

SESSION OF 2008

REVISED
CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2746

As Agreed to April 2, 2008

Brief*

HB 2746 would amend the Real Estate Brokers' and Salespersons' License Act regarding licensure, prohibited acts, and definitions, and create a new section dealing with advertising.

Granting or Renewal of License

The bill would require the Kansas Real Estate Commission (Commission) when considering a prior revocation, conduct, or plea of guilty, *nolo contendere*, or a conviction of a misdemeanor which could reflect on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate, consideration must be given to the time lapse since such revocation, conduct, or plea of guilty, or *nolo contendere*, or conviction of such misdemeanor happened. In addition, the bill would allow the Commission to grant an original license if the applicant's application is received 15 years after the date of the applicant's "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" which would require the applicant to register under the Kansas Offender Registration Act, or if the application is received five years after the applicant's 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 felony other than a

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felony that would require the applicant to register in the Kansas Offender Registration Act. Furthermore, the bill would allow the Commission to renew or grant an original license where the applicant presents sufficient proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of real estate.

The bill would contain a licensing provision which would deal with cancellation and reinstatement of licenses which sets out the duties of the supervising broker, salesperson and associate broker upon closure of a primary office regarding cancellation and reinstatement of the supervising broker's, salesperson's and associate broker's licenses or placement on inactive status. Other provisions would set out the duties of the branch broker, salesperson or associate broker upon closure of a branch office regarding cancellation and reinstatement of the branch broker's, salesperson's and associate broker's license or placement on inactive status.

The bill would contain a provision to increase the civil fine imposed, for violation of prohibited acts, to not exceed \$1,000. The bill also would provide for a civil fine, not to exceed \$5,000 if the Commission would make specific findings that aggravating circumstances exist in the execution of certain prohibited acts by a licensee. The bill would create measures which would allow the Commission to recover, from a civil fine imposed, its actual costs and attorney fees incurred to investigate and prosecute a disciplinary case. Such costs and attorney fees would be credited to the Real Estate Commission Fee Fund. Any remaining balance would be credited to the State General Fund.

Other provisions would prohibit a licensee from committing any act that is deemed unprofessional conduct as defined by the Commission by rules and regulations and from attempting to represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

Advertising

Additionally, the bill would set out the prohibitions and guidelines for advertising by a licensee, and include that any time the balance in the Real Estate Recovery Revolving Fund is greater than \$250,000, any amount over the \$250,000 could be used by the Commission to pay for production and distribution of an agency newsletter; monitoring education courses; expansion of materials available for consumers; and education grants to high schools and universities for course materials on money management and home ownership.

Conference Committee Action

The Conference Committee agreed to the following:

- Adopt the Senate amendments to the bill;
- Strike the leasehold and easement terms in the definition of interest and agree with the House definition of interest; and
- Approve various technical amendments.

Background

Sherry Diel, Executive Director, Kansas Real Estate Commission; and Luke Bell, Director of Governmental Relations, Kansas Association of Realtors, appeared in support of HB 2746.

There was no opposition to the bill.

The House Committee of the Whole amendments were technical in nature.

The Senate Committee amended the definition of “interest” to include leasehold or easement as part of the definition. Other amendments were technical in nature.

The fiscal note on the original bill shows that the Kansas Real Estate Commission indicates that no additional staffing would be required to implement the proposed legislation. The Commission indicates that it may incur additional attorney fees and other costs to prosecute additional disciplinary cases as a result of this bill; however, the agency does not have information available upon which to provide a precise estimate of additional expenditures. The bill would allow the Commission to retain, from any fine collected, the amount of attorney fees, court costs, and investigation costs incurred to prosecute the case. The Commission does not anticipate that more than one or two cases per year would fall within the fine range for aggravating circumstances. The Commission estimates that the annual increase to the State General Fund would be approximately \$10,000, with the possibility that a portion of the fine may be retained by the Commission as a reimbursement of attorney fees and costs to prosecute the disciplinary case.

The agency's Real Estate Recovery Revolving Fund currently has a balance of \$557,229 with no expenditures budgeted for FY 2008 or FY 2009. If the agency were allowed to expend the balance that exceed \$250,000 in FY 2009, the agency could spend as much as \$307,229 for specified purposes that benefit licensees and consumers. However, the agency indicates it would spend approximately \$25,000 in FY 2009 to produce a newsletter and to develop guidelines on providing education grants to high schools and universities for course materials on money management and home ownership. Any fiscal effect associated with HB 2746 is not reflected in *The FY 2009 Governor's Budget*.

real estate brokers and salespersons license act