

Ralph Pimentel, Senate Commerce Committee Written Testimony
Submitted February 23, 2021 to the office of Senator Olson

Chairman Senator Olson and senators of the commerce committee, thank you for allowing me to testify before this committee. My name is Ralph Pimentel. I am the owner of National Building Consultants, a consulting business that I started in 1988. Being the first business to provide whole house inspections and environmental surveys for the real estate industry in the Topeka area, I have seen the home inspection industry evolve from a time when ninety-five percent of home buyers had never heard of a home inspection to the present where nearly ninety-five percent of home buyers include home inspections in their real estate contracts.

Before starting up National Building Consultants, I served as a certified building official for the City of Topeka and the City of Lawrence. In general, I have always been a proponent of good regulations such as the building regulations that assure the construction of safe, reliable, and sustainable buildings for the public. I was specifically appointed by the City of Topeka and the City of Lawrence to implement newly adopted building codes and to establish licensing programs for segments of the construction industries. Several thousand contractors and tradesmen received their licenses in these two cities alone. Looking back, it is now evident that these two licensing programs accomplished their primary goals; to elevate the overall competency of the trade groups and to provide the public with additional safeguards and consumer protection.

Seeing the first hand the direct consumer benefits of licensing, I was honored to be appointed to the first Home Inspectors Registration Board in 2007. I was the only member to serve on the board from its inception until the the date when the statute was allowed to expire and the board was disbanded. When Governor Brownback vetoed the Home Inspectors Competency and Financial Responsibility Act thus allowing the statute to sunset in 2013, he issued a statement and listed the reasons why he decided to let the home inspector law expire. Governor Brownback said that he was committed to less government intrusion into small businesses. He also stated that homeowners had other forms of consumer protection through the Attorney General's office and through the court system. Most notably, decided to end home inspection regulations because the home inspectors board "had proven to be incapable of regulating itself". This statement being an apparent reference to the numerous consumer complaints filed with the Governor's office against a then board member, Jeff Barnes.

Governor Brownback also had to be disappointed by what appeared to be a pattern of denying homeowners any meaningful level of consumer protection. If you are wondering how this bill will impact the real estate industry, we can look back at the those homeowners who filed complaints and sought relief from the Kansas Home Inspectors Registration Board (KHIRB) during the years 2008-2013. During that period aggrieved homeowners could file their complaints with the board and seek up to \$10,000.00 in relief for home inspection errors and omissions. If you are curious about the total amount of money received by aggrieved home buyers during those years, the answer is; zero. Not one homeowner ever received any one penny of compensation through the board. Even more troubling was when the board subsequently learned that Mr. Barnes, one of the individuals here promoting this latest iteration of consumer protection, had systematically intercepted all of the consumer complaints and then informed the complainants that no compensation would be provided to them. The board was never officially informed about any of the details of these cases or how they were resolved.

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Governor Brownback's appointment secretary, Kim Borchers, contacted the board to inform us that numerous complaints have been filed with the Governor's office against Mr. Barnes. The information provided by Kim Borchers was when the board members first became aware of the serious nature of the complaints levied against Mr. Barnes and of the years of home inspection complaints that had been filed with the board. Mr. Barnes had kept all of this information from the board. Due to the volume and severity of the complaints, the Governor's office asked the board to remove Mr. Barnes, who was then serving as the board's executive secretary. I forwarded all of this information to legal counsels, Sara Fertig and Dwight Carswell, who provided the board with legal advice and instructions about how best to separate Jeff Barnes from the board. During the January 2013 meeting the board voted unanimously to abolish the executive secretary position. When the Home Inspectors Competency and Financial Responsibility Act expired on July 1, 2013 the board was dissolved. That is a brief history of the first attempt to regulate the home inspection industry.

Fast forward to now and this is the third version of a bill to regulate home inspectors and again there are some of the same fatal flaws. The most glaring is the unnecessary exemption for engineers and architects licensed by the state of Kansas. None of the provisions of a state engineer or architect license apply to a real estate inspection, as defined by the statute. This is according to the opinion provided by the board's legal counsel, Sara Fertig.

I recently confirmed that Texas, Florida, Oklahoma, Ohio, Arizona, and other states do not exempt engineers and architects from their state licensing requirements, if they provide home inspection services as defined by the statute. I believe it is imperative that all home buyers in Kansas be afforded all of the same levels of consumer protection that are at the core of this statute. Every home buyer should be assured that their inspector has demonstrated competency, is insured, financially solvent, and most importantly, that every home buyer has access to the exact same dispute remedies provided within this bill.

The following bullet points are an abbreviated description of the several other legal issues or consumer protection concerns found in this bill:

1. The bill contains unconstitutional provisions, *the unlawful delegation of legislative authority*. Requirements to be a member of a trade association were deemed to be unconstitutional by an Attorney General's legal opinion prepared for the Home Inspectors Registration Board.
2. The advisory committee, to be created to assist the Attorney General in reviewing home inspection complaints, should only be comprised of registered home inspectors with more than one thousand inspections to ensure the highest level expertise. The Governor should appoint one inspector from each congressional district and one member of the public to this advisory group.
3. The bill should not eliminate a KBI background check. It is vital that homeowners be assured that individuals with serious criminal records not be given unvetted access to their homes or their families.

In closing, I would like this committee to know that I have dedicated a vast majority of my business career to helping property owners acquire, construct, repair, and maintain commercial and residential buildings. From my days as a journeyman and master licensed tradesman, through the years of being a building official for the cities of Topeka and Lawrence, I have always been an advocate for licensing, consumer protection, and public service. I will continue to offer my support and assistance to this committee and to the home inspection industry whenever possible. Chairman Olson and committee senators, thank you for giving me the opportunity to provide you with my perspective today and thank your time and for your efforts to improve the home inspection industry. I would welcome any request for additional information.