

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 1, 2007 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Paul Allen, KS Bd of Accountancy
Tony Scott, KS Society of CPA's
Jeff Wells, KS Pest Control Assoc.
Dale Lambley, KS Dept of Agriculture
Luke Bell, KS Assoc. Of Realtors

Others attending:

See attached list.

HB 2293 - Technical changes to the licensure, examination and registration of certified public accountants

Chairman Brungardt opened the hearing on **HB 2293**.

Paul Allen, Vice-Chair, Kansas Board of Accountancy, appeared in favor of the bill. (Attachment 1) The bill will clean up the language for changes in the profession and for clarification to eliminate outdated requirements.

Tony Scott, Executive Director, Kansas Society of Certified Public Accountants, spoke in favor of the bill. (Attachment 2) The bill includes substantive addition intended to enhance the ability of the Board of Accountancy to engage in compelling disciplinary-related activities.

Chairman Brungardt closed the hearing on **HB 2293**.

HB 2314 - Board of accountancy approval of educational credit

Chairman Brungardt opened the hearing on **HB 2314**.

Paul Allen, Vice-Chair, Kansas Board of Accountancy, appeared in favor of the bill. (Attachment 3) The bill would allow for fulfilling a portion of the degree requirement by non-traditional means, or alternative credits, such as advanced placement credits, credits by examination and military credits; as the law is currently written, these credits cannot be recognized as hours counting toward the 150 semester-hour requirement. An amendment was provided to restore lines 28, 40 and 41 that allows the Board the discretionary authority to accept the credits and to allow the board to promulgate a regulation that would restrict the number and types of alternative credits, as agreed to by the colleges and universities.

Tony Scott, Executive Director, Kansas Society of Certified Public Accountants, (KSCPA) spoke in favor of the bill. (Attachment 4) The bill maintains the Board's statutory authority and collective professional ability to regulate admission to the CPA examination and, ultimately, to the CPA profession. KSCPA respectfully requested the Committee to reject the amendments made by the House and return the bill to its original form.

Chairman Brungardt closed the hearing on **HB 2314**.

HB 2268 - Qualifications of persons conducting certain insect inspections.

Chairman Brungardt opened the hearing on **HB 2268**.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 1, 2007 in Room 231-N of the Capitol.

Jeff West, President Elect, Kansas Pest Control Association, appeared as a proponent on the bill. (Attachment 5) The standards set by the bill are practical and the industry demands training and accountability; the recertification program currently in place in Kansas would ensure continuing education and training for persons performing WDI inspections.

Dale Lambley, Assistant to the Secretary, Kansas Department of Agriculture, spoke in favor of the bill. (Attachment 6) The bill would require individuals who perform formal inspections for termites and other wood-destroying organisms as part of a real estate transaction to have a current commercial pesticide applicator certification, and the certification would be obtained through an existing program of training and testing administered by the Kansas Department of Agriculture.

Luke Bell, Director of Governmental Relations, Kansas Association of Realtors, appeared in favor of the bill. (Attachment 7) The bill would require any individual performing inspections of wood-destroying insects to hold a valid certification under the Kansas pesticide law; this certification ensures that the individual is qualified to properly use and apply pesticides in the state of Kansas in a manner that will ensure the protection of consumers.

Chairman Brungardt closed the hearing on **HB 2268**.

HB 2249 - Technical changes to the use of real estate sales validation questionnaires

Chairman Brungardt opened the hearing on **HB 2249**.

Luke Bell, Director of Governmental Relations, Kansas Association of Realtors, (KAR) appeared in favor of the bill. (Attachment 8) The bill is a technical change that would reinforce the intent behind **SB 271** of the 2006 Legislature, by allowing all licensed real estate professionals to perform their statutory duties for their customers and clients. This would allow real estate licensees acting as transaction brokers to have access to the sales validation questionnaires.

Chairman Brungardt closed the hearing on **HB 2249**.

HB 2295 - Effect of criminal convictions on licensure of real estate brokers and salespersons

Chairman Brungardt opened the hearing on **HB 2295**.

Luke Bell, Director of Governmental Relations, Kansas Association of Realtors, (KAR) appeared in favor of the bill. (Attachment 9) The bill would require all real estate license applicants to undergo a fingerprint-based criminal background check prior to licensure and limit the ability of the Kansas Real Estate Commission (KREC) to grant real estate licenses to applicants with certain felony convictions on their record.

Chairman Brungardt continued the hearing on **HB 2295** to Tuesday, March 6, 2007.

The meeting was adjourned at 11:53 am. The next scheduled meeting is March 6, 2007.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 3-01-07

NAME	REPRESENTING
Gary Meyer	Ks Dept Agriculture
Dale Lambley	KSDA
Jeff Wells	KPCA
Hal Hudson	KPCA
Paul All	Ks Board of Accountancy
Virginia Powell	Ks Board of Accountancy
BUSA SOMERS	Ks Board of Accountancy
TONY A. SCOTT	KSCPA
Lindsey Douglas	New Law Firm
Will Lawrence	Capitol Consulting Group

KANSAS

BOARD OF ACCOUNTANCY
SUSAN L. SOMERS, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

TESTIMONY ON HB 2293

MR. CHAIRMAN, I AM PAUL ALLEN, VICE-CHAIR OF THE KANSAS BOARD OF ACCOUNTANCY AND I AM HERE TODAY TO TESTIFY ON BEHALF OF THE BOARD IN FAVOR OF HOUSE BILL 2293.

MOST OF THE PROPOSED REVISIONS GROW OUT OF NEED TO CLEAN UP LANGUAGE FOR CHANGES IN THE PROFESSION AND FOR CLARIFICATION, AND TO ELIMINATE OUTDATED REQUIREMENTS. WITH YOUR PERMISSION I WILL ATTEMPT TO EXPLAIN THE PURPOSE OF EACH CHANGE.

1-302b: CLEAN UP PURPOSES. THE PROFESSION NOW SIMPLY DEFINES THESE SERVICES AS "ATTEST".

1-304: ELIMINATION OF A SECTION THAT IS NO LONGER NEEDED WITH THE COMPLETION OF THE MOVEMENT TO COMPUTER BASED EXAMINATION.

1-308: REQUIRES OUT OF STATE CPA FIRMS DOING BUSINESS IN THE STATE TO REGISTER WITH THE BOARD. THIS IS SO THAT PEER REVIEW MAY BE TRACKED WITH THE FIRM RATHER THAN WITH THE INDIVIDUAL. THE AMENDMENT TO (a)(5) IS DUE TO A CHANGE IN THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS (AICPA) RULE OF PROFESSIONAL CONDUCT THAT THE BOARD ADOPTS BY REFERENCE.

THE AMENDMENT TO (B) IS TO REMOVE AN OBSOLETE PROVISION WHICH WAS ADOPTED TO ALLOW CERTAIN OWNERS IN GENERAL PARTNERSHIPS TO FORM A PROFESSIONAL CORPORATION FOR THE PRIMARY PURPOSE OF SETTING UP A QUALIFIED RETIREMENT PLAN INDIVIDUALLY. UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA), THE BENEFIT OF USING THIS METHODOLOGY WAS ELIMINATED.

1-310: WITH THE PROPOSED ADMENDMENT REQUIRING OUT OF STATE FIRMS TO SUBMIT PEER REVIEWS AS PART OF THEIR REGISTRATION, THIS PROVISION WOULD BECOME UNNECESSARY.

1-311: CHANGES ARE FOR CLARIFICATION AND CLEAN-UP PURPOSES. HOWEVER, WE REQUEST THAT ON LINE PAGE 6, LINE 17, THAT THE WORD'S "PERMIT HOLDER'S" BE STRICKEN, AND THE WORD "PERSON'S" BE INSERTED. THIS WILL COVER BOTH CERTIFICATE HOLDERS AND PERMIT HOLDERS.

1-312: THE AICPA, WHO PROMULGATES THE STANDARDS FOR PERFORMING AND CONDUCTING PEER REVIEWS, IS IN THE PROCESS OF CHANGING LANGUAGE THAT IS CURRENTLY INCLUDED IN THIS STATUTE REGARDING THE TYPE OF PEER REVIEW REPORT THAT IS ISSUED. THE TERMS "MODIFIED" AND "ADVERSE" WILL BE CHANGED; HOWEVER, IT IS NOT KNOWN AT THIS TIME WHAT TERMINOLOGY WILL BE CHOSEN. THEREFORE, (d) WILL MOVE THE DEFINITION TO THE REGULATIONS TO ALLOW THE BOARD TO ACCOMMODATE THE CHANGE IN TERMINOLOGY. THE PURPOSE OF (e) IS TO CLARIFY THE TYPE OF DISCIPLINE THAT CAN BE TAKEN AGAINST A SOLE CPA OWNER OF A FIRM WHEN THE FIRM REGISTRATION IS SUSPENDED OR REVOKED. OTHER AMENDMENTS TO THIS STATUTE ARE FOR CLEAN-UP PURPOSES.

1-316: THESE AMENDMENTS ARE FOR CLEAN-UP PURPOSES. (c) WILL ALLOW PERSONS WHO HAVE A VALID CERTIFICATE FROM ANOTHER STATE TO USE THE TITLE "CPA" IN KANSAS, BUT WILL NOT ALLOW THEM TO PRACTICE AS A CPA WITHOUT HAVING A KANSAS CERTIFICATE AND PERMIT. THIS IS TO ACCOMMODATE THOSE WHO ARE IN INDUSTRY, NOT PROVIDING SERVICES FOR THE PUBLIC, TO USE THE "CPA" AS A CREDENTIAL ONLY.

1-318: CLARIFIES THAT THE BOARD CAN SEEK AN INJUNCTION AGAINST A FIRM, AS WELL AS AN INDIVIDUAL.

1-319: THE PURPOSE OF THIS AMENDMENT IS REMOVE THE TERMS "UTTERING OR UTERRANCE" WHICH ARE INAPPROPRIATELY USED IN CONNECTION WITH THIS STATUTE AND TO REPLACE THEM WITH THE TERMS "ASSERTION OR ASSERTED" TO MORE CORRECTLY CLARIFY THE ACTS PROHIBITED.

1-321: THE PURPOSE OF THESE AMENDMENTS ARE TO INCLUDE THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB) AND MOVE THE DEFINITION OF "FIRM" FROM 1-308 TO THIS STATUTE. THE OTHER AMENDMENTS ARE FOR CLEAN-UP PURPOSES.

1-501: LIKE THE AMENDMENTS TO 1-312, THIS THROWS THE TERMINOLOGY USED FOR PEER REVIEW REPORTS TO THE REGULATIONS.

WE RESPECTFULLY REQUEST FAVORABLE PASSAGE OF THIS BILL. I WILL BE HAPPY TO STAND FOR QUESTIONS.



Kansas Society of Certified Public Accountants

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TESTIMONY

To: The Honorable Pete Brungardt, Chair
Members, Senate Committee on Federal and State Affairs

From: Tony A. Scott, Executive Director, Kansas Society of Certified Public Accountants

Date: March 1, 2007

Re: Testimony as Proponent of HB 2293

Ladies and Gentlemen of the Senate Committee on Federal and State Affairs:

Approximately 2,600 members strong, the Kansas Society of Certified Public Accountants (KSCPA) is the statewide professional association of CPAs dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public we serve. My name is Tony A. Scott and I am Executive Director of the KSCPA. **Today I am here testifying as a proponent of HB 2293.**

HB 2293 includes several instances of wording changes brought about by the dynamic nature of the CPA profession. One such example is substitution of the word "attest" as a more succinct reference to audits, compilations and other professional services performed, and "attested" to, by CPAs. Another example is the deletion from current statutes of certain exam-related language which is no longer applicable. A final example is use of the word "firm" to encompass a number of different operating structures used by CPAs. The word "firm" is more fully defined in new law contained within HB 2293.

Also included in HB 2293 are substantive additions intended to enhance the ability of the Board of Accountancy (the Board) to engage in compelling disciplinary-related activities. For example, the addition of new law will provide the Board the authority to discipline a CPA for failure to timely comply with applicable federal and state tax filing requirements. Another such addition will allow the Board to suspend an individual practitioner's permit to practice when that individual's firm registration is suspended or revoked.

Another minor, yet important, change will allow certified public accountants duly licensed by another licensing jurisdiction to use the words "Certified Public Accountant" and/or the initials "CPA" as a demonstrated educational and professional credential without subjecting themselves to discipline by the Board. One caveat, of course, is that a CPA using the earned educational and professional designation will be prohibited from holding themselves out to the public as being in the practice of certified public accountancy unless the CPA holds a valid Kansas CPA certificate and permit to practice issued by the Kansas Board of Accountancy.

Finally, several wording changes are proposed to accommodate a significant transition in the CPA profession's peer review program. Peer Review was implemented in the late 1980's by the American Institute of Certified Public Accountants and State Societies of CPAs as a way to

Sen Fed & State

enhance internal education, mentoring and quality control elements in and among CPA firms. The KSCPA acts as the Kansas Peer Review Program Administrator. Currently there is a nationwide attempt to make peer review more understandable to participants, as well as to the public, and to facilitate state Board access to peer review results. Wording changes proposed in HB 2293 will help with this transition, in Kansas, pending final changes in the peer review program.

Based upon the foregoing, **we respectfully request members of the Committee vote in favor of HB 2293.**

It is my honor and privilege to appear before you today. I will be pleased to stand for questions.

Respectfully submitted,

Tony A. Scott

TAS/mmi

KANSAS

BOARD OF ACCOUNTANCY
SUSAN L. SOMERS, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

TESTIMONY ON HB2314
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
MARCH 1, 2007

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM PAUL ALLEN, VICE CHAIR OF THE KANSAS BOARD OF ACCOUNTANCY. I AM HERE TODAY ON BEHALF OF THE BOARD TO TESTIFY IN FAVOR OF HOUSE BILL 2314.

SINCE THE BOARD'S IMPLEMENTATION IN 1997 OF THE 150 SEMESTER HOUR EDUCATION REQUIREMENT FOR ADMISSION TO THE CPA EXAMINATION, A GREAT DEAL HAS CHANGED IN HOW OUR UNIVERSITIES AND COLLEGES DELIVER THEIR EDUCATION SERVICES. INCREASINGLY, STUDENTS ARE FULFILLING A PORTION OF THEIR DEGREE REQUIREMENTS BY NON-TRADITIONAL MEANS, OR ALTERNATIVE CREDITS, SUCH AS ADVANCED PLACEMENT CREDITS, CREDITS BY EXAMINATION AND MILITARY CREDITS. AS THE LAW IS CURRENTLY WRITTEN, THESE CREDITS CANNOT BE RECOGNIZED AS HOURS COUNTING TOWARD THE 150 SEMESTER-HOUR REQUIREMENT.

THE BOARD AGREED THAT THE CURRENT LAW MUST BE CHANGED TO ACCEPT APPROPRIATE CREDITS THAT MAINTAIN OUR HIGH STANDARDS AND PREPARE CPA EXAMINATION CANDIDATES TO JOIN OUR PROFESSION.

TO THAT END, THE BOARD HELD A SERIES OF MEETINGS AT WHICH REPRESENTATIVES OF THE ACCOUNTING DEPARTMENTS OF THE REGENTS' UNIVERSITIES, THE BOARD OF REGENTS, THE KANSAS SOCIETY OF CPAS, COMMUNITY COLLEGES, CPA CANDIDATES AND OTHER STAKEHOLDERS DISCUSSED THE TOPIC OF ACADEMIC CREDITS. HB 2314 IN ITS ORIGINAL FORM, AND THE PROPOSED AMENDMENT OF OUR REGULATIONS ATTACHED TO MY TESTIMONY, REPRESENTS THE WORK PRODUCT OF THOSE MEETINGS.

WHEN THIS BILL WENT THROUGH THE HOUSE COMMITTEE, THE COMMITTEE ELIMINATED LANGUAGE THAT WOULD HAVE ALLOWED THE BOARD THE AUTHORITY TO REGULATE THE TYPE AND AMOUNT OF ACADEMIC CREDITS THAT COULD BE SUBSTITUTED FOR COURSE WORK. THE RESULT OF THIS CHANGE WOULD BE TO ASSIGN THAT AUTHORITY TO COLLEGE AND UNIVERSITIES, BOTH IN-STATE AND OUT-OF-STATE, THAT ARE NOT ACCOUNTABLE TO THE PUBLIC FOR THE REGULATION OF THE PROFESSION.

IN STRIKING THE BOARD'S AUTHORITY, THE REMAINING AUTHORITY WOULD REQUIRE THE BOARD TO REJECT IN TOTAL TRANSCRIPTS FROM UNIVERSITIES THAT, IN THE JUDGMENT OF THE BOARD, AWARDED EXCESSIVE ALTERNATIVE CREDITS OR ALTERNATIVE CREDITS OF A NATURE THAT ARE UNACCEPTABLE.

PERHAPS MORE IMPORTANT, NONE OF THE COLLEGES OR UNIVERSITIES OR OTHER INTERESTED PARTIES SPOKE OR WROTE US IN FAVOR OF UNLIMITED CREDITS EITHER IN AMOUNT OR NATURE. IN FACT, THE PARTIES MEETING WITH THE BOARD FAVORED LIMITS AS TO THE AMOUNT AND TYPES OF CREDITS THAT SHOULD BE ACCEPTED.

IN SHORT, WE KNOW OF NO CONSTITUENCY AMONG THE PROFESSION OR UNIVERSITY COMMUNITY SUPPORTING UNLIMITED OR UNREGULATED ACADEMIC CREDITS.

WE THEREFORE RESPECTFULLY REQUEST THAT LINES 28, 40 AND 41 BE RESTORED SO THAT THE BOARD MAY HAVE THE DISCRETIONARY AUTHORITY TO ACCEPT THE CREDITS AND TO ALLOW THE BOARD TO PROMULGATE A REGULATION THAT WOULD RESTRICT THE NUMBER AND TYPES OF ALTERNATIVE CREDITS, AS AGREED TO BY THE COLLEGES AND UNIVERSITIES.

THANK YOU. I WOULD BE HAPPY TO STAND FOR ANY QUESTIONS.

**Proposed regulation to implement 2007 Legislation amending K.S.A. 1-302a
Draft dated 12/12/06**

74-2-2. Evaluation of college credits. (a) Pursuant to K.S.A. 1-302a and amendments thereto, the following credits awarded by a college or university approved by the board shall be accepted by the board:

1. Advanced placement credit;

2. credit by examination;

3. military credit; and

4. credit awarded for course work offered by a technical school, a technical college or a similar institution in another jurisdiction;

(b) Notwithstanding paragraph (a), the amount of credits accepted by the board shall not exceed a total of twenty-four credit hours for any credit or combination of credits identified in paragraph (a). For good cause, the board may waive this limitation and accept the credit.

(c) In evaluating credit hours earned at a college or university operating under the quarter plan, these such hours shall be converted to semester hours at the rate of two (2) semester hours for every three (3) quarter hours. (Authorized by and implementing K.S.A. 1-202 and 2006 K.S.A. Supp. 1-302a, as amended by 2007



Kansas Society of Certified Public Accountants

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TESTIMONY

To: The Honorable Pete Brungardt, Chair
Members, Senate Committee on Federal and State Affairs

From: Tony A. Scott, Executive Director, Kansas Society of Certified Public Accountants

Date: March 1, 2007

Re: Testimony as Proponent of HB 2314

Ladies and Gentlemen of the Senate Committee on Federal and State Affairs:

Approximately 2,600 members strong, the Kansas Society of Certified Public Accountants (KSCPA) is the statewide professional association of CPAs dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public we serve. My name is Tony A. Scott and I am Executive Director of the KSCPA. **Today I am here testifying as a proponent of HB 2314.**

HB 2314 strengthens the statutory authority of the Kansas Board of Accountancy (the Board) to accept certain academic credits awarded by educational institutions to students who are prospective candidates for the uniform CPA examination. Last year members of both the Senate and House considered a similar bill. At that time we were concerned that the legislation, as amended, could lead to unintended consequences as it relates to the Board's ability to set appropriate qualifications for the CPA examination and for prospective CPAs.

Following through on a promise we made, this past summer representatives from the Board, the KSCPA, institutions of higher education, and other stakeholders met several times to study a wide-range of issues. Among the issues discussed was the topic of academic credits awarded by educational institutions to prospective CPA examination candidates.

Following comprehensive input and thoughtful consideration, proposed legislation was drafted and introduced this session in the House. That bill is the original form of HB 2314. We believe HB 2314, as originally proposed, together with the Board's good-faith presentation of draft rules and regulations relating to the issue, appropriately address the award of academic credits by educational institutions to prospective CPA examination candidates. We also believe HB 2314 maintains the Board's statutory authority and collective professional ability to regulate admission to the CPA examination and, ultimately, to the CPA profession. As such, **we respectfully request members of the Committee reject amendments made by members of the House and vote in favor of HB 2314 in its original form.**

It is my honor and privilege to appear before you today. I will be pleased to stand for questions.

Respectfully submitted,

Tony A. Scott

TAS/mmi

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& DIRECTORS**

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**Testimony of
Jeff Wells, President Elect
Kansas Pest Control Association
Before the Senate Federal and State Affairs Committee
on HB 2268
Thursday, March 1, 2007**

Mr. Chairman and Members of the Committee:

On behalf of the Kansas Pest Control Association I would like to thank you for the opportunity to discuss with you House Bill 2268.

A focal point of the termite control industry is the performance of wood destroying insect inspections or WDIs. In the recent past, there has been a paradigm shift and professionals in the industry no longer inspect only for the presence of termites but now actively search for all sorts of wood destroying pests, including powder post beetles, death watch beetles, old house borers, carpenter ants, carpenter bees and of course, termites. Our industry, through the National Pest Management Association, has created a standard form (which I have included with my testimony), as well as standardized recommendations for completion of the form following the performance of WDI inspections.

To date, Kansas does not require any type of training, education or standards for persons performing WDIs. Lending institutions require such inspections in most real estate transactions. Because of these requirements, in an effort to protect consumers, over 20 states have implemented minimum standards for inspectors. Industry professionalism demands training and accountability and we believe that HB 2268 addresses at least some areas of those demands.

The standards set by HB2268 are practical and use already established norms and testing procedures to procure trained and qualified inspectors. First, the bill would allow consumers to be assured that the inspector performing the service would have studied the biology, foraging habits and detection of all pertinent wood-destroying insects in Kansas, as well as treatment methods and guidelines. Treatment guidelines are very important as they help to identify the need for further work in providing protection for the home. Secondly, this is a fiscally responsible bill. No extra funds would be required to set up testing and re-certification venues as these locations already exist and are staffed. In fact, this bill could actually increase funds the Kansas Department of Agriculture receives for proctoring these exams and issuing certification papers.



The recertification program currently in place in Kansas would ensure continuing education and training for persons performing WDI inspections. Persons wanting to keep their certification current would have to attend training seminars and meetings where speakers discuss items such as colony formation, identification methods, control methods and inspection requirements, just to name a few. The applicant would have to build seven hours of classroom time over a three-year period to maintain his or her license; the alternative to this is re-testing.

The KPCA believes that our industry needs to establish a minimum standard of education in order to perform one of, if not the most important aspect of our profession. This bill provides that standard as well as protecting the general public from pests that cause an estimated eleven billion dollars in damage annually in the United States.

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

Testimony on HB 2268
to
Senate Federal and State Affairs Committee

by
Dale Lambley
Assistant to the Secretary
Kansas Department of Agriculture

March 1, 2007

Good morning, Mr. Chairman and members of the committee. I am Dale Lambley, assistant to the secretary of agriculture, and I am here to offer a few remarks in support of House Bill 2268.

HB 2268 would require individuals who perform formal inspections for termites and other wood-destroying organisms as a part of a real estate transaction to have a current commercial pesticide applicator certification. Certification would be obtained through an existing program of training and testing that has been in place under the Kansas Pesticide Law and is administered by the Kansas Department of Agriculture.

There is little doubt that the quality of many inspections for evidence of wood-destroying organisms is called into question by home buyers. Our department fields many questions from homeowners who have purchased a home they believed to be free of active termite infestation or damage, only to find that was not the case. We believe the requirements outlined by this bill would improve the overall quality of home inspections and reduce instances of deceptive or incompetent practices.

Thank you for your attention. I will gladly stand for questions at the appropriate time.



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To: Senate Federal and State Affairs Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: March 1, 2007
Subject: **HB 2268** – Qualifications of Individuals Conducting Certain Pest Inspections

Chairman Brungardt and members of the Senate Federal and State Affairs 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 2268**. KAR is a trade association which has faithfully represented the 10,000 real estate professionals in the state of Kansas for over 85 years.

Under current Kansas law, there are absolutely no requirements that an individual must meet to offer his or her services as a pest inspector to members of the public. If an individual wanted to begin the practice of pest inspection currently in the state of Kansas, all he or she would need to do is place an advertisement in the yellow pages offering his or her services as a pest inspector. Under this current system, there is absolutely no mechanism in place though which a consumer can ascertain whether or not a pest inspector is qualified to conduct pest inspections.

HB 2268 would require any individual performing inspections of wood destroying insects to hold a valid certification under the Kansas pesticide law. This certification ensures that the individual is qualified to properly use and apply pesticides in the state of Kansas in a manner that will ensure the protection of consumers.

When a consumer engages the services of an inspector to inspect a property for evidence on the possible presence of wood destroying insects, they are placing a great deal of trust in the ability and professionalism of that inspector to identify and properly remediate any insect-related defects in the property. **HB 2268** would simply ensure that consumers have the ability to rely on an inspector's qualifications to adequately identify and properly remediate any potential problems that may arise in the single-largest purchase the average consumer will ever make.

We commend the Kansas Pest Control Association for bringing forward this legislation and would wholeheartedly support their efforts to increase the professionalism and qualifications of the pest inspection industry. KAR would ask that you support **HB 2268** to ensure that all individuals performing inspections for the possible presence of wood destroying insects in the state of Kansas are adequately professional and qualified.

Thank you for allowing me to appear before you today and I would be more than happy to stand for questions at the appropriate time.

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VOICE

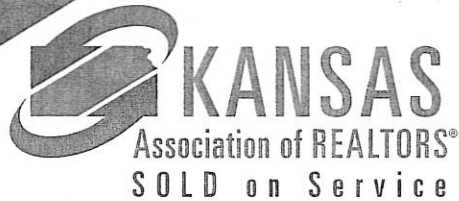
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Sen Fed & State

Attachment 7
3-1-07



8

To: Senate Federal and State Affairs Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: March 1, 2007
Subject: **HB 2249** – Technical Corrections to K.S.A. § 79-1437f

Chairman Brungardt and members of the Senate Federal and State Affairs 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 such person's statutory duties and providing information on the market value of property to clients and customers."

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.

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Sen Fed & State
Attachment 8
3-1-07



9

To: Senate Federal and State Affairs Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: March 1, 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 Brungardt and members of the Senate Federal and State Affairs 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 interests of over 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.

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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.

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.

15 Year Prohibition 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 prohibited from granting a license to an applicant who, within the last 15 years, 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 prohibited from receiving a real estate license until they are able to prove that they have been rehabilitated and are no longer a danger to society.

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.