

Approved: SRB 2/20/07
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:08 A.M. on February 19, 2007 in Room 231-N of the Capitol.

All members were present except:

Candy Ruff- excused
Delia Garcia- excused

Committee staff present:

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

Conferees appearing before the committee:

Others attending:

See attached list.

The Chairman reopened the hearing on **HB 2315 - Home Inspection Competency and financial responsibility.**

Martha Smith, Director for Kansas Housing Association testified as neutral and passed out a Proposed Amendment to **HB 2315 (Attachment 1).**

Chris Wilson, Executive Director of the Kansas Building Industry Association presented written testimony and a proposed amendment to **HB 2315 (Attachment 2).**

Larry Magill, representing the Kansas Association of Insurance Agents testified as neutral and proposed an amendment to **HB 2315 (Attachment 3).**

Ron Gaches, Executive Director, Kansas Society of Professional Engineers, testified as an opponent of **HB 2315 (Attachment 4).**

There being no questions for the conferees the Chairman closed the hearing on **HB 2315.**

The Chairman called for a motion to reconsider **HB 2314 - Board of accountancy approval of educational credit.**

Because their had been some confusion about the actions taken on the bill on Friday Representative Humerickhouse made a motion to reconsider. The motion was seconded by Representative Goico. The motion to reconsider passed on voice vote.

Duston reminded the committee of the changes that were approved by the committee and commented on the implications of the actions.

The Chairman said that the 150 hours is an industry standard across the country and changing it to 100 makes Kansas significantly different than the rest of the country. Also removing lines 39-40 defeats the original intent of this bill which was to allow the AP classes.

Representative Goico asked if you can get an accounting degree with 100 hours. It takes 124 hours for a basic accounting degree. The 26 extra hours are required to be able to set for the CPA exam. He made a motion to restore lines 39 and 40 and change the 100 hours back to 150 hours. Representative Kiegerl seconded the motion.

Representative landwehr asked for the motion to be split. There was no objection. Representative Goico restated the motion to reinstate the 150 hours. Seconded by Keigerl.

The question was called and the motion passed on voice vote.

Representative Goico made a motion to restore lines 39-40. Seconded by Huntington.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:08 A.M. on February 19, 2007 in Room 231-N of the Capitol.

Representative Pauls said there was a problem with the Board not accurately reporting year to year and she is opposed to the motion.

Representative Landwehr said if you reinstate the language you are giving the Board the ability to micro manage and she is opposed to the motion.

Representative Goico said the issue is colleges outside of Kansas. There is no problem with colleges in the State of Kansas. Other states do not have the same requirements as Kansas and restoring lines 39-40 allows the Board to limit the type and amount of credits that other states allow. Representative Goico said that a balloon was confusing and restoring lines 39-40 would solve the problem.

Representative Landwehr said again this would allow the Board to Micro manage.

Representative Huntington asked Susan Somers to respond to the statement about micro managing. She said the lines were needed to quantify the courses that are required to sit for the CPA exam. It is not to micro manage anyone. It is to collectively say what is required to sit for the CAP exam. The problem is that without lines 39-40 the out of state college may have to be disqualified because their AP credits are not up to our standard.

Representative Landwehr complained that they were not asked to agree to the reconsideration of the bill except for the 150 hours.

The Chairman said that once the bill is reopened, anything can be considered.

Representative Sharp commented about the different numbers of hours required by different states.

Tony Scott, Kansas Society of CPA's offered to clarify the question. He said that there were some states that did not require 150 hours. Colorado was one of those states. The difficulty with that is that the Colorado CPA's cannot cross state lines to practice. They must first get the 150 hours so that they can be considered "substantially equivalent". Substantial equivalency requires 150 hours. Tony said that when he spoke to the members of the committee about reconsideration his focus was on the 150 hours because that would have emasculated the CPA profession in the State of Kansas.

Representative Huntington asked if it was important to have a uniform act. Tony replied said that it was important to have a uniform ability to practice across state lines.

Representative Grant said that Kansas colleges are controlled by the Regents. Outside of Kansas they may accept more credits and we have no control over what they accept without lines 39-40.

Representative Pauls thought the committee was hearing misleading information and advised the committee to vote no.

Representative Landwehr said that it might be better to postpone the decision.

Representative Roth asked for the motion to be restated.

Representative Grant asked if there was an urgency to pass this bill. The urgency is that going back to last year we will not be able to accept Dante credits.

Representative Grange said that he agreed with the 150 hours but not restoring lines 39-40. Representative Kiegerl agreed with Representative Grange.

The question was called and the motion failed.

Representative Kiegerl made a motion to pass the bill favorably for passage as amended, seconded by Representative Grant. The motion passed on voice vote.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:08 A.M. on February 19, 2007 in Room 231-N of the Capitol.

The Chairman said that tomorrow the committee will be working **HB 2315**, the home inspector's bill and hearing **HB 2379** the employee misconduct bill. There may be an opportunity to hear **SB 0083**, the employment security bill.

The Chairman adjourned the meeting at 10:25 A.M.

COMMERCE AND LABOR COMMITTEE

Date 2-19-07

NAME	AGENCY
Susan Simon	Board of Accountancy
Tony A. Scott	KSCPA
Mike Speer	KAREI
Michelle Jean Smith	KIMHA
Luke Bell	Ks Assoc. of REALTORS
John Federer	HBA of KC
Kerri Spielman	KAIA
Larry Magill	KAIA
John Peterson	Capital Strategies
Jeff & Jennifer	Kansas Association of Real Estate Inspectors
Jon Deches	CBBA
Zach Oswald	Janice Paul's Intern
Dan Hough	KTLA
Callie Benton Hartle	KTLA

Proposed Balloon Amendment to HB 2315

AN ACT concerning real property; relating to home inspections; requiring home inspector registration and certificates.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this section: (a) (1) "Home inspection" means a non-invasive limited visual examination of a residential dwelling of not more than four attached units, or any portion thereof designed to identify material defects at the time of the inspection of three or more of the following readily accessible systems and components:

- (A) Heating systems;
- (B) cooling systems;
- (C) electrical systems;
- (D) plumbing systems;
- (E) structural components;
- (F) foundations;
- (G) roof coverings;
- (H) exterior and interior components; and
- (I) any other components and systems that are part of the residential dwelling and included in the standards of practice followed by the home inspector

(2) The term "home inspection" also includes any consultation regarding the property that is represented to be a home inspection or that is described by any similar term.

(3) The term "home inspection" does not include:

- (A) A compliance inspection for any code or governmental regulation;
- (B) an examination for the conditions and operation of kitchen-type appliances, on-site water supplies or wells, private waste systems, the determination of the presence of wood-destroying organisms or pests, or the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or conditions of air quality; and
- (C) an examination and evaluation of only two or less of the components listed in section (a)(1).

(b) "Home inspector" means an individual who performs a home inspection as defined by this act.

(c) "Home inspection report" means a written report on the results of a home inspection which is issued for a home inspection. The report shall include the following:

- (1) A clear identification and description of those systems, structures or components which were inspected;
- (2) a clear identification and description of those systems, structures or components designated to be inspected under the standards of practice approved by the board and which were not inspected, and the reason why they were not inspected;
- (3) a clear identification and description of any material defects found to be in need of repair, including any recommendations for further evaluation; and
- (4) a completed pre-inspection agreement.

(d) "Pre-inspection notice" means a document which shall be provided to a customer prior to the start of the home inspection. The pre-inspection notice shall contain, at a minimum, the following information:

- (1) A clear description of the scope of the home inspection;
- (2) a clear description of any limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection; and
- (3) an identification of the national home inspection organizations approved by the board which the home inspector is a member of at the time of the home inspection; and
- (4) an identification of the standards of practice approved by the board which the home inspector will be following during the home inspection.

(e) "Readily accessible" means available for visual inspection without requiring the moving of personal property, dismantling, destructive measures or actions that would likely involve risk to persons or property.

(f) "Dismantling" means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by any other means and that would not be taken apart or removed by a homeowner in the course of normal and routine household maintenance.

- (g) "Material defect" means any condition that significantly affects the value, habitability or safety of the dwelling. Style, cosmetic defects or aesthetics shall not be considered in determining whether a system, structure or component is materially defective.
- (h) "Board" means the Kansas home inspectors registration board.
- (i) "Registrant" means any person registered as a home inspector under this act.
- (j) "Applicant" means any person who is applying for registration or renewal of registration under this act.

Sec. 2. This act shall apply to all individuals who conduct home inspections for compensation, but shall not apply to the following individuals who are specifically exempted from registration under this act:

- (a) A tradesman or contractor performing a single component or system evaluation or a combination of any two systems or components listed in section 1 (a)(1)(A)-(I) while acting within the scope of that occupation;
- (b) an individual employed by the state or a political subdivision of the state who, within the scope of such employment and in the discharge of such public duties, inspects property or buildings for compliance with requirements safeguarding life, health or property;
- (c) an individual licensed by the state as an architect while acting within the scope of that license;
- (d) an individual licensed by the state as a professional engineer while acting within the scope of that license as long as the individual is not providing services which would constitute a home inspection as defined by this act;
- (e) an individual licensed by the state as a real estate appraiser while acting within the scope of that license;
- (f) an individual licensed by the state as a real estate broker or salesperson while acting within the scope of that license;
- (g) an individual employed as an insurance adjuster while acting within the scope of that occupation;
- (h) an individual licensed as a manufactured home manufacturer while acting within the scope of that license;**
- (i) an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;**
- (j) a modular home manufacturer or modular home manufacturer's representative reviewing a residential dwelling built by the manufacturer for the purposes of evaluating the residential dwelling;**
- ~~(k) an individual licensed as a manufactured home dealer while acting within the scope of that license;~~
- ~~(l) an individual employed as a manufactured home installer while acting within the scope of that occupation;~~
- (m) an individual licensed by the state as an insurance agent while acting within the scope of that license;**
- ~~(n) a homebuilder or homebuilder's representative reviewing a residential dwelling built by the homebuilder for the purposes of evaluating the residential dwelling prior to the dwelling's first transfer of ownership; and~~
- ~~(o) an individual employed as a pest exterminator or chemical applicator while acting within the scope of that occupation and not providing services which would constitute a home inspection under this act.~~

Sec. 3. (a) There is hereby established the Kansas home inspectors registration board. The purpose of the board is to administer and enforce the provisions of this act, promote consumer protection, ensure professional competency and ensure the presence of a viable home inspection industry in this state.

- (b) The board shall consist of five members to be appointed by the governor as follows:
 - (1) Three members shall be home inspectors who have actively been engaged in the practice of home inspections for at least five years immediately preceding their appointment and have completed at least 1,000 fee-paid home inspections;
 - (2) one member shall be a licensed real estate salesperson or broker; and
 - (3) one member shall be an at-large member who is neither a home inspector nor a licensed real estate salesperson or broker.
- (c) Prior to September 1, 2007, the governor shall appoint the initial board members as specified in subsection (b). The board shall hold its first meeting prior to January 1, 2008. Following the first meeting of the board, the newly elected chairperson shall serve for a term of three years, the vice-chairperson shall

serve for a term of three years, the secretary shall serve for a term of two years and the remaining board members shall serve for a term of one year. After these initial terms have been completed, the board members shall serve terms as specified in subsection (d).

(d) Board members shall serve three-year terms, with no board member serving more than two consecutive terms of office. Upon the expiration of the term of office of any member, the governor shall appoint a successor meeting the qualifications under this act. Each board member shall serve until a successor is appointed and qualified. There shall be at all times at least one board member from each congressional district in the state of Kansas.

(e) In the event of a vacancy in the membership of the board for any reason other than expiration of a board member's term of office, the governor shall appoint a successor meeting the qualifications of this act to fill the unexpired term.

(f) At the first board meeting each year, the board shall elect from its membership the following officers: Chairperson, vice-chairperson and secretary. The officers shall serve 12-month terms. A person may serve a maximum of two consecutive terms as an officer in each respective position. The officers shall have the following duties:

(1) The chairperson shall preside over all meetings.

(2) The vice-chairperson shall preside over meetings in the absence of the chairperson.

(3) The secretary shall be responsible for:

(A) Preparation, publication and maintenance of the minutes of the board meetings;

(B) preparation of correspondence and conduct of administrative support as the chairperson may direct or as may be prescribed in the rules and regulations of the board;

(C) maintaining the permanent records of the board. The secretary of state shall be the custodian of all permanent records of the board.

(g) Upon determining that adequate resources are available, the board may appoint an executive secretary who shall be in the unclassified service of the Kansas civil service act. The executive secretary shall receive an annual salary which shall be fixed by the board and approved by the state finance council.

(h) The board may employ such other employees as may be necessary, fix salaries of all its employees and make such other expenditures as are necessary to properly carry out the provisions of this act.

(i) Each board member shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(j) The board shall hold meetings in such places as it shall determine and at such times as it may designate or on request of two or more of its members. A majority of the members of the board shall constitute a quorum.

(k) Applications for original registration and renewal of registration shall be made in writing or by electronic filing to the board on forms approved by the board and shall be accompanied by the appropriate fees prescribed by the board.

Sec. 4. (a) The secretary shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the balance shall be credited to the home inspectors registration fee fund, which is hereby established. All expenditures from such fund shall be approved by the board.

Sec. 5. The board shall have the following duties and powers:

(a) Administer and enforce the provisions of this act;

(b) approve and adopt the standards of practice of nationally-recognized home inspection associations which meet the requirements of this act;

(c) register qualified applicants as home inspectors pursuant to this act;

(d) suspend, revoke or fail to renew the registration of a home inspector under this act;

(e) make all necessary investigations into the qualifications of an applicant and registrant;

(f) approve examinations to determine the qualifications of applicants for registration; and

(g) adopt all rules and regulations which are necessary to carry out the provisions of this act.

Sec. 6. (a) The board may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:

- (1) Making a materially false or fraudulent statement in an application for registration or renewal;
- (2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to forgery, fraud, conspiracy to defraud or any similar offense or offenses;
- (3) intentionally falsifying a home inspection report;
- (4) failing to perform a home inspection in accordance with the standards of practice approved by the board and followed by the home inspector; and
- (5) violating any provision of this act or rules and regulations promulgated by the board pursuant to this act.

(b) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, the board, in accordance with the Kansas administrative procedures act and upon a finding that a registrant has violated a provision of this act or rules and regulations adopted hereunder, may impose on such registrant a civil fine not to exceed \$500 for each violation.

Sec. 7. The board shall adopt rules and regulations fixing the amounts of fees provided for by this act, subject to the following: For an application for an original registration, the amount may not exceed \$200, and for renewal of registration the amount may not exceed \$200. Other fees may be set in the amount determined by the board.

Sec. 8. (a) The attorney general shall provide as an attorney for the board and shall represent the board in all actions and proceedings brought by or against the board. The board may hire independent counsel when the board deems appropriate. All fees and expenses of such independent counsel arising out of the performance of duties for the board shall be paid out of the home inspectors registration fee fund.

Sec. 9. The home inspector shall be prohibited from performing any of the following acts as part of the home inspection:

- (a) Performing or offering to perform for an additional fee any repairs, remodeling or other type of remedial work to the dwelling for which the home inspector has prepared a home inspection report within the last 12 months;
- (b) inspecting for a fee any property in which the home inspector has any personal interest unless the interest is disclosed in writing to the client before the home inspection is performed and the client signs an acknowledgment of receipt of the disclosure;
- (c) offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector; and
- (d) accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings or the closing of the underlying real estate transaction.

Sec. 10. On and after July 1, 2008, all individuals performing home inspections as defined under this act in the state of Kansas shall be required to file a written registration with the board. All registrants must:

- (a) Be at least 18 years of age;
- (b) have successfully completed high school or its equivalent;
- (c) submit proof of current general liability insurance coverage in an amount of \$250,000 or more;
- (d) submit proof of a fidelity bond to cover dishonesty in an amount not less than \$10,000 providing that the fidelity bond may not be terminated without 30 days prior written notice to the board;
- (e) submit proof of financial responsibility by one of the following:
 - (1) A policy of errors and omissions insurance coverage;
 - (2) a surety bond in an amount not less than \$10,000, providing that the surety bond may not be terminated without 30 days prior written notice to the board;
 - (3) an irrevocable letter of credit not less than \$10,000 issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior written notice of intention not to renew is provided to the board; or

- (4) the maintenance of a minimum balance of \$10,000 in an escrow account in a Kansas financial institution as defined in K.S.A. 16-117, and amendments thereto, provided that the escrow account shall maintain the minimum balance through the term of the registrant's registration as a home inspector. The board shall be notified in writing by the financial institution within 10 days if the amount in the escrow account falls below the \$10,000 minimum balance. Upon notification, the board shall suspend such registrant's registration as a home inspector until the escrow account minimum balance is restored to greater than or equal to \$10,000;
- (e) submit proof of membership in good standing in either:
- (1) The American society of home inspectors (ASHI);
 - (2) the national association of home inspectors (NAHI); or
 - (3) the national association of certified home inspectors (NACHI); and
- (f) have successfully completed and passed a written or electronic exam as approved by the board and proctored by a testing organization approved by the board;
- (g) annually obtained a minimum of 16 hours of continuing education by completing courses approved by the board; and
- (h) have satisfied one of the following requirements:
- (1) Have successfully completed and passed a course of study containing at least 80 hours of classroom and field training offered by an educational provider approved by the board; or
 - (2) have been actively engaged in the practice of conducting home inspections for not fewer than three years prior to the effective date of this act and have completed not less than 300 fee-paid home inspections.

Sec. 11. (a) It is the duty of all home inspectors registered under this act to conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise under the circumstances.

(b) All home inspections shall be conducted according to standards of practice and a code of ethics approved by the board.

(c) No home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability for any errors and omissions which may arise during a home inspection, or limit the amount of damages for liability for any errors and omissions which may arise during a home inspection to less than \$1,000 in the aggregate for each home inspection.

(d) An action to recover damages for any act or omission of a home inspector relating to a home inspection or home inspection report must be brought not more than 12 months from the date the home inspection was performed and may be initiated only by a party to the real estate transaction for which the home inspection was conducted.

(e) In any action to recover damages for any error or omission of a home inspector relating to a home inspection or home inspection report, a home inspector is liable for any errors and omissions which may arise during a home inspection in an amount of not to exceed *less than* \$1,000 in the aggregate for each home inspection.

Sec. 12. (a) No individual shall advertise themselves as a home inspector unless the individual has complied with the provisions of this act. Individuals who are exempt from registration under this act or whose actions are considered to be a home inspection under this act may not hold themselves out to be home inspectors or use words or titles that may reasonably be confused with the title of "home inspector" or "house inspector" unless they are registered as a home inspector pursuant to this act.

(b) All advertisements, contracts, correspondence and other documents prepared by an individual performing home inspections under this act shall indicate the home inspector's registration number, name and address as registered with the board.

Sec. 13. Any individual performing home inspections as defined in this act or assisting any person to perform home inspections outside the guidelines of this act shall constitute a class A misdemeanor and will be subject to all the legal remedies and penalties thereof.

Sec. 14. This act shall be cited as the Kansas home inspectors professional competence and financial responsibility act.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.



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STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION
TO THE HOUSE COMMERCE AND LABOR COMMITTEE
REPRESENTATIVE STEVE BRUNK, CHAIR

REGARDING H.B. 2315

FEBRUARY 9, 2007

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association, the statewide trade association of the home building industry. Thank you for the opportunity to speak regarding H.B. 2315.

We would like to request an amendment on page 3, subsection (j), on lines 26-28 of the bill. We think this is well-stated, but would like to strike "prior to the dwelling's first transfer of ownership," so that this would apply anytime the homebuilder or homebuilder's representative returns to the home to inspect and make repairs. Frequently, the builder will return to the home at the homeowner's request after transfer of ownership to inspect a system or make repairs or modifications.

Below is the amendment as described above:

(j) a homebuilder or homebuilder's representative reviewing a residential dwelling built by the homebuilder for the purposes of evaluating the residential dwelling prior to the dwelling's first transfer of ownership;

Thank you for your consideration.

H Commerce + Labor
2-19-07
(Attach 2)



Kansas Association of Insurance Agents



Testimony on House Bill 2315
Before the House Commerce & Labor Committee
By Larry Magill
February 9, 2007

Thank you mister chairman and members of the committee for the opportunity to appear today as a neutral, but interested party on HB 2315, which will set up a registration requirement for home inspectors. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 433 member agencies across the state and another 110 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

Our only concern with the proposed legislation is that insurance agents may inadvertently be included in the Home Inspector registration requirement when they are performing their normal duties as an agent, either for their client or for their company. Most agents are involved in helping an insured determine the replacement cost of their home for insurance purposes. This may involve actually taking outside measurements of the home and running a cost estimator calculation using a system provided by the insurer and details on the features of the home. The agent may be asked to provide a picture of the front and back of the property.

The agent does not charge a fee for this as it is included as part of writing the homeowners insurance. The agent is compensated by commission on the homeowners premium.

Attached to my testimony is a "balloon" of a simple amendment that will take care of our concerns. We urge the committee to adopt the balloon if you work the bill. We would be happy to provide additional information or answer questions.

H Commerce Labor
2-19-07
(Attach 3)

1 inspections for compensation, but shall not apply to the following individ-
2 uals who are specifically exempted from registration under this act:

3 (a) A tradesman or contractor performing a single component or sys-
4 tem evaluation or a combination of any two systems or components listed
5 in section 1 (a)(1)(A)-(I) while acting within the scope of that occupation;

6 (b) an individual employed by the state or a political subdivision of
7 the state who, within the scope of such employment and in the discharge
8 of such public duties, inspects property or buildings for compliance with
9 requirements safeguarding life, health or property;

10 (c) an individual licensed by the state as an architect while acting
11 within the scope of that license;

12 (d) an individual licensed by the state as a professional engineer while
13 acting within the scope of that license as long as the individual is not
14 providing services which would constitute a home inspection as defined
15 by this act;

16 (e) an individual licensed by the state as a real estate appraiser while
17 acting within the scope of that license;

18 (f) an individual licensed by the state as a real estate broker or sales-
19 person while acting within the scope of that license;

20 (g) an individual employed as an insurance adjuster while acting
21 within the scope of that occupation;

22 (h) an individual licensed as a manufactured home dealer while acting
23 within the scope of that license;

24 (i) an individual employed as a manufactured home installer while
25 acting within the scope of that occupation;

26 (j) a homebuilder or homebuilder's representative reviewing a resi-
27 dential dwelling built by the homebuilder for the purposes of evaluating
28 the residential dwelling prior to the dwelling's first transfer of ownership;
29 and

30 (k) an individual employed as a pest exterminator or chemical appli-
31 cator while acting within the scope of that occupation and not providing
32 services which would constitute a home inspection under this act.

33 Sec. 3. (a) There is hereby established the Kansas home inspectors
34 registration board. The purpose of the board is to administer and enforce
35 the provisions of this act, promote consumer protection, ensure profes-
36 sional competency and ensure the presence of a viable home inspection
37 industry in this state.

38 (b) The board shall consist of five members to be appointed by the
39 governor as follows:

40 (1) Three members shall be home inspectors who have actively been
41 engaged in the practice of home inspections for at least five years im-
42 mediately preceding their appointment and have completed at least 1,000
43 fee-paid home inspections;

(l) an individual licensed as an insurance agent under Supp. K.S.A. 40-4901 et sec while acting within the scope of that license;



Kansas Society of Professional Engineers

A state society of the National Society of Professional Engineers

**House Commerce and Labor Committee
Comments of Kansas Society of Professional Engineers
Regarding HB 2315 – Home Inspector Registration
Presented by Ron Gaches, Executive Director
Friday, February 9, 2007**

Thank you Chairman Brunk and members of the Committee for this opportunity to present comments on behalf of the Kansas Society of Professional Engineers (KSPE) regarding HB 2315, a proposal to create a state registration program for home inspectors.

At the onset let me note that KSPE is not opposed to the underlying purpose of this bill. In fact, we believe that passage of such legislation would be beneficial both to home purchasers and to those engaged in the business of home inspection. Several bills have been discussed by the Legislature in recent years intending to address the professionalism and liability of home inspectors. We believe this is the best and most comprehensive proposal that has been considered to date and urge your favorable consideration.

However, it is important to note, we take exception to one clause in the bill. Ironically, it is the subsection intended to create an exemption to the registration requirement for licensed Professional Engineers.

That language is found on Page 3, lines 12-15, Section 2 (d), and reads, “an individual licensed by the state as a professional engineer while acting within the scope of that license as long as the individual is not providing services which would constitute a home inspection as defined by this act;”

The troubling part of this exemption is the qualifying language that reads, “... as long as the individual is not providing services which would constitute a home inspection as defined by this act;”

Please note the exemption immediately above subsection (d), which is subsection (c), and reads, “... an individual licensed by the state as an architect while acting within the scope of that license.”

We believe the exemption language for Professional Engineers ought to be the same as the exemption for architects. Licensed Professional Engineers who are engaged in building inspections or home inspections are doing so under the authority of rules and regulations promulgated by the Kansas State Board of Technical Professions. K.A.R. 66-6-4 (d) reads:

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(Attach 4)*

“The licensee shall not advertise to perform or undertake to perform any assignment involving a specific technical profession unless the licensee is licensed and qualified by education and experience in that technical profession, as defined in K.S.A. 74-7003, and amendments thereto.”

Many Professional Engineers may have the specific education and experience to engage in home inspections acting under authority of K.A.R. 66-6-4 (d). For example, a licensed PE with a master degree in Electrical Engineering probably has the education and experience to inspect three or more of the systems enumerated in Section 1 of the bill that would constitute a “home inspection.” Those might be the heating system, cooling system, and electrical system. Similarly, a licensed PE with a degree in structural engineering may have the education and experience to inspect structural components, foundations, and exterior and interior components of the home.

Such engineers are already subject to the rules and regulations and code of conduct of the Kansas State Board of Technical Professions, are already required by law to have Errors and Omissions insurance, are already subject to enforcement actions by the Board of Technical Professions and are already required to have a minimum of 30 Professional Development Hours of continuing education every two years. If anyone believes any Professional Engineer is acting outside the scope of their education and experience in conducting a home inspection, they may file a complaint against that engineer with the Board of Technical Professions. At that time, the PE would have the burden of demonstrating that they are qualified to perform this work and, if not, would have to discontinue offering those services. This is current law.

We believe that prohibiting Professional Engineers from performing home inspections without first becoming registered home inspectors and subject to the requirements of this bill is an unnecessary and redundant exercise in government regulation.

Accordingly, we urge you to strike all of the language on page 3, line 13 following the word “license” and continuing through the word “act” on line 15.

With this change, HB 2315 receives our strong endorsement.

Thank you for your consideration of our concerns.

The Kansas Society of Professional Engineers in the Kansas affiliate of the National Society of Professional Engineers and is the largest professional society of licensed Professional Engineers in the United States. Our members are located throughout Kansas and are employed in private consulting firms, industry, and state and local government agencies.