

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Thursday, February 5, 2004, in Room 123-S of the Capitol.

All members were present except:  
Senator Derek Schmidt (E)

Committee staff present:  
Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of the Revisor Statutes  
Helen Pedigo, Office of the Revisor Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:  
Representative Doug Patterson  
Bill Yanek, Kansas Association of Realtors (written)  
Chris Wilson, Executive Director, Kansas Building Industry Association (written)  
Scott Schneider, Great Plains Chapter of the American Society of Home Inspectors (ASHI)  
Paul Meiers, Norton Y Schmidt Consulting Engineers, Kansas City  
Jeff Barnes, Kansas Association of Real Estate Inspectors  
Kerry Parham, President, Midwest Pro-ASHI Chapter  
Brian Meitler, President, World Pest Control & Sunflower Services  
Miki Mertz, Complete Home Inspection, Shawnee  
Erik Hansen, National Property Inspections Of Kansas, Lenexa (written)  
Gary Hodgden, President, Society of Professional Property Inspectors (written)  
Thomas Swayne, TCS Building Inspection Services, Meriden (written)  
Mark Hassman, Hassman Termite Pest, Salina (written)  
John Bryon, Byron Home Inspection Services (written)  
Tom Lauhon, American Residential Inspection, Shawnee (written)  
Thomas Swayne, TCS Building Inspections, Inc. (written)  
Erik Hansen, National Property Inspections of Kansas (written)  
Gary Hodgden, President, Society of Professional Property Inspectors (written)  
Mark Hassman, Chairman Government Affairs, Kansas Pest Control Association (written)  
John Byron, President, Byron Home Inspection Services, Inc. (written)  
Tom Lauhon, American Residential Inspections, Inc. (written)

Others attending: See attached list.

**Final Action:**

**SB 256 - Victim compensation for residents who are victims of crimes committed outside of the United States**

Chairman Vratil called for discussion and final action on **SB 256**. The Chair explained the bill, and said it was sponsored by Senator David Jackson.

Senator O'Connor made a motion to pass SB 256 out favorably, and the motion was seconded by Senator Umbarger

Before the vote on the motion, Senator Oleen asked Senator Jackson if there was any conflict between state law and U.S. military law. Senator Jackson responded that as far as he knew there was not. Senator Oleen said she would research this topic and find out before the bill goes to the Senate floor.

Chairman Vratil called for a vote on the motion. The motion carried, with Senator Pugh requesting his no vote be recorded. Senator Pugh explained his negative vote. He said there were a lot of tragedies out there, but he did not know how the state could indemnify people who go to foreign countries or cross U.S. borders and experience a tragic circumstance. Senator Pugh stated that he did not think the state could insure people around the world, but felt it could within the state's own borders under Kansas laws.

**SB 316 - Requiring judges to sign executions and orders of sale**

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, February 5, 2004, in Room 123-S of the Capitol.

Chairman Vratil called for discussion and final action on **SB 316**. He explained that the bill concerned civil procedures, and shifts the requirement of clerks to sign executions and orders of sale back to judges.

Senator Oleen moved to pass **SB 316** out favorably, seconded by Senator Goodwin, and the motion carried.

### **SB 317 - Eliminating the requirement that subpoenaed business records be held indefinitely by the clerk of the district court**

Chairman Vratil called for discussion and final action on **SB 317**. He said the bill concerned civil procedure, and related to the subpoena of business records. He added it would allow Clerks of the Court, 30 days following termination of a case, to destroy any records which had not been introduced in evidence and are not required as part of the record.

The Chair stated the bill contained a form that takes up two full pages in the bill. In order to be consistent with the Committee's past practice, the Chair suggested an amendment be considered to delete the form on page 2 and 3.

Senator Goodwin made a motion to amend **SB 317** by deleting everything after the sentence which ends on line 25 of page 2 through line 21 on page 4, retaining the first sentence of subsection (c) which is on line 24 and 25 of page 2. The motion was seconded by Senator Umbarger.

Committee discussion followed. Concern was expressed about removing a form that was consistent throughout the state especially for attorneys with small practices, reducing the volume of paper in the Statute Books, and forms being available in form books put out by the Kansas Judicial Counsel and the Kansas Bar Association.

The Chair called for a vote on the motion to amend by Senator Goodwin, and the motion carried.

Senator Umbarger made a motion to recommend **SB 317** favorably as amended, seconded by Senator Donovan, and the motion carried.

### **HB 2100 - Home inspections; contractual language limiting liability**

Chairman Vratil opened the hearing on **HB 2100**. Representative Doug Patterson testified in support of the bill which states that anyone involved in the home inspection business, such as home inspectors, termite inspectors, pool inspectors and other such persons conducting inspection activities based upon a good-faith reliance on their expertise by the consumer, can limit their scope of engagement but cannot disclaim their responsibility for negligent inspections undertaken. He stated that there would be no fiscal effect to the state in respect to **HB 2100**.

Representative Patterson pointed out the small type on page 2 of the standard inspection report form, and how it could be overlooked. He spoke briefly on issues concerning liability insurance. Representative Patterson said that the bill provides that disclaimers of responsibility of professionalism involving large consumer transactions are against public policy. He added that it requires home inspectors to use the same degree of care all citizens use in dealing with the consuming public and to insure themselves against errors. (Attachment 1)

Bill Yanek, Kansas Association of Realtors' Director of Governmental Relations, submitted written testimony in support of **HB 2100**. (Attachment 2)

Chris Wilson, Kansas Building Industry Association, submitted written testimony as a proponent of **HB 2100**. (Attachment 3)

Scott Schneider, representing the Great Plains Chapter of the American Society of Home Inspectors (ASHI), spoke in opposition to **HB 2100**. He stated that the bill restricts citizens' freedom to contract which is protected by the Fifth and Fourteenth Amendments of the U.S. Constitution. He made three points in his testimony: (1) the bill would alter the market place for the home buyer, (2) the proposed bill extends the remedy for a breach of contract far beyond any gain or profit realized by a home inspector,

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:35 a.m. on Thursday, February 5, 2004, in Room 123-S of the Capitol.

and (3) ASHI believes the bill unfairly singles out the smallest participant in the transaction to benefit the largest. ([Attachment 4](#))

Paul Meiers, Norton & Schmidt Consulting Engineers, testified in opposition to **HB 2100**. He stated that the proposed legislation was anti-small business, would hurt every Kansas homeowner and home buyer and undercut the Kansas economy. Mr. Meiers explained that the bill would wipe away any ability of home inspectors to protect themselves from excessive and vindictive lawsuits, and gives a green light to disgruntled homeowners to sue home inspectors based on whatever problems arise in a home in the future during the natural course of home ownership. He felt that **HB 2100** went against the goal of tort reform, and undermines the concept of personal responsibility and free market. ([Attachment 5](#))

Jeff Barnes, Kansas Association of Real Estate Inspectors, spoke in opposition of **HB 2100**. He stated that the bill is against existing public policy which allows a disclaimer or limitation of liability. He expressed two concerns with the bill, i.e. the potential for the cost of an inspection to increase, and the increased liability and cost would inevitably lead to delays in scheduling. Mr. Barnes added that inspections would take longer to complete, and have increased documentation. ([Attachment 6](#))

Kerry Parham, Midwest Pro-ASHI Chapter President, testified in opposition of **HB 2100** because it burdens trades people and professionals who provide needed services to assist prospective real property buyers to make informed decisions. He felt the main purpose of the bill was to eliminate an impediment to prosecution by trial attorneys; the true beneficiaries of the proposed legislation. Mr. Parham stated that if the bill were enacted it would wreck havoc among the home inspection industry forcing a lot of established and/or rural members out of the profession because the cost of doing business or the financial risk would be too great. He concluded by stating the home buyer's greatest protection against unqualified home inspectors was to choose "certified" members of ASHI. ([Attachment 7](#))

Brian Meitler, World Pest Control and Sunflower Services, spoke against **HB 2100**. He felt it would make inspection company's exposure to litigation increase dramatically. ([Attachment 8](#))

Miki Mertz, Complete Home Inspection, testified in opposition to **HB 2100**, saying the bill would change the job description of a home inspector. She explained that currently a home inspector is to examine, describe and recommend, but this bill would imply that a home inspector would now be required to provide a warranty on all systems of the house forever. She stated that a home inspection was not intended to be a guarantee of the future performance of the house. The inspector offered a professional opinion of the condition of the house at the time of the inspection. Ms. Mertz said she believed the intent of this bill was consumer protection, but was afraid it would actually hurt consumers. She recounted that home inspectors would not be able to get errors and omissions insurance in a state with unlimited liability, so there would be fewer inspectors willing to do business. She concluded that there are existing legal avenues to take when a home inspector is negligent or provides an unprofessional service, and that this bill was not necessary. ([Attachment 9](#))

Due to time constraints, the following opposition conferees submitted their testimony in writing:

Thomas Swayne, Owner, TCS Building Inspection Services, Inc. ([Attachment 10](#))  
Erik Hansen, National Property Inspections of Kansas, Inc. ([Attachment 11](#))  
Gary Hodgden, President, Society of Professional Property Inspectors. ([Attachment 12](#))  
Mark Hassman, Chairman Government Affairs, Kansas Pest Control Assn. ([Attachment 13](#))  
John Byron, President, Byron Home Inspection Services ([Attachment 14](#))  
Tom Lauhon, American Residential Inspections, Inc. ([Attachment 15](#))

Due to the expiration of the allotted Committee meeting time, there was not time for any questions from Committee members. Chairman Vratil closed the hearing on **HB 2100**.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is February 9, 2004.

CONTINUATION SHEET

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