



Sherry C. Diel, Director

Sam Brownback, Governor

To: Senate Judiciary Committee  
From: Sherry C. Diel, Executive Director  
Date: January 27, 2011  
RE: **SB 7**—Concerns regarding certain provisions of Section 1 of the Driving Under the Influence Legislation

Chairman Owens and members of the Judiciary Committee, the Kansas Real Estate Commission only wishes to provide neutral testimony to ensure that the Committee is made aware of a few concerns that the Commission has with the wording of Section 1 of the bill. The Commission believes that the current wording may have unintended consequences.

### Agency Background

The Kansas Real Estate Commission is a state agency that licenses real estate salespersons and brokers. The agency's mission is to provide services to real estate licensees, police the industry, and protect the public. The agency is 100% fee funded, which means that real estate licensees pay fees to support all operations of the agency including the functions of issuing licensure orders for denials, restrictions and conditions and all orders for disciplinary action taken by the agency. Twenty percent of the fees paid by the licensees up to a cap of \$200,000 per year are transferred to the State General Fund.

### Real Estate Applicants and Licensees Commonly Receive Restricted and Conditioned Licenses for Pending Misdemeanor Cases

As part of the services provided to a client or customer, a real estate salesperson or broker will often drive members of the public to view available properties. The Commission considers an applicant or a licensee that has a pending misdemeanor alcohol related case as a potential danger to the public. Consequently, if a misdemeanor alcohol related offense is pending or the sentence, diversion or suspended imposition of sentence has not been completed at the time the original or renewal application is filed, the Commission may restrict the applicant or licensee to conduct real estate activities under the supervision of the proposed supervising broker and may condition the license to: (1) require satisfactory completion of the sentence, diversion or suspended imposition of sentence; (2) provide the Commission proof of completion of the sentence, diversion, suspended imposition of sentence or dismissal of the charges; and (3) impose quarterly reporting requirements if proof is not provided that the sentence, diversion, suspended imposition of sentence or dismissal of the charges in the criminal case was timely completed.

A restriction to a supervising broker merely means that the licensee cannot change supervising brokers without the Commission's express authorization. Otherwise, the licensee fills out a form, pays a fee and the transfer is processed. A restriction allows the Commission to ensure that if the licensee transfers his or her license, the supervising broker of the new brokerage is aware of the pending alcohol or drug related case so that the new supervising broker can impose any safeguards he or she may deem necessary.

The bottom line is the applicant or licensee is allowed to go to work, with appropriate precautions put in place to protect the supervising broker and members of the public. To impose

reasonable restrictions and conditions on an applicant or licensee, due process does not require that a hearing actually be held. Due process only requires that the applicant or licensee be given the opportunity to request a hearing. It would be an extremely rare instance that a salesperson or broker applicant or licensee requests a hearing or will not sign a consent agreement when the restriction and conditions described above are proposed by the Commission for a pending misdemeanor alcohol related case.

**Section 1 Prohibits Restrictions and Appears to Require  
a Hearing to Impose Conditions on a License for First Time Offenders**

Section 1 of the bill (Page 1, lines 22-34) prohibits a professional licensing body, such as the Kansas Real Estate Commission, from restricting a license solely because a person has been convicted of a first violation of K.S.A. 8-1567 (driving under the influence of alcohol or drugs) or a first time violation of refusing to submit to a test to determine the presence of alcohol or drugs.

Based upon Section 1(a) of the bill, whenever an applicant has a first time driving under the influence offense or first time offense for refusal to submit to an alcohol or drug test, the Commission could no longer restrict a licensee to conduct real estate activities under the supervision of the licensee's supervising broker. This essentially would prevent the Commission from taking the necessary precautions to ensure that the next supervising broker where the licensee decides to transfer his or her license will be advised of the existence of the pending misdemeanor case.

It is unclear, due to the wording of Section 1(b) of the bill, whether the Commission must hold a hearing in order to impose reasonable conditions on a license. On page 2, lines 2-5, it appears that a hearing may only be required if requested by the licensee to determine how the first time driving under the influence or first time refusal to submit to an alcohol or drug test will affect the licensee's professional license. However, lines 5-9 state that *after holding such hearing*, the licensing body may take any action authorized by law including, but not limited to, alternative corrective measures in lieu of suspension, restriction, denial, termination, or failure to renew the license. The latter sentence appears to require a hearing.

It appears that Section 1(b) [Page 2, lines 2-9] applies only to licensees, so the Commission apparently has no means of imposing reasonable conditions on original applicants even if a hearing was requested and held.

If the intention of Section 1 (b) is to mandate that a hearing must be held before an applicant's or licensee's license can be conditioned for first time alcohol or drug related offenses, the Commission simply does not have the funding to hold hearings for the significant number of applications involved. This would appear to be an unnecessary waste of agency staffing and budgetary resources when due process only requires that the applicant or licensee be given the opportunity to request a hearing before measures such as conditions can be imposed.

The Commission also believes that an agency should not be prohibited from restricting a license as long as the restrictions imposed are reasonable and the applicant or licensee has the opportunity to request a hearing to object to the restriction being imposed.

Thank you for your consideration. I will be happy to answer questions.