

Approved: SRB 2-5-09
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:03 a.m. on February 3, 2009, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Renaë Jefferies, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Kathy Sachs, Secretary of State Office
John Lyle, Professional Engineering Inspections, Inc
Sherry C. Diel, Kansas Real Estate Commission
Luke Bell, Kansas Association of Realtors

Others attending:

See attached list.

The meeting was called to order by Chairman Steve Brunk at 9:03 a.m. He explained why he stands up at the opening of the committee meeting. It is something he has always done at various meetings as a sign of respect. He compared it to standing up to greet a guest and applied it to greeting the committee and the conferees and hopes that it has not been misunderstood.

HB 2067 Kansas home inspectors registration board; removing the secretary of state as custodian of the board's records.

Renaë Jefferies, Assistant Revisor explained the changes in the bill. The only change was to no longer require the Secretary of State to be the custodian of the records of the Kansas Home Inspectors Registration Board.

Representative Worley asked where the records would then be physically located. Renaë said it would be with the Secretary of the Home Inspectors Registration Board. Representative Worley asked where that was. Representative Brunk explained that the Board was created last year and did not know exactly where their office was but that we will be bringing them in to the committee on another bill.. He further said that the Secretary of State did not really want this responsibility and it should be the responsibility of the Home Inspectors Registration Board.

Representative Bethell asked who was the overseer of the Board. Representative Brunk replied that the Board was appointed by the governor and was under the authority of the administration. Representative Bethell asked further where the Board was set up. Representative Brunk explained that we are just in the genesis of setting this up and the Secretary of State was inadvertently added to the bill as being the one responsible for the records. Our purpose today is just to remove the responsibility from the Secretary of State.

Representative Pottorff commented that the governor had appointed all the members of the board.

HB 2068 Real estate brokers and salespersons; licensure; deactivation.

Renaë Jefferies, Assistant Revisor explained the changes being made to the bill.

Representative Schwab asked about the date the bill would take affect. Wouldn't it normally be when it was placed in the register? Renaë said that most bills took affect when placed in the statute book unless the person requesting the bill wanted it to take affect sooner.

Representative Tietze asked that if according to page 15 section (c) if a supervisor was deactivated would anyone who was responsible to that supervisor be deactivated also. It was explained that the people

CONTINUATION SHEET

Minutes of the House Commerce And Labor Committee at 9:03 a.m. on February 3, 2009, in Room 784 of the Docking State Office Building.

responsible to the supervisor were not allowed to be unsupervised, so unless they transferred to another broker or supervisor they would have to be deactivated.

The Chairman opened the hearing on **HB 2067**. Kathy Sachs, of the Secretary of State's Office addressed the committee as a proponent of the bill (Attachment 1).

Representative Grange asked if the Secretary of State did not keep the records, who does keep them. Kathy said that the Secretary of State office was not a regulatory office and was not involved in keeping records for other State Boards.

Representative Bethell asked if someone was here from the board to testify. Representative Brunk said that they would not be here to testify on this bill but on one that is coming later. He did not want to confuse this bill with the one that is coming later. The Secretary of State was mentioned in this bill by mistake. We just wanted to remove them from this bill so that they could go their way and we would address the changes in the later bill.

Representative Bethell said that he had a real concern about where the records were to be kept. He was concerned that the records would be lost or mishandled. He had a real concern about passing this without a knowledge of where the records would be.

The Chairman said that it was his intent to work the bill tomorrow but because of the question he would hold up the working of the bill until we get the other Home Inspector bill. Then we can ask the questions and we can combine the two.

Representative Worley asked Kathy if the Secretary of State maintained records for other boards. She said no, they don't keep records of any boards, they maintain their own records.

Representative Hermanson said that as Realtors they keep their own records. Representative Brunk said that this is a little different in that there is a board that is appointed to oversee the Inspectors.

Representative Schwab wondered why the records would not be kept by the Secretary of State. Kathy clarified that in the bill in the same paragraph the Chairman of the Home Inspectors Registration Board was listed as custodian, so this was to make clear who was the custodian of records. Our understanding is that the various Boards keep their own records.

John Lyle, Professional Engineering Inspections, Inc. appeared as a proponent of **HB 2067**.

The Chairman closed the hearing on **HB 2067** and opened the hearing on **HB 2068**.

Sherry C. Diel, Kansas Real Estate Commission was introduced as a proponent of **HB 2068** (Attachment 2).

Representative Quigley was unclear what deactivation was. Was it different than suspension? What is the procedure to be reactivated. Sherry said deactivation can be voluntary or involuntary. It can be reactivated any time by paying the \$15.00 fee. One reason for deactivation might be that they have not completed their continuing education and they deactivate until they complete it.

Representative Brunk said the goal is to professionalize the industry. He asked what the definition of harassment was in the bill. Sherry said that it was defined by existing law. It is not new, it is already in the statutes.

Luke Bell, Kansas Association of Realtors appeared as a proponent of **HB 2068** (Attachment 3). He said that the Kansas Association of Realtors strongly supports the language in the bill because it strongly protects the public.

The chairman closed the hearing on **HB 2068** and advised that the committee would work it tomorrow.

CONTINUATION SHEET

Minutes of the House Commerce And Labor Committee at 9:03 a.m. on February 3, 2009, in Room 784 of the Docking State Office Building.

The next meeting is scheduled for February 4, 2009.

The meeting was adjourned at 10:05 a.m.

RON THORNBURGH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

STATE OF KANSAS

TESTIMONY OF THE SECRETARY OF STATE TO THE HOUSE COMMERCE AND LABOR COMMITTEE ON SB 2067

February 3, 2009

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 2067, a bill requested by the Secretary of State.

Last year, a bill was passed that created the Home Inspectors Board. In the final version of the bill, the secretary of state was erroneously listed as the custodian of the permanent record. At the same time, and in the same paragraph of the bill, the secretary of the Home Inspectors Board was also named as custodian of the permanent record. As a practical matter, the secretary of state requests the legislature amend K.S.A. 58-4503 and remove the secretary of state as custodian of the permanent record. The secretary of state cannot fulfill his responsibility as custodian of the permanent record when the responsibility also lies with the secretary of the board. There is no fiscal impact and amendment is strictly a cleanup measure.

I appreciate the opportunity to appear today and would be happy to answer questions.

House Commerce & Labor

Date: 2-3-09

Attachment # 1



KANSAS

KANSAS REAL ESTATE COMMISSION
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Chairperson Brunk and Members of the House Commerce and Labor Committee
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission
RE: HB 2068—Relating to licensure of real estate salespersons and brokers
Date: February 3, 2009

HB 2068 was requested by the Kansas Real Estate Commission to clarify existing law. The Commission and its disciplinary committee are requesting the proposed amendments to existing law to address issues that have arisen during policy discussions and disciplinary investigations. The Commission has consulted with the trade association, the Kansas Association of Realtors, in drafting the proposed amendments. The Commission believes that the Kansas Association of Realtors supports the proposed legislation. The requested legislation would:

- **Page 2, Lines 27-35:** Amend K.S.A. 58-3035 to revise the definition of “office” to include any permanent location where one or more licensees regularly conduct real estate business or a location that is held out as such an office. Temporary facilities that are used as model home sales offices in a new homes subdivision are exempted from the definition of office if the real estate transaction files are maintained in the primary office or branch office. If the records are maintained at the model home office, the location would be considered an office. Real estate business is described to have the same definition as “broker” as defined in subsection (f) of K.S.A. 58-3035.

The purpose of this amendment is to clarify what is considered an “office” for purposes of designating a primary office and branch office in accordance with K.S.A. 58-3060(b), which requires that a supervising broker or branch broker be designated to supervise the office. The definition of “office” also ties into K.S.A. 58-3086 regarding advertising requirements. The intent is that temporary facilities in a new home subdivision that are used as a sales office, such as a model home, a temporary trailer, or the clubhouse, would not be considered to be an “office” and not required to be designated as a primary office or branch office as long as the transaction files are maintained at the actual primary office or branch office. If the files are maintained at the temporary sales office, the location would be considered an “office” and would have to be designated as a primary office or branch office. Any other facility where sales activity is regularly conducted or that the licensee holds out to the public to be an office that is not in a new homes subdivision would need to be designated as a primary office or branch office and have a supervising broker or branch broker designated to supervise the office.

- **Page 5, Lines 17-21:** Amend K.S.A. 58-3046a to authorize the Commission to designate a course of study to fulfill any specific education requirement by rules and regulation, which may include a testing requirement.

The current statute limits the testing requirement to licensees for the mandatory core continuing education requirement. The Commission compiled a group of stakeholders to review ways of improving standards for distance education for pre-license and continuing education courses. Amongst other recommendations, the stakeholders recommended that a person taking a course via distance education pass a test showing competency over the material in the current module before the person could move to the next module. The proposed amendment will allow the Commission to implement the recommendations of the stakeholders to improve distance education standards by rules and regulations and to adjust to changes in distance education standards as needed.

- **Page 6, Lines 10-12** Amend K.S.A. 58-3050 to clarify that the Commission is authorized to pursue disciplinary action even if a licensee is not engaged in a real estate transaction. The Commission has authority in other sections of the license law and regulations to take disciplinary action when the licensee is not acting as an agent, transaction broker or a principal.

There are several instances throughout the statutes when the licensee does not have to be involved in a transaction for the Commission to take disciplinary action. K.S.A. 58-3050(a)(1) creates a conflict because it implies that a licensee must be acting as an agent, transaction broker or a principal for the Commission to take disciplinary action when there is a violation of the license law, K.S.A. 58-3034 et seq., the Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101 et seq., or regulations promulgated thereunder. However, the "prohibited acts" section of the license law, K.S.A. 58-3062(e), provides the Commission authority to take disciplinary action in matters outside of a transaction (harassment or physical harm or threatening of physical harm to another licensee or a client or customer, threatening to file a lien on residential property, etc.). Likewise, additional provisions have been added to the license law in recent years that result in violations (see K.S.A. 58-3079 through K.S.A. 58-3086). Licensees are also cited for violating regulations that may fall outside of a transaction, i.e. failure to report required information, such as an arrest or conviction of a felony, litigation involving real property, or a change of address.

- **Page 6, Lines 20-21** Amend K.S.A. 58-3050 to clarify that misrepresentation on an application includes a reinstatement and an attempt to obtain or reinstate a license.
- **Page 14, Lines 7-22** Amend K.S.A. 58-3062(e) to expand the list of persons who could be subject to threats or are the victims of physical abuse or harassment from a licensee.

The list would be expanded to include persons involved in a real estate transaction, persons involved in the real estate business or a closely related business, or persons that may be involved because of issues that arise during the prosecution of a complaint. In addition to a client or customer or another licensee that are already covered by the current statute, the proposed legislation would provide the Commission jurisdiction if attempts were made or the following persons were threatened, physically abused or harassed: a commissioner or staff member from the Commission, a staff member from the Office of Administrative Hearings, staff from any real estate trade association or multiple listing service; or any person from

another business or industry whose services are requested or required as part of a real estate transaction.

- **Pages 15-17** Amend K.S.A. 58-3080 through 58-3085 to address what happens to the licenses of affiliated licensees and pending transactions when the license of a supervising broker or branch broker is either voluntarily or involuntarily deactivated.

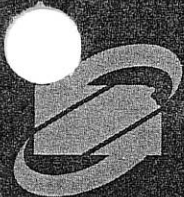
Just as a supervising broker or branch broker may allow his or her license to expire, the broker may also place the license on inactive status. Also, the Commission may place conditions on a license of a supervising broker or branch broker that include that the license be placed on inactive status.

- **Page 17, Lines 39-41** Amend K.S.A. 58-3086 to clarify that advertising of an "office" where real estate activity is conducted that is not designated as a primary office or branch office is a violation of K.S.A. 58-3086. The legislation refers to "office" as defined by K.S.A. 58-3035 rather than "location", which is not defined in current law.

The amendment would tie back to the definition of "office" so that advertising of a temporary facility, such as a model home, trailer, or clubhouse, that is used as a sales office in a new home subdivision would not constitute a violation of K.S.A. 58-3086(a)(3) provided the transaction files are maintained at the primary office or branch office.

The Commission believes that the only fiscal impact from the proposed legislation would be approximately \$5,000 per year from increased attorney fees and costs due to the expansion of the list of covered persons that would be protected from harassment or acts of or threats of physical harm towards others conducted by a licensee. The Commission does not anticipate receiving more than 1-2 more complaints per year, and the Commission would have to find that sufficient evidence exists to pursue disciplinary action against a licensee in order to incur any costs.

The Commission appreciates the Committee's consideration of this important legislation. I will be happy to stand for questions.



KANSAS
Association of REALTORS®
SOLD on Service

To: House Commerce and Labor Committee

From: Luke Bell, KAR Vice President of Governmental Affairs

Date: February 3, 2009

Subject: **HB 2068** – Enacting Numerous Technical and Substantive Changes to the Kansas Real Estate Brokers' and Salespersons' License Act

Chairman Brunk and members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in support of **HB 2068**. KAR has faithfully represented the interests of the 9,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

HB 2068 would make several technical and substantive changes to the real estate license act. We would like to express our gratitude to the Kansas Real Estate Commission for agreeing to work with the association over the course of this past year on this legislation.

As a direct result of this collaborative process, we believe that **HB 2068** would be a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees. Among other things, this legislation will strengthen our continuing education requirements, clarify the Commission's jurisdiction on disciplinary actions against real estate licensees and protect a greater number of individuals from harassment and physical abuse.

Thank you for the opportunity to appear before you today. I would be happy to respond to any questions at the appropriate time.



785.267.3610
VOICE

800.366.0069
TOLL FREE

785.267.1867
FAX

House Commerce & Labor

Date: 2-3-09

Attachment # 3

www.kansasrealtor.com