

Approved: 2/19/08

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:20 A.M. on February 7, 2008 in Room 784 of the DSOB.

All members were present except:

Brenda Landwehr- excused  
Candy Ruff- excused  
Lana Gordon- excused  
Mike Kiegerl- excused  
Ronnie Metsker- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Renae Jefferies, Office of Revisor of Statutes  
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Others attending: See attached list.

The Chairman called for Bill Introductions. Representative Pauls introduced a bill about Service Members Civil Relief Act. Natalie Bright introduced a bill about Regulatory Fairness for Small Business. They were both received without objection.

The Chairman announced that the committee was now going to work **HB 2315 Home inspectors competency and financial responsibility** and asked Renae Jefferies to explain the Revisors Balloon Amendments. He asked her to explain that the bill only requires registration.

Renae said that the Kansas courts treat a license as a grant or authority to do a specified act, such as conducting a business. Usually they will declare that it is unlawful for anyone without the license to perform that act. Certification generally requires that a person meets certain educational standards to establish that they have the necessary knowledge to do something. Many occupations require continuing education to maintain the certification. Registration is required when there is reason for the government to be able to find and contact people who perform these services.

The chairman clarified that this bill does require registering with this newly established governing board. It also requires certification of a certain level of expertise to be called a home inspector. It does not require licensing.

Renae explained the technical changes made in the Revisor's Balloon Amendment (**Attachment 1**).

Representative Goico made a motion to adopt the amendment. Motion seconded by Representative Pauls.

Representative Pauls suggested a technical amendment on page 8, line 14 "less than \$10,000" and line 24 "not to exceed \$10,000". She said that the wording should be made consistent. Both Representative Goico and Roth agreed to change the motion to include consistent wording. The committee agreed unanimously to adopt the new wording.

Representative Goico called attention to the changes that the Kansas Association for Justice wanted to make on page 8 of the bill. Those changes were submitted to the committee in writing (**Attachment 2**). Representative Goico made a motion that their Balloon Amendment be adopted except for the change in the statute of limitations. It was seconded by Representative Pauls. The changes added the word "written" after the word "clear" on line 25 and changed the word "notice" to "agreement" in line 25.

Representative Grant said that we were not addressing the statute of limitations at this time.

Luke Bell explained that the pre-inspection notice change requested on page 8, line 15 was already in the bill

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:20 A.M. on February 7, 2008 in Room 784 of the DSOB.

on page 2, lines 14 to 26. Therefore the amendment being offered for page 8, line 15 is not needed because it is already covered on page 2. Subsections C and E on page 8 deal with different subjects. Subsection C is intended to prohibit any clauses in the contract that disavow liability for less than \$10,000. Subsection E allows the parties to negotiate a liability higher than \$10,000 if they desire to.

Representative Goico modified his motion to allow the Revisors to correct the language. Representative Pauls agreed to the change in the motion. The committee agreed to allow the Revisor's office to correct the language regarding the two different documents, the pre-inspection notice and the contractual agreement.

Representative Goico made a motion to pass the bill as amended favorable for passage. The motion was seconded by Representative Huntington.

The motion passed by unanimous vote of the committee.

The meeting was adjourned at 10:10 AM. The next meeting was scheduled for February 12, 2008

COMMERCE & LABOR COMMITTEE

DATE: 2-7-08

NAME	REPRESENTING
Cecile Hill-Hartle	KS Assn for Justice
RICHARD THOMAS	IDDOZ-WC
Julie Hein	KARET
Jeff Barnes	KARET
Luke Bell	Ks Assoc. of REALTORS
Cindy Green	KC Regional Assoc of REALTORS
Dan Munnig	Federico Consulting
Martha Jo Smith	KIDHA
Michael Greenwalt	NAHI, KARCI
Craig Lester	NAHI, KARET
GARY FRANKMORSE	Missouri Spec Home Insp.
Wigh Keck	Rep. Gordon
LARRY MAGILL	KAI A

**HOUSE BILL No. 2315**

By Committee on Commerce and Labor

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Revisor's  
Balloon Amendments  
February 7, 2008

H-Commerce + Labor  
Committee  
2-7-08  
Attachment 1

9 AN ACT concerning real property; relating to home inspections; requir-  
10 ing home inspector registration and certificates.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. As used in this section:

14 (a) (1) "Home inspection" means a non-invasive limited visual ex-  
15 amination of a residential dwelling of not more than four attached units,  
16 or any portion thereof designed to identify material defects at the time  
17 of the inspection of three or more of the following readily accessible  
18 systems and components:

- 19 (A) Heating systems;
- 20 (B) cooling systems;
- 21 (C) electrical systems;
- 22 (D) plumbing systems;
- 23 (E) structural components;
- 24 (F) foundations;
- 25 (G) roof coverings;
- 26 (H) exterior and interior components; and

27 (I) any other components and systems that are part of the residential  
28 dwelling and included in the standards of practice followed by the home  
29 inspector.

30 (2) The term "home inspection" also includes any consultation re-  
31 garding the property that is represented to be a home inspection or that  
32 is described by any similar term.

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

- 34 (A) A compliance inspection for any code or governmental regulation;
- 35 (B) an examination for the conditions and operation of kitchen-type  
36 appliances, on-site water supplies or wells, private waste systems, the  
37 determination of the presence of wood-destroying organisms or pests, or  
38 the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or  
39 conditions of air quality; and

40 (C) an examination and evaluation of only two or less of the compo-  
41 nents listed in section (a)(1).

42 (b) "Home inspector" means an individual who performs a home in-  
43 spection as defined by this act.

House Commerce + Labor  
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Prepared by the Revisor of Statutes Office: RJ  
Saved as: H:1Drafts/Balloons/z2315g2.pdf

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

4 (1) A clear identification and description of those systems, structures  
5 or components which were inspected;

6 (2) a clear identification and description of those systems, structures  
7 or components designated to be inspected under the standards of practice  
8 approved by the board and which were not inspected, and the reason why  
9 they were not inspected;

10 (3) a clear identification and description of any material defects found  
11 to be in need of repair, including any recommendations for further eval-  
12 uation; and

13 (4) a completed pre-inspection agreement.

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

17 (1) A clear description of the scope of the home inspection;

18 (2) a clear description of any limitations on the liability of the home  
19 inspector for any errors and omissions which may arise during the home  
20 inspection; and

21 (3) an identification of the national home inspection organizations  
22 approved by the board which the home inspector is a member of at the  
23 time of the home inspection; and

24 (4) an identification of the standards of practice approved by the  
25 board which the home inspector will be following during the home  
26 inspection.

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

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

34 (g) "Material defect" means any condition that significantly affects  
35 the value, habitability or safety of the dwelling. Style, cosmetic defects or  
36 aesthetics shall not be considered in determining whether a system, struc-  
37 ture or component is materially defective.

38 (h) "Board" means the Kansas home inspectors registration board.

39 (i) "Registrant" means any person registered as a home inspector un-  
40 der this act.

41 (j) "Applicant" means any person who is applying for registration or  
42 renewal of registration under this act.

43 Sec. 2. This act shall apply to all individuals who conduct home in-

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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;

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 purpose of evaluating the residential dwelling;  
(k)

(m) an individual licensed by the state as an insurance agent while acting within the scope of that license;  
(n)

(l)

(o)

1 (2) one member shall be a licensed real estate salesperson or broker;  
 2 and  
 3 (3) one member shall be an at-large member who is neither a home  
 4 inspector nor a licensed real estate salesperson or broker.  
 5 (c) Prior to September 1, ~~2007~~, the governor shall appoint the initial  
 6 board members as specified in subsection (b). The board shall hold its  
 7 first meeting prior to January 1, ~~2008~~. Following the first meeting of the  
 8 board, the newly elected chairperson shall serve for a term of three years,  
 9 the vice-chairperson shall serve for a term of three years, the secretary  
 10 shall serve for a term of two years and the remaining board members  
 11 shall serve for a term of one year. After these initial terms have been  
 12 completed, the board members shall serve terms as specified in subsec-  
 13 tion (d).  
 14 (d) Board members shall serve three-year terms, with no board mem-  
 15 ber serving more than two consecutive terms of office. Upon the expi-  
 16 ration of the term of office of any member, the governor shall appoint a  
 17 successor meeting the qualifications under this act. Each board member  
 18 shall serve until a successor is appointed and qualified. There shall be at  
 19 all times at least one board member from each congressional district in  
 20 the state of Kansas.  
 21 (e) In the event of a vacancy in the membership of the board for any  
 22 reason other than expiration of a board member's term of office, the  
 23 governor shall appoint a successor meeting the qualifications of this act  
 24 to fill the unexpired term.  
 25 (f) At the first board meeting each year, the board shall elect from  
 26 its membership the following officers: Chairperson, vice-chairperson and  
 27 secretary. The officers shall serve 12-month terms. A person may serve a  
 28 maximum of two consecutive terms as an officer in each respective po-  
 29 sition. The officers shall have the following duties:  
 30 (1) The chairperson shall preside over all meetings.  
 31 (2) The vice-chairperson shall preside over meetings in the absence  
 32 of the chairperson.  
 33 (3) The secretary shall be responsible for:  
 34 (A) Preparation, publication and maintenance of the minutes of the  
 35 board meetings;  
 36 (B) preparation of correspondence and conduct of administrative  
 37 support as the chairperson may direct or as may be prescribed in the rules  
 38 and regulations of the board;  
 39 (C) maintaining the permanent records of the board. The secretary  
 40 of state shall be the custodian of all permanent records of the board.  
 41 (g) Upon determining that adequate resources are available, the  
 42 board may appoint an executive secretary who shall be in the unclassified  
 43 service of the Kansas civil service act. The executive secretary shall receive

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Revisor's technical amendments

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1 an annual salary which shall be fixed by the board and approved by the  
2 state finance council.

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

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

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

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

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

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

- 25 (a) Administer and enforce the provisions of this act;
- 26 (b) approve and adopt the standards of practice of nationally-recog-  
27 nized home inspection associations which meet the requirements of this  
28 act;
- 29 (c) register qualified applicants as home inspectors pursuant to this  
30 act;
- 31 (d) suspend, revoke or fail to renew the registration of a home in-  
32 spector under this act;
- 33 (e) make all necessary investigations into the qualifications of an ap-  
34 plicant and registrant;
- 35 (f) approve examinations to determine the qualifications of applicants  
36 for registration; and
- 37 (g) adopt all rules and regulations which are necessary to carry out  
38 the provisions of this act.

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

- 42 (1) Making a materially false or fraudulent statement in an application  
43 for registration or renewal;

Revisor's technical amendments

**shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the board or by a person or persons designated by the board**

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1 (2) been convicted of or plead guilty or nolo contendere in a court of  
2 competent jurisdiction to forgery, fraud, conspiracy to defraud or any  
3 similar offense or offenses;

4 (3) intentionally falsifying a home inspection report;

5 (4) failing to perform a home inspection in accordance with the stan-  
6 dards of practice approved by the board and followed by the home in-  
7 spector; and

8 (5) violating any provision of this act or rules and regulations prom-  
9 ulgated by the board pursuant to this act.

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

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

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

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

29 (a) ~~Performing or offering to perform for an additional fee any re-~~  
30 ~~pairs, remodeling or other type of remedial work to the dwelling for which~~  
31 ~~the home inspector has prepared a home inspection report within the last~~  
32 ~~12 months;~~

Inspecting

33 (b) ~~inspecting~~ for a fee any property in which the home inspector has  
34 any personal interest unless the interest is disclosed in writing to the client  
35 before the home inspection is performed and the client signs an acknow-  
36 ledgment of receipt of the disclosure;

(b)

37 (c) ~~offering or delivering any commission, referral fee or kickback for~~  
38 ~~the referral of any business to the home inspector; and~~

(c)

39 (d) ~~accepting an engagement to perform a home inspection or to~~  
40 ~~prepare a home inspection report in which the employment itself or the~~  
41 ~~fee payable for the inspection is contingent upon the conclusions in the~~  
42 ~~home inspection report, pre-established or prescribed findings or the~~  
43 ~~closing of the underlying real estate transaction.~~

6

17

1 Sec. 10. On and after July 1, 2009, all individuals performing home  
2 inspections as defined under this act in the state of Kansas shall be re-  
3 quired to file a written registration with the board. All registrants must:

- 4 (a) Be at least 18 years of age;
- 5 (b) have successfully completed high school or its equivalent;
- 6 (c) submit proof of current general liability insurance coverage in an  
7 amount of \$250,000 or more;

8 (d) submit proof of a fidelity bond to cover dishonesty in an amount  
9 not less than \$10,000 providing that the fidelity bond may not be termi-  
10 nated without 30 days prior written notice to the board;

- 11 (e) submit proof of financial responsibility by one of the following:
- 12 (1) A policy of errors and omissions insurance coverage;
- 13 (2) a surety bond in an amount not less than \$10,000, providing that  
14 the surety bond may not be terminated without 30 days prior written  
15 notice to the board;

16 (3) an irrevocable letter of credit not less than \$10,000 issued by a  
17 bank which is insured by the federal deposit insurance corporation or its  
18 successor if such letter of credit is initially issued for a term of at least  
19 one year and by its terms is automatically renewed at each expiration date  
20 for at least an additional one-year term unless at least 30 days prior written  
21 notice of intention not to renew is provided to the board; or

22 (4) the maintenance of a minimum balance of \$10,000 in an escrow  
23 account in a Kansas financial institution as defined in K.S.A. 16-117, and  
24 amendments thereto, provided that the escrow account shall maintain the  
25 minimum balance through the term of the registrant's registration as a  
26 home inspector. The board shall be notified in writing by the financial  
27 institution within 10 days if the amount in the escrow account falls below  
28 the \$10,000 minimum balance. Upon notification, the board shall suspend  
29 such registrant's registration as a home inspector until the escrow account  
30 minimum balance is restored to greater than or equal to \$10,000;

- 31 ~~(e) submit proof of membership in good standing in either:~~
- 32 ~~(1) The American society of home inspectors (ASHI);~~
- 33 ~~(2) the national association of home inspectors (NAHI); or~~
- 34 ~~(3) the national association of certified home inspectors (NACHI);~~

35 and

36 (f) have successfully completed and passed a written or electronic  
37 exam as approved by the board and proctored by a testing organization  
38 approved by the board;

39 ~~(g)~~ annually obtained a minimum of 16 hours of continuing education  
40 by completing courses approved by the board; and

41 ~~(h)~~ have satisfied one of the following requirements:

- 42 (1) Have successfully completed and passed a course of study con-  
43 taining at least 80 hours of classroom and field training offered by an

submit proof of membership in good standing in one or  
more nationally recognized society, association or  
organization that provides for membership of individuals  
engaged in home inspections as recognized by the board;  
and  
(g)

(h)

(i)

1 educational provider approved by the board; or

2 (2) have been actively engaged in the practice of conducting home  
3 inspections for not fewer than three years prior to the effective date of  
4 this act and have completed not less than 300 fee-paid home inspections.

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

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

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

\$10,000

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

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

\$10,000

Revisor's technical amendment

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

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

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

42 Sec. 14. This act shall be cited as the Kansas home inspectors pro-  
43 fessional competence and financial responsibility act.

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

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*Your rights. Our mission.*

To: Representative Steve Brunk, Chairman  
Members of the House Commerce and Labor Committee

From: Callie Denton Hartle

Date: February 7, 2008

Re: HB 2315 Relating to home inspections—**Balloon  
Amendments, Additional Information**

The Kansas Association for Justice is a statewide nonprofit organization of attorneys who serve Kansans who are seeking justice. Our association's position on HB 2315 as amended by the House Commerce Committee is neutral. I am following up on a committee request to provide balloon amendments consistent with the recommendations in our testimony from the committee's 2-6-08 hearing:

1. Disclosure of the limits on liability to consumers. KsAJ recommends that any limitations on liability for errors and omissions be disclosed to consumers. On page 2, lines 14-26 of the bill, inspectors are required to provide a "pre-inspection notice" to customers prior to the start of the home inspection. The pre-inspection notice includes "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," lines 18-20. This requirement is consistent with KsAJ's recommendation and we suggest no further amendments.
2. Suspension of liability limitations for failure to disclose to consumers. KsAJ recommends that there be no limitations on liability for errors and omissions if the inspector fails to

House Commerce & Labor

Date: 2-7-08

Attachment # 2

disclose the limits on liability to consumers as part of the pre-inspection notice.

3. Permit home inspectors to assume more liability if they choose. KsAJ recommends that home inspectors be permitted to voluntarily assume more liability for errors and omissions as a marketing strategy or demonstration of quality, if they choose to do so. The current language does not appear to permit this option because in Section 11 (e) liability for errors and omissions shall "not exceed \$10,000".
4. Increase the statute of limitations from one year to two years. As noted by Mr. Robinson in the attachment to my 2/6/08 testimony, the statute of limitations for negligence is two years and applies to other businesses and professions. Some conditions may not be discovered immediately, such as a leaky foundation after a period of drought.

In addition, I would like to provide clarification to the committee on testimony regarding the legal remedies currently available to home buyers who discover problems or defects after closing. In effect, the remedies available to buyers are very limited.

Because of Kansas court decisions, there is a strong policy of "caveat emptor"—buyer beware. In Kansas, this means that as long as a buyer has the opportunity to inspect the property before purchase, there is little, if any, recourse against the seller, even if the seller knowingly makes false statements about the condition of the property.

If the buyer relies on a home inspector to make the inspection and the buyer has a claim against the home inspector, remedies are now typically limited to either the amount specified in the contract for the home inspection, or the price of the home inspection (\$250-\$500, generally.)

As noted by Mr. Robinson in the attachment to my 2/6/08 testimony, Kansans with legitimate grievances have no effective recourse because the cost of litigation easily exceeds what they can hope to recover under current law. In these cases, Kansas buyers must pay for the costs, which can be significant, out of their own pockets. These cases never reach the court room doors.

Thank you for the opportunity to provide you with this additional information.

Kansas Association for Justice  
Balloon Amendment  
2-7-08

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1 educational provider approved by the board; or  
2 (2) have been actively engaged in the practice of conducting home  
3 inspections for not fewer than three years prior to the effective date of  
4 this act and have completed not less than 300 fee-paid home inspections.

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

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

10 (c) No home inspector may include, as a term or condition in an  
11 agreement to conduct a home inspection, any provision that disclaims the  
12 liability for any errors and omissions which may arise during a home  
13 inspection, or limit the amount of damages for liability for any errors and  
14 omissions which may arise during a home inspection to less than ~~\$10,000~~  
15 in the aggregate for each home inspection.

**, and such term or condition or limitation must be provided to the customer in writing to be in effect. (KsAJ Amendment)**

\$10,000

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

**24 (KsAJ Amendment)**

21 (e) In any action to recover damages for any error or omission of a  
22 home inspector relating to a home inspection or home inspection report,  
23 a home inspector is liable for any errors and omissions which may arise  
24 during a home inspection in an amount of not to exceed ~~\$10,000~~ in the  
25 aggregate for each home inspection.

\$10,000

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

**, or to the amount in the agreement to conduct a home inspection, if greater than \$10,000 in the aggregate for each home inspection, provided that a home inspector provides the customer with a clear description in the pre-inspection notice of any limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection. (KsAJ Amendment)**

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

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

42 Sec. 14. This act shall be cited as the Kansas home inspectors pro-  
43 fessional competence and financial responsibility act.

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