

Approved: 3/6/08  
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:17 A.M. on February 22, 2008 in Room 784 of the DSOB.

All members were present except:  
Brenda Landwehr- excused  
Candy Ruff- excused

Committee staff present:  
Jerry Ann Donaldson, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Renaë Jefferies, Office of Revisor of Statutes  
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:  
Sherry Diel, Kansas Real Estate Commission  
Luke Bell, Kansas Association of Realtors

Others attending: See attached list.

The Chairman opened the hearing on **HB 2746 Amendments to real estate brokers' and salespersons' license act; advertising.**

**Sherry Diel gave her testimony in support of HB 2746.** She spoke about the recovery fund being funded years ago by excess money in the fee fund for payment of claims. The maximum that can be paid for a claim is \$15,000.00 and we have about \$516,000.00 in the recovery fund. The minimum balance is \$250,000. Anything above that can be used for education purposes. They would consider setting up an advisory committee to advise on uses of the money. The Commission is concerned with dealing with threats against licensees and consumers. They want regulation authority to deal with these problems.

Representative Quigley asked for an explanation of page 19 line 30 "monitoring education courses". Sherry said that the Commission approves pre-license curriculum and instructors for real estate courses.

Representative Pauls said she had a little concern with the definition of "unprofessional conduct" language in the bill. Some agencies have abused the use of that phrase. Sherry said that they just want the ability to prosecute those who commit unprofessional acts.

**Sherry continued her testimony with an explanation of a technical balloon. (Attachment 1)**. On page 16, lines 12 and 13 text was lined out. On page 17 the words "broker, associate broker or salesperson" were changed to "licensee".

**Luke Bell presented his testimony in support of HB 2746.** He indicated that the Association of Realtors would support an amendment to give definition to "unprofessional conduct".

Representative Huntington asked if the Association wanted to remove page 11, section 15. Luke said only three terms were requested to be removed, "attempt to represent".

There were no more questions and the Chairman closed the hearing on **HB 2746** and advised the committee that it would be worked next week.

The Chairman called for action on **HB 2827 Rules and regulations; consideration of effect on small employers.**

**Representative Kiegerl made a motion to pass HB 2827 favorable for passage. Representative Grant seconded the motion. It passed by unanimous voice vote.**

**Representative Kiegerl made a motion that it be placed on the consent calendar. The motion was**

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:17 A.M. on February 22, 2008 in Room 784 of the DSOB.

**seconded by Representative Ruiz and passed by unanimous voice vote.**

The Chairman called for action on **HB 2772 Real estate appraisers, full licensure.**

**Representative Humerickhouse made a motion to propose an amendment to change page 1, lines 32 and 33 from a class B misdemeanor to a class A misdemeanor.** Several members of the committee felt that the penalty level was too severe.

**Representative Huntington seconded the motion.**

Representative Kiegerl asked what the maximum penalty would be for a class A misdemeanor. Representative Pauls thought it was \$2,500 fine and up to a year in jail.

**The motion passed on a unanimous voice vote.**

**Representative Humerickhouse made a motion to adopt the balloon. Representative Huntington seconded the motion. The motion passed on unanimous voice vote.**

**Representative Humerickhouse made a motion to accept the language from the CPA's and the Whitney Damron balloon. Representative Metsker seconded the motion and it passed on unanimous voice vote.**

**Representative Grant made a motion to pass HB 2772 favorable for passage as amended. Representative Huntington seconded the motion. It passed on a unanimous voice vote.**

The Chairman reminded the committee that the next meeting was scheduled for Monday, February 25<sup>th</sup>. He adjourned the meeting at 10:10 A.M.

COMMERCE & LABOR COMMITTEE

DATE: 2-22-08

NAME	REPRESENTING
Sherry C Dief	KS Real Estate Comm
Greg DeBacker	DeBacker's Inc
Luke Bell	Ks Assoc. of REALTORS
Larry R Baer	LKM
Nate Michel	Hem Law Firm
Denick Santag	NFIB
Dan Murray	Federico Courtly

HOUSE BILL No. 2746

By Committee on Commerce and Labor

2-4

9 AN ACT concerning real estate brokers and salespersons; relating  
10 censure, prohibited acts, advertising and definitions; amending  
11 58-3067, 58-3068 and 74-4202 and K.S.A. 2007 Supp. 58-30  
12 3048, 58-3047, 58-3050 and 58-3062 and repealing the existing  
13 sections.  
14

15 *Be it enacted by the Legislature of the State of Kansas:*  
16 Section 1. K.S.A. 2007 Supp. 58-3035 is hereby amended to read as  
17 follows: 58-3035. As used in this act, unless the context otherwise  
18 requires:

- 19 (a) "Act" means the real estate brokers' and salespersons' license act.
- 20 (b) "Advance listing fee" means any fee charged for services related  
21 to promoting the sale or lease of real estate and paid in advance of the  
22 rendering of such services, including any fees charged for listing, adver-  
23 tising or offering for sale or lease any real estate, but excluding any fees  
24 paid solely for advertisement or for listing in a publication issued for the  
25 sole purpose of promoting the sale or lease of real estate wherein inquiries  
26 are directed to the owner of the real estate or to real estate brokers and  
27 not to unlicensed persons who publish the listing.
- 28 (c) "Associate broker" means an individual who has a broker's license  
29 and who is employed by another broker or is associated with another  
30 broker as an independent contractor and participates in any activity de-  
31 scribed in subsection (f).
- 32 (d) "Branch broker" means an individual who has a broker's license  
33 and who has been designated to supervise a branch office and the activ-  
34 ities of salespersons and associate brokers assigned to the branch office.
- 35 (e) "Branch office" means a place of business other than the principal  
36 place of business of a broker.
- 37 (f) "Broker" means an individual, other than a salesperson, who ad-  
38 vertises or represents that such individual engages in the business of buy-  
39 ing, selling, exchanging or leasing real estate or who, for compensation,  
40 engages in any of the following activities as an employee of, or on behalf  
41 of the owner, purchaser, lessor or lessee of real estate:  
42 (1) Sells, exchanges, purchases or leases real estate.  
43 (2) Offers to sell, exchange, purchase or lease real estate.

House Commerce & Labor  
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Attachment # 1

1 kers do not apply to earnest money deposited with the escrow agent  
2 named in the purchase agreement.

3 (e) A branch broker shall not be employed by or associated with more  
4 than one supervising broker at any one time unless each supervising bro-  
5 ker who employs or associates with the branch broker consents to such  
6 multiple employment or association. Such consent shall be on a form  
7 provided by the commission and shall not be effective until a signed copy  
8 of the completed form has been filed with the commission.

9 (f) Nothing in this section shall be construed to grant any person a  
10 private right of action for damages or to eliminate any right of action  
11 pursuant to other statutes or common law.

12 New Sec. 6. (a) No licensee, ~~whether acting as an agent, transaction~~  
13 ~~broker or a principal,~~ shall use any promotion or advertisement in any  
14 type of media that:

15 (1) Is misleading or inaccurate as to any material fact or that in any  
16 way misrepresents any property, terms, values, policies or services of the  
17 business conducted;

18 (2) includes the trade name, trademark, collective membership mark,  
19 service mark or logo of any organization owning such name, mark or logo  
20 without being authorized to do so;

21 (3) includes a location where real estate activity is conducted that is  
22 not registered as a primary office or branch office with the commission;  
23 or

24 (4) promotes the licensee's business in a manner that could confuse  
25 or mislead the public by using terms or a trade name or a business name  
26 that could be construed as the trade name or business name of a super-  
27 vising broker.

28 (b) Except as specified by subsection (c), all advertising conducted  
29 by a licensee shall:

30 (A) Be conducted under the direct supervision of the supervising bro-  
31 ker or branch broker;

32 (B) include the name of the supervising broker's trade name or busi-  
33 ness name by prominently and conspicuously displaying or announcing  
34 the supervising broker's trade name or business name in a readable and  
35 identifiable manner; and

36 (C) include any other information that the supervising broker or  
37 branch broker considers necessary.

38 (c) The advertising of property for sale, lease or exchange shall not  
39 be required to include the supervising broker's trade name or business  
40 name if the property is not listed with a broker and if either of the fol-  
41 lowing conditions is met:

42 (1) The property is personally owned by a licensee; or

43 (2) a licensee has an interest in the property.

1-3

1 (d) If authorized by the supervising broker or the branch broker, an  
2 employed or associated salesperson or associate broker may include in  
3 the advertisement:

4 (1) The contact information for the employed or associated salesper-  
5 son or associate broker;

6 (2) a name or team name which cannot be construed as a supervising  
7 broker's trade name or business name;

8 (3) a slogan which does not include terms that are confusing to the  
9 public or which can not be construed as a supervising broker's trade name  
10 or business name; and

11 (4) a domain name or website which does not include terms that are  
12 ~~not~~ confusing to the public or which can be construed as a supervising bro-  
13 ker's trade name or business name.

14 (e) Unless property personally owned by a licensee or in which a  
15 licensee has an interest is listed with a supervising broker or branch bro-  
16 ker, all advertising caused by the licensee regarding the property shall be  
17 done in a manner that clearly informs the public that a real estate broker,  
18 ~~licensee~~ ~~associate broker or salesperson~~ is the owner of or has an interest in the  
19 property advertised.

20 (f) If a licensee does not have a buyer's agency agreement and is  
21 ~~purchase~~ soliciting property for ~~purchase~~ for the benefit of the licensee or an  
22 entity in which the licensee has an interest, all advertising by the licensee  
23 that contains a solicitation to purchase property from potential sellers shall  
24 clearly inform the public that a real estate broker, ~~associate broker or~~  
25 ~~licensee~~ ~~salesperson~~ is involved in the solicitation of potential sellers of property.

26 (g) Each supervising broker who enters into an agreement that au-  
27 thORIZES the supervising broker to utilize the name or trade name of any  
28 person or entity in the conduct of the supervising broker's real estate  
29 business shall file a copy of the agreement with the commission.

30 (h) This section shall be part of and supplemental to the real estate  
31 brokers' and salespersons' license act.

32 Sec. 7. K.S.A. 58-3067 is hereby amended to read as follows: 58-  
33 3067. ~~Payments Except as provided in subsection (d) of K.S.A. 58-3068,~~  
34 ~~and amendments thereto, payments~~ from the real estate recovery revol-  
35 ving fund under the provisions of this act shall be subject to the following  
36 conditions and limitations:

37 (a) ~~Payments shall be made only pursuant to an order of a court of~~  
38 ~~competent jurisdiction, as provided in K.S.A. 58-3071 and amendments~~  
39 ~~thereto, and in the manner prescribed by this act.~~

40 (b) ~~Payments for claims arising out of the same transaction shall be~~  
41 ~~limited in the aggregate to \$15,000, irrespective of the number of claim-~~  
42 ~~ants or parcels of real estate involved in the transaction.~~

43 (c) ~~Payments for claims based upon judgments against any one li-~~

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1 licensed broker or salesperson shall not exceed in the aggregate \$30,000  
 2 within any calendar year, but in no event shall payments for claims based  
 3 upon judgments against any one licensed broker or salesperson exceed in  
 4 the aggregate \$50,000.

5 (d) If, at any time, the moneys in the real estate recovery revolving  
 6 fund are insufficient to satisfy any valid claim, or portion thereof, the  
 7 director of the commission shall satisfy such unpaid claim or portion  
 8 thereof, as soon as a sufficient amount of money has been credited to the  
 9 fund as provided in subsection (b) of K.S.A. 58-3066 and amendments  
 10 thereto. If there is more than one such claim outstanding, such claims  
 11 shall be paid in the order that they were made. Any such unsatisfied claim,  
 12 or portion thereof, shall accrue interest at the rate of 4% per annum.

13 Sec. 8. K.S.A. 58-3068 is hereby amended to read as follows: 58-  
 14 3068. (a) ~~Moneys Except as provided in subsection (d),~~ moneys in the real  
 15 estate recovery revolving fund shall be used in the manner provided by  
 16 this act to reimburse persons who suffer monetary damages by reason of  
 17 any of the following acts committed in connection with any transaction  
 18 involving the sale of real estate in this state by any broker or salesperson  
 19 who was licensed under the laws of this state at the time the act was  
 20 committed or by any unlicensed employee of such broker or salesperson:

21 (1) Violation of any of the following provisions of this act:

22 (A) K.S.A. 58-3061 and amendments thereto; or

or (26)

23 (B) subsection (a)(2), (3), (14), (19) ~~or~~ (20) or subsection (b)(2) of  
 24 K.S.A. 58-3062 and amendments thereto; or

25 (2) violation of any provision of the brokerage relationships in real  
 26 estate transactions act; or

27 (3) obtaining money or property by any act which would constitute  
 28 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-  
 29 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

30 (b) Any person may seek recovery from the real estate recovery re-  
 31 volving fund under the following conditions:

32 (1) Such person has received final judgment in a court of competent  
 33 jurisdiction of this state in any action wherein the cause of action was  
 34 based on any of the acts described in subsection (a);

35 (2) the claim is made within two years after the date that final judg-  
 36 ment is entered;

37 (3) such person has caused to be issued a writ of execution upon such  
 38 judgment, and the officer executing the same has made a return showing  
 39 that no personal or real property of the judgment debtor liable to be  
 40 levied upon in satisfaction of the judgment could be found, or that the  
 41 amount realized on the sale of the judgment debtor's property pursuant  
 42 to such execution was insufficient to satisfy the judgment;

43 (4) such person has made all reasonable searches and inquiries to

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1 ascertain whether the judgment debtor is possessed of real or personal  
 2 property or other assets, subject to being sold or applied in satisfaction  
 3 of the judgment, and by such search such person has discovered no such  
 4 property or assets, or that such person has discovered such property and  
 5 assets and that such person has taken all necessary action and proceedings  
 6 for the application thereof to the judgment and that the amount thereby  
 7 realized was insufficient to satisfy the judgment;

8 (5) any amounts recovered by such person from the judgment debtor,  
 9 or from any other source, has been applied to the damages awarded by  
 10 the court; and

11 (6) such person is not a person who is precluded by subsection (c)  
 12 from making a claim for recovery.

13 (c) A person shall not be qualified to make a claim for recovery from  
 14 the real estate recovery revolving fund, if:

15 (1) The person is the spouse of the judgment debtor or a personal  
 16 representative of such spouse;

17 (2) the person acted as principal or agent in the real estate transaction  
 18 which is the subject of the claim and is a licensed broker or salesperson  
 19 or is a partnership, association, limited liability company or corporation  
 20 whose partners, members, officers and employees are licensed as pro-  
 21 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

22 (3) such person's claim is based upon a real estate transaction in  
 23 which the licensed broker or salesperson was acting on the broker's or  
 24 salesperson's own behalf with respect to property owned or controlled by  
 25 such broker or salesperson.

26 (d) *At any time that the balance remaining in the real estate recovery*  
 27 *revolving fund is greater than \$250,000, any amount over \$250,000 may*  
 28 *be used by the commission for the following purposes:*

29 (1) *Production and distribution of an agency newsletter;*

30 (2) *monitoring education courses;*

31 (3) *expansion of materials available for consumers; and*

32 (4) *education grants to high schools and universities for course ma-*  
 33 *terials on money management and home ownership.*

34 ~~Sec. 9. K.S.A. 74-4202 is hereby amended to read as follows: 74-~~

35 ~~4202. (a) Within 30 days after the appointment of the members to be~~  
 36 ~~regularly appointed within any year, the commission shall meet in the city~~  
 37 ~~of Topeka for the purpose of organizing by selecting from its membership~~  
 38 ~~a chairperson and such other officers as the commission may deem nec-~~  
 39 ~~essary and appropriate. A majority of the members of the commission~~  
 40 ~~shall constitute a quorum for the exercise of the powers or authority~~  
 41 ~~conferred upon it.~~

42 (b) ~~The commission shall receive applications for, and issue licenses~~  
 43 ~~to, brokers and salespersons, as provided in this the real estate brokers'~~