

Approved: SRB 2/12/09
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:01 a.m. on February 9, 2009, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Louis Ruiz- excused

Committee staff present:

Renae Jefferies, Office of the Revisor of Statutes
Dennis Hodgins, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Jeff Barnes, Kansas Home Inspection Registration Board
Kerry D. Parham, Kansas Association of Real Estate Inspectors
Mary Diane Minear, Secretary of State Office
John Lyle, Professional Engineering Inspections Inc
Dan Bowers, Holmes Inspection Co.

Others attending:

See attached list.

The meeting was called to order by Chairman Steve Brunk at 9:01 a.m. The Chairman opened the hearing on **HB 2260 - Amendments to the Kansas home inspectors professional competence and financial responsibility act.**

Renae Jefferies explained the changes being made to the bill. (Attachment 1).

Jeff Barnes, Kansas Home Inspection Registration Board testified as a proponent of **HB 2260** (Attachment 2). He gave a line by line explanation of the changes the Board was requesting.

Representative Bethell asked about the location of the office. Mr. Barnes indicated that it was in his home since the Board has no income yet.

Representative Pottorff asked how information would get out to people. Jeff indicated that it would be listed on the board's website.

Representative Worley asked how many members they were estimated to have a year from now. Jeff said they estimated that the initial registration would be 150 and within a year approximately 200 inspectors listed.

Representative Bethell asked what the registration fee was. Jeff said the maximum fee is \$200 and the renewal fee might be lowered.

Representative Quigley asked for an explanation of the finger printing requirement. Jeff said that they felt that they needed it to find out if there was a problem with an applicant's background.

Kerry D. Parham, Kansas Association of Real Estate Inspectors appeared as a proponent of **HB 2260** (Attachment 3). He presented several areas that they feel should be amended in the bill.

Representative Pottorff asked who approves what would qualify as continuing education. Jeff said that the Board would accept whatever the national associations accepted.

John Lyle, Professional Engineering Inspections Inc gave verbal only testimon in support of **HB 2260**. His only concert was that Engineers not lose the exemption they had in the bill.

Mary Diane Minear, Secretary of State Office appeared as a proponent of **HB 2260** (Attachment 4). The Secretary of State was only concerned that the Secretary of State be removed as custodian of the records of the Board.

CONTINUATION SHEET

Minutes of the House Commerce And Labor Committee at 9:01 a.m. on February 9, 2009, in Room 784 of the Docking State Office Building.

Representative Brunk asked if the Secretary of State maintained files for any other organizations. Diane replied that they do not. The only records they maintain are their own.

Dan Bowers, Holmes Inspection Co. appeared as an opponent to **HB 2260**. He gave verbal testimony only. He objected to the background investigations saying that they have never had a problem with that in his thirty year experience. With the economic downturn some inspectors will be pushed out of the business or they will do inspections illegally. He also agreed that there were times when an assistant was needed who could not give advice to the home owner.

The Chairman closed the hearing on **HB 2260** and adjourned the Committee.

The next meeting is scheduled for February 10, 2009.

The meeting was adjourned at 10:33 a.m.

Office of Revisor of Statutes
300 S.W. 10th Avenue
Suite 010-E, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296 -2321 FAX (785) 296-6668

MEMORANDUM

To: House Committee on Commerce and Labor
From: Renae Jefferies, Assistant Revisor
Date: February 9, 2009
Subject: HB 2260

HB 2260 creates one new statute and amends several statutes in the Kansas home inspectors professional competence and financial responsibility act.

Section 1 creates a new section which may require an applicant for registration or a registrant or applicant under investigation by the board to be fingerprinted and submit to a state and national criminal history check by the Kansas Bureau of Investigation and the Federal Bureau of Investigation. The costs for obtaining the fingerprint record and the criminal background check will be the responsibility of the applicant or registrant. The costs of the background check shall not exceed \$75. The Board may use the information for identification purposes and to determine the fitness of the person to be registered.

Disclosure of the information received by the board shall constitute a class A nonperson misdemeanor and shall constitute grounds for removal from office, loss of employment or denial, revocation or suspension of a registration issued under the act.

Section 2 amends K.S.A. 2008 Supp. 58-4502 on page 3 by deleting the definitions for dismantling and material defect.

Section 3 amends K.S.A. 2008 Supp. 58-4503 on page 4 and by removing the Secretary of State as custodian of the board's permanent records; having the governor approve the executive secretary's annual salary; and making the employees of the board classified employees under the state civil service act instead of the board fixing the employees salaries.

Section 4 amends K.S.A. 2008 Supp. 58-4504 regarding the powers and duties of the board on pages 5 and 6 by:

- Requiring the board to adopt a standards of practice and a code of ethics;
- deleting language in subsection (d);
- giving the board access to and the ability to copy any document, report, record or other physical evidence of any registered home inspector;
- requiring, at the discretion of the board, the attendance and testimony of any registered home inspector or the production of evidence for examination and copying by an applicant for registration or registrant if it relates to the qualifications for registration or allegations of misconduct by the applicant or registrant;
- giving the board the power to approve courses of education, educational providers and providers of continuing education; and
- allowing the board to contract with agencies and consultants as necessary to assist the board in obtaining information regarding the educational providers.

Section 5 amends K.S.A. 2008 58-4505 on pages 6 and 7 by allowing the board to deny, suspend or revoke a registration or impose probationary conditions on registrant or applicant who:

- Was convicted of any misdemeanor involving dishonesty or any felony;
- failed to perform a home inspection with the degree of care that a reasonable prudent home inspector would exercise under the circumstances;
- inspected for a fee any property in which the registered home inspector has a personal or financial interest without disclosing it in writing to the client beforehand;
- offered or delivered a commission, referral fee or kickback for the referral of any business to the home inspector;
- accepted an engagement to perform a home inspection or to prepare a home inspection report in which the employment or fee for the inspection was contingent upon the conclusions in the inspection report or the closing of the underlying real estate transaction:
- included as a term or condition of the agreement to conduct the home inspection a provision that disclaimed the liability of the home inspector for any errors or omissions of the home inspector or which limited the home inspectors liability for any errors or omissions to less than \$10,000 in the aggregate for each home inspection;
- failed to provide a client with a pre-inspection notice prior to the home inspection;

- failed to substantially follow the approved standards of practice and code of ethics;
- failed to respond to a summons by the board to attend and testify or produce documents or other evidence during an investigation regarding the applicant or registrant.

Section 5 also requires that all proceedings conducted under that section be in accordance with the provisions of the Kansas administrative procedure act.

Section 6 on page 7 amends K.S.A. 2008 Supp. 58-4506 by setting out various fees that may be charged by the board.

Section 7 amends K.S.A. 2008 Supp. 58-4509 by making various technical amendments to the language on pages 7 and 8. Added language on page 9 allows the board to:

- Establish, by rule and regulation, the date for renewal of registration of a license, either annually or biennially;
- renew or reinstate an expired license;
- grant inactive status to a registrant who meets all requirements for renewal except for completion of continuing education; and
- grant active status to an inactive license upon completion of the continuing education requirements and payment of the renewal fee.

Section 8 amends K.S.A. 2008 Supp. 58-4510 regarding persons who are exempt from the act, on page 10, by deleting “employed” and inserting “providing services” as a pest exterminator and by exempting “an individual assisting a registrant in a home inspection if that person does not provide an opinion, evaluation or report to a client regarding any system or component inspected.”

Section 9 amends K.S.A. 2008 Supp. 58-4511 to make it unlawful for an individual to knowingly engage or hire an individual who is not registered under the act to conduct a home inspection.

Section 10 makes technical changes to K.S.A. 2008 Supp. 58-4512 on page 10 of the bill.

The act also repeals K.S.A. 2008 Supp. 58-4513 whose language is now contained in section 5 of the bill.

The bill becomes effective upon publication in the statute book.

There is no fiscal note on the bill at this time.



KANSAS

HOME INSPECTION REGISTRATION BOARD

610 Rivera - Mulvane, KS 67110 316.393.0735 e-mail resinspect@aol.com

Board of Direc
Jeff Barnes, Chair
Ed Robinson, Vice Chair
Pat Regan, Secretary
Ron Naab
Ralph Pimentel

TO: Members of the House Commerce & Labor Committee

FROM: Jeff Barnes, Chairman, Kansas Home Inspection Registration Board
Agency Number 130

RE: HB 2260

DATE: February 9, 2009

Honorable, Chairman Brunk and Committee members,

HB 2260 was introduced as a cleanup bill for HB 2315, now K.S.A 58-4502 as signed into law last year. The bill has several technical and clerical corrections, as well as, additions to allow for the implementation of provisions in K.S.A 58-4502 which were not well defined. The Kansas Home Inspection Registration Board has been created to implement the new home inspection law, but has found that completing this task has been hindered by shortcomings in the original bill language. As with all legislation, implementation of a new law is not as simple as it sounds. Following all of the State and legal requirements can prevent implementation of the well meant intentions of the language or require drafting additional language to better define the original language. During the process of developing the Rules and Regulations and working through the steps necessary to implement the provisions of this law, we have determined that not only will we not be able to maintain the intent and sprit of original bill, but we will not be able to implement, or enforce the bill without making the requested corrections and adjustments.

I encourage you to contact me if you have any questions not answered during my verbal testimony or provided in this written testimony. I can be reached at 316-393-0735 or e-mail at resinspect@aol.com.

The Board respectfully requests your favorable support and passage of HB 2260.

Sincerely,

Jeff Barnes, Chairman
Kansas Home Inspection Registration Board

To assist you in understanding the reasoning for the requested changes, I have included on the following pages, a listing of each correction, addition or adjustment and the reason for the change.

House Commerce & Labor

Date: 2-9-09

Attachment # 2

House Bill 2260 - Explanation

Page 1, line 16 – 42: K.S.A 2008 Supp. 58-4805, Section 6 (a) (2) provides that the Board may “deny, suspend, or revoke a registration for persons being 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.” (dishonesty offenses). This new section allow for the board to investigate the applicant for issues in this area. Without the new language the Board is at the mercy and honesty of the applicant.

Page 2, line 1: This amendment changes the word “section” to “act”, because the terms defined are used throughout the act, The word “section” refers only to statute section 58-4502.

Page 3, line 20 – 27: The inclusion of these definitions in the act were discussed during one of the Board meetings by the Board members and gallery participants and it was determined that these definitions were legal definitions best left defined by the individual inspector in his or her pre-inspection agreement or notice.

Page 4, lines 38 – 39: During deliberations of HB 2315, the Senate Commerce committee placed the bill under the authority of the Secretary of State’s office. During conference meetings between the House and Senate, it was removed from their authority, but this language was inadvertently left in. The records of the Board will be kept secured by the Kansas Home Inspection Registration Board for a predetermined amount of time and then turned over to State Archives.

Page 5, line 1 - 3: This change was made to be consistent with other administrative agencies.

Page 5, line 20: The current language binds the hands of the Board to use current standards designed for a national audience, the change allows the Board to adopt standards consistent with State and local conditions, building practices and business practices.

Page 5, line 25 – 26: This was removed as it is redundant language also found under K.S.A. 2008 Supp.58-4505.

Page 5, line 27 – 39: This amendment provides detailed authority regarding investigations. Without this language the Board cannot conduct investigations in to allegations of misconduct. Please note that this investigation pertains to registered inspectors only.

Page 5, line 41: Clerical correction.

Page 6, line 1 – 5: The original language, as found at K.S.A 2008 Supp. 58-4509 (c), (7) and (8), (A), is vague and ambiguous regarding the difference between the pre-registration education and continuing education. The new language delineates the difference and also separates courses and course providers. This is important due to requirements of the Kansas Board of Regents and existing laws regarding the two types of education.

Page 6, line 13 – 23: This language is intended to be more precise as to criminal conduct that may result in disciplinary actions and gives the Board latitude to address inspectors on an individual basis for long past offences for which the individual has been rehabilitated. An example would be the 50 year old applicant who was arrested for streaking in the early 1970's and now has a sex offence conviction on his record, but has had no additional convictions. This individual poses no threat and warrants the public trust. The new language gives the Board the ability to issue a registration to the applicant.

Page 6, line 25 – 28: This adjustments to this section is incorrect and needs to read "*failing to perform a home inspection with the degree of care that a reasonably prudent home inspector would exercise under the circumstances*". This language states the legal duty of care more precisely than the current language found at K.S.A. 2008 Supp. 58-4512 (a). This language is also a requirement of bonding companies. The first half of this section discussing the standards of practice are covered on page 7 line 7.

Page 6, line 29 – 43 and page 7, line 1 – 6 is the same language as found in the original bill, but was moved under a different section for better consistency of format.

Page 7, line 7: This correction was from language moved from another sections and modified for clarification.

Page 7, line 9 -12: This is new language compelling a registrant to respond to the Boards requests for documents or testimony during an investigation. This language was added as its absents hinders the Boards authority during investigations.

Page 7, line 21 – 22: The Kansas administrative procedures act applies only to the extent that another provision of law dictates. This act establishes necessary due process for registrants charged with misconduct.

Page 7, 28 – 36: The Board and agency are completely fee funded with no fiscal dependency on the State. Because of this, the Board has adopted a "pay to play" policy so that inspectors registration fees are not used to support the activities of education providers which, if approved will be charging the inspectors a fee for their services. This section allows the Board to charge for the costs involved with reviewing education provider applications. This section

Commerce and Labor Committee testimony
Provided by the Kansas Home Inspection Registration Board
February 9, 2002
Page 4

also provides language to allow for fees for renewal and reinstatement of expired or revoked registrations.

Page 7, line 41 and Page 8, line 1: The change clarifies the original language which is unclear and confusing.

Page 8, line 30 – 33: We were advised by the Attorney General's office that this was unconstitutional language and needed to be removed. The Board has made a request for a written opinion, which has yet to be rendered.

Page 8, line 34 – 36: This change clarifies that the Board is approving proctored exams not exam administrators.

Page 8, line 38: This is a technical clarification.

Page 9, line 10 – 15: The current act implies an expiration for registration by establishing renewal requirements, but does not provide detail on expiration. This new language provides the Board the authority to establish an expiration date.

Page 9, line 16 – 23: This is new language which allows an inspector with a health concern or other issues to inactivate their registration without loss of the registration with the payment of a reduced fee and so long as continuing education hours are maintained.

Page 9, line 24 – 30: The current act does not provide a process or authority to reinstate a revoked or expired registration. This language is needed to allow for this process.

Page 10, line 26: Clarifies that employment status is not a technical requirement for the exception to apply.

Page 10, line 30 – 32: This change allows an unregistered person to assist a registrant in performing tasks during an inspection. This is an important amendment for an injured inspector needing assistance in carrying ladders or other equipment.

Page 10, line 35 - 40: Clerical correction, technical correction and clarification.

Page 11, line 16 – 17: Technical correction to clarify that the inspector's duty is to the contracted client for which the inspection is conducted and not all parties in the transaction.

Page 11, line 29 – 30: Technical correction for consistency with language used in the rest of the act.



KANSAS ASSOCIATION OF REAL ESTATE INSPECTORS

12601 Jayson Lane - Wichita, Kansas 67235

karei@cox.net Phone: 316-393-4043 Fax: 316-722-4463

February 9, 2009

Steven Brunk, Chairman
House Committee on Commerce and Labor
300 SW 10th Street Rm 141-W
Topeka KS 66612-1504

Re: Position statement on HB 2260

Dear Committee Chair and Members:

As president of largest state association of home inspectors in Kansas, I am in general agreement with the provisions of this bill, however, ask that you withhold passage until we reach final agreement on the following proposed changes.

HB2260 proposes to amend existing legislation that is a vehicle for "Registration", not "Licensure". The whole idea behind the original legislation was to minimize cost and complexity to the state and industry registrants by not duplicating processes related to competency testing, continuing education, inspection standards, and compliance oversight that are already capably provided for by several non-profit and for-profit organizations.

Certification by a national trade organization verses state registration, in this case, boils down to paying a trade organization to provide these services, in lieu of paying a larger fee to the state. It seems paying fees to the state to recreate what private industry already has developed does not improve in any way the situation for stakeholders involved in the process. One fails to see how paying a larger mandatory registration fee directly to the state is more "constitutional" than a requirement to join a trade organization of your choice and then pay a small fee for registration to the state, especially, when the aggregate cost (trade membership plus state registration) may ultimately be less than what the state might charge when these requirements are funded by only a limited number of registrants.

This requirement to join a national trade association is not in anyway unfair, burdensome, or discriminatory upon registered home inspectors, as there are multiple, reasonably priced, readily available, and non-discriminatory organizations, of which the vast majority of "active" inspectors already belong to one or more. Therefore, we believe this provision should not be eliminated from the bill.

Sec. 7 (c) (5): eliminate strike through (beginning at line 30 on page #8 of the bill)

Other miscellaneous recommended amendments are as follows:

House Commerce & Labor
Date: 2-9-09
Attachment # 3

Revise to specify that the office of Chairperson shall only be held only by one of the home inspector members on the board. After all, this is a home inspector board and its operation should not be controlled by attorneys, Realtors, or any other "at-large" member; just as we do not hold positions of supreme control over their boards.

(suggested language as follows, beginning at line 24 on page #4)

Sec. 3 (f): At the first board meeting each year, the board shall elect from one of the home inspector members an individual to hold the office of Chairperson. From the remaining members the board shall elect a vice-chairperson and secretary. The office of chairperson shall not be held by an "at-large" board member.

Revise to push back 6 months the initial registration date to allow time for the real estate market to improve and additional time to get all rules and regulations in place.

(suggested revision located at line 38 on page #7)

Sec. 7 (a): On and after January 1, 2010...

Revise to increase from 16 to 20 the number of required continuing education hours, in keeping with recent changes for minimum hours now required by all recognized national home inspector trade organizations.

(suggested revision located at line 37 on page #8)

Sec. 7 (c) #6: annually obtained a minimum of 20 hours of continuing education...

Revise to more clearly define the actions of an assistant to a home inspector:

(suggested revision beginning at line 30 on page #10)

Sec. 8 (p): A person who is not registered as a home inspector, may assist a registered home inspector in the performance of an inspection provided that the person is supervised at the inspection site by a registered home inspector and any inspection report rendered in connection with the inspection is reviewed and signed by the registered home inspector.

Thank you for your consideration. I would be happy to answer any questions that you or your committee might have.

Sincerely,



Kerry D. Parham
President, Kansas Association of Real Estate Inspectors

TESTIMONY OF THE SECRETARY OF STATE
ON HB 2260
FEBRUARY 9, 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 HB 2260, a bill regarding the Kansas Home Inspectors Registration Board and the assignment of the Secretary of State as the custodian of the permanent record.

In the 2008 session, the legislature passed HB 2315 which created the Home Inspectors Registration Board. Section 3, which is now K.S.A. 58-4503, set out the requirements for appointment of the members of the board as well as the terms and duties of each board member. Paragraph (3) (C) of §3 required the secretary of the board to maintain the permanent record. The same paragraph required the Secretary of State to be the custodian of all permanent records of the board. It is our assertion that the Secretary of State was mistakenly left in the bill and that dual responsibility for the maintenance and custody of the permanent records is problematic.

K.S.A. 2008 Supp. 45-217, as found in the Kansas Open Records Act, defines Official Custodian as, "...any officer or employee or a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control." Black's Law Dictionary defines maintenance as "the continuation of something". By definition, the duties assigned to the secretary of the board and the Secretary of State mirror one another. It is our belief that, as written, neither the board nor the Secretary of State can fulfill their statutory obligation.

The Committee may have questions regarding who should bear the responsibility of maintaining the permanent records. Our recommendation is that the Home Inspectors Registration Board maintains its own records. Currently, the Secretary of State does not act as custodian of the permanent records nor do they maintain the permanent records for any agency other than the Secretary of State. It is our understanding that record keeping is the responsibility of the agency that creates the record.

In closing, the Secretary of State requests that K.S.A. 58-4503 be amended to remove the Secretary of State as custodian of the permanent record for the Home Inspectors Registration Board and allow the Home Inspectors Registration Board the autonomy to maintain custody of its records.

Again, we appreciate the opportunity to appear before you today and I am happy to stand for questions.

Mary Diane Minear, Legal Counsel
Deputy Assistant Secretary of State

House Commerce & Labor
Date: 2-9-09
Attachment # 4