

## MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Nick Jordan at 1:00 P.M.. On March 31, 2008 in Room 431 N of the Capitol.

All members were present except:

Jay Emler- excused  
Laura Kelly- excused

Committee staff present:

Jennifer Thierer, Kansas Legislative Research Department  
Jason Long, Revisor of Statutes  
Jackie Lunn, Committee Assistant

Others attending:

See attached list.

To read testimony submitted by conferees go to

<http://skyways.lib.ks.us/government/KansasSenateCommerceCommittee>.

**HB 2315--Secretary of state; registration of home inspectors.**

**SB 693--Creating the Kansas intermodal transportation revolving fund; financing of intermodal transportation projects**

Chairperson Jordan announced to the Committee they would be working a couple of bills today starting with SB 693. He called on Jason Long, Revisor's Office, to explain the balloon that had been passed out in a previous meeting on **SB 693**. Mr. Long reviewed the balloon (Attachment 1) which can be found in its entirety on the link shown above.

A discussion followed regarding the balloon. The impact on the Gardner School District was discussed with Senator Reitz having concerns. The Chair asked if there was anyone in the room representing the schools to discuss their issues. It was noted that there was no one representing the schools present but Bill Crandall, President, Allen Group, was recognized and he stated the Gardner School District had not contacted them in writing or person to voice any concerns. Mr. Crandall told the Committee he did not feel the intermodal would have a negative impact on the Gardner School District; in fact, he stated the school district will benefit. It was noted that the Gardner School District had not been in any of our meetings regarding the intermodal. The impact on the school district was discussed further and the Committee decided that if they were not concerned enough to be in the meetings they would not discuss it further. Why Johnson County is not backing the bonds for this project was also discussed. Stuart Little representing the Johnson County Commissioners was recognized and he stated the County Commissioners felt it would consume 18% of the County's bonding authority that the County has at their disposal. He stated they are supportive of this legislation.

**Senator Schodorf made a motion to approve the balloon amendment. Senator Reitz seconded.**

A lengthy discussion followed with Senator Barone having concerns with the word "projected" on Page 1, line 31 of the balloon amendment and would like to see the word removed or replaced with another word.

**Senator Teichman made a substitute motion on Page 1, line 31, to remove the word "projected" and replace \$175,000,000 with "\$150,000,000". Senator Barons seconded. Motion carried.**

**Senator Reitz made a motion to accept the balloon as amended. Senator Schodorf seconded. Motion carried.**

**Senator Teichman made a motion to move the bill out favorably as amended. Senator Reitz seconded. Motion carried.**

Chairperson Jordan turned the Chair over to Senator Brownlee. Chairperson Brownlee turned the Committee's attention to **HB 2315** and the proposed amendments by Luke Bell. Chairperson Brownlee called

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 1:00 P.M.. On March 31, 2008 in Room 431 N of the Capitol.

on Mr. Bell, representing the Realtors, to explain the balloon (Attachment 2) which can be found in its entirety on the link listed on Page 1 of these minutes.

A lengthy discussion followed regarding the balloon. It was noted by Mr. Bell that the original bill has been trimmed down so that it would fit with the Secretary of State losing some of the original intent of the bill. It was noted that the Secretary of State's Office did not have the power to invoke but does have the power to revoke. There was some discussion that the bill has lost all its power with this amendment. The need for a membership in a national organization was discussed and it was noted it was removed from the original bill and needed to be put back in. There are some concerns of the Committee that putting the Board with the Secretary of State makes it less of a bill.

The Committee attention was moved to the proposed Senate Substitute for House **Bill 2315** presented by Mr. Bell (Attachment 3). Chairperson Brownlee asked Mr. Bell to review the Substitute Bill. The Committee discussed the section requiring inspectors to belong to a national organization which was in the original bill but did not appear in the substitute bill and it was decided to add that back in.

**Senator Schodorf made a motion to add on page 3 of the substitute bill sub paragraph (g) to read "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 Secretary of State". Senator Jordan seconded. Motion carried.**

**Senator Wagle made a motion to add under section 9 (4) "performing or offering to perform for an additional fee any repairs, remodeling or other type of remedial work to the dwelling for which the home inspector has prepared a home inspection in the last 12 months; inspecting for a fee any property in which the home inspector has a personal interest unless the interest is disclosed in writing to the client before the home inspection is performed; offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector; and accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings on the closing of the underlying real estate transaction". Senator Reitz seconded. Motion carried.**

**Senator Jordan made a motion to move the bill out as a Senate substitute bill as amended. Senator Schodorf seconded. Motion carried.**

**Senator Jordan made a motion to approve the minutes for February 7<sup>th</sup>, 8<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>th</sup>, 22<sup>th</sup>, and 25<sup>th</sup>. Senator Barone seconded. Motion carried.**

Chairperson Brownlee adjourned the meeting at 2:00 p.m. with no other meetings scheduled for this session.



# SENATE BILL No. 693

By Committee on Federal and State Affairs

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9 AN ACT concerning transportation; relating to intermodal transportation  
10 projects, and providing for the financing thereof.

11

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

13 Section 1. The secretary of transportation is hereby authorized to  
14 establish an intermodal transportation revolving fund to provide assis-  
15 tance to governmental units for intermodal transportation projects.

16 Sec. 2. As used in sections 1 through 7, and amendments thereto:

17 (a) "Cost" means as applied to any qualified project, any or all costs,  
18 whenever incurred, approved by the department, for carrying out a qual-  
19 ified project;

20 (b) "department" means the department of transportation, estab-  
21 lished under K.S.A. 75-5001, and amendments thereto;

22 (c) "fund" means the Kansas intermodal transportation revolving  
23 fund established by section 4, and amendments thereto;

24 (d) "governmental unit" means any town, city, district, county, com-  
25 mission, agency, authority, board or other instrumentality of the state or  
26 of any of its political subdivisions, including any combination thereof,  
27 which is responsible for the construction, ownership or operation of a  
28 qualified project;

29 (e) "intermodal facility" means an intermodal facility developed pri-  
30 marily to handle the transfer, storage and distribution of freight through  
31 railway and trucking operations with a cost in excess of \$175,000,000;

32 (f) "intermodal transportation area" means an area including an in-  
33 termodal facility and property adjacent to such intermodal facility, as ap-  
34 proved by the secretary.

35 (g) "intermodal transportation project" means any bridge, culvert,  
36 highway, road, street or combination thereof located within an intermodal  
37 transportation area;

38 (h) "private enterprise" means a private person or entity that has  
39 entered into a contract with a public authority to design, finance, con-  
40 struct or operate a qualified project that is within the jurisdiction of such  
41 public authority;

42 (i) "project" means the acquisition, construction, improvement, re-  
43 pair, rehabilitation, maintenance or extension of transportation facilities;

has a qualified project located within the boundaries of such entity or within the jurisdiction of such entity

land, improvements, personal property and fixtures

projected

such additional area certified by the secretary to be impacted by

, underpass, railroad crossing

governmental unit

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Attachment 1-1

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1 (j) "project costs" means all costs or expenses which are necessary or  
2 incident to a qualified project and which are directly attributable thereto;

, including, but not limited to, land acquisition

3 (k) "qualified borrower" means any governmental unit or private en-  
4 terprise which is authorized to construct, operate or own a qualified  
5 project;

6 (l) "qualified project" means any public or private intermodal trans-  
7 portation project, including, without limitation, the construction, recon-  
8 struction, resurfacing, restoration, rehabilitation or replacement of public  
9 or private transportation facilities within the state, that is determined by  
10 the secretary to be of statewide as well as local importance;

intermodal

projects

11 (m) "revenues" means when used with respect to the department,  
12 any receipts, fees, revenues or other payments received or to be received  
13 by the department under sections 1 through 7, and amendments thereto;  
14 and

and by the city or county in which the qualified project is located to be of local importance

15 (n) "secretary" means the secretary of the department of  
16 transportation.

17 Sec. 3. (a) The secretary shall administer the provisions of sections  
18 1 through 7, and amendments thereto, and shall be responsible for the  
19 administration and management of the fund, and shall have the power to  
20 enter into agreements and contracts and to transfer money between the  
21 state highway fund and the fund as required to effect the purposes of  
22 sections 1 through 7, and amendments thereto.

23 (b) The secretary shall adopt rules and regulations, to carry out the  
24 purposes and provisions of sections 1 through 7, and amendments  
25 thereto.

26 Sec. 4. (a) There is hereby established in the state treasury a fund to  
27 be known as the Kansas intermodal transportation revolving fund which  
28 shall consist of the following:

29 (1) Amounts appropriated or otherwise made available by the legis-  
30 lature for the purposes of the fund;

31 (2) the proceeds, if any, from the sale of bonds issued pursuant to  
32 section 5, and amendments thereto, for the purposes of the fund to the  
33 extent provided in any agreement entered into between the secretary and  
34 the Kansas development finance authority;

35 (3) amounts of repayments made by qualified borrowers of loans re-  
36 ceived under sections 1 through 7, and amendments thereto, together  
37 with payments of interest thereon, in accordance with agreements en-  
38 tered into between such qualified borrowers and the secretary;

39 (4) amounts earned on moneys in the fund;

40 (5) amounts contributed or otherwise made available by any public  
41 or private entity for use in effectuating the purposes of the fund;

42 (6) amounts transferred by order of the secretary from the state high-  
43 way fund; and

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1 (7) any other amounts as may be made available for purposes of the  
2 fund.

3 (b) Subject to the provisions of sections 1 through 7, and amendments  
4 thereto, expenditures from the fund shall be made for the following  
5 purposes:

6 (1) For the payment of the principal, including sinking fund payments  
7 of and premium, if any, and interest on bonds issued pursuant to sections  
8 1 through 7, and amendments thereto;

9 (2) for providing financial assistance to qualified borrowers to finance  
10 qualified projects;

11 (3) for the maintenance of, or provision for, any reserves, additional  
12 security, insurance or other form of credit enhancement to secure such  
13 bonds required or provided for in any trust agreement entered into pur-  
14 suant to sections 1 through 7, and amendments thereto;

15 (4) to guarantee, purchase insurance or provide other credit enhance-  
16 ment for bonds of qualified borrowers issued to finance the costs of qual-  
17 ified projects;

18 (5) to provide reserves for or otherwise secure bonds issued pursuant  
19 to sections 1 through 7, and amendments thereto, and to provide insur-  
20 ance or other credit enhancement for such bonds;

21 (6) to provide reserves for, or to otherwise secure, amounts payable  
22 by qualified borrowers on loans made by and leases with the department  
23 in the event of default by a particular qualified borrower or, on a parity  
24 basis, by any qualified borrower;

25 (7) to provide a subsidy for, or to otherwise assist, qualified borrowers  
26 in the payment of debt service costs on loans made by the department  
27 hereunder;

28 (8) for administrative costs of the fund or for any of the foregoing;

29 (9) the transfer of money by order of the secretary to the state high-  
30 way fund; and

31 (10) the transfer of money by order of the secretary to the state gen-  
32 eral fund.

33 Sec. 5. (a) The activities of the department in administering and per-  
34 forming the powers, duties and functions prescribed by the provisions of  
35 sections 1 through 7, and amendments thereto, are hereby approved for  
36 the purposes of subsection (b) of K.S.A. 74-8905, and amendments  
37 thereto, and the authorization of issuance of bonds by the Kansas devel-  
38 opment finance authority in accordance with that statute. The provisions  
39 of subsection (a) of K.S.A. 74-8905, and amendments thereto, shall not  
40 prohibit the issuance of bonds for such purposes when so authorized and  
41 any such issuance of bonds is exempt from the provisions of subsection  
42 (a) of K.S.A. 74-8905, and amendments thereto.

43 (b) The debt service for any bonds issued pursuant to this section

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1 shall be paid from revenues, including loan repayments received from  
2 qualified borrowers under agreements entered into pursuant to sections  
3 1 through 7, and amendments thereto, or from any other amounts avail-  
4 able in the Kansas intermodal transportation revolving fund pursuant to  
5 section 4, and amendments thereto, including appropriations of moneys  
6 from the state general fund.

7 (c) Neither the state nor the department shall have the power to  
8 pledge the full faith and credit or taxing power of the state of Kansas for  
9 such purposes and any payment by the department for such purpose shall  
10 be subject to and dependent on appropriations by the legislature. Any  
11 obligation of the state or the department for payment of debt service on  
12 bonds issued pursuant to this section shall not be considered a debt or  
13 obligation of the state for the purpose of section 6 of article 11 of the  
14 Kansas constitution.

(d) No governmental unit is authorized to pledge its full faith and credit or its taxing power for the purpose of repayment of any loan under this act.

15 Sec. 6. (a) Qualified borrowers which desire assistance in the form  
16 of a loan, credit enhancement or grant under sections 1 through 7, and  
17 amendments thereto, shall submit an application therefor to the secretary.  
18 Applications shall be in such form and shall include such information as  
19 the secretary shall require and shall be submitted in a manner and at a  
20 time to be determined by the secretary.

21 (b) The secretary may enter into agreements with any qualified bor-  
22 rower for payment of all or a part of project costs. All moneys received  
23 by the secretary pursuant to such agreements shall be deposited in the  
24 Kansas intermodal transportation revolving fund.

25 (c) The secretary shall provide any governmental unit, upon its re-  
26 quest, with technical advice and assistance regarding a project or an ap-  
27 plication for assistance. The secretary may assess reasonable fees for pro-  
28 viding such assistance.

with the secretary

29 (d) Any governmental unit may enter into agreements and may accept  
30 assistance as provided in this section when so authorized by its governing  
31 body.

32 Sec. 7. (a) Upon the failure of a governmental unit to meet the re-  
33 payment terms and conditions of an agreement, the secretary may order  
34 the state treasurer to pay to the fund such portion of the governmental  
35 unit's share of the special city and county highway fund as may be nec-  
36 essary to meet the terms of the agreement.

This subsection shall not apply if the source of repayment of a loan with a governmental unit, as identified in the agreement, is not received by such governmental unit prior to the loan repayment date.

37 (b) Any loans received by a governmental unit under the provisions  
38 of sections 1 through 7, and amendments thereto, shall be construed to  
39 be bonds for the purposes of K.S.A. 10-1116 and ~~70-5028~~, and amend-  
40 ments thereto, and the amount of such loans shall not be included within  
41 any limitation on the bonded indebtedness of the governmental unit.

42 Sec. 8. This act shall take effect and be in force from and after its  
43 publication in the Kansas register.

## Proposed KAR Amendments to HB 2315

AN ACT concerning real property; *relating to the secretary of state*; relating to home inspections; requiring home inspector registration and certificates.

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

Section 1. As used in this section:

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

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

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

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

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

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

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

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

(d) "**Pre-inspection agreement**" means a written contract between a customer and a home inspector to do a home inspection.

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

- (1) A clear description of the scope of the home inspection;
- (2) a clear description of any limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection; and
- (3) an identification of the national **not-for-profit** home inspection organizations approved by the board ~~secretary~~ which the home inspector is a member of at the time of the home inspection; and
- (4) an identification of the standards of practice approved by the board ~~secretary~~ which the home inspector will be following during the home inspection.

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

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

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

(h) (i) "~~Board~~" means the Kansas home inspectors registration board. "**Secretary**" means the **secretary of state**.

(i) (j) "Registrant" means any person registered as a home inspector under this act.

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

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

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

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

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

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

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

(f) an individual licensed by the state as a real estate broker or salesperson while acting within the scope of that license;

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

(h) **an individual licensed as a manufactured home manufacturer while acting within the scope of that license;**

(i) **an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;**

- (j) a modular home manufacturer or modular home manufacturer's representative reviewing a residential dwelling built by the manufacturer for the purpose of evaluating the residential dwelling;
- (k) an individual licensed as a manufactured home dealer while acting within the scope of that license;
- (l) an individual employed as a manufactured home installer while acting within the scope of that occupation;
- (m) an individual licensed by the state as an insurance agent while acting within the scope of that license, or an individual retained by an insurance company while acting within the scope of the Kansas insurance code;
- (n) a homebuilder or homebuilder's representative reviewing a residential dwelling built by the homebuilder for the purposes of evaluating the residential dwelling prior to the dwelling's first transfer of ownership; and
- (o) an individual employed as a pest exterminator or chemical applicator while acting within the scope of that occupation and not providing services which would constitute a home inspection under this act.

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

- (b) The board shall consist of five members to be appointed by the governor as follows:
  - (1) Three members shall be home inspectors who have actively been engaged in the practice of home inspections for at least five years immediately preceding their appointment and have completed at least 1,000 fee-paid home inspections;
  - (2) one member shall be a licensed real estate salesperson or broker; and
  - (3) one member shall be an at-large member who is neither a home inspector nor a licensed real estate salesperson or broker.
- (c) Prior to September 1, 2007 ~~2008~~, the governor shall appoint the initial board members as specified in subsection (b). The board shall hold its first meeting prior to January 1, 2008 ~~2009~~. Following the first meeting of the board, the newly elected chairperson shall serve for a term of three years, the vice chairperson shall serve for a term of three years, the secretary shall serve for a term of two years and the remaining board members shall serve for a term of one year. After these initial terms have been completed, the board members shall serve terms as specified in subsection (d).
- (d) Board members shall serve three-year terms, with no board member serving more than two consecutive terms of office. Upon the expiration of the term of office of any member, the governor shall appoint a successor meeting the qualifications under this act. Each board member shall serve until a successor is appointed and qualified. There shall be at all times at least one board member from each congressional district in the state of Kansas.
- (e) In the event of a vacancy in the membership of the board for any reason other than expiration of a board member's term of office, the governor shall appoint a successor meeting the qualifications of this act to fill the unexpired term.

Sec. 4. ~~3.~~ (a) The secretary shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and the balance shall be credited to the home inspectors registration fee fund, which is hereby established. All expenditures from such fund shall be approved by the board ~~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 secretary or by a person or persons designated by the board secretary.~~

~~Sec. 5. 4. The board secretary shall have the following duties and powers:~~

- ~~(a) Administer and enforce the provisions of this act;~~
- ~~(b) approve and adopt the standards of practice of nationally recognized home inspection associations which meet the requirements of this act;~~
- ~~(c) register qualified applicants as home inspectors pursuant to this act;~~
- ~~(d) suspend, revoke or fail to renew the registration of a home inspector under this act;~~
- ~~(e) make all necessary investigations into the qualifications of an applicant and registrant;~~
- ~~(f) approve examinations to determine the qualifications of applicants for registration; and~~
- ~~(g) adopt all rules and regulations which are necessary to carry out the provisions of this act.~~

~~Sec. 6. 5. (a) The board secretary may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:~~

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

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

~~Sec. 7. 6. The board secretary shall adopt rules and regulations fixing the amounts of fees provided for by this act, subject to the following: For an application for an original registration, the amount may not exceed \$200, and for renewal of registration the amount may not exceed \$200. Other fees may be set in the amount determined by the board secretary.~~

~~Sec. 8. 7. (a) The attorney general shall provide as an attorney for the board secretary and shall represent the board secretary in all actions and proceedings brought by or against the board secretary. The board secretary may hire independent counsel when the board secretary deems appropriate. All fees and expenses of such independent counsel arising out of the performance of duties for the board secretary shall be paid out of the home inspectors registration fee fund.~~

~~Sec. 9. 8. The home inspector shall be prohibited from performing any of the following acts as part of the home inspection:~~

- ~~(a) Performing or offering to perform for an additional fee any repairs, remodeling or other type of remedial work to the dwelling for which the home inspector has prepared a home inspection report within the last 12 months;~~
- ~~(b) inspecting Inspecting for a fee any property in which the home inspector has any personal interest unless the interest is disclosed in writing to the client before the home inspection is performed and the client signs an acknowledgment of receipt of the disclosure;~~

- ~~(c) (b) offering or delivering any commission, referral fee or kickback for the referral of any business to the home inspector; and~~
- ~~(d) (e) accepting an engagement to perform a home inspection or to prepare a home inspection report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings or the closing of the underlying real estate transaction.~~

Sec. 10. ~~9.~~ On and after July 1, 2008 ~~2009~~, all individuals performing home inspections as defined under this act in the state of Kansas shall be required to file a written registration with the board ~~secretary~~. All registrants must:

- ~~(a) Be at least 18 years of age;~~
- ~~(b) have successfully completed high school or its equivalent, **unless such individual is engaged in the practice of performing home inspections on the effective date of this act**;~~
- ~~(c) submit proof of current general liability insurance coverage in an amount of \$250,000 or more;~~
- ~~(d) submit proof of a fidelity bond to cover dishonesty in an amount not less than \$10,000 providing that the fidelity bond may not be terminated without 30 days prior written notice to the board ~~secretary~~;~~
- ~~(e) submit proof of financial responsibility by one of the following:~~
  - ~~(1) A policy of errors and omissions insurance coverage;~~
  - ~~(2) a surety bond in an amount not less than \$10,000, providing that the surety bond may not be terminated without 30 days prior written notice to the board ~~secretary~~;~~
  - ~~(3) an irrevocable letter of credit not less than \$10,000 issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior written notice of intention not to renew is provided to the board ~~secretary~~; or~~
  - ~~(4) the maintenance of a minimum balance of \$10,000 in an escrow account in a Kansas financial institution as defined in K.S.A. 16-117, and amendments thereto, provided that the escrow account shall maintain the minimum balance through the term of the registrant's registration as a home inspector. The board ~~secretary~~ shall be notified in writing by the financial institution within 10 days if the amount in the escrow account falls below the \$10,000 minimum balance. Upon notification, the board ~~secretary~~ shall suspend such registrant's registration as a home inspector until the escrow account minimum balance is restored to greater than or equal to \$10,000;~~
- ~~(e) submit proof of membership in good standing in either:~~
  - ~~(1) The American society of home inspectors (ASHI);~~
  - ~~(2) the national association of home inspectors (NAHI); or~~
  - ~~(3) the national association of certified home inspectors (NACHI); and~~
- ~~(f) **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 ~~secretary~~; and**~~
- ~~(g) have successfully completed and passed a written or electronic exam as approved by the board ~~secretary~~ and proctored by a testing organization approved by the board ~~secretary~~;~~
- ~~(g) (h) annually obtained a minimum of 16 hours of continuing education by completing courses approved by the board ~~secretary~~; and~~
- ~~(h) (i) have satisfied one of the following requirements:~~
  - ~~(1) Have successfully completed and passed a course of study containing at least 80 hours of classroom and field training offered by an educational provider approved by the board ~~secretary~~; or~~

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

Sec. 3. (a) On and after July 1, 2009, all individuals performing home inspections as defined under this act in the state of Kansas shall be required to file a written registration with the secretary of state. Applications for original registration and renewal of registration under this act shall be made in writing to the secretary of state on forms approved by the secretary of state and shall be accompanied by the appropriate fees prescribed by the secretary of state.

(b) The application for original registration and the renewal of a registration must be in the name of the individual applicant and signed or otherwise authenticated by the applicant under penalty of perjury and must contain:

- (1) The name and address of the applicant;
- (2) A statement that the applicant is at least 18 years of age;
- (3) A statement that the applicant has successfully completed high school or its equivalent, unless such individual is engaged in the practice of performing home inspections on the effective date of this act;
- (4) Proof of general liability insurance coverage;
- (5) Proof of financial responsibility by one of the following:
  - (A) A policy of errors and omissions insurance coverage in an amount not less than \$10,000; or
  - (B) a surety bond in an amount not less than \$10,000;
- (6) A statement that the applicant has satisfactorily completed a written or electronic proctored examination as approved by the secretary of state; and
- (7) any other information that the secretary of state may require for registration under this act.

(c) The secretary of state shall issue a certificate of registration to an individual who complies with all the applicable registration requirements under this act.

(d) A certificate of registration or a renewal of a registration is valid for only two years.

(e) For an application for an original registration, the fee may not exceed \$400, and for renewal of registration the amount may not exceed \$400.

(f) The secretary of state shall cancel the registration of an individual who fails to file a timely application for the renewal of registration. This cancellation shall be without notice or opportunity for hearing. An individual whose registration has been cancelled and who desires to register as a home inspector under this act shall file an application for original registration and pay the appropriate fee for an original registration.

Sec. 4. (a) The secretary of state shall have the following duties and powers:

- (1) Administer the provisions of this act;
- (2) register applicants as home inspectors pursuant to this act; and
- (3) adopt all rules and regulations that are necessary to carry out the provisions of this act.

Sec. 5. (a) The secretary of state may deny, suspend or revoke a registration under this act upon sufficient evidence provided to the secretary that the registrant or applicant has engaged in any of the following conduct:

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

- (2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to forgery, fraud, conspiracy to defraud or any similar offense or offenses; and
- (3) violating any provision of this act or rules and regulations promulgated by the secretary of state pursuant to this act.

Sec. 6. There is hereby created in the state treasury the home inspectors registration fee fund which shall be administered by the secretary of state. All moneys credited to the home inspectors registration fee fund shall be used for the expenses incurred for the performance of the duties and functions of the secretary of state under this act. All expenditures from the home inspection registration fee fund shall be made in accordance with the provisions of appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or by a person or persons designated by the secretary. Fees and any other moneys received under this act by the secretary of state shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the home inspectors registration fee fund.

Sec. 44: ~~10.~~ 7. (a) It is the duty of all home inspectors registered under this act to conduct home inspections with the degree of care that a reasonably prudent home inspector would exercise under the circumstances.

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

(c) No home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability for any errors and omissions which may arise during a home inspection, or limit the amount of damages for liability for any errors and omissions which may arise during a home inspection to less than ~~\$1,000~~ **\$10,000** in the aggregate for each home inspection **and such term or condition or limitation setting the liability at an amount greater than \$10,000 must be provided to the customer in writing to be in effect.**

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

(e) In any action to recover damages for any error or omission of a home inspector relating to a home inspection or home inspection report, a home inspector is liable for any errors and omissions which may arise during a home inspection in an amount of not to exceed ~~\$1,000~~ **\$10,000** in the aggregate for each home inspection, **or to the amount in the pre-inspection 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 written description in the pre-inspection agreement of any greater limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection.**

(f) All home inspectors registered under this act shall provide customers and clients with a completed pre-inspection notice prior to the home inspection.

Sec. 12. ~~11~~ **8.** (a) No individual shall advertise themselves as a home inspector unless the individual has complied with the provisions of this act. Individuals who are exempt from registration under this act or whose actions are considered to be a home inspection under this act may not hold themselves out to be home inspectors or use words or titles that may reasonably be confused with the title of "home inspector" or "house inspector" unless they are registered as a home inspector pursuant to this act.

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

Sec. 13. ~~12.~~ Any individual performing home inspections as defined in this act or assisting any person to perform home inspections outside the guidelines of this act shall constitute a class A misdemeanor and will be subject to all the legal remedies and penalties thereof.

**Sec. 9. (a) Criminal conduct occurs under this act when:**

**(1) an individual provides home inspection services as defined under Section 1(a)(1) while not registered as a home inspector under this act;**

**(2) provides materially false or misleading information in an application for registration or renewal of a registration under this act; and**

**(3) fails to comply with all obligations of a registered home inspector under this act.**

**(b) Criminal conduct under this act is a class A nonperson misdemeanor.**

**Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.**

Sec. 14. ~~13~~ **10.** This act shall be cited as the Kansas home inspectors ~~professional competence and financial responsibility~~ **registration** act.

Sec. 15. ~~14~~ **11.** This act shall take effect and be in force from and after its publication in the statute book.

## Proposed Senate Substitute for House Bill 2315

AN ACT concerning real property; *relating to the secretary of state*; relating to home inspections; requiring home inspector registration and certificates.

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

Section 1. As used in this section:

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

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

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

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

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

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

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

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

(d) "Pre-inspection agreement" means a written contract between a customer and a home inspector to do a home inspection.

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

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- (1) A clear description of the scope of the home inspection;
  - (2) a clear description of any limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection; and
  - (3) an identification of the national not-for-profit home inspection organizations that the home inspector is a member of at the time of the home inspection; and
  - (4) an identification of the standards of practice that the home inspector will be following during the home inspection.
- (f) "Readily accessible" means available for visual inspection without requiring the moving of personal property, dismantling, destructive measures or actions that would likely involve risk to persons or property.
- (g) "Dismantling" means to take apart or remove any component, device or piece of equipment that is bolted, screwed or fastened by any other means and that would not be taken apart or removed by a homeowner in the course of normal and routine household maintenance.
- (h) "Material defect" means any condition that significantly affects the value, habitability or safety of the dwelling. Style, cosmetic defects or aesthetics shall not be considered in determining whether a system, structure or component is materially defective.
- (i) "Secretary" means the secretary of state.
- (j) "Registrant" means any person registered as a home inspector under this act.
- (k) "Applicant" means any person who is applying for registration or renewal of registration under this act.

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

- (a) A tradesman or contractor performing a single component or system evaluation or a combination of any two systems or components listed in section 1 (a)(1)(A)-(I) while acting within the scope of that occupation;
- (b) an individual employed by the state or a political subdivision of the state who, within the scope of such employment and in the discharge of such public duties, inspects property or buildings for compliance with requirements safeguarding life, health or property;
- (c) an individual licensed by the state as an architect while acting within the scope of that license;
- (d) an individual licensed by the state as a professional engineer while acting within the scope of that license;
- (e) an individual licensed by the state as a real estate appraiser while acting within the scope of that license;
- (f) an individual licensed by the state as a real estate broker or salesperson while acting within the scope of that license;
- (g) an individual employed as an insurance adjuster while acting within the scope of that occupation;
- (h) an individual licensed as a manufactured home manufacturer while acting within the scope of that license;
- (i) an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;
- (j) a modular home manufacturer or modular home manufacturer's representative reviewing a residential dwelling built by the manufacturer for the purpose of evaluating the residential dwelling;
- (k) an individual licensed as a manufactured home dealer while acting within the scope of that license;
- (l) an individual employed as a manufactured home installer while acting within the scope of that occupation;

- (m) an individual licensed by the state as an insurance agent while acting within the scope of that license, or an individual retained by an insurance company while acting within the scope of the Kansas insurance code;
- (n) a homebuilder or homebuilder's representative reviewing a residential dwelling built by the homebuilder for the purposes of evaluating the residential dwelling prior to the dwelling's first transfer of ownership; and
- (o) an individual employed as a pest exterminator or chemical applicator while acting within the scope of that occupation and not providing services which would constitute a home inspection under this act.

Sec. 3. (a) On and after July 1, 2009, all individuals performing home inspections as defined under this act in the state of Kansas shall be required to file a written registration with the secretary of state. Applications for original registration and renewal of registration under this act shall be made in writing to the secretary of state on forms approved by the secretary of state and shall be accompanied by the appropriate fees prescribed by the secretary of state.

(b) The application for original registration and the renewal of a registration must be in the name of the individual applicant and signed or otherwise authenticated by the applicant under penalty of perjury and must contain:

- (1) The name and address of the applicant;
- (2) A statement that the applicant is at least 18 years of age;
- (3) A statement that the applicant has successfully completed high school or its equivalent, unless such individual is engaged in the practice of performing home inspections on the effective date of this act;
- (4) Proof of general liability insurance coverage;
- (5) Proof of financial responsibility by one of the following:
  - (A) A policy of errors and omissions insurance coverage in an amount not less than \$10,000; or
  - (B) a surety bond in an amount not less than \$10,000;
- (6) A statement that the applicant has satisfactorily completed a written or electronic proctored examination as approved by the secretary of state; and
- (7) any other information that the secretary of state may require for registration under this act.

(c) The secretary of state shall issue a certificate of registration to an individual who complies with all the applicable registration requirements under this act.

(d) A certificate of registration or a renewal of a registration is valid for only two years.

(e) For an application for an original registration, the fee may not exceed \$400, and for renewal of registration the amount may not exceed \$400.

(f) The secretary of state shall cancel the registration of an individual who fails to file a timely application for the renewal of registration. This cancellation shall be without notice or opportunity for hearing. An individual whose registration has been cancelled and who desires to register as a home inspector under this act shall file an application for original registration and pay the appropriate fee for an original registration.

Sec. 4. (a) The secretary of state shall have the following duties and powers:

- (1) Administer the provisions of this act;
- (2) register applicants as home inspectors pursuant to this act; and
- (3) adopt all rules and regulations that are necessary to carry out the provisions of this act.

Sec. 5. (a) The secretary of state may deny, suspend or revoke a registration under this act upon sufficient evidence provided to the secretary that the registrant or applicant has engaged in any of the following conduct:

- (1) Making a materially false or fraudulent statement in an application for registration or renewal;
- (2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to forgery, fraud, conspiracy to defraud or any similar offense or offenses; and
- (3) violating any provision of this act or rules and regulations promulgated by the secretary of state pursuant to this act.

Sec. 6. There is hereby created in the state treasury the home inspectors registration fee fund which shall be administered by the secretary of state. All moneys credited to the home inspectors registration fee fund shall be used for the expenses incurred for the performance of the duties and functions of the secretary of state under this act. All expenditures from the home inspection registration fee fund shall be made in accordance with the provisions of appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of state or by a person or persons designated by the secretary. Fees and any other moneys received under this act by the secretary of state shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the home inspectors registration fee fund.

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

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

(c) No home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability for any errors and omissions which may arise during a home inspection, or limit the amount of damages for liability for any errors and omissions which may arise during a home inspection to less than \$10,000 in the aggregate for each home inspection and such term or condition or limitation setting the liability at an amount greater than \$10,000 must be provided to the customer in writing to be in effect.

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

(e) In any action to recover damages for any error or omission of a home inspector relating to a home inspection or home inspection report, a home inspector is liable for any errors and omissions which may arise during a home inspection in an amount of not to exceed \$10,000 in the aggregate for each home inspection, or to the amount in the pre-inspection 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 written description in the pre-inspection agreement of any greater limitations on the liability of the home inspector for any errors and omissions which may arise during the home inspection.

(f) All home inspectors registered under this act shall provide customers and clients with a completed pre-inspection notice prior to the home inspection.

Sec. 8. (a) No individual shall advertise themselves as a home inspector unless the individual has complied with the provisions of this act. Individuals who are exempt from registration under this act or whose actions are considered to be a home inspection under this act may not hold themselves out to be home inspectors or use words or titles that may reasonably be confused with the title of "home inspector" or "house inspector" unless they are registered as a home inspector pursuant to this act.

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

Sec. 9. (a) Criminal conduct occurs under this act when:

(1) an individual provides home inspection services as defined under Section 1(a)(1) while not registered as a home inspector under this act;

(2) provides materially false or misleading information in an application for registration or renewal of a registration under this act; and

(3) fails to comply with all obligations of a registered home inspector under this act.

(b) Criminal conduct under this act is a class A nonperson misdemeanor.

Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 11. This act shall be cited as the Kansas home inspectors registration act.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.