

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman David Wysong at 8:30 a.m. on March 10, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant
Mr. Norm Furse, Office of the Revisor of Statutes
Mr. Ken Wilke, Office of the Revisor of Statutes
Mr. Reed Holwegner, Kansas Legislative Research Department

Conferees appearing before the Committee:

Representative Steve Brunk, 85th District Chairman House Commerce & Labor
Ms. Mary Diane Minear, Legal Counsel, Deputy Assistant for Secretary of State
Mr. Jeff Barnes, Chairman, Kansas Home Inspectors Regulatory Board Agency 130
Mr. Kerry Parkham, President, Kansas Association of Real Estate Inspectors
Mr. Dan Bowers, Building Consultant, Holmes Inspection Company

Others attending:

See attached list.

Hearing on HB2260 - an act concerning the Kansas home inspectors professional competence and financial responsibility act.

Upon calling the meeting to order, Chairman Wysong announced a hearing on **HB2260** and called upon the first of three proponents to testify, Representative Steve Brunk, 85th District and Chairman, House Commerce & Labor, who offered an explanation as to why the bill is so marked up, beginning with a previous bill last year (**HB2315**) that established a home inspectors board. He stated with the goal being to establish a board that would be able to self regulate, the Committee was trying to put together some mechanism that would be consistent with many of the other boards that already existed, to copy what the home inspectors would do off of some of the existing boards. He went on to say, now that the board members were appointed, **HB2260** would actually help them with their functions, with some of the changes being made at their attorney's suggestion.

He added there was a point where they felt they needed the ability if there was some allegation of misconduct by a home inspector, to deal with this person as one of the elements of the board's functions. They were told they need to have some mechanism to be able to fingerprint if they were going to do some kind of investigation. The committee felt this was an over reach saying no home inspector goes into a home unannounced, so this is the reason there is so much strike out language on page one, Section 1. He went on to say, they did pick up some additional information that gives them the appropriate edict (found on page 5, lines 23 through 41), establishing a code of ethics and the ability to ask certain inspectors for some documentation and paperwork if there is an allegation. Lastly, he referred to page 4, lines 40 and 41 that are stricken because it was an error, stating originally it was discussed what authority they would be under and one of the bills they had, said that the Secretary of State would keep the records. No written testimony was offered.

The Chair recognized Senator Schodorf who stated the Secretary of State was not a mistake, "it may not have been the right place to put it, but in that Committee, when the Chairwoman was concerned with the large fiscal note and the technical corp. of engineers' architecture did not want, so the Committee talked to the Secretary of State who sort of agreed to set up the books there."

As there were no questions of Representative Brunk, Chairman Wysong called on Ms. Mary Diane Minear, Legal Counsel, Deputy Assistant for Secretary of State who stated she was testifying before the Committee as a neutral conferee, to answer questions relating to **HB2260** assigning the Secretary of State as custodian of the permanent records for the Kansas Home Inspectors Registration Board (KHIRB). She went on to offer a brief history of how this assignment came about:

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on March 10, 2009, in Room 545-N of the Capitol.

Page 2

- in the 2008 legislative session, **HB2315**, which created the KHIRB, was passed.

- Section 3, Paragraph (3) ©, which is now K.S.A. 58-4503, required the secretary of this board maintain the permanent records and in this same paragraph, required the Secretary of State to be the custodian of all permanent records of the board.

Adding, she said, the definition of "Official Custodian" as shown in K.S.A. 2008 Supp. 45-217, of the Kansas Open Records Act, along with Black's Law Dictionary defining "maintenance," the duties assigned to both the secretary of the KHIRB's board and the Secretary of State mirror one another and as written, it is their belief, that neither can fulfill their statutory obligations.

Ms. Minear, requests that K.S.A. 58-4503 be amended to remove the Secretary of State as custodian of the permanent record for the KHIRB and allow them the autonomy to maintain custody of its records. A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The Chair then recognized Senator Schodorf who asked if the Board is able to perform all of the duties that are described in the bill?

As there were no further questions for Ms. Minear, the Chair called on the second proponent conferee, Mr. Jeff Barnes, Chairman of Kansas Home Inspectors Regulatory Board Agency 130 who stated during the process of developing the rules & regulations and working through the steps necessary to implement the provisions of this law, they have determined that not only are they not be able to maintain the intent and spirit of the original bill, but will not be able to implement or enforce the bill without making the requested corrections and adjustments:

1. Offering a balloon amendment to clarify language deficiencies and implementation date confusion as identified by the Attorney General's office including:

A. Insert the word "registered" on page 7, line two after the second "the" to read "registered home inspector."

B. On page 11, line 31 before the first word "home" to read registered home inspector."

2. Offering a second balloon as a requirement of the bonding industry as a prerequisite to issuing a bond. The language will be added on page 8, line 17 before © and should be listed as (I) of sub paragraph (B).

He included a listing of each correction, addition, or adjustment of the bill and the reason for the change for the items which passed out of the House, to assist the Committee in understanding the reasoning for the requested changes.

Lastly, he stated the intent of the final bill last year was to set it up in a two-tier fashion:

1. Tier 1 states that inspectors who work in populations of sixty thousand or more are to be registered by July 1 of this year. However, the word "registered" was inadvertently left out in a couple of places causing that part of the bill to be enforced on July 1 of last year according to the Attorney General. But with the bill not being signed off until 5-18, it only gave inspectors a month and a half to make changes to legal documents and how the way they operate their business.

2. Tier 2 states those inspectors who work in populations of 60 thousand or less are required to be registered by July 1, 2011 and with that language it also makes them responsible for those same change last year. They are asking that the word "registered" be inserted into the bill as shown on his attachments and offered for the revisor's benefit. (See a copy of both page 7 and 11 of the bill.) A copy of his testimony, balloons, and list are (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on March 10, 2009, in Room 545-N of the Capitol.

Page 3

The Chair then asked for questions or comments from the Committee which came from Senators Emler opposing the change Mr. Barnes offered on page 3, lines 21 through 28 as there is no uniformity in the law at all and did they have rule and regs? A discussion ensued regarding Senator Emler's second question regarding the chair of the board being a registered home inspector and the vice president taking over (found on page 2) but there was no reference that the vice president be a registered home inspector. On page 5 reference was made to "standards of practice" and asking if this was a grammatical error (is it standards or standard)? In reference to the same page and section, but regarding the code of ethics, Senator Lynn asked is it particular to Kansas? Lastly Senator Reitz asked were there any opponents to this bill?

As there were no further questions or comments, the Chair called on the final proponent conferee, Mr. Kerry Parkham, President, Kansas Association of Real Estate Inspectors (KAREI) who stated they support that the Chairman of the KHIRB board be a registered home inspector and support wording allowing a non-registered person to assist a registered home inspector during an inspection, as they have members with health issues that cause them to require assistance carrying tools and getting around tight or high places.

He went on to say they do not support the Attorney General's opinion regarding implementation dates and provisions of the original **HB2315** and know as coauthor, the original intent of the legislation was to establish only rules for registered home inspectors with no provisions applicable to anyone until July 1, 2009, and only later for those in rural areas. As it is now interpreted, liability limits, bond and insurance provisions began for everyone on July 2, 2008. (A bond for this purpose is not yet available in the state of Kansas.) A copy of his testimony is (Attachment 3) attached and incorporated into the Minutes as referenced.

As there were no questions of Mr. Parkham, the Chair called on Mr. Dan Bowers, Building Consultant, Holmes Inspection Co., the only opponent conferee, who also offered a listing of each correction, addition or adjustment and the reason for the change. As they were running short of time, Chairman Wysong asked Mr. Bower for written testimony to be given to the Committee Secretary and the Revisor and that he can continue his testimony at tomorrow's meeting.

Referring the Committee to Mr. Wilke's handout, the Chair stated he had asked Mr. Wilke to go section by section of the bill to make this a little easier (similar to Mr. Barnes list), and that tomorrow they would take the easy part first referring to Mr. Wilke's technical corrections, and then go to substantive corrections. A copy of Mr. Wilke's handout is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

Adjournment

As there was no further business or discussion, the Chair adjourned the meeting. The time was 9:28 a.m.

The next meeting is scheduled for March 11, 2009.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Tuesday, March 10, 2009

| NAME | REPRESENTING |
|-------------------|---|
| John Lyle P.E. | Professional Engineering Inspection Inc. |
| Jeff Barnes | Kansas Home Inspection Registration Board |
| KERRY PARHAM | Ks. Assoc. Real Estate Inspectors |
| Cathy Fairbrother | Micro-Inspect KCMC |
| Dan Bowers | Holmes Inspection Co. |
| Nick Jordan | Capitol Strategies |
| Mike Reeder | Gaelen Braden |
| Bill Brady | Capitol Strategies |
| Michael Greenwalt | KANSAS ASSOC OF RESIDENTIAL & COMMERCIAL INSPECTION |
| Joseph Molva | ICS Bui Assn |
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TESTIMONY OF THE SECRETARY OF STATE FOR THE SENATE COMMERCE AND LABOR
COMMITTEE
HB 2260
MARCH 10, 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 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 secretary of state recommends the Home Inspectors Registration Board maintain 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

Senate Commerce Committee

Date: March 10, 2009

Attachment 1



KANSAS

HOME INSPECTION REGISTRATION BOARD

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

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

TO: Members of the Senate Commerce Committee

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

RE: HB 2260

DATE: March 10, 2009

Honorable, Chairman Wysong and Committee members,

HB 2260 was introduced as a cleanup bill for HB 2315, now K.S.A 58-4501 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 many new bills, implementation of the 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 spirit of original bill, but we will not be able to implement, or enforce the bill without making the requested corrections and adjustments in HB 2260.

We have also included balloon amendment for the insertion of the word "registered" on page 7 line 2 after the second "the" to read "registered home inspector". On page 11, line 17 after the word "No" to read "No registered home inspector", and on page 11 line 31 before the first word "home" to read "registered home inspector". This clarifies language deficiencies and implementation date confusion as identified by the Attorney General's office.

A second balloon has been added as a requirement of the bonding industry as a prerequisite to issuing a bond. The language is "Each registered home inspector electing to provide the Board a surety bond as a condition of registration, shall file with the State of Kansas a surety bond in the amount of \$10,000 issued by a surety company licensed to do business in the state of Kansas. The bond shall be conditioned upon the home inspector faithfully performing all contracts entered into and following all laws, rules and regulations governing the profession. The aggregate liability of the surety, regardless of the number of claims made against the bond or the number of years the bond remains in force, shall in no event exceed the amount of the bond. The bond may be terminated at any time by the surety upon sending 30 days' notice in writing to the principal and to the obligee." This language is to be added on page 8 line 17 before (C) and should be listed as (i) of sub paragraph (B).

Senate Commerce Committee
Date: March 10, 2009

Attachment 2

Commerce Committee testimony
Provided by the Kansas Home Inspection Registration Board
March 10, 2009
Page 2

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 KHIRB 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 for the items which passed out of the House

House Bill 2260 - Explanation

Page 1, lines 17 - 43: Stricken by the house committee (not opposed by the KHIRB)

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, lines 12 - 14: The Attorney General's office is notified us that it is not constitutional for the Board to require an inspector to belong to an association.

Page 3, line 21 - 28: 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 line 29: One of the original objectives of the authors of KSA 58-4501 was for the inspection industry to be governed by the industry to prevent influences from competing industries from making changes which would harm the profession and undermine the clients we

Commerce Committee testimony
Provided by the Kansas Home Inspection Registration Board
March 10, 2009
Page 3

serve. To that end, this change was inserted to insure the leadership of the Board remain an active professional home inspector.

Page 4, lines 40 – 41: 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 3: This change was made to be consistent with other administrative agencies.

Page 5, line 22 - 24: 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, and local building and business practices.

Page 5, line 27 – 28: This was removed as it is redundant language and is present in section KSA 2008 Supp. 58-4505 as shown on page 6 line 9

Page 5, line 29 – 41: This amendment provides detailed authority regarding investigations. Without this language the Board cannot conduct investigations into allegations of misconduct. Please note that this investigation pertains to registered inspectors only.

Page 5, line 43: Clerical correction.

Page 6, line 3 – 7: 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 15 – 25: This language is intended to be more precise as to criminal conduct that may result in disciplinary action by the Board 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.

Commerce Committee testimony
Provided by the Kansas Home Inspection Registration Board
March 10, 2009
Page 4

Page 6, line 27 – 30: This is redundant language located under this section on page 7 lines 9 – 10 and under K.S.A. 2008 Supp. 58-4512 (a), page 11 lines 12 – 14.

Page 6, line 31 – 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 9 - 10: This correction was from language moved from another sections and modified for clarification.

Page 7, line 11 -14: 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 23 – 24: The Kansas administrative procedures act applies only to the extent that another provision of law dictates. This language establishes necessary due process for registrants charged with misconduct.

Page 7, 30 – 38: 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 also provides language to allow for fees for renewal and reinstatement of expired or revoked registrations.

Page 7, line 43 and Page 8, line 3: The change clarifies the original language which is unclear and confusing.

Page 8, line 32 – 35: The Attorney General’s office has issued a written opinion indicating that this language is unconstitutional and needed to be removed.

Page 8, line 36 – 42: This change clarifies that the Board is approving proctored exams not exam administrators and inserts grandfathering language which was inadvertently left out under K.S.A 2008 Supp. 58-4502.

Page 9, line 1: This is a technical clarification.

Page 9, line 16 – 21: 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.

Commerce Committee testimony
Provided by the Kansas Home Inspection Registration Board
March 10, 2009
Page 5

Page 9, line 12 – 29: This is new language which allows an inspector with a health concerns or other issues to inactivate their registration without loss of the registration with the payment of a reduced fee and so long as continuing educations hours are maintained.

Page 9, line 30 – 36: 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 32: Clarifies that employment status is not a technical requirement for the exception to apply.

Page 10, line 36– 43 and page 11, line 1: 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. It is also beneficial for inspectors in training to be able to obtain training without the expense of registering until fully qualified.

Page 11, line 4: Clerical correction

Page 11, line 5 – 9: Stricken by the House committee

Page 11, line 28 – 29: Technical correction to clarify that the inspectors duty is to the contracted client for which the inspection is conducted and not all parties in the transaction.

Page 11, line 41 – 42: Technical correction for consistency with language used in the rest of the act.

1 ~~(6)~~ (5) including as a term or condition in an agreement to conduct
2 a home inspection any provision that disclaims the liability of the home
3 inspector for any errors and omissions which may arise during a home
4 inspection or to limit the amount of damage for liability for any errors
5 and omissions which may arise during a home inspection to less than
6 \$10,000 in the aggregate for each home inspection;

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

9 ~~(8)~~ (7) failing to substantially follow the approved standards of prac-
10 tice and code of ethics;

11 ~~(9)~~ (8) failing to respond as requested by the board to any summons
12 for attendance and testimony or to produce documents or any other phys-
13 ical evidence during an investigation into the qualifications of or allega-
14 tions of misconduct of an applicant or registrant; and

15 ~~(5)~~ ~~(10)~~ (9) violating any provision of this act or rules and regulations
16 promulgated by the board pursuant to this act.

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

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

25 Sec. 6: 5. K.S.A. 2008 Supp. 58-4506 is hereby amended to read as
26 follows: 58-4506. (a) The board shall adopt rules and regulations fixing
27 the amounts of fees provided for by this act, subject to the following: For
28 an application for an original registration, the amount may not exceed
29 \$200; and for renewal of registration the amount may not exceed \$200;
30 for an additional fee for a late renewal an amount not to exceed \$50; for
31 reinstatement of an expired or revoked registration an amount not to
32 exceed \$300; and for a duplicate copy of a registration certificate an
33 amount not to exceed \$25. Other fees may be set in the amount deter-
34 mined by the board.

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

39 Sec. 7: 6. K.S.A. 2008 Supp. 58-4509 is hereby amended to read as
40 follows: 58-4509. (a) On and after July 1, 2009, all individuals performing
41 home inspections as defined in K.S.A. 2008 Supp. 58-4502, and amend-
42 ments thereto, in counties with a population of 60,000 or more shall be
43 required to file a written registration with be registered by the board.

Registered

1 **home inspector.**

2 Sec. ~~9~~ **8.** K.S.A. 2008 Supp. 58-4511 is hereby amended to read as
3 follows: 58-4511. (a) It shall be unlawful for an individual to perform a
4 home ~~inspections~~ *inspection* as defined in K.S.A. 2008 Supp. 58-4502,
5 and amendments thereto, without being registered under this act if such
6 individual is required to register with the board pursuant to K.S.A. 2008
7 Supp. 58-4509, and amendments thereto ~~or to knowingly engage or hire~~
8 ~~an individual who is not registered under this act to conduct a home~~
9 ~~inspection.~~

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

11 Sec. ~~10~~ **9.** K.S.A. 2008 Supp. 58-4512 is hereby amended to read as
12 follows: 58-4512. (a) It is the duty of all home inspectors registered under
13 this act to conduct home inspections with the degree of care that a rea-
14 sonably prudent home inspector would exercise under the circumstances.

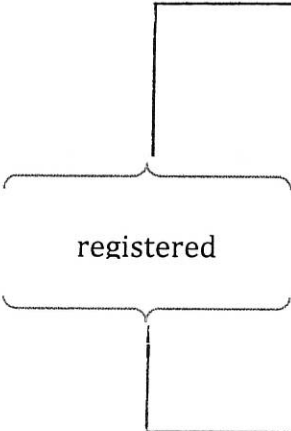
15 (b) All home inspections shall be conducted according to standards
16 of practice and a code of ethics approved by the board.

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

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

30 (e) In any action to recover damages for any error or omission of a
31 home inspector relating to a home inspection or home inspection report,
32 a home inspector is liable for any errors and omissions which may arise
33 during a home inspection in an amount of not to exceed \$10,000 in the
34 aggregate for each home inspection, or to the amount in the pre-inspec-
35 tion agreement to conduct a home inspection, if greater than \$10,000 in
36 the aggregate for each home inspection, provided that a home inspector
37 provides the customer with a clear written description in the pre-inspec-
38 tion agreement of any greater limitations on the liability of the home
39 inspector for any errors and omissions which may arise during the home
40 inspection.

41 (f) All home inspectors registered under this act shall provide cus-
42 ~~tomers and clients with a completed~~ *written* pre-inspection notice prior
43 to the home inspection.



1 (b) On and after January 1, 2011, all individuals performing home
2 inspections as defined in K.S.A. 2008 Supp. 58-4502, and amendments
3 thereto, shall be required to ~~file a written registration with~~ *be registered*
4 *by* the board.

5 (c) All registrants must:

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

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

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

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

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

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

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

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

36 ~~—(6) have successfully completed and passed a proctored written or~~
37 ~~electronic exam as approved by the board and proctored by a testing~~
38 ~~organization approved by the board unless the applicant has been ac-~~
39 ~~tively engaged as a home inspector as defined in K.S.A. 2008 Supp.~~
40 ~~58-4502, and amendments thereto, and met the requirements of~~
41 ~~clause (i) or clause (ii) of subparagraph (B) of paragraph 7 of sub-~~
42 ~~section (c) of this section;~~

43 ~~(7)~~ (6) annually obtained a minimum of 16 hours of continuing ed-

Each registered home inspector electing to provide the Board a surety bond as a condition of registration, shall file with the State of Kansas a surety bond in the amount of \$10,000 issued by a surety company licensed to do business in the state of Kansas. The bond shall be conditioned upon the home inspector faithfully performing all contracts entered into and following all laws, rules and regulations governing the profession. The aggregate liability of the surety, regardless of the number of claims made against the bond or the number of years the bond remains in force, shall in no event exceed the amount of the bond. The bond may be terminated at any time by the surety upon sending 30 days' notice in writing to the principal and to the obligee.



KANSAS ASSOCIATION OF REAL ESTATE INSPECTORS

12601 Jayson Lane - Wichita, Kansas 67235 www.karei.org Phone: 316-393-4043 Fax: 316-722-4463

March 8, 2009

The Honorable David Wysong, Chairman
Senate Commerce Committee
300 SW 10th Street; Room 545-N
Topeka KS 66612-1504

Re: Position statement on HB 2260

Dear Senator Wysong and other committee members:

As president of largest state association of home inspectors in Kansas, we support HB2260 as passed by the House. Regarding amendments made by the House; we strongly feel that the chairman of the KHRIB should be a registered home inspector, as we could imagine a situation that could develop where a board member was incapacitated and an at-large member would be put in control. This is a home inspector board, and as such should only be directed by a registered home inspector that fully knows and understands the intricacies and complexity of the home inspection business. We also endorse and strongly support wording allowing a non-registered person to assist a registered home inspector during an inspection, as we have members with health issues that cause them to require assistance carrying tools and getting around tight or high places.

Attorney General Stephen Six rendered an opinion regarding implementation dates and provisions of the original HB2315. AG Six contends that HB2315 creates 2 classes of home inspectors: those that are registered and those that are not. We don't agree with this opinion, and know as a co-author, original intent of the legislation was to establish only rules for registered home inspectors, with no provisions applicable to anyone until July 1, 2009, and only later for those in rural areas. As it is now interpreted, liability limits, bond and insurance provisions began for everyone on July 1, 2008. This means that those home inspectors in rural areas, that were to be excluded from any and all requirements of this bill until 2011 are now required today to expend the funds for insurance and surety bonding (of which a bond for this purpose is not yet available in the state of Kansas). Clearly, the many provisions of this bill revolve around implementation dates stated in section 10 (a) and (b) of the bill (July 1, 2009 and January 1, 2011). Minor changes in wording as proposed by Jeff Barnes (i.e., insertion of the word "registered" in 3 locations) would eliminate any ambiguity and restore original intent of the bill. These changes are strongly endorsed by this organization and its many members. The last thing we want to do is put additional financial burden upon our rural members that are already desperately struggling to make ends meet in these tough economic times.

Sincerely,

Digitally signed by Kerry Parham
DN: cn=Kerry Parham, o=Terra Inspections,
ou, email=terrainpections@cox.net, c=US
Date: 2009.03.08 20:07:08 -05'00'

Kerry Parham, President
Kansas Association of Real Estate Inspectors

Senate Commerce Committee

Date: March 10, 2009

Attachment 3

Senate Committee on Commerce
House Bill 2260

| Section | Original Bill Provision | Provision as Amended | Additional Information |
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| <p>1 New Section</p> | <p>Subsection (a) of this section included in the application process a requirement for fingerprinting and a criminal background check.</p> <p>Subsection (b) prohibits disclosure by the Board of any information received as a result of the information required by subsection(a). However, such information may be used by the Board at a hearing pursuant to the act. Penalties for disclosure are included. include Class A nonperson misdemeanor, removal from office and denial, suspension or revocation of registration issued under the act.</p> <p>Subsection (c) makes the costs of the fingerprinting and criminal background check the responsibility of the applicant for registration</p> | <p>This section was stricken in its entirety by the House Committee.</p> | |
| <p>2 Amends K.S.A. 2008 Supp. 58-4502</p> | <p>This section removed the definitions of the terms “dismantling” and “material defect”</p> | <p>1 The original language remained intact, but the amendment also includes, on page 2, lines 12-14, removal of the language requiring the home inspector to belong to a national organization of home inspectors approved by the Board.</p> | <p>The amendment appears to have been done to comply with Attorney General Opinion 2009-5, Dated February 11, 2009.</p> |

Senate Commerce Committee
Date: March 15, 2009

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| <p>3 Amends K.S.A. 2008 Supp. 58-4503</p> | <p>This section establishes the Kansas Home Inspectors Registration Board and provides for the organization thereof. This section removes:</p> <p>(1) the requirement that the secretary of state be the custodian of all permanent records of the Board;</p> <p>(2) makes the salary of the executive secretary of the Board approved by the Governor instead of the state finance council; and</p> <p>(3) places all other employees of the agency in the Classified Service. changes to the Governor corrects a reference to who approves the salary of the</p> | <p>2 No change from the original bill.</p> | |
| <p>4 Amends K.S.A. 2008 Supp. 58-4504</p> | <p>This section provides of the powers and duties of the Board. This section:</p> <p>(1) authorizes the Board to adopt a standards of practice and a code of ethics for home inspectors. It also removes the requirement that the standards of practice be those of a nationally recognized home inspection association;</p> <p>(2) strikes the ability to suspend revoke or fail to renew registrations and move this to another section;</p> <p>(3) authorizes investigations into allegations of misconduct against an applicant or registrant. Also grant s right to inspect records kept and maintained by a registrant;</p> <p>(4) requires attendance or production for examination of documents or physical evidence in possession of registered home inspector;</p> <p>(5) authorizes approval of educational materials and and providers of continuing education in accordance with rules and regulations; and</p> <p>(6) authorizes contracts with other agencies or consultants to obtain information with education providers.</p> | <p>3 No change from the original bill.</p> | |

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| <p>5 Amends K.S.A. 2008 Supp. 58-4505</p> | <p>This section lists grounds for suspension, revocation or denial of a registration or the imposition of probationary conditions on a registrant or applicant.</p> <p>(1) This section removes the reference to pleading guilty, nolo contendere or being convicted of forgery, fraud, conspiracy to defraud or similar offenses and replaces these with an expanded list of any misdemeanor involving dishonesty or any felony.</p> <p>(2) This section mandates the revocation of a registration involving conviction of a felony unless the Board determines that:</p> <p> (A) the registrant poses no threat to the public; and</p> <p> (B) the registrant has been rehabilitated sufficiently to warrant the public trust.</p> <p>(3) This section includes the ground that the home inspector failed to perform the inspection with the standard of care which would be exercised by the reasonably prudent home inspector.</p> <p>(4) This section includes certain conflict of interest types of acts as grounds for action against the registration. These include inspecting for a fee any property in which the home inspector has a personal or financial interest without proper disclosure; offering or delivering commissions or referral fees for business referrals; and performing or agreeing to perform home inspections where employment or fee is contingent on the outcome of the home inspection.</p> | <p>4</p> <p>This provision was removed by the House Committee amendments. (See page 6, lines 27-30)</p> <p>(This language is found on page 6, lines 33-43 and also transfers existing language from K.S.A. 2008 Supp. 58-4513(a), (b) and (c) which have been repealed.)</p> | <p>This language in (3) effectively duplicates K.S.A. 2008 Supp. 58-4512(a). (See HB 2260 as amended on page 11, lines 12-14.</p> |
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| | <p>from K.S.A.2008 Supp. 58-4513 and repeals that section.</p> <p>(5) This section includes as a ground for action :</p> <p>(A) the inclusion in an agreement for a home inspection any provision which disclaims liability of the home inspector for errors or omissions in the inspection or limits the amount of damage for such liability to less than \$10,000.</p> <p>(B) failing to provide a client with a pre-inspection notice.</p> <p>(C) Failing to respond to the Board to appear or provide documents or evidence during an investigation.</p> <p>(6) The section adds a provision requiring proceedings comply with the Kansas Administrative procedures Act (KAPA).</p> | | <p>This language in(5) (A) and (B) effectively duplicates K.S.A. 2008 Supp. 58-4512(c) and (f). (See HB 2260 as amended on page 11, lines 17-24 and 41-43.</p> |
| <p>6 Amends K.S.A. 2008 Supp. 58-4506</p> | <p>This section authorizes additional fees for:</p> <p>(1) late renewal (not to exceed \$50)</p> <p>(2) reinstatement of an expired or revoked registration (not to exceed \$300)</p> <p>(3) duplicate copy of registration (not to exceed \$25)</p> <p>(4) review of application packet for a preregistration course from educational provider for approval (not to exceed \$500)</p> <p>(5) review of application packet for a continuing education course from educational provider for approval (not to exceed \$50)</p> | <p>5 No change from the original bill.</p> | |

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| <p>7 Amends K.S.A. 2008 Supp. 58-4509</p> | <p>This section establishes registration time lines and requirements. The section removes the requirement that any person performing home inspections file a written application for registration with the Board with the requirement that such person be registered with the Board. (Corrective language) Subsection (a) requires registration by July 1, 2009 for persons performing home inspections in counties having a population of 60,000 or more. Subsection (b) requires registration by July 1, 2011 for all persons performing home inspections. Subsection (c)(5) requirement for proof of membership in one or more nationally recognized organizations of home inspectors has been removed. Subsection (c)(6) removes the requirement for exams to be proctored by a national organization requirement approved by the Board. Subsection (c)(7) removes the requirement that continuing education courses be approved by the Board. Subsection(d) authorizes renewal of registrations annual or biennial basis through rules and regulations. Subsection(e) authorizes granting if inactive status to a registrant who completes all requirements for registration except continuing education. Subsection (f) authorizes a reinstatement process for registrations which have been expired or revoked for at least 30 but not more than 90 days.</p> | <p>6 This provision was amended by the House committee to allow for grand-fathering of persons who have been performing home inspections for at least two years prior to the effective date of this act and who have met certain other conditions.</p> | <p>The amendments in (c) (5) and (c)(6) appears to have been done to comply with Attorney General Opinion 2009-5, Dated February 11, 2009.</p> |
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| <p>8 Amends K.S.A. 2008 Supp. 58-4510</p> | <p>This section establishes to whom the act applies and provides a list of exemptions.</p> <p>The exemption for pest exterminator or chemical applicator has been changed from a person employed in that capacity to one providing those services within the scope of such occupation and not as a home inspector.</p> <p>Subsection (p) creates a new exemption for any person assisting a registrant providing such person renders no opinion evaluation or report to a client regarding the items inspected.</p> | <p>7 The House committee rewrote this provision so that the person is supervised by a registered home inspector who also is responsible for any home inspection report issued.</p> | |
| <p>9 Amends K.S.A. 2008 Supp. 58-4511</p> | <p>This section declares that any home inspection by an individual who is not registered as a home inspector is unlawful.</p> <p>This section also makes it unlawful for any person to knowingly hire an unregistered home inspector. Violation of this section is a Class A nonperson misdemeanor.</p> | <p>8 The House Committee removed this second provision.</p> | |

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| <p>10 Amends K.S.A. 2008 Supp. 58-4512</p> | <p>Subsection (a) requires registered home inspectors to conduct home inspection under the degree of care that a reasonably prudent home inspector would exercise under the circumstances.</p> <p>Subsection (b) requires home inspections to be conducted under standards approved by the Board.</p> <p>Subsection (c) prohibits the inclusion in an agreement for a home inspection any provision which disclaims liability of the home inspector for errors or omissions in the inspection or limits the amount of damage for such liability to less than \$10,000.</p> <p>Subsection (d) imposes a 12 month statute of limitation for recovery of damages from the date of the home inspection. This provision limits the right of recovery to the client instead of any party to the real estate transaction.</p> <p>Subsection (e) limits the amount of damage recovery for errors and omissions in the home inspection to \$10,000 or less unless the home inspection contract provides for a greater amount and the written pre-inspection agreement clearly discloses the greater amount.</p> <p>Subsection (f) requires all registered home inspectors to customers and clients with a completed pre-inspection notice prior to the actual home inspection. The terms "customers and" are deleted. Also "completed" is replaced by the term "written".</p> | <p>9 No change from the original bill.</p> | |
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