

Approved: 2/15/10
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 January 13, 2010, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Gene Suellentrop - excused
Representative Dale Swenson - absent

Committee staff present:

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

Others attending:

See attached list.

The Agenda, Members list, seating chart and 2010 rules were made available to the members. New members were recognized and shared their background information. Representative Gene Suellentrop is new to the committee but was out of town today. Representative Aaron Jack and Representative Pat Maloney were also introduced to the committee. Additionally Representative Dale Swenson was recognized as new to the committee. The committee has grown from 19 to 21 members this year.

The Chairman mentioned that the most significant bill the committee would work this year would probably be The Unemployment Insurance bill. There was a significant amount of money in the pool at the beginning of last year. Through the extraordinary number of layoffs that pool has almost been depleted. The Secretary of Labor will be coming to explain how the system works.

The Chairman explained that we have the Home Inspectors Bill today that was passed in the previous session. In the bill it was determined that the Inspectors would be liable up to a certain amount of money. It was to be up to \$2,000.00 for each inspection and over a years time they would be liable up to \$10,000.00. The Chairman then presented the proposed House Bill with number 9rs1338 (Attachment 1). On page 2 it has a change from \$10,000 to \$2,000 and on page 5 it has two changes from \$10,000 to \$2,000. He indicated that this is a technical cleanup bill. The simplest way to handle it is to gut out a Senate Bill that we have that is just languishing here. It is SB 324. After adding and passing the language from proposed House Bill 9rs1338 to SB 324 it would go to general orders. When it is passed in general orders it would go the Senate where they could simply concur with the language of their bill.

Renaë Jefferies explained the contents of 9rs1338 saying that it was a technical cleanup bill. The language in SB 324 was put into another Senate Bill and passed by the Senate.

Ron Hein testified in support of the changes to the bill. The reason it needs to be passed right away is that the language of the bill has to be placed in the contracts with their customers. If they do not comply with the bill as it is written they can be held liable for it. Hopefully this can be passed into law within the next two weeks.

Representative Grange made a motion that we take the language of proposed House Bill 9rs1338 and move it into SB 324. The motion was seconded by Representative Pottorff. The motion carried.

Representative Grant made a motion to take SB 324 and pass it out favorably for passage. Representative Hermanson seconded the motion. The motion carried.

The next meeting will be an informational meeting with Secretary Garner of the Department of Labor on January 20th.

The meeting was adjourned at 9:25 a.m.

HOUSE BILL NO. _____

By Representative Brunk

AN ACT concerning the Kansas home inspectors professional competence and financial responsibility act; amending K.S.A. 2009 Supp. 58-4505 and 58-4512 and repealing the existing sections.

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

Section 1. K.S.A. 2009 Supp. 58-4505 is hereby amended to read as follows: 58-4505. (a) Except as provided in subsections (b) and (c), the board may deny, suspend or revoke a registration, or may impose probationary conditions on a registrant or applicant if the registrant or applicant has engaged in any of the following conduct:

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

(2) been convicted of or plead guilty or nolo contendere in a court of competent jurisdiction to any misdemeanor involving dishonesty;

(3) intentionally falsifying a home inspection report;

(4) performing any of the following acts as part of the home inspection:

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

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

(C) accepting an engagement to perform a home inspection or to prepare a home inspection

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report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the home inspection report, pre-established or prescribed findings or the closing of the underlying real estate transaction;

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

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

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

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

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

(b) (1) Except as provided in paragraph (2), the board shall refuse to issue a registration to an applicant or registrant if the applicant or registrant has entered a plea of guilty or nolo contendere to, or has been convicted of:

(A) (i) Any offense that is comparable to any crime which would require the applicant to register as provided in the Kansas offender registration act; or

(ii) any federal, military or other state conviction for an offense that is comparable to any crime under the laws of this state which would require the applicant to register as provided in the

Kansas offender registration act; or

(B) (i) Any felony other than a felony under subparagraph (A); or

(ii) any federal, military or other state conviction for an offense that is comparable to any under the laws of this state other than a felony under subparagraph (A).

(2) The board may grant an original registration pursuant to subsection (c) if the applicant's or registrant's application is received at least:

(A) Fifteen years after the date of the applicant's or registrant's discharge from postrelease supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (A) of paragraph (1); or

(B) five years after the date of the applicant's discharge from postrelease supervision, completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense specified in subparagraph (B) of paragraph (1), whichever is applicable.

(3) For the purposes of this subsection, "postrelease supervision" shall have the meaning ascribed to it in K.S.A. 21-4703 and amendments thereto.

(4) For the purposes of this subsection, "nonprison sanction" shall have the meaning ascribed to it in K.S.A. 21-4703 and amendments thereto.

(c) (1) The board may renew or grant an original registration to an applicant or registrant who has entered a plea of guilty or nolo contendere to, or has been convicted of any misdemeanor or any crime listed in paragraph (1) of subsection (b) if the applicant or registrant presents to the board satisfactory proof that the applicant or registrant now bears a good reputation for honesty,

trustworthiness, integrity and competence to transact the business of registered home inspector in such a manner as to safeguard the interest of the public. The burden of proof shall be on the applicator or registrant to present such evidence to the board.

(2) In determining whether or not the applicant or registrant presently has a good reputation as required in this subsection, the board shall consider the following additional factors:

- (A) The extent and nature of the applicant's or registrant's past criminal activity;
- (B) the age of the applicant or registrant at the time of the commission of the crime or crimes;
- (C) the amount of time elapsed since the applicant's or registrant's last criminal activity;
- (D) the conduct and work activity of the applicant or registrant prior to and following the criminal activity; and
- (E) evidence of the applicant's or registrant's rehabilitation or rehabilitative effort; and
- (F) all other evidence of the applicant's or registrant's present fitness for a registration.

(d) 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.

(e) All proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

Sec. 2. K.S.A. 2009 Supp. 58-4512 is hereby amended to read as follows: 58-4512. (a) It is the duty of all home inspectors registered under this act to conduct home inspections with the degree

of care that a reasonably prudent home inspector would exercise under the circumstances.

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

(c) No registered home inspector may include, as a term or condition in an agreement to conduct a home inspection, any provision that disclaims the liability for any errors and omissions which may arise during a home inspection, or limit the amount of damages for liability for any errors and omissions which may arise during a home inspection to less than ~~\$10,000~~ \$2,000 in the aggregate for each home inspection and such term or condition or limitation setting the liability at an amount greater than ~~\$10,000~~ \$2,000 must be provided to the customer in writing to be in effect.

(d) An action to recover damages for any act or omission of a registered home inspector relating to a home inspection or home inspection report must be brought not more than 12 months from the date the home inspection was performed and may be initiated only by the client for which the home inspection was conducted.

(e) In any action to recover damages for any error or omission of a registered home inspector relating to a home inspection or home inspection report, a registered home inspector is liable for any errors and omissions which may arise during a home inspection in an amount of not to exceed \$2,000 in the aggregate for each home inspection, or to the amount in the pre-inspection agreement to conduct a home inspection, if greater than \$2,000 in the aggregate for each home inspection, provided that a registered home inspector provides the customer with a clear written description in the pre-inspection agreement of any greater limitations on the liability of the registered home inspector for any errors and omissions which may arise during the home inspection.

(f) All home inspectors registered under this act shall provide clients with a written

pre-inspection notice prior to the home inspection.

Sec. 3. K.S.A. 2009 Supp. 58-4505 and 58-4512 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.