

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on March 8, 2005 in Room 241-N of the Capitol.

All members were present except:
Dale Swenson- unexcused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Renaë Jefferies, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:
Dan Sight, Kansas Association of Realtors
John Peterson, Legislative Committee Kansas Land Title Association
Kathy Olsen, Kansas Bankers Association
Jim Edwards, Kansas Association of School Boards

Others attending:
See attached list.

The Chairperson opened the hearing on **SB 215 - Commercial real estate broker lien act.**

Staff gave a briefing on **SB 215** stating the bill would enact the Commercial Real Estate Broker Lien Act. Staff said on page 2, line 34, it was not clear who the current owner was. The key to the bill is: (a) A broker may enforce a lien attaching against commercial real estate by filing a petition to foreclose such lien in the district court of the county in which such real estate is located. Failure to file such petition within two years of recording a lien shall extinguish such lien. A claim for a lien extinguished pursuant to this section may not be asserted in subsequent proceedings. On page 5, line 4, there is no time limitation set out in Section 8 and that should be changed to Section 11. This only covers one county. Where should the filing be when two or more counties are involved? There is no fiscal note.

Dan Sight, Sight Commercial Realty, Inc., Overland Park, KS, and immediate past President of the Kansas Association of REALTORS, testified as a proponent to **SB 215**. Currently 21 other states have enacted this type of legislation. This would strengthen the legal rights of Kansas real estate brokers in order to collect commissions in a fair and timely manner. Commercial real estate brokers have a contractual right to a commission based upon his/her written agreement with landlords or sellers of property. Brokers could pursue an unpaid commission through costly litigation with no guarantee that the party owing the commission would have the cash or assets sufficient to satisfy the broker's claim years later. It makes sense to seek a means by which a broker can place a lien on the property, since the value of the property has been increased by the broker's efforts. The purpose of the lien law is to prevent lawsuits, not encourage them (Attachment 1).

Roy H. Worthington, Chairman, Legislative Committee, Kansas Land Title Association, provided written testimony opposing **SB 215**. The bill is far too complicated. Brokers already have judicial remedies available to seek payment of a disputed commission. This act would make it far too easy for liens to be filed unilaterally by a broker and without the advice and expertise of an attorney, the result being erroneous liens which encumber real estate to the detriment of sellers and buyers (Attachment 2).

John Peterson, in the audience, stated he supported Mr. Worthington's testimony. There are adequate remedies in place and attorney fees should be included.

Kathy Taylor Olsen, Kansas Bankers Association (KBA), testified stating **SB 215** would create a new statutory lien for the commissions of commercial real estate brokers. The KBA supports the amendments made by the Senate Judiciary Committee in two areas. One of our concerns with the bill is that there are no procedures for filing a release of the lien. When a broker no longer has a claim to the property (the broker has been paid in full or the time for taking action to collect the lien has passed), the broker will be responsible for filing a release of the lien, paying the required fee. This would help to ensure that there would be no

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unwanted blemishes on the title of the property down the road.

KBA recommends two amendments: (1) Page 5, line 4, relating to the release of the lien being filed by the broker with the Register of Deeds. (2) On Page 5, line 2, states that if a broker has been paid in full or if he or she fails to take action to collect the lien within the time period provided in the bill, and upon written demand of the owner, the broker would acknowledge satisfaction of the lien. There may be instances where a broker knows that he or she is not going to take action to collect the broker fee. This decision could occur well before the time period for taking such action has expired. In those instances, the broker may be willing to give the property owner or the lender with a security interest in the property a lien waiver or lien subordination to signify that he or she no longer has a claim to the property (Attachment 3).

The Chairman closed the hearing on **SB 215**.

The Chairman opened the hearing on **SB 107 - Unemployment benefits; disqualifying certain persons**.

Staff gave a briefing on **SB 107**. As amended, the bill would prohibit an employer's account under employment security law from being charged unemployment benefits if the employee was a part-time employee, defined as less than 20 hours per week or less than \$2,500 in base period wages.

Jim Edwards, Governmental Relations Specialist, Kansas Association of School Boards, a proponent for **SB 107**, testified this measure would prohibit an employer's account under employment security law from being charged unemployment benefits if the employee is a part time employee. Part time employees would be persons that work less than 20 hours per week or earn less than \$2,500 in base period wages. This bill would have no effect on a full time employee receiving benefits. The employee's full time employer's account would be charged if the employee is terminated; however, if the employee also was a part time school district employee, the school district account would not be charged with the termination by the full time employee. This was intended primarily for coaches that coach part time and have a full time job. If they were laid off from the full time job, they could also draw from the school (Attachment 4).

Wayne Michaels, Kansas Department of Labor, was in the audience and said the Department of Labor was glad to see on Page 3, lines 2 - 14 stricken. The Department of Labor defines full time and anything less is part time. This will make it much easier. There is no fiscal note because of the definition of part time.

The Chairman closed the hearing on **SB 107**.

The Chairman said the Minutes of February 11, 14, 15, 16, 17, 18 and 21 were distributed on March 3. If there are any corrections, additions, or deletions, contact the secretary before 5:00 p.m. today or they stand approved.

The meeting adjourned at 10:00 a.m. The next meeting will be March 9.