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To: Senate Commerce Committee

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Subject: **HB 2125** – Supporting the Request by the Kansas Real Estate Commission for an Incremental Increase in the Statutory Maximum Real Estate Licensing Fees to Stabilize the Balance of the Real Estate Fee Fund and Ensure that the Commission Has the Necessary Resources to Properly Regulate the Real Estate Industry and Protect Consumers in Real Estate Transactions

Chairperson Lynn and members of the Senate Commerce Committee, thank you for the opportunity to provide testimony on behalf of the Kansas Association of REALTORS® in support of **HB 2125**, which would incrementally increase the statutory real estate licensing fees for real estate licensees under the Kansas Real Estate Brokers' and Salespersons' License Act (KREBSLA). Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 homeowners for over 90 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

In order to protect consumers from harmful conduct in real estate transactions and uphold the highest ethical and professional standards of the real estate industry, Kansas REALTORS® strongly believe that the Kansas Real Estate Commission needs to have the necessary resources to maintain active and robust oversight of the real estate industry. In many situations, the efforts of the Commission are needed to take action against unqualified and unethical individuals that attempt to degrade the professionalism of the real estate industry.

Unfortunately, the actions of the Kansas Legislature over the last decade and the recent challenges facing the real estate industry have combined to force the Commission's real estate fee fund into a rather precarious situation. Unless the Kansas Legislature takes immediate action to allow the Commission to increase real estate licensing fees, REALTORS® are concerned that the Commission will not have adequate resources to provide for the proper regulation of the real estate industry and protect consumers from harm.

As a starting point, it is important to point out that the Commission is entirely funded through real estate licensing fees levied against real estate industry professionals. The Commission has never and will never receive a dime of funding from the state general fund or general tax revenues to offset the various expenses associated with regulating the real estate profession through the real estate fee fund.

As we discuss the current fiscal challenges facing the Commission and the proposed solutions contained within the provisions of **HB 2125**, it is also important to note that it is exclusively members of the real estate industry who pay real estate licensing fees into the real estate fee fund maintained by the Commission. In this respect, real estate industry professionals exclusively offset the costs of the regulation of our profession by the Commission and thus we believe that our opinions on this issue should carry great weight.

Fundamental Reasons Behind Declining Fiscal Health of the Commission and Real Estate Fee Fund

Based on our analysis of the Commission’s budget and fee fund balance over the last several fiscal years, we have concluded that there are three primary contributing factors to the Commission’s fiscal challenges and the resulting declining balance of the real estate fee fund:

- (1) **Unconstitutional Fee Fund Sweeps by the Kansas Legislature:** A series of very large unconstitutional transfers of nearly \$800,000.00 in real estate fee fund balances to the state general fund between 2005 and 2009.
- (2) **Large Reduction in the Number of Real Estate Licensees:** The drastic reduction in the number of real estate licensees regulated by the Commission due to the stagnant housing market and economic environment and more stringent licensing requirements for real estate salespersons and brokers.
- (3) **Increased Costs for the Investigation and Processing of Complaints:** An increase in the costs associated with administrative hearings, investigations, legal matters and processing of complaints against real estate licensees regulated by the Commission due to an increase in the number of complaints filed against real estate licensees.

First, the Kansas Legislature transferred \$195,671.00 from the Commission’s real estate fee fund to the state general fund during the 2009 Legislative Session. The association contends that this was an impermissible and unconstitutional transfer of regulatory fees and has filed a lawsuit against the State of Kansas seeking the return of those funds. Unfortunately, the litigation is still pending in the Kansas Court of Appeals and will not be resolved for at least several more years.

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 funding problem for the Commission that began with previous fee fund sweeps by the Kansas Legislature of over \$600,000.00 in 2005.

Second, the total number of real estate licensees regulated by the Commission has declined significantly by over 2,000 real estate licensees since 2009. Unfortunately, the real estate fee fund balance of the Commission rises and falls with the number of real estate licensees currently paying real estate licensing fees into the fund.

Since the number of real estate licensees peaked at nearly 17,600 in FY 2007, the number of real estate licensees has already dropped by nearly 4,000 licensees (for a total reduction of 22.7%). As you can see in Table 1 below, the number of real estate licensees continues to decline (or slowly recover with insignificant annual growth), which will continue to negatively affect the financial health of the Commission and lead to a continuing deterioration of the balance in the real estate fee fund.

Table 1. Number of Real Estate Licensees from 2009 through 2015.

Year	Total Number of Real Estate Licensees	Active Licensees	Active Brokers	Active Salespersons	Inactive Licensees	Inactive Brokers	Inactive Salespersons
FY 2009 Actual	15,879	14,411	4,102	10,309	1,468	152	1,316
FY 2010 Actual	15,030	13,856	4,025	9,831	1,174	129	1,045
FY 2011 Actual	14,500	13,367	3,912	9,455	1,133	132	1,000
FY 2012 Actual	13,747	12,835	3,776	9,059	912	122	790
FY 2013 Estimate	13,625	12,725	3,750	8,975	900	125	775
FY 2014 Estimate	13,750	12,785	3,708	9,077	965	145	820
FY 2015 Estimate	13,825	12,865	3,715	9,150	960	147	813

Finally, the Commission has stated that an increasing number of inquiries from members of the general public and real estate licensees are being handled by Commission staff. This has resulted in an increased number of complaints being filed against real estate licensees and an increase in the number of complaints resulting in disciplinary action, which leads to an increase in the number of hearings requested by real estate licensees to challenge disciplinary action imposed by the Commission.

Compared to previous fiscal years, the Commission has concluded that an increasing portion of the annual budget is being allocated to the administrative, legal and other processing costs associated with responding to consumer inquiries, processing complaints, holding hearings and defending disciplinary sanctions in administrative and legal proceedings. Based on the information on the Commission's enforcement actions found in Table 2 below, it also appears that an increasing number of office audits by the Commission have resulted in violations and disciplinary actions, which eats up significant resources.

Table 2. Number of Enforcement Actions from 2009 through 2015.

Type of Enforcement Action	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Estimate	FY 2014 Estimate	FY 2015 Estimate
Consumer Inquiries	1,083	932	781	875	875	925	950
Licensee Inquiries	1,599	1,584	1,348	1,387	1,450	1,475	1,500
Total Inquiries	2,682	2,516	2,129	2,262	2,325	2,400	2,450
Complaints Logged	143	124	98	118	125	130	125
Closed Complaints Resulting in Disciplinary Action	93	82	63	71	80	81	75
Hearing Requests Arising from Closed Complaints	32	37	30	38	36	37	36
Number of Real Estate Offices	2,060	2,705	2,622	2,590	2,566	2,540	2,515
Audits Performed	480	419	583	596	560	570	600
Audits Finding Violations	62	36	168	187	168	171	180
Hearing Requests Arising from Audits	4	4	6	0	5	4	4
Petitions for Judicial Review Filed in District Court	7	5	4	4	5	5	4

When it became apparent that the Kansas Legislature was not going to approve an increase in the statutory maximum real estate licensing fees in the 2010, 2011 and 2012 legislative sessions, the Commission made several efforts to capture significant budgetary savings in FY 2011 and 2012. However, the Commission's efforts to trim the budget coupled with the significant increase in hearing requests and petitions for judicial review resulted in an increase in the backlog of orders and hearings waiting to be processed.

In an effort to reduce legal expenses, the Commission attempted to utilize the assistance of the Attorney General's office in disciplinary proceedings in FY 2011. However, the Commission believes that the Attorney General's office was not well-suited to this type of legal assistance and that this effort was not successful in either reducing the backlog in orders and hearings or reducing the Commission's costs to hire outside legal disciplinary counsel to handle disciplinary proceedings.

During the past few years, the backlog of orders arising from audits and complaints has continued to increase to approximately 12 to 15 months and the backlog for licensure cases has increased to around 60 to 120 days. According to the Commission, any further attempts to stabilize the fee fund balance through budget cuts will cause these backlogs to increase to even higher amounts in future fiscal years. Unfortunately, this growing backlog harms the very individuals that pay the real estate licensing fees – real estate industry professionals.

Current Fiscal Projections for Real Estate Fee Fund Balance

At this time, the Commission’s budget analysis is projecting that the real estate fee fund will have a balance of only \$131,180.00 remaining at the end of the current fiscal year (FY 2013). This ending balance represents only 12.4% of the Commission’s annual operating expenditures, which would leave the Commission with dangerously low reserves of around 1.5 months’ supply of operating expenses.

If the Kansas Legislature does not approve an increase in the statutory maximum real estate licensing fees during the 2013 Legislative Session, the Commission anticipates that the real estate fee fund would start running a negative fund balance sometime in mid-FY 2014. At the conclusion of FY 2014, the budget analysis shows that the real estate fee fund would have a nearly \$130,000.00 budget deficit, which again is around 12.4% of the Commission’s annual operating expenditures.

Table 3. Real Estate Fee Fund Balance – No Fee Increase Scenario.

NO FEE INCREASE SCENARIO	FY 2012 Actual	FY 2013 Budget Request	FY 2014 Budget Request	FY 2015 Budget Request
CASH FORWARD	\$576,426.00	\$388,303.00	\$131,180.00	-\$127,209.00
Real Estate License Fee Revenue	\$840,854.00	\$799,825.00	\$828,625.00	\$826,750.00
Recovery of Expenses Revenue	\$3,083.00	\$2,500.00	\$2,500.00	\$2,500.00
Other Nonrevenue Receipts	\$2,021.00	\$2,025.00	\$2,025.00	\$2,025.00
TOTAL REVENUE	\$1,422,384.00	\$1,192,653.00	\$964,330.00	\$704,066.00
TOTAL EXPENDITURES	\$1,034,081.00	\$1,061,473.00	\$1,091,539.00	\$1,109,766.00
FEE FUND BALANCE AT END OF FISCAL YEAR	\$388,303.00	\$131,180.00	-\$127,209.00	-\$405,700.00

Accordingly, the Commission would need to reduce annual operating expenditures in FY 2013, FY 2014 and FY 2015 by roughly 14% annually in order to avoid the anticipated budget deficit in FY 2014 and FY 2015. As discussed later in this testimony, this would obviously require a large amount of cuts to the Commission’s largest programs (i.e. the enforcement and licensing programs).

Table 4. Real Estate Fee Fund Balance – Annual 14% Cuts in Operating Expenditures.

NO FEE INCREASE WITH 14% CUTS IN FY 2013, FY 2014 and FY 2015	FY 2012 Actual	FY 2013 Budget Request	FY 2014 Budget Request	FY 2015 Budget Request
CASH FORWARD	\$576,426.00	\$388,303.00	\$279,786.22	\$174,212.68
Real Estate License Fee Revenue	\$840,854.00	\$799,825.00	\$828,625.00	\$826,750.00
Recovery of Expenses Revenue	\$3,083.00	\$2,500.00	\$2,500.00	\$2,500.00
Other Nonrevenue Receipts	\$2,021.00	\$2,025.00	\$2,025.00	\$2,025.00
TOTAL REVENUE	\$1,422,384.00	\$1,192,653.00	\$1,112,936.22	\$1,005,487.68
TOTAL EXPENDITURES	\$1,034,081.00	\$1,061,473.00	\$1,091,539.00	\$1,109,766.00
Reduction in Expenditures Required to Balance the Budget	N/A	-\$148,606.22	-\$152,815.46	-\$155,367.24
FEE FUND BALANCE AT END OF FISCAL YEAR	\$388,303.00	\$279,786.22	\$174,212.68	\$51,088.92

If the statutory maximum real estate licensing fees are not increased, the Commission's budget analysis anticipates that the real estate fee fund would end with a negative budget balance of \$405,700.00 in FY 2015. This would represent around 36.6% of the Commission's annual operating expenditures. Again, the Commission would need to reduce annual operating expenditures in FY 2013, FY 2014 and FY 2015 by roughly 14% in order to avoid the anticipated budget deficit in FY 2015.

As you can see in Table 4 above, balancing the budget without the \$35.00 fee increase proposed by the Commission would require an annual 14% reduction in total operating expenditures by the Commission in FY 2013, FY 2014 and FY 2015. In each fiscal year, this would represent a roughly \$150,000.00 reduction in total operating expenditures for the Commission, which is a very sizeable amount of annual funding.

Even if the Kansas Legislature approves the Commission's current proposal to increase the statutory maximum real estate licensing fees and the Commission adopts a regulation increasing the real estate licensing fees for \$35.00 for both real estate brokers and salespersons, the real estate fee fund would barely maintain a positive balance in FY 2013, FY 2014 and FY 2015. According to the Commission's budget analysis, an increase of \$35.00 for both real estate brokers and salespersons would produce a budget with an ending positive balance of \$34,540.00 in FY 2105.

Table 5. Real Estate Fee Fund Balance – \$35.00 Increase Beginning in FY 2014.

\$35.00 INCREASE FOR SALESPERSONS AND BROKERS BEGINNING IN FY 2014	FY 2012 Actual	FY 2013 Budget Request	FY 2014 Budget Request	FY 2015 Budget Request
CASH FORWARD	\$576,426.00	\$388,303.00	\$130,980.00	\$95,581.00
Real Estate License Fee Revenue	\$840,854.00	\$799,825.00	\$1,051,815.00	\$1,044,400.00
Recovery of Expenses Revenue	\$3,083.00	\$2,500.00	\$2,500.00	\$2,500.00
Other Nonrevenue Receipts	\$2,021.00	\$2,025.00	\$2,025.00	\$2,025.00
Operating Transfers Out	\$0.00	-\$200.00	-\$200.00	-\$200.00
TOTAL REVENUE	\$1,422,384.00	\$1,192,453.00	\$1,187,120.00	\$1,144,306.00
TOTAL EXPENDITURES	\$1,034,081.00	\$1,061,473.00	\$1,091,539.00	\$1,109,766.00
FEE FUND BALANCE AT END OF FISCAL YEAR	\$388,303.00	\$130,980.00	\$95,581.00	\$34,540.00

Unappealing Alternatives to Real Estate Licensing Fee Increases

If the Kansas Legislature does not approve an increased in the real estate licensing fee increases during the 2013 Legislative Session, the Commission has concluded that major cuts will need to be made to licensing and enforcement programs. According to the Commission's budget analysis, the majority of enforcement efforts would need to be eliminated and the Commission would only be able to investigate complaints involving allegations that affected the most serious violations of KREBSLA and BRRETA. In our opinion, this does not serve real estate industry professionals well and would harm consumer protection efforts.

In addition, the Commission's budget analysis has concluded that the Commission would no longer have the resources to conduct an in-person audit of every real estate office at least once every five years as required by the statute. Instead, the Commission has proposed requiring each real estate office to ship a limited number of transaction records to the Commission's main office for review by Commission staff. This proposal is extremely unpopular in the real estate industry and would lead to increased costs for real estate brokerages.

Moreover, the Commission's budget analysis concludes that the Commission would no longer have the resources to load continuing education attendance records into the Commission's licensure system. In the alternative, each approved educational provider would be required to load this information into the system electronically using a system approved by the Commission. In the past, the Commission has explored and discarded this option due to resistance from the educational providers because of increased costs.

In order to help stabilize the real estate fee fund balance, the Commission has taken a number of steps to identify cost savings and reduce operating expenditures. These measures include the elimination of out-of-state travel expenditures for industry conferences and meetings, holding Commission meetings via conference call every other month, issuing warning letters instead of initiating disciplinary actions for minor violations of KREBSLA and BRRETA and delaying information technology expenditures.

However, the annual reductions in total operating expenditures required to balance the real estate fee fund without a fee increase would be substantial and could not be achieved without going beyond cost savings and actually cutting enforcement or licensing programs, which would increase the cost burden on real estate licensees in other areas and harm consumer protection efforts. As you can see in Table 4 on page four of this testimony, balancing the budget without a fee increase would require an annual 14% reduction (or \$150,000.00 annually) in total operating expenditures by the Commission over the next three fiscal years.

Historical Progression of Real Estate Licensing Fees

Based on exhaustive research conducted into the fiscal history of the Commission, it appears that the Commission has not increased the statutory maximum real estate licensing fees for real estate brokers and salespersons since at least 1993. For a minimum of the last 16 years, these licensing fees have remained constant at their current levels without any increase.

In 1997, the license fee was doubled from \$50 to \$100 for real estate salespersons and \$75 to \$150 for real estate brokers. However, the Commission also switched from a one-year to a two-year renewal period at that time. As a result, the Commission received no additional revenue from the increased fees and instead transferred from a one-year to a two-year renewal system.

If the Commission were to increase real estate licensing fees in 2013, I believe it would be the first increase in the statutory maximum real estate licensing fees since at least 1988. Although the Commission would like to increase the statutory maximum real estate licensing fees by \$50.00 for both real estate brokers and salespersons, the Commission has the authority to adopt rules and regulations to increase the fees by a lower amount than the maximum amount specified in the statute.

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 (along with several other fees related to specific services provided by the Commission). At this time, the Commission has expressed no interest in increasing any other fees other than the basic real estate license fee for real estate salespersons and brokers.

At this time, the Commission has expressed a desire to increase the fees by regulation by \$35.00 each for real estate salespersons and brokers. This means that the Commission would not be increasing the fees up to the maximum amount specified in the statute if the Kansas Legislature agrees to the increased fees in **HB 2125**.

Comparison to Real Estate Licensing Fees in Other Jurisdictions

In the process of conducting research on this issue, we utilized information provided by the Commission to analyze how real estate licensing fees in Kansas compared to other jurisdictions both under current law and under the proposal for a \$35.00 increase set forth by the Commission. On pages eight and nine of this testimony, you will find attached a spreadsheet that contains the results of this research.

Under current law, the average annual cost of obtaining a real estate license in Kansas is \$75.00 for individuals licensed as real estate brokers and \$50.00 for individuals licensed as real estate salespersons. Compared to other jurisdictions, real estate licensing fees in Kansas are roughly in the middle of the pack with the annual cost for real estate brokers and salespersons both tied for the 29th highest amount.

If the Commission were to increase the real estate licensing fees by regulation by \$35.00 each for individuals licensed as both real estate brokers and salespersons in FY 2014, the average annual cost of obtaining a real estate license in Kansas would increase to \$92.50 for individuals licensed as real estate brokers and \$67.50 for individuals licensed as real estate salespersons. This would be an annual increase in the annual cost of \$17.50 for both real estate brokers and salespersons or an additional \$1.46 per month per real estate licensee.

Table 6. Real Estate Licensing Fees in Surrounding Jurisdictions.

State	Real Estate License Term (Years)	Broker Renewal Fee	Broker License Annual Cost	Salesperson Renewal Fee	Salesperson License Annual Cost	Composite Annual License Cost Rank
Arkansas	1	\$70.00	\$70.00	\$50.00	\$50.00	32
Colorado	3	\$300.00	\$100.00	N/A	N/A	8
Iowa	3	\$170.00	\$56.67	\$125.00	\$41.67	40
Kansas – \$35 Increase	2	\$185.00	\$92.50	\$135.00	\$67.50	16
Kansas – Current	2	\$150.00	\$75.00	\$100.00	\$50.00	29
Missouri	2	\$50.00	\$25.00	\$40.00	\$20.00	52
Nebraska	2	\$230.00	\$115.00	\$100.00	\$50.00	17
Oklahoma	3	\$225.00	\$75.00	\$165.00	\$55.00	27
AVERAGE	2	\$172.50	\$76.15	\$102.14	\$47.74	

Conclusion

In order to protect consumers from harmful conduct in real estate transactions and uphold the highest ethical and professional standards of the real estate industry, Kansas REALTORS® strongly believe that the Kansas Real Estate Commission needs to maintain active and robust oversight of the real estate industry. In many situations, the efforts of the Commission are sorely needed to take action against unqualified and unethical individuals that attempt to degrade the professionalism of the real estate industry.

Unfortunately, the actions of the Kansas Legislature over the last decade and the recent challenges facing the real estate industry have combined to force the Commission’s real estate fee fund into a rather precarious situation. Unless the Kansas Legislature takes immediate action to allow the Commission to increase real estate licensing fees, then Kansas REALTORS® are concerned that the Commission will not have adequate resources to provide for the proper regulation of the real estate industry.

For all the foregoing reasons, the Kansas Association of REALTORS® would urge the members of the Senate Commerce Committee to strongly support the provisions of **HB 2125**. Thank you for the opportunity to testify and I look forward to answering your questions at the appropriate time.