance coverage? _____ (Date must be no earlier the date the MAILED application is received by FREA.)
2. Has any claim or suit alleging a negligent act, error or breach of duty been brought against the applicant within the past five (5) years?
Yes () No () **If yes, please furnish complete details on a separate sheet.**
3. Does applicant have knowledge of any circumstances which could result in a claim or suit?
Yes () No () **If yes, please furnish complete details on a separate sheet.**
4. Has applicant ever been criticized, censored, reprimanded or had any license suspended or revoked by any professional organization, regulatory agency or court?
Yes () No () **If yes, please furnish complete details on a separate sheet.**
- 5. PLEASE NOTE: There will be no coverage unless a pre-inspection agreement has been signed by the customer.**
6. How many inspectors work for your firm (including yourself)? _____.
7. Do you require retroactive coverage? Yes () No () In certain cases, if you are currently and have had continuous coverage back to the retroactive date requested, we can provide retroactive coverage
- What is desired Retroactive Date of insurance coverage? _____ **IF YOU ARE REQUESTING RETROACTIVE COVERAGE, PLEASE INCLUDE PROOF OF PRIOR COVERAGE BACK TO THE DATE REQUESTED.**

The coverage which applies to individual members is provided by a "Claims Made" master policy issued to the Foundation of Real Estate Appraisers. If applicant has added corporate name on policy, coverage applies ONLY for you as corporate principal. Your personal and corporate assets will be covered under this policy. This policy does not cover other home inspectors, whether employed by you directly or hired as subcontractors. Additional inspectors must apply for coverage separately.

Coverage will apply only when:

1. You are engaged in the inspection of real property. There is no coverage for any other activity.
2. You are in strict compliance with the standards promulgated by an applicant's governing state agency or the standards of those professional organizations on the Group Sponsor's approved list as of the beginning of each respective policy Term.
3. Coverage is for policyholder only and does not cover work performed by anyone other than the applicant.
4. Coverage does not include Radon testing or Termite inspections. (Radon and termite coverage are available. Please call FREA.)

I certify that all the statements and information set forth in this Application and any attachment submitted herewith are true and that no material facts have been suppressed or misstated. I understand that signing the Application does not obligate the insurance company contracted by FREA to provide any insurance benefit. I do agree that the statements and information contained in and submitted with this Application will be relied upon by FREA and its contracted insurance company should this application be approved. I further understand that the Underwriters reserve the right to amend the terms, conditions, limitations and coverage of any policy that is issued pursuant to this application, if subsequent to the date of this application, but prior to the inception of such a policy, there are any material alterations to the information contained herein. In the event of such material alteration the Applicant agrees to give immediate written notice to Underwriters and such notice shall attach to and form part of this application.

Printed Name: _____

Signature: _____ Date _____

(Date can be no later than desired effective date on question 1 above.) Collection by FREA of the specified fee is a condition precedent to the effectuation and continuation of coverage. In the event of the termination of coverage for any reason, an applicant will receive a pro rata return of the fee applicable to the unused portion of policy term, excluding the \$245.00 non-refundable enrollment fee.

FREA: 4907 Morena Blvd. #1415, San Diego, CA 92117 PH: (858) 483-2490 frea@frea.com

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Payment Information Home/Commercial Inspection

Please remember to: (1) complete and sign the Home/Commercial Inspection Application and Insurance Information Pages; (2) check the appropriate box (below) for the level of coverage you desire; (3) indicate payment method (below) and complete the credit card agreement and/or Monthly Installment Plan Sections (if applicable); (4) mail all three pages, with original signatures where indicated, with a copy of your pre-inspection agreement, a summary of your education/training and experience, and payment to FREA (address below). Incomplete applications cannot be processed. **WE DO NOT ACCEPT FAXED APPLICATIONS.**

COVERAGE

Please check the desired level of Coverage:

<input type="checkbox"/> Standard Benefit Package	Annual fee \$ 245.00	
<input type="checkbox"/> Class "A" Coverage \$1 million E&O:	Annual fee \$2,575.00 \$2295.00	<input type="checkbox"/> \$258.00
<input type="checkbox"/> Class "B" Coverage \$500,000 E&O:	Annual fee \$2,350.00 \$2195.00	<input type="checkbox"/> \$235.00
<input type="checkbox"/> Class "C" Coverage \$300,000 E&O:	Annual fee \$2,175.00 \$1995.00	<input type="checkbox"/> \$218.00

Corporate Coverage (optional)

Optional Coverage: (require supplemental applications)

<input type="checkbox"/> Commercial General Liability (\$1 million limit of liability)	Annual fee \$ 450.00
<input type="checkbox"/> Fidelity Bond (Included with Class "A" membership fee):	Annual fee \$ 75.00
<input type="checkbox"/> Radon Coverage	Annual fee \$ 150.00
<input type="checkbox"/> Wood Destroying Insect Coverage	Annual fee \$ 250.00

PAYMENT METHOD

- Check I have enclosed a check payable to FREA for \$ _____.
- Credit Card If paying by credit card, the agreement below must be signed in order for your application and insurance to be processed. Visa, MasterCard and Discover accepted. We do not accept American Express.

I approve FREA to deduct the total amount due of \$ _____ for the level of coverage I have chosen for a one-year term

I approve FREA to deduct the amount of \$350.00. I understand that this is the enrollment fee for the installment plan. In addition to this fee, I understand I will be billed the amount due in 8 monthly installments

Card Holder Name _____

Card No. _____ Expiration Date _____

Signature: _____ Date _____

INSTALLMENT PLAN: (optional)

Installment Plan requires an additional enrollment fee of \$350.00 due with the application. All additional fees are to be paid in 8 monthly installments subject to a \$25.00 late fee if not received within 10 days of due date. If not received within 20 days of due date, FREA may cancel the coverage.

I agree to the above terms _____ Date _____

AUTOMATIC DEBIT (optional): I approve FREA to automatically debit my monthly installment each month from the credit card listed above. If my requested policy start date is in the first 15 days of the month, my credit card will be debited for the first installment within 45 days on the 15th of the month. Each installment thereafter will be debited on the 15th of the month. If my requested policy start date is in the last 15 days of the month, my credit card will be debited for the first installment within 45 days on the 1st of the month. Each installment thereafter will be debited on the 1st of the month. *Please Note: the automatic debit is also subject to the \$350 installment plan enrollment fee.*

Example 1: Requested start date of 10/26/01 will be automatically debited on the 1st of the month, starting 12/1/01.

Example 2: Requested start date of 10/10/01 will be automatically debited on the 15th of the month, starting 11/15/01.

Signature _____ Date _____

FREA: 4907 Morena Blvd. #1415, San Diego, CA 92117 PH: (858) 483-2490 frea/frea.com

APPLICATION CHECKLIST

Please read carefully to avoid a delay in processing your application.

To assure that your FREA application and insurance binder are processed and issued without delay, please be certain to mail the completed application with payment to FREA, and that the following items are included:

1. Answer all of the Errors and Omissions questions. If you answer "yes" to any of these questions, you must provide a detailed explanation. (If you have had a claim, you must provide details, such as: date of the suit, the stated reason for the action, the amount you were sued for and the current status of the suit.)
2. A summary of qualifications, resume including experience, training/education and professional designation(s), and proof of education (if applicable) such as certificates of completion or letters.
3. A copy of your pre-inspection agreement or contract.
4. If you are currently insured, you must obtain an up-to-date loss/run report from your existing carrier and submit it with this application.
5. If you desire your corporation to be named as co-insured, you must include the corporation name on the application along with your individual name (a company cannot be named solely). Additional premium is required, please ask your FREA representative for details.
6. If you desire radon, pest, or commercial general liability coverage, the proper supplemental application must be submitted along with the membership application. Please ask your FREA representative if these applications are not included in your application package.
7. If you are part of a group application, you must identify the name of the group if your application is sent in individually.
8. Payment must be received before an insurance binder can be issued. If you are paying by credit card (VISA / Mastercard / Discover card only) you must include the card number, expiration date and you must sign the credit card agreement.
9. If you would like to be on the installment plan, the Installment plan agreement must be signed. Please see page 3 of the application.

10. Sign and **MAIL** the completed application to:

FREA,
4907 Morena Blvd. #1415
San Diego, CA 92117

FAXED applications will not be processed. An insurance binder cannot be issued until an application with a "live signature" and payment are received.

COMMERCIAL GENERAL LIABILITY INSURANCE

Supplemental Application (optional)

(Please fill this application out only if you would like to add general liability to your policy, please note there is an additional fee required)

1. NAMED INSURED (For insurance purposes) _____

PHYSICAL MAILING ADDRESS _____

(NOTE: Policy will not be issued without a physical address -- No PO Boxes)

CITY _____ STATE _____ ZIP CODE _____

HOME PHONE () _____ BUSINESS PHONE () _____

FAX () _____

2. Applicant's Form Of Business: (circle one) Individual / Sole Prop Corp. Partnership Joint Venture LLC

3. Physical address of any additional office locations used by applicant in the conduct of Applicant's business:

NOTE: Properties owned, rented or occupied by applicant other than those used specifically for office purposes in the conduct of Applicant's inspection business are excluded from coverage under the master Commercial General Liability Insurance. Policy issued to The Foundation of Real Estate Appraisers.

4. What is the desired effective date of insurance coverage? _____

5. How many inspectors/Appraisers are active in the business? _____

6. Do you expect to add anymore inspectors/appraisers +during this coming year? _____ If yes, how many? _____

7. Loss History: Enter all claims or occurrences for the prior 5 years. Check here if none.

<u>Date</u>	<u>Description of Occurrence or Claim</u>	<u>Date of Claim</u>	<u>Amt. Paid</u>	<u>Amt. Reserved</u>
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Commercial General Liability Insurance coverage applies as follows:

1. The Policy covers Bodily Injury, Property Damage, Personal Injury and Advertising Injury.
2. Limits of Liability afforded apply on a Combined Single Limit basis for all of the above coverages, subject to the same per occurrence / aggregate limit.
3. A zero deductible applies to each claim.
4. If insurance is issued, the applicable policy period shall be for one year from the effective date of coverage.
5. There will be no back dating. Coverage will not be effective prior to the receipt by FREA of the necessary funds.

I require Commercial General Liability Insurance with liability limits of \$1 million, at an annual fee of \$450.

I certify that all the statements and information set forth in this Supplemental Membership Application and any attachments submitted herewith are true and that no material facts have been suppressed or misstated. I understand that signing this Supplemental Membership Application does not obligate FREA to grant membership or bind the insurance company contracted by FREA to provide any membership insurance benefit. I do agree that the statements and information contained in and submitted with this Supplemental Membership Application will be relied upon by FREA and its contracted insurance should the requested insurance be effected.

Printed Name _____

Signature _____

Date _____

RADON TESTING COVERAGE
SUPPLEMENTARY APPLICATION (Optional)

(\$150 per year)

1. When did you first pass the EPA Radon Measurement Proficiency Exam or State?
Equivalent Radon Program Exam? _____
(Please attach photocopy of your Radon Residential Measurement Provider.)

2. Please check the relevant types of Radon detection devices used:
 Charcoal canisters
 Alpha track detectors
 Charcoal liquid scintillation devices
 Electret iron chamber detectors
 Power driven continuous monitors

3. Do you only use for analysis a laboratory listed by the EPA? Yes No
If no, please explain: _____

4. What is the approximate number of monthly radon inspections you perform? _____

5. Do you provide mitigation and/or consulting services for radon? Yes No
(Note: FREA's Group Insurance Policy does not cover radon mitigation or radon consulting services.)

6. Please check the relevant non-interference measures you use:
 Radon detectors and connected components secured to resting surface by
tamper evident tape;
 Application of tamper evident sealing tape to windows and non-primary doors;
 Inclusion of radon detection equipment in a tamper proof cage incorporating
motion sensors, infrared or ultrasonic proximity sensors;
 Grab sampling from prone areas at the time the radon detectors are placed.

7. Do you require all relevant parties to sign a non interference agreement? Yes No
(If yes, please attach a specimen copy of the agreement)

I CERTIFY THAT ALL THE STATEMENTS AND INFORMATION SET FORTH IN THIS SUPPLEMENTARY MEMBERSHIP QUESTIONNAIRE ARE TRUE AND THAT NO MATERIAL FACTS HAVE BEEN SUPPRESSED OR MISSTATED.

Printed Name _____

Signature _____ Date _____

This signed original questionnaire must be mailed to FREA with membership application and payment.

**WOOD DESTROYING INSECT ("WDI") COVERAGE
SUPPLEMENTARY APPLICATION (optional)**

Wood Destroying Insect ("WDI") coverage is available for an additional \$250, if you qualify, with a \$1,000 deductible.

Wood Destroying Insect means arthropod life which damages and can reinfest seasoned wood in a structure, namely, termites, carpenter ants, wood boring beetles, wood boring wasps, carpenter bees, powder post beetles, and old house borers.

To be eligible for coverage, a minimum of twenty-five (25) WDI inspections must have been performed by the inspector. Prior claims must be reviewed by underwriting in detail. No coverage will be afforded on a retroactive basis. **NOTE: FREA's Group Insurance Policy does not cover any WDI treatment or mitigation services.**

This Supplemental Membership Questionnaire must be fully completed for each inspector requesting coverage.

INSPECTOR'S NAME _____

ADDRESS _____ PHONE # _____

CITY _____ STATE _____ ZIP _____

1. Does the state in which you perform or will be performing WDI inspections have a licensing requirement? Yes ____
No ____ **If yes, please provide a photocopy of your license.**

2. How many years of WDI inspection experience do you have? _____

3. How many WDI inspections have you performed in the past? _____

4. What is the approximate number of WDI inspections you plan to perform each month? _____

5. Please give details of all educational courses on WDI / evaluation you've taken: _____

6. Do you or your firm or any persons associated with or employed by your firm provide any treatment for wood destroying insects? Yes No. If yes, please provide details: _____

7. Have you or your inspection firm had any claims regarding WDI inspections?
 Yes No. If yes, please provide full details: _____

I certify that all the statements and information set forth in this WDI Supplementary Membership Questionnaire are true and that no material facts have been suppressed or misstated. I understand I will be charged an additional \$250 for WDI coverage.

Signature _____

Date _____

NOV-15-2000 WED 12:08 PM JCN PV

FAX NO. 9136482292

P. 02

BUILDING REVIEW CONTRACT

PROPERTY ADDRESS: _____	JOB # _____
CITY/STATE: <u>Overland Park KS</u>	REVIEW DATE: <u>10/15/00</u>
CLIENT NAME: _____	REVIEW TIME: <u>9 AM</u>

RIGHT OF ENTRY: I warrant that I or my agent have made all necessary arrangements with the owner for [redacted] to enter and review the property described in this agreement.

SEVERABILITY: If any court or arbitrator determines that any portion of this contract is unenforceable, that court or arbitrator shall enforce the remainder of the contract as though the unenforceable portion did not exist.

PARTICIPATION: I have been encouraged to participate in the review and accept responsibility for incomplete information should I not participate in the review. My participation shall be at my own risk for falls, injuries, property damage, etc.

SCOPE OF THE WORK:

- Structural Review**
 Foundation Only
 A structural review consists of an engineer reviewing the exposed structure of the building (concrete slabs, foundation walls, floor frame, load bearing walls, roof frame and exterior grade around the perimeter of the house).
- M/E Review**
 A mechanical and electrical review consists of checking all major (exposed) plumbing items, heating and cooling systems, electrical service and built-in kitchen appliances.
- Roof Covering Review**
 A roof covering review consists of examining the present condition of the roof material observed from the ground provided the surface is visible.

EXCLUSIONS AND CONDITIONS: Items not covered in this review include, but are not limited to, the following: doors, windows, locks, refrigerators, freezers, ice makers, whirlpools, saunas, pools, hot tubs, intercommunication systems, burglar alarms, telephone and television systems, wood burning stoves, fireplace inserts, flue liners, solar equipment, sprinkler systems, yard lights, grills, unattached exterior plumbing and electrical fixtures, wells, fences, sewage disposal systems, presence of termites or any other insect/pest infestation, radon, asbestos or any other environmental hazard, and any unattached buildings. To avoid possible damage to the units, air conditioners will be tested only if the outside temperature exceeds 65 degrees Fahrenheit at the time of the site visit. Heat-pumps will be tested in one mode only (heating or cooling) as required by the outside temperature at the time of the site visit.

No expressed or implied warranty or guarantee of any kind of any future performance, condition or suitability is given. It is also understood and agreed that the report to be rendered on the basis of this review is not to be construed as a guarantee or warranty of the premises or equipment therein and is not to be used as a basis for determining the value of the premises or whether or not the same is to be purchased. Unless otherwise specified in writing in the report, no review will be given for: (a) a condition or performance of any items observed after the time of the inspection; (b) improvements complying with any building restrictions, codes, zoning or other standard imposed by law or arising out of protective covenants or declarations which extend to the property; (c) any conditions which are concealed by view, in part or in whole, by any man-made or natural barrier (i.e. snow, trees, shrubs, interior walls and structural members, personal property, etc.); (d) any defect that is cosmetic in character and that is apparent to normal inspection by the buyer (i.e. broken glass, wear and tear); or (e) possible water damage.

The written report and this agreement constitute the sole representations by [redacted] and any discussions that may occur during or after the review shall be considered informal in nature and shall be superseded by the report of review which shall constitute the sole report by [redacted] as to the condition of the premises. The review and the written report that will follow is not an exhaustive technical evaluation of the premises and no engineering, architectural or design work recommendations will be provided. Those services would be beyond the scope of a standard building review. A comprehensive engineering evaluation which may include invasive testing and/or laboratory testing may be obtained upon request but would be at a substantially higher cost and would be pursuant to a separate written agreement which would specifically identify the scope of services to be performed.

The fee (on Page 2) covers only the cost of the review checked above. Additional site visits, conferences, court room appearances or fees charged by consultants or engineers whose services are required by the client will be negotiated.

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FAX NO. 9136492292

P. 03

RISK ASSESSMENT: I understand this work cannot accurately and completely assess risk, detect all flaws, predict all occurrences or make assurances. I understand this will not eliminate my risk and I will not burden the reviewer or [redacted] with such risk. I understand this is not a warranty, guarantee or insurance policy though some jurisdictions may imply such. I will purchase such instruments from others if I desire.

ARBITRATION: I agree to submit disputes to binding arbitration in accordance with the rules of the American Arbitration Association. Property or equipment in dispute will be made available for viewing during arbitration. Arbitration will occur at the property, unless mutually agreed otherwise, and I will immediately phone and write [redacted] of any claim. Repairs or replacements accomplished without consultation with [redacted] completely relieve the reviewer and [redacted] of any and all liability.

INDEMNIFICATION: When making visual observations of a building, it is required that certain assumptions be made regarding the existing conditions. Because these assumptions may not be verifiable without expending added sums of money or destroying adequate or serviceable portions of the building, I agree that, I will hold harmless, indemnify and defend the reviewer and [redacted] from and against all claims, losses, liabilities and expenses (including legal fees) arising out of the services provided by the report. I understand that neither the engineer nor [redacted] shall be jointly or individually liable to the client/owner in any amount in excess of the fee listed below.

THIRD PARTY LIABILITY: I request this review and report for my confidential use only. By my release of this report, I promise to indemnify and hold harmless the reviewer and [redacted] for any damages claimed by others, including those damages arising out of [redacted]'s own negligence.

DISCLOSURE: I authorize the disclosure of information within this report to my agent, seller's agent, seller, lender or other parties intimate to this transaction for the purpose of clarification and facilitation of repairs:

YES NO
(circle one)

[Signature]
(initial)

ATTORNEY'S FEES: If I make a claim against the engineer or partnership for any alleged error, omission or other act arising out of this work and fail to prove such claim, I will pay all attorney's fees, arbitrator's fees, legal expenses and costs incurred by the reviewer or [redacted] in the defense of such claim.

30 DAY REFUND: Should I be dissatisfied with the engineer or report, the fee may be refunded with 1) written notice given to the engineer within 30 days from the date of the review and 2) the original signed and/or sealed report returned to the engineer or [redacted] within 30 days. I understand that the fee will not be refunded until the original report is returned nor will I make or keep any additional copies.

FOR REAL ESTATE TRANSACTIONS ONLY: The property may be in good condition when examined, but the condition may change thereafter. As part of this review contract, I agree to do a "pre-closing walk-thru examination" of the property 48-72 hours prior to closing to insure that all systems/components originally reviewed are still functional. If a problem is discovered during my walk-thru, I agree to describe the problem in writing and send to engineer immediately.

I have read, understand and agree to be bound by the terms of this contract or have renegotiated them in writing to my satisfaction. I am aware that this is a limitation of liability and a contract between myself and [redacted] and I sign of my own free will. In the event of refund of the fee, such refund shall be accepted by the undersigned as full and final settlement of all claims and causes of action and the reviewer or [redacted] as agreed herein. Acceptance of this report constitutes acceptance of all contractual terms herein. I agree to pay the charge as specified below at the time of the review or within 30 days. If payment is not received by [redacted] within 30 days, I understand interest will be charged at the rate of 1.5% per month.

Fee Amount: \$700

CLIENT SIGNATURE: X *[Signature]*
SPOUSE (IF APPLICABLE): X *[Signature]*
DATE: 11/15/00

BY: *[Signature]*
Consulting Engineers, LLP

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.
Facsimile signatures shall be sufficient unless originals are required by a third party.

1-11



AMERICAN SOCIETY OF
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4.9 Million Home Inspections Performed in 2000; ASHI/ NAR Study Suggests Dramatic Growth in Home Inspectic

A recent study completed by the American Society of Home Inspectors (ASHI) National Association of Realtors (NAR) estimates that nearly 4.9 million home inspections were completed in the U.S. in 2000. Conducted on more than 77% of all home inspections have become an integral part of the real estate transaction process.

The first-ever National Home Inspection Study shows that existing single-family homes were the primary living unit in which inspections were completed in 2000, totaling 1.4 million. Apartments/Condos/Co-ops and newly constructed homes made up the remainder of the inspections, where approximately 537,000 and 377,000 home inspections were completed respectively.

Regionally, the South led the nation with nearly 2 million home inspections last year, followed by the West (1.4 million home inspections), the Midwest (900,000) and the Northeast (620,000).

"It's clear from the study that more people are recognizing the importance of home inspections," said John Ghent, president of ASHI, the largest and most respected professional organization for home inspectors. "By hiring a qualified home inspector, a client gains an understanding of the overall condition of the home, which can pay for itself down the road."

Ghent also added that while obtaining a home inspection prior to purchasing a home is the most common reason for an inspection, consumers retain inspectors for a number of other reasons.

"Many consumers want a home inspection before selling their home to better understand the condition prior to putting it on the market," he explained. "For those building a new home there is often a desire to monitor the progress and quality of the home construction. Homeowners also retain inspectors, even if they are not buying or selling, to periodically check the condition of their home, in case any repairs are needed. In fact, a significant portion of the home inspection business has been built on periodic inspections for homeowners."

State of the Industry

The National Home Inspection Study surveyed home buyers and real estate agents in a nationwide omnibus poll, and found that among those who retained an inspector, ninety-seven percent believe that the home inspection was a good value for the price they paid.

These and other key findings, as well as additional information on the methodology used in the study, are available from ASHI.

For More Information

Celebrating its 25th Anniversary this year, the American Society of Home Inspectors is the oldest and most respected non-profit, professional organization of home inspectors in North America. Its mission is to promote excellence and exemplary practice within the industry.



AMERICAN
SOCIETY of
HOME
INSPECTORS

Established 1976

Position Statement on Regulation of Home Inspectors

July 2003

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This document shall be reviewed and revised in July 2004, at which time this edition may be inaccurate and should be discarded.

Rev. 7/03

CONTINUING EDUCATION

The homebuilding industry is constantly evolving as new materials and techniques are introduced. Home inspectors must be aware of these changes. Mandatory continuing education assures consumers that inspectors are staying current. ASHI requires 20 hours of continuing education credits per year to maintain Membership and recommends continuing education be a part of any regulation of the profession.

TESTING

Central to regulatory and credentialing processes is a valid and reliable minimum competency examination designed to protect the public. This examination will identify which individuals possess the required knowledge to perform a home inspection. The public should be able to trust the examination as a means by which consumers are assured of competency. Individuals wishing to enter the home inspection profession must demonstrate that they understand the basics of performing a home inspection. Rigorous requirements must be met in the development, administration and governance of the examination to ensure that a valid, accurate and fair process determines each candidate's pass/fail standing.

The Examination Board of Professional Home Inspectors (EBPHI) has developed the National Home Inspector Examination (NHIE) as an assessment tool to test competence in home inspection practice, as determined by recognized role definition methodology. The test was developed and administered in a manner consistent with the American Educational Research Association's "Standards for Educational and Psychological Testing"; the Equal Employment Opportunity Commission's "Uniform Guidelines for Employee Selection Procedures"; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990; and other applicable standards. Currently, 22 states have an examination, and 12 of those use or accept the NHIE as the examination required in their regulatory laws.

FINANCIAL ASSURANCE AND LIABILITY

The consumer has a right to expect the home inspector to be financially solvent and the inspector should be required to provide financial assurance comparable to that which is required of similar license holders, such as brokers, appraisers, engineers, etc., in each state. A home inspector should be able to limit his/her liability by mutual agreement with the client.

RECIPROCITY

Different states regulate the home inspection profession in different ways: licensing, registration, certification and/or practice acts. Home inspectors from jurisdictions with similar general requirements for education and experience who have passed the National Home Inspector Examination or another psychometrically valid exam should be allowed to inspect homes in other areas of the country, provided all other requirements of the state law are met by the nonresident inspector.

Registry of Complaints

In lieu of proceeding with an investigation, the Board may place, in a registry, a copy of a complaint received by the Board against a licensed home inspector, the inspector's response to the complaint, and a copy of any records of the Board concerning the complaint.

1. The Board shall provide the inspector with a copy of the complaint no later than 30 days after the date on which the Board receives a complaint alleging that a home inspector has engaged in conduct that is grounds for discipline.
2. After receiving a copy of the complaint, the home inspector may place in the registry a statement describing the inspector's view of the correctness or relevance of any of the information contained in the complaint.
3. The Board shall make the complaint and the home inspector's response to the complaint available to the public.
4. The Board shall remove all complaints against and other information concerning a home inspector from the registry if, for a period of (two) 2 years from the date of the most recent complaint filed in the registry, no further complaints have been filed against the inspector.
5. Unworthy or frivolous complaints shall be discarded and shall not be retained.

Liability of Home Inspectors

1. An action to recover damages for any act or omission of a home inspector relating to a home inspection that he or she conducts can only be commenced within one (1) year after the date that a home inspection is completed.
2. Only a client and no other party shall have an action to recover damages arising from a home inspection or a home inspection report.

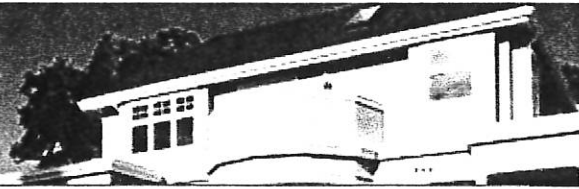
Penalties

The Board may, as a condition of removing a limitation on a license or of reinstating a license that has been suspended or revoked, do any of the following:

1. Require the home inspector to obtain insurance against loss, expense and liability resulting from errors and omissions or neglect in the performance of services as a home inspector.
2. Require the home inspector to file with the Board a bond that is furnished by a company authorized to do business in this State and is in the amount approved by the Board.



AMERICAN SOCIETY OF HOME INSPECTORS



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- [Code of Ethics](#)
- [State Regulations](#)
- [The ASHI Reporter](#)
- [ASHI Chapters](#)
- [Fax-on-Demand](#)
- [Products & Services](#)

Insurance

Business Risk Partners

78 Bridge Street
 Suffield, CT 06078
<http://www.inspectorinsurance.com>



Protect your home inspection business with ASHI's endorsed Errors & Omission Program provided by Business Risk Partners. Business Risk Partners is a Managed as a surplus lines producer, underwriting professional liability on behalf of Lloyds. BRP is a privately held corporation, incorporated in the state of Connecticut, internationally recognized insurance market established more than 300 years ago.

Business Risk Partners' E&O Insurance Program is especially designed for ASHI

- General Liability coverage for claims resulting in bodily injury or property damage at the inspection site
- Automatic coverage for radon inspections
- Coverage for commercial inspections if less than 10% of services
- Exclusive ASHI membership discount
- Referral coverage for real estate agent included
- Automatic tail coverage for 60 days after policy expiration
- Non-cancelable policy except for non-payment of premium
- 60-day post policy period Reporting Provision
- Web site provides 24/7 access

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RESOURCE DIRECTORY



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 Inspector's
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Claims Scenarios

BUSINESSRISK

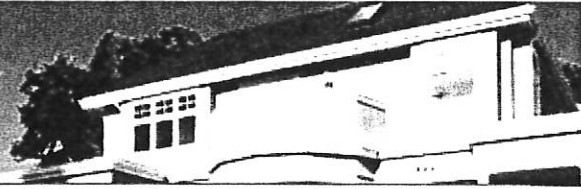
PROFESSIONAL LIABILITY INSURANCE

Business Risk Partners, backed by Lloyd's general professional liability coverage for

Professional liability insurance, also called (E&O), protects an individual or a company



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RESOURCE DIRECTORY

Insurance

Target Insurance Services

35 Tower Lane
 Avon, CT 06001
 Fax: 860-679-9391
vmcdonald@target-capital.com
<http://www.target-capital.com>



As a leading administrator of home inspector liability programs, we have developed understanding of our clients' business needs and the selection of coverage and service. Target Insurance Services offers two types of policies; the first type of policy is liability, which covers the services provided by home inspectors. The second type combined professional liability and general liability that is offered on an occurrence PL/GI into a single occurrence form, Target Insurance Services is able to offer a service that saves time and money by alleviating confusion over which coverage form is best. The ASHI Inspectors Insurance Program is underwritten through Lexington Insurance Company (Superior)" by A.M. Best.

Coverage features include:

- This policy not only provides coverage for home inspector services, it also provides liability coverage arising from business operations.
- Coverage for residential inspections
- Radon inspection coverage may be added to the policy
- An easy-to-complete application

Limits available:

- From \$100,000 to \$1 million
- Deductibles as low as \$1,500

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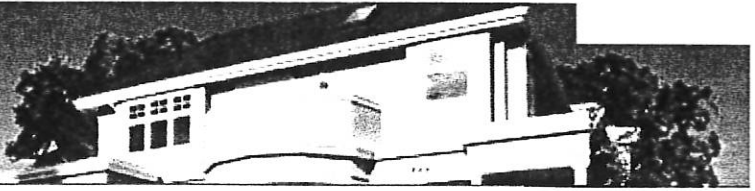
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ASHI.org Search Results

Search Results

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insurance liability Search

New Refine

1. ASHI - State Regulations
sets license fees and **insurance** requirements, and defines penalties under which ... inspec
insurance and a bond of \$5 ... Errors and Omissions **Insurance** in the amount of \$200
<http://www.ashi.org/inspectors/state.asp>
2. ASHI - State Home Inspector Regulatory Legislation
sets license fees and **insurance** requirements, and defines penalties under which ... inspec
insurance and a bond of \$5 ... Errors and Omissions **Insurance** in the amount of \$200
<http://www.ashi.org/customers/state.asp>
3. ASHI - Members Only
Inspectors : Products & Services **Insurance** Business Risk Partners 78 Bridge ... Omission
Insurance Program provided by Business ... underwriting professional **liability** on behalf o
<http://www.ashi.org/resources/detail.asp?id=131>
4. ASHI - Members Only
Inspectors : Products & Services **Insurance** Target **Insurance** Services 35 Tower Lane Av
inspector **liability** programs, we have ... require. Target **Insurance** Services offers two
<http://www.ashi.org/resources/detail.asp?id=86>
5. ASHI Position Statement 2003
regulatory laws. FINANCIAL ASSURANCE AND **LIABILITY** The consumer has a right to e:
home ... able to limit his/her **liability** by mutual agreement with the client. RECIPROCITY C
http://www.ashi.org/pdf/ASHI_Position_Statement.pdf
6. ASHI - Members Only
Inspectors : Products/Services **Insurance** Business Risk Partners Suffield ... Inspector's Pr
Liability Insurance Claims Scenarios What ... general professional **liability** coverage for
<http://www.ashi.org/resources/sendLink.asp?cat=prod&id=131>
7. ASHI Home Inspectors Section
Credentials Getting Started **Liability** Obtaining More Information Background Requirement
Liability Home inspection is a ... and Omissions **Insurance** coverage is available
<http://www.ashi.org/inspectors/become.asp>
8. ASHI - Members Only
Home Inspectors : Products/Services **Insurance** Target **Insurance** Services Avon, CT Cov
include ... also provides general **liability** coverage arising from business operations
<http://www.ashi.org/resources/sendLink.asp?cat=prod&id=86>

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insurance liability Search

New Refine

6 more pages

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TO: SENATE JUDICIARY COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: February 5, 2004
SUBJECT: House Bill 2100

HB 2100 would make any agreement or contract issued by a home inspector for a home inspection report that contained “language limiting or disclaiming the home inspector’s liability” against public policy and void.

The Kansas Association of REALTORS® supports passage of HB 2100.

Under 58-30-106 of the Kansas Brokerage Relationships in Real Estate Transactions Act, our licensees are required to disclose “material facts actually known”. REALTORS® are not property inspection experts, therefore they routinely recommend that clients seek an inspection by a “qualified third party”.

REALTORS® and their clients rely on the expertise of qualified third party inspectors to identify material defects in systems and components prior to the sale of real estate.

Consumers should be protected from home inspectors who issue reports, yet disclaim or limit their liability.

However, our support of HB 2100 does not preclude our participation in, and support of, a potential compromise. One such compromise would be to allow home inspectors to limit their liability to some degree, yet allow the homebuyer and other stakeholders avenues to pursue catastrophic or financially significant claims.

We urge you to pass favorably House Bill 2100.

Senate Judiciary
2-5-04
Attachment 2



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TOLL FREE

785.267.1867
FAX

3644 SW Burlingame Rd
Topeka, Kansas 66611
www.kansasrealtor.com

**STATEMENT OF THE
KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE SENATE JUDICIARY COMMITTEE
SENATOR JOHN VRATIL, CHAIR
REGARDING H.B. 2100**

FEBRUARY 5, 2004

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). Our over 2300 members are involved in the state's residential building industry. Thank you for the opportunity to express support for H.B. 2100.

KBIA builder members have had experience with good home inspectors and also, unfortunately, with home inspectors who have no training and qualifications to do the job. Our Association's position is that home inspectors should have to pass the same level of exam as they are doing the inspection for, or in other words, to inspect a home, they should have to pass the local contractor's exam, or plumber's exam if doing a plumbing inspection, and so on.

When H.B. 2100 was introduced last year, KBIA supported it because our members believe that one should be responsible for one's own negligence, and that it should be against public policy to limit professional liability to the fee charged. We believe this is an unconscionable contract clause. The consumer is not in a position to reject such a contract when all home inspectors have that clause in their contract and perhaps the consumer's lender is requiring a home inspection in order to issue a mortgage. The consumer then has no choice but to accept the contract with the objectionable clause in order to have a home inspection performed so that he can purchase a home.

It seems that the insurance industry drives a lot of legislation and issues such as this. We assume that the insurance industry is requesting home inspectors to include this clause, and it has become standard for all home inspectors to do so. We have a professional engineer member whose insurance company has instructed his firm to do the

Senate Judiciary
2-5-04
Attachment 3

same. However, his firm's clients would not accept the clause, and the firm does not use it.

After the language concerning a single system or component was stricken from the bill, some of our members were concerned that if they are giving an estimate, for an example a plumber giving a plumbing estimate or analysis prior to a home purchase, that this bill would increase their liability. However, they do not use contract clauses of this nature. Also, in our reading of the bill, it is limited to those who issue a home inspection report and their liability is limited to the information covered in the report. So, for instance, if the inspector can't visually inspect an area, the report may say so, and he is not liable for what he can't see or inspect.

While we would prefer to see the stricken language on lines 22-29 restored, KBIA supports the bill. Also, our Association would like to work with the home inspection industry and other interested parties towards some compromise language or other mechanism to provide some regulation of home inspection. It seems to us that there clearly is a need to in some way regulate home inspectors to discourage those without training or financial stability from entering the business and to provide some level of consumer protection.



Gaches, Braden, Barbee & Associates

300 SW 8th Third Floor - Topeka, KS - 66603
785.233.4512 - Fax: 785.233.2206

Opposition testimony on HB 2100

by Scott J. Schneider J.D.

On behalf of

Great Plains Chapter of American Society of Home Inspectors

Mr. Chairman and members of the committee my name is Scott Schneider and I represent the Great Plains Chapter of the American Society of Home Inspectors (ASHI). ASHI is a national certification organization for home inspectors.

We oppose HB 2100 because it restricts our freedom to contract protected by Fifth and Fourteenth Amendments of the U.S. Constitution. We readily acknowledge this protection is not absolute but it should be subject only to limited and reasonable restraints. *Manhattan Buildings Inc., v. Hurley*, 231 Kan. 20, 28, 643 P.2d 87 (1982); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 81 L.Ed. 703, 57 S.Ct. 578 (1937). We question the reasonableness of making one contract in a sophisticated real estate transaction involving several contracts against public policy.

It is important to recognize why home inspections even exist. Kansas law only requires the realtor to disclose to the buyer "material facts actually known" (K.S.A. 58-30,106). This law is both a sword and a shield for the realtor industry. This law shifts the burden of proof away from the realtor and seller to the buyer. This is the pinnacle of "buyer beware." A buyer chooses to contract for a home inspection to protect them from this law. If a home inspector did not protect themselves by entering into a contract which establishes a set of clear expectations, they would likely be liable even for hidden or latent defects. *Realtors limit their liability by the statute; home inspectors limit their liability by contract.*

Opposition to HB 2100 is justified on several fronts. First and most importantly, the bill will alter the market place for the homebuyer.

1. A home inspector will now essentially be required to provide the buyer a home warranty insurance policy in order to conduct business.
2. This will increase the cost of a home inspection.
3. Lower income and first time purchasers will have to now decide if the increase costs are justified.
4. **Going without a home inspection is a likely outcome of this bill and is bad public policy to move buyers in that direction.**

Second, this bill extends the remedy for a breach of contract far beyond any gain or profit realized by a home inspector. The general remedies for breach of contract are to prohibit the breaching party from receiving any gain. Second, the law generally protects the promisee's expectation. Making the inspector financially responsible for "any portion" of the home, even if inaccessible, even if the inspector advised in writing to correct the problem is beyond the benefit of the bargain of the promisee and far exceeds a normal remedy.

Third, and finally, this bill is the sledgehammer that will kill the gnat. We oppose HB 2100 because it unfairly singles out the smallest participant in the transaction to the benefit of the largest.

Senate Judiciary

2-5-04

Attachment 4

24 Kan. App. 2d 76

No. 76,282

ALAN DOUGLAS MOLER, *Appellant*, v. MARK EDWARD MELZER, d/b/a APEX BUILDING INSPECTORS, and MARCHELLE CO., INC., d/b/a APEX BUILDING INSPECTORS TRS, *Appellees*.

SYLLABUS BY THE COURT

1. Rules for construing contracts are stated and applied.
2. Kansas has never imposed a requirement that a contract clause limiting liability be supported by separate consideration.
3. Portions of the Kansas Consumer Protection Act are construed and applied.
4. The contract clause here involved, which limits a party's liability, does not violate K.S.A. 50-639(a)(2).
5. The contract clause here involved is not unconscionable, applying the factors listed in *Wille v. Southwestern Bell Tel. Co.*, 219 Kan. 755, 549 P.2d 903 (1976).

Appeal from Sedgwick District Court; PAUL BUCHANAN, judge. Opinion filed July 3, 1997. Affirmed.

Edgar Wm. Dwire and *Warren Jones*, of Malone, Dwire and Jones, of Wichita, for appellant.

Charles E. Millsap and *Lyndon W. Vix*, of Fleeson, Gooing, Coulson & Kitch, L.L.C., of Wichita, for appellees.

Before ROYSE, P.J., ELLIOTT, J., and J. BYRON MEEKS, District Judge, assigned.

ELLIOTT, J.: Alan Douglas Moler sued Apex Building Inspectors, alleging he had purchased a house based on a favorable inspection report prepared by Apex. Moler sought damages for the costs of repairing structural problems Apex had failed to discover. The trial court granted summary judgment in favor of Apex, ruling that the contract between the parties limiting Apex's liability to the cost of the inspection was valid and enforceable.

Moler appeals and we affirm.

Moler first contends the contract clause limiting Apex's liability is neither valid nor enforceable. The clause read: "In the case that the client should become dissatisfied with the inspection, it's [*sic*] findings, or future occurrences, the client will hold the inspector or the company represented liable for the cost of the inspection only."

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Moler argues the contract clause is enforceable only if it is expressed in clear and unequivocal language. See *Johnson v. Board of Pratt County Comm'rs*, 259 Kan. 305, Syl. ¶ 16, 913 P.2d 119 (1996); *Zenda Grain & Supply Co. v. Farmland Industries, Inc.*, 20 Kan. App. 2d 728, Syl. ¶ 1, 894 P.2d 881 (1995). Kansas law also provides that competent parties are free to make their own contracts where not illegal, against public policy, or induced by fraud. And a party who freely enters a contract is bound by it even though it was unwise or disadvantageous to the party, so long as the contract is not unconscionable. *Corral v. Rollins Protective Services Co.*, 240 Kan. 678, Syl. ¶ 2, 732 P.2d 1260 (1987).

Corral held the limitation of liability clause there involved to be valid. 240 Kan. at 683-84. In *Zenda*, we found the clause to be not sufficiently clear and unequivocal. 20 Kan. App. 2d at 735. Thus, the question for our resolution is whether the clause in the Apex contract was clear enough to advise Moler of its purpose and potential effect. In this regard, *Zenda* did not void all similar clauses which do not use the exact language validated in *Corral*.

The language in the present case could not possibly refer to anything other than the possibility Apex might miss something in its inspection. Unlike in *Zenda*, the present clause could not have been intended for any other purpose. Further, Moler does not allege he misunderstood what the clause meant. He noticed the clause and was concerned by it, but never questioned Apex about his concerns. The clause was enforceable as a clear expression of Apex's intent to limit liability.

Moler next argues the clause effects a release of liability and, therefore, must be supported by separate consideration. We disagree.

The clause limiting Apex's liability was not a release in any traditional sense. See 57A Am. Jur. 2d, Negligence § 49, pp. 106-07. Kansas has never imposed a requirement that a contract clause *limiting* liability be supported by separate consideration.

Moler urges that we follow *Schaffer v. Property Evaluations, Inc.*, 854 S.W.2d 493 (Mo. App. 1993). So far as we can determine, *Schaffer* is leading a parade of one; in any event, we decline to adopt its reasoning.

Moler next argues the clause violates K.S.A. 50-639(a)(2) of the Kansas Consumer Protection Act (KCPA). While the contract involved in the present case probably is a consumer transaction as defined in K.S.A. 50-624(c), the problem is that K.S.A. 50-639 applies *only* where the subject of the consumer transaction is property and not services. "Property" and "services" are separately defined. K.S.A. 50-624 (g), (h).

The subject of the transaction here involved was not property, but the *inspection* of a building--a service.

The clause limiting Apex's liability does not violate K.S.A. 50-639(a)(2), and Moler does not argue on appeal that Apex engaged in any deceptive act or practice under K.S.A. 50-626 of the KCPA.

Finally, Moler argues the clause is unconscionable, claiming the contract was on a preprinted form and claiming he was not in a position to negotiate for different contract provisions.

Our Supreme Court listed various factors as relevant in determining whether a contract is unconscionable in *Wille v. Southwestern Bell Tel. Co.*, 219 Kan. 755, 758-59, 549 P.2d 903 (1976).

Here, the clause limiting Apex's liability was not hidden; it appears as the last of six short provisions, each of which is accompanied by a box to be checked by the client after he or she has read the provision.

And just before the signature line, the client must check a box indicating he or she has read the foregoing provisions: "The client agrees to permit the inspector to perform the inspection of the property according to the terms listed above without change as read and understood."

The record in this case gives no indication of an inequality of bargaining or economic power, nor any indication that Moler could not have sought a different inspection company had he been unsatisfied with the contract provisions. On these facts, the contract clause limiting Apex's liability was not unconscionable.

Affirmed.

¹**REPORTER'S NOTE:** Previously filed as an unpublished opinion, the Supreme Court granted a motion to publish by an order dated July 10, 1997, pursuant to Rule 7.04 (1996 Kan. Ct. R. Annot. 40).

END



| [Keyword](#) | [Name](#) » [SupCt](#) - [CtApp](#) | [Docket](#) | [Date](#) |

Comments to: [WebMaster, kscases@kscourts.org](mailto:kscases@kscourts.org).

Updated: August 01, 1997; revised: August 21, 1997.

URL: <http://kscourts.org/kscases/ctapp/1997/19970801/76282.htm>.

4-4

FROM PAUL MEIERS
NORTON SCHMIDT.

1 of 3

The Disturbing Facts About House Bill 2100

- Representative Doug Patterson, a Republican member of the Kansas State House of Representatives since 2000, has submitted legislation (House Bill No. 2100) that would radically re-shape the home inspection business in the state of Kansas. This legislation was introduced on January 29, 2003 and referred to the House Judiciary Committee. On February 4, 2003, Representative Patterson, who serves as Vice-chairperson of the Judiciary committee, conducted a hearing on this legislation to consider its merits. As this piece of legislation worms its way through the legislative process without fanfare and without public scrutiny, it is time for the facts of this legislation be advertised to all citizens who care about what type of government we have, what type of society we will live in, and the type of legislation being pushed by some of our elected officials in Topeka.
-
- House Bill 2100 is terrible legislation that is anti-small business, will hurt every Kansas homeowner and homebuyer, and undercut the Kansas economy
-
- House Bill 2100 would wipe away any ability of a home inspector to protect themselves from excessive and vindictive lawsuits. Section 3(b) of the bill exposes this bill as the pro-trial lawyer, anti-small business legislation that it truly is. Section 3(b) states: "Any agreement or contract issued by a home inspector for a home inspection report which contains language limiting or disclaiming the home inspectors liability is hereby declared to be against public policy and void."
-
- This legislation gives a green light to any disgruntled homeowner and their disgruntled lawyers to sue home inspectors based on whatever problems arise in a home in the future during the natural course of home-ownership, whether the defect was related to the original purpose of the inspection or not.
-
- This legislative language, if adopted, would basically kill the home inspection market in the state of Kansas. Its aim is to push all of the local home inspectors in Kansas out of business.
-
- Home inspector reports would be a ticking time bomb of legal foul-play, and the reports could be used by any unscrupulous person seeking to make someone else (in this case, the home inspector) pay for a broken swimming pool or any other defect that may occur in the future in a residence.
-
- This legislation is flawed in several areas, each of which have an profound impact on our economy and society:
 - 1) This legislation is anti-small business.
 - 2) This legislation goes against the goal of tort reform.
 - 3) If adopted, this legislation will hurt anyone who buys a home in Kansas.
 - 4) This legislation will hurt the Kansas economy.
 - 5) This legislation undermines the concept of personal responsibility and the free market.

The key question to ask is what are the benefits of this legislation? What purpose does it serve? The answer is that there are no benefits emanating from this legislation – except for those in the legal profession who have crafted this legislation and are silently pushing it through the legislative process. Doug Patterson's Home Page for the Legislative Session for 2003 (<http://www.dougspatterson.org>) states that "State government is in our lives to an excess." (I am not making this up!) Yet, in Topeka, he has authored and is now pushing legislation that is a prime example of state government intruding itself further into our lives.

Please call your state legislator and tell them to kill this ill-conceived legislation. This is the type of "legislative help" that Kansans could gladly live without.

Senate Judiciary

2-5-04

Attachment 5

PAUL MEYERS
 NDETON & SCHMIDT

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- Some background on home inspections: When you buy a home, a home inspection report is typically requested by either the buyer of the home and those representing the buyer (the realtor, the mortgage company, etc.). The purpose of this home inspection is to insure that no major structural flaws exist with a home. Currently, licensed engineers perform home inspections for a nominal fee, typically around 300 dollars, to provide a professional assessment of the residence. The inspections typically last two hours and a report is generated for the home buyer based on this inspection. Because the scope of the inspection is typically small (given the commensurate fee), home inspectors place contract language in their report stating that their review cannot completely assess risk, detect all flaws, predict all occurrences, or make 100% assurances regarding the future performance of the residence. It goes against common sense to think that a two hour home inspection can completely discover all future defects that may occur at a property.
- Home inspectors typically place exclusions in their contract stating what they are not to be held liable for because they do not have that area of expertise.

If adopted, this legislation will push local home inspectors out of business and shift this business to large corporations who can afford the expensive insurance that will need to be carried to deal with the inevitable cascade of lawsuits that will be filed in the future. Only a small number of insurance companies (in this case, 2 or less) would even offer the liability insurance that would be required by home inspectors to protect themselves from legal sharks. The sky high rates will make it all but impossible for small home inspectors to survive. This would be a tremendous victory for the large corporations that would then run the local home inspection business, but would be the death knell for local, independent home inspectors who live, work, and contribute greatly to our community.

At the national level, President Bush and true Republicans are pushing for limits on legal liability, like containing medical malpractice liability. Unfortunately, House Bill 2100 goes against this national trend. It is the type of tort legislation that would make Hillary Clinton proud.

This legislation would force small home inspectors out of business in Kansas. The price of home inspections would increase dramatically. Instead of paying \$300 for a home inspection, a home buyer could conceivably pay over \$2400 for a home inspection due to higher insurance costs and the additional time required performing an inspection. This would be a kick in the financial gut for any home buyer in the future, but would be murderous for those least able to afford it, like young families seeking to buy their first home.

The U.S. has had a sluggish economy for the past 3 years. One of the few pillars of our economy that has helped keep us all afloat is the vibrant housing market. If the price of home inspections increases dramatically due to the adoption of House Bill 2100, the Kansas housing market will suffer. This is the absolute wrong policy to adopt in a weak economy that is troubled by war clouds in Iraq, a jobless recovery, and a weak stock market.

The most troubling aspect of this legislation revolves around the issue of what the priorities are of the House Judiciary Committee in 2003. The state of Kansas is at a real cross-roads during this legislative session. There is a \$1 billion state budget deficit to close. Our schools are facing a funding crisis. Thousands of employees at Sprint and other Kansas employers have lost their jobs amid the economic downturn. Yet amidst all of these pressing public policy issues, it is extremely odd that the House Judiciary Committee decided to push this special interest legislation that will hurt anyone seeking to buy a house. This legislation is Exhibit A in the Museum of Misplaced Political Priorities.

Defeating this legislation is important for anyone who believes in the concept of honesty in government and setting our priorities straight so we can deal with the larger issues Topeka should be addressing. Defeating this legislation will send a message that Kansans are serious about tort reform, serious about stimulating our sluggish economy, and serious about protecting small business people of whatever line of work...including home inspectors!

PAUL MEIERS
NORTON & SCHMIDT

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- Common sense and personal experience dictate that no home can truly be perfect. Part of the responsibility of home ownership is making necessary repairs as they occur in the future. This legislation is a pathetic exercise in creating scapegoats out of home inspectors so that unscrupulous individuals can make them pay for their home repairs. If this legislation passes, a home inspector will be forced to either buy expensive insurance (which will dramatically increase the cost of a home inspection), or a home inspector will have to spend 40 or more hours in a home to do a detailed analysis (basically, tearing apart the house to discover all of the "potential" defects that may arise in the future). This will also cause the price of a home inspection to skyrocket tremendously.



KANSAS ASSOCIATION OF REAL ESTATE INSPECTORS Ltd.

12601 Jayson - Wichita, Kansas 67235 www.karei.org Phone: 316-393-0735 Fax: 316-777-9209

TO: Members of the Senate Judiciary Committee
FROM: Jeff Barnes, President, Kansas Association of Real Estate Inspectors, Wichita, Ks
RE: HB 2100
DATE: January 27, 2004

When HB2100 was first introduced last year by Representative Patterson, I was concerned as to why a bill of this magnitude was presented without any research as to the effect it would have on the real estate industry or the buying public. I was also concerned as to why no dialogue was started between the author and any of the industry professionals it was effecting. During my research into the bill I received copies of letters generated by the Kansas Trial Lawyers Association, the Kansas Association of Realtors, and the Kansas Building Industry Association. All of these letters were written to the members of the House Judiciary Committee in support of HB2100. After reading the letters I found out why no real effort was put into determining the effects of this bill. What I found in all three cases is the authors of the letters had no real understanding of what an inspection is, what it does and does not encompass or the impact of the bill. What the letters did demonstrate is the authors "perception" of what an inspection is. This "perception" is what we as Home Inspectors have been trying for years to educate the public about. To aid you in dispelling misplaced perception I have listed below the definition of a home inspection as defined by the American Society of Home Inspections.

The American Society of Home Inspectors (ASHI) is the oldest, largest and most respected not for profit association of independent home inspections with a twenty seven year tradition of the pursuit of excellence within the profession and continual education of its members. To that end, ASHI has established a diligent Standards of Practice which is constantly reviewed and scrutinized by its members and others to establish a national minimum uniform standard to insure competence and professionalism. ASHI has defined a home inspection as **"the inspection of the readily accessible systems and components of homes, and installed systems and components of homes. Report on those systems and components inspected which, in the professional opinion of the inspector, are significantly deficient or are near the end of their service lives. List a reason why, if not self-evident, the system or component is significantly deficient or near the end of its service life. The inspector's recommendations to correct or monitor the reported deficiency, or list why an item was not reviewed."**

Unfortunately, some of the public has the same perception as the authors of the letters I have addressed above. The perception is that a home inspection will not only be all encompassing and list each and every defect, but that we also have x-ray vision and a crystal ball. Inspections are built on the premise that all homes have problems and not all problems are detectable. Because of this, the professional home inspector, just like professionals in many other professions, will begin his relationship with the customer by having the customer sign a contract which specifically sets out the scope of the inspection including the limitations of the inspection as well as, in most cases a clause informing the customer that due to the nature of the inspection event and the uncontrollable limitations placed on the inspector at the home, the inspector is limiting his liability. The customer should always know this IN ADVANCE of signing the contract and should ALWAYS have the opportunity to decline the inspection.

Senate Judiciary
2-5-04
Attachment 6

There are literally thousands of variables and items to consider when inspecting a home and a competent inspector has a duty to insure that he or she has met or exceeded the minimum standards when performing the inspection. Unfortunately, there are inspectors who are not in the business for the right reasons and who not only do not meet the standards but who don't even know what the standards are. We are very much in agreement that inspectors should be accountable for their actions, however HB2100 is not the answer to insure accountability. We would be more than happy to sit down and discuss other options which better serve the public, help to re-educate unqualified inspectors, and provide a better regulated industry.

Now lets discuss the effect of the proposed HB2100. We have two main concerns.

First, The potential for the cost of an inspection to increase (as much as double). This would price a home inspection out of reach for that section of the buying public which needs it most, low income and first time buyers. Home inspections in Kansas have an average base rate between \$175.00 and \$250.00, the lowest in the country, which is within the budget of most home buyers. On a daily bases home inspectors are finding problems in homes such as leaking sewer lines in crawl spaces, disconnected duct work, structural damage due to termites, carbon monoxide emissions from gas burning appliances, gas leaks and many, many more possibly life threatening problems. Finding these problems provides a major public safety benefit, without the inspection, these potential life treating situations would not be found until someone was hurt or the damage was so great that the repair cost was too high for the home owner to bear.

Second, increased liability and cost would inevitably lead to delays in scheduling. Additionally, inspections would take longer to complete, have increased documentation, and a certain "Chicken Little" mentality. Those items which would have normally been breezed over due to its insignificance, will have to be listed as an area of potential concern. With the passage of this bill, loose wall paper will go from an item not listed at all, to possible moisture damage in the wall with the potential of mold growth, requiring additional expensive investigation and testing. Talk about your deal killer. Remember, this relates to all trades, so each contractor visiting the home will be under the same yoke of increased liability and will want to make sure to cover all of his bases. Imagine not being able to sell your own home because it has brick veneer on the outside and the inspector, in an effort to protect himself, listed on the report "brick has a tendency to allow moisture to penetrate which could lead to moisture collecting behind the brick causing mold growth". This situation is very real and so is the comment. If you were the buyer in this case how nervous would you be at this point, and this is just one item.

As I mentions above HB2100 is NOT the answer. Buying a home is the equivalent of accepting a certain amount of risk. Having a home inspection helps you understand and to a certain extent quantify that risk. It by no means eliminates that risk or insures or warrants against it. Visual non-intrusive home inspections are generally able to shed light on approximately 2/3 of the risks or problems that may be in existence with a typical home. This means the home inspection may NOT have addressed a potentially hidden, discreet or otherwise existing risk or problem. More extensive and specific inspections may reveal risks not addressed in the home inspection. This is why they are recommended.

Respectfully submitted,

Jeff Barnes, CRMI
President



Midwest Pro-ASHI Chapter

Members in Iowa - Kansas - Missouri
Chapter President, Kerry Parham • Wichita, KS

Wichita Regional Inspection Group
Local Coordinator, Jeff Barnes

January 26, 2004

The Honorable Senator Les Donovan
Assistant Majority Leader
300 SW 10th Street, Rm #120-S
Topeka, KS 66612-1504
donovan@senate.state.ks.us

RE: Position Statement HB2100

Dear Senator Donovan:

House Bill 2100 is an inequitable piece of proposed legislation that unfairly burdens trades people and professionals that are providing needed services to assist prospective real property buyers in making informed decisions. This bill makes it "against public policy" for a "home inspector" to use language in their contract that limits their liability regarding services performed. On its face, it attempts to aid the unsuspecting public from the dubious acts of the unscrupulous home inspector. While in reality, its main purpose is to eliminate an impediment to prosecution by trial attorneys, the true beneficiary of this proposed legislation.

During the original House hearings regarding this bill, Representative Patterson (bill's author) stated that he fully expected the cost of home inspections to increase as a result of this bill's enactment, however, he apparently has done no research as to the true cost or impact on the industry or the public. This bill was introduced without comment or consultation from the industry it is written to restrain. Additionally, Representative Patterson, although accepting an offer to meet with us, has arrogantly stated he has no "need" to further discuss the matter as "*he can pass this bill at any time, when & how he chooses*". This is hardly the kind of considered legislation we expect from our elected representatives.

If enacted, this bill would wreck havoc among the home inspection industry. A great number of less established and/or rural members would likely find the cost of doing business or the financial risk too great and might leave the profession. One multi-inspector firm in Wichita has already stated they intend to lay off all employees if this bill is passed. It is already very difficult for new members to get started, as those without a track record have a hard time finding clients willing to trust them with such an important decision. HB2100 would create an impediment to entry of new members into the home inspection profession. It would, without a doubt, limit the number of new members and candidates in our organization. The general public would suffer in that cost of home inspections would likely increase 25% to 50%. This additional cost, brought on by the inspector's increased liability, would restrict access to home inspections by those that can most ill afford to buy a home with a significant "hidden" defect.

Representative Patterson argues "What is the value of a home inspection if the inspector has no liability?" A quick check of court records reveals that home inspectors are not the source of the disputes clogging our civil court system. Few buyers have serious or significant complaints regarding the home inspection process. The buyer receives a commensurate benefit for the fee he/she has paid. The bulk of the responsible independent business owners, that makeup the vast majority of home inspectors in the state, stand behind the accuracy and completeness of their reports, they are however, not warranty companies. The few hundred dollars the buyer paid for the inspection cannot provide them with an unlimited "bank account" from which they can draw. This bill is attempting to place a burden of liability upon the shoulders of those who can least afford its cost. Seller's profits, Realtor's commissions, and in most cases other related fees for: appraisal, loan origination, surveys, title work, insurance, etc., all usually exceed the small fees paid the person, who in good faith, crawls through the moldy spider-infested crawl space, or ventures into a stifling hot attic full of itchy insulation. When desired, home warranties are available to buyers through their Realtors, usually for less than \$400 on most homes.

There are already legal remedies available to the homebuyer who feels they are victim of a truly negligent home inspector. No home inspector in our organization has the delusional belief that they can perform poor quality home inspections with impunity to prosecution. Our agreements are intended to prevent frivolous lawsuits that might be brought without merit. Most longtime, respected members in our organization, including myself, have been sued at least once. We are all well aware of the inherent "limits" that our own "Limit of Liability" clause embraces.

In summary, HB 2100, is an unnecessary piece of proposed legislation that serves the best interest of only the trial attorney. Its origin appears dubious, but even if its purpose were well intended, its consequences would be ruinous. Not only would it potentially devastate the industry it is intended to restrain, it may have the reverse affect intended for the general population. Many homebuyers might perceive that home inspections are too expensive, and take their chances. An analogous situation has been debated in the deep-south regarding childcare. Proposed legislation intended to improve childcare, by further limiting the number of children a provider can care for, may have the opposite intended result. Increased cost causes those marginalized individuals to find other unregulated or unsafe options, because they can no longer afford the "improved" requirements. For nearly all homebuyers, a quality home inspection by a "certified" member of a professional home inspector association, subject to a limit of liability agreement, is much preferable to a purchase without an inspection, or review by an unqualified family member or friend. The homebuyer's greatest protection against unqualified home inspectors, are to choose "certified" members of ASHI.

Kerry Parham, President
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Judiciary Committee: J. Vratil, JD - Chairman; B. Allen, JD; D. Betts; L. Donovan; G. Goodwin, CLA; D. Halley, JD; K. O'Connor; L. Oleen; E. Pugh, JD; D. Schmidt, JD; & D. Umbarger



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2-5-04

Attachment 7

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***The
Standards
of Practice
and
Code of Ethics***

of the American
Society of Home
Inspectors, Inc.®

Effective January 1, 2000

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To obtain additional copies, contact:

The American Society of Home Inspectors, Inc.®
932 Lee Street, Suite 101
Des Plaines, IL 60016
800-743-ASHI/2744
ashi.com

Home Inspection

Home inspections were being performed in the mid 1950s, and by the early 1970s were considered by many consumers to be essential to the real estate transaction. The escalating demand was due to a growing desire by homebuyers' to learn about the condition of a house prior to purchase. Meeting the expectations of consumers required a unique discipline, distinct from construction, engineering, architecture, or municipal building inspection. As such, home inspection requires its own set of professional guidelines and qualifications. The American Society of Home Inspectors (ASHI) formed in 1976 and established the ASHI Standards of Practice and Code of Ethics to help buyers and sellers make real estate transaction decisions based on accurate, objective information.

American Society of Home Inspectors

As the oldest, largest and highest profile organization of home inspectors in North America, ASHI takes pride in its position of leadership. Its Membership works to build public awareness of home inspection and to enhance the technical and ethical performance of home inspectors.

Standards of Practice

The ASHI Standards of Practice guide home inspectors in the performance of their inspections. Subject to regular review, the Standards of Practice reflect information gained through surveys of conditions in the field and of the consumers' interests and concerns. Vigilance has elevated ASHI's Standards of Practice so that today they are the most widely-accepted home inspection guidelines in use and are recognized by many government and professional groups as the definitive standard for professional performance.

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Code of Ethics

ASHI's Code of Ethics stresses the responsibility of the home inspector to report the results of the inspection in a strictly fair, impartial, and professional manner, avoiding conflicts of interest.

ASHI Membership

Selecting the right home inspector can be as important as finding the right home. ASHI Members have performed no fewer than 250 fee-paid inspections in accordance with the ASHI Standards of Practice. They have passed written examinations testing their knowledge of residential construction, defect recognition, inspection techniques, and report-writing, as well as ASHI's Standards of Practice and Code of Ethics.

Membership in the American Society of Home Inspectors is well-earned and maintained only through meeting requirements for continuing education.

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Standards of Practice

1. INTRODUCTION

1.1 The American Society of Home Inspectors (ASHI) is a not-for-profit professional society established in 1976. Membership in ASHI is voluntary and its members include private, fee-paid home *inspectors*. ASHI's objectives include promotion of excellence within the profession and continual improvement of its members' inspection services to the public.

2. PURPOSE AND SCOPE

2.1 The purpose of these Standards of Practice is to establish a minimum and uniform standard for private, fee-paid home *inspectors* who are members of the American Society of Home Inspectors. *Home Inspections* performed to these Standards of Practice are intended to provide the client with information regarding the condition of the *systems* and *components* of the home as *inspected* at the time of the *Home Inspection*.

2.2 The *inspector* shall:

- A. *inspect*:
 - 1. *readily accessible systems* and *components* of homes listed in these Standards of Practice.
 - 2. *installed systems* and *components* of homes listed in these Standards of Practice.
- B. *report*:
 - 1. on those *systems* and *components inspected* which,

in the professional opinion of the *inspector*, are *significantly deficient* or are near the end of their service lives.

2. a reason why, if not self-evident, the *system* or *component* is *significantly deficient* or near the end of its service life.

3. the *inspector's* recommendations to correct or monitor the *reported* deficiency.

4. on any *systems* and *components* designated for inspection in these Standards of Practice which were present at the time of the *Home Inspection* but were not *inspected* and a reason they were not *inspected*.

2.3 These Standards of Practice are not intended to limit *inspectors* from:

- A. including other inspection services, *systems* or *components* in addition to those required by these Standards of Practice.
- B. specifying repairs, provided the *inspector* is appropriately qualified and willing to do so.
- C. excluding *systems* and *components* from the inspection if requested by the client.

3. STRUCTURAL SYSTEM

3.1 The inspector shall:

- A. *inspect*:
 - 1. the *structural components* including foundation and framing.
 - 2. by probing a *representative number of structural components* where deterioration is suspected or where clear indications of possible deterioration exist. Probing is NOT required when probing would damage any finished surface or where no deterioration is visible.
- B. *describe*:
 - 1. the foundation and *report* the methods used to *inspect* the *under-floor crawl space*.
 - 2. the floor structure.
 - 3. the wall structure.
 - 4. the ceiling structure.
 - 5. the roof structure and *report* the methods used to *inspect* the attic.

3.2 The inspector is NOT required to:

- A. provide any *engineering service* or *architectural service*.
- B. offer an opinion as to the adequacy of any *structural system* or *component*.

4. EXTERIOR

4.1 The inspector shall:

- A. *inspect*:
 - 1. the exterior wall covering, flashing and trim.
 - 2. all exterior doors.
 - 3. attached decks, balconies, stoops, steps, porches, and their associated railings.

- 4. the eaves, soffits, and fascias where accessible from the ground level.
 - 5. the vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to adversely affect the building.
 - 6. walkways, patios, and driveways leading to dwelling entrances.
- B. *describe* the exterior wall covering.

4.2 The inspector is NOT required to:

- A. *inspect*:
 - 1. screening, shutters, awnings, and similar seasonal accessories.
 - 2. fences.
 - 3. geological, geotechnical or hydrological conditions.
 - 4. *recreational facilities*.
 - 5. outbuildings.
 - 6. seawalls, break-walls, and docks.
 - 7. erosion control and earth stabilization measures.

5. ROOF SYSTEM

5.1 The inspector shall:

- A. *inspect*:
 - 1. the roof covering.
 - 2. the *roof drainage systems*.
 - 3. the flashings.
 - 4. the skylights, chimneys, and roof penetrations.
- B. *describe* the roof covering and *report* the methods used to *inspect* the roof.

5.2 The inspector is NOT required to:

- A. *inspect*:
 - 1. antennae.

2. interiors of flues or chimneys which are not readily accessible.
3. other installed accessories.

6. PLUMBING SYSTEM

6.1 The inspector shall:

- A. inspect:
 1. the interior water supply and distribution systems including all fixtures and faucets.
 2. the drain, waste and vent systems including all fixtures.
 3. the water heating equipment.
 4. the vent systems, flues, and chimneys.
 5. the fuel storage and fuel distribution systems.
 6. the drainage sumps, sump pumps, and related piping.
- B. describe:
 1. the water supply, drain, waste, and vent piping materials.
 2. the water heating equipment including the energy source.
 3. the location of main water and main fuel shut-off valves.

6.2 The inspector is NOT required to:

- A. inspect:
 1. the clothes washing machine connections.
 2. the interiors of flues or chimneys which are not readily accessible.
 3. wells, well pumps, or water storage related equipment.

4. water conditioning systems.
5. solar water heating systems.
6. fire and lawn sprinkler systems.
7. private waste disposal systems.

- B. determine:
 1. whether water supply and waste disposal systems are public or private.
 2. the quantity or quality of the water supply.
- C. operate safety valves or shut-off valves.

7. ELECTRICAL SYSTEM

7.1 The inspector shall:

- A. inspect:
 1. the service drop.
 2. the service entrance conductors, cables, and raceways.
 3. the service equipment and main disconnects.
 4. the service grounding.
 5. the interior components of service panels and sub panels.
 6. the conductors.
 7. the overcurrent protection devices.
 8. a representative number of installed lighting fixtures, switches, and receptacles.
 9. the ground fault circuit interrupters.
- B. describe:
 1. the amperage and voltage rating of the service.
 2. the location of main disconnect(s) and sub panels.
 3. the wiring methods.

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- C. report:
 - 1. on the presence of solid conductor aluminum branch circuit wiring.
 - 2. on the absence of smoke detectors.

7.2 The inspector is NOT required to:

- A. inspect:
 - 1. the remote control devices unless the device is the only control device.
 - 2. the alarm systems and components.
 - 3. the low voltage wiring, systems and components.
 - 4. the ancillary wiring, systems and components not a part of the primary electrical power distribution system.
- B. measure amperage, voltage, or impedance.

8. HEATING SYSTEM

8.1 The inspector shall:

- A. inspect:
 - 1. the installed heating equipment.
 - 2. the vent systems, flues, and chimneys.
- B. describe:
 - 1. the energy source.
 - 2. the heating method by its distinguishing characteristics.

8.2 The inspector is NOT required to:

- A. inspect:
 - 1. the interiors of flues or chimneys which are not readily accessible.
 - 2. the heat exchanger.
 - 3. the humidifier or dehumidifier.

- 4. the electronic air filter.
- 5. the solar space heating system.
- B. determine heat supply adequacy or distribution balance.

9. AIR CONDITIONING SYSTEMS

9.1 The inspector shall:

- A. inspect the installed central and through-wall cooling equipment.
- B. describe:
 - 1. the energy source
 - 2. the cooling method by its distinguishing characteristics.

9.2 The inspector is NOT required to:

- A. inspect electronic air filters.
- B. determine cooling supply adequacy or distribution balance.

10. INTERIOR

10.1 The inspector shall:

- A. inspect:
 - 1. the walls, ceilings, and floors.
 - 2. the steps, stairways, and railings.
 - 3. the countertops and a representative number of installed cabinets.
 - 4. a representative number of doors and windows.
 - 5. garage doors and garage door operators.

10.2 The inspector is NOT required to:

- A. *inspect:*
1. the paint, wallpaper, and other finish treatments.
 2. the carpeting.
 3. the window treatments.
 4. the central vacuum systems.
 5. the household appliances.
 6. recreational facilities.

11. INSULATION AND VENTILATION

11.1 The inspector shall:

- A. *inspect:*
1. the insulation and vapor retarders in unfinished spaces.
 2. the ventilation of attics and foundation areas.
 3. the mechanical ventilation systems.
- B. *describe:*
1. the insulation and vapor retarders in unfinished spaces.
 2. the absence of insulation in unfinished spaces at conditioned surfaces.

11.2 The inspector is NOT required to:

- A. disturb insulation or vapor retarders.
- B. determine indoor air quality.

12. FIREPLACES AND SOLID FUEL BURNING APPLIANCES

12.1 The inspector shall:

- A. *inspect:*
1. the system components.

2. the vent systems, flues, and chimneys.

B. *describe:*

1. the fireplaces and solid fuel burning appliances.
2. the chimneys.

12.2 The inspector is NOT required to:

A. *inspect:*

1. the interiors of flues or chimneys.
2. the firescreens and doors.
3. the seals and gaskets.
4. the automatic fuel feed devices.
5. the mantels and fireplace surrounds.
6. the combustion make-up air devices.
7. the heat distribution assists whether gravity controlled or fan assisted.

B. ignite or extinguish fires.

C. determine draft characteristics.

D. move fireplace inserts or stoves or firebox contents.

13. GENERAL LIMITATIONS AND EXCLUSIONS

13.1 General limitations:

- A. Inspections performed in accordance with these Standards of Practice
1. are not *technically exhaustive*.
 2. will not identify concealed conditions or latent defects.

The ASHI® Standards of Practice and Code of Ethics

- B. These Standards of Practice are applicable to buildings with four or fewer dwelling units and their garages or carports.
- 13.2 General exclusions:**
- A. The *inspector* is not required to perform any action or make any determination unless specifically stated in these Standards of Practice, except as may be required by lawful authority.
 - B. *Inspectors* are NOT required to determine:
 - 1. the condition of *systems* or *components* which are not *readily accessible*.
 - 2. the remaining life of any *system* or *component*.
 - 3. the strength, adequacy, effectiveness, or efficiency of any *system* or *component*.
 - 4. the causes of any condition or deficiency.
 - 5. the methods, materials, or costs of corrections.
 - 6. future conditions including, but not limited to, failure of *systems* and *components*.
 - 7. the suitability of the property for any specialized use.
 - 8. compliance with regulatory requirements (codes, regulations, laws, ordinances, etc.).
 - 9. the market value of the property or its marketability.
 - 10. the advisability of the purchase of the property.
 - 11. the presence of potentially hazardous plants or animals including, but not limited to wood destroying organisms or diseases harmful to humans.
 - 12. the presence of any environmental hazards including, but not limited to toxins, carcinogens, noise, and contaminants in soil, water, and air.
 - 13. the effectiveness of any *system installed* or methods utilized to control or remove suspected hazardous substances.
 - 14. the operating costs of *systems* or *components*.
 - 15. the acoustical properties of any *system* or *component*.
 - C. *Inspectors* are NOT required to offer:
 - 1. or perform any act or service contrary to law.
 - 2. or perform *engineering services*.
 - 3. or perform work in any trade or any professional service other than *home inspection*.
 - 4. warranties or guarantees of any kind.
 - D. *Inspectors* are NOT required to operate:
 - 1. any *system* or *component* which is *shut down* or otherwise inoperable.
 - 2. any *system* or *component* which does not respond to *normal operating controls*.
 - 3. shut-off valves.

-
- E. *Inspectors* are NOT required to enter:
1. any area which will, in the opinion of the *inspector*, likely be dangerous to the *inspector* or other persons or damage the property or its *systems* or *components*.
 2. the *under-floor crawl spaces* or attics which are not *readily accessible*.
- F. *Inspectors* are NOT required to *inspect*:
1. underground items including, but not limited to underground storage tanks or other underground indications of their presence, whether abandoned or active.
 2. *systems* or *components* which are not *installed*.
 3. *decorative items*.
 4. *systems* or *components* located in areas that are not entered in accordance with these Standards of Practice.
 5. detached structures other than garages and carports.
 6. common elements or common areas in multi-unit housing, such as condominium properties or cooperative housing.
- G. *Inspectors* are NOT required to:
1. perform any procedure or operation which will, in the opinion of the *inspector*, likely be dangerous to the *inspector* or other persons or damage the property or its *systems* or *components*.
 2. move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris.
 3. *dismantle* any *system* or *component*, except as explicitly required by these Standards of Practice.

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Glossary of Italicized Terms

Alarm Systems

Warning devices, *installed* or free-standing, including but not limited to: carbon monoxide detectors, flue gas and other spillage detectors, security equipment, ejector pumps and smoke alarms

Architectural Service

Any practice involving the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction, including but not specifically limited to, schematic design, design development, preparation of construction contract documents, and administration of the construction contract

Component

A part of a *system*

Decorative

Ornamental; not required for the operation of the essential *systems* and *components* of a home

Describe

To *report* a *system* or *component* by its type or other observed, significant characteristics to distinguish it from other *systems* or *components*

Dismantle

To take apart or remove any *component*, device or piece of equipment that would not be taken apart or removed by a homeowner in the course of normal and routine homeowner maintenance

Engineering Service

Any professional service or creative work requiring engineering educa-

tion, training, and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional service or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with the specifications and design, in conjunction with structures, buildings, machines, equipment, works or processes

Further Evaluation

Examination and analysis by a qualified professional, tradesman or service technician beyond that provided by the *home inspection*

Home Inspection

The process by which an *inspector* visually examines the *readily accessible systems* and *components* of a home and which describes those *systems* and *components* in accordance with these Standards of Practice

Household Appliances

Kitchen, laundry, and similar appliances, whether *installed* or free-standing

Inspect

To examine *readily accessible systems* and *components* of a building in accordance with these Standards of Practice, using *normal operating controls* and opening *readily openable access panels*

Inspector

A person hired to examine any *system* or *component* of a building in accordance with these Standards of Practice

Installed

Attached such that removal requires tools

Normal Operating Controls

Devices such as thermostats, switches or valves intended to be operated by the homeowner

Readily Accessible

Available for visual inspection without requiring moving of personal property, *dismantling*, destructive measures, or any action which will likely involve risk to persons or property

Readily Openable Access Panel

A panel provided for homeowner inspection and maintenance that is within normal reach, can be removed by one person, and is not sealed in place

Recreational Facilities

Spas, saunas, steam baths, swimming pools, exercise, entertainment, athletic, playground or other similar equipment and associated accessories

Report

To communicate in writing

Representative Number

One *component* per room for multiple similar interior *components* such as windows and electric outlets; one *component* on each side of the building for multiple similar exterior *components*

Roof Drainage Systems

Components used to carry water off a roof and away from a building

Significantly Deficient

Unsafe or not functioning

Shut Down

A state in which a *system* or *component* cannot be operated by *normal operating controls*

Solid Fuel Burning Appliances

A hearth and fire chamber or similar

prepared place in which a fire may be built and which is built in conjunction with a chimney; or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction

Structural Component

A *component* that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads)

System

A combination of interacting or interdependent *components*, assembled to carry out one or more functions

Technically Exhaustive

An investigation that involves *dismantling*, the extensive use of advanced techniques, measurements, instruments, testing, calculations, or other means

Under-floor Crawl Space

The area within the confines of the foundation and between the ground and the underside of the floor

Unsafe

A condition in a *readily accessible, installed system* or *component* which is judged to be a significant risk of personal injury during normal, day-to-day use. The risk may be due to damage, deterioration, improper installation or a change in accepted residential construction standards

Wiring Methods

Identification of electrical conductors or wires by their general type, such as "non-metallic sheathed cable" ("Romex"), "armored cable" ("bx") or "knob and tube", etc.

Code of Ethics

of the
American
Society of
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Honesty, justice, and courtesy form a moral philosophy which, associated with mutual interest among people, constitutes the foundation of ethics. The members should recognize such a standard, not in passive observance, but as a set of dynamic principles guiding their conduct. It is their duty to practice the profession according to this code of ethics.

As the keystone of professional conduct is integrity, the Members will discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all. They should uphold the honor and dignity of their profession and avoid association with any enterprise of questionable character, or apparent conflict of interest.

1 The Member will express an opinion only when it is based on practical experience and honest conviction.

2 The Member will always act in good faith toward each client.

3 The Member will not disclose any information concerning the results of the inspection without the approval of the clients or their representatives.

4 The Member will not accept compensation, financial or otherwise, from more than one interested party for the same service without the consent of all interested parties.

5 The Member will not accept nor offer commissions or allowances, directly or indirectly, from other parties dealing with their client in connection with work for which the member is responsible.

6 The Member will promptly disclose to his or her client any interest in a business which may affect the client. The member will not allow an interest in any business to affect the quality or the results of their inspection work which they may be called upon to perform. The inspection work may not be used as a vehicle by the inspector to deliberately obtain work in another field.

7 An inspector shall make every effort to uphold, maintain, and improve the professional integrity, reputation, and practice of the home inspection profession. He or she will report all such relevant information, including violations of this Code by other members, to the Association for possible remedial action.

Code of Ethics

of the
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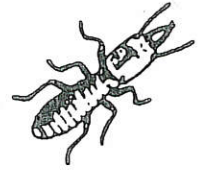
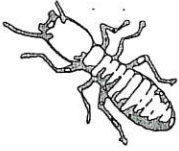
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Statement by **Brian Meitler**, President
B.A.T.S., Inc. d.b.a. World Pest Control & Sunflower Services
Tox-eol Pest Management Inc.

On House Bill 2100
Before the Senate Judiciary Committee

Thursday February 5, 2004

Good Morning,

My name is Brian Meitler. I am President of World Pest Control and Sunflower Services of Sylvan Grove and Otis, and a partner of Tox-eol Pest Management Inc. in Salina. I am here today to offer comments in opposition to HB 2100.

If HB 2100 were to pass in its current version, it would have an enormous impact on the Banking, Real Estate, Insurance industries and the services Pest Management Professionals provide. As a Pest Management Professional, we are contracted to perform Wood Destroying Insect inspections and submit a written report on our findings to Buyers/Sellers and Mortgage Loan companies. These inspections are thorough visual inspections for Wood Destroying Insects.

Most Pest Management Professionals use the NPCA-1 form. This form is recognized and accepted by FHA/VA and conventional loan companies. The NPCA-1 form does have an area to list areas that are inaccessible to the inspector and in turn limits our liability because they are not within the scope of a visual inspection. With HB 2100, we would no longer be able to list any inaccessible areas.

With the passage of HB 2100, our exposure to litigation would increase dramatically. The inaccessible areas would now become our responsibility. In turn, it would become very difficult, if not impossible, for Pest Management Professionals to purchase liability insurance with errors and omissions coverage. The Banking and Real Estate industries would be requesting Wood Destroying Insect Reports and unable to find a Pest Management Professional naïve enough to take on the liability for themselves. This bill in its current state would have a trickle down effect on the Kansas economy that goes way beyond its intent.

I would like to ask the current bill be killed or accept the language that exempts us from this Bill.

If you have any questions, I would be glad to answer them at this time.

Senate Judiciary

2-5-04

Attachment 8

Concerns about Bill 2100 by Miki Mertz, Complete Home Inspection, Shawnee, KS

My first concern is that this bill will change the job description of a home inspector. At this time, it is to examine, describe and recommend. This bill would imply that a home inspector now provide a warranty on all systems of the house forever. The phrase in the bill making it illegal for a home inspector to "include any clause limiting liability" has very far-reaching implications. If I inspect a 12 year old water heater that is making hot water and not leaking at the time of the inspection, yet starts leaking 2 months later, can the customer make a claim against me to replace the tank? What if I can't inspect the air conditioning (like today), am I liable for it next June when it doesn't run? Ten years from now, when the house has major settlement problems am I liable for it? All of these are issues that are dealt with in many home inspectors' pre-inspection agreement clauses that limit liability to real problems with realistic time restrictions. This bill would make "any clause" like these illegal. A home inspection is not intended to be a guarantee of the future performance of the house. It is a professional opinion of the condition of the house at the time of the inspection only. That concept could be interpreted as a limiting liability clause. There are many naturally limiting conditions, like weather and restricted access due to stored items, etc., that we may not be able to address in our pre-inspection agreements because they could be considered as a limiting liability clause.

A second concern is that the bill would change the purpose and scope of home inspections in Kansas. At this time, the purpose of a home inspection is for the customer to learn more about the condition of the house at the time of the inspection. The inspector visually examines systems and components to see if they are installed correctly, functioning as intended and operating in a safe manner. The inspector describes the house-good and bad- and explains how things work and provides basic maintenance tips. A written report is provided, many times on location, describing the condition of the house and makes recommendations for repairs. The customer can use this information to re-negotiate their contract or to use it to plan repairs and improvements after they take possession. It is not the inspector's responsibility to require repairs. This bill would change the inspector's focus away from providing valuable information to the customer to focusing on protecting himself from possible lawsuits. While still providing information, he would need to nit-pick every little detail so that he won't get in trouble for it later. Inspections would take longer and reports delivered later, delaying the sales transaction. This hurts consumers and the real estate industry.

I believe the intent of this bill was consumer protection, but I'm afraid it will actually hurt consumers. Home inspectors will not be able to get errors and omissions insurance in a state with unlimited liability, so there will be fewer inspectors willing to do business. Inspectors without insurance may not have the funds to back up any future law suits, so consumers wouldn't be protected. Inspection fees would increase, following supply and demand, so fewer consumers would have inspections. The first to stop hiring a home inspector would be lower income buyers who could no longer afford the very service they most need. Many low income homes need to be inspected to reveal potentially expensive,

life-threatening concerns. Without an inspection, they may unknowingly move into a home that is unsafe or will become a "money pit". So, the real victims of this bill are not the few home inspectors in the state, but potentially every buyer and seller in Kansas.

There are existing legal avenues to take when a home inspector is negligent or provides an unprofessional service. This bill is not necessary and is a disservice to consumers and home inspectors. I recommend that you do not pass this bill.



TCS Building Inspections, Inc.

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Serving northeast and northcentral Kansas

January 26, 2004

The Honorable Senator John Vratil
Judiciary Committee Chairperson
300 SW 10th Street, Room 170W
Topeka, KS 66612-1504

RE: HB2100 – paragraph (3)(b) removing the limit of liability for a home inspection

Dear Senator Vratil;

My name is Cheryl Swayne and I am the Secretary/Treasurer for TCS Building Inspection Services, Inc. We respectfully suggest that the committee use the following American Society of Home Inspectors (ASHI) model act wording for service contract liability concerning an act or omission:

Liability of Home Inspectors

- 1. An action to recover damages for any act or omission of a home inspector relating to a home inspection that he or she conducts can only be commenced within one (1) year after the date that a home inspection is completed.*
- 2. Only a client and no other party shall have an action to recover damages arising from a home inspection or a home inspection report.*

ASHI members are comprised of 6,000 *independent* home inspectors. Those 6,000 inspectors are small business owners. Removing the limit of liability completely will create a crippling financial burden on those small businesses. For example, the least expensive Errors and Omissions (E&O) insurance policy is \$297 a month, per inspector (not per company). They also carry a deductible of \$1,000 to \$5,000. That same small business owner also needs automobile insurance, health insurance, and business insurance.

A home inspection is a noninvasive, visual examination of specifically identified components as seen on the day of the inspection. HB2100 unduly places the responsibility of all current and future problems on the home inspector, the person who gains the least from the real estate transaction.

Sincerely,

THOMAS Cheryl Swayne, Owner
TCS Building Inspection Services, Inc

Senate Judiciary

2-5-04
Attachment 10

Hansen

January 28, 2004

To the Honorable Members of the Kansas State Senate Judiciary Committee;

As a professional home inspector, I strive every day to provide a quality service to my clients. The firm for which I work has developed a reputation for thoroughness and accuracy that we are very proud of and seek to maintain. To meet this end, we have chosen to become members of the American Society of Home Inspectors (ASHI) and have shown our proficiency as home inspectors by passing the Nation Home Inspectors Exam, attended monthly educational meetings for more than the required twenty annual education credits, and work within our local chapter to help develop professionalism and integrity in the home inspection industry in general. For this reason alone, our business has thrived.

HB 2100 seeks to eliminate the limits of liability for home inspectors. I urge you not to approve this measure as it will be detrimental to my profession and the public good. It will not promote professionalism in the industry, it will not eliminate poor services, and it will not aid home buyers in purchasing homes that they can live in comfortably, affordably, and safely. HB 2100 has the potential to destroy the home inspection profession within the state of Kansas by driving competent inspectors out of business, making the cost of doing business prohibitive. That is certainly contrary to the interests of the home buying public.

Liability currently exists for home inspectors. Many inspection firms carry liability insurance for this reason. A basic business philosophy of our firm is that we work after the fact to ensure that our clients are satisfied with their home purchase and our services. This has occasionally lead to us paying for or performing repairs that arise from errors in our inspections. After all, every one makes mistakes. To legislate an open-ended liability in this regard can obviously only have detrimental effects on our business. Insurance carriers will see this as well and increase their rates for Errors and Liability insurance coverage as a result. The cost for this coverage is already substantial and increases in rates will lead to fees that approach prohibitive. Of course, this increase in cost will not be borne by the inspectors alone and will be passed along to the home buying public. Aside from driving some home inspectors out of business, others will perform inspections without liability insurance coverage and any claims made against these inspectors will not result with the intended resolution.

Home buyers have extended protections available in the form of home warranties. These cover the mechanical systems, indoor air quality, appliances, and structural repairs. To require the home inspector shoulder this burden will mean that inspection fees will rise accordingly and few inspections will be performed.

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HB 2100 singles out inspectors who perform whole house inspections. There are a variety of inspections that are done during real estate transactions that are not included, but which can have the same potential impact on the home buyer if problems occur. These professions are allowed to place limits on their liability, as are real estate agents, builders, appraisers, and home repair companies. Why?

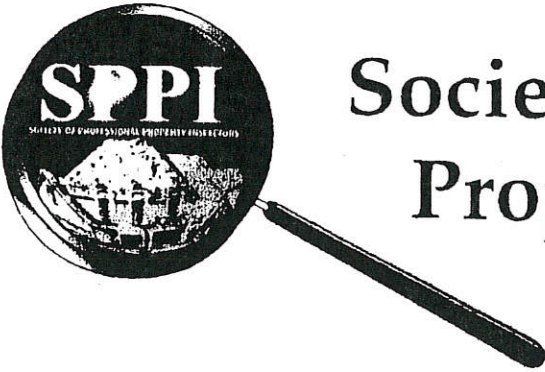
The home inspection industry and our home-buying clients can almost certainly benefit from some state regulation. There are currently laws on the books in many states that can be pointed to as models for this type of legislation. No where will you find anything resembling HB 2100.

Thank you for the opportunity to express my concerns.

Sincerely,



Erik I. Hansen, Lenexa
National Property Inspections of Kansas, Inc.
Treasurer, Great Plains Chapter of ASHI©
Candidate #210945



Society of Professional Property Inspectors

*Hodgden
written*

January 26th, 2004

Fax page 1 of 3

Senate Judiciary
Leadership Office
c/o Dee Woodson 785-296-6718
Topeka, KS.

RE: Hearing on bill 2100 - Opposed

Dear committee,

I am writing as the president of the oldest home inspection organization in Kansas. The Society of Professional Property Inspectors (a non-profit organization) was formed in 1988. Most inspectors in the Kansas City area have been members of SPPI. These are the professionals who go out of their way to provide conscientious service and to seek the best education available.

These professionals protect over 20,000 consumers from unsafe conditions and unexpected repairs each year in Kansas. By doing so, they protect all other parties to these home sales. Their expertise saves countless lawsuits that would otherwise result due to the limited ability of sellers and Realtors to identify or disclose problems in a home.

To reiterate concerns:

Any practicing professional must be able to specify limits to the scope of their service. Patients sign paperwork when entering a hospital for exactly this reason. Otherwise, all hospitals would shut their doors. Even with the best service on earth, there are still unknowns and especially regarding what lies ahead in the future. A

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similar situation applies to all professionals including inspectors, physicians, engineers, attorneys, etc.

It is clearly not practical to disassemble an entire building in search of defects. A home inspector's standard of care typically entails written notice that the inspection/consultation is primarily visual with brief operation of accessible components. Still, the trained eye of a professional consultant is well worth a few hundred dollars to identify almost all existing problems for the largest investment in most people's lives.

Bill 2100 seeks to eliminate the ability to define obvious limitations that exist in the performance of this service. It even limits the consumer's right to be informed of these natural limitations.

The net result of bill 2100 would be to eliminate this service as a consumer option. Like a hospital, even the most conscientious professionals would be forced to shut their doors since they could not protect against unforeseen events. Professional insurance carriers that bank upon reasonable inspector/client relationships would close the door on Kansas inspectors. A flood of highly emotional misunderstandings between sellers, buyers and Realtors would fill Kansas courtrooms.

There is room for improvement within any profession. Yet parties that are harmed by any service or consultant already have many avenues of relief available.

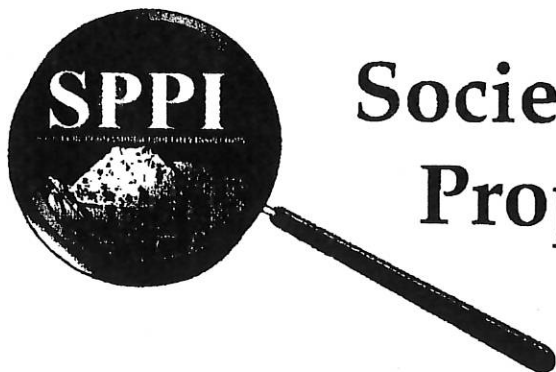
It is difficult to ascertain the benefits intended by this proposed legislation. However, it is hardly an answer for addressing concerns that relate to any industry. Least of all, home inspectors.

Please feel free to contact me if there are any questions or needs.

Sincerely,



Gary Hodgden
SPPI President 2003-2004
913-780-2000



Society of Professional Property Inspectors

Since 1988 A non-profit organization

AMPRO

James Cottrell
(913) 642-4677

Aquatic Consultants, Inc.

Curt Straub
(913) 362-3332

Critter Control

Jeff Archer
(816) 363-8727

Don Wilkinson Pest Control

Rhonda Gernhardt
(913) 768-1188

Ed Sullivan Inspections

Edward Sullivan
(913) 438-7474

Full Service Chimney

Robert Berry
(913) 642-6171

Inspex

J. Jack Clark
(913) 492-4663

Kansas City Home Insp.

Bill McGuff
(913) 381-7583

Midwest Home, Inc.

Stephen Hodgden
(816) 941-2005

Midwest Radon

Gary Hodgden
(913) 780-2000

Moore's Home Mechanical Serv.

Randy A. Moore
(816) 421-7300

National Property Insp. of KS.

Larry Schindler
(913) 341-4595



Norm Clark Property Inspec.

Norman Clark
(913) 780-4677

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Serving the Pest Control
Industry of Kansas Since 1948



**Statement by Mark Hassman, Chairman Government Affairs
Kansas Pest Control Association
On House Bill 2100
Before the Senate Judiciary Committee**

Tuesday January 27, 2004

Mr. Chairman and members of the committee.

My name is Mark Hassman. I am currently the chairman of the Government Affairs committee of the Kansas Pest Control Association and Manager of Hassman Termite and Pest Control in both Salina and McPherson.

I am here today to voice concerns that the Kansas Pest Control Association has with regard to HB 2100.

The Kansas Pest Control Association is a 54-year-old organization comprised of about 100 member Pest Management companies in Kansas. It is the primary Association in Kansas whose member companies perform a wide variety of structural pest control services for the residents of Kansas. One of the services that many of our member companies perform is a termite inspection and/or a Wood Destroying Insect (WDI) inspection. A WDI by definition is an inspection that would include *any* insect that can cause damage to wood or wood products. This is why I am here today.

House Bill 2100, in its current version, severely limits what our member companies and any other Pest Management company would be able to do in reporting findings of any WDI. I would like to explain what a WDI is and is not, what direct impact HB 2100 has on WDI's, and finally the impact that will be felt by the consumers of Kansas, the Real Estate and Mortgage Banking industry and finally the State of Kansas should this Bill pass.

Wood Destroying Insect inspections are careful visual inspections of the readily accessible areas of any structure. We, for the most part, would be looking for termite evidence or any other evidence of wood destroying insects. The inspections performed may be ordered by a buyer or seller of a property, a realtor representing either the buying or selling party, or the mortgage company looking to finance the purchase. After the inspection is complete, a written report is submitted to the person or company ordering the inspection.

As part of the reporting process, the inspector will report the findings to the party ordering the inspection. Such findings are visible evidence of an active infestation, the insect observed, the location of that infestation, whether damage is found, and whether the structure shows signs of a previous treatment. It may also include a recommendation for treatment or additional

future inspections. Also, an integral part of the report will contain language that informs the interested parties that there may be evidence of insects or damage from insects that is in hidden or inaccessible areas. The hidden and inaccessible areas will be listed on the report. There is usually also a disclaimer in the report that the report is not a structural damage report.

With the passage of HB 2100, we would not be able to report the hidden and inaccessible areas in a structure nor disclaim that the report is not a structural damage report.

These reporting methods are not just happenstance. They are the result of work performed jointly between our industry and FHA and VA many years ago. The result of that effort was the development of NPCA Form 1. I have submitted a copy of this report for each of you to look at. This report is mandated for each and every FHA, VA, and Rural Development Loan issued today. In addition to these loans, many of the lenders who offer what are termed conventional mortgages also follow these standards mainly because the secondary mortgage market requires it.

Wood Destroying Insect inspectors are not currently regulated by any agency in the State of Kansas. The licensing agency for termite and pest control companies performing pesticide applications in Kansas is the Department of Agriculture. You should also be aware that most termite inspections are performed by licensed Pest Management companies. As a condition of licensure, a company must provide evidence of liability insurance. We are responsible to the consumers. However, we cannot be held liable to them for areas that are out of our control by not being able to disclaim what we can and cannot inspect in a structure and what the report is and is not.

As evidence of our intention to be financially responsible for the work we do, KPCA, this year, requested introduction of a bill increasing the insurance requirement for KDA to issue a pest control company a license from \$25,000 to \$250,000. That bill has been introduced through the Senate Agriculture Committee as Senate Bill 326.

If HB 2100 were to become law, the result would be that no Pest Management or home inspection companies could offer to provide WDI's for FHA, VA or Rural Development loans. All of the other mortgage loan products that require termite or WDI inspections would also not be available. The reason is that termite inspections or WDI's would no longer be available. The reasons would be that either the NPCA Form 1 could not be used, or the liability for the inspection would be too high.

This would result in virtually no loan products being available for mortgage loans. This would in turn lead to a huge decline in real estate sales in Kansas. And finally, the end result to the State would be reduced revenues, as the inevitable decline in real property values would mean less property tax and other taxes. Mr. Goossen's fiscal note for this Bill may have been accurate in its original form. However, enactment of HB 2100 in its current form will have financial impacts to the State.

We urge you to amend the bill beginning on line 22 to read: "***The term does not include an examination for... 'Wood destroying insects performed by a pest control technician licensed by the Kansas Department of Agriculture...***," or kill the bill.

I would entertain any questions.

Wood Destroying Insect Infestation Inspection Report This is not a structural damage report. This form may not be altered.

Section I. General Information Inspection Company, Address, & Phone: _____
 Company's Business Lic. No: _____
 Property Address: _____
 FHA/VA Case No. (if any): _____

Inspector's Name: _____ Structure(s) Inspected: _____

Section II. Inspection Findings This report is indicative of the condition of the subject structure(s) on the date of the inspection only and is Not to be construed as an express or implied warranty or guarantee against latent, concealed, or future infestation or defects. Any such warranty or service agreement to provide future treatment or inspections may be provided as a separate attachment and only if indicated in Section IV. See Section IX on side 2 for important information. Based on a careful visual inspection of the readily accessible areas of the structure(s) inspected:

a. No Visible evidence of a wood destroying insect infestation was observed.

b. Visible evidence of a wood destroying insect infestation was observed as follows:

Live insects; (description & location): _____

Insect parts, frass, exit holes, or shelter tubes; (description & location): _____

Damage from wood destroying insects was noted in the following area(s): _____

Regarding visible evidence of wood destroying insects: The inspector may find wood which has been damaged by insects. Any damage noted should be considered only as evidence of current or previous infestation of wood destroying insects. If box b is checked above, it should be understood that some degree of damage, including hidden damage, may be present. The inspector's training and experience do not qualify the inspector in damage evaluation or any other building construction technology and/or repair. Upon receipt of this report, the Seller or the Seller's Agent shall notify the Buyer that any damage should be examined by a qualified individual to determine the need for repair.

Any visible evidence observed above appears:

Active; treatment recommended at this time (Note: FHA and VA require treatment for all active infestations)

Inactive; no treatment recommended at this time

Activity and need for treatment cannot be determined without further investigation. Reason: _____

In many cases, based upon visible signs of infestation by wood destroying insects, it is not possible without benefit of subsequent inspections and evaluations over a period of time to ascertain whether an infestation is active or inactive. If a warranty or service agreement is in effect, the company which issued the warranty or service agreement should be contacted. If no warranty or service agreement is in effect, the inspecting company or another company may provide treatment, if requested and permitted by regulations, for an additional fee.

It appears that the structure(s) or a portion thereof may have been previously treated. Evidence of previous treatment: _____

This company can give no assurances with regard to work that may have been previously performed by other companies. The company which treated the property should be contacted by the Buyer for treatment and warranty information.

Section III. Treatment was/is scheduled to be performed by the inspecting company: Yes No Date: _____
 Treatment Description: _____

Section IV. Attachments The following listed attachments are integral parts of this inspection report:

Section V. Obstructions & Inaccessible Areas
 The following areas of the structure(s) inspected were obstructed or inaccessible (see item 4 on side 2):

Basement _____

Crawl Space _____

Main Level _____

Attic _____

Garage _____

Exterior _____

Porch _____

Addition _____

Other _____

The inspector may write out inaccessible areas or use the following key:

1. fixed ceilings	12. only visual access
2. suspended ceiling	13. no access beneath
3. fixed wall covering	14. cluttered condition
4. floor covering	15. standing water
5. insulation	16. dense vegetation
6. cabinets or shelving	17. exterior coverings
7. stored items	18. window well covers
8. furnishings	19. wood pile
9. appliances	20. snow
10. no access or entry	21. unsafe conditions
11. limited access	

Section VI. Additional Comments (may be continued on side 2)

Section VII. Inspector's Signature: Neither I nor the company for which I am acting have had, presently have, or contemplate having any interest in the property.

X _____ Certification or Registration No: (if applicable) _____ Date of Inspection: _____

Section VIII. Statement of Buyer & Seller This report is integral to, and a necessary part of the inspecting company's full disclosure as to the scope and inherent limitations of the inspection and report of findings. It is most important that the interested parties acknowledge this advice. The Seller hereto agrees that all known property history information regarding WDI infestation, damage from infestation, and treatment history has been disclosed to the Buyer.

Signature of Seller(s) _____ Date: _____
 Owner(s) _____
 (if refinancing) X _____

The undersigned hereby acknowledges receipt of a copy of this report

Buyer's Signature: _____ Date: _____

X _____

Section IX. Important Consumer Information Regarding the Scope and Limitations Or the Inspection

Read this entire page as it is part of the report.

Attention Homebuyer: The WDI inspection firm is not responsible to repair any damage disclosed by this inspection, including without limitation, any wood destroying insect infestation and/or damage which exists in areas or in wood which were not accessible for visual inspection as of the date of this inspection, except as provided by separate contract. Also, wood destroying insect infestation and/or damage may exist in concealed or inaccessible areas. This inspection firm cannot guarantee that any wood destroying insect infestation and/or damage disclosed by visual inspection of the premises, as noted, represents all of the wood destroying insect infestation and/or damage which may exist as of the date of the inspection. Damage and any corrective action should be evaluated by the buyer and/or their qualified building expert to determine the extent of damage and need for repair.

inspection did not include areas which were obstructed or inaccessible at the time of this inspection. All structures which were inspected are specifically noted. Neither the inspector nor the company for which the inspector is acting have had, presently have, or contemplate having any ownership in the property. This report shall be considered invalid for purposes of securing a mortgage and/or settlement of property transfer if not used within ninety (90) days from the inspection date.

This report is not a guarantee or warranty as to the absence of wood destroying insects nor is it a report as to structural integrity.

4. Common Obstructions and/or Inaccessible Areas No inspection was made in areas which required the breaking apart or into, dismantling, removal of any object including, but not limited to: moldings, floor coverings, wall coverings, siding, ceilings, insulation, floors, furniture, appliances, and/or personal possessions; nor were areas inspected which were obstructed and/or inaccessible for physical access. Your inspector may write out inaccessible areas or use the key in section V. If any area which has been reported as inaccessible is made accessible, the inspection company may be contacted for another inspection. An additional fee will apply.

1. About the Inspection The inspection was conducted in the readily accessible areas of the identified inspected structure(s). If visible evidence of the infestation by wood destroying insects is reported, it should be understood that some degree of damage, including hidden damage, may be present.

5. Consumer Maintenance Advisory regarding Integrated Pest Management for Prevention of Wood Destroying Insects Information regarding prevention of wood destroying insect infestation is helpful to any property owner interested in protecting the structure from infestation. Any structure can be attacked by wood destroying insects. Periodic maintenance should include measures to minimize possibilities of infestation in and around a structure. Factors which may lead to infestation from wood destroying insects include foam insulation at foundation, earth-wood contact, faulty grade, firewood against structure, insufficient ventilation, moisture, wood debris in crawlspace, wood mulch, tree branches touching structures, landscape timbers, and wood rot. Should these or other such conditions exist, corrective measures should be taken by the owner in order to reduce the chances of infestations by wood destroying insects, and the need for treatment.

2. Scope of the Inspection A wood destroying insect inspector is trained to look for visible signs of wood destroying insect infestation. A representative of this inspection firm has conducted an inspection which may include probing and/or sounding of the unobstructed and accessible areas of the subject structure(s) to determine the presence or absence of visible evidence from wood destroying insects. For the purposes of this inspection, wood destroying insects include termites, carpenter ants, carpenter bees, and reinfesting wood boring beetles.

3. What the Inspection Covered and Validation The inspection covered the readily accessible areas of the structures inspected, including attics and crawlspaces which permitted entry during inspection. This

Additional Comments from Side 1:

(indicate to which section these comments apply)

Horizontal lines for additional comments.

Grid area for drawing or notes. Includes a vertical label 'Not to scale' on the right side.

© 1995 National Pest Management Association. All Rights Reserved. No reproduction of this form is permitted without the express permission of NPMA. This form has been developed by NPMA as a service to WDI inspection firms. By so doing, NPMA does not certify that the inspection firm is a member in good standing of NPMA or that it is qualified to perform the inspection. NPMA is not guaranteeing the inspection firm's work. NPMA shall not be party to any claim or action by the buyer or seller against the inspection firm solely by reason of making this form report available for use.

BYRON HOME INSPECTION SERVICES, INC.

ASHI MEMBER #103763

Written

5176 Mansfield Lane Shawnee, Kansas 66216

February 2, 2004

Senator John Vratil
State Capitol, Room 255-E
Topeka, KS 66612-1504

Re: HB 2100

Dear Senator Vratil:

I am writing to urge you and the Members of the Senate Judiciary Committee to vote against HB 2100. The bill, proposed by Representative Patterson, was written ostensibly to provide safeguards for citizens victimized by disreputable home inspectors. In fact, it is just one more effort to pave the way for trial lawyers to line their pockets.

The intent of the bill is to forbid home inspectors from including language in their service contracts that limits their liability in the event of a lawsuit against them. On the surface, that doesn't sound like a bad idea. It sounds like it would provide a remedy for people who are sorely wronged by a home inspector's poor performance or negligence. What it would really do, however, is provide an avenue for frivolous lawsuits and provide a disservice to Kansas families.

Like most home inspection companies, there is a limitation of liability clause in my company's contract. It says that if a problem arises later that cannot be resolved between the client and us, the company's liability is limited to the amount of the inspection fee. I do not believe for one minute that if a serious problem arose out of an inspection, my company would be able to rely on that clause. I have no doubt it would be set aside in court. It is there because small business owners all over the country have learned that we need to put roadblocks in place to protect us from frivolous suits brought by ambitious lawyers.

Home inspections are limited visual evaluations conducted to a generalist level. In Kansas City, the average inspection fee for the typical house is around \$300.00. I can't speak for all inspectors, but I can tell you I explain to the client before the inspection starts that it will be a limited inspection and, as such, it definitely will not identify everything that is wrong with the house. I also offer a service called "Inspection Plus," which provides specialist levels of inspection services and a negotiable limitation of liability. I am currently in my tenth year of business. After nearly four thousand home inspections, not one single client has chose to upgrade the service to Inspection Plus.

(913) 962-5222

Fax: (913) 962-8488

jlbyron@swbell.net

Senate Judiciary

*2-5-04*Attachment 14

BYRON HOME INSPECTION SERVICES, INC.

-2-

There are surely a number of reasons why clients have shied away from Inspection Plus, but there is no doubt increased cost is principal among them. I tell my clients the inspection can be conducted with no limitation on my company's liability or with some lesser limitation, but the price will go up. That is exactly what will happen if this bill proceeds; the prices for home inspections will increase. If I know my company is vulnerable to attack by vultures, I will need to be prepared to defend it. The ability to defend it will be generated through higher fees. Whether those higher fees are the result of increased insurance costs or an inability to obtain insurance is irrelevant. The end result will be that Kansas families will be harmed so that trial lawyers can benefit. The families who can barely afford home inspection services now will not be able to afford them at all if prices double or triple. These are typically the families who need the service the most. These are people who are purchasing homes on the lower end of the price scale, often first-time buyers who are inexperienced at dealing with house problems and unable to afford big repairs. This bill would drop many of them out of the inspection marketplace altogether, so while the original intent is said to be for consumer protection, in truth it would leave many with no protection at all.

Please vote against this bill. It is an ill-conceived, ill-advised piece of legislation written only for the benefit of trial lawyers. It is not intended to serve the public interest. In fact, it would provide a disservice to many.

Thank you for your attention.

Sincerely,



John Byron
President

Senate Judiciary Committee
January 27, 2004
Opposition Testimony of Tom Lauhon,
American Residential Inspections, Inc.

Mr. Chairman and members of the committee, thank you for the opportunity to testify on House Bill 2100. My name is Tom Lauhon. I am a home inspector as well as a teacher in the field. I am here today because I oppose HB 2100.

A home inspection is not an insurance policy against unseen structural integrity problems. A home inspection is used to provide a purchaser a more complete picture of the condition of a physical structure. I believe home inspections provide the purchaser reassurances that they are getting the benefit of their bargain.

There are two reasons why passing HB 2100 would be bad public policy for Kansas.

First, the purchaser will be harmed. HB 2100 creates an artificial barrier to entry when purchasing a house. My insurance carrier tells me that my rates will rise dramatically if HB 2100 is passed. The rise of insurance rates equates to a doubling or tripling of the price of a home inspection. Because home inspections are generally up-front costs many lower income purchasers would face an additional barrier to home ownership. And for what? To give the trail lawyers another insurance pot to try to empty?

Second, the government should not be in the business of writing home inspection contracts. I am not an attorney, but I have tried to understand the importance of being able to freely enter into contracts in the state of Kansas. Court cases like *Moler v. Melzer* have upheld my right to limit my exposure through contract. Home inspectors receive a very small amount of the real estate transaction compared to realtors, attorneys, and the financial services.

I try to make sure my contracts are clear and that the customers know what they are receiving in return. We make them sign a box so they understand what they are contracting for. There is nothing preventing the customer from seeking the advice of a licensed professional engineer or additional services which can provide them an enhanced picture that we cannot see. I have included a sample scenario in my written testimony to illustrate that point.

Mr. Chairman, thank you for the opportunity to testify. We certainly oppose HB 2100.

Sample Scenario

What appears to be a shrinkage/curing crack and generally reported as such will now be written as a potentially catastrophic issue that requires opening the sheetrock wall on the interior to view the crack to its termination. Additionally, a soil analysis could be completed to determine the hydraulic loads being induced during various climatic conditions to determine if the crack will become a movement crack as a result of excessive lateral loads. This can only be determined by an analysis of the soils types and conditions, a core sampling of the foundation wall to determine the strength of the foundation wall materials and a magnetic scan of the wall itself to determine if there is adequate steel within the wall to support the imposed loads. And finally the buyer signing an additional contract with the home inspectors that they will perform the needed maintenance to remove roof water and rainfall from the immediate area surrounding the foundation, which if not maintained can be a contributing factor of the future movement of the foundation wall, that has what appears to be a shrinkage or curing crack.

Potential costs of further analysis are as follows:

- Soils engineer report, \$200.
- Foundation company to perform a core sample of the foundation wall, \$200
- Engineering firm to perform stress test and chemical analysis to determine the strength of the concrete materials installed, \$250.
- Wall scan of entire foundation wall to determine if adequate steel was used, \$300. (Assuming that the tests can determine the diameter of the rebar installed without chipping out a section of wall to expose the rebar.)
- Engineering report with analysis of the above noted factors in an attempt to verify the potential ability of the wall to withhold potential imposed loads. \$250
- Fee that the engineer will impose for future unlimited liability in rendering a decision as to whether the crack was a shrinkage crack or a movement crack, \$?.

Total additional cost of analysis of this one shrinkage crack = Minimum of \$1200.

The following situations are actual lawsuits that have recently been filed against home inspectors. I can provide cites if necessary.

1. The sellers freshly paint the house for sale. One month after moving in, the family canary dies. It is later determined that the sellers painted kilz over mold on the walls. This was hidden from view at the time of the inspection and the contract stipulated that mold was not a part of the inspection.
2. One year after the new buyers move in, a home in New Jersey burns down. The cause is determined to be clogged lint in a clothes dryer vent hose. The inspector is being sued because he did not warn the buyer that this was a possibility.

3. The inspector arrived at a house that reeking of cat waste. The smell was so bad that the inspector wore a mask and limited his breathing. The attic was inaccessible because of an active hornets nest near the access opening, and was so stated on the inspection report. The buyer sued because the inspector did not tell the buyer that there was cat waste in the attic and the staining is now coming through the ceiling.