

Approved: SRB 2/16/09  
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 12, 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  
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:

Trudy Aron, American Institute of Architects

Others attending:

See attached list.

The meeting was called to order by Chairman Steve Brunk at 9:03 a.m. He opened the hearing on **HB 2238**.

**HB 2238 - Amending the fairness in private construction contract act and the fairness in public construction contract act regarding retainage.**

Trudy Aron, American Institute of Architects, presented testimony in opposition to **HB 2238 (Attachment 1)**. She said that after substantial completion there was almost always things that needed to be done for final completion. The 10% retainage provides the certainty that the contractor will come back and do them.

Representative Grange asked if we would see the AIA do away with bonding requirements. Trudy said no. John asked about a heating and air contractor who had \$30,000 sitting on the books, waiting to get his money, what does he have to do with the base or carpet finishing. Trudy said that he has nothing to do with that but until everything is done you are not sure that it is installed correctly. John said that this is work that is already done and approved and now they are going to pay us for it but withhold 10% out while we are waiting for guys to put base down.

Representative Worley commented that there could be a certificate of occupancy and there are still things to do. That is pretty common but it doesn't mean that the building is unsafe. The city is concerned about the safety issues, not whether the sheetrock is painted.

Stuart Little, on behalf of the Board of County Commissioners of Sedgwick County, Kansas presented written only testimony in opposition to **HB 2238 (Attachment 2)**.

Larry R Baer, League of Kansas Municipalities, presented written only testimony in opposition to **HB 2238 (Attachment 3)**.

Darci Meese, on behalf of Water District No. 1 of Johnson County, presented written only testimony in opposition to **HB 2238 (Attachment 4)**.

Erik Sartorius for the City of Overland Park, presented written only testimony in opposition to **HB 2238 (Attachment 5)**.

Darryl C. Lutz for Butler County presented written only testimony in opposition to **HB 2238 (Attachment 6)**.

The Chairman closed the hearing on **HB 2238**. He then opened the hearing on **HB 2260**.

**HB 2260 - Amendments to the Kansas home inspectors professional competence and financial responsibility act.**

CONTINUATION SHEET

Minutes of the House Commerce And Labor Committee at 9:00 a.m. on February 12, 2009, in Room 784 of the Docking State Office Building.

The Chairman called the committee's attention to three sets of Balloon Amendments. The Balloon by Jeff Barnes was chosen to be worked first (Attachment 7).

Representative Pottorff made a motion to strike New Section 1, on page 1, lines 16 through 42. Representative Grant seconded the motion. The motion carried.

Representative Schwab made a motion to strike lines 11 through 13 on page 3. Representative Pottorff seconded the motion. The motion carried.

Representative Grant made a motion to strike lines 20 through 27 on page 3. Representative Swenson seconded the motion. The motion carried.

Representative Grant made a motion to insert the words, "The chairperson must be a registered home inspector." after the word "position" on line 28 of page 4. Representative Hermanson seconded the motion. The motion carried.

Representative Schwab made a motion to strike lines 25 through 28 on page 6. Representative Prescott seconded the motion. The motion carried.

Representative Grange made a motion to insert on page 8, line 36 the words, "unless the applicant has been actively engaged as a home inspector as defined in K.S.A. 2008 Supp. 58-4502, and amendments thereto, and met the requirements of clause (i) or clause (ii) of subparagraph (B) of paragraph 7 of subsection (c) of this section". The motion was seconded by Representative Hermanson. The motion carried.

The consensus of the committee was to reject the strikeout of the words "for compensation" on page 9, line 33.

Representative Grant made a motion to strike lines 30 through 32 on page 10 and replace them with the words "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 home inspection report rendered in connection with the home inspection is reviewed and signed by the registered home inspector." Representative Pottorff seconded the motion. The motion carried.

Representative Bethell made a motion to strike lines 38 through 40 on page 10. Representative Quigley seconded the motion. The motion carried.

The Chairman called the committee's attention to the Dan Bowers Balloon Amendment. (Attachment 8).

Representative Schwab made a motion to insert on page 2 line 17 the language, "; which is performed as part of a purchase or sale of real estate and transfer of ownership." Representative Prescott seconded the motion.

Representative Quigley made a substitute motion that the committee not adopt the balloon on page 2 of the Bowers Balloon Amendment. Representative Bethel seconded the motion. The substitute motion carried.

Representative Bethell made a motion that we pass out HB 2260 favorably for passage as amended. Representative Grange seconded the motion. The motion carried.

The next meeting is scheduled for February 16, 2009.

The meeting was adjourned at 10:23 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 2-12-09

NAME	REPRESENTING
Diane Minear	Secretary of State
Sandy Geron	Am Inst of Architects
Corey Peterson	AGC of KS
Tom Burgess	ASA
Allen Askew	Federico Consulting
Wigh Keck	Hull Law Firm
Larry R Baser	LKM



**AIA Kansas**

*A Chapter of the American  
Institute of Architects*

February 10, 2009

**TO:** House Commerce and Labor Committee  
**FROM:** Trudy Aron, Executive Director  
**RE:** Opposition to HB 2238

Good Morning, Chair Brunk and Members of the Committee. I am Trudy Aron, Executive Director, of the American Institute of Architects in Kansas.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 120 private practice architectural firms designing a variety of project types for both public and private clients. Our members are designing tomorrow's buildings today, aiming to meet the "triple bottom line": economy, healthy people and environment.

AIA Kansas opposes HB 2238 because it removes most incentives for the completion of work by contractors and subcontractors. The retainage is the owner's assurance that work will be completed satisfactorily. Release of retainage before substantial completion of a project is at the owner's option and is often done.

The most frustrating time for the owner and architect can come at the end of a project when the architect goes through the building to see what needs to be finished. While the remaining items do not affect the occupancy and hence substantial completion, they do remain to be finished in order to achieve final completion. Let me give you some examples of problems that occur after substantial completion when the contractor has been paid for their work, except for retainage:

- Painting and base – there may be numerous places where painting needs to be touched up and cove base installed.
- Tile Work – at substantial completion, the tile work is completed except for damaged tiles that need to be replaced
- Carpet – there is a flaw in the carpet and it needs to be replaced
- Electric wall cover plates are not installed

In all of these cases, some work remains to be finished and the contractor has been paid for the work except retainage. If the owner cannot withhold the retainage due on the entire contract, the owner has no certainty that the contractor will finish the job. In that case, the owner has two choices – hire someone else to finish (often at a much higher cost) or try to get the bonding company to get the original subcontractor back on the job.

HB 2238 would allow the owner to withhold only 150% of the remaining work. All the items above have little monetary value, so the only incentive to get the job completed is the entire retention.

These statutes were passed just two years ago. At that time my testimony on the final bill was: " This bill has been a long time in the making and I would like to thank those who have worked so hard to come to a consensus ... Not everyone got what they wanted, but we believe this bill serves everyone on the construction team – owners, architects, engineers, general contractors, subcontractors and material suppliers."

AIA Kansas firmly believes the current statutes are appropriate. We urge you to oppose HB 2238. I'll be glad to answer questions.

- President  
David S. Heit, AIA  
Topeka  
President Elect  
J. Michael Vieux, AIA  
Leavenworth  
Secretary  
Hans Nettelblad, AIA  
Overland Park  
Treasurer  
Nadia Zhiri, AIA  
Lawrence
- Richard Brown, AIA  
Wichita  
Christie Carl, AIA  
Abilene  
Randle L. Clark, AIA  
McPherson  
Keith Diaz-Moore, AIA  
Lawrence  
Dale R. Duncan, AIA  
Olathe  
Gwenda S. Gigous, AIA  
Topeka  
David Livingood, AIA  
Lawrence  
Peter Magyar, Assoc, AIA  
Manhattan  
Katherine Nichols, Assoc. AIA  
Gary Nevius, AIA  
Overland Park  
C. Stan Peterson, FAIA  
Topeka  
Daniel Sabatini, AIA  
Lawrence  
Charles Smith, AIA  
Topeka  
Daniel (Terry) Tevis, AIA  
Lenexa  
Jason VanHecke, AIA  
Wichita

Executive Director  
Trudy Aron, Hon. AIA, CAE  
info@aiaaks.org





COUNTY MANAGER'S OFFICE

Sedgwick County Courthouse  
525 N. Main, Suite 343  
Wichita, KS 67203  
Phone: (316) 660-9393  
Fax: (316) 383-7946  
[wbuchana@sedgwick.gov](mailto:wbuchana@sedgwick.gov)

William P. Buchanan  
County Manager

February 11, 2009

Testimony - In Opposition to House Bill No. 2238

Presented to:  
House Committee on Commerce and Labor

By:  
Stuart Little, on behalf of the  
Board of County Commissioners of Sedgwick County, Kansas

Good morning Chairman Brunk and members of the committee. Thank you for the opportunity to present testimony on this bill. Sedgwick County is a public entity with ownership interests in real property that would be directly and adversely affected by this proposed legislation.

The Board, on behalf of the residents of Sedgwick County, is responsible for the construction of a number of public buildings and infrastructure projects, ranging from the Intrust Bank Arena (opening early next year) to courthouse improvements, detention facilities, fire stations, emergency medical system stations and many other large and small projects. As steward of the county taxpayer's dollars - the Board works hard to protect the public interest so that our construction projects are completed on time, on budget, and within the parameters expected under the construction contracts. HB 2238 would make it much harder for the Board to protect the public interest and taxpayer investments in infrastructure.

Elimination of retainage or provision for an "alternate retainage security" would remove an important incentive the contractor has to satisfy the owner. Without retainage, individual components of the work that would be required to be paid for in full as they are complete but later found to be deficient in some way when integrated into completed assemblies near the end of the project, would require the owner to prove the necessity of correction. Likewise, if liquidated damages were suffered due to delays in completion, the owner would have the obligation to collect from the contractor for damages rather than withhold the appropriate liquidated damages from the retained final payment.

Most construction contracts are long term lasting over a year. Issues of satisfactory performance do not just come up as individual components of the construction process are completed. It is more common to find problems when the work is aggregated into completed assemblies and structures. Only then can complete, final and satisfactory completion be determined.

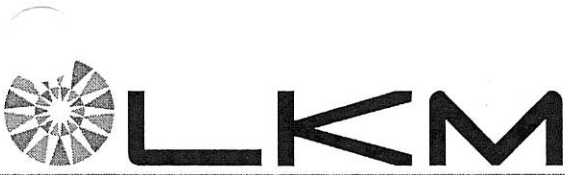
Control of the "purse strings" is necessary to insure satisfactory contract compliance. As long as the owner owes the contractor, it is the contractor's obligation to provide evidence and documentation that they are in full compliance with the contract. Once payment in full is made, it is the owner's obligation to provide evidence and documentation showing why work is not compliant with the contract.

Retainage is withheld to insure complete, on time and satisfactory performance of the work according to the conditions of the contract. It is commonly accepted in private sector and in the design, bid, build project delivery method that public sector organizations generally rely on. It is an important and effective tool to insure contract compliance.

The proposed Alternate Security would place the collection obligation for work found to be noncompliant on the owner rather than the contractor where it rightly belongs. For an alternative security to be satisfactory to the owner the money should be placed in an escrowed account with pre-established disbursement terms.

In conclusion then, Sedgwick County respectfully requests this committee not recommend passage of HB 2238 as it is currently drafted.

Thank you again for this opportunity to appear and present testimony today.



League of Kansas Municipalities

300 SW 8th Avenue- STE  
Topeka, Kansas 66603-3951  
Phone: (785) 354-9565  
Fax: (785) 354-4186

Date: February 11, 2009  
To: House Committee on Commerce and Labor  
From: Larry R. Baer  
Assistant General Counsel  
Re: HB 2238  
Written Testimony in Opposition

Thank you for allowing me to appear before you today and present testimony in opposition to House Bill 2238 on behalf of the League of Kansas Municipalities. The League's opposition is primarily based upon the public policy of allowing municipalities the flexibility to contract for public improvement projects to the benefit of the public and to negotiate such terms and conditions as are in the best interest of the public.

Also, HB 2238 caps retainage at 5%. For some public projects a greater than 5% retainage, which is prohibited in Section 4, would be appropriate, but again, the municipality would be prohibited from negotiating for such a term, perhaps to the detriment of the public. In fact, 10% is the more common percentage for retainage on public improvement projects. Municipalities should not have their hands tied in negotiating for public construction projects.

We do note that the time for payment would be extended from 30 to 45 days. This is helpful to those cities that only meet one time per month. However, even this is a term that cities should be able to negotiate and putting it in statute merely ties the hands of public entities trying to negotiate a contract that is in the best of interest of the municipality and its citizens who pay the bills for the project.

Thank you again for allowing the League to testify in opposition to HB 2238.

**WRITTEN TESTIMONY IN  
OPPOSITION TO HOUSE BILL 2238**

To: Members of the House Commerce and Labor Committee

From: Darci Meese, Governmental Affairs Coordinator

Date: February 10, 2009

RE: House Bill 2238 – Amending the fairness in private/public construction contract act regarding retainage.

On behalf of Water District No. 1 of Johnson County, Kansas, (“WaterOne”), I would like to thank you for consideration of our comments regarding Senate Bill 2238.

House Bill 2238 is an attempt at another bite at the apple. There has been significant legislation on private and public construction contracts in the last several years. It is inefficient government to continue, year after year, to entertain the same parties asking for a little more each time without some demonstration that a problem exists that must be remedied through statute. If the issues presented in 2238 necessitate action at all, it should be through the contract negotiation process, not through legislation.

Currently, WaterOne uses model construction documents created by the Engineering Joint Contract Documents Committee (EJCDC). The EJCDC construction documents are generally accepted and used nationally and are prepared by a joint committee of engineers, public agencies and contractors. With respect to retainage, WaterOne follows the recommendation of EJCDC and calculates retainage at 10%. By limiting retainage to 5% and by providing in some cases retainage cannot be used at all, we believe House Bill 2238 falls below well reasoned national standards and local practice. The EJCDC construction documents carefully balance the legitimate business needs of contractors with the equally legitimate needs of the owner to result in a fair payment process.

We also believe the proposed expansions of the definitions of “substantial completion” and “retainage” do more to muddy the water than clarify. Substantial completion is specific to each contract and cannot be defined generally in statute. The proposed addition to the term retainage seems unnecessary and confusing. The point of retainage is to allow the public owner leverage to ensure the project is completed according to the contract requirements. Retainage is not intended to be released when the subcontractor



declares his or her part of the job complete, which is what the additional language seems to indicate.

In summary, Water District No. 1 of Johnson County, Kansas opposes HB 2238. It is our opinion that this bill is a redundant attempt to legislate the contract negotiation process.

Contact Information:

Darci Meese, Governmental Affairs Coordinator  
Water District No. 1 of Johnson County, Kansas  
913-895-5516 direct  
913-579-9817 cell  
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Testimony Before The House Commerce & Labor Committee  
Regarding House Bill 2238  
By Erik Sartorius  
February 11, 2009

The City of Overland Park appreciates the opportunity to appear in opposition to House Bill 2238. The City instead supports retaining its current practices for paying contractors.

The City of Overland Park maintains a strong relationship with a multitude of contractors who perform work vital to the growth of the City. To do so, the City must be able to take local conditions into account when formulating contracts for the performance of work to be done. Artificial measures for retainage compromise the City's ability to ensure that work is performed at a standard expected by taxpayers.

Unlike contracts entered into between private entities, public construction contracts are funded by taxpayers, to which the governmental entities are ultimately accountable. City ordinances, policy resolutions and contracting procedures prescribe how the interests of all parties to the construction contracts are balanced – and protected.

Public construction contracting is also regulated by federal acquisition regulations, state statutes, Kansas Department of Transportation policies and procedures, and in some cases, county requirements. In order to ensure compliance with all applicable contracting requirements, the City of Overland Park has a standard construction contract, which among other provisions, addresses prompt payment, retainage and dispute resolution. Many of the contract provisions required by federal and state legislation require accommodations not found in private construction contracts – such as the Buy American Act, Disadvantaged Business Enterprise, and Davis-Bacon Act, to name just three.

In addition, competitive bidding is required on all public construction contracting where the lowest, responsive bid determines the contractor selected to perform. For this reason, all contractual requirements and protections are included in the contract documents, including but not limited to provisions related to retainage.

Finally, public construction contracting is done in the interest of the public good. Governmental agencies operate from a long-term perspective – serving citizens today and well into the future. Cities seek to develop long-term constructive relationships with the contractor community, on the basis that a mutually beneficial partnership serves the best interests of the citizens, cities and contractors.

The City of Overland Park believes that adequate protections exist in current law for all parties in engaged in public construction. We request that you not recommend House Bill 2238 favorably for passage.

House Commerce & Labor  
Date: 2-12-09  
Attachment # 5



**TESTIMONY**  
**HB 2238**  
**RE: Contract Retainage Bill**

**HOUSE COMMERCE AND LABOR COMMITTEE**  
**Steven Brunk, Chairman**

Presented by: Darryl C. Lutz, P.E., Butler County Engineer  
February 11, 2009

To: Mr. Chairman and Members of the House Commerce and Labor Committee

I wish to present this written testimony against the proposed HB 2238.

I am Darryl Lutz, P.E., Director of Public Works and County Engineer for Butler County. I have served in this position for nearly 18 years. I am a member of the Kansas County Highway Association (KCHA) and currently Chair the Legislative Committee of that organization. The KCHA is an affiliate organization of the Kansas Association of Counties (KAC) and is a statewide organization of County Engineers, Public Works Directors, Highway Administrators, and other highway officials. The primary purpose of the KCHA is to provide technical programs and educational opportunities for its members to advance their knowledge and skills related County road, bridge and public works functions and to develop their skills as administrators of their respective County departments.

As Chair of the KCHA Legislative Committee, I have received several e-mails from our membership concerned with proposed language in HB 2238. As Director of Public Works for Butler County I likewise concur with the concerns. The 2 primary concerns are as follows:

1. The most important concern is the stipulation that no retainage shall be held for any projects that require a 100% performance bond. A performance bond and contract retainage have 2 totally separate functions. The retainage primarily helps to assure that a contract is completed in a timely manner. Many contracts have liquidated damages for construction time beyond that stipulated in the contract. The best means to assure that liquidated damages are recoverable is with a contract retainage. Additionally, many contracts have substantial completion clauses. In most cases the contract amounts are paid out with the exception of retainage. A contractor may be required to make repairs or provide cleanup. The

Darryl C. Lutz, P.E., Director of Public Works / County En

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**House Commerce & Labor**  
**Date:** 2-12-09  
**Attachment #** 6

retainage mechanism assures that the contractor completes final completion in a timely manner. A performance bond is merely an assurance that a contractor will perform work as contracted for and protects the owner from a contractor walking away from a project. To file an action against a performance bond requires legal action, legal fees and can be very time consuming. The cleanest method of closing out a project is with the long standing "tried and trued" method of withholding a fraction of the contract amount due.

2. The second concern is allowing an "alternate security" in lieu of contract retainage. To reiterate the previously mentioned issues, to file an action against a bond or any other alternate security requires legal action, legal fees and consumes considerable time. Also, bonds and letters of credit and other forms of security do cost money which will be paid for by the contractor and passed on to the owner.

A few years ago, the Kansas County Highway Association with great success completed major revisions and updates to the County Engineer and County Highway and Bridge Statutes. The KCHA openly promoted in good faith reducing contract retainage amounts for road projects, bridge projects and benefit district projects from 10% to 5%. The KCHA, the Kansas Contractor's Association and the Kansas Association of Counties supported this legislation which passed easily and is now law. This bill attempts to undermine the good faith efforts made by Counties to put into place a reasonable contract retainage amount of 5%. This bill if passed does not favor county or any other governmental agency interested in assuring that public projects are completed cleanly and on time.

Thank you for the opportunity to submit this testimony.

Respectfully submitted.



# HOUSE BILL No. 2260

By Committee on Commerce and Labor

2-4

Jeff Barnes  
Balloon Amendment  
February 10, 2009

House Commerce & Labor  
Date: 2-12-09  
Attachment # 7

9 AN ACT concerning the Kansas home inspectors professional compe-  
10 tence and financial responsibility act; amending K.S.A. 2008 Supp. 58-  
11 4502, 58-4503, 58-4504, 58-4505, 58-4506, 58-4509, 58-4510, 58-4511  
12 and 58-4512 and repealing the existing sections; also repealing K.S.A.  
13 2008 Supp. 58-4513.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 ~~New Section 1. (a) As part of an application for registration or in~~  
17 ~~connection with any investigation of any registrant or applicant, the board~~  
18 ~~may require a person to be fingerprinted and to submit to a state and~~  
19 ~~national criminal history record check. The fingerprints shall be used to~~  
20 ~~identify the person and to determine whether the person has a criminal~~  
21 ~~history record. The board may require the applicant to submit the fin-~~  
22 ~~gerprints to the Kansas bureau of investigation and the federal bureau of~~  
23 ~~investigation for a state and national criminal history record check. The~~  
24 ~~board may use the information obtained from the fingerprinting and crim-~~  
25 ~~inal history record check for purposes of verifying the identification of~~  
26 ~~the person and in the official determination of the qualifications and fit-~~  
27 ~~ness of the person to be issued a registration or to maintain a registration~~  
28 ~~under this act.~~

29 ~~(b) Disclosure or use of any information received by the board or of~~  
30 ~~any record containing information obtained pursuant to subsection (a) for~~  
31 ~~any purpose other than that provided by subsection (a) is a class A non-~~  
32 ~~person misdemeanor and shall constitute grounds for removal from office,~~  
33 ~~termination of employment or denial, revocation or suspension of any~~  
34 ~~registration issued under this act. Nothing in this section shall be con-~~  
35 ~~strued to make unlawful the disclosure of any information obtained pur-~~  
36 ~~suant to subsection (a) by the board in a hearing pursuant to this act.~~

37 ~~(c) All costs associated with obtaining a fingerprint record shall be~~  
38 ~~the responsibility of the applicant or registrant and are to be paid directly~~  
39 ~~to the board approved contractor providing the fingerprinting services.~~  
40 ~~The costs associated with obtaining a background or criminal history rec-~~  
41 ~~ord shall be paid to the board and shall be the responsibility of the ap-~~  
42 ~~plicant or registrant and shall not exceed \$75.~~

43 Sec. 2. K.S.A. 2008 Supp. 58-4502 is hereby amended to read as

And by renumbering the remaining sections accordingly

1 (4) a completed pre-inspection agreement.

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

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

7 (1) A clear description of the scope of the home inspection;

8 (2) a clear description of any limitations on the liability of the home  
9 inspector for any errors and omissions which may arise during the home  
10 inspection; and

11 ~~(3) an identification of the national home inspection organizations  
12 approved by the board which the home inspector is a member of at the  
13 time of the home inspection; and~~

14 ~~(4)~~ an identification of the standards of practice approved by the  
15 board which the home inspector will be following during the home  
16 inspection.

17 (f) "Readily accessible" means available for visual inspection without  
18 requiring the moving of personal property, dismantling, destructive meas-  
19 ures or actions that would likely involve risk to persons or property.

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

24 ~~—(h) "Material defect" means any condition that significantly affects  
25 the value, habitability or safety of the dwelling. Style, cosmetic defects or  
26 aesthetics shall not be considered in determining whether a system, struc-  
27 ture or component is materially defective.~~

28 ~~—(i) "Board" means the Kansas home inspectors registration board.~~

29 ~~(j) (h)~~ "Registrant" means any person registered as a home inspector  
30 under this act.

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

33 Sec. 3. K.S.A. 2008 Supp. 58-4503 is hereby amended to read as  
34 follows: 58-4503. (a) There is hereby established the Kansas home in-  
35 spectors registration board. The purpose of the board is to administer  
36 and enforce the provisions of this act, promote consumer protection, en-  
37 sure professional competency and ensure the presence of a viable home  
38 inspection industry in this state.

39 (b) The board shall consist of five members to be appointed by the  
40 governor as follows:

41 (1) Three members shall be home inspectors who have actively been  
42 engaged in the practice of home inspections for at least five years im-  
43 mediately preceding their appointment and have completed at least 1,000

1 fee-paid home inspections; and

2 (2) two members shall be at-large members neither of whom shall be  
3 a home inspector.

4 (c) Prior to September 1, 2008, the governor shall appoint the initial  
5 board members as specified in subsection (b). The board shall hold its  
6 first meeting prior to January 1, 2009. Following the first meeting of the  
7 board, the newly elected chairperson shall serve for a term of three years,  
8 the vice-chairperson shall serve for a term of three years, the secretary  
9 shall serve for a term of two years and the remaining board members  
10 shall serve for a term of one year. After these initial terms have been  
11 completed, the board members shall serve terms as specified in subsec-  
12 tion (d).

13 (d) Board members shall serve three-year terms, with no board mem-  
14 ber serving more than two consecutive terms of office. Upon the expi-  
15 ration of the term of office of any member, the governor shall appoint a  
16 successor meeting the qualifications under this act. Each board member  
17 shall serve until a successor is appointed and qualified. There shall be at  
18 all times at least one board member from each congressional district in  
19 the state of Kansas.

20 (e) In the event of a vacancy in the membership of the board for any  
21 reason other than expiration of a board member's term of office, the  
22 governor shall appoint a successor meeting the qualifications of this act  
23 to fill the unexpired term.

24 (f) At the first board meeting each year, the board shall elect from  
25 its membership the following officers: Chairperson, vice-chairperson and  
26 secretary. The officers shall serve 12-month terms. A person may serve a  
27 maximum of two consecutive terms as an officer in each respective po-  
28 sition. The officers shall have the following duties:

29 (1) The chairperson shall preside over all meetings.

30 (2) The vice-chairperson shall preside over meetings in the absence  
31 of the chairperson.

32 (3) The secretary shall be responsible for:

33 (A) Preparation, publication and maintenance of the minutes of the  
34 board meetings;

35 (B) preparation of correspondence and conduct of administrative  
36 support as the chairperson may direct or as may be prescribed in the rules  
37 and regulations of the board;

38 (C) maintaining the permanent records of the board. ~~The secretary  
39 of state shall be the custodian of all permanent records of the board.~~

40 (g) Upon determining that adequate resources are available, the  
41 board may appoint an executive secretary who shall be in the unclassified  
42 service of the Kansas civil service act. The executive secretary shall receive  
43 an annual salary which shall be fixed by the board and approved by the

The chairperson must be a registered home inspector.

1 (h) approve courses of study, educational providers and providers of  
2 continuing education and continuing education courses meeting stan-  
3 dards for approval established by rules and regulations of the board; and

4 (i) contract with agencies or consultants as necessary to assist the  
5 board in obtaining information about educational providers.

6 Sec. 5. K.S.A. 2008 Supp. 58-4505 is hereby amended to read as  
7 follows: 58-4505. (a) The board may deny, suspend or revoke a registra-  
8 tion, or may impose probationary conditions on a registrant or applicant  
9 if the registrant or applicant has engaged in any of the following conduct:

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

12 (2) been convicted of or plead guilty or nolo contendere in a court of  
13 competent jurisdiction to ~~forgery, fraud, conspiracy to defraud or any~~  
14 ~~similar offense or offenses any misdemeanor involving dishonesty or to~~  
15 ~~any felony. The board shall revoke a registration following the conviction~~  
16 ~~of a felony unless the board determines the registrant will not pose a threat~~  
17 ~~to the public in the capacity as a home inspector and that such registrant~~  
18 ~~has been sufficiently rehabilitated to warrant public trust. In the case of~~  
19 ~~a person who has been convicted of a felony and who applies for an~~  
20 ~~original registration, or to reinstate a revoked registration, the application~~  
21 ~~shall be denied unless the board determines that the applicant will not~~  
22 ~~pose a threat to the public as a home inspector and that the applicant has~~  
23 ~~been sufficiently rehabilitated to warrant public trust;~~

24 (3) intentionally falsifying a home inspection report;

25 (4) ~~failing to perform a home inspection in accordance with the stan-~~  
26 ~~dards of practice approved by the board and followed by the home in-~~  
27 ~~spector, and or with the degree of care that a reasonable prudent home~~  
28 ~~inspector would exercise under the circumstances;~~

29 (5) performing any of the following acts as part of the home  
30 inspection:

31 (A) Inspecting for a fee any property in which the home inspector  
32 has any personal or financial interest unless the interest is disclosed in  
33 writing to the client before the home inspection is performed and the client  
34 signs an acknowledgment of receipt of the disclosure;

35 (B) offering or delivering any commission, referral fee or kickback for  
36 the referral of any business to the home inspector; and

37 (C) accepting an engagement to perform a home inspection or to pre-  
38 pare a home inspection report in which the employment itself or the fee  
39 payable for the inspection is contingent upon the conclusions in the home  
40 inspection report, pre-established or prescribed findings or the closing of  
41 the underlying real estate transaction;

42 (6) including as a term or condition in an agreement to conduct a  
43 home inspection any provision that disclaims the liability of the home

And by renumbering the remaining paragraphs accordingly



1 thereto, shall be required to ~~file a written registration with~~ *be registered*  
2 *by* the board.

3 (c) All registrants must:

4 (1) Be at least 18 years of age;  
5 (2) have successfully completed high school or its equivalent, unless  
6 such individual is engaged in the practice of performing home inspections  
7 on the effective date of this act;

8 (3) submit proof of current general liability insurance coverage in an  
9 amount of \$100,000 or more;

10 (4) submit proof of financial responsibility by one of the following:

11 (A) A policy of errors and omissions insurance coverage;

12 (B) a surety bond in an amount not less than \$10,000, providing that  
13 the surety bond may not be terminated without 30 days prior written  
14 notice to the board;

15 (C) an irrevocable letter of credit not less than \$10,000 issued by a  
16 bank which is insured by the federal deposit insurance corporation or its  
17 successor if such letter of credit is initially issued for a term of at least  
18 one year and by its terms is automatically renewed at each expiration date  
19 for at least an additional one-year term unless at least 30 days prior written  
20 notice of intention not to renew is provided to the board; or

21 (D) the maintenance of a minimum balance of \$10,000 in an escrow  
22 account in a Kansas financial institution as defined in K.S.A. 16-117, and  
23 amendments thereto, provided that the escrow account shall maintain the  
24 minimum balance through the term of the registrant's registration as a  
25 home inspector. The board shall be notified in writing by the financial  
26 institution within 10 days if the amount in the escrow account falls below  
27 the \$10,000 minimum balance. Upon notification, the board shall suspend  
28 such registrant's registration as a home inspector until the escrow account  
29 minimum balance is restored to greater than or equal to \$10,000;

30 ~~(5) submit proof of membership in good standing in one or more~~  
31 ~~nationally recognized society, association or organization that provides for~~  
32 ~~membership of individuals engaged in home inspections as recognized by~~  
33 ~~the board; and~~

34 ~~—(6) have successfully completed and passed a proctored written or~~  
35 ~~electronic exam as approved by the board and proctored by a testing~~  
36 ~~organization approved by the board;~~

37 ~~(7) annually obtained a minimum of 16 hours of continuing ed-~~  
38 ~~ucation by completing courses approved by the board; and~~

39 ~~(8) (7) have satisfied one of the following requirements:~~

40 (A) Have successfully completed and passed a course of study con-  
41 taining at least 80 hours of classroom and field training offered by an  
42 educational provider approved by the board; or

43 (B) (i) if the individual performs home inspections in counties with

unless the applicant has been actively engaged as a home inspector as defined in K.S.A. 2008 Supp. 58-4502, and amendments thereto, and met the requirements of clause (i) or clause (ii) of subparagraph (B) of paragraph 7 of subsection (c) of this section

1 a population of 60,000 or more, have been actively engaged in the practice  
2 of conducting home inspections for not fewer than two years prior to the  
3 effective date of this act and have completed not less than 100 fee-paid  
4 home inspections; or

5 (ii) if the individual does not perform home inspections in counties  
6 with a population of 60,000 or more, have been actively engaged in the  
7 practice of conducting home inspections for not fewer than two years  
8 prior to the effective date of this act and have completed not less than 35  
9 fee-paid home inspections.

10 (d) *The board, by rules and regulations, shall establish the date for*  
11 *renewal of a registration which may be on an annual or biennial basis. A*  
12 *registration that is not renewed in a timely manner shall be deemed exp-*  
13 *ired and may be renewed within 30 days following the expiration date*  
14 *upon completion of a renewal form and payment of a late fee established*  
15 *by the board.*

16 (e) *The board may grant inactive status to a registrant who meets all*  
17 *the requirements for renewal except for completion of continuing educa-*  
18 *tion upon written request of the registrant and payment of the inactive*  
19 *status fee which shall not exceed \$50. The registration shall become active*  
20 *upon approval of the board following completion of all continuing edu-*  
21 *cation requirements and payment of the renewal fee. A registrant whose*  
22 *registration is inactive shall not conduct home inspections during the time*  
23 *the registration is in inactive status.*

24 (f) *The board may reinstate a registration that has been expired or*  
25 *revoked for more than 30 days but less than 90 days upon application on*  
26 *a form provided by the board and payment of a reinstatement fee estab-*  
27 *lished by the board. The board may establish standards for reinstatement,*  
28 *including a requirement that an applicant whose registration was revoked*  
29 *or that has been expired for more than one year successfully complete an*  
30 *approved examination.*

31 Sec. 8. K.S.A. 2008 Supp. 58-4510 is hereby amended to read as  
32 follows: 58-4510. This act shall apply to all individuals who conduct home  
33 inspections ~~for compensation~~, but shall not apply to the following indi-  
34 viduals who are specifically exempted from registration under this act:

35 (a) A tradesman or contractor performing a single component or sys-  
36 tem evaluation or a combination of any two systems or components listed  
37 in K.S.A. 2008 Supp. 58-4502 (a)(1)(A)-(I) while acting within the scope  
38 of that occupation;

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

43 (c) an individual licensed by the state as an architect while acting

- 1 within the scope of that license;
- 2 (d) an individual licensed by the state as a professional engineer while
- 3 acting within the scope of that license;
- 4 (e) an individual licensed by the state as a real estate appraiser while
- 5 acting within the scope of that license;
- 6 (f) an individual licensed by the state as a real estate broker or sales-
- 7 person while acting within the scope of that license;
- 8 (g) an individual employed as an insurance adjuster while acting
- 9 within the scope of that occupation;
- 10 (h) an individual licensed as a manufactured home manufacturer
- 11 while acting within the scope of that license;
- 12 (i) an individual employed by a manufactured home manufacturer
- 13 while acting within the scope of that occupation;
- 14 (j) a modular home manufacturer or modular home manufacturer's
- 15 representative reviewing a residential dwelling built by the manufacturer
- 16 for the purpose of evaluating the residential dwelling;
- 17 (k) an individual licensed as a manufactured home dealer while acting
- 18 within the scope of that license;
- 19 (l) an individual employed as a manufactured home installer while
- 20 acting within the scope of that occupation;
- 21 (m) an individual licensed by the state as an insurance agent while
- 22 acting within the scope of that license;
- 23 (n) a homebuilder or homebuilder's representative reviewing a resi-
- 24 dential dwelling built by the homebuilder for the purposes of evaluating
- 25 the residential dwelling; ~~and~~
- 26 (o) an individual ~~employed~~ *providing services* as a pest exterminator
- 27 or chemical applicator while acting within the scope of that occupation
- 28 and not providing services which would constitute a home inspection
- 29 under this act; *and*
- 30 (p) ~~an individual assisting a registrant in the performance of a home~~
- 31 ~~inspection if that person does not provide an opinion, evaluation or report~~
- 32 ~~to a client regarding any system or component inspected.~~
- 33 Sec. 9. K.S.A. 2008 Supp. 58-4511 is hereby amended to read as
- 34 follows: 58-4511. (a) It shall be unlawful for an individual to perform a
- 35 home ~~inspections~~ *inspection* as defined in K.S.A. 2008 Supp. 58-4502,
- 36 and amendments thereto, without being registered under this act ~~if such~~
- 37 ~~individual is required to register with the board pursuant to K.S.A. 2008~~
- 38 ~~Supp. 58-4509, and amendments thereto~~ *or to knowingly engage or hire*
- 39 ~~an individual who is not registered under this act to conduct a home~~
- 40 ~~inspection.~~
- 41 (b) Violation of this section is a class A nonperson misdemeanor.
- 42 Sec. 10. K.S.A. 2008 Supp. 58-4512 is hereby amended to read as
- 43 follows: 58-4512. (a) It is the duty of all home inspectors registered under

7-7

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 home inspection report rendered in connection with the home inspection is reviewed and signed by the registered home inspector

**HOUSE BILL No. 2260**

By Committee on Commerce and Labor

2-4

9 AN ACT concerning the Kansas home inspectors professional compe-  
10 tence and financial responsibility act; amending K.S.A. 2008 Supp. 58-  
11 4502, 58-4503, 58-4504, 58-4505, 58-4506, 58-4509, 58-4510, 58-4511  
12 and 58-4512 and repealing the existing sections; also repealing K.S.A.  
13 2008 Supp. 58-4513.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 ~~New Section 1. (a) As part of an application for registration or in~~  
17 ~~connection with any investigation of any registrant or applicant, the board~~  
18 ~~may require a person to be fingerprinted and to submit to a state and~~  
19 ~~national criminal history record check. The fingerprints shall be used to~~  
20 ~~identify the person and to determine whether the person has a criminal~~  
21 ~~history record. The board may require the applicant to submit the fin-~~  
22 ~~gerprints to the Kansas bureau of investigation and the federal bureau of~~  
23 ~~investigation for a state and national criminal history record check. The~~  
24 ~~board may use the information obtained from the fingerprinting and crim-~~  
25 ~~inal history record check for purposes of verifying the identification of~~  
26 ~~the person and in the official determination of the qualifications and fit-~~  
27 ~~ness of the person to be issued a registration or to maintain a registration~~  
28 ~~under this act.~~

29 ~~(b) Disclosure or use of any information received by the board or of~~  
30 ~~any record containing information obtained pursuant to subsection (a) for~~  
31 ~~any purpose other than that provided by subsection (a) is a class A non-~~  
32 ~~person misdemeanor and shall constitute grounds for removal from office,~~  
33 ~~termination of employment or denial, revocation or suspension of any~~  
34 ~~registration issued under this act. Nothing in this section shall be con-~~  
35 ~~strued to make unlawful the disclosure of any information obtained pur-~~  
36 ~~suant to subsection (a) by the board in a hearing pursuant to this act.~~

37 ~~(c) All costs associated with obtaining a fingerprint record shall be~~  
38 ~~the responsibility of the applicant or registrant and are to be paid directly~~  
39 ~~to the board approved contractor providing the fingerprinting services.~~  
40 ~~The costs associated with obtaining a background or criminal history rec-~~  
41 ~~ord shall be paid to the board and shall be the responsibility of the ap-~~  
42 ~~plicant or registrant and shall not exceed \$75.~~

43 Sec. 2. K.S.A. 2008 Supp. 58-4502 is hereby amended to read as

Dan Bowers  
Balloon Amendment  
Februray 10, 2009

House Commerce & Labor  
Date: 2-12-09  
Attachment # 8

And by renumbering the remaining sections accordingly



1 follows: 58-4502. As used in this section act:

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

7 (A) Heating systems;

8 (B) cooling systems;

9 (C) electrical systems;

10 (D) plumbing systems;

11 (E) structural components;

12 (F) foundations;

13 (G) roof coverings;

14 (H) exterior and interior components; and

15 (I) any other components and systems that are part of the residential  
16 dwelling and included in the standards of practice followed by the home  
17 inspector;

18 (2) The term "home inspection" also includes any consultation re-  
19 garding the property that is represented to be a home inspection or that  
20 is described by any similar term.

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

22 (A) A compliance inspection for any code or governmental regulation;

23 (B) an examination for the conditions and operation of kitchen-type  
24 appliances, on-site water supplies or wells, private waste systems, the  
25 determination of the presence of wood-destroying organisms or pests, or  
26 the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or  
27 conditions of air quality; and

28 (C) an examination and evaluation of only two or less of the compo-  
29 nents listed in section (a)(1).

30 (b) "Home inspector" means an individual who performs a home in-  
31 spection as defined by this act.

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

35 (1) A clear identification and description of those systems, structures  
36 or components which were inspected;

37 (2) a clear identification and description of those systems, structures  
38 or components designated to be inspected under the standards of practice  
39 approved by the board and which were not inspected, and the reason why  
40 they were not inspected;

41 (3) a clear identification and description of any material defects found  
42 to be in need of repair, including any recommendations for further eval-  
43 uation; and

8-2  
which is performed as part of a purchase or sale of  
real estate and transfer of ownership.

1 (4) a completed pre-inspection agreement.

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

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

7 (1) A clear description of the scope of the home inspection;

8 (2) a clear description of any limitations on the liability of the home  
9 inspector for any errors and omissions which may arise during the home  
10 inspection; and

11 (3) an identification of the national home inspection organizations  
12 approved by the board which the home inspector is a member of at the  
13 time of the home inspection; and

14 (4) an identification of the standards of practice approved by the  
15 board which the home inspector will be following during the home  
16 inspection.

17 (f) "Readily accessible" means available for visual inspection without  
18 requiring the moving of personal property, dismantling, destructive meas-  
19 ures or actions that would likely involve risk to persons or property.

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

24 ~~—(h) "Material defect" means any condition that significantly affects  
25 the value, habitability or safety of the dwelling. Style, cosmetic defects or  
26 aesthetics shall not be considered in determining whether a system, struc-  
27 ture or component is materially defective.~~

28 ~~—(i) "Board" means the Kansas home inspectors registration board.~~

29 ~~(j) (h) "Registrant" means any person registered as a home inspector  
30 under this act.~~

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

33 Sec. 3. K.S.A. 2008 Supp. 58-4503 is hereby amended to read as  
34 follows: 58-4503. (a) There is hereby established the Kansas home in-  
35 spectors registration board. The purpose of the board is to administer  
36 and enforce the provisions of this act, promote consumer protection, en-  
37 sure professional competency and ensure the presence of a viable home  
38 inspection industry in this state.

39 (b) The board shall consist of five members to be appointed by the  
40 governor as follows:

41 (1) Three members shall be home inspectors who have actively been  
42 engaged in the practice of home inspections for at least five years im-  
43 mediately preceding their appointment and have completed at least 1,000

"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)  
And by relettering the remaining subsections accordingly

1 inspector for any errors and omissions which may arise during a home  
2 inspection or to limit the amount of damage for liability for any errors  
3 and omissions which may arise during a home inspection to less than  
4 \$10,000 in the aggregate for each home inspection;

5 (7) failing to provide a client with a pre-inspection notice prior to the  
6 home inspection;

7 (8) failing to substantially follow the approved standards of practice  
8 and code of ethics;

9 (9) failing to respond as requested by the board to any summons for  
10 attendance and testimony or to produce documents or any other physical  
11 evidence during an investigation into the qualifications of or allegations  
12 of misconduct of an applicant or registrant; and

13 ~~(5) (10) violating any provision of this act or rules and regulations~~  
14 ~~promulgated by the board pursuant to this act.~~

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

21 (c) All proceedings pursuant to this section shall be conducted in ac-  
22 cordance with the provisions of the Kansas administrative procedure act.

23 Sec. 6. K.S.A. 2008 Supp. 58-4506 is hereby amended to read as  
24 follows: 58-4506. (a) The board shall adopt rules and regulations fixing  
25 the amounts of fees provided for by this act, subject to the following: For  
26 an application for an original registration, the amount may not exceed  
27 \$200.; and for renewal of registration the amount may not exceed \$200;  
28 for an additional fee for a late renewal an amount not to exceed \$50; for  
29 reinstatement of an expired or revoked registration an amount not to  
30 exceed \$300; and for a duplicate copy of a registration certificate an  
31 amount not to exceed \$25. Other fees may be set in the amount deter-  
32 mined by the board.

33 (b) The board may charge a fee not to exceed \$500 to review an ap-  
34 plication packet submitted for approval by an education provider for pre-  
35 registration courses or a fee not to exceed \$50 to review an application  
36 packet for an education provider for continuing education classes.

37 Sec. 7. K.S.A. 2008 Supp. 58-4509 is hereby amended to read as  
38 follows: 58-4509. (a) On and after July 1, 2009, all individuals performing  
39 home inspections as defined in K.S.A. 2008 Supp. 58-4502, and amend-  
40 ments thereto, in counties with a population of 60,000 or more shall be  
41 required to ~~file a written registration with~~ be registered by the board.

42 (b) On and after January 1, 2011, all individuals performing home  
43 inspections as defined in K.S.A. 2008 Supp. 58-4502, and amendments

(11) is convicted, or pleads guilty or nolo contendere in a court of competent jurisdiction of a felony or any similar offense while holding a Kansas home inspections license;  
(12) has been convicted and found guilty or entered a plea of guilty or nolo contendere, in a felony prosecution under the laws of any state of the United States for any violent crime or sexual offense unless seven years has elapsed since the applicant was discharged from post-release supervision. At which time they are eligible for licensure if all other requirements for licensure are met;  
(13) has been convicted and found guilty, or entered a plea of guilty or nolo contendere, in a felony prosecution under the laws of any state or the United States for any type of felony other than in paragraph (12) of subsection (a) unless three years has elapsed since the applicant was discharged from post-release supervision. At which time they are eligible for licensure if all other requirements for the licensure are met.

- 1 within the scope of that license;
- 2 (d) an individual licensed by the state as a professional engineer while
- 3 acting within the scope of that license;
- 4 (e) an individual licensed by the state as a real estate appraiser while
- 5 acting within the scope of that license;
- 6 (f) an individual licensed by the state as a real estate broker or sales-
- 7 person while acting within the scope of that license;
- 8 (g) an individual employed as an insurance adjuster while acting
- 9 within the scope of that occupation;
- 10 (h) an individual licensed as a manufactured home manufacturer
- 11 while acting within the scope of that license;
- 12 (i) an individual employed by a manufactured home manufacturer
- 13 while acting within the scope of that occupation;
- 14 (j) a modular home manufacturer or modular home manufacturer's
- 15 representative reviewing a residential dwelling built by the manufacturer
- 16 for the purpose of evaluating the residential dwelling;
- 17 (k) an individual licensed as a manufactured home dealer while acting
- 18 within the scope of that license;
- 19 (l) an individual employed as a manufactured home installer while
- 20 acting within the scope of that occupation;
- 21 (m) an individual licensed by the state as an insurance agent while
- 22 acting within the scope of that license;
- 23 (n) a homebuilder or homebuilder's representative reviewing a resi-
- 24 dential dwelling built by the homebuilder for the purposes of evaluating
- 25 the residential dwelling; ~~and~~
- 26 (o) an individual ~~employed~~ *providing services* as a pest exterminator
- 27 or chemical applicator while acting within the scope of that occupation
- 28 and not providing services which would constitute a home inspection
- 29 under this act; *and*

30 (p) *an individual assisting a registrant in the performance of a home*  
 31 *inspection if that person does not provide an opinion, evaluation or report*  
 32 *to a client regarding any system or component inspected.*

is under the supervision of a registered home inspector, and the home inspection report is approved and signed by the registered home inspector

33 Sec. 9. K.S.A. 2008 Supp. 58-4511 is hereby amended to read as  
 34 follows: 58-4511. (a) It shall be unlawful for an individual to perform a  
 35 home ~~inspections~~ *inspection* as defined in K.S.A. 2008 Supp. 58-4502,  
 36 and amendments thereto, without being registered under this act ~~if such~~  
 37 ~~individual is required to register with the board pursuant to K.S.A. 2008~~  
 38 ~~Supp. 58-4509, and amendments thereto~~ *or to knowingly engage or hire*  
 39 *an individual who is not registered under this act to conduct a home*  
 40 *inspection.*

41 (b) Violation of this section is a class A nonperson misdemeanor.

42 Sec. 10. K.S.A. 2008 Supp. 58-4512 is hereby amended to read as  
 43 follows: 58-4512. (a) It is the duty of all home inspectors registered under