

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 16, 2006 in Room 241-N of the Capitol.

All members were present except:

Ty Masterson- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Renae Jefferies, Office of Revisor of Statutes

June Evans, Committee Secretary

Conferees appearing before the committee:

Tom Whitaker, Kansas Motor Carriers Assn.

Bill Yanek, Kansas Association of Realtors

Jeff Wells, Vice President, Kansas Pest Control Association

George Barbee, Kansas State Board of Technical Professionals

Jeff Barnes, President, Kansas Association of Real Estate Inspectors

Kerry Parham, Midwest Pro-ASHI Chapter

Randy Sipe, President, Great Plains Chapter, American Society of Home Inspectors

Michael Greenwalt, MGI Home Inspection LLC

Ron Gaches, Kansas Society of Professional Engineers of Kansas and American Council of Engineering Companies

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2772 - Employment relationship between owner-operators and licensed motor carrier operators for employment security law purposes.**

Staff briefed the committee on **HB 2772**. This is an act concerning employment security law.

Tom Whitaker, Executive Director, Kansas Motors Carriers Association, testified as a proponent to **HB 2772**. **HB 2772** does not change the factors used to determine whether an owner/operator is an independent contractor or employee. This merely removes any doubt that required compliance with federal and state safety rules shall not enter into the determination of an owner/operator's status (Attachment 1).

There was no opposition to **HB 2772**.

The Chairman closed the hearing on **HB 2772**.

The Chairman opened the hearing on **HB 2807 - Home inspectors registration and certification, errors and omissions insurance.**

Bill Yanek, Kansas Association of Realtors (KAR), Director of Government Relations, testified as a proponent to **HB 2807**. The bill requires the registration of all home inspectors with the State of Kansas. Second, the bill mandates, over a period of years that home inspectors become certified by a recognized organization of home inspectors. This certification is not limited to a single certification source, but allows the flexibility for home inspectors to choose their certification route.

HB 2807 also mandates errors and omissions insurance for all home inspectors. KAR strongly believes that some type of home inspection liability protection, whether that takes the form of insurance or not, is essential to protecting the public (Attachment 2).

Jeff Wells, Vice President, Kansas Pest Control Association, testified as an opponent to **HB 2807**. The genre of inspections that the Kansas Pest Control provides differs greatly from that of a standard home inspection.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 16, 20006 in Room 241-N of the Capitol.

Pest management professionals perform these inspections as a stand-alone service and do not, as a rule, offer inspections dealing with any other structural components in conjunction with the WDI report (Attachment 3).

George Barbee, Public Member of the Kansas State Board of Technical Professions, appeared as an opponent to **HB 2807**. It is felt it is not appropriate to place their registration under the Kansas State Board of Technical Professions. Residential dwellings are exempt from licensure under the laws as stated in K.S.A. 74-7031 and 74-7033. The Board of Technical Professions has a statutory responsibility for the licensure of design professionals. These professionals are required, with few exceptions, to graduate with a BS from an accredited curriculum in the appropriate profession (Attachment 4).

Jeff Barnes, President, Kansas Association of Real Estate Inspectors, Wichita, Kansas, testified as an opponent to **HB 2807**. This bill does not, despite its best intentions, address the main issue plaguing the industry which is a lack of minimum competency requirements. The bill would require inspectors to carry Errors and Omissions insurance. The effect of this would be disastrous for the consumer. There is concern that regulatory control for the industry is under the Board of Technical Professions. This group has little or no idea about what an inspection is or the many complexities of the inspection process.

The Kansas Association of Real Estate Inspectors has been working on language for a bill which addresses the cause of the issues relating to the industry, not the symptoms. The language requires inspectors to inspect to a nationally recognized standard. This gives them the ammunition needed to assure the realtor that the inspection is fair and impartial and allows the needed time to complete the inspection (Attachment 5).

Kerry Parham, President, Midwest Pro-American Society of Home Inspectors (ASHI) Chapter, testified as an opponent, stating **HB 2807** is an inequitable piece of proposed legislation that unfairly requires home inspectors to become the only profession in the state required by statute to carry E&O insurance. This bill would wreck havoc among the home inspection industry. The general public would suffer because the cost of home inspections would likely increase 20% to 45%. Home warranties are available to buyers through their realtors, usually for less than \$400. A homebuyer's greatest protection against choosing an unqualified home inspector is to pick a "full" member of ASHI (Attachment 6).

Randy Sipe, President, Great Plains Chapter (ASHI), testified as an opponent. The bill should protect the public. As written it only starts to outline basic rules that need to take place. We could support a good bill. This bill does not identify qualifications for professional home inspectors, education requirements for inspectors, background checks, or other requirement that should be in effect to protect the consumer. An undefined registration act would only mislead the public into believing that these things were in effect and that they were, indeed protected (Attachment 7).

Michael Greenwalt, owner of MGI Home Inspection, LLC, Milford, Kansas, testified as an opponent to **HB 2807**. Although consideration of this bill is a positive step towards insuring that inspectors meet minimum standards, if this bill were to pass as currently written, it would create many issues and undue consequences (Attachment 8).

Ron Gaches, representing the Kansas Society of Professional Engineers and American Council of Engineering Companies, testified as an opponent to **HB 2807**. Our organizations take no position as to the underlying merits of the bill. However, there are concerns about putting the responsibility for the registration and certification of home inspectors on the Kansas State Board of Technical Professions (Attachment 9).

The Chairman said the Committee would not work the bill due to time constraints before turn around. Hopefully the realtors and inspectors can bring a bill back early next year and it will be addressed then.

The Chairman closed the hearing on **HB 2807**.

The Chairman asked the Committee what their wishes were on **HB 2696 - Workers compensation; administrative law judge, requirements, salary and applications; establishing the workers compensation administrative law judge nominating and review committee.**

CONTINUATION SHEET

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Staff brief the Committee on a balloon amendment to **HB 2696** (Attachment 10).

Representative Grant moved and Representative Roth seconded to adopt the balloon amendment to **HB 2696**.

Representative Roth moved and Representative Grange seconded to move **HB 2696** out as amended. The motion carried.

Representative Kiegerl moved and Representative Humerickhouse seconded a Substitute Motion authorizing Administrative law judges increased sanctions for treatment and benefits.

There was discussion and the Chairman reminded the committee that there was another bill with the same subject of benefits still in Committee.

Representative Kiegerl and Representative Humerickhouse withdrew their Substitute Motion.

The Chairman stated, "back on the original motion". The motion carried to move **HB 2696** out favorably as amended.

The meeting adjourned at 10:50 a.m. The next meeting will be February 17, 2006.

COMMERCE AND LABOR COMMITTEE

DATE February 16, 2006

NAME	REPRESENTING
Mike Reecht	Home Inspectors
Jeff Barnes	Kansas Assoc. of Real Estate Inspr.
KERRY PARHAM	Midwest Pro-ASHI Chapter
DAVID STOFFER	GREAT PLAINS CHAPTER OF ASHI
MIKE GREENWALT	Home Inspector
Betty Rose	K. State Bldg. Tech. Prof.
SHANE POUCH	GREAT PLAINS ASHI
John Clason	Great Plains ASHI
Randy Sipe	President Great Plains ASHI
David Shriver	KASB
DARREL MAWIC	KATA
LARRY MAWIC	KATA
Scott Heidner	ACEC Kansas
JEFF GUIDICCI	KS CHAMBER
Martha Jean Jones	KIMHA



Kansas Motor Carriers Association

Trucking Solutions Since 1936

Calvin Koehn
Circle K Transport, Inc.
President

Jeff Robertson
J.M.J. Projects
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Miller Trucking, LTD
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TT&T Towing, Inc.
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Golden Plains Trucking, Inc.
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Arensdorf Trucking, Inc.
ATA State Vice President

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Rawhide Trucking, Inc.
ATA Alternate State VP

Mike Ross
Ross Truck Line of Salina, Inc.
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Public Relations Chairman

Dave Eaton
Cummins Central Power, LLC
Allied Industries Chairman

Tom Whitaker
Executive Director

LEGISLATIVE TESTIMONY

In Support of House Bill No. 2772

**Presented by the Kansas Motor Carriers Association
Before the House Commerce & Labor Committee**

Representative Don Dahl, Chairman

Thursday, February 16, 2006

MR. CHAIRMAN AND MEMBERS OF THE HOUSE COMMERCE & LABOR COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our 1,250 member-firms seeking your favorable consideration of House Bill No. 2772.

HB 2772 clarifies in Kansas law that a motor carrier complying with the requirements of the Federal Motor Carriers Safety Regulations shall not be considered as the motor carrier's exercise of control over an owner/operator.

In the trucking industry, an owner/operator will lease his/her equipment to a licensed motor carrier to operate under the carrier's operating authority granted by the state or federal government. In return, the owner/operator receives a percentage of the freight revenue generated by such equipment lease. Owner/operators are independent small businesses.

Federal law (see attached) requires a motor carrier to be responsible for operating leased motor vehicles in compliance with requirements prescribed by the Secretary of Transportation on safety of operations and equipment as if the motor vehicles were owned by the motor carrier. We have attached a list of the federal and state rules and regulations with which a motor carrier must comply.

HB 2772 does not change the factors used to determine whether an owner/operator is an independent contractor or employee. The bill merely removes any doubt that required compliance with federal and state safety rules shall not enter into the determination of an owner/operator's status.

The Kansas Motor Carriers Association respectfully requests the House Commerce and Labor Committee report HB 2772 favorably. We thank you for the opportunity to appear before you today and we would be pleased to respond to any questions you may have.

49 § 14101

Note 2

on ground of neglect or refusal to transport goods where although it failed to provide a tractor from Monday through Thursday its failure to do so was due to inclement weather and it made a good-faith effort to provide and eventually did provide service. *John Morrell & Co. v. Frozen Food Exp., Inc.*, C.A.5 (Tex.) 1983, 700 F.2d 256.

A carrier is not required to subject its employees to risk of injury or harm in crossing picket line, established by a shipper's striking employees, in order to comply with statute obligating carrier to furnish transportation on reasonable request therefor by shipper. *Meier & Pohlmann Furniture Co. v. Gibbons*, C.A.8 (Mo.) 1956, 233 F.2d 296, certiorari denied 77 S.Ct. 101, 352 U.S. 879, 1 L.Ed.2d 80.

§ 14102. Leased motor vehicles

(a) **General authority of Secretary.**—The Secretary may require a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 that uses motor vehicles not owned by it to transport property under an arrangement with another party to—

- (1) make the arrangement in writing signed by the parties specifying its duration and the compensation to be paid by the motor carrier;
- (2) carry a copy of the arrangement in each motor vehicle to which it applies during the period the arrangement is in effect;
- (3) inspect the motor vehicles and obtain liability and cargo insurance on them; and
- (4) have control of and be responsible for operating those motor vehicles in compliance with requirements prescribed by the Secretary on safety of operations and equipment, and with other applicable law as if the motor vehicles were owned by the motor carrier.

(b) **Responsible party for loading and unloading.**—The Secretary shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to jurisdiction under subchapter I of chapter 135 and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

(Added Pub.L. 104-88, Title I, § 103, Dec. 29, 1995, 109 Stat. 890.)

MOTOR CARRIERS, ETC. Ch. 141

In action brought by the Commission and the states of Michigan and Wisconsin for a preliminary injunction compelling defendant, a common carrier by water, to operate all three of its Lake Michigan carferries during the 1977 summer sailing season, the record showed that the 1977 demand for defendant's carferry service was at least as high as, and possibly higher than, that of recent years, that August had been and was likely to continue to be the month of heaviest demand, and that, despite defendant's best efforts, it would not be able to satisfy its statutory and administrative mandate of providing adequate service upon reasonable demand with the operation of only two vessels during the month of August, 1977. *I.C.C. v. Chesapeake & Ohio Ry. Co.*, W.D.Mich.1977, 438 F.Supp. 666.

Ch. 141 OPERATIONS OF CAR

HISTORICAL AN

Revision Notes and Legislative Reports
1995 Acts. House Report No. 104-3
House Conference Report
104-422, see 1995 U.S. Code Cong. a
Adm. News, p. 793.

Effective Dates
1995 Acts. Section effective Jan.
1996, except as otherwise provided
Pub.L. 104-88, see section 2 of Pub

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Carriers cases: 70k[add key num
Commerce cases: 83k[add key n
See, also, WESTLAW guide follo

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Liability of lessee 6
Preemption 3
Presumptions 9
Private right of action 8
Purpose 1
Regulations 4
Right of action 8
Rules and regulations 4
State regulation or control 3
Strict liability 11

1. Purpose
Interstate Commerce Act was su
to prevent accidents, as well as
financially responsible defendan
statutory provision for direction a
trol of leased vehicles was inte
insure that interstate operations v
supervised directly by persons

(2) When possession of the equipment by the authorized carrier ends, a receipt shall be given in accordance with the terms of the lease agreement if the lease agreement requires a receipt.

(3) Authorized representatives of the carrier and the owner may take possession of leased equipment and give and receive the receipts required under this subsection.

(c) **Identification of equipment** — The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service as follows:

(1) During the period of the lease, the carrier shall identify the equipment in accordance with the FMCSA's requirements in 49 CFR part 390 of this chapter (Identification of Vehicles).

(2) Unless a copy of the lease is carried on the equipment, the authorized carrier shall keep a statement with the equipment during the period of the lease certifying that the equipment is being operated by it. The statement shall also specify the name of the owner, the date and length of the lease, any restrictions in the lease relative to the commodities to be transported, and the address at which the original lease is kept by the authorized carrier. This statement shall be prepared by the authorized carrier or its authorized representative.

(d) **Records of equipment** — The authorized carrier using equipment leased under this section shall keep records of the equipment as follows:

(1) The authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly indicating that the transportation is under its responsibility. These papers shall be preserved by the authorized carrier as part of its transportation records. Leases which contain the information required by the provisions in this paragraph may be used and retained instead of such documents or papers. As to lease agreements negotiated under a master lease, this provision is complied with by having a copy of a master lease in the unit of equipment in question and where the balance of documentation called for by this paragraph is included in the freight documents prepared for the specific movement.

(2) [Reserved]

[44 FR 4681, Jan. 23, 1979, as amended at 49 FR 47269, Dec. 3, 1984; 49 FR 47850, Dec. 7, 1984; 50 FR 24649, June 12, 1985; 51 FR 37406, Oct. 22, 1986; 62 FR 15424, Apr. 1, 1997]

§376.12 Written lease requirements.

Except as provided in the exemptions set forth in subpart C of this part, the written lease required under §376.11(a) shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier.

(a) **Parties** — The lease shall be made between the

authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives.

(b) **Duration to be specific** — The lease shall specify the time and date or the circumstances on which the lease begins and ends. These times or circumstances shall coincide with the times for the giving of receipts required by §376.11(b).

(c) **Exclusive possession and responsibilities** — (1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

(2) Provision may be made in the lease for considering the authorized carrier lessee as the owner of the equipment for the purpose of subleasing it under these regulations to other authorized carriers during the lease.

(3) When an authorized carrier of household goods leases equipment for the transportation of household goods, as defined by the Secretary, the parties may provide in the lease that the provisions required by paragraph (d)(1) of this section apply only during the time the equipment is operated by or for the authorized carrier lessee.

(4) Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. 14102 and attendant administrative requirements.

(d) **Compensation to be specified** — The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

(e) **Items specified in lease** — The lease shall clearly specify which party is responsible for removing identification devices from the equipment upon the termination of the lease and when and how these devices, other than those painted directly on the equipment, will be returned to the carrier. The lease shall clearly specify the manner in which a receipt will be given to the authorized carrier by the equipment owner when the latter retakes possession of the equipment upon termination of the lease agreement, if a receipt is required at all by the lease. The lease shall clearly specify the responsibility of

Part 391.51 Requires the motor carrier to maintain a Driver Qualification File. The following is a list of the minimum requirements for a Driver Qualification File.

(b)(1) The driver's application for employment completed in accordance with §391.21;

(b)(2) A copy of the response by each State agency concerning a driver's driving record pursuant to §391.23(a)(1);

(b)(3) The certificate of driver's road test issued to the driver pursuant to §391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to §391.33;

(b)(4) The response of each State agency to the annual driver record inquiry required by §391.25(a);

(b)(5) A note relating to the annual review of the driver's driving record as required by §391.25(c)(2);

(b)(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27;

(b)(7) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle as required by §391.43(f) or a legible photographic copy of the certificate; and

(b)(8) A letter from the Field Administrator, Division Administrator, or State Director granting a waiver of a physical disqualification, if a waiver was issued under §391.49.

(c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

(d) The following records may be removed from a driver's qualification file three years after the date of execution:

(d)(1) The response of each State agency to the annual driver record inquiry required by §391.25(a);

(d)(2) The note relating to the annual review of the driver's driving record as required by §391.25(c)(2);

(d)(3) The list or certificate relating to violations of motor vehicle laws and ordinances required by §391.27;

(d)(4) The medical examiner's certificate of the driver's physical qualification to drive a commercial motor vehicle or the photographic copy of the certificate as required by §391.43(f); and

(d)(5) The letter issued under §391.49 granting a waiver of a physical disqualification.

Part 395.8 Requires the motor carrier to maintain the driver's logs and supporting documents.

(k)(1) Retention of driver's record of duty status. Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.

Part 390.15 Requires the motor carrier to maintain an Accident File.

A motor carrier must make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative or authorized third party representative, upon request or as part of any investigation within such time as the request or investigation may specify. A motor carrier shall give an authorized representative all reasonable assistance in the investigation of any accident including providing a full, true and correct response to any question of the inquiry.

Part 40.333 Requires the Motor Carrier to maintain Drug and Alcohol Testing Files.

(a) As an employer, you must keep the following records for the following periods of time:

(a)(1) You must keep the following records for five years:

(a)(1)(i) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;

(a)(1)(ii) Records of verified positive drug test results;

(a)(1)(iii) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);

(a)(1)(iv) SAP reports; and

(a)(1)(v) All follow-up tests and schedules for follow-up tests.

(a)(2) You must keep records for three years of information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees.

(a)(3) You must keep records of the inspection, maintenance, and calibration of EBTs, for two years.

(a)(4) You must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

(b) You do not have to keep records related to a program requirement that does not apply to you (e.g., a maritime employer who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).

(c) You must maintain the records in a location with controlled access.

Part 396 – Inspection, Repair and Maintenance.

396.1 General – Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply and be conversant with the rules of this part.

396.3 (a) General — Every motor carrier shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control.

(a)(1) Parts and accessories shall be in safe and proper operating condition at all times. These include those specified in Part 393 of this subchapter and any additional parts and accessories which may affect safety of operation, including

but not limited to, frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems.

(a)(2) Pushout windows, emergency doors, and emergency door marking lights in buses shall be inspected at least every 90 days.

(b) Required records — For vehicles controlled for 30 consecutive days or more, except for a private motor carrier of passengers (nonbusiness), the motor carriers shall maintain, or cause to be maintained, the following record for each vehicle:

(b)(1) An identification of the vehicle including company number, if so marked, make, serial number, year, and tire size. In addition, if the motor vehicle is not owned by the motor carrier, the record shall identify the name of the person furnishing the vehicle;

(b)(2) A means to indicate the nature and due date of the various inspection and maintenance operations to be performed;

(b)(3) A record of inspection, repairs and maintenance indicating their date and nature; and

(b)(4) A record of tests conducted on pushout windows, emergency doors, and emergency door marking lights on buses.

(c) Record retention — The records required by this section shall be retained where the vehicle is either housed or maintained for a period of 1 year and for 6 months after the motor vehicle leaves the motor carrier's control.

Part 396.17 – Periodic inspection

(a) Every commercial motor vehicle shall be inspected as required by this section. The inspection shall include, at a minimum, the parts and accessories set forth in Appendix G of this subchapter.

Note: The term commercial motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semitrailer, fulltrailer combination, the tractor, semitrailer, and the fulltrailer (including the converter dolly if so equipped) shall each be inspected.

(b) Except as provided in §396.23, a motor carrier shall inspect or cause to be inspected all motor vehicles subject to its control.

(c) A motor carrier shall not use a commercial motor vehicle unless each component identified in Appendix G has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(c)(1) The inspection report prepared in accordance with paragraph §396.21(a), or

(c)(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), which contains the following information:

(c)(2)(i) The date of inspection;

(c)(2)(ii) Name and address of the motor carrier or other entity where the inspection report is maintained;

(c)(2)(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(c)(2)(iv) A certification that the vehicle has passed an inspection in accordance with §396.17.

- (d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control which are not subject to an inspection under §396.23(b)(1).
- (e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by §396.19.
- (f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FMCSA, meeting the minimum standards contained in Appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed, except as provided in §396.23(b)(1).
- (g) It shall be the responsibility of the motor carrier to ensure that all parts and accessories not meeting the minimum standards set forth in Appendix G to this subchapter are repaired promptly.
- (h) Failure to perform properly the annual inspection set forth in this section shall cause the motor carrier to be subject to the penalty provisions provided by 49 U.S.C.521(b).

Part 396.19 – Inspector qualifications.

- (a) It shall be the motor carrier's responsibility to ensure that the individual(s) performing an annual inspection under §396.17(d) or (e) is qualified as follows:
- (a)(1) Understands the inspection criteria set forth in 49 CFR Part 393 and Appendix G of this subchapter and can identify defective components;
- (a)(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an inspection; and
- (a)(3) Is capable of performing an inspection by reason of experience, training, or both as follows:
- (a)(3)(i) Successfully completed a State or Federal sponsored training program or has a certificate from a State or Canadian Province which qualifies the person to perform commercial motor vehicle safety inspections, or
- (a)(3)(ii) Have a combination of training and/or experience totaling at least 1 year. Such training and/or experience may consist of:
- (a)(3)(ii)(A) Participation in a truck manufacturer sponsored training program or similar commercial training program designed to train students in truck operation and maintenance;
- (a)(3)(ii)(B) Experience as a mechanic or inspector in a motor carrier maintenance program;
- (a)(3)(ii)(C) Experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility; or
- (a)(3)(ii)(D) Experience as a commercial vehicle inspector for a State, Provincial or Federal Government.
- (b) Evidence of that individual's qualifications under this section shall be retained by the motor carrier for the period during which that individual is performing

annual motor vehicle inspections for the motor carrier, and for one year thereafter. However, motor carriers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

392.60 – Unauthorized persons not to be transported.

(a) Unless specifically authorized in writing to do so by the motor carrier under whose authority the commercial motor vehicle is being operated, no driver shall transport any person or permit any person to be transported on any commercial motor vehicle other than a bus. When such authorization is issued, it shall state the name of the person to be transported, the points where the transportation is to begin and end, and the date upon which such authority expires. No written authorization, however, shall be necessary for the transportation of:

- (1) Employees or other persons assigned to a commercial motor vehicle by a motor carrier;
- (2) Any person transported when aid is being rendered in case of an accident or other emergency;
- (3) An attendant delegated to care for livestock.

(b) This section shall not apply to the operation of commercial motor vehicles controlled and operated by any farmer and used in the transportation of agricultural commodities or products thereof from his/her farm or in the transportation of supplies to his/her farm.



TO: HOUSE COMMERCE AND LABOR COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: February 16, 2006
SUBJECT: House Bill 2807

House Bill 2807 creates a regulatory framework for the home inspection industry. Past attempts at such regulation focused upon the liability incurred by the home inspector. HB 2807 takes a different approach.

First, the bill requires the registration of all home inspectors with the State of Kansas. Second, the bill mandates, over a period of years that home inspectors become certified by a recognized organization of home inspectors. This certification is not limited to a single certification source, but allows the flexibility for home inspectors to choose their certification route.

HB 2807 also mandates errors and omissions insurance for all home inspectors. KAR strongly believes that some type of home inspection liability protection, whether that takes the form of insurance or not, is essential to protecting the public.

Under K.S.A. 58-30-106 (d) (1) 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.

Both the real estate and home inspection industries have a vested interest in making sure that home inspectors who fail to adhere to professional industry standards of practice are identified and regulated in such a way that the public is protected. KAR looks forward to working with the home inspection industry on making this regulatory framework a reality.

We urge you to pass favorably House Bill 2807.



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Comm Labor
2-16-06
Atch # 2

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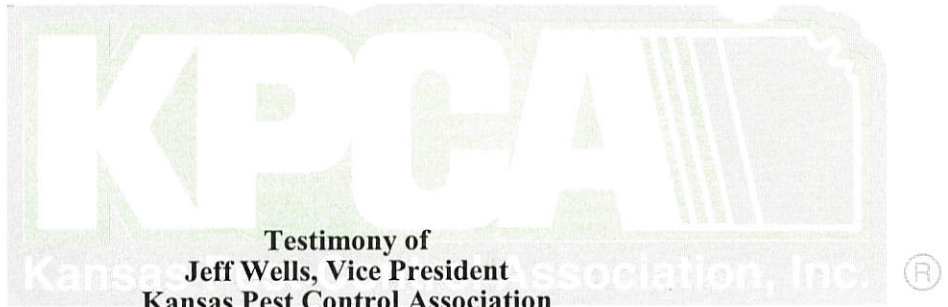
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**Testimony of
Jeff Wells, Vice President
Kansas Pest Control Association
Before the House Commerce and Labor Committee
On HB 2807
Tuesday, February 14, 2006**

Mr. Chairman and Members of the Committee:

On behalf of the Kansas Pest Control Association, I would like to thank you for the opportunity to discuss with you House Bill 2807.

A focal point of the pest control industry is performing inspections that determine or attempt to determine an active or past wood-destroying insect infestation. In the course of performing such inspections (or WDIs), we inspect both structural and essential components of residential dwellings. The inspections provided by pest control professionals oftentimes detect the presence of insects such as termites, carpenter ants, powder post beetles, wood borers and carpenter bees; however, inspection findings also may identify defects in wood members caused by the current or previous presence of the above insects.

For these reasons, the Kansas Pest Control Association feels that the language of this bill includes wood-destroying insect inspectors. The genre of inspections that we provide differs greatly from that of a standard home inspection. Pest management professionals perform these inspections as a stand-alone service and do not, as a rule, offer inspections dealing with any other structural components in conjunction with the WDI report.

The American Society of Home Inspectors and other similar organizations with which our members would be obligated to associate do not test on nor do they offer extensive training on detecting the presence of wood-destroying insects. We feel that requiring our members to belong to these organizations would unjustifiably increase the cost of termite inspections, placing an increased and unjustifiable expense squarely on homeowners, who would not receive a more qualified WDI as a result of the required membership.

The KPCA has requested that legislation be introduced that would require WDI inspectors to have certification in category 7A through the Kansas Department of Agriculture. We believe that our industry should have a minimum standard of education to perform these inspections and we are actively working to see this to fruition. We would, however, like to see that the standard that is set is practical for our job description and requires continuing education as opposed to simply paying yearly fees to maintain an affiliation.

Because of these reasons, we are requesting a friendly amendment that would make any person or company performing inspections for the sole purpose of determining the presence of a wood-destroying insect infestation and or the presence of a wood-destroying organism exempt from the provisions of this act.

This concludes my testimony. Thank you for the opportunity to present this information. I will be happy to stand for questions.



Comme labor
2-16-06
Arch #3



KANSAS STATE BOARD OF TECHNICAL PROFESSIONS

(785) 296-3053

<http://www.accesskansas.org/ksbtp/>

Suite 507, Landon State Office Building 900 S.W. Jackson Street Topeka, Kansas 66612-1257

TESTIMONY BEFORE
THE
HOUSE COMMERCE AND LABOR COMMITTEE
THURSDAY, FEBRUARY 16, 2006
9:00 a.m.
Room 241-N

I am George Barbee, Public Member of the Kansas State Board of Technical Professions. On behalf of the Board, I appreciate the opportunity to appear before the House Commerce and Labor Committee. I am appearing today in opposition to House Bill 2807 in its current form.

As you know, the Board of Technical Professions licenses learned professions in the following areas: professional engineers, architects, land surveyors, landscape architects, and geologists. We currently have 15,500 individual and corporate licensees. Our board is made up of 13 members.

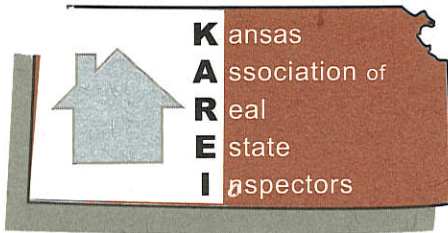
The Board of Technical Professions has no position on the proposed legislation which would register home inspectors. However, we feel it is not appropriate to place their registration under this board.

Residential dwellings are exempt from licensure under our laws as stated in K.S.A. 74-7031 and 74-7033. The Board of Technical Professions has a statutory responsibility for the licensure of design professionals. These professionals are required, with few exceptions, to graduate with a BS from an accredited curriculum in the appropriate profession.

Various fees to become licensed and to maintain the privilege to practice in Kansas fund this fee agency. To require the 15,500 licensees to fund this new home inspectors registration program for an unknown number would equate to a tax on the design professionals in the inappropriate use of their renewal fees.

There are a number of questions regarding the bill. How many inspectors are in Kansas? How many are outside of Kansas, but are presently engaged in the activity of home inspections in Kansas? What are the educational or training requirements to become a home inspector? Are there accrediting agencies for these educational or training programs? Is there an examination fee for registration and/or certification? How many home inspections are performed each year? Are there continuing education requirements for certification? These and other pertinent questions could best be answered by the Board of Realtors, which is, perhaps, where this idea should be referred to determine if the real estate industry has a need for this registration.

Thank you for allowing me to speak to you today.



KANSAS ASSOCIATION OF REAL ESTATE INSPECTORS Ltd.

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

February 16, 2006

Kansas House of representatives
Commerce and labor committee

RE: Position Statement HB 2807

Dear Chairman Dahl and Committee members,

Our position here today is that HB 2807 is a start down the right track, but misses the mark of what the bill should be. The home inspection industry, bottom line, is a consumer protection industry and as such, we should strive to perform our job with professionalism, integrity and competency. Unfortunately, in our profession, like all professions, there are those who are out to make a quick dollar and look at the home inspection industry as a way to get that dollar. Without well thought out legislation which provides for minimum competency requirements to insure competent inspectors, we are no better off than we were before the legislation, and in fact we are worse off. Our organization cannot support this bill for three main reasons.

First, despite its best intentions, it doesn't address the main issue plaguing our industry which is a lack of minimum competency requirements.

Second, the bill as presented, would require inspectors to carry Errors and Omissions insurance. The effect of this would be disastrous for the consumer. It would virtually eliminate the ability of an inspector from a small town to get started due to the escalating costs of the insurance. Many insurance providers will not write coverage for new inspectors and those that do, have excessive premiums, out of the reach of most new inspectors. For a new inspector starting out in Hays, Salina, or Cherokee, for example, we would expect the number of inspections completed per year would barely cover the cost of doing business and adding on an additional burden of the high cost of E & O insurance would be a major barrier to entry into the market. This is not just bad for the inspector, it is also bad for the consumer, because now the buyer has no access to a qualified inspector in the smaller markets.

The third area of concern is the placement of all regulatory control for our industry under the board of Technical Professions. This places all control for our industry in the hands of a group of individuals who have little or no idea about what an inspection is or the many complexities of the inspection process. Nor do they know how the relationship between the buyer, seller, realtor and inspector intertwine or the effect of how making a regulation in one area effects others. As I described earlier the mandating of E & O insurance will not only effect the inspector but it will also place a qualified inspector out of reach for rural areas of our state.

Commerce labor
2-16-06
Atch # 5

The members of our association have been working on language for a bill which addresses the cause of the issues relating to our industry, not the symptoms. The language we have developed would put in place the long range consumer protection measures needed to protect your constituents. Our language also helps to address one of our industries biggest problems which is the pressure place on inspectors by realtors to do the inspection fast and with limited derogatory comments. Our language requires inspectors to inspect to a nationally recognized standard which gives them the ammunition needed to assure the realtor that the inspection will be fair and impartial and will take however long it takes.

We respectfully urge you to take no action on this bill and allow us to continue our dialogue with other industry and legislative leaders to fully develop well thought out and effective legislation.

Jeff Barnes, CRMI, CEI, CES, CTS, CEC
President, Kansas Association of Real Estate Inspectors
144 N. Oliver
Wichita, KS 67208
316-393-0735 (office)
316-777-9209 (FAX)



Midwest Pro-ASHI Chapter

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

Wichita Regional Inspection Group
Local Coordinator, Jeff Barnes

February 16, 2006

Kansas House of Representatives
Commerce and Labor Committee

RE: Position Statement HB2807

Dear Representatives:

House Bill 2807 is an inequitable piece of proposed legislation that unfairly requires home inspectors to become the only profession in the State required by statute to carry E&O insurance. Those that would attempt to place this burden upon us, while accounting for the majority of legal disputes related to the sale and purchase of homes, are not required by statute to carry this insurance. Additionally, homebuilders, remodeling contractors, appraisers, adjusters, and other tradespeople that actually do the work and create the defects, are not required to carry this insurance.

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 too great and may leave the profession. It is already very difficult for new members and those in rural areas to get started. HB2807 would create an impediment to business entry, as anyone not performing a substantial number of inspections would be unable to afford the cost of up to \$4,500/yr. Additionally, less experienced inspectors, and those with poor past claims history, may be unable to obtain insurance at any price. The general public would suffer in that cost of home inspections would likely increase 20% to 45%. This additional cost, passed on by the inspector, would restrict access to home inspections by low-income buyers who can least afford to purchase a home with a significant "hidden" defect.

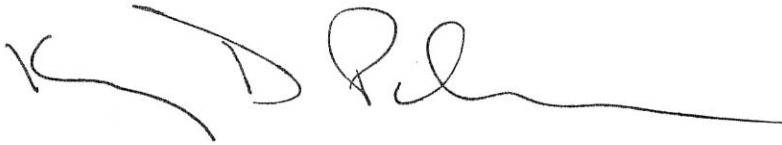
A quick check of court records reveals that home inspectors are not the source of the disputes clogging our civil court system. Few buyers have serious or significant complaints regarding the home inspection process. The buyer receives a commensurate benefit for the fee he/she has paid. The bulk of the 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 an additional burden 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.

There are already legal remedies available to homebuyers who feel they are victims 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.

Comm & Labor
2-16-05
Atch #6

In summary, HB2807 is an unnecessary piece of "half-baked" legislation that is a misguided attempt to limit the liability of those that push for its passage. Not only would it potentially devastate the industry it is intended to burden, 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. Where 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 is much preferable to a purchase without an inspection, or review by an unqualified family member or friend. A homebuyer's greatest protection against choosing an unqualified home inspector is to pick a "full" member of ASHI.

Therefore, we respectfully request that HB2807 be allowed to die in committee. The directors of the Kansas Association of Real Estate Inspectors (KAREI) have been working since last legislative session on a registration bill that better addresses the needs of the general public, without causing an undue burden on the industry or on the State through administration costs. Please allow us to continue this process, including consultation with other industry stakeholders so that we might craft a bill that is truly beneficial for the consumer.



Kerry Parham, President
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terrainspectations@cox.net

To be eligible for coverage, a minimum of twenty-five (25) WDI/WDO inspections must have been performed by the inspector. The WDI/WDO policy does not cover any WDI/WDO treatment or mitigation services.

Prices/Membership Fees

Coverage Type	Level A	Level B	Level C	Candidate
E&O	\$3295	\$3195	\$2995	\$3550 *
Corporation	\$330	\$320	\$300	\$320 *
General Liability	\$450	\$450	\$450	\$450 *
WDI/WDO	\$495	\$495	\$495	\$495
Radon	\$150	\$150	\$150	\$150
5K Bond	\$75	\$75	\$75	\$75
10K Bond	\$135	\$135	\$135	\$135 **

Enrollment #350
 Membership #400
 FREE

3550
 Corp. 320
 Fundlmt 750
\$4,620.
 GLib. 450
 Bond + 270
\$5,340.

Frequently Asked Questions

What is a claims-made policy?

A "claims made" policy protects the policyholder against claims or incidents that are reported while the policy is in force, or during an "extended reporting period". The negligent act, error or omission must have also occurred during the specific time frame set by the policy.

What is the difference between a claims-made policy and an occurrence policy?

With an occurrence policy, the claim has to occur during the policy period, regardless of when a claim is actually made or reported. On a Claims Made policy, the claim must be made or reported during the policy period regardless of when the claim actually happened.

What is General Liability?

General liability covers bodily injury and property damage to others while you are at the inspection. (ex: your ladder falls through a window and injures the owner's child.)

Are my employees covered under my policy?

No. Our policy covers the individual inspector only. Each employee needs to obtain their own E&O policy.

How long does it take to get an insurance binder?

It typically takes 3-5 business days to receive a copy of your insurance

6-3

OPPOSITION of HOUSE BILL 2807

Randy Sipe

President of the Great Plains Chapter of ASHI (American Society of Home Inspectors)

Member, ASHI National Council of Representatives

Full Member of ASHI

Member of Kansas Association of Real Estate Inspectors

Full Time Home Inspector in the state of Kansas

Chairman Dahl, Committee Members thank you for serving the state of Kansas and hearing what we have to say.

I would like to outline our points of opposition to HOUSE BILL 2807. Most important this bill should be to protect the public, and as written it only starts to outline basic rules that need to take place. I speak for our Chapter of inspectors, and we do believe that a good bill is something that we can support. This bill however is not what we can support for the following reasons.

- Section 1.b: Board of Technical Professions. The appointment of the board members should have specific rules of the requirements for this position. As written this is not addressed. This board should consist of a group of people with a background of Home Inspection Experience. As written this bill does not define the creation of the board, the powers of the board, or duties of the board.
- Section 1.d: As written, the bill requires errors and omissions insurance. We are opposed to any inclusion of errors and omissions insurance requirements because of long standing precedence that does not require insurance for related professionals such as engineers, architects, or home builders. We believe it should be a professional business decision that is not regulated by the State.

We are also opposed to this bill because it does not address other issues related to the home inspection profession:

- The bill does not identify qualifications for professional home inspectors, education requirements for inspectors, background checks, or other requirements that should be in effect to protect the consumer. An undefined registration act would only mislead the public into believing that these things were in effect and that they were, indeed, protected.

In closing, we would like to thank you for your time and your consideration of our opposition and reasons for our opposition to this bill.

Thank you.

Randy Sipe

President, Great Plains Chapter, American Society of Home Inspectors

Comm + Labor
2-16-06
Atch # 7

Michael Greenwalt, matters pertaining to HB 2807

The Honorable Representative Donald Dahl and committee persons
Commerce and Labor Commission

My name is Michael Greenwalt, owner of MGI Home Inspection LLC located in Milford, KS. I am a member of the National Association of Home Inspectors (NAHI). I represent my small business, the interest of home inspectors and am an opponent to HB 2807.

Although consideration of this bill is a positive step towards insuring that inspectors meet minimum standards If this bill were to pass as currently written, it would create many issues and undo consequences.

First, the use of a private organization as a means to determine who can be licensed by state law is ill advised. As a business decision, I chose to belong to NAHI. This bill however could direct me to become a member of an organization that I do not support. Although ASHI is a fine organization, I do not however agree with some of their practices. Creating a law that benchmarks any named national organization(s) essentially creates a law that mandates funding to that/those organizations. The use of a Kansas law to financially benefit any national organization should be rejected by this committee. As well, memberships into the three primary national organizations (those that have membership in more than ten (10) states) ASHI, NAHI, and NACHI, all have different membership requirement, Standards of Practice, and Code of Ethics. This would allow for a wide range of qualifications, which is not fair to Kansas home inspection businesses. Note also that while the wording of "ASHI or other recognized organizations of home inspectors" in theory implies inclusivity and thus no discrimination based on affiliation, in reality this language does not guarantee the law doesn't discriminate. In fact, because there is no process or procedure laid out in the law or authority to make such a determination of who besides ASHI is or is not a "recognized" organization of home inspectors, ASHI is the ONLY recognized organization by default.

Second, the requirement to carry a minimum of \$500,000 in E&O insurance creates a substantial problem for Kansas home inspection business. As a matter of business, I carry E&O insurance but many Home Inspection businesses cannot afford to do so. Insurance is an instrument that provides protection for the insured. A law requiring E&O insurance essentially creates another set of deep pockets for Kansas realtors to direct their clients too. Home inspectors in Kansas are, in my opinion, a "high risk, low compensation service." We do not enjoy the average 6% commission that a realtor receives from the transaction, which usually ranges into the thousands or tens of thousands of dollars. Instead, we receive compensation generally in the area of a few hundred dollars for the same liability. A law that requires home inspectors to carry such high level of insurance, or any insurance, is unfair to the many rural inspectors who do not have the market to pay the normally \$3500-\$4000 annual average cost. This law would also give the insurance companies the competitive advantage over our business and we could incur a substantial price increase. I operate a business in an area that is considered a micro-county in Kansas with a median home price of \$69,000 and a median household income of \$31,900. Many other counties in Kansas are substantially lower and this insurance requirement would virtually assure no home inspectors could operate in those areas. High-income counties may enjoy the ability to absorb the high cost of E&O insurance but my county and many others cannot. The requirement for \$500,000 for inspectors where the median price is \$69,000 will stagnate growth, impede free market, and increase the price for a home inspection service to a level many cannot afford.

Finally, the rush to pass legislation and register inspectors by January 2007 is a recipe for disaster that other states such as New York, Illinois and Arizona have already discovered. Kentucky however, organized a Work Study group that included members and representatives from the NAHI (National Association of Home Inspectors), ASHI (American Society of Home Inspectors), KREIA (Kentucky Real Estate Inspection Association), KAR (Kentucky Association of Realtors) and HBAK (Homebuilders Association of Kentucky). This group met monthly for 18 months, discussed problems, and possible solutions to issues the respective organizations experienced. A spin-off committee was formed, informally called the Kentucky Home Inspector Licensing Task Force. They were able to develop sensible legislation that served the citizens of Kentucky, the home inspection industry, and public policy. We should learn from others mistakes and successes of the states that went before us.

I ask that you set this bill aside until such time that a group can be formed to develop a law that serves the citizens of Kansas, does not have to be re-addressed in the near future due to haste, and can be implemented over a reasonable amount of time so as to keep Kansas Home inspection business in business.

Comm & Labor
2-16-06
Atch # 8



Kansas Society of Professional Engineers

A state society of the National Society of Professional Engineers

House Commerce and Labor Committee
HB 2807 – Home Inspectors Registration and Certification
Testimony of Kansas Society of Professional Engineers AND
American Council of Engineering Companies – Kansas
Submitted by Ron Gaches, Executive Director
Kansas Society of Professional Engineers
Thursday, February 16, 2006

Thank you Chairman Dahl for the opportunity to express the concerns of the Kansas Society of Professional Engineers and American Council of Engineering Companies – Kansas regarding HB 2807, which proposes registration and certification of home inspectors. Our organizations take no position as to the underlying merits of the bill before your committee. We do, however, express our concerns about putting the responsibility for the registration and certification of home inspectors on the Kansas State Board of Technical Professions.

The technical professions currently licensed by the board have a great commonality of interests and work. Their scope of practices are closely aligned to reflect the breadth of professional design practices and their common regulation under a single board is a model common across much of the United States.

In addition, the education background and continuing education requirements of the design professions regulated by the Board of Technical Professions are very similar. All require a minimum of a four-year degree in an accredited college program of study. Continuing education requirements are similar and accredited Kansas universities design programs are heavily involved in offering continuing education courses in satisfaction of these requirements. Further, the professions regulated by the Board heavily interact together on major infrastructure and building projects across the state.

Conversely, the professions regulated by the Board of Technical Professions seldom, if ever, come in contact with home inspectors. Residential property is even exempt from many of the design requirements that apply to Professional Engineers.

It is the recommendation of KSPE and ACEC that the committee investigate other possible homes for this registration and certification program if you decide to proceed further with this effort. Current licensees of the Board of Technical Professions should not be asked to subsidize the registration and certification program of a service not in any way associated with the work of the professions regulated by the Board.

I welcome your questions and can be reached at 785-233-4512.

HOUSE BILL No. 2696

By Committee on Commerce and Labor

1-24

Commerce Labor
2-16-06
Atch # 10

9 AN ACT concerning workers compensation; relating to administrative
10 law judges; amending K.S.A. 2005 Supp. 44-551 and 75-5708 and re-
11 pealing the existing sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 44-551 is hereby amended to read as
15 follows: 44-551 (a) The duties of the assistant directors of workers com-
16 pensation ~~shall~~ may include but not be limited to acting in the capacity
17 of an administrative law judge.

18 (b) *Each administrative law judge shall be an attorney regularly ad-*
19 *mitted to practice law in Kansas. Such attorney shall have at least five*
20 *years of experience as an attorney, with at least one year of experience*
21 *practicing law in the area of workers compensation.*

22 (c) ~~The~~ annual salary of each administrative law judge shall be an
23 amount equal to 80% of the annual salary paid by the state to a district
24 ~~court~~ judge, other than a district ~~court~~ judge designated as a chief judge.
25 Administrative law judges shall devote full time to the duties of such office
26 and shall not engage in the private practice of law during their term of
27 office. No administrative law judge may receive additional compensation
28 for official services performed by the administrative law judge. Each ad-
29 ministrative law judge shall be reimbursed for expenses incurred in the
30 performance of such official duties under the same circumstances and to
31 the same extent as judges of the district court are reimbursed for such
32 expenses.

Except as provided in subsection (g), the

district judges

33 (d) Applications for administrative law judge positions shall be sub-
34 mitted to the director of workers compensation. The director shall deter-
35 mine if an applicant meets the qualifications for an administrative law
36 judge as prescribed in subsection (b). Qualified applicants for a position
37 of administrative law judge shall be submitted by the director to the work-
38 ers compensation administrative law judge nominating and review com-
39 mittee for consideration.

40 (e) There is hereby established the workers compensation adminis-
41 trative law judge nominating and review committee which shall be com-
42 posed of two members appointed as follows: The Kansas AFL-CIO and
43 the Kansas chamber of commerce and industry shall each select one rep-

1 representatice to serve on the workers compensation administrative law judge
 2 nominating and review committee and shall each give written notice of
 3 such selection to the secretary who shall appoint such selected persons to
 4 the committee. In the event of a vacancy occurring for any reason on the
 5 ~~nominating~~ committee, the vacating member shall be replaced by the or-
 6 ganization which originally selected such member with written notice pro-
 7 vided to the secretary within 30 days of such vacancy.

workers compensation administrative law judge nominating and
 review

8 (f) (1) Upon being notified of any vacancy in the position of admini-
 9 strative law judge, the administrative law judge nominating and review
 10 committee shall consider all qualified applicants submitted by the director
 11 for the vacant position of administrative law judge and nominate a person
 12 qualified therefor. The administrative law judge nominating and review
 13 committee shall be required to reach unanimous agreement on any nomi-
 14 nation to the position of administrative law judge. ~~The secretary shall~~
 15 appoint the person nominated by the administrative law judge nominating
 16 and review committee to the position of administrative law judge for
 17 which the nomination was made

With respect to each person nominated, the secretary either shall
 accept and

or shall reject the nomination and request the administrative law
 judge nominating and review committee to nominate another person
 for that position. Upon receipt of any such request for the
 nomination of another person, the administrative law judge
 nominating and review committee shall nominate another person
 for that position in the same manner

18 (2) Each administrative law judge shall hold office for a term of four
 19 years and may be reappointed. Each administrative law judge shall con-
 20 tinue to serve for the term of the appointment or ~~and~~ until a successor is
 21 appointed. Successors to such administrative law judge positions shall be
 22 appointed for terms of four years.

23 (3) If a vacancy should occur in the position of an administrative law
 24 judge during the term of an administrative law judge, the administrative
 25 law judge nominating and review committee shall nominate an individual
 26 from the qualified applicants submitted by the director to complete the
 27 remainder of the unexpired portion of the term.

28 (g) ~~Administrative~~ law judges appointed on and after July 1, 2006,
 29 shall serve a term of office of four years. Administrative law judges hired
 30 before July 1, 2006, may continue as administrative law judges under the
 31 classified service under the Kansas civil service act or may ~~opt~~ to be ap-
 32 pointed to a ~~four year~~ term and receive the annual salary equal to 80%
 33 of the salary prescribed for a district ~~court~~ judge if the currently employed
 34 administrative law judge within 60 days of the effective date of this section
 35 notifies the director in writing that the administrative law judge elects to
 36 serve an appointed term of office rather than continuing in the classified
 37 service. The term of office for an administrative law judge who elects a
 38 term of office shall begin on the date the written election is received by
 39 the director.

Except as otherwise provided in this subsection, administrative

at the salary provided under the civil service act

elect

and the first term of office for such person shall be for two, three or
 four years as specified by the secretary so that administrative law
 judges appointed under this subsection serve staggered terms.
 Thereafter, any such person if reappointed as an administrative law
 judge shall be appointed for a term of four years

40 (h) Following the completion of a term, an administrative law judge
 41 who wishes to be considered for reappointment to such judge's position
 42 shall be deemed to have met the qualification requirements for appoint-
 43 ment as administrative law judge and shall be considered for renomina-

1 *tion by the workers compensation administrative law judge nominating*
2 *and review committee.*

3 ~~(b)~~ (1) Administrative law judges shall have power to administer
4 oaths, certify official acts, take depositions, issue subpoenas, compel the
5 attendance of witnesses and the production of books, accounts, papers,
6 documents and records to the same extent as is conferred on the district
7 courts of this state, and may conduct an investigation, inquiry or hearing
8 on all matters before the administrative law judges. All final orders,
9 awards, modifications of awards, or preliminary awards under K.S.A. 44-
10 534a and amendments thereto made by an administrative law judge shall
11 be subject to review by the board upon written request of any interested
12 party within 10 days. Intermediate Saturdays, Sundays and legal holidays
13 shall be excluded in the time computation. Review by the board shall be
14 a prerequisite to judicial review as provided for in K.S.A. 44-556 and
15 amendments thereto. On any such review, the board shall have authority
16 to grant or refuse compensation, or to increase or diminish any award of
17 compensation or to remand any matter to the administrative law judge
18 for further proceedings. The orders of the board under this subsection
19 shall be issued within 30 days from the date arguments were presented
20 by the parties.

21 (2) (A) If an administrative law judge has entered a preliminary
22 award under K.S.A. 44-534a and amendments thereto, a review by the
23 board shall not be conducted under this section unless it is alleged that
24 the administrative law judge exceeded the administrative law judge's ju-
25 risdiction in granting or denying the relief requested at the preliminary
26 hearing. Such an appeal from a preliminary award may be heard and
27 decided by a single member of the board. Members of the board shall
28 hear such preliminary appeals on a rotating basis and the individual board
29 member who decides the appeal shall sign each such decision. The orders
30 of the board under this subsection shall be issued within 30 days from
31 the date arguments were presented by the parties.

32 (B) If an order on review is not issued by the board within the ap-
33 plicable time period prescribed by subsection (b) (1), medical compen-
34 sation and any disability compensation as provided in the award of the
35 administrative law judge shall be paid commencing with the first day after
36 such time period and shall continue to be paid until the order of the
37 board is issued, except that no payments shall be made under this pro-
38 vision for any period before the first day after such time period. Nothing
39 in this section shall be construed to limit or restrict any other remedies
available to any party to a claim under any other statute.

40 (C) In any case in which the final award of an administrative law judge
41 is appealed to the board for review under this section and in which the
42 compensability is not an issue to be decided on review by the board,
43

1 medical compensation shall be payable in accordance with the award of
2 the administrative law judge and shall not be stayed pending such review.
3 The employee may proceed under K.S.A. 44-510k and amendments
4 thereto and may have a hearing in accordance with that statute to enforce
5 the provisions of this subsection.

6 ~~(j)~~ Each assistant director and each administrative law judge or
7 special administrative law judge shall be allowed all reasonable and nec-
8 essary expenses actually incurred while in the actual discharge of official
9 duties in administering the workers compensation act, but such expenses
10 shall be sworn to by the person incurring the same and be approved by
11 the secretary.

12 ~~(k)~~ In case of emergency the director may appoint special local
13 administrative law judges and assign to them the examination and hearing
14 of any designated case or cases. Such special local administrative law
15 judges shall be attorneys and admitted to practice law in the state of
16 Kansas and shall, as to all cases assigned to them, exercise the same pow-
17 ers as provided by this section for the regular administrative law judges.
18 Special local administrative law judges shall receive a fee commensurate
19 with the services rendered as fixed by rules and regulations adopted by
20 the director. The fees prescribed by this section prior to the effective date
21 of this act shall be effective until different fees are fixed by such rules
22 and regulations.

23 ~~(l)~~ All special local administrative law judge's fees and expenses,
24 with the exception of settlement hearings, shall be paid from the workers
25 compensation administration fee fund, as provided in K.S.A. 74-712 and
26 amendments thereto. Where there are no available funds or where the
27 special local administrative law judge conducted a settlement hearing, the
28 fees shall be taxed as costs in each case heard by such special local ad-
29 ministrative law judge and when collected shall be paid directly to such
30 special local administrative law judge by the party charged with the pay-
31 ment of the same.

32 ~~(m)~~ Except as provided for judicial review under K.S.A. 44-556
33 and amendments thereto, the decisions and awards of the board shall be
34 final.

35 Sec. 2. K.S.A. 2005 Supp. 75-5708 is hereby amended to read as
36 follows: 75-5708. (a) There is hereby established within and as a part of
37 the department of labor a division of workers compensation. The division
38 shall be administered, under the supervision of the secretary of labor, by
39 the director of workers compensation, who shall be the chief administra-
40 tive officer of the division. The director of workers compensation shall
41 be appointed by the secretary of labor and shall serve at the pleasure of
42 the secretary. The director shall be in the unclassified service under the
43 Kansas civil service act and shall receive an annual salary fixed by the

1 secretary of labor, with the approval of the governor. The director of
2 workers compensation shall be an attorney admitted to practice law in
3 the state of Kansas. The director shall devote full time to the duties of
4 such office and shall not engage in the private practice of law during the
5 director's term of office.

6 (b) The director of workers compensation may appoint two assistant
7 directors of workers compensation ~~and also may appoint~~ ~~upto~~ not to
8 exceed 10 administrative law judges. Such assistant directors ~~and admini-~~
9 ~~strative law judges~~ shall be in the classified service. *Such administrative*
10 *law judges shall be in the unclassified service under the Kansas civil ser-*
11 *vice act unless an administrative law judge ~~opts~~ to stay in the classified*
12 *service under subsection (g) of K.S.A. 44-551, and amendments thereto.*
13 The assistant directors shall act for and exercise the powers of the director
14 of workers compensation to the extent authority to do so is delegated by
15 the director. The assistant directors and administrative law judges shall
16 be attorneys admitted to practice law in the state of Kansas, and shall
17 have such powers, duties and functions as are assigned to them by the
18 director or are prescribed by law. The assistant directors and administra-
19 tive law judges shall devote full time to the duties of their offices and
20 shall not engage in the private practice of law during their terms of office.

21 (c) Assistant directors ~~and administrative law judges~~ shall be selected
22 by the director of workers compensation, with the approval of the sec-
23 retary of labor. ~~On~~ *and after July 1, 2006, administrative law judges shall*
24 *be selected by the administrative law judge nominating and review com-*
25 *mittee and appointed by the secretary of labor.* Each appointee shall be
26 subject to either dismissal or suspension of up to 30 days for any of the
27 following:

- 28 (1) Failure to conduct oneself in a manner appropriate to the ap-
29 pointee's professional capacity;
- 30 (2) failure to perform duties as required by the workers compensation
31 act; or
- 32 (3) any reason set out for dismissal or suspension in the Kansas civil
33 service act or rules and regulations adopted pursuant thereto.

34 No appointee shall be appointed, dismissed or suspended for political,
35 religious or racial reasons or by reason of the appointee's sex.

36 Sec. 3. K.S.A. 2005 Supp. 44-551 and 75-5708 are hereby repealed.

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

. The secretary of labor

appoint

elects

Except as otherwise provided under K.S.A. 44-551, and
amendments thereto, on