

Approved: 3/5/10
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:02 a.m. on February 9, 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 Diehl, Kansas Real Estate Commission
Paul H. Wooley, PhD, CiBOR

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.**

Sherry Diehl, Kansas Real Estate Commission, introduced her Balloon amendment 1 (Attachment 1). She said that it was easier to delete the definition of a person throughout the bill rather than make all the changes.

Representative Gatewood made a motion to move the amendment. Seconded by Representative Swenson. The motion carried.

Representative Grant made a motion to pass the bill out favorably as amended. Representative Hermanson seconded the motion. The motion carried.

The Chairman asked Bruce Witt of Via Christi Health Systems to introduce our guest from CiBOR.

Paul H. Wooley, PhD, CiBOR, spoke about the challenges and opportunities as they try to develop medical devices. The first one is changing the FDA approval environment. Ninety five percent of medical devices do not undergo FDA testing. A new device must demonstrate that it is medically superior to what is currently available.

We are now where we can replace functioning joints and organs and integrate them with the bodies own cells. This means that the casting, forging technology for conventional devices are all outdated. So we will need to acquire or build new manufacturing facilities in order to accommodate what is now being termed orthobiological.

Representative Quigley asked where they were in their five years of KDA funding. Dr. Wooley said they were half way through the first year.

Representative Brunk asked how has the funding helped you move forward and how would its absence complicate your ability to move forward. Dr. Wooley said that it had enabled them to bring in high level people who will actually conduct the research. He said that it was critical to establish their own laboratory so that they can host the companies that are coming in.

Representative Pottorff said that the possibilities were exciting for Kansas.

Representative Brunk asked about their progress considering that surgeons and others take a wait and see

CONTINUATION SHEET

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attitude. Dr. Wooley said that some surgeons always take a wait and see attitude. It's easy to demonstrate the advantages we have with composites and we believe we can overcome the skepticism. We have a great surgeon who can convince them.

Representative Brunk asked how much the military use was driving the research. Dr. Wooley said that he was encouraged that a reasonable amount of money had been given for military orthopaedic applications.

The next meeting is scheduled for February 10, 2010.

The meeting was adjourned at 10:09 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 2-9-10

| NAME | REPRESENTING |
|--------------------|-----------------------|
| Paul H Wooley | CIBOR |
| Michael T. Hood | CIBOR |
| Bruce Witt | Via Christi Health |
| TED HENRY | CAPITOL STRATEGIES |
| Sherry C Diehl | KS Real Estate Comm |
| Sarah Hatch | US EPA |
| Luke Bell | KS Assoc. of REALTORS |
| Duy Pham | Rep. Ruiz's intern |
| Meagan Prothenberg | KDOL |
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HOUSE BILL No. 2560

By Committee on Commerce and Labor

1-27

Sherry Diehl
Balloon amendment 1
February 8, 2010

9 AN ACT concerning real estate salespersons and brokers; relating to
10 censure; technical amendments; amending K.S.A. 58-3037, 58-3038,
11 58-3041, 58-3042, 58-3044, 58-3060, 58-3061, 58-30,101, 58-30,102
12 and 58-30,103 and K.S.A. 2009 Supp. 58-3035, 58-3043, 58-3062, 58-
13 3063 and 58-3068 and repealing the existing sections.

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

15 Section 1. K.S.A. 2009 Supp. 58-3035 is hereby amended to read as
16 follows: 58-3035. As used in this act, unless the context otherwise
17 requires:

18 (a) "Act" means the real estate brokers' and salespersons' license act.

19 (b) "Advance listing fee" means any fee charged for services related
20 to promoting the sale or lease of real estate and paid in advance of the
21 rendering of such services, including any fees charged for listing, adver-
22 tising or offering for sale or lease any real estate, but excluding any fees
23 paid solely for advertisement or for listing in a publication issued for the
24 sole purpose of promoting the sale or lease of real estate wherein inquiries
25 are directed to the owner of the real estate or to real estate brokers and
26 not to unlicensed persons who publish the listing.

27 (c) "Associate broker" means an individual who has a broker's license
28 and who is employed by another broker or is associated with another
29 broker as an independent contractor and participates in any activity de-
30 scribed in subsection (f).

31 (d) "Branch broker" means an individual who has a broker's license
32 and who has been designated to supervise a branch office and the activ-
33 ities of salespersons and associate brokers assigned to the branch office.

34 (e) "Branch office" means a place of business other than the principal
35 place of business of a broker.

36 (f) "Broker" means an individual, other than a salesperson, who ad-
37 vertises or represents that such individual engages in the business of buy-
38 ing, selling, exchanging or leasing real estate or who, for compensation,
39 engages in any of the following activities as an employee of, or on behalf
40 of, the owner, purchaser, lessor or lessee of real estate:

41 (1) Sells, exchanges, purchases or leases real estate.

42 (2) Offers to sell, exchange, purchase or lease real estate.

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Attachment # 1

1 (3) Negotiates or offers, attempts or agrees to negotiate the sale,
2 exchange, purchase or leasing of real estate.

3 (4) Lists or offers, attempts or agrees to list real estate for sale, lease
4 or exchange.

5 (5) Auctions or offers, attempts or agrees to auction real estate or
6 assists an auctioneer by procuring bids at a real estate auction.

7 (6) Buys, sells, offers to buy or sell or otherwise deals in options on
8 real estate.

9 (7) Assists or directs in the procuring of prospects calculated to result
10 in the sale, exchange or lease of real estate.

11 (8) Assists in or directs the negotiation of any transaction calculated
12 or intended to result in the sale, exchange or lease of real estate.

13 (9) Engages in the business of charging an advance listing fee.

14 (10) Provides lists of real estate as being available for sale or lease,
15 other than lists provided for the sole purpose of promoting the sale or
16 lease of real estate wherein inquiries are directed to the owner of the real
17 estate or to real estate brokers and not to unlicensed persons who publish
18 the list.

19 (g) "Commission" means the Kansas real estate commission.

20 (h) "Exchange" means a type of sale or purchase of real estate.

21 (i) "Interest" means: (1) Having any type of ownership in the real
22 estate involved in the transaction; or (2) an officer, member, partner or
23 shareholder of any entity that owns such real estate excluding an own-
24 ership interest of less than 5% in a publicly traded entity.

25 (j) "Lease" means rent or lease for nonresidential use.

26 (k) "Licensee" means any person licensed under this act as a broker
27 or salesperson.

28 (l) (1) "Office" means any permanent location where one or more
29 licensees regularly conduct real estate business as described in subsection
30 (f) or a location that is held out as an office.

31 (2) "Office" does not mean a model home office in a new home sub-
32 division if the real estate transaction files are maintained in the primary
33 office or branch office.

34 ~~(m) "Person" means any individual or any foreign or domestic cor-
35 poration, partnership or association association, corporation, limited lia-
36 bility company, limited liability partnership, partnership or professional
37 corporation.~~

38 (n) "Primary office" means a supervising broker's principal place of
39 business for each company created or established by the broker.

40 (o) "Real estate" means any interest or estate in land, including any
41 leasehold or condominium, whether corporeal, incorporeal, freehold or
42 nonfreehold and whether the real estate is situated in this state or else-
43 where, but does not include oil and gas leases, royalties and other mineral

and reletter the remaining subsections

1 (3) has a pending charge, plea of guilty or nolo contendere, or con-
 2 viction of a misdemeanor offense that the commission determines reflects
 3 on the licensee's honesty, trustworthiness, integrity or competence to
 4 transact the business of real estate;

5 (4) has been adjudicated and found to be guilty of violating the federal
 6 fair housing act, 42 U.S.C. 3601 et seq., and amendments thereto, or the
 7 Kansas acts against discrimination, K.S.A. 44-1015 through 44-1044, and
 8 amendments thereto;

9 (5) has obtained or reinstated, or attempted to obtain or reinstate, a
 10 license by false or fraudulent misrepresentation;

11 (6) has violated any lawful order or directive of the commission; or

12 (7) has a pending or finally adjudicated case filed in another juris-
 13 diction involving the condition, probation, suspension or revocation of a
 14 real estate salesperson's or broker's license.

15 (e) Restrictions or conditions that may be imposed against a licensee
 16 at any time as provided in paragraph (d), as deemed by the commission
 17 to be in the public interest may include the restrictions and conditions as
 18 provided in paragraphs (1) through (9) of subsection (b).

19 (f) Granting or renewing a license, whether the license is restricted,
 20 conditioned or not, or taking disciplinary action against a license using
 21 restrictions and conditions shall be at the sole discretion of the commission
 22 as it deems appropriate to safeguard the public interest. The holder of a
 23 restricted or conditioned license shall not be entitled to automatic renewal
 24 of a license by complying with K.S.A. 58-3045, and amendments thereto.

25 (g) Restrictions or conditions shall not be imposed upon a license un-
 26 less the applicant or licensee is provided notice and an opportunity to be
 27 heard in accordance with the Kansas administrative procedure act.

28 Sec. 5. K.S.A. 58-3042 is hereby amended to read as follows: 58-
 29 3042. (a) No real estate license shall give authority to any person other
 30 than the person to whom the license is issued.

31 (b) No license shall be granted to ~~a corporation, partnership, associ-~~
 32 ~~ation or limited liability company~~ an association, corporation, limited li-
 33 ~~ability company, limited liability partnership, partnership or professional~~
 34 ~~corporation.~~ Each person who is an officer of a corporation or a member (OW 12/20)
 35 ~~of a partnership, association or limited liability company~~ or member of an
 36 association, corporation, limited liability company, limited liability part-
 37 nership, partnership or professional corporation and who performs any
 38 act described in subsection (f) of K.S.A. 58-3035, and amendments
 39 thereto, and each person who is employed by or associated with a cor-
 40 ~~poration, partnership, association or limited liability company~~ an associ-
 41 ation, corporation, limited liability company, limited liability partnership,
 42 partnership or professional corporation and who performs any act de-
 43 scribed in subsection (f) of K.S.A. 58-3035, and amendments thereto,

1 shall be a licensed broker or licensed salesperson.

2 Sec. 6. K.S.A. 2009 Supp. 58-3043 is hereby amended to read as
3 follows: 58-3043. (a) In determining whether to grant or renew a license
4 the commission shall consider:

5 (1) Any revocation or suspension of a prior real estate license;

6 (2) (A) Whether an applicant has committed any of the following
7 during the term of any prior real estate license:

8 (i) A violation of any of the practices enumerated in K.S.A. 58-3062,
9 and amendments thereto;

10 (ii) a violation of this act or rules and regulations adopted hereunder;
11 or

12 (iii) a violation of the brokerage relationships in real estate transac-
13 tions act, K.S.A. 58-30,101 et seq., and amendments thereto;

14 (B) whether an applicant has been finally adjudicated and a deter-
15 mination was made by a federal, state or other appropriate licensing body
16 that the applicant committed any violation that is comparable to a viola-
17 tion in subparagraph (A) during the term of any real estate license issued
18 to the applicant by another jurisdiction;

19 (3) any plea of guilty or *nolo contendere* to, or any conviction of any
20 misdemeanor which reflects on the applicant's honesty, trustworthiness,
21 integrity or competence to transact the business of real estate;

22 (4) any conduct of the applicant which reflects on the applicant's hon-
23 esty, trustworthiness, integrity or competence to transact the business of
24 real estate; and

25 (5) such other matters as the commission deems pertinent.

26 (b) *The commission may renew or grant an original license to an*
27 *applicant who has any prior revocation, conduct or plea of guilty or nolo*

28 *contendere to or conviction of a misdemeanor as specified in subsection*
29 *(a) if the applicant presents to the commission satisfactory proof that the*

30 *applicant now bears a good reputation for honesty, trustworthiness, in-*
31 *tegrity and competence to transact the business of real estate in such a*

32 *manner as to safeguard the interest of the public. The burden of proof*
33 *shall be on the applicant to present such evidence to the commission. In*

34 *its consideration of any prior revocation, conduct or plea of guilty or nolo*
35 *contendere to or conviction of a misdemeanor as specified in subsection*

36 (a), the commission shall consider the following factors:

37 (1) The nature of the offense;

38 (2) any aggravating or extenuating circumstances;

39 (3) the time elapsed since such revocation, conduct or plea of guilty
40 or nolo contendere to or conviction of a misdemeanor;

41 (4) the rehabilitation or restitution performed by the applicant; and

42 (5) any other factors that the commission deems relevant.

43 (c) The commission may deny a license to any person who, without

owner,
(c) If any person who is an officer or member of an association, corporation, limited liability company, limited liability partnership or professional corporation performs any act described in subsection (f) of K.S.A. 58-3035, and amendments thereto, a primary office shall be established and a supervising broker shall be designated pursuant to K.S.A. 58-3060, and amendments thereto, to supervise the office and any employed or associated salespersons or associate brokers and the supervising broker shall obtain approval for the supervising broker's business name or trade name pursuant to K.S.A. 58-3079, and amendments thereto.

or suspension

7-1

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