

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Wysong at 8:30 a.m. on March 12, 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:

Mr. Richard Wienckowski, Chief Financial Officer, Hills Pet Nutrition
Mr. David Kerr, Secretary, Kansas Department of Commerce

Others attending:

Hearing on HB2270 - an act concerning income taxation relating to apportionment of business income

Upon calling the meeting to order, Chairman Wysong announced there would be a hearing on **HB2270** and called on Mr. Ken Wilke, Office of the Revisor of Statutes, to explain the bill. He began with the amendment, starting at the bottom of page 5 and continuing on to page 6, which basically allows the Secretary of Revenue to extend the performance date, provided in subsection (b)(6), for a period not to exceed six months based upon a showing of good cause receiving certification that the applicant has complied with the requirements of this section.

As there were no questions of Mr. Wilke, the Chair called on the first of two proponent conferees to testify, Mr. Richard Wienckowski, Chief Financial Officer, Hills Pet Nutrition who offered a brief history of their company. (Ex. Hills has continuously engaged in business in Topeka for more than 100 years.) He went on to say, encouraged by the legislature enacting K.S.A. 79-3279, Hills is engaged in a major expansion in Emporia which will exceed their current projections of spending some \$190 million and creating significantly more than 100 new jobs.

However, he said due to construction factors beyond their control, reaching the two thresholds by December 31 of this year might be problematic. He stated **HB2270** would allow the Secretary of Revenue a limited amount of flexibility, if just cause was determined for the delay, to extend the deadline for completion of a manufacturing facility after the Department of Commerce has certified that the entity was in substantial compliance. A copy of Mr. Wienckowski's testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

As there were no questions of Mr. Wienckowski, the Chair called on Mr. David Kerr, Secretary, Kansas Department of Commerce, who stated they strongly support this because:

1. This is a very targeted and specific amendment to the bill,
2. It does not allow other companies to opt into the bill,
3. It does not extend the bill,
4. Very simply, it allows companies that are already in the process (having an application) and applied for a six-month extension to complete the project. A copy of his testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The Chair thanked both conferees and stated as the Committee heard, this bill was passed by both the House and Senate a couple on years ago and the Secretary of Revenue and the Secretary of Commerce have both

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basically signed onto this extension to comply. As there were no opponents, neutral or written testimonies, and no questions from the Committee, the Chair asked if there was a motion.

Senator Schodorf made a motion to pass out favorably HB2270 and put it on the consent calendar. It was seconded by Senator Lynn and the motion passed.

Continued hearing and possible action on HB2260 - an act concerning the Kansas home inspectors a professional competence and financial responsibility act

The Chair announced the next order of business was the continued hearing on **HB2260** and again, called on Mr. Wilke who offered, as requested in the March 11, 2009 meeting, something like a partial balloon to include material that was not covered in yesterday's hearing and some of the issues that have already been discussed beginning on page 3, "material defect" is being reinstated and offered two versions of the definition:

1. The first version is the one that came with the bill
2. The second is the definition offered in Mr. Bowers' testimony. (Mr. Wilke mentioned he changed the language somewhat by inserting "the cost of repairing such material defect" to comply with what he thought Mr. Bowers intended.)

The Chair asked Senator Emler for comments who stated, the second version is clearer and will probably help limit some litigation because it offers a threshold where the first does not (the 1% or \$2,000.)

The Chair then asked if the Committee had any problems with taking the second definition and as there were none or further discussion, Senator Wagle made a motion to accept the second definition (h). It was seconded by Senator Emler and the motion carried.

Mr. Wilke continued explaining the bill referring to page 4, stating in accordance with directions that have been issued, he amended line 29 so that both the Chairperson and the Vice Chairperson be registered home inspectors and on line 40, the word "permanent" has been removed so there would not be a problem with the Open Records Act. Referring to page 5, Mr. Wilke said instead of taking out the word "a" and choosing "standards" he chose "a standard" to make it parallel with the language of "a code of ethics" in line 24.

The Chair asked the Committee if there were any problems with these changes? As there were none, Mr. Wilke continued his explanation of the bill referring the Committee to Section 4, where language involving mandatory revocation has been taken out of lines 17 through 25 and moved to page 7, inserting a separate subsection (b)(1). He would modify this slightly if the Committee wants, perhaps limit this kind of provision to crimes involving sex offenses, violent crimes, etc. (not sure where the Committee wants to draw the line and this.)

He went on to say there were some time frames in Mr. Bowers testimony that have not yet been incorporated. This is the type of thing he was thinking about when he said they need to make changes to clarify this section. The Chair asked Mr. Wilke to offer the Committee some choices.

Mr. Wilke first asked if the Committee wanted to make the mandatory revocation aimed primarily at the sex offenses as was done in the real estate act? (Re: K.S.A. 58-3043)

The Chair thought what he was hearing, and asked the Committee to correct him if he was wrong, was marijuana was brought up and did not think this is where they want to be headed. He recognized Senator Wagle who asked Mr. Wilke, if there was already a statute in the licensure for the Realtors Act? Mr. Wilke said it does and it allows discretion within the agency to look at various felonies. (Ex. Sex offenders cannot get a license until 15 years after their conviction.) Senator Wagle suggested that they use this, the Chair asked the will of the Committee and it was a unanimous agreement to use.

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Referring to page 7 in subsection © lines 17 through 22, Mr. Wilke stated, in his commentary yesterday this particular language basically gets to the point of requiring a hearing every time a civil penalty or civil fine might be used and is suggesting the language proposed on the right-hand side of page 7, which requires the board to make findings after notice and an opportunity for a hearing, easing the situation for the board if they have a default situation. (For instance, if they notify someone they wish to impose a civil penalty or fine used in this act, the language that is here would probably work, but it also leaves open an argument. If you cannot find the person and the board goes ahead and imposes the fine, an argument might be made that the person fined was not there and no hearing, therefore is not valid.) The Chair called on Senator Emler who agreed as did the Committee when polled.

The Committee was referred to page 8 where some bond language had been incorporated that Mr. Barnes had suggested in his testimony. Mr. Wilke stated he had to restructure slightly, basically following the statutes in the Kansas pesticide law. Two changes he noted are:

1. The amount of the bond would have to be so much per year that way you do not have a situation where you have one bond and you have a complaint that comes in two or three years later you do not have just one bond sitting there, you have one for each year of operation.
2. Referring to the language proposed by Mr. Barnes regarding an issue by surety, this would require a corporate surety bond be authorized to do business in this state.
3. He has added rules and regs.

The Chair asked what a \$10,00 surety bond cost?

Referring to page 9, Mr. Wilke said the act, as currently proposed, had effective subpoena and production of document provisions, yet there is nothing in writing that requires the home inspector to maintain or keep any documents. Language has been added requiring them to keep those documents and is listed in (A)(B) and ©. In addition, he added (D) to allow the board the ability to prescribe additional information by rules and regulations to establish a definite starting date for retention of documents.

On page 11, line 15, Mr. Wilke inserted the words "a standard" to correspond with the earlier change found on page 5 and the word "registered" found on lines 17, 25, and 31, suggested by Mr. Barnes, inserted to be consistent. Mr. Wilke concluded by saying this is as far as he had gotten in comparing and incorporating Mr. Barnes and Mr. Bowers' testimonies. However, regarding Mr. Bowers' testimony there were some questions raised as to whether the \$10,000 amounts on lines 21, 23, 33 and 35 are too high?

The Chair then called on Mr. Bowers to answer questions from the Committee which came from Senators Lynn and Holland including revisiting his explanation regarding surety bonds; his reasoning of going from \$10,000 to \$1500; what is that for and what does it cover? Also, on page 8 can he explain (3) and additionally (B)?

The Chair then called on Mr. Luke Bell to answer questions from Senators Lynn, Kelsey and Emler including asking him to refresh them on the \$10,000 liability and what impact would this have on their industry? What about his contention they can go to small claims court?

The Chair recognized Senator Emler who asked Mr. Wilke, with regards to the material deficit, how would this \$1500 interface with the \$2,000?

Senator Kelsey made a motion to set "material defect" at \$2,000 and the surety bond at \$2,000. It was seconded by Senator Wagle. A discussion ensued with Senator Lynn stating she was not comfortable overriding the dollars decided on last year so she cannot support the motion. Mr. Wilke said regarding the material defect definition, as written it states "\$2,000 or 1% whichever is greater," so the 1% will fluctuate depending on the value of the house. Mr. Bowers was asked by Senator Holland to explain his reasoning for this.

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The Chair then recognized Senator Emler who referred to line 32 on page 11 asking shouldn't this also be "registered home inspectors?" And Senator Holland, who referred to the bottom on page 8 and top of page 9, asked if the continuing education is limited to regions?

A discussion ensued with Senators Holland, Emler, and Wysong, Mr. Bowers and Mr. Wilke regarding the issue of large counties fee collection and registration time period of 2009 and with small counties of 2011, why not move to 2010? Fees need to be set by rules and regs. The Chair asked the Committee and all agreed to the 2010 time frame.

A copy of Mr. Wilke's additional changes to the bill that were not covered in yesterday's hearing and some issues were already discussed is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there was no further discussion, Senator Lynn made a substitute motion to Senator Kelsey's motion to leave language as is on page 11, lines 33 through 35. It was seconded by Senator Holland and with a show of hands, the motion did not pass.

The Chair went back to Senator Kelsey's original motion, seconded by Senator Wagle, setting the material deficit at \$2,000 and the surety bond at \$2,000 and with a show of hands the motion carried.

Chairman Wysong then recognized Mr. Bowers who asked if Mr. Wilke could make a change on page 9, (7), which should read as "home inspector?" The Committee authorized Mr. Wilke to make any technical changes to this bill.

Adjournment

As it was going on 9:30 a.m., the Chair suggested they meet tomorrow, March 13, 2009 to finish up this substitute bill and asked the Committee to think about putting in a sunset provision to see how this commission is doing in three or four years. He then adjourned the meeting. The time was 9:30 a.m.

The next meeting is scheduled for March 13, 2009.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Thursday, March 12, 2009

NAME	REPRESENTING
DAVID KERR	Commerce Dept
John Petrusa	Capitol Strategies
Gabe Krasnowski	Mitro-Spec INC
MARK BORANYAK	CAPITOL STRATEGIES
Nick Jordan	Capitol Strategies
Leigh Keck	Main law firm
Stacey Van Houtan	The Home Inspection Co.
DAN BOWERS	KANSAS HOME INSPECTORS
Kent Eckles	KS Chamber of Commerce
Christy Caldwell	Joplin Chamber
John Lyle P.E.	Professional Engineering Inspectors Inc.
Mike Rees	KSPE
Megan Inguire	KDOL
Luke Bell	KS Assoc. of REALTORS
Callie Hartle	KS Assn. for Justice
Diane Minear	Secretary of State
Wendy [unclear]	KAPA KEMCA
Wendy [unclear]	KAPA KEMCA
Christy Paffy	Frieden & Forbes

Testimony of Richard Wienckowski
Hills Pet Nutrition, Inc.
Support of HB 2270
Senate Commerce Committee
March 12, 2009

Chairman Wysong, members of the Committee. My name is Richard Wienckowski and I am the Chief Financial Officer of Hill's Pet Nutrition. I am appearing today on behalf of Hill's Pet Nutrition. I am pleased to offer our support for HB2270. Hill's is the manufacturer and distributor of nutritionally balanced therapeutic and wellness pet foods. Our sales exceed \$2 billion and our products are sold in over 100 countries around the world. We export over \$400 million of products from Kansas to these countries and source most of our raw materials from local area farmers and meat producers. Hill's Pet Nutrition has been continuously engaged in business in Topeka for over 100 years.

We are currently engaged in a major expansion in Emporia, Kansas. This new plant will produce Science Diet® and Prescription Diet® dry products for domestic and international markets. As an encouragement to locate this plant in Kansas, the legislature enacted KSA 79-3279 which allows a manufacturing concern investing \$100 million and creating 100 or more new jobs before Dec 31, 2009, to have its income apportioned to Kansas based on its sales in Kansas (a single factor formula). Our Emporia expansion will exceed the \$100 million investment. Current projections are that we will spend some \$190 million, and we are creating significantly more than 100 new jobs. Unfortunately we faced about a three month delay in construction due to factors beyond our control. As a result, reaching the two thresholds by December 31st of this year might be problematic.

HB 2270 would allow the Secretary of Revenue a limited amount of flexibility to extend the deadline for completion of a manufacturing facility. This extension would only be granted if the Secretary determined that there was good cause for the delay and after the Department of Commerce certified that the entity was in substantial compliance. In no case could the deadline be extended for more than six months.

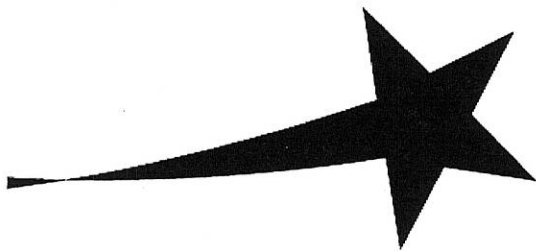
We would urge your support for HB 2270 and would be glad to answer any questions you have at the appropriate time.

Senate Commerce Committee
Date: March 12, 2009
Attachment 1



KANSAS
DEPARTMENT OF COMMERCE

David D. Kerr, Secretary



Testimony Presented by David D. Kerr
Kansas Department of Commerce

Senate Commerce Committee

March 12, 2009

For more information on this topic contact:

David D. Kerr

Phone: (785) 296-2741

Fax: (785) 296-3665

www.kansascommerce.com

Senate Commerce Committee

Date: March 12, 2009

Attachment 2

**Kansas Department of Commerce
Testimony to
Senate Commerce Committee**

Chairman Wysong and members of the Committee, thank you for the opportunity to testify in support of House Bill No. 2270, which amends K.S.A. 2008 Supp. 79-3279.

The Department of Commerce is in favor of the proposed amendment which is intended to ensure that businesses which are eligible for the incentives under the law are able to realize those benefits. The current "sunset" date of December 31, 2009, for placing into service the \$100 million investment necessary to qualify under the law has become overly restrictive based on the general economic downturn.

The proposed amendment would grant the Secretary of Revenue and the Secretary of Commerce the discretion to determine that substantial compliance with the job creation and investment requirement is being actively pursued in good faith and allow up to an additional six months for full compliance. This would ensure that businesses diligently seeking to meet the statutory requirements are not unduly prejudiced by the devastating economic downturn of the past several months. The language is very targeted and limited in application to projects already in progress. This makes good sense from an economic development perspective.

Thank you for your consideration of HB 2270. I will be happy to stand for any questions.

HOUSE BILL No. 2260

By Committee on Commerce and Labor

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10 AN ACT concerning the Kansas home inspectors professional compe-
11 tence and financial responsibility act; amending K.S.A. 2008 Supp. 58-
12 4502, 58-4503, 58-4504, 58-4505, 58-4506, 58-4509, 58-4510, 58-4511
13 and 58-4512 and repealing the existing sections; also repealing K.S.A.
14 2008 Supp. 58-4513.
15

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

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

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

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

Senate Commerce Committee

Note: March 12, 2009

Attachment 3

1 Sec. ~~2~~ 1. K.S.A. 2008 Supp. 58-4502 is hereby amended to read as
2 follows: 58-4502. As used in this ~~section~~ *act*:

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

8 (A) Heating systems;

9 (B) cooling systems;

10 (C) electrical systems;

11 (D) plumbing systems;

12 (E) structural components;

13 (F) foundations;

14 (G) roof coverings;

15 (H) exterior and interior components; and

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

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

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

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

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

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

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

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

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

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

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

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1 uation; and
 2 (4) a completed pre-inspection agreement.
 3 (d) "Pre-inspection agreement" means a written contract between a
 4 customer and a home inspector to do a home inspection.
 5 (e) "Pre-inspection notice" means a document which shall be pro-
 6 vided to a customer prior to the start of the home inspection. The pre-
 7 inspection notice shall contain, at a minimum, the following information:
 8 (1) A clear description of the scope of the home inspection;
 9 (2) a clear description of any limitations on the liability of the home
 10 inspector for any errors and omissions which may arise during the home
 11 inspection; and
 12 (3) ~~an identification of the national home inspection organizations~~
 13 ~~approved by the board which the home inspector is a member of at the~~
 14 ~~time of the home inspection, and~~
 15 ~~(4) an identification of the standards of practice approved by the~~
 16 ~~board which the home inspector will be following during the home~~
 17 ~~inspection.~~
 18 (f) "Readily accessible" means available for visual inspection without
 19 requiring the moving of personal property, dismantling, destructive meas-
 20 ures or actions that would likely involve risk to persons or property.
 21 (g) ~~"Dismantling" means to take apart or remove any component,~~
 22 ~~device or piece of equipment that is bolted, screwed or fastened by any~~
 23 ~~other means and that would not be taken apart or removed by a hom-~~
 24 ~~eowner in the course of normal and routine household maintenance.~~
 25 ~~(h) "Material defect" means any condition that significantly affects~~
 26 ~~the value, habitability or safety of the dwelling. Style, cosmetic defects or~~
 27 ~~aesthetics shall not be considered in determining whether a system, struc-~~
 28 ~~ture or component is materially defective.~~
 29 ~~(i) "Board" means the Kansas home inspectors registration board.~~
 30 (j) (h) "Registrant" means any person registered as a home inspector
 31 under this act.
 32 (k) (i) "Applicant" means any person who is applying for registration
 33 or renewal of registration under this act.
 34 Sec. 3. 2. K.S.A. 2008 Supp. 58-4503 is hereby amended to read as
 35 follows: 58-4503. (a) There is hereby established the Kansas home in-
 36 spectors registration board. The purpose of the board is to administer
 37 and enforce the provisions of this act, promote consumer protection, en-
 38 sure professional competency and ensure the presence of a viable home
 39 inspection industry in this state.
 40 (b) The board shall consist of five members to be appointed by the
 41 governor as follows:
 42 (1) Three members shall be home inspectors who have actively been
 43 engaged in the practice of home inspections for at least five years im-

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

(h) "Material defect" means any condition that significantly affects the value, habitability or safety of the dwelling and the cost of repairing such material defect equals 1% of the sales price or \$2,000 whichever is greater. Style, cosmetic defects or aesthetics shall not be considered in determining whether a system, structure or component is materially defective.

1%

Material defect - was limitations liability

↓

Need to know what ND is and what determine

1 mediately preceding their appointment and have completed at least 1,000
2 fee-paid home inspections; and

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

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

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

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

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

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

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

34 (3) The secretary shall be responsible for:

35 (A) Preparation, publication and maintenance of the minutes of the
36 board meetings;

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

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

42 (g) Upon determining that adequate resources are available, the
43 board may appoint an executive secretary who shall be in the unclassified

Both the chairperson and the vice-chairperson shall

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1 service of the Kansas civil service act. The executive secretary shall receive
2 an annual salary which shall be fixed by the board and approved by the
3 ~~state finance council~~ *governor*.

4 (h) The board may employ such other employees as may be neces-
5 sary, ~~fix salaries of all its employees who shall be in the classified service~~
6 *under the Kansas civil service act*, and make such other expenditures as
7 are necessary to properly carry out the provisions of this act.

8 (i) Each board member shall be paid compensation, subsistence al-
9 lowances, mileage and other expenses as provided in K.S.A. 75-3223, and
10 amendments thereto.

11 (j) The board shall hold meetings in such places as it shall determine
12 and at such times as it may designate or on request of two or more of its
13 members. A majority of the members of the board shall constitute a
14 quorum.

15 (k) Applications for original registration and renewal of registration
16 shall be made in writing or by electronic filing to the board on forms
17 approved by the board and shall be accompanied by the appropriate fees
18 prescribed by the board.

19 Sec. ~~4~~ 3. K.S.A. 2008 Supp. 58-4504 is hereby amended to read as
20 follows: 58-4504. The board shall have the following duties and powers:

21 (a) Administer and enforce the provisions of this act;

22 (b) approve and adopt the ~~a~~ ^{standards} ~~of practice of nationally-rec-~~
23 ~~ognized home inspection associations which meet the requirements of~~
24 ~~this act and a code of ethics;~~

25 (c) register qualified applicants as home inspectors pursuant to this
26 act;

27 (d) ~~suspend, revoke or fail to renew the registration of a home in-~~
28 ~~pector under this act;~~

29 ~~(e) make all necessary investigations into the qualifications of or al-~~
30 ~~legations of misconduct against an applicant and registrant. In connection~~
31 ~~with any investigation by the board or its duly authorized agents or em-~~
32 ~~ployees shall at all reasonable times have access to and the right to examine~~
33 ~~and copy any document, report, record or other physical evidence of any~~
34 ~~registered home inspector being investigated or any document, report,~~
35 ~~record or other evidence maintained by and in the possession of any reg-~~
36 ~~istered home inspector;~~

37 (e) *require, at the discretion of the board, the attendance and testi-*
38 *mony of any registered home inspector or the production for examination*
39 *or copying documents or any other physical evidence if such evidence*
40 *relates to qualifications for registration or allegation of misconduct of an*
41 *applicant or registrant;*

42 (f) approve examinations to determine the qualifications of applicants
43 for registration; and

standard

1 (g) adopt all rules and regulations which are necessary to carry out
2 the provisions of this act;

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

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

8 Sec. 5: 4. K.S.A. 2008 Supp. 58-4505 is hereby amended to read as
9 follows: 58-4505. (a) ~~The~~ board may deny, suspend or revoke a registra-
10 tion, or may impose probationary conditions on a registrant or applicant
11 if the registrant or applicant has engaged in any of the following conduct:

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

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

26 (3) intentionally falsifying a home inspection report;

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

31 ~~(5) performing any of the following acts as part of the home~~
32 ~~inspection:~~

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

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

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

Subject to the provisions of subsection(b), the

3-6

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;

registered

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

9 ~~(9)~~ (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.

(c) 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.

(b)(1) The board shall revoke a registration following the conviction of a felony unless the board determines the registrant:

- (A) Will not pose a threat to the public in the capacity as a home inspector; and
- (B) has been sufficiently rehabilitated to warrant public trust.

(d) 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.

(2) Whenever a person who has been convicted of a felony applies for an original registration or to reinstate a revoked registration, such person's application shall be denied unless the board determines that the applicant:

- (A) Will not pose a threat to the public as a home inspector; and
- (B) has been sufficiently rehabilitated to warrant public trust.

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.

(c) In addition to or in lieu of any other administrative, civil or criminal remedy provided by law, if the board determines after notice and an opportunity for a hearing in accordance with the Kansas administrative procedures act that a registrant has violated any provision of this act or any rule and regulation adopted hereunder, the board may impose on such registrant a civil fine not to exceed \$500 for each violation. (Alternate version)

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.

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 actively~~
39 ~~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 board a surety bond in the amount of not less than \$10,000 per year. Such bond shall be issued by a corporate surety authorized to do business in this state. The surety bond shall state the effective date and the expiration date. The registered home inspector shall be named as principal. The bond shall to the state of Kansas and shall be conditioned upon the registered home inspector faithfully performing all contracts entered into and complying with all provisions of this act and acts amendatory thereof and supplemental thereto and following all rules and regulations governing the profession. Regardless of the number of claims made against the bond or the number of years the bond remains in force, the aggregate liability of the surety 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, the obligee and the board

1. general libb. of 10K a year
2. 10 K

10K - reasonable amount
→ Real Estate Lic. 100K-250K
→ When lower amount to 1500 eliminates
CONS. liability for legal rep.
cover real claims
Small Claims

3-8

(8)

1 ucation by completing courses approved by the board; and
 2 ~~(8)~~(7) have satisfied one of the following requirements:
 3 (A) Have successfully completed and passed a course of study con-
 4 taining at least 80 hours of classroom and field training offered by an
 5 educational provider approved by the board; or
 6 (B) (i) if the individual performs home inspections in counties with
 7 a population of 60,000 or more, have been actively engaged in the practice
 8 of conducting home inspections for not fewer than two years prior to the
 9 effective date of this act and have completed not less than 100 fee-paid
 10 home inspections; or
 11 (ii) if the individual does not perform home inspections in counties
 12 with a population of 60,000 or more, have been actively engaged in the
 13 practice of conducting home inspections for not fewer than two years
 14 prior to the effective date of this act and have completed not less than 35
 15 fee-paid home inspections.
 16 (d) *The board, by rules and regulations, shall establish the date for*
 17 *renewal of a registration which may be on an annual or biennial basis. A*
 18 *registration that is not renewed in a timely manner shall be deemed ex-*
 19 *pired and may be renewed within 30 days following the expiration date*
 20 *upon completion of a renewal form and payment of a late fee established*
 21 *by the board.*
 22 (e) *The board may grant inactive status to a registrant who meets all*
 23 *the requirements for renewal except for completion of continuing educa-*
 24 *tion upon written request of the registrant and payment of the inactive*
 25 *status fee which shall not exceed \$50. The registration shall become active*
 26 *upon approval of the board following completion of all continuing edu-*
 27 *cation requirements and payment of the renewal fee. A registrant whose*
 28 *registration is inactive shall not conduct home inspections during the time*
 29 *the registration is in inactive status.*
 30 (f) *The board may reinstate a registration that has been expired or*
 31 *revoked for more than 30 days but less than 90 days upon application on*
 32 *a form provided by the board and payment of a reinstatement fee estab-*
 33 *lished by the board. The board may establish standards for reinstatement,*
 34 *including a requirement that an applicant whose registration was revoked*
 35 *or that has been expired for more than one year successfully complete an*
 36 *approved examination.*
 37 Sec. 8-7. K.S.A. 2008 Supp. 58-4510 is hereby amended to read as
 38 follows: 58-4510. This act shall apply to all individuals who conduct home
 39 inspections for compensation, but shall not apply to the following indi-
 40 viduals who are specifically exempted from registration under this act:
 41 (a) A tradesman or contractor performing a single component or sys-
 42 tem evaluation or a combination of any two systems or components listed
 43 in K.S.A. 2008 Supp. 58-4502 (a)(1)(A)-(I) while acting within the scope

(7) shall retain a copy of each of the following documents
 pertaining to each home inspection performed by, or at the
 direction of, the home for a period of 24 consecutive
 calendar months commencing on the first day of the month
 in which such document is issued or in which the expiration
 date of any written agreement for such home inspection
 occurs:

8-9

- (A) The pre-inspection notice;
- (B) the home inspection agreement;
- (C) the home inspection report; and
- (D) any other information prescribed by the board
by rule and regulation;

1 of that occupation;

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

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

8 (d) an individual licensed by the state as a professional engineer while
9 acting within the scope of that license;

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

12 (f) an individual licensed by the state as a real estate broker or sales-
13 person while acting within the scope of that license;

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

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

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

20 (j) a modular home manufacturer or modular home manufacturer's
21 representative reviewing a residential dwelling built by the manufacturer
22 for the purpose of evaluating the residential dwelling;

23 (k) an individual licensed as a manufactured home dealer while acting
24 within the scope of that license;

25 (l) an individual employed as a manufactured home installer while
26 acting within the scope of that occupation;

27 (m) an individual licensed by the state as an insurance agent while
28 acting within the scope of that license;

29 (n) a homebuilder or homebuilder's representative reviewing a resi-
30 dential dwelling built by the homebuilder for the purposes of evaluating
31 the residential dwelling; and

32 (o) an individual employed *providing services* as a pest exterminator
33 or chemical applicator while acting within the scope of that occupation
34 and not providing services which would constitute a home inspection
35 under this act; and

36 (p) *an individual assisting a registrant in the performance of a home*
37 *inspection if that person does not provide an opinion, evaluation or report*
38 *to a client regarding any system or component inspected* A person who
39 is not registered as a home inspector, may assist a registered home
40 inspector in the performance of an inspection provided that the
41 person is supervised at the inspection site by a registered home
42 inspector and any home inspection report rendered in connection
43 with the home inspection is reviewed and signed by the registered

3-11

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. 58-4500, 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.

a standard

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.

registered

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.

registered

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.

registered

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 Sec. ~~11~~ 10. K.S.A. 2008 Supp. 58-4502, 58-4503, 58-4504, 58-4505,
2 58-4506, 58-4509, 58-4510, 58-4511, 58-4512 and 58-4513 are hereby
3 repealed.

4 Sec. ~~12~~ 11. This act shall take effect and be in force from and after
5 its publication in the statute book.

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