

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2598

As Amended by the House Committee on
Commerce, Labor and Economic Development

Brief*

HB 2598, as amended, would prohibit dealing in assignable contracts for the purchase or sale of, or options on, real estate or improvements of certain residential properties and deem such dealing a deceptive act or practice under the Kansas Consumer Protection Act (KCPA).

The bill would also authorize the Kansas Real Estate Commission (Commission) to issue cease-and-desist orders on a person the Commission has determined is practicing without a valid broker's or salesperson's license issued by the Commission.

The bill would also prohibit a seller from executing a contract for deed with a buyer if the seller does not hold the property's title. This prohibition would require the seller to maintain fee simple title to the property free from certain encumbrances, and it would establish that any violation of provisions pertaining to the execution of a contract for deed would be deemed a deceptive act or practice under the KCPA.

Assignable Contracts

The bill would prohibit any person, association, corporation, limited liability company, limited liability partnership, partnership, professional corporation, or trust from buying, selling, offering to buy or sell, market for sale,

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

exchange, or otherwise deal in assignable contracts for the purchase or sale of, or options on, real estate or improvements for single-family residential housing and multifamily residential housing of four units or fewer.

Any violation would constitute a deceptive act or practice under the KCPA and would be subject to civil penalty and any other remedy or penalty provided by the KCPA. Each unlawful transaction would be considered a separate violation of the KCPA.

Cease-And-Desist Orders

If the Commission determines a person has practiced without a valid broker's or salesperson's licenses issued by the Commission, the Commission may issue a cease-and-desist order in accordance with the Kansas Administrative Procedure Act against such unlicensed person or associated association, corporation, limited liability company, limited liability partnership, partnership, professional corporation, or trust.

Contract for Deed

Definitions

The bill would define terms, including:

- "Contract for deed," to mean an executory agreement in which the seller agrees to convey title to real property to the buyer and the buyer agrees to pay the purchase price in five or more subsequent payments, exclusive of a down payment, while the seller retains title to the property as security for the buyer's obligation. The term would specifically exclude option contracts for the purchase of real property; and

- “Property,” to mean real property located in Kansas upon which there is located or will be located a structure designed principally for occupancy of one to four families that is or will be occupied by the buyer as the buyer’s principal place of residence.

The bill also would define the terms “buyer” and “seller” for this purpose.

Recording of Contract for Deed

The bill would provide that any contract for deed or affidavit of equitable interest may be recorded by any interested person in the office of the county register of deeds where the property is located.

Seller to Hold Title to the Property; Exceptions

The bill would prohibit a seller from executing a contract for deed if the seller does not hold fee simple title to the property, free from any mortgage, lien, or other encumbrances (liability), subject to certain exceptions specified in the bill:

- Due to the conduct of the buyer;
- With the agreement of the buyer as a condition of a loan obtained to make improvements to the property; or
- By the seller prior to the execution of the contract for deed if:
 - The seller disclosed the liability to the buyer;
 - The seller continues to make timely payments on the outstanding liability;
 - The seller disclosed the contract for deed to a party of interest to the liability; and

- The seller satisfies and obtains a release of the liability not later than the date of the final contract for deed payment by the buyer, unless the buyer assumes the liability as part of such contract.

Violations of the specified title liability prohibitions would be considered a deceptive act and be subject to enforcement under the KCPA.

Contract for Deed: Buyer's Rights

The bill would provide that a buyer's rights under a contract for deed would not be forfeited or canceled except as specified in the bill. However, under the bill, a contract could provide for forfeiture of buyer's rights. Additionally, the bill would contain a statement that the provisions on a buyer's rights could not be construed to limit the power of a district court to require equitable foreclosure proceedings.

A buyer's rights would not be forfeited until the buyer has been notified of the intent to forfeit and has been given a right to cure the default and has not done so within the time period allowed. A notice of default and intent to forfeit would be required to:

- Reasonably identify the contract and describe the property covered by it;
- Specify the terms and conditions of the contract with which the buyer has not complied; and
- Notify the buyer that the contract will be forfeited unless the buyer performs the terms and conditions within the following time periods:
 - If the buyer has paid less than 50 percent of the purchase price, 30 days from completed service of notice; or

- If the buyer has paid 50 percent or more of the purchase price, 90 days from completed service of notice.

The bill would require such notice be served on the buyer in-person, delivered directly to the buyer's residence, or delivered by certified or priority mail to the buyer's residence with return receipt requested.

Background

The bill was introduced by the House Committee on Commerce, Labor and Economic Development at the request of a representative of the Kansas Association of Realtors.

House Committee on Commerce, Labor and Economic Development

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Association of Realtors and the Kansas Real Estate Commission.

The proponents generally stated the bill would ban the use of assignable contracts and allow the Commission to curtail this practice. Additionally, the cease-and-desist order would give the Commission the ability to address real estate issues that would not be a high priority for district attorneys or the Attorney General.

No other testimony was provided.

The House Committee amended the bill to include the contents of HB 2101, as amended by the House Committee on Financial Institutions and Pensions, related to contract for deed agreements. Background information for HB 2101 is provided below.

HB 2101 (Contract for Deed Provisions)

The bill was introduced by the House Committee on Financial Institutions and Pensions at the request of Representative Hoheisel.

House Committee on Financial Institutions and Pensions

In the House Committee hearing, Representative Probst, an attorney, a citizen lobbyist, and three private citizens provided **proponent** testimony. The proponents stated that the bill would add protections to a currently unregulated aspect of the residential housing market. The citizen lobbyist, formerly a member of the Judicial Council Advisory Committee, testified that the bill is the result and recommendation of that Committee's 2020 study. The attorney and the private citizens he represented in a case of convicted fraud described the misrepresentations made in a rent-to-own contract and protections the bill would afford to assist other buyers in similar situations.

Neutral written-only testimony was provided by the Kansas Judicial Council, which included the report of the Judicial Council Advisory Committee on 2020 HB 2600 and noted a discrepancy between the Committee's recommendation and HB 2101.

No other testimony was provided.

The House Committee amended the bill to insert additional criteria by which a seller could qualify for an exemption from the liability prohibition, which would require that the seller disclose the contract for deed to the liability interest holder and require that the seller obtain a release of any outstanding liabilities on the property prior to the buyer's final payment.

Fiscal Information

HB 2598 (Assignable Contracts and Cease-and-Desist Orders)

According to the fiscal note prepared by the Division of Budget on the bill, as introduced, the Office of the Attorney General indicates the agency would incur additional expenses to take action against the bill's KCPA violations, but is unable to estimate the amount of additional time or resources required to execute those actions.

The Office of Judicial Administration states the bill would have a negligible fiscal effect and could be accommodated within the existing budget resources. The bill has the potential to increase the collections of docket fees that are deposited in the State General Fund; however, the amount of additional docket fee collections is estimated to be negligible. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

HB 2101 (Contract for Deed Provisions)

The Abstracters' Board of Examiners and the League of Kansas Municipalities state the bill would have no fiscal effect.

The Kansas Association of Counties states the bill could have an impact on counties if current resources are inadequate to handle prosecutions and court needs. Therefore, a fiscal effect cannot be determined. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Real estate; Real estate commission; cease-and-desist; residential housing; contract for deed; Consumer Protection Act