

Approved: SRB 2/10/07
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:04 A.M. on February 7, 2007 in Room 231-N of the Capitol.

All members were present except:

Brenda Landwehr- excused
Broderick Henderson- excused
Delia Garcia- excused
Mike Kiegerl- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Dustin Slinkard, Office of Revisor of Statutes
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Luke Bell, KAR, Director of Governmental Relations
Carol B. Mangan, 2007 President, Kansas Association of Realtors
John Green, President, Coldwell Banker Griffith and Blair American Home
Cal Lantis, 2005 President, Kansas Association of Realtors
Sherry Diel, Executive Director, Kansas Real Estate Commission

Others attending:

See attached list.

The Chairman reminded the committee fo the schedule for the week of 2/12/07.

The Chairman opened the hearing on **HB 2249 - Technical changes to the use of real estate sales validation questionnaires.**

Luke Bell, KAR, director of Governmental Relations testified as a proponent of **HB 2249 (Attachment 1).**

Representative Huntington asked about the information provided on the questionnaire. All the questions were worked out at the time that the questionnaire was put in the statute.

Representative Pauls asked if the term "fiduciary" was not used in any other statutes. It is not used in Real Estate statutes, they are statutory duties. The information allows them give their clients a more accurate picture of the value of a property. We would consider it a friendly amendment if you want to add "to customers and clients" after "on the market value of property".

The Chairman asked for any other proponents or opponents to the bill. There being none the Chairman closed the hearing on **HB 2249.**

The Chairman opened the hearing on **HB 2295 - Effect of criminal convictions on licensure of real estate brokers and salespersons.**

Luke Bell, KAR, Director of Governmental Relations testified as a proponent of **HB 2295 (Attachment 2).**

Representative Tietze asked if this law would affect the 31 convicted felons who already have licenses. Luke answered, "No, they are grand fathered in under current law.

Representative Pauls asked if the law would eliminate them upon their renewal of liscense. Luke Bell indicated that it was not their intent to retroactively apply the statute and they would be willing to add language to clarify that. Representative Pauls said that they were removing discretion from the commission. Luke Bell said that was true for the periods of 10 and 5 years plus the permanent prohibition on violent sexual offenders.

Representative Grant asked if there was in incident that triggered the changes. Luke answered that

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there was no specific incident that triggered it. It was a growing concern. Representative Grant further asked what kind of felonies were involved with the 31 who were issued licenses. Luke said that it involved a lot of drug convictions, robbery, burglary, prostitution, forgery and fraud.

Representative Huntington asked if they would exempt teenagers on the felony list. Luke answered that it was difficult to second guess the legislature on creating the offender registry and when the legislature made the determination that placed that crime on the registry it is difficult to draw a line to exclude one crime and not include all crimes.

Representative Huntington further asked if they would consider using DNA evidence. Luke replied that what the FBI needs is fingerprint information to conduct a national background check.

Representative Roth said that bans on employment would increase the recidivism rate. Have you considered that? When considering drug offenses, we do not consider drug offenses as a serious crime, however we feel that if you are coming off a recent drug conviction it is wise to have a waiting period because drug offenders have to commit other crimes to support their habit. We feel that they need to wait a certain amount of time to prove that they are qualified for a license. Other states require a 3 to 7 year ban.

Representative Tietze asked how long does it take to get a license. Typically it is done fairly quickly. How much time is added by this requirement. The KBI says that it will take 2 to 4 weeks to conduct a background check. They encourage us to have the background checks done early in the application process.

Representative Ruiz asked if the 31 felons granted licenses would be given background checks when they do their renewal. Luke said that since we have 17,000 licenses renewed on a bi-annual basis it would be very difficult to do background checks on renewals. That is why it is restricted to original applications only.

The Chairman asked if all applicants are required to submit fingerprints or if it were only those who declared that they were felons. Luke replied that they want all applicants to submit fingerprints.

Representative Pauls asked if the language on page 1 line 36-37 required the opening of all juvenile records that are sealed to the public. Luke replied that it was standard language that was provided to them by the KBI and it is the language that is supplied to all agencies requiring background checks. We did not originally want to include all this language. The KBI asked us to include this language. If it is the will of the committee I would be OK with striking all this language you have concerns with.

The Chairman asked if there were any other questions and there were none.

The Chairman introduced the next conferee Carol Mangan, 2007 President, Kansas Association of Realtors who testified in support of **HB 2295 (Attachment 3)**. The committee had no questions for Carol Mangan.

John Green, President, Caldwell Banker Griffith and Blair American Home testified as a proponent for **HB 2295 (Attachment 4)**.

The Chairman asked how he felt about the permanent ban on some felons. He indicated that he approves of it and said that the public should not have to take a chance when buying or selling real estate.

Representative Metsker asked if the application printed on the back of his testimony was the one that all agents use. He answered that it was only page 1 of 3 pages of the questionnaire. He said that if no-one checks on the answer to question 5 then why would a felon answer the question truthfully.

Cal Lantis, 2005 President, KAR testified in support of **HB 2295 (Attachment 5)**. He gave three

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points. 1. Public Safety, 2. Personal Experience and 3. Recidivism.

The Chairman asked about his background. He said that he had been a deputy sheriff from 1981 to 1984 and served 10 years as a reserve deputy. The Chairman further asked how he felt about the KBI language in the bill that had been mentioned earlier. He said that KBI Directors tend to error on the side of caution and that he was not concerned about expunged records.

There were no more questions for Cal Lantis so the Chairman turned to the opponents of **HB 2295**.

Sherry Diel, Executive Director, Kansas Real Estate Commission appeared as an opponent of **HB 2295** (Attachment 6). They feel that the bill goes too far. They do not oppose background checks.

Chairman Brunk asked if the problem with the bill was the length of time or the ban itself or the commissions discretion. The bill does give discretion after the time limit. Sherry Diel answered that discretion was the factor they were concerned with.

Chairman Brunk asked if there was a checklist they used to screen prospective agents. There is a statutory list that they use. It considers the nature of the crime, how much time has passed and if they have shown rehabilitation. It is done on a case by case basis and is done similar to a parole board hearing.

Representative Pauls asked if they were concerned about a lifetime ban for someone who committed a crime as a 13 or 14 year old. They said that was an extreme example of a lifetime ban.

The Chairman asked for further questions from the committee. Since there were none the hearing was closed on **HB 2295**.

COMMERCE AND LABOR COMMITTEE

Date 2-~~6~~⁷-07

NAME	AGENCY
Bill Perry	KREC
Sherry O'Diel	KREC
TONY A. SCOTT	KSCPA
Trump Bell	KAR
Loren Gehle	KAR
Carol Mangan	KAR
Cal Lantis	KAR
JOHN GREEN	KAR
Luke Bell	KAR
Susan Somers	Ks. Board of Accountancy
Jeff Bottoby	KBOD

TO: House Commerce and Labor Committee
FROM: Luke Bell, KAR Director of Governmental Relations
DATE: February 7, 2007
SUBJECT: **HB 2249** – Technical Corrections to K.S.A. § 79-1437f

Chairman Brunk and members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in support of **HB 2249**. KAR is a trade association which has faithfully represented the 10,000 real estate professionals in the state of Kansas for over 85 years.

During the 2006 Legislative session, **SB 271** passed the Senate on a vote of 36 to 4 and the House on a vote of 100 to 22. **SB 271** authorized the Kansas Real Estate Commission to charge five new fees for administrative services and allowed real estate salespersons and brokers licensed under the Kansas Real Estate Brokers' and Salespersons' Act to have access to the contents of sales validation questionnaires. Allowing real estate licensees to have access to the sales validation questionnaires allows them to more effectively serve the interests of their clients and customers by providing them with the most accurate market value of their property.

Unfortunately, an error in the drafting of **SB 271** neglected to allow real estate licensees acting as transaction brokers to have access to the sales validation questionnaires. A transaction broker, as defined in K.S.A. § 58-30, 102(s) is "a broker who assists one or more parties with a real estate transaction without being an agent or advocate for the interests of any party to such transaction." A transaction broker, just like any other licensed real estate salesperson or broker, has specific statutory duties that he or she must provide to every party in a real estate transaction.

Under K.S.A. § 58-30, 113 of the Rules and Regulations of the Kansas Real Estate Commission, these statutory duties include, among others, a duty of confidentiality, a duty to exercise reasonable skill and care on behalf of all parties, and a duty to disclose to both the buyer and seller all adverse material facts actually known by the transaction broker. These statutorily-required duties of a transaction broker are of the same category as any fiduciary duty prescribed by law.

Therefore, KAR would ask that you support **HB 2249** to amend K.S.A. § 79-1437f to read the following: "*(i) a person licensed pursuant to the Kansas Real Estate Brokers' and Salespersons' Act for the purposes of fulfilling their statutory duties and providing information on the market value of property.*"

This technical change would reinforce the intent behind **SB 271** by allowing all licensed real estate professionals to perform their statutory duties for their customers and clients.

House Commerce + Labor
2-7-07
(Attach #1)

To: House Commerce and Labor Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: February 7, 2007
Subject: **HB 2295** – Criminal Background Checks and Limitations on the Ability of the Kansas Real Estate Commission to Grant Licenses to Certain Convicted Felons

Chairman Brunk and members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in support of **HB 2295**. KAR is a trade association which has faithfully represented the 10,000 real estate professionals in the state of Kansas for over 85 years.

In the past several years, KAR has become increasingly concerned with the number of convicted felons who are granted real estate licenses by the Kansas Real Estate Commission (KREC). Since August 2004, KREC has granted real estate licenses to 31 applicants with felony convictions in their background. We believe that the increasing number of convicted felons granted real estate licenses by KREC leads to an unreasonable risk that consumers will be harmed by real estate licensees who are not qualified to transact the business of real estate in a manner which will safeguard the best interests of the public.

The decision to purchase or sell real estate is typically the most costly and important decision most consumers will make during their lives. As real estate professionals, KAR members are dedicated to providing the best possible service to consumers and helping them obtain their own piece of the American Dream. In order to make the real estate transaction process function smoothly, consumers are required to place a great deal of trust in the services of their real estate professional.

On a daily basis, real estate licensees are required to enter the homes of consumers and access their personal and confidential financial information. As a consequence, the real estate industry is primarily concerned with ensuring that consumers are provided with top-quality professional service and are not harmed by the presence of unqualified and unprofessional individuals in the real estate industry.

In order to protect consumers and uphold the professionalism of the real estate industry, KAR would ask you to support **HB 2295** which would require all real estate license applicants to undergo a fingerprint-based criminal background check prior to licensure and limit the ability of KREC to grant real estate licenses to applicants with certain felony convictions on their record.

Criminal Background Checks

First, in Section 1(b), **HB 2295** would require all new applicants for a real estate license to submit a set of fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) so that a state and national criminal history record check could be performed. The results of this criminal history record check would be submitted to KREC so that the information derived from the criminal history record check could be used in order to determine whether an individual is suitable to receive a real estate license.

In order to compensate the KBI and KREC for the increased expenses associated with conducting the criminal history record checks, **HB 2295** would authorize KREC to charge an additional fee to cover the costs of administering the criminal background check to all new real estate license applicants. According to discussions that KAR had with the KBI prior to the legislative session, the state and national criminal background check would cost approximately \$54 per real estate license applicant. In addition to this amount, KREC would have the ability to charge an additional fee to cover the administrative costs of conducting the criminal background checks.

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In the state of Kansas, the following occupations and positions, among others, require a criminal history record check to be performed before employment or licensure: adult care home workers, teachers, child care facility workers, state lottery vendors and employees, pari-mutuel racing officials, private investigators, nurses, doctors, racing and gaming commission employees, home health workers, liquor license applicants, commercial drivers license applicants, and mental health technicians. KAR would simply ask that the Legislature allow real estate license applicants to be added to the list of professions which are subject to this scrutiny.

Unfortunately, many real estate license applicants currently do not fully disclose past criminal convictions on their real estate license application. Routinely, KREC is forced to take disciplinary action against real estate licensees who have failed to disclose a past felony conviction on their original application for licensure. Requiring KREC to analyze this information before an original real estate license is issued will ensure that the criminal history of each real estate license applicant is appropriately scrutinized prior to the granting of a real estate license.

Permanent Bar on KREC's Ability to Grant Licenses to Registered Offenders

Second, in Section 3(b), **HB 2295** specifies three separate limitations on the ability of KREC to grant a real estate license to applicants with convicted felonies in their background.

Under Section 3(b)(1), KREC would be permanently prohibited from granting a license to an applicant who had pleaded guilty or *nolo contendere* to or been convicted of a felony for: (A) any offense that is comparable to any crime which would subject the applicant to offender registration under K.S.A. 22-4902; or (B) any federal, military or other state conviction for an offense that is comparable to any crime under the laws of this state which would subject the applicant to offender registration under K.S.A. 22-4902.

In K.S.A. 22-4902 *et seq.*, the Kansas Legislature requires individuals convicted of certain violent and sexually violent crimes to register as offenders with the Kansas Bureau of Investigation. In creating the offender registry, the United States Congress and the Kansas Legislature have made the policy determination that these individuals are so dangerous to society that consumers must be made constantly aware of their identities and locations. In addition, legislation proposed by KREC (see **HB 2345**) would mandate that real estate licensees provide information to the consumer in every real estate sales contract which advises them on the possible presence of registered offenders in the area of a for-sale residential property.

On a daily basis, real estate licensees are allowed to have unfettered access to homes which are listed for sale in the state of Kansas. By virtue of this position, real estate licensees are entrusted with the personal and confidential information of consumers. In our culture, there is nothing more sacred than the right of the individual to be secure in the privacy and protection of one's own home. In order to protect consumers from harm, it is essential that individuals who have committed crimes which would subject them to offender registration be permanently banned from receiving a real estate license.

If the Kansas Legislature has made the determination that these individuals are a danger to society and KREC proposes to mandate consumers be made constantly aware of their potential presence in the area of a for-sale residential property, KAR believes that it is clearly inappropriate for KREC to have the discretion to decide whether or not to grant a real estate license to a registered violent or sexual offender.

10 Year Prohibition on the Licensure of Individuals Convicted of Crimes Involving Fraud

In addition, under Section 3(b)(2), KREC would be prohibited from granting a license to an applicant who, within the last ten (10) years, had pleaded guilty or *nolo contendere* to, had been convicted of, sentenced, or has completed serving a sentence, whichever is later, for crimes involving fraud. Since June 2004, KREC has granted a real estate license to five applicants with criminal convictions for fraud-related crimes.

On a daily basis, real estate professionals have access to the personal and confidential financial information of consumers. Under Kansas state law, real estate professionals are required to maintain trust accounts for the safekeeping of consumers' funds in the real estate transaction process. Throughout the entire process, real estate professionals are required to act on behalf of the consumer as they undertake the largest financial obligation of their entire lives. In these situations, it is entirely inappropriate to allow an individual with a recent history of fraud-related criminal convictions to have access to the confidential financial information of the consumer.

Under K.S.A. 17-1254 *et seq.*, in order to be licensed to sell securities in the state of Kansas, an individual must not have been convicted within the past 10 years of any misdemeanor involving fraud or of any felony. As a securities broker or dealer, an individual has access to the personal and confidential financial information of consumers. Since the sale of real estate is no less important or complicated than the sale of securities, an individual should be required to prove that they have not been convicted of or completed serving a sentence for a crime involving fraud within the past 10 years to receive a real estate license in the state of Kansas.

Five Year Prohibition on the Licensure of Individuals Convicted of Any Felony

Under Section 3(b)(3), the Commission would be prohibited from granting a license to an applicant who, within the last five years, had pleaded guilty or *nolo contendere* to, had been convicted of, sentenced, or has completed serving a sentence, whichever is later, for any felony charge. Since June 2004, KREC has granted a real estate license to 27 applicants with felony convictions for crimes ranging from drug possession to aggravated robbery.

A felony conviction, standing by itself, should not operate as an absolute and permanent bar for an individual to be licensed as a real estate salesperson or broker in the state of Kansas. However, when an individual chooses to engage in certain behaviors which endanger the general public, that individual should not be allowed to engage in a profession which requires the public trust and demands professional competency.

For example, in many cases, an individual who is convicted of a felony which involves the use of illegal drugs represents a danger to members of the general public in that many individuals who have substance abuse problems commit additional crimes to finance their addiction. Furthermore, it is clearly inappropriate for an individual with a recent armed robbery or burglary conviction to be granted *carte blanche* access to consumers' homes absent proof that the individual has been sufficiently rehabilitated.

Even though KAR would agree that individuals with felony convictions deserve a second chance to pursue a meaningful career and earn a living as a real estate licensee, we believe that individuals with felony convictions should be required to prove to KREC that they have sufficiently rehabilitated themselves subsequent to their respective felony convictions. In order to do so, an individual should be required to wait five years following a conviction for or the completion of a sentence for any felony.

Requirements for KREC to Grant License to an Applicant with a Felony Conviction After the Respective Time Period Has Elapsed (Ten and Five Year Prohibitions)

The third piece of **HB 2295**, in Section 3(c), would specify the requirements an applicant would have to meet in order to be granted a license by KREC if he or she has committed an offense listed in Sections 3(b)(2) or 3(b)(3) of the legislation.

In order for KREC to grant a real estate license to an applicant that has committed one of the crimes listed in these sections, the applicant would have to satisfy the following requirements:

- (1) Depending upon the crime that was committed, at least ten or five years must have passed since the applicant entered a plea of guilty or *nolo contendere* to, was convicted of, or has completed serving a sentence for the crime in question, whichever is later;
- (2) no felony criminal charges must be currently pending against the applicant at the time the application is pending; and
- (3) the applicant must present KREC with satisfactory proof that he or she now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the interest of the public. The burden is on the applicant to show present qualifications for licensure.

This section of **HB 2295** makes it clear that we believe an individual deserves a second chance to prove their suitability for licensure and show that they have been sufficiently rehabilitated. As long as sufficient time has passed which signifies the applicant's ability to conform his or her conduct to the requirements of the law, that applicant should not be prevented from entering the practice of real estate.

If a real estate license applicant is able to present evidence to KREC that they have been sufficiently rehabilitated following their respective criminal convictions, KREC should be given the ability to grant a real estate license to that applicant if they deem the applicant will transact the business of real estate in a manner that will protect consumers.

Revocation of Current Licenses for a Felony Conviction

Fourth, in Section 3(a), **HB 2295** would require KREC to revoke the license of any real estate licensee who enters a plea of guilty or *nolo contendere* to or is convicted of any felony charge while they are licensed to practice real estate in the state of Kansas. When the license is revoked under this section, that licensee will then be subject to the requirements of the remaining portions of **HB 2295** when they choose to make any subsequent applications for a real estate license.

This section would ensure that current real estate licensees are held to the same standards as new license applicants and that consumers are protected from individuals who are unqualified to practice real estate in the state of Kansas.

Factors for KREC to Consider When Determining if an Applicant Has Been Rehabilitated

Finally, the fifth piece of **HB 2295**, in Section 3(d), would simply specify the evidence that KREC could consider in determining whether or not an applicant presently has a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the interest of the public. This evidence would include:

- (1) the extent and nature of the applicant's past criminal activity;
- (2) the age of the applicant at the time of the commission of the crime or crimes;
- (3) the amount of time elapsed since the applicant's last criminal activity;
- (4) the conduct and work activity of the applicant prior to and following the criminal activity;
- (5) evidence of the applicant's rehabilitation or rehabilitative effort; and
- (6) all other evidence of the applicant's present fitness.

To: House Commerce and Labor Committee
From: Carol B. Mangan, 2007 President, Kansas Association of REALTORS®
Date: February 7, 2007
Subject: **HB 2295** – Criminal Background Checks and Limitations on the Ability of the Kansas Real Estate Commission to Grant Licenses to Certain Convicted Felons

Chairman Brunk and members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® to offer testimony in support of **HB 2295**.

My name is Carol Mangan and I am the 2007 President of the Kansas of Association of REALTORS®. I own and operate a real estate brokerage in Coffeyville, KS. I am a third generation real estate broker. In 1962, my grandmother, Carol Ewing, opened Carol G. Ewing Realty in a building across the street from the current George REALTORS®. Over the course of the last 45 years, both my mother and father have worked in the family business as real estate brokers. I am very proud to say that I continue to make real estate a family business as my daughter Kim is now a licensed agent in my office.

As you can see, I literally grew up in the real estate business. I was raised with the understanding that to work in real estate you had to be a respected and trusted member of your community. As a real estate professional, you did the best you could do to provide the best possible service to your customers and you stayed out of trouble with the law or you were not allowed to be in the real estate business.

I am very proud that we have gained the public trust. This gives real estate professionals the opportunity to enter homes and help consumers with the most important decision of their lives. We are very conscious of the fact that we occupy a unique position of trust and we place a very high value on providing the best possible service to our customers.

However, we depend on the respect and trust of our customers to make a living in the real estate business. That is one of the reasons that we want to ensure that all real estate licensees are professional and qualified to practice the business of real estate. We are concerned about the good relationships that we have developed with consumers and want to keep those relationships strong for a lifetime.

I think the public would be very concerned if they were aware of the fact that an increasing number of convicted felons are being admitted to practice real estate in Kansas. To think that they have trusted us with their lives, access to their homes and access to their most precious possessions and family.

We currently don't have enough restrictions in place which would allow our profession to keep unqualified and unprofessional individuals out of the real estate business. We are here to simply ask you to help us take a few concrete steps to strengthen our industry.

Please help us strengthen our industry and protect the public by supporting **HB 2295**. Thank you for your time.

House Commerce + Labor
2-7-07
(Attach # 3)

To: House Commerce and Labor Committee

From: John Green, President Coldwell Banker Griffith and Blair American Home,
Topeka

Date: February 7, 2007

Subject: **HB 2295**

Thank you for the opportunity to appear today before you to support **HB 2295**. My name is John Green and I am an owner of the largest real estate company in the city of Topeka; with 77 agents located in two offices. Our industry has always strived to increase the respect that we deserve from the public we serve. One of the industry's concerns is the quality of the individuals who are allowed to enter the industry. We have a responsibility to the public to protect the owners of the homes we have listed and the buyers and sellers who rely on us to assist them in the home purchasing process.

The passage of **HB 2295** is a very important step forward in safeguarding the interests of buyers and sellers and their properties. Under current statutes, each applicant for a real estate license must disclose if he or she has been convicted of any criminal offense. However, my concern is that many applicants fail to honestly answer the question on the license application.

Two years ago, I interviewed an employment agency for the purpose of assisting our company in locating and identifying candidates for a real estate career. The first question the employment agency asked was what our current procedure for checking the backgrounds of potential applicants. I answered the question and then I was asked if we conducted criminal background checks on applicants. Unfortunately, I was embarrassed to say that we had not even considered running criminal background checks on the applicants. The employment agency was shocked and as potential clients expressed serious concerns regarding our company and the real estate industry.

Within the year, we made the decision to perform our own criminal background checks on all the candidates for a real estate license that we planned to hire. Our concern now is how to protect our clients from the other real estate licensees who we know have not had completed a criminal background check prior to licensure.

My final concern is regarding the current policy of the KREC. It is my understanding that if KREC grants a license to an individual who has a criminal record, the commission asks the employing broker if he or she is willing to have this individual within his or her agency. My concern is what about all the other companies who have no knowledge of the individual's background who unknowingly allow these individual to enter into the homes of our clients. What happens if the agent changes companies and the new broker has no knowledge of the individual's criminal background prior to licensure?

In order to protect consumers and uphold the professionalism of the real estate industry, I urge you to support **HB 2295**.

House Commerce + Labor
2-7-07
(Attach # 4)

STATE OF KANSAS
APPLICATION FOR LICENSE AS A REAL ESTATE SALESPERSON

RECIPROCITY: Applicant must be resident of one of the following states: Arkansas, Colorado, Idaho, Indiana, Iowa, Mississippi, Nebraska, North Dakota, Oklahoma, South Dakota or Wyoming.

EQUIVALENT REQUIREMENTS MET IN ANOTHER STATE: The Kansas Real Estate Commission may waive the pre-license education and examination requirements and issue a salesperson's license to an individual who currently holds a salesperson's license issued by another state or jurisdiction, if, in the judgment of the Commission, the individual received equivalent education and passed an equivalent examination in the other state or jurisdiction.

Name to be shown on license (type or print): _____

Mark appropriate box and provide information as requested. Attach supplemental sheet if additional space is needed.

YES NO

1. Have you ever been licensed as a real estate broker or salesperson in Kansas or any other jurisdiction? **If yes**, provide name of jurisdiction, expiration date and license type. **Attach license history certification(s) for jurisdictions other than Kansas.** (A copy of your license will not be accepted.) _____
2. Has there been a denial, revocation, suspension, or any other disciplinary action taken by the state of Kansas or any other jurisdiction against any professional or occupational license held by you? **If yes**, attach a copy of the order and an explanation including the name of the jurisdiction, discipline dates and reasons. _____
3. Have you ever been engaged in the real estate business without a license or when a license was not required? **If yes**, provide name of the jurisdiction, year and type of activity. _____
4. Has there been any litigation filed by or against you or a company owned in whole or part by you relating to the business of buying, selling, exchanging or leasing real estate or any other activity that requires a real estate license in Kansas or another jurisdiction? **If yes**, provide a copy of the petition or complaint that sets forth the allegations and any settlement agreement or order that sets forth the outcome. If the litigation resulted in a judgment against you or a company owned in whole or part by you, also indicate whether the judgment has been satisfied and, if not, provide an explanation why the judgment has not been satisfied. _____
5. Have you ever been convicted of a criminal offense or is there any criminal charge now pending against you (other than minor traffic violations)? **If yes**, provide the date, offense or pending charge, court location and case number, and attach a copy of the charges, any order of conviction, sentencing, and any release from probation or parole. This includes misdemeanors. **NOTE:** A criminal record check may be done. _____
6. Are you a U.S. citizen? **If no**, attach a copy of the documentation that permits you to obtain employment in the United States.
7. State of residence: _____
8. **High school diploma** (year received, name and location of high school) _____
_____ **or G.E.D. equivalent** (date received and state that issued certificate) _____
College degrees (school, major, degree and year received) _____

I hereby certify that the information provided in this application is correct and that the Kansas Real Estate Commission may rely on its truthfulness.

Date Signed

Applicant's Signature

To: House Commerce and Labor Committee

From: Cal Lantis, 2005 President, Kansas Association of Realtors®

Date: February 7, 2007

Subject: **HB 2295** – Criminal Background Checks and Limitations on the Ability of the Kansas Real Estate Commission to Grant Licenses to Certain Convicted Felons

Chairman Brunk and the members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in support of **HB 2295**.

I am the Broker/Owner of Century 21 Lantis & Associates in Ottawa, Kansas. From 1981 through 1984, prior to starting my real estate career, I was a deputy sheriff in Franklin County and I served for ten years after that as a reserve deputy for the same department. During my tenure as deputy sheriff I also served as member of the 4th Judicial District Community Corrections Advisory Board. I believe that this background may give me a unique perspective on the issue before you.

There are three points that I would like to make today in support of **HB 2295**.

The first is simply that this isn't about reducing the power of the Kansas Real Estate Commission. This is about removing their liability by statutorily defining when and if a convicted felon may receive a real estate license. This is about public safety and the right of citizens to be protected by law on who has access to their homes and private records and who comes in contact with their families. On any given day, if you are granted a real estate license in Kansas, you are given access to 25,000 – 30,000 homes across the state. I believe that most Kansans would not want to allow a convicted felon to have uncontrolled entry into their home.

Second is the personal experience of having had an agent that was a victim of sexual assault. The event occurred in 1997. The agent was one of six individuals who were molested by this man. At the time of the incident, the Franklin County Attorney's office was understaffed and subsequently overworked. The accused was offered a plea bargain of simple felony assault, which he declined. He went to trial and was convicted of sexual assault and sentenced to prison. He served his sentence and his last known address was Topeka. The point of this is that had he taken the plea of a class E felony he would probably be granted a real estate license if he applied. Would you want him to have contact with your wife or daughter?

The third point is recidivism. According to the former Kansas Secretary of Corrections in "A Message From the Secretary, October, 2001," within 3 years of release 41% of convicted felons are returned to prison for parole violations and 15% are returned for committing additional crimes. This is the general population. There are other studies that indicate that the recidivism rate for violent offenders and sexual predators is higher. Some studies suggest that it is much higher. In the last 18 months, 41 felons have applied for licensure and 31 of those applications have been granted. If you use the Secretary's numbers and look at the number of admitted felons that have been granted a real estate license the math is simple.

When I was thinking about buying a motorcycle a couple of years ago an old Harley rider told me "Cal, it's not if your going to have a bad wreck on a motorcycle, it's when." I believe it's the same with granting a felon a real estate license.

I ask you to support **HB 2295**. Thank you for your time.

House Commerce & Labor
2-7-07
(Attach # 5)

KANSAS

KANSAS REAL ESTATE COMMISSION
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Chairperson Brunk and Members of the House Commerce and Labor Committee
From: Sherry C. Diel, Executive Director
RE: HB 2295—Concerning licensure and revocation of real estate salespersons and brokers
Date: February 7, 2007

Thank you for the opportunity to address your Committee today. I have one of my commissioners here today, Bill Perry, a broker from the Kansas City area, who can answer any questions you may have, and he can explain factors the Commission considers when evaluating whether an applicant with a felony record should be granted a license.

HB 2295 has been requested by the trade association, the Kansas Association of Realtors, to raise the bar for licensees who are entrusted to have keys that allow salespersons and brokers to have unaccompanied access to the public's homes and businesses and access to personal financial documents as licensees assist their client or customer with a transaction. The Commission applauds the trade association for wanting to raise the bar for licensure. However, the Commission believes that HB 2295 goes too far and addresses an alleged problem where no problem exists.

Simplified, HB 2295 would do the following:

- Authorize the Commission to require background checks of applicants and licensees and to recover the cost of the fingerprint and criminal history check from the applicant or licensee (Sect. 1, Lines 15-37 and Sect. 4, Lines 11-13);
- Eliminate the Commission's authority to consider convictions for misdemeanor crimes involving a crime of moral turpitude or forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud or any other similar offense when considering whether to grant or renew a license (Sect. 2, Lines 34-37);
- Require the Commission to revoke the license of any licensee if the licensee has entered a plea of guilty or nolo contendere to, or been convicted of, any felony charge (Sect. 3; Lines 11-14);
- Eliminate forever the Commission's discretion to grant or renew the license of any applicant who has pled guilty or nolo contendere to, or been convicted of, any offence that is comparable to any crime that would require the applicant to register under the Kansas Offender Registration Act (Sect 3, Lines 15-22);
- Eliminate the Commission's discretion for a period of at least 10 years if the applicant has entered a plea of guilty or nolo contendere to, or has been convicted of, forgery, embezzlement, obtaining money under false pretences, larceny, extortion, conspiracy to defraud or any other similar offense (Sect. 3, Lines 15, 23-30);

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(Attach # 6)*

- Eliminate the Commission's discretion for a period of at least 5 years if the applicant has entered a plea of guilty or nolo contendere to, or has been convicted of, any other felony (Sect. 3, Lines 15, 31-37).
- After the 10 years for "money crimes" or the 5 years for "any other felony" passes and the applicant has completed their sentence, the Commission may grant a license to an applicant with a felony record if no felony charges are pending and the applicant presents satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the public's interest. The burden of proof is on the applicant (Sect 3, p. 4, Lines 38-43, p. 5, Lines 1-22).
- On or after July 1, 2008, each residential real estate contract must contain language that notifies a buyer that persons convicted of certain sexually violent crimes must register with the local sheriff and to provide the buyer with the KBI web site address or to advise the buyer to contact the local sheriff if they wish to obtain more information. (Sect 5, Lines 28-36).

Background Checks

The Commission is supportive of the idea of having background checks for applicants. The Commission believes that it would be an excellent means of ensuring that the Commission knows the backgrounds of applicants that are granted licensure. Currently, the Commission requests information on the application about the applicant's criminal history. If the Commission later finds out that the applicant answered untruthfully, the Commission will often revoke the license.

However, the trade association previously submitted language for the Commission's consideration that was much more favorable to the Commission than what is contained in HB 2295. The initial language put the burden on the applicant for obtaining the fingerprints and submitting the background request to the KBI prior to an application ever being submitted to the Commission. The present language will require that the Commission administer the fingerprint and background check program, which will require the hiring of at least one new staff person in the licensing department.

Eliminate the Commission's Authority to Consider Certain Misdemeanors

The Commission often considers whether to grant or renew a license of someone who has been convicted of a crime that is a misdemeanor but the crime involves theft, writing a number of worthless checks, or a crime involving a sexual offense or violence that was pled down from a felony to a misdemeanor. The Commission believes it is imperative that the Commission retain the discretion to grant or renew licensure for persons who plead guilty or nolo contendere to, or have been convicted of, misdemeanor "money crimes" or crimes involving moral turpitude.

Require the revocation of existing licenses of licensees who have felony criminal histories

As written, the legislation would require the Commission to revoke the license of any licensee who has pled guilty or nolo contendere to, or has been convicted of, any felony offense. This provision would have a huge operational and fiscal impact on the Commission. The Commission currently has approximately 17,500 licensees. The Commission would need to hire at least one, possibly two, Special Investigator II or attorney positions to handle the increased workload. Each position would cost the Commission \$40,000-\$50,000 per year plus

benefits. The Commission is unable to anticipate the number of hearings and petitions for judicial review that will be filed but assumes the number will be significant. The increase in the Commission's litigation costs and attorney fees cannot be estimated. There have been no reports that licensees with felony records have committed crimes while conducting real estate business. Unless some type of grandfather clause is added for felonies that have already been considered by the Commission, it appears that a great deal of the Commission's staffing and fiscal resources will be focused on defending the statute in hearings and judicial proceedings.

Eliminate Discretion of the Commission to License Applicants with Felony Records

HB 2295 would eliminate all discretion of the Commission based upon the type of crime and the amount of time that has passed without any consideration whether the person has been rehabilitated. The Commission believes that it has used its discretion judiciously. The Commission carefully considers several statutory factors including the nature of the crime, the length of time that has passed, evidence of rehabilitation and mitigating factors, such as age of the applicant at the time the crime was committed. HB 2295 does not consider rehabilitation and seems to punish those persons who made a mistake in their life, served their sentence, have paid back society, and now want to move forward with their life.

Over calendar year 2006, 14 persons with felony records have been licensed. The Commission doesn't license everyone with a criminal record. Rather, the Commission considers the evidence put forth by the applicant and weighs the safety of public. The Commission considers each case on its unique facts. A summary of the 2006 felony licensure approvals are as follows:

1990 Poss. Of Cocaine
1981 4 Cts of Poss of Drugs
2001 Check forgery for \$478.43 (Employed as trades processor in financial sector)
1991 Burglary, felony theft (college stunt stole 50 CDs and stereo equip in a house)
2005 Failure to have Tax Stamp (marijuana found in his car that was in his girlfriend's makeup bag)
1997 Aggravated battery/aggravated assault (Age 17 at the time)
1984 Promoting prostitution
2001 Felony theft
1992 Theft, 1996 Attempted Theft
1998 Driving While an Habitual Offender
1995 First Degree Criminal Trespass
1992 Armed Bank Robbery (18 yrs old at time and armed with a BB-pellet gun)
1986 Prostitution, 1996 Possession and Distrib of Controlled Substance, and 1997 Stealing

The majority of other jurisdictions permit the use of discretion to grant or renew licensure

Attached to my testimony is a summary of the survey results from other jurisdictions concerning whether they bar convicted felons from licensure. Of the 22 jurisdictions that responded, only Missouri has a complete bar on the licensure of felons convicted of certain crimes. Only Nova Scotia, Utah, Alaska and Idaho bar convicted felons for a specific period of time and 17 authorize the commissioners to use discretion whether to grant or deny licensure.

Definition of "sentence" needed

The Commission understands that the intent of the trade association is that the clock for the 10-year "money crimes" and 5-year "any other felony" crimes does not begin until the person completes their sentence, including any probation, parole and post-supervision release. The Commission does not believe that HB 2295, as currently written, is clear enough in this regard.

Mandatory Language in Residential Real Estate Purchase/Sales Contracts

The Commission has no objections to inclusion of the language requested last year by Rep. Huntington as part of 2006 HB 2788 and, in fact, has included this language in legislation requested by the Commission, which is contained in HB 2345.

Summary

The Commission has significant concerns regarding the fiscal and operational effects HB 2295, as written, will have on the agency. However, the Commission does not oppose the following portions of HB 2295:

- Background checks of original applicants, but the Commission prefers the language proposed initially by the Kansas Association of Realtors for original applicants **combined** with the HB 2295 language for investigations of existing licensees;
- Mandatory language in the purchase/sales contract that Rep. Huntington requested;
- The Commission would propose substituting the factors to consider for determining whether a person bears a good reputation for honesty, trustworthiness, integrity and competency that are located on page 5, Lines 5-22 of the bill for the factors set forth in K.S.A. 58-3043(a)(4) and (5) in current law. The Commission believes the factors set forth in HB 2295 provide clear guidance and unquestionably place the burden on the applicant to show the applicant currently possesses a good reputation.

The Commission is also not opposed to continued discussions with the trade association to determine if there is any common ground that can be reached regarding the licensure of felons.

We will be happy to address any questions the Committee may have. Thank you for your time and consideration.

SURVEY OF JURISDICTIONS REGARDING

LICENSURE OF CONVICTED FELONS

The Kansas Real Estate Commission asked me to post the following questions to jurisdictions:

Does your jurisdiction's law provide for an outright ban from licensure for convicted felons for any offense or specific offenses?

Arkansas law provides thata person shall not receive or hold a license issued by the Commission if the person has been convicted of a felony or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness. However the applicant can request a hearing if denied and the Commission can waive the conviction based on the following:

The age at which the crime was committed;

The circumstances surrounding the crime;

The length of time since the crime;

Subsequent work history;

Employment references;

Character references;

Other evidence demonstrating that the applicant does not pose a threat to the public.

Kentucky is the same for felony and some misdemeanor cases. They are determined on a case by case basis.

Norman Brown

Executive Director

Kentucky Real Estate Commission

SD does not have an outright ban; however, it is grounds for denial of an application. If an application is denied by me, the applicant has the right to appeal my decision to the Commission.

Dee Jones Noordermeer
Executive Director
South Dakota Real Estate Commission

No. Cases are considered on a case by case basis in North Carolina.

No. Not in the District of Columbia.

The Oregon Real Estate Agency does not deny licenses solely on the fact that an applicant or licensee is a convicted felon. We evaluate whether there is a nexus between the crime and conducting the business of real estate. Once the crime is identified, an evaluation of the nexus between the crime and the licensee's responsibilities, the agency must also consider:

- (a) The nature of the crime;
- (b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;
- (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position, services, employment, license, certification or registration; and
- (d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit. Intervening circumstances include but are not limited to:
 - (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.

We are currently working on further defining the administrative rules to better outline the crimes we consider serious and questionable.

No, Texas considers each conviction on a case by case basis. Chapter 53 of the Texas Occupations Code provides criteria that licensing and occupational boards must use in determining whether to grant a license to a person with a criminal conviction. Here is the link to Chapter 53.

<http://tlo2.tlc.state.tx.us/statutes/docs/OC/content/htm/oc.002.00.000053.00.htm#53.001.00>

Loretta DeHay
General Counsel
Texas Real Estate Commission

The California Department of Real Estate does have an outright ban from licensure for individuals convicted of felonies. These licensing decisions are made on a case by case basis. Some of the key factors in the decision process include the length of time that has transpired since the conviction and the time that the individual was off of probation or parole as well as the efforts the individual has made toward rehabilitation.

Bill Moran
Assistant Commissioner,
Enforcement

No, West Virginia considers each application on a case-by-case basis.

No, not in Maine

Massachusetts law does not provide for an outright ban. Rather, it permits the Board to review the criminal conviction (an other relevant information) to determine whether there is a reasonable basis for concluding that rehabilitation occurred and that the individual candidate has the requisite good moral character to become a licensed real estate agent.

Joe Autilio

In Oklahoma we consider each case individually, case by case. We have rules which set out what constitutes good moral character, i.e., past convictions, length of time since a conviction, have fines and costs been paid, all probation requirements met, etc. Anne

In Alabama, no.....Commissioners may reject or deny issuance of a license to an applicant with a record of felony or issues of moral turpitude.

Shown below are the guidelines for Nova Scotia.

B. Application for Pre-Screening

Successful completion of the licensing course and examination is not the sole requirement for licensing. The Real Estate Trading Act and By-Law also stipulate that applicants for a licence shall "be of good reputation". (See "Good Reputation" below). For this reason, applicants are investigated. The investigation process generally takes four to eight weeks.

Individuals who have some concern about whether or not they satisfy the requirements of being of "good reputation" should, prior to registering for the licensing course, submit a licence application together with the fee to the Real Estate Commission office. An advance decision may thus be obtained as to the applicant's suitability for licensing subject, of course, to completing the course and passing the examination.

In the event that an applicant is found not to be suitable for licensing, the fee is fully refunded. If the applicant is found to be suitable for licensing, but does not proceed with an application for licensing, a refund in the amount of 75% of the fee is available.

C) "Good Reputation" - Guidelines

Every applicant for a licence shall, among other things, be of "good reputation". General business and personal reputation in addition to criminal convictions and charges will be reviewed when considering an applicant's "good reputation".

It is standard procedure for copies of all applications to be forwarded to the R.C.M.P. to determine if the applicant has engaged in unlawful activities, and it is incumbent upon applicants to ensure that all charges and convictions, including conditional discharges, are disclosed when applying for a licence. A criminal conviction will not necessarily be a bar to licensing. Consideration is given as to the nature of the offence, sanctions imposed, and whether the offence is related to the employment of the applicant as a real estate Salesperson, Managing/Associate Broker or Broker. A continued history of convictions, charges or other actions relating to the unlawful activity may result in the denial of licence.

Applications from applicants with criminal records will not be considered until the following periods have passed following convictions:

i) **Summary Conviction Offenses**

a) Summary conviction offenses unrelated to employment - e.g., common assault, simple possession of narcotics, impaired driving.

The Commission will not consider an application until completion of sentence, parole and/or probation, or payment of fine. Summary conviction offenses are defined as having a maximum sentence of a fine of not more than \$2,000 or a sentence to imprisonment for six months or both. These would include offenses for which the applicant had received a fine, a suspended sentence and probation or a conditional discharge and probation.

b) Summary conviction offenses related to employment - e.g., theft under \$1,000 (shoplifting); false pretences under \$1,000; possession of stolen property under \$1,000.

An application will not be considered until at least one year following completion of sentence, parole and/or probation. These would include offenses for which the applicant had received a fine, a suspended sentence and probation or a conditional discharge and probation.

ii) **Indictable Offenses**

a) Indictable offenses unrelated to employment - e.g., possession of narcotics for the purpose of trafficking.

Applications from applicants will not be considered until at least one year following completion of sentence, parole and/or probation. These would include indictable offenses for which the applicant received a sentence of imprisonment, a fine, a suspended sentence and probation or a conditional discharge and probation.

b) Indictable offenses related to employment - e.g., theft over \$1,000, breaking and entering, possession of stolen property over \$1,000, false pretences over \$1,000.

Applications from applicants will not be considered until at least two years from the date of completion of sentence, parole and/or probation. These would include indictable offenses for which the applicant received a sentence of imprisonment, a fine, a suspended sentence and probation or a conditional discharge and probation.

iii) **White Collar Crime**

The crimes in this category include theft from employer, theft of large sums of money, serious fraud cases, embezzlement, criminal breach of trust, forgery or any other business related crime or a conviction for a crime where the individual was in a position of trust.

Applications from applicants will not be considered until at least five years from the date of completion of sentence, parole and/or probation. These would include both summary and indictable offenses for which the applicant received a sentence of imprisonment, a fine, a suspended sentence and probation or a conditional discharge and probation.

NOTE: For the purpose of determining whether a conviction is related to employment as a real estate licensee, the following criteria shall be included.

- a) Does the behaviour for which the charge was laid, if repeated, pose any threat to the employer's ability to carry on business safely and efficiently?
- b) What were the circumstances of the charge and the particulars of the offence involved: e.g., how old was the individual when the events in question occurred and were there any extenuating circumstances?
- c) How much time has elapsed between the charge and the employment decision?
- d) What has the individual done during that period of time?
- e) Has the person shown any tendencies to repeat the kind of behaviour for which they were charged?
- f) Has the person shown a firm intention toward self-rehabilitation?

Hope this helps.

Doug Dixon

Registrar

Nova Scotia Real Estate Commission

Iowa unfortunately no

Neither. In Nebraska, the Commission considers each applicant or licensee on a case-by-case basis. A felony can be a reason for denial of a license; denial of the renewal of a license or the revocation of a license after hearing.

Les

No in Louisiana. Applications are considered on a case by case basis.

J. C.

In Utah, the licensing statute give the Real Estate Commission authority to establish licensing standards. The Commission recently passed a rule under that authority that prohibits a person from being licensed if that person has any felony within the past 5 years or any misdemeanor involving fraud, misrepresentation, theft, or dishonesty within the past 3 years.

We have been happy with the result of this new rule. Our experience has been that the real estate schools have done an excellent job of getting the word out and we have seen a significant reduction in the number of applicants who do not meet these qualifications, so we don't have to spend time and resources handling applications that would have typically been denied anyway.

All other applications are dealt with on a case-by-case basis.

Ms Toll:

I am sorry we have not had the opportunity to meet yet. I hope we get the opportunity soon. The Kansas Association of Realtors has introduced legislation that bars felons listed as sexual offenders or violent offenders from ever obtaining a real estate license, felons who have committed fraud, embezzlement, etc. are barred for 10 yrs. and any other felon is barred for 5 yrs. All discretion would be taken away from the Commission. I am told that Colorado has a complete ban on felons obtaining a license. Could you email me a copy of your statute?

Thanks for your help.

Ms. Diel,

I am responding on behalf of Erin Toll in regards to your email about Colorado's statutes on licensing felons. We actually don't have a ban on licensing felons. Applicants for a broker's license are required to disclose misdemeanor and felony convictions that occurred within 10 years of their application for licensure. The applicants with criminal convictions are subject to a pre-licensure investigation, the outcome of which is presented to our Real Estate Commission. Our Commission decides if a license will be granted. We do have a specific statute regarding brokers who have been convicted, pled guilty or pled nolo contendere to specific criminal offenses while they have been licensed. That statute is 12-61-113(1)(m), C.R.S. If I can be of further assistance, please let me know.

Thank you,

Marcia Waters

Division of Real Estate
Colorado Real Estate Commission

Hi Janet:

The Kansas Association of Realtors has introduced legislation that bars felons listed as sexual offenders or violent offenders from ever obtaining a real estate license, felons who have committed fraud, embezzlement, etc. are barred for 10 yrs. and any other felon is barred for 5 yrs. All discretion would be taken away from the Commission. I am told that Missouri has a complete ban on felons obtaining a license. Could you email me a copy of your statute?

Thanks for your help. See you soon.

Sherry:

Here is the language found in 339.100 RSMo. We basically took the language from the Department of Education. This is our first renewal under the language and we are still tracking down a couple of licensees who failed to mark "yes" to the question, when we know they should have. We also have indicates that many people chose to not renew so that the information would not be made public.

Best regards,

janet

Notwithstanding other provisions of this section, a broker or salesperson's license shall be revoked, or in the case of an applicant, shall not be issued, if the licensee or applicant has pleaded guilty to, entered a plea of nolo contendere to, or been found guilty of any of the following offenses or offenses of a similar nature established under the laws of this, any other state, the United States, or any other country, notwithstanding whether sentence is imposed:

- (1) Any dangerous felony as defined under section 556.061, RSMo, or murder in the first degree;
- (2) Any of the following sexual offenses: rape, statutory rape in the first degree, statutory rape in the second degree, sexual assault, forcible sodomy, statutory sodomy in the first degree, statutory sodomy in the second degree, child molestation in the first degree, child molestation in the second degree, deviate sexual assault, sexual misconduct involving a child, sexual misconduct in the first degree, sexual abuse, enticement of a child, or attempting to entice a child;
- (3) Any of the following offenses against the family and related offenses: incest, abandonment of a child in the first degree, abandonment of a child in the second degree, endangering the welfare of a child in the first degree, abuse of a child, using a child in a sexual performance, promoting sexual performance by a child, or trafficking in children; and
- (4) Any of the following offenses involving child pornography and related offenses: promoting obscenity in the first degree, promoting obscenity in the second degree when the penalty is enhanced to a class D felony, promoting child pornography in the first degree, promoting child pornography in the second degree, possession of child pornography in the first degree, possession of child pornography in the second degree, furnishing child pornography to a minor, furnishing pornographic materials to minors, or coercing acceptance of obscene material.

6. A person whose license was revoked under subsection 5 of this section may appeal such revocation to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of revocation. Failure of a person whose license was revoked to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the revocation. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commissioner.

Janet Carder, Executive Director
Missouri Real Estate Commission

Hi Sharon:

The Kansas Association of Realtors has introduced legislation that bars felons listed as sexual offenders or violent offenders from ever obtaining a real estate license, felons who have committed fraud, embezzlement, etc. are barred for 10 yrs. and any other felon is barred for 5 yrs. All discretion would be taken away from the Commission. I am told that Alaska has a complete ban on felons obtaining a license. Could you email me a copy of your statute?

Thanks for your help. See you soon.

Good Morning Sherry,

Well unfortunately in AK we do not have a "complete" ban on felons obtaining a RE license. In fact we are looking at ways to not allow them in without some sort of time span since their conviction. Right now we only require that they have completed their probation and that's it for a Salesperson license qualifier. However, in order to obtain an AB or Brokers license a time span of seven years must have lapsed since you committed a felon.

Sorry we don't have what you are looking for in our statutes... maybe AZ or AR or AL?
See you in Banff.

Regards,
Sharon

Ms. Martine:

The Kansas Association of Realtors has introduced legislation that bars felons listed as sexual offenders or violent offenders from ever obtaining a real estate license, felons who have committed fraud, embezzlement, etc. are barred for 10 yrs. and any other felon is barred for 5 yrs. All discretion would be taken away from the Commission. I am told that Virginia has a complete ban on felons obtaining a license. Could you email me a copy of your statute?

Thanks for your help.

Ms. Diel,

At this time, the Virginia Real Estate Board does not have a complete ban on felons obtaining a license. We require all licensees to disclose whether they have any convictions on their applications. If a person discloses a felony conviction, the person is given an opportunity to present information at an Informal Fact-Finding conference (IFF) regarding the conviction(s). The Board must review the information obtained at the IFF to ascertain whether or not to issue the license pursuant to § 54.1-204 of the Code of Virginia. Here is the link to that Code section. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+54.1-204+404134>

I hope this information is helpful. If you need anything further, please don't hesitate to contact me.

Christine Martine
Executive Director
Real Estate Board
Dept. of Professional and Occupational Regulation
804-367-0402

Mr. Hurlburt:

The Kansas Association of Realtors has introduced legislation that bars felons listed as sexual offenders or violent offenders from ever obtaining a real estate license, felons who have committed fraud, embezzlement, etc. are barred for 10 yrs. and any other felon is barred for 5 yrs. All discretion would be taken away from the Commission. I am told that Connecticut has a complete ban on felons obtaining a license. Could you email me a copy of your statute?

Thanks for your help.

REAL ESTATE LICENSURE Sec. 20-316. Grounds for refusal of license. (a) No license under this chapter shall be denied by the commission to any applicant who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or other like offense or offenses, or to any association or partnership of which such person is a member, or to any corporation of which such person is an officer or in which as a stockholder such person has or exercises a controlling interest either directly or indirectly, except in accordance with the provisions of section 46a-80.

(b) No license under this chapter shall be issued by the department of consumer protection to any applicant (1) whose application for a license as a real estate broker or real estate salesperson has, within one year prior to the date of his application under this chapter, been rejected in this state, in any other state or in the District of Columbia or (2) whose license as a real estate broker or real estate salesperson has, within one year prior to the date of his application under this chapter, been revoked in this state, in any other state or in the District of Columbia.

(c) No license as a real estate broker or real estate salesperson shall be issued under this chapter to any person who has not attained the age of eighteen years.

(d) The provisions of this section shall apply any applicant for a license under this chapter, whether or not such applicant was engaged in the real estate business in this state on July 1, 1953, and whenever the applicant's application is filed.

Sec. 46a-80. (Formerly Sec. 4-61o). Denial of employment based on prior conviction of crime. Dissemination of arrest record prohibited. (a) Except as provided in subsection (b) of this section and subsection (b) of section 46a-81, and notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the state of

Connecticut or any of its agencies, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit, certificate or registration is required to be issued by the state of Connecticut or any of its agencies solely because of a prior conviction of a crime.

(b) A person may be denied employment by the state or any of its agencies, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, profession or business by reason of the prior conviction of a crime if after considering (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release, the state, or any of its agencies determines that the applicant is not suitable for the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration is sought.

(c) If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant.

(d) In no case may records of arrest, which are not followed by a conviction, or records of convictions, which have been erased, be used, distributed or disseminated by the state or any of its agencies in connection with an application for employment or for a permit, license, certificate or registration.

Thank you,

Richard :)

Richard M. Hurlburt Director

Connecticut Department of Consumer Protection

Occupational and Professional Licensing Division

Ms. Jackson-Heim:

The Kansas Association of Realtors has introduced legislation that bars felons listed as sexual offenders or violent offenders from ever obtaining a real estate license, felons who have committed fraud, embezzlement, etc. are barred for 10 yrs. and any other felon is barred for 5 yrs. All discretion would be taken away from the Commission. I am told that Idaho has a complete ban on felons obtaining a license. Could you email me a copy of your statute?

Thanks for your help.

It is true that in Idaho, any felony conviction precludes licensure. However, if 5 years has passed since the felony conviction, then the applicant may apply to the commissioners for an exemption. Here is a link to our statute:

<http://www3.state.id.us/cgi-bin/newidst?sctid=540200012.K>

Hope that helps. Please let me know if you need any further information or assistance!

Thanks,
Jeanne

Idaho Statutes

TITLE 54
PROFESSIONS, VOCATIONS, AND BUSINESSES
CHAPTER 20

IDAHO REAL ESTATE LICENSE LAW

54-2012. MINIMUM REQUIREMENTS FOR AN INDIVIDUAL PRIMARY IDAHO LICENSE.

(1) Requirements for all individual primary licenses. Unless a qualification is waived or modified by the commission for good cause and upon special consideration, and except as provided in section 54-2015, Idaho Code, each person seeking a primary Idaho real estate license as a salesperson, associate

broker or designated broker shall meet all of the following minimum qualifications:

- (a) Be an individual;
- (b) Be eighteen (18) years of age or older;
- (c) Furnish satisfactory proof that the applicant graduated from an accredited high school or its equivalent or holds a certificate of

general

education;

(d) Not have had a real estate or other professional or occupational license revoked, suspended, or surrendered, or the renewal refused, for a disciplinary violation involving fraud, misrepresentation or dishonest or dishonorable dealing, in Idaho or any other jurisdiction, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(e) Not have been convicted or completed any sentence of confinement for or on account of any misdemeanor involving fraud, misrepresentation or dishonest or dishonorable dealing, in a state or federal court, within five (5) years immediately prior to the date the application for license is submitted to the commission;

(f) Not have been convicted of any felony in a state or federal court; provided that after a period of five (5) years from the date the person was convicted or completed any term of probation, sentence or confinement or period of parole, whichever is later, the applicant may make written request to the commission for an exemption review to determine the applicant's suitability for licensure, which the commission shall determine in accordance with the following:

(i) The exemption review shall consist of a review of any documents

relating to the felony and any supplemental information provided by the applicant bearing upon his suitability for licensure. The commission may, at its discretion, grant an interview of the applicant.

(ii) During the review, the commission shall consider the following factors or evidence:

1. The severity or nature of the felony;
2. The period of time that has passed since the felony under review;
3. The number or pattern of felonies or other similar incidents;
4. The circumstances surrounding the crime that would help determine the risk of repetition;
5. The relationship of the crime to the licensed practice of real estate; and
6. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution, or any other factors which may be evidence of current rehabilitation.

(iii) The applicant shall bear the burden of establishing his current suitability for licensure.

(g) Complete all prelicense education requirements as provided for in section 54-2022, Idaho Code, for a salesperson's or broker's license;

(h) Pass the commission-approved real estate licensing exam for a sales or broker license in the time and manner stated in section 54-2014, Idaho Code, and pay the required exam fees;

(i) Be fingerprinted for the purpose of a national criminal history check

to determine whether the applicant is qualified for licensure, and pay all

fees associated with the fingerprinting and background check services. If the fingerprints are returned to the commission as illegible the applicant

shall, upon request from the commission, be fingerprinted again and file the new fingerprints with the commission;

(j) Sign and file with the commission an irrevocable consent to service, appointing the commission's executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served, and consenting that any lawful process against the licensee that is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon receipt of any such process or notice, the executive director shall immediately mail a copy of the same by certified mail to the last known address of the licensee. All

licensees

shall provide the commission a full and current mailing address and shall notify the commission in writing of any change in mailing address within ten (10) business days of the change;

(k) If licensing as an active salesperson or associate broker, provide the name and physical address of the main business location of the designated broker with whom the applicant will be licensed, and the signature of that broker; or, if licensing as a designated broker,

provide

the name and physical address of the main business location. No Idaho sales associate may be licensed under or associated with more than one

(1)

Idaho broker at a time;

(l) Submit a properly completed application and all license, application and other fees listed in section 54-2020, Idaho Code, or as otherwise required by statute or rule; and

(m) Provide satisfactory proof of meeting the mandatory errors and

omissions insurance requirement for real estate licensees, as stated in section 54-2013, Idaho Code.

(2) Additional requirements for broker and associate broker licenses. Applicants seeking a primary Idaho license as a broker or associate broker shall meet the additional following qualifications:

(a) Provide satisfactory evidence of having been actively engaged, on a full-time basis, for two (2) years as a licensed real estate salesperson within five (5) years immediately prior to the date upon which the individual makes application. Such evidence shall demonstrate the productiveness of the licensed activity to have been generally commensurate with that of other licensees practicing in a similar capacity. Listings, sales, options or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification.

(i) A broker or associate broker applicant may be required to furnish a report of listings and sales accomplished by the applicant during two (2) or more years within the last five (5) years of licensure immediately prior to the application date;

(ii) This report shall be certified as correct by the broker or brokers with whom the applicant has been associated, provided however, that upon preapproval by the commission, the applicant may verify that the report is correct in an alternative manner;

(iii) The broker experience requirement may be modified or reduced, in whole or in part, at the discretion of the commission, based upon the applicant's educational background, or experience in related or affiliated business activities;

(iv) The commission in its discretion may make such additional investigation and inquiry relative to the applicant as it shall deem advisable;

(b) Designate a physical office location and a business name. The commission may refuse to issue a license to any person if the business name is the same as that of any person whose license has been suspended or revoked or is so similar as to be easily confused with another licensee's name by members of the general public. However, nothing in this subsection shall restrict an individual from obtaining a license in his or her own legal name.

(c) If currently licensed in Idaho as a salesperson and applying for a license as an Idaho broker or associate broker, the individual shall submit a new fingerprint card for processing and pay associated fees.

Jeanne Jackson-Heim
Executive Director
Idaho Real Estate Commission
