

Approved: 3/1/10

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:05 a.m. on February 2, 2010, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

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

Conferees appearing before the Committee:

Sherry C Diel, Kansas Real Estate Commission  
Tim Holt, Kansas Real Estate Commission

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2560**.

**HB 2560**     **Real estate salespersons and brokers, amendments related to technical changes and restricted and conditioned licenses.**

Renaë Jefferies, Assistant Revisor, gave an explanation of the changes that **HB 2560** would make to the statutes (Attachment 1).

Luke Bell, Kansas Association of Realtors, gave written only testimony as a proponent of **HB 2560** (Attachment 2). This bill is intended to amend statutes to accurately reflect the various forms of corporate organizations available under Kansas statutes.

Sherry C Diel, Kansas Real Estate Commission, gave testimony in support of **HB 2560** (Attachment 3). The bill would ensure equal treatment to all forms of business entities that affiliated licensees may establish to conduct authorized activities. It also permits restrictions to be imposed on a license after notice and an opportunity for a hearing is given. It clarifies that an applicant for an original license or license renewal has the burden of proof to show the applicant is rehabilitated from a prior revocation or suspension of a license. It established a procedure for allowing an applicant to withdraw an incomplete application to avoid denial of an application for an original license or renewal. It also increases the fee for an original salesperson's license and two-year salesperson renewal by \$30 from \$100 to \$130 and increases the fee for an original broker's license and two-year broker renewal fee by \$50 from \$150 to \$200. It establishes by statute that if the provisions of the Brokerage Relationships in Real Estate Transaction Act ("BRRETA") and common law conflict, BRRETA supersedes common law.

Representative Brunk asked if someone made an accusation against me you have the authority to restrict or take away my license. Sherry said it was authority to restrict, not take away and it would have to be something serious, something criminal in nature. It would not restrict your ability to earn an income.

Representative Kerschen asked how you decide if a person is rehabilitated. Sherry said that the burden of proof is on the applicant. They must bring forth evidence of rehabilitation. Show whether or not they are employed, things like showing they have met the conditions of probation, whether they have made restitution. Representative Kerschen further asked what the time frame was for rehabilitation. Sherry said that it depended on what the crime was.

Representative Hermanson said that he had been in this business for ten years and that with these restrictions the industry is better protected.

Representative Brunk said that changes in the laws over the last two or three years have given you the authority to restrict licenses, wouldn't some of the cases drop off and go away. Sherry said that their current

## CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:05 a.m. on February 2, 2010, in Room 784 of the Docking State Office Building.

cases are coming from people who get into trouble after they are licensed.

Representative Quigley asked for an example of BRRETA taking precedence over common law. Sherry said that it came from a judge explaining what the BRRETA relationship was. He clearly did not understand how the Brokerage Relationship works. They felt that it would be better if it was stated in the statutes.

Tim Holt, Kansas Real Estate Commission appeared to answer questions since Luke Bell was unable to come to the meeting.

Representative Ruiz asked how many licenses are restricted. Sherry answered and said that they now have about 15,200 licensees and that there may be 500 to 1000 restricted or conditioned licenses. Representative Ruiz also asked how the fee structure for Kansas compared with the fee structure in other states. Sherry said that our fee structure would be in the lower middle.

Representative Brunk asked why a statute was needed to raise the fees if they had raised the fees by regulation. Tim said that they were at the cap right now according to statutes and could not raise it any higher.

The Chairman closed the hearing on **HB 2560**.

The next meeting is scheduled for February 3, 2010.

The meeting was adjourned at 10:11 a.m.



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MEMORANDUM

To: House Committee on Commerce and Labor  
From: Renae Jefferies, Assistant Revisor  
Date: February 2, 2010  
Subject: HB 2560

HB 2560 amends statutes relating to real estate brokers and salespersons. Section 4, on page 4 of the bill, was extensively amended by striking all of the language of K.S.A. 58-3041 and inserting new language. Subsection (a), on page 5, applies to original and renewal applications and sets out when restrictions or conditions may be imposed on such licenses. Subsection (b), on page 6, is intended to provide a nonexclusive list of restrictions or conditions that may be imposed when an original or renewal application is considered. Subsection ©, on page 7, deals with applications for original licensure and renewals of broker's licenses that lack solely the requisite experience or related education to qualify for an unrestricted or conditional license. Subsection (d), also on page 7, sets forth the reasons that restrictions and conditions can be imposed in a disciplinary action. Subsection (e), on page 8, is intended to provide a nonexclusive list of restrictions or conditions that could be imposed for disciplinary reasons. Subsection (f), also on page 8, provides that whether restrictions or conditions are granted or a license is denied, suspended or revoked is solely up to the Commission. It also that licenses that are restricted or conditioned are not automatically renewed. Subsection (g), also on page 8, provides that restrictions or conditions shall not be imposed on a license unless the applicant is provided with notice and an opportunity to be heard.

New subsection (b) was added to K.S.A. 58-3043 concerning the granting of an original license or a renewal to an applicant who had a prior revocation, conduct or plea of guilty or nolo contendere or to a conviction of a misdemeanor.

Section 7 on page 11, allows for a withdrawal of an incomplete application for licensure.

Section 11, on page 20, concerns fees for licensure and contains an increase of some of the statutory caps on some fees in K.S.A. 58-3063.

Section 13, on page 23 to 24, amends K.S.A. 58-30,101 to provide that when there is a conflict between the brokerage relationships in real estate transactions act and common law, the act controls.

Section 14 , on page 24 et seq., adds definitions for “exclusive agency agreement,” “exclusive right to sell agreement,” and “written transaction brokerage agreement” to the brokerage relationships act.

Sections 1, 2, 3, 5, 8, 9, 10, and 12 of the bill contain technical changes to those statutes, including in particular substituting “association, corporation, limited liability company, limited liability partnership, partnership or professional corporation “ for “foreign or domestic corporation, partnership or association.

The act will take effect upon publication in the statute book.

The fiscal note reflects no fiscal effect on the state general fund at this time.



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To: House Commerce and Labor Committee

Date: February 2, 2010

Subject: **HB 2560** -- Making Various Technical and Substantive Changes to the Kansas Real Estate Brokers' and Salespersons' License Act (KREBSLA) and the Brokerage Relationships in Real Estate Transactions Act (BRRETA)

Chairman Brunk and members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® to offer testimony in support of **HB 2560**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR has faithfully represented the interests of the nearly 9,000 real estate professionals and over 700,000 homeowners in Kansas for the last 90 years. In conjunction with other organizations involved in the housing industry, the association seeks to increase housing opportunities in this state by increasing the availability of affordable and adequate housing for Kansas families.

Over the past several years, we have been actively working with the Kansas Real Estate Commission to review and modernize our statutes to bring them into conformity with current administrative procedures and business practices in the real estate industry. As a direct result of this extremely collaborative process, we believe that **HB 2560** would be a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees.

**HB 2560** would make several technical and substantive changes to the Kansas Real Estate Brokers' and Salespersons' License Act (KREBSLA) and the Brokerage Relationships in Real Estate Transactions Act (BRRETA). In order to clarify the intent behind the requested changes, I will briefly explain each of the major changes below.

Technical Changes to Update the Language Regarding Associations, Corporations, Limited Liability Companies, Limited Liability Partnerships, Partnerships and Professional Corporations

Earlier this year, former Representative Jason Watkins (R – Wichita) contacted the Commission to inquire whether limited liability companies, limited liability partnerships and other similar forms of corporate organization were allowed under KREBSLA and BRRETA. In researching this issue, we identified numerous places in the statutes that do not properly identify the various corporate forms of organization available to a real estate company under Kansas statutes.

As a result, this legislation would propose that we amend various sections of KREBSLA and BRRETA to accurately reflect the various forms of corporate organization available under Kansas statutes. The following sections would be amended: K.S.A. 58-3035(m); 58-3037(i); 58-3037(j); 58-3038(b); 58-3042(b); 58-3060(e); 58-3061(f); 58-3062(b)(1)(B); 58-3068(c)(2); 58-30,102(d)(1) and (2); and 58-30,102(e).

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Attachment # 2

Accordingly, each section listed above would be amended to identify the following permissible forms of corporate organization for the purposes of KREBSLA and BRRETA: associations, corporations, limited liability companies, limited liability partnerships, partnerships and professional corporations. This list includes all the forms of corporate organization currently available under Kansas statutes.

This change is purely technical in nature and would clarify that a real estate brokerage can choose any of the various corporate forms of organization available to a real estate company under Kansas statutes. This change is necessary in order to ensure our statutes are consistent with current business practices in the real estate industry and other Kansas statutes.

Clarifying and Expanding the Commission's Authority to Condition or Restrict the Licenses of Applicants and Licensees for Certain Conduct and Violations of KREBSLA and BRRETA

Under the existing K.S.A. 58-3041, the Commission has the authority to issue a conditioned or restricted license to applicants and licensees under a very narrow set of circumstances. The Commission must first hold a hearing (even if the applicant does not request a hearing, which means that the applicant will not show up in most cases) and can only issue a conditioned or restricted license under three very narrow circumstances.

As a result, the Commission has been unable to use this statute for the last several years to issue conditioned or restricted licenses to applicants and licensees. The Commission would like to make several amendments to the statute to allow it to use this statute for its intended purpose of providing the Commission with a system to appropriately restrict or supervise applicants or licensees in need of additional supervision to ensure that they do not harm the general public.

The absence of a feasible conditions and restrictions statute has forced the Commission to become increasingly reliant on an even more burdensome system to restrict or supervise the applicants or licensees who need additional requirements. Over the past few years, the Commission has issued many consent agreements (legally binding agreements between the applicant or licensee) where the Commission agrees to grant a license to an applicant or licensee if that individual abides by certain restrictions and conditions contained in the consent agreement.

Unfortunately, the process of drafting a consent agreement is a very expensive and time-consuming process that consumes the Commission's resources and forces them to rely on the expensive services of outside legal counsel. Factoring in the often lengthy negotiations that take place between the Commission and the applicants or licensees in question, the need to rely on consent agreements has become a problem that actually delays the issuance of a real estate license to an applicant.

Under the language found in Section 4 on pages 4 to 8 of the legislation, the Commission would be granted a more appropriate level of authority to condition or restrict the license of an applicant or licensee when a specified set of factors in the statute are satisfied. If this legislation is approved, this would again allow the Commission to make use of the statute to place conditions and restrictions on applicants and licensees who need additional requirements.

If the applicant or licensee disagreed with the proposed conditions and restrictions placed on the license by the Commission, this statute gives the applicant or licensee the opportunity to request a hearing in front of the Commission to dispute the findings and/or conditions imposed. In our opinion, the proposed changes would significantly reduce the Commission's use of consent agreements in these situations and increase the efficiency and fairness of this process.

Clarifying and Strengthening the Commission's Authority to Deny the Granting or Renewal of Licenses to Individuals Convicted of Certain Serious Misdemeanor Crimes

In Section 6 on page 9 of the legislation, the Commission would like an amendment to K.S.A. 58-3043 to clarify and strengthen the Commission's authority to deny the granting or renewal of licenses to applicants and licensees convicted of misdemeanor crimes that reflect on the individual's honesty, trustworthiness, integrity and competence to transact the business of real estate. In our opinion, the language in Section 6(b) is extremely important to ensure the Commission has the necessary authority to deny licenses to individual with a history of serious misdemeanor convictions.

This language would require the applicant or licensee to produce evidence that they now bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the interest of the public when they apply for a real estate license under KREBSLA. This language is exactly identical to the language in K.S.A. 58-3043(f)(1) approved by the House Commerce and Labor Committee in **2007 HB 2295** concerning the Commission's authority to grant a license to an individual with a history of felony convictions.

As in past years, we continue to believe that the Commission needs all the necessary authority to promote the professionalism of the real estate industry and protect consumers interacting with real estate professionals. On a daily basis, real estate licensees are provided with nearly unfettered access to the homes and personal and confidential financial information of consumers.

As a consequence, we are primarily concerned with providing the appropriate authority to the Commission to ensure that consumers are not harmed by the presence of unqualified and unprofessional individuals in the real estate industry. In order to protect consumers and uphold the professionalism of the real estate industry, we would strongly urge your support of the proposed language in Section 6(b) on page 9 of the legislation.

Modifying and Streamlining the Commission's Procedures for Dealing with Incomplete Applications

In Section 7 on page 11 of the legislation, the Commission would like an amendment to K.S.A. 58-3044 to clarify the Commission's procedures for dealing with an incomplete application for a real estate license. Under the current language in K.S.A. 58-3044, the Commission is forced to deny an application for a real estate license when the application is incomplete or the proper fees are not paid in a timely manner by the applicant.

However, this practice can cause considerable harm to an applicant in the future because this action is considered a denial of the application and must be reported on all future license applications in this and other states. The proposed change would help avoid this unintended harm by allowing the Commission to consider the application incomplete instead of requiring an application denial.

Increasing Real Estate Licensing Fees to Cover the Budgetary Shortfall Created by the Kansas Legislature's Decision to Sweep \$195,671 from the Real Estate Fee Fund Last Session

During the 2009 Legislative Session, the Kansas Legislature transferred \$195,671 from the Kansas Real Estate Commission's real estate fee fund to the state general fund. Even though we asserted that this was an impermissible and unconstitutional transfer of regulatory fees, we were unable to prevent the Kansas Senate from including this in the final budget bill of the 2009 Legislative Session.



In the past eight years, the Kansas Legislature has swept nearly \$800,000 from the real estate fee fund administered by the Kansas Real Estate Commission to pay for unrelated programs funded through the state general fund in other parts of the state budget. As a result, the Commission has been forced to increase licensing fees on real estate professionals, which is an indirect tax increase on the individuals and small businesses that make up the real estate industry.

However, the transfer of this large amount of funds from the real estate fee fund and a huge reduction in the number of real estate licensees in Kansas have caused severe budgetary problems for the Commission. Unfortunately, the fee fund sweeps in 2009 only complicated a problem that began with previous fee fund sweeps during the 2002, 2003 and 2004 legislative sessions.

Moreover, the Commission has stated that the number of real estate licensees has declined by nearly 2,000 over the past two years. Just as with the overall state budget, the real estate fee fund balance of the Commission rises and falls with the number of real estate licensees in Kansas who are paying their licensing fees.

At this time, the Kansas Real Estate Commission contends it does not have the budget resources necessary to fill vacant staff positions that are responsible for important tasks like auditing, prosecuting disciplinary cases and conducting investigations. Despite their best efforts to operate efficiently in the face of the harm caused by the fee fund sweeps, the Commission has experienced a 15-month backlog on audit orders and 24-month backlog on routine complaint investigations.

For the past few years, the Kansas Association of REALTORS® has consistently asked the Commission to put forward a plan to demonstrably reduce the huge backlog in pending audit orders and complaint investigations. In preparation for the 2011 Fiscal Year Budget, the Commission requested an enhancement of \$46,515 in spending authority and the authorization to reorganize two vacant positions to hire an attorney and a legal assistant to help eliminate this enforcement backlog.

Unfortunately, the Division of Budget recently denied the Commission's request to reorganize the 2011 Fiscal Year Budget due to a declining cash balance caused by the recent fee fund sweeps and the declining number of real estate licensees. The Commission has appealed this request, but it is very unlikely at this time that the Division of Budget will reverse its decision on the request.

Having exhausted all other reasonable options to reduce the backlog and shore up the budget shortfall, the Commission has been forced to request an increase in the maximum real estate licensing fees specified in statute. In Section 11 on pages 20 through 22 of this legislation, the Commission has requested a \$30 increase in the maximum statutory authority for a two-year real estate salesperson's license and a \$50 increase in the maximum statutory authority for a two-year real estate broker's license.

Under K.S.A. 58-3063, the Commission has the authority to adopt rules and regulations to stipulate the amount of fees required to apply for and renew a license as a real estate broker and salesperson (up to the statutory maximum established by the statute). At this time, we believe the Commission is planning to seek a \$15 increase for the real estate salesperson's license (from \$100 to \$115) and a \$25 increase for the real estate broker's license (from \$150 to \$175).

Following some preliminary research, it appears that the Commission has not increased the statutory maximum real estate licensing fees for real estate brokers and salespersons since at least 1988. For at least the preceding 20 years, these licensing fees have remained constant at their current levels without any increase.

Fundamentally, we strongly believe the Commission has efficiently and prudently managed the real estate fee fund in light of its statutory obligations to closely regulate the real estate industry. If the Kansas Legislature had not swept the approximately \$800,000 from the real estate fund over the last eight years, we are confident that the Commission would not be put in this very reluctant position to request a fee increase in this legislation.

Clarifying that the Provisions of BRRETA Supersede the Common Law Rules Governing the Relationships Between Real Estate Brokers and Salespersons and Their Clients or Customers

In 1997, the Kansas Legislature passed the Brokerage Relationships in Real Estate Transactions Act (BRRETA) that was intended to completely govern the relationship between real estate brokers and salespersons and their clients and customers. As evidenced by the attached minutes from the Senate Judiciary Committee, the Kansas Legislature intended BRRETA to supersede the common law with respect to the issues governed by the statute.

However, the provisions of BRRETA do not explicitly state that BRRETA supersedes the common law rules regarding the relationship between real estate licensees and their clients and customers. Even though the legislative intent is clear through the minutes of the Senate Judiciary Committee, there have been no published appellate opinions in Kansas since the passage of BRRETA that have definitively stated for the record that BRRETA supersedes the common law.

Accordingly, we would like to insert the proposed language in Section 13 on pages 23 and 24 of the legislation to reinforce the original legislative intent and clarify once and for all that the provisions of BRRETA explicitly supersede the common law regarding the relationship between real estate licensees and their clients and customers. As an example on the misinformation that has resulted from this drafting oversight, a dissenting opinion in a recent appellate case questioned the ability of a transaction broker to serve as a neutral, disinterested capacity in a real estate transaction (which is clearly permissible under the plain language of BRRETA).

Nothing in the proposed language would eliminate or restrict the ability of an aggrieved consumer to bring an appropriate action when they have been harmed by the actions of a real estate broker or salesperson. In contrast, the proposed language would eliminate any regulatory uncertainty over the precise duties, protections and responsibilities a real estate broker or salesperson is required to provide to a consumer when they are operating as an agent or broker under BRRETA.

Defining the Terms “Exclusive Right to Sell Agreement” and “Exclusive Agency Agreement” for the Purposes of BRRETA

In Section 14(l) and (m) on page 25 of the legislation, the proposed language would define the terms “Exclusive Agency Agreement” and “Exclusive Right to Sell Agreement” for the purposes of BRRETA. As discussed in the next section of my testimony, these changes are necessary to ensure that we can add the term “written transaction brokerage agreement” to the provisions of K.S.A. 58-30,103 to ensure that written transaction brokerage agreements are governed by the same rules as agency agreements under BRRETA.

Unfortunately, the inclusion of the term “written transaction brokerage agreement” next to the term “exclusive agency agreement” can be confusing for some individuals since the word “agency” is included in that term and a transaction broker cannot act as an agent for either party in a real estate transaction. Even though the term “exclusive agency agreement” refers to compensation terms and does not create an agency relationship between the parties, the inclusion of the word “agency” in this term is nevertheless misleading in this context.

Accordingly, we would propose that we add a definition of “exclusive agency agreement” and “exclusive right to sell agreement” to the statute to ensure that there is no confusion when the term “written transaction brokerage agreement” is added to K.S.A. 58-30,103. This will ensure that no one confuses the distinction between compensation arrangements (such as exclusive agency and exclusive right to sell) and brokerage relationships and obligations (such as agency and transaction brokerage).

In our research on this issue, we have lifted the definitions of “exclusive agency agreement” and “exclusive right to sell agreement” from similar statutes that are currently in effect in the states of , Nevada, Ohio and Oregon. According to my research, these definitions are also consistent with the current definitions of these terms in Kansas case law.

#### Clarifying the Language in BRRETA to Ensure that the Statute Applies Equally to Agency Agreements and Written Transaction Brokerage Agreements

Finally, a drafting oversight in the provisions of BRRETA passed by the Kansas Legislature in 1997 has resulted in a situation where we believe the provisions of BRRETA do not uniformly govern and apply the same rules to agency agreements and written transaction brokerage agreements. Accordingly, we would propose technical amendments to K.S.A. 58-30,103(i) through (p) in Section 15 on pages 26 through 29 of this legislation to correct this drafting oversight.

The proposed change would clarify the statute to ensure that the same BRRETA provisions and rules uniformly apply to agency agreements and written transaction brokerage agreements. This change would provide greater protection to consumers by ensuring that the important consumer protections contained in K.S.A. 58-30,103 apply to both of these real estate brokerage relationships.

The proposed change would also prohibit competing real estate brokerages from soliciting listing or agency agreements from the customer of another real estate broker who has signed an exclusive written listing agreement with a real estate broker acting as a transaction broker. Due to the drafting oversight, there is a loophole currently in the statute that does not allow the Commission to discipline a real estate licensee who crosses the listing of a transaction broker who has entered into a written transaction brokerage agreement with a customer.

Unfortunately, several unethical and unscrupulous real estate licensees are currently exploiting this loophole to solicit property listings away from real estate brokerages who have accepted listings as a transaction broker under a written transaction brokerage agreement. If approved, the proposed language will end this detrimental practice and protect the legitimate business interests of these real estate brokerages.

#### Conclusion

For all the foregoing reasons, we would urge the House Commerce and Labor Committee to strongly support the provisions of **HB 2560**. Once again, thank you for the opportunity to provide comments on **HB 2560** and I would be happy to respond to any questions at the appropriate time.

March 24, 1997 meeting p. 3

HB 2264 - Brokerage relationships in real estate transactions act (BRRETA)

BRRETA is intended to modify common law rules governing the relationship between brokers or salespersons and their clients or customers. BRRETA establishes a scheme of statutory agency to replace Common Law rules. It is the intent that where BRRETA and Common Law conflict, BRRETA will be applied, but where BRRETA is silent, the Common Law will be applied. In 1984 in the case of Board of Neosho County Commissioners v. Central Air Conditioning Co. 235 Kan. 977, 981, 683 P.2d 1282 the Kansas Supreme Court held that when a statute conflicts with the common law, the statute controls. Additionally, K.S.A. 77-109 specifically provides that statutes which modify the common law should be liberally construed. (attachment 19)

Subcommittee Chair Senator Schraad gave a subcommittee report on HB 2264 commonly referred to as the BRRETA BILL. He stated that the subcommittee discussed at length possible amendments to the bill including proposed amendment language by two conferees. (attachment 20) No recommendation was formally proposed by the subcommittee. Following discussion Senator Bond made a motion to pass HB 2264 out favorably. Senator Feleciano seconded. Motion carried.

The Chair adjourned the meeting at 10:59 a.m. The next scheduled meeting is Tuesday March 25, 1997.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been subedited in the individuals appearing before the committee for editing or corrections.

# KANSAS

KANSAS REAL ESTATE COMMISSION  
SHERRY C. DIEL, EXECUTIVE DIRECTOR

MARK PARKINSON, GOVERNOR

Memo To: Chairperson Brunk and Members of the House Commerce & Labor Committee  
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission  
RE: HB 2560 Amendments to Real Estate Salespersons' and Brokers' Laws  
Date: February 2, 2010

## Background

HB 2560 was jointly requested by the Kansas Real Estate Commission and the Kansas Association of Realtors. The Commission drafted certain sections of the proposed legislation and the trade association drafted other sections. Former State Representative Jason Watkins also requested a technical amendment that was incorporated into the bill draft.

The amendments relate to licensure of real estate salespersons and brokers and the brokerage relationships between brokers and their clients and customers, which requires amendments to both the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034 et seq., and the Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101 et seq. The amendments are largely technical or clarifying in nature, except for Section 11 which includes a fee increase for original and renewal licenses.

## Proposed Amendments

The bill would provide the following amendments to existing law:

**Ensures equal treatment to all forms of business entities established by supervising brokers to function as a "broker" or "brokerage firm" under the law and to provide equal treatment under the law for the types of business entities that affiliated licensees may establish to conduct authorized activities.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 1	p. 2	58-3035(m)
Sec. 2	p. 4	58-3037(i) and (j)
Sec. 3	p. 4	58-3038(b)
Sec. 5	p. 8	58-3042(b)
Sec. 8	p. 12	58-3060(e)
Sec. 9	p. 13	58-3061(f)
Sec. 10	p. 17	58-3062(b)(1)(B)
Sec. 12	p. 23	58-3068(c)(2)
Sec. 14	p. 24	58-30,102(d) and (e)

Former State Representative Jason Watkins requested this technical amendment because one of his constituents, a builder of new homes, was not exempt from licensure because he was a member of a limited liability corporation instead of setting up his construction company as a corporation. Under current law, corporations, associations, partnerships, limited liability

corporations, professional corporations, and limited liability partnerships are not uniformly included in the various statutes throughout the licensure act that refer to business entities, which may result in unequal treatment. Although the reasons for the unequal treatment are not known, it may be possible that the Commission's statutes were not updated over the years as the Kansas business statutes were amended.

**Would amend current law to authorize restrictions to be imposed on a license after notice and an opportunity for a hearing is given rather than requiring that a hearing actually be held. Also, would put applicants and licensees on notice of the reasons for and types of conditions that can be imposed on a license under K.S.A. 58-3050 and restrictions imposed pursuant to K.S.A. 58-3041 and K.S.A. 58-3050.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 4	p. 5-8	58-3041

This section was requested by the Commission to preserve limited agency resources. The Kansas Administrative Procedures Act only requires that an applicant or licensee be given notice and an opportunity for a hearing for any adverse action to be taken on an application for licensure or for disciplinary action to be taken against a licensee. The current provisions of K.S.A. 58-3041 provide that before restrictions can be imposed on a license, a hearing must actually be held. To save limited agency resources, the Commission does offer applicants and licensees a Consent Agreement and Final Order to issue a license with restrictions. However, if the applicant or licensee does not respond or refuses to sign the agreed order, an application for licensure will be denied or disciplinary action will proceed, which requires staff resources to draft the agency orders and expenditures to hold the hearings.

The Commission also drafted amendments to put on notice applicants for original licenses and renewal, applicants for broker's licenses that lack the necessary experience, and licensees that are subject to disciplinary action the reasons for and types of restrictions that can be imposed on licenses. The Commission may impose other restrictions and conditions that the Commission deems is appropriate in the public interest.

**Clarifies that an applicant for an original license or license renewal has the burden of proof to show the applicant is rehabilitated from any prior revocation or suspension of a license, any conduct deemed relevant by the Commission or plea of guilty or nolo contendere to or conviction of a misdemeanor by showing that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in a manner to safeguard the public interest.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 6	p. 9	58-3043(b)

This language was jointly requested by the Commission and the trade association to clarify existing law and would mirror the language that applies to felony applicants.

**Establishes a procedure for allowing an applicant to withdraw an incomplete application to avoid denial of an application for an original license or renewal. Also, provides that if a complete application is not filed, the applicant is not entitled to the rights provided by the Kansas Administrative Procedure Act, K.S.A. 77-501 et seq.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 7	p. 11	58-3044

The Commission requested this section to prevent denying an application because the applicant failed to file the necessary documentation, forms or fees to constitute a completed application if the applicant would be willing to withdraw the application. Current law appears to require a denial unless the appropriate form or fees are not filed. The Commission is concerned that a denial may need to be reported by the applicant on an application for a professional license or certification or on a job application. The Commission wanted to clarify that if an incomplete application is not filed, the applicant is not entitled to rights afforded by the Kansas Administrative Procedures Act.

**Increases the fee for an original salesperson's license and two-year salesperson renewal by \$30 from \$100 to \$130 and increases the fee for an original broker's license and two-year broker renewal fee by \$50 from \$150 to \$200.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 11	p. 20-21	58-3063(a)(5)-(8)

The Commission requested this section because the fee fund has declined to a level that it can no longer sustain the Commission's anticipated expenditures. Three forces are at work to decrease the Commission's fee fund balance: (1) past fee fund sweeps; (2) reasonable trending upward in the agency's expenditures that closely correlate with an increase in the number and severity of contested disciplinary actions; and (3) decrease in licensee counts. The Commission's intent is to impose the fee increase at a rate by regulation for the period necessary to build the fee fund back to a reasonable level. The last time that the Commission requested a statutory increase was 1993 and license fees have been at the statutory cap since 1998.

The Commission estimates that the increase in the statutory cap for broker original license and renewal fees would generate approximately \$105,000 (2,100 brokers applying/renewing at \$50 increase) for FY 2011. However, the Commission intends to increase license fees for brokers \$25 which would produce \$52,500. The Commission estimates that the increase in the statutory cap for salesperson original license and renewal fees would generate approximately \$168,000 (5,600 salespersons applying/renewing at \$30 increase) for FY 2011. However, the Commission intends to increase salesperson license fees by regulation \$15 which would produce \$84,000. The Commission estimates that the Commission's licensee counts may continue to decline through at least FY 2012 so the potential increase from the statutory and regulatory fee increase is difficult to calculate. Since 2007, the Commission's licensee counts have dropped by approximately 2,500 with scheduled renewal groups renewing every other month based upon the first initial of the person's last name.

**Establishes by statute that if the provisions of the Brokerage Relationships in Real Estate Transactions Act ("BRRETA"), K.S.A. 58-30,101 et seq., and common law conflict, BRRETA supersedes common law.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 13	p. 23-24	58-30,101(c)

The trade association requested this section because there have been a few district court opinions and Kansas court of appeals decisions that have addressed BRRETA, but there has not been a Kansas Supreme Court case decision yet that clearly states that when BRRETA and the common law conflict, that the statutory law supersedes common law.

**Expands the same protections set forth in K.S.A. 58-30,103 to brokers and their customers that have entered into a written transaction brokerage agreement granting an exclusive right to sell with a seller or an exclusive brokerage relationship with a buyer that apply under current law to brokers and their clients that have entered into an exclusive agency agreement.**

<u>Section</u>	<u>Page</u>	<u>Amends</u>
Sec. 14	p. 25-26	58-30,102(l), (m) and (v)
Sec. 15	p. 26-29	58-30,103(f), (i)-(p)

The trade association requested this section to ensure that a broker and customer that enter into an exclusive written transaction brokerage agreement enjoy the same protections under the law as a broker and client that enter into an exclusive agency agreement. This closes a gap in the law and would require written transaction brokerage agreements to set forth the terms and conditions of the relationship with the customer, including the duty of confidentiality, fixed date of expiration and compensation, require the agreement to be signed by the broker and the customer and a copy to be furnished to the customer. The amendment would protect customers by preventing net commissions or assignment of a written transaction brokerage agreement to another broker without consent of the customer. The amendment would prohibit a licensee from "crossing" an exclusive written transaction brokerage agreement or inducing any party to break such an agreement with a customer. The amendment would also prohibit a licensee from contacting directly a buyer or seller who has entered into a written transaction brokerage agreement or attempting to negotiate a purchase, sale, lease or exchange directly with the buyer or seller without written consent of the customer. Under current law, these are protections only afforded a broker and a client who have entered into an exclusive agency agreement.

Thank you for your consideration of this important legislation. I would be happy to address any questions from the Committee.