

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 13, 2008 in Room 123-S of the Capitol.

All members were present except:  
Jay Emler- excused

Committee staff present:  
Jennifer Thierer, Kansas Legislative Research Department  
Kathie Sparks, Kansas Legislative Research Department  
  
Jason Long, Revisor of Statutes  
Jackie Lunn, Committee Assistant

Conferees appearing before the committee:  
Trinidad Galdean, SHRM  
Bill Sneed, State Farm Insurance Companies  
Ron Gaches, Kansas Society of Professional Engineers

Others attending:  
See attached list.

To read testimony submitted by conferees go to  
<http://skyways.lib.ks.us/government/KansasSenateCommerceCommittee>.

**HB 2771--Concerning age discrimination**

**HB 2315--Home inspectors competency and financial responsibility**

Chairperson Jordan opened the hearing on **HB 2771** and introduced Trinidad Galdean to give his testimony as a proponent of the bill. Mr. Galdean presented written testimony (Attachment 1) which can be found in its entirety on the link shown above.

Upon the conclusion of Mr. Galdean's testimony there were questions and answers regarding why the age limit had been changed from 40 to 18. Mr. Galdean stated he did not know why but it was changed in 1988 and stated the original intent of the bill was the age to be 40. Chairperson Jordan instructed staff to find out why it was changed and stated he would leave the hearing open to get the additional information.

Chairperson Jordan called the Committee attention to the "written only" proponent testimony of Marlee Carpenter, KCCI, (Attachment 2) and the "written only" neutral party testimony of the Kansas Human Rights Commission (Attachment 3). Both testimonies can be found in their entirety on the link listed above.

Next, Chairperson Jordan opened the continued hearing on **HB 2315** and called the Committee's attention to the "written only" opponent testimony of Gary Farnsworth, Metro-Spec (Attachment 4) which can be found in its entirety on the link listed above.

Chairperson Jordan introduced Bill Sneed, State Farm Insurance companies, to give his testimony as a neutral party of the bill. Mr. Sneed presented written testimony (Attachment 5) which can be found in its entirety on the link shown above.

A short question and answer session followed Mr. Sneed's testimony and then Chairperson Jordan introduced Ron Gaches, Kansas Society of Professional Engineers, to give his testimony as a neutral party of the bill. Mr. Gaches presented written testimony (Attachment 6) which can be found in its entirety on the link shown above.

Chairperson asked if there was anyone else wishing to testify on **HB 2315**; being none he closed the hearing and adjourned the meeting at 9:00 a.m. with the next scheduled meeting to be March 18, 2008 at 8:30 a.m. in room 123 S.





The Kansas Society for  
Human Resource Management (KS SHRM)  
P.O. Box 8668  
Wichita, KS 67208



## **KS-SHRM ASKS YOU TO SUPPORT HB 2771**

HB 2771, which proposes to restore the protected age from 18 years to 40 years for a valid age discrimination claim in Kansas, will be the subject of a hearing in the Senate Commerce Committee on Thursday, March 13<sup>th</sup>.

The goal of KS-SHRM in requesting HB 2771 is to restore the original intent of the Kansas Age Discrimination Act, which is to protect workers over the age of 40 from discrimination by employers. Current Kansas law deviates from this original intent of the law by providing a cause of action to workers as young of 18 years old. If passed, HB 2771 brings Kansas back in line with the majority of other states, as well as federal law, who maintain the age of 40 years as the standard minimum threshold for a discrimination claim based on age.

Full hearings were held in the House Commerce Committee on HB 2771 and no opponents appeared on behalf of the bill. In fact, the committee voted to place the bill on the consent calendar. The Human Rights Commission, who enforces the age discrimination act of Kansas, testified neutral on HB 2771 and shared information that the causes of action brought by those younger than 40 years have been part of a broader claim and do not provide for a valid age discrimination claim.

HB 2771 was debated on the House floor and there was some discussion that HB 2771 in fact discriminates against younger workers. Though an interesting argument, the age discrimination law was not intended to provide such protection to younger workers and KS-SHRM asks you vote to restore its original intent. The bill passed the full House by a vote of 71 to 48.

The over 2,000 members of KS-SHRM, who is the leading organization of Kansas human resource professionals, respectfully request you vote in favor of HB 2771.

\*\*\* If you have questions regarding HB 2771, please feel free to contact either Mary Ellen Conlee (316.619.2683) or Natalie Bright (316.640.1422) who represent KS-SHRM.

Senate Commerce Committee  
March 13, 2008

Attachment 1-1



## Legislative Testimony

HB 2771

March 13, 2008

**Testimony before the Kansas Senate Commerce Committee  
By Marlee Carpenter, Vice President of Government Affairs**

Co-Chairperson Brownlee, Co-Chairperson Jordan and members of the committee;

The Kansas Chamber of Commerce supports the amendments to the Kansas Age Discrimination Act provided in HB 2771.

HB 2771 will re-establish consistency by restoring the protected age from 18 years to 40 years in discrimination claims. The federal law's intent is to protect the aging population from being discriminated against in a place of employment. This change in age will bring Kansas up to par with a majority of other states that use the federal law as a benchmark in age discrimination claims.

The Chamber is committed to encouraging the most conducive business environment in Kansas to maintain current businesses and entice new business to the state. The passage of HB 2771 will send a clear message to businesses that Kansas is committed to bringing consistency between state and federal statutes. Consistency between state and federal statutes make doing business in Kansas less restrictive and will have a positive impact on Kansas.

Thank you for your time and I will be happy to answer any questions.



*Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium and large employers all across Kansas.*

Senate Commerce Committee  
March 13, 2008



Testimony  
On Behalf Of The  
Kansas Human Rights Commission  
Before The  
Senate Commerce Committee  
Regarding H.B. 2771  
March 13, 2008

Attendees:

Executive Director William V. Minner,  
Chief Legal Counsel Brandon L. Myers, and  
Assistant Director Ruth Glover

The Commission wishes to provide only this written testimony pertaining to this bill.

H.B. 2771 proposes to amend the Kansas Age Discrimination in Employment Act, which is administered and enforced by the Kansas Human Rights Commission. That law currently prohibits age discrimination in employment against any person on the basis of age, with the definition of "age" at which such protections begin being age 18 or more years, to age 40 or more years. The Federal Age Discrimination in Employment Act protects persons of age 40 or more years from age discrimination in employment, and we understand this bill is intended to make State and Federal age discrimination provisions consistent in this regard.

Because of the timing of the introduction and hearings on this bill KHRC Commissioners have not had an opportunity to review its provisions in their regular meeting. However, staff believes the Commission will be essentially neutral and nonoppositional to the proposals within this bill.

In 1988 when the current provisions regarding over 18 years of age were added to the KADEA, the Commission had sought what this bill currently seeks—that coverage be for those of 40 or more years of age. The Federal Age Discrimination in Employment Act had been amended from covering those of age 40-70 by that time to those over 40 years of age, and a similar change was sought to the KADEA's provisions of coverage of those 40-70 years of age to 40 years of age. This was deemed appropriate in order to maintain substantial conformity between State and Federal law in this regard and necessary to maintain KHRC's worksharing agreements with the U.S. EEOC (which administers the FADEA). There was considerable public support for the proposed amendments, including a desire to protect qualified older workers from mandatory retirement at age 70, for example. Former members of the House Business, Commerce and Labor Committee inserted the 18 years of age provisions into the proposed bill and it became law despite testimony that there had been no great need for that type of provision within the law (although some other states and jurisdictions had various types of age discrimination coverage/protection for those under 40 within their laws).

The Commission's experience in administering the 18 or more years of age provisions in the KADEA has been that few complaints alleging discrimination due to being under 40 years of age have been filed. As outlined in the Commission's input for the Fiscal Note on this bill, little or no impact upon the Commission's operations and administration of the KADEA would occur if H.B. 2771 were passed. A copy of the agency's Fiscal Note is attached.

Senate Commerce Committee  
March 13, 2008

Attachment 3-1

ERROL V. WILLIAMS, Chairman  
TOPEKA  
BETH M. BRADRICK, Ph.D.  
PITTSBURG  
JOHN CARMICHAEL  
WICHITA  
CLYDE HOWARD  
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**K A N S A S**

**KANSAS HUMAN RIGHTS COMMISSION**

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February 12, 2008

**KATHLEEN SEBELIUS, GOVERNOR**

WILLIAM V. MINNER  
EXECUTIVE DIRECTOR  
RUTH GLOVER  
ASSISTANT DIRECTOR  
BRANDON L. MYERS  
CHIEF LEGAL COUNSEL  
JUDY FOWLER  
SENIOR LEGAL COUNSEL  
CATHERINE WALTER  
SENIOR LEGAL COUNSEL  
BILL WRIGHT  
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ADMINISTRATOR  
ORIE KIRKSEY  
TOPEKA INVESTIGATIVE  
ADMINISTRATOR  
JANE L. NEAVE  
WICHITA INVESTIGATIVE  
ADMINISTRATOR  
RICK FISCHLI  
RACIAL AND OTHER PROFILING  
ADMINISTRATOR  
BETH MONTGOMERY  
OFFICE MANAGER

Amy Penrod  
Division of the Budget  
900 S.W. Jackson, Room 504  
Topeka, KS 66612

Submitted via e-mail

RE: Requested Fiscal Note for HB 2771

Dear Ms. Penrod:

Please find below the Kansas Human Rights Commission's (KHRC) review of HB 2771, which proposes changing the threshold of prohibiting discriminatory employment decisions based on age from 40 or more years to 18 or more years.

**A Brief Analysis of the Proposed Bill**

The Kansas Age Discrimination in Employment Act prohibits employers from making discriminatory employment decisions based on the person's age, with "age" defined as 18 or more years. The bill seeks to change the threshold of protection from 18 or more years to 40 or more years.

In 1983, the Kansas Age Discrimination in Employment Act (KADEA) was enacted with a definition of "age" as 40-70 years of age, which was comparable to the definition within the federal Age Discrimination in Employment Act at that time. The KADEA was expanded in 1988 to include persons aged 18 and over. The amendment in 1988 was not requested in that form by the KHRC, but was initiated by the Legislature during the legislative process. The Commission's request in 1988 was that the law be changed to cover those 40 or more years of age, since at that time the federal Age Discrimination in Employment Act had been so amended. When the law was amended in 1988, it was determined there were several other states or jurisdictions that referenced an age threshold lower than 40 years or referenced age in general terms.

The federal Age Discrimination in Employment Act of 1967, as amended, which is enforced by the Equal Employment Opportunity Commission (EEOC), has a threshold of 40 or more years. The surrounding states of Colorado, Missouri, Nebraska, and Oklahoma also have protection against employment discrimination beginning at the age of 40.

### **How The Bill Will Affect The Agency's Responsibilities/Administrative Impact**

In fiscal year 2007, the agency received 821 complaints in the areas of employment, housing, public accommodations, and profiling in conjunction with traffic stops. Of the 821 complaints received, 768 were employment complaints and included 168 allegations of age discrimination. Of complaints alleging age discrimination, only four complaints alleged discrimination for the age category of 18 – 39 years. Of these four complaints, three included allegations of discrimination in other protected categories (race, sex, national origin, etc.). This means that, if the proposed bill had been in effect in FY 2007, one complainant would not have been able to file with the Kansas Human Rights Commission.

In fiscal year 2006, the agency received 1,076 complaints in the areas of employment, housing, public accommodations, and profiling in conjunction with traffic stops. Of the complaints received, 1,029 were employment complaints and included 343 allegations of age discrimination. Of complaints alleging age discrimination, only ten complaints alleged discrimination for the age category of 18 – 39 years. Of these ten complaints, six included allegations of discrimination in other protected categories (race, sex, national origin, etc.). This means that, if the proposed bill had been in effect in FY 2006, four complainants would not have been able to file with the Kansas Human Rights Commission.

### **Staffing, Revenue and Fiscal Impact**

Because of the potential minimal reduction in complaints received and investigated, the bill will not impact staffing levels.

Revenues would not be impacted either. We currently receive reimbursement from the EEOC for investigating employment cases that are jointly filed under the EEOC's and KHRC's jurisdictions. However, employment cases only alleging age discrimination for the age category of 18 – 39 years are not eligible for reimbursement now. Therefore, if the lower age threshold is increased to 40, it will not impact the number of cases eligible for reimbursement. It is, however, vital that the age threshold begin, at a minimum, at the age of 40 in order for the Kansas Act Against Discrimination to be deemed comparable to the federal Age Discrimination in Employment Act of 1967, as amended, and to make us eligible to investigate such complaints on behalf of the EEOC. We are currently paid \$550 by the EEOC for each case investigated and jointly filed with the KHRC and the EEOC. In federal fiscal year 2007, we investigated 642 cases that were jointly filed with the EEOC for \$353,100 in reimbursement.

We do not anticipate that expenditures will be impacted by the proposed legislation. K.S.A. 44-1114 requires the Act be posted in a conspicuous place or places on the premises. The current poster indicates that it is against the law to discriminate in employment based on age, but does not list a specific age. Therefore, we can use the same poster even if the law changes.

It will also be necessary to update and reprint statute books. Printing costs for the KHRC statute book has been minimal in recent years because it is posted on our website and available for each individual to print at their convenience. We do not anticipate this practice to change.

It will be necessary to update our website, but we anticipate that can be done within existing resources and staff.

**Long-Range Fiscal Effect Of The Bill**

Based on the above, we do not anticipate a long-range fiscal impact on the agency, either through revenues or expenditures.



# **METRO-SPEC**

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March 12, 2008

Senator Karin Brownlee  
14725 S. Chalet Drive  
Olathe, KS 66062

First, I apologize for sending this to your home address. I saw it on the internet, so I thought it would be OK. To be fair, my address is 13831 W. 140<sup>th</sup> Terrace, Olathe, KS 66062, not far from your home. I have performed several inspections in your area. One was last year on South Brougham, just south of 143<sup>rd</sup>, and had a bad roof, and rotted siding. Buyer did not buy the home, not due to the issues on the report, but because the owner would not leave the window curtains, that matched wallpaper.

I thought the hearing yesterday was great, especially the last question you had. I also left a message with the teacher of the class that was in attendance. With my sister being a teacher, I thought it was awesome that the high school class was there.

You have greater things to do. Cell phone company issues, immigration, cable companies, oil, gas, smoking laws, etc. I will try to keep this short. Just a list of comments that my brother and I discussed on the way home from the hearing.

I was taught the home inspection business by a gentleman who performed 28,000 inspections here in Kansas City from 1977 to 2007. He is still performing some inspections, but due to health of his wife, is slowing down. He is NOT a member of any national home inspection organization. I worked with him in 2001 and 2002, before going out on my own in 2002. I incorporated in 2003. He and his wife are great teachers. I hope someday to teach other inspectors, as I have done recently with my brother, Steve, who was at the hearing with me.

Here is a list of comments. No particular order.

I liked the one proponent from Eldorado, KS. He first stated that he was an electrical and mechanical contractor, and wanted to continue offering home inspections. What does he do when he finds bad electrical components, or a bad furnace? I bet he offers to fix or replace the item. With his own company. Big conflict here. He should not be performing home inspections because of ethics.

I have had to perform second inspections of properties that engineers could not finish. I can give you names and addresses. One buyer hired an engineer, thinking that they would do a better job than a regular home inspector. But, the engineer did not touch anything. He would not remove the attic panel to check the attic, and in fact told the realtor he could not locate it. I was hired to check the things that the engineer could not, due to his "regulations". I had to check the electrical panel. The engineer would not remove cover. I had to check the built-in stove. The engineer

Attachment

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Senate Commerce Committee  
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would not open the oven door. I checked the attic and insulation, because the engineer could not locate the access panel. I found two access panels. Engineers are not covered by their regulations as engineers on one and two family dwellings. That is why they want the bill to pass, because it would not cover them in any way. They know that it would put home inspectors out of business, so they could do them all. And not under the rules of the bill.

Insurance inspectors need to be regulated by this bill. They check roof, chimney, wood rot, broken windows, siding, all exterior areas. They are the ones who are going to insure the property. How are they experienced to do this? Where do they fit in with this bill? Where is their liability? Who pays for a hail damaged roof within the 12 month time frame? Insurance companies would love to get money from an inspector to cover their losses.

I know realtors who perform radon tests, with kits you can buy at any hardware store and perform small home repairs. They should not be exempted. They clean houses, store items, pack for the owner, etc. What happens if a manufactured home dealer from out of state? He should be regulated to protect the consumer while doing business in the State of Kansas. Is the foundation sound? How is the electrical service connected? Is an architect a builder? In fact, I believe all of Section 2 should **not** be part of the bill.

I believe that just registering with the State and a national agency, high school, and mentoring would be enough for the bill. I and only four other inspectors here in Kansas City are members of the Better Business Bureau. I bet there are other BBB offices in Kansas. Make the inspector be a member of that agency. If you have a complaint filed against you, as an inspector, you are out. If a bad inspector is recommended by a realtor; that is their problem. Hire a good one next time. The realtors should be educated enough, have good networking, guidance from their brokers and supervisors to be able to recommend a good, or not so good inspector. They know the difference. They know who is good. Perhaps they want the bill, so they can recommend a bad inspector, so they can sue him, to get the money for the reason they want. But again, the buyer hires the inspector. The inspector is not involved in the transaction. The inspection industry has been operating for 30 years in Kansas on its own. If it is not broke, why fix it.

Buyers have the right to sue anyone for anything at any time, including bad home inspectors, with or without this bill. The buyer is the consumer. He/she makes the choice which inspector to hire, not the realtor. Get the realtor away from this bill.

Education is the key for everything. To be an appraiser, you have to be mentored with one appraiser, for up to a certain amount of appraisals. To be a home inspector, you should have to go on at least 100 inspections with an experienced home inspector. Nothing like on the job training. My brother has attended about 50 with me, and is still learning. He was surprised to know how involved the business end of it is, not the technical end. Perhaps, a Vo-Tech degree in home inspections could be offered by the state.

Home inspections are not mandatory in the state of Kansas. The buyer is the one who decides whether or not to get a home inspection. What if the buyer does not want an inspection, signs the home inspection waver (per KCRAR here in KC) and then has an issue with the home? Where does the buyer go then? How is the consumer protected here?

What is actually negotiated in the real estate transaction? What was written on the 'unacceptable conditions report' for the seller? The inspection, I believe, is not part of the real estate transaction. It is a tool for the consumer to use to assist in the filling out of the "unacceptable

conditions report” for the seller. The inspection is for informational purposes only. Whatever is on that report is what is negotiated. Most all items on the inspection report never get repaired, or negotiated. Is the inspector still liable? Is the home listed as “as is”? What is on the “seller’s disclosure? Where is the disclosure? If the seller holds something back, and the inspector finds it, will the inspector get sued by the seller’s agent because of the lost sale? The realtor/buyer agent should sue the listing agent/home owner for non-disclosure. This could cause the owner to damage something in the home, accuse the inspector for not noting it on the reports (or during the 12 month period) and reap \$10,000. Most of the time, no matter what my reports say, I hear the realtors talk to the buyer and say that they would be ahead, if they negotiate the price down, and repair the issues later. How does that affect inspectors under the new bill?

Good questions. The attached negotiation was inadvertently e-mailed to me, and I printed it off. The names of the buyers, realtors, companies, address have been blocked for privacy. I can tell you that the home was in Olathe, and inspected in October and November 2007. It is an example of a contract negotiation between the inspection report, buyer, and seller, and an example of the engineering report. The buyer had to get both, due to the limits of an engineer. I probably should not really be sending you the example. You can see, that only certain items were negotiated. Inspectors have no control over that.

Just yesterday a bill was passed in Ohio where home inspections are mandatory. I think that several issues can be solved by getting a pre-inspection on a home before it is even marketed. Get a radon test, termite, mold test. Get it done before a potential buyer sees it. Then, if the buyer chooses, they can get another inspection when they negotiate to purchase the home. The KAR will not want this. They may lose a listing, because the owner will not want to fix anything. The realtor may lose a sale because the buyer will not buy the home because of the issue listed on the pre-inspection report that is sitting on the kitchen table. (see attached story) The realtors will mandate an inspection, no matter what the buyer says, so they can make the inspector liable. They can then mandate which inspector. Do you want that power for the realtors?

And that is the bottom line. The bill protects the realtors. Not the consumers. It is the buyer who hires us. Not the realtors. The bill needs to be for the consumers and the inspectors. Realtors do not need to be involved. Think about this one.

Any builder, contractor, repairman, anyone involved the maintaining or building of a home should need also to be registered, to be fair. Do the realtors hire repairmen to perform a home repair after the inspection is performed? You bet. How much of a kick back do they get for that? All to keep a sale alive. Conflict of interest here. Who hires the repairman after the inspection to repair an issue listed on the inspection report?

Did the KAR person at the hearing have any documents on why the bill is needed?

Who came up with the liability number?

Where are the Attorney General complaints on home inspections? There are none.

Who really benefits here?

Who really financially benefits here?

Does the 12 month period stay good even if the sale of the home does not go through?

What if the seller does not want to sell after the inspection? Do the parameters in the bill still stand for 12 months after the sale is canceled?

How many realtors were at the hearing? None.

If the item costs \$150 to fix, does an inspector pay \$10,000?

Can an inspector from Kansas inspect a home in Missouri? Vice versa?

Does an inspector from Kansas have to be registered in Missouri to do Missouri inspections? Where is the liability clause for being a certified termite inspector in Kansas? None. Radon? None. Appraisers? Regulate the whole home industry, or none. You can't go halfway. And how are you going to police it all? Where will Kansas get the money? How will inspectors insure themselves: \$10,000 per inspection per year? It's millions.

Where are all of the young inspectors at the hearing? Most all of the inspectors present were over 50. We know what we are doing. Do the realtors, most of who are young, know what they are doing? Where were they at the hearing? Where are their complaints? Where is the documentation on the complaints by the KAR? KAR is looking to get money elsewhere, when they lose a sale or listing, due to issues on a good inspection report. They can find something on a home, always, that needs repair. Perhaps during a 12 month period. Sue the inspector, get the loss of the sale money back.

The inspector will be the first line of defense in the real estate transaction. And we are not involved. We work for the buyer. But now we can be sued by the realtor, instead of them taking a hit due to losses of a sale. Realtors stand to lose 7% commission on a lost sale, due to issues noted on bad issues stated on a home inspection. Average sale is about \$160,000. Seven percent of that is \$11,200. Close to the \$10,000 per inspection protection KAR wants and the bill states. They want the money from the lost sale. Find an issue on the home after a failed sale within 12 months. Sue the inspector. \$10,000 per inspection. You have 12 months to do this.

Example: inspector inspects a home. Inspector found a bad, leaning basement wall and rusted furnace. He/she tells the buyer, and presents the reports to the buyer. The buyer will not purchase the home due to the bad basement wall and furnace. Contract over. One month later, realtor notices the toilet leaking. Realtor sues the inspector for \$10,000. Realtor wins his commission on the lost sale. Does the toilet get fixed? I'm sure the realtor will find something else, if he loses.

We, as inspectors, are only at the home for 2 to 3 hours. We cannot control what happens to a home when we are not there. The weather in Kansas changes daily. Issues to a home can happen at any time. Home and weather conditions change often. Mechanical items can break down at any time. Structural items and ground movements happen often. Inspectors cannot be responsible for the home for 12 months. Tires on car go flat. Batteries fail. Where is the 12 month warranty on a used car? No where. If Sears delivers a dented washer, do you sue? No, it gets replaced.

Where is the money going to come from to operate the act? Two hundred dollars a year, from 300 inspectors, that is only \$60,000 income per year. That may pay for gas. The bill was written, as stated, years ago. It is already out of date.

Where is the builders' liability for building shoddy houses? All builders offer a one year home warranty on brand new homes. Why should we be responsible for an 80 year old home for 12 months? I have performed dozens of brand new home inspections, and have found lots of issues on homes that have never been occupied. Same should be done on new manufactured homes. Most builders do not like home inspectors, because we find stuff for them to fix. City and county code enforcers are only on site once or twice during new home construction. Not every day.

Why don't other agencies in the state want to handle this bill? Because the bill opens up themselves up for litigation. As inspectors, we would have to follow state regulation. If a repairman fixes an item on a home due to an inspection, and it breaks again, is the inspector liable due to the 12 month time frame? If engineers perform a home inspection, and are excluded

from the act, buyers could sue the State due to the regulations. What if the seller hides something? What happened to the home in the past? Some homes I inspect are as is, and no seller's disclosure is available. There should be one on EVERY home being sold in the State of Kansas.

At the end of the hearing, after your question was asked, only one person stood up. The man from KAR was the only one. They want it, so they can sue the inspector for losses. They want to protect themselves, even though they are the ones who negotiate issues. Again, it is the buyer who hires us. NOT THE REALTOR. The inspector is the first line of defense for the realtor. But the inspectors are not technically involved with the realtor, because it is the buyer who hires an inspector. The inspection is for informational purposes only. The realtor is the one who should protect the buyer. That is why they are in business. The realtors on the board will have the power to move their own liability some where else; another conflict of interest. Realtors make the most money on a home transaction and have the most influence.

How will inspection companies with multiple inspectors be insured? The company only, or each individual inspector? The man from ASHI was scared. He did not want to go either way. He knew that the inspection industry in Kansas was gone, if this bill went through.

Who wins?

Who benefits?

Where are the complaints?

Why is it needed?

Why did 37 people in the house vote against the bill?

Why are health care costs high? Doctors' insurance I bet is through the roof.

The reason doctors need insurance, is because one doctor out of 10,000 screws up; same in any company or industry. There is always that one who messes up, and affects everyone else.

The home purchase may not be, today, the largest purchase a person can make. I have seen some cars in the \$80,000 range, and boats in the \$130,000 range. Where is the liability on them? I inspected a home in KCKS, for \$70,000, and the owner had his motor home for sale at \$110,000.

If the state requires education, they will need to pay for it, and not the inspectors. It's required. I am a member of a homes association. I have to have approval from them to allow me to paint my home the color of their choosing. Should they be registered? They require me to get permission to paint my home a certain color. I can go on and on.

This bill hurts the consumer. If, and when, inspectors stay in business, they have no choice but to raise the cost of an inspection. How does this help the consumer? If you think the real estate sales are low now, pass the bill and wait. Don't give realtors the power. If the bill goes through, I, and many other inspectors, will be out of the inspection business. Seven years of building a successful small business in the State of Kansas gone. My wife and I have already discussed this.

If I were you, I would not want my name on this bill.

The offer still stands. Go with me on an inspection. I can even inspect your home, for free, for your informational purposes.

Thanks

Gary Farnsworth  
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# **METRO-SPEC**

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March 12, 2008

Supplement

In the spring of 2007, Steve and I went on an inspection on a home in the 9400 block of Grandview in Overland Park, KS. I was hired by a buyer to inspect the home after he negotiated a sales contract with the seller and his agent.

Steve and I found dry rot on the lower exterior window trim boards, hidden by fresh paint. We took pictures. We found some other issues with the deck, vegetation, and roof. We took pictures of all of the issues, as we do at all of our inspections.

We found the roof to have heavy hail damage. We took several pictures of the damage shingles, which were everywhere on the roof. The roof had two layers. I wrote up the inspection report, stating that the roof need full roof layers tear-off, and new roof installed due to severe hail damage, shingle dents, edge deterioration, and shingle backing showing. We offered the buyer to step up a few steps on a ladder to look. He was concerned.

Before the presentation, the seller's agent, the wife and husband home owners all arrived. I did not think much of it. It is their home. I wrote up the report, and printed it off. I down loaded all of the pictures I took from my camera, and showed the pictures to the buyer, his wife, and their agent. All toll, about 12 people in attendance.

I then started the presentation with the pictures first. I told them about the roof. It needed replaced, due to heavy hail damage, and as the pictures showed. The listing agent was surprised. I suggested that perhaps he file a claim with his insurance company, or get estimates on replacement. The wife stepped in, and she said that her husband was the insurance agent, and that he owns his own agency.

Pure silence. After about 20 seconds, I continued with the presentation, collected a check, and left as soon as I could. Who is the bad guy here? Listing agent was pissed at me due to finding the bad roof. Buyer agent was unhappy, knowing that the buyer was not going to buy the home, and it would take more work to find him another one. A lost sale for both realtors. Seller did not sell the home. He was really unhappy. I was the bad guy, even though I did my job.

I know why the bathroom was newly renovated, and how. I can assume where the roof damage money went. The buyer did not purchase the home, and I did another one for him the next week. I never saw a seller disclosure on the home inspected. I was offered a copy. Perhaps, that was a good thing. If I did see the disclosure, and noted the age of the roof as newer, I may have never inspected the roof. I now almost never look at a disclosure statement. It is hardly ever correct.

How would this scenario go if the new bill was in effect? I still have the reports and pictures on file.

Gary F.

# Polsinelli

Shalton | Flanigan | Suelthaus PC

## Memorandum

**TO:** THE HONORABLE KARIN BROWNLEE, CHAIR  
SENATE COMMERCE COMMITTEE

**FROM:** WILLIAM W. SNEED, LEGISLATIVE COUNSEL  
THE STATE FARM INSURANCE COMPANIES

**RE:** H.B. 2315

**DATE:** MARCH 11, 2008

Madam Chair, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies. State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. Please accept this memorandum as a request to further clarify an amendment that the House Committee inserted into H.B. 2315.

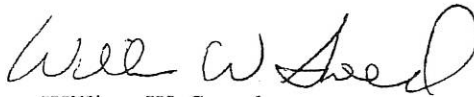
On page 3, lines 37-38, an amendment was inserted in an attempt to clarify that insurance agents would not fall under the purview of H.B. 2315. We would request that some additional language be added so as to make certain that those individuals working and representing insurance companies, whether they are agents, adjusters or employees, would be encompassed in that exception. Thus, we would respectfully suggest that the following be inserted on page three at line 38, after the word "license:"

"or an individual retained by an insurance company while acting within the scope of the Kansas Insurance Code."

We believe that this language will make certain that regardless of the "status" of the individual, if that individual is working under the purview of the Kansas Insurance Code, that Code will apply as opposed to the laws incorporated in H.B. 2315.

We appreciate your consideration of this clarification and we would be happy to stand for questions.

Respectfully submitted,

  
William W. Sneed

555 S. Kansas Avenue, Suite 101  
Topeka, Kansas 66603-3423  
Telephone: (785) 233-1446  
Fax: (785) 233-1939

Attachment

5-1

Senate Commerce Committee  
March 13, 2008





# **Kansas Society of Professional Engineers**

*A state society of the National Society of Professional Engineers*

**Testimony of Kansas Society of Professional Engineers  
Presented by Ron Gaches, Executive Director  
Regarding HB 2315: Requiring Home Inspector Registration  
Senate Commerce Committee  
Tuesday, March 11, 2008**

Thank you Senator Brownlee for this opportunity to comment on behalf of the Kansas Society of Professional Engineers (KSPE) regarding House Bill 2315, a proposal to establish a state registration program for home inspectors.

KSPE is neutral as to the underlying purpose of the bill. Our comment today is directly to the language on page three, lines 15 – 18 that makes clear that licensed Professional Engineers conducting home inspections would not be subject to the added regulation required by this bill. Licensed Professional Engineers are already regulated by the Kansas State Board of Technical Professions. They are graduates of accredited college or university engineer programs and must pass comprehensive exams before they are licensed as Engineers in Training. Following four years of professional experience and a successful completion of a second exam they become Professional Engineers. They must continue their education by completing not less than 30 hours of Professional Development every two years.

Although there are not many Professional Engineers conducting home inspections, there are several, and there are many more who conduct inspections of commercial, industrial and government buildings. Typically they are trained as Structural Engineers, Electrical Engineers, or Civil Engineers and have years of experience conducting this kind of work. More importantly, the professional code of conduct for Professional Engineers prohibits them from practicing in areas where they are not qualified by education or experience.

The House Commerce and Labor Committee considered these factors when deciding to exempt Professional Engineers from the registration requirements of this bill. Thank you for your time and consideration and I will try to answer any questions.

Senate Commerce Committee

March 13, 2008

Attachment 6-1