

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2629

As Amended by House Committee on Local
Government

Brief*

HB 2629, as amended, would require common interest communities subject to the Kansas Uniform Common Interest Owners Bill of Rights Act (KUCIOBORA) to file a registration statement with the Attorney General, make board members or property managers civilly liable for knowingly violating the KUCIOBORA, and make changes to the degree of care board members and property managers must exercise under the KUCIOBORA.

Registration of Common Interest Communities

The bill would require common interest communities subject to the KUCIOBORA to file a registration statement with the Attorney General on or before July 1 of each year. The registration must contain the following information:

- The name and address of the common interest community;
- The names of the board of directors;
- The name of the property managers; and
- Any information required by the Attorney General.

Additionally, the bill would require an annual registration fee, not to exceed \$50, based on the number of units in the common interest community as determined by the Attorney General. A Common Interest Community Fund (Fund) would be established in the State Treasury and administered by the

*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>

Attorney General. Expenditures from the Fund are to be used for the enforcement of the KUCIOBORA in accordance with appropriations acts, upon warrants of the Director of Accounts and Reports, within the Kansas Department of Administration, issued pursuant to vouchers approved by the Attorney General.

Civil Liability

The bill would also make any member of the board of directors or a property manager who knowingly violates any of the provisions of the KUCIOBORA liable for the payment of a civil penalty in an action brought by the Attorney General in a sum set by the court, not to exceed \$500 for each violation. The court would also have the jurisdiction to issue injunctions or writs of mandamus to enforce provisions of the Act. Any civil penalties recovered by the Attorney General would be paid into the Fund, established by the bill.

Property Manager Degree of Care and Loyalty

The bill would require property managers appointed by the board of a common interest community to exercise the care and loyalty of a trustee to the association, and make them subject to the conflict of interest rules governing directors and officers of under existing laws.

Background

The bill was introduced at the request of Representative Schwab. In the House Committee on Local Government hearing, Representative Schwab testified as a proponent on the bill, stating the current law is more of a guideline and there is no enforcement mechanism to protect homeowners from homeowners associations (HOA) that have more power than some cities. Written-only proponent testimony was received from two residents of HOAs citing lawsuits between homeowners and their HOAs.

Opponent testimony was presented by a representative of Emerald Bay Estates HOA and two private citizens. The representative of Emerald Bay Estates HOA stated there is concern regarding the potential \$500 fee for registration of an HOA with the Office of the Attorney General, and the negative impact it would have on the individuals the bill is intended to help. The private citizens stated the bill would make it more difficult to recruit volunteer board members, and would strain HOA budgets. Additionally, one private citizen expressed concern with provisions regarding the Kansas Consumer Protection Act. Written-only opponent testimony was provided by 14 private citizens who identified themselves as board members of HOAs.

Written-only neutral testimony was provided by the Attorney General and a representative of the Kansas Association of Realtors.

On March 20, the House Committee received information from the Kansas Legislative Research Department in response to the Chairperson's request for information on statutes in other states that address the registration, regulation, and complaint mechanism for common interest communities. An overview of the KUCIOBORA was also provided.

The House Committee amended the bill by removing provisions establishing new definitions and addressing the ability for a consumer to file a complaint against a common interest community with the Attorney General. The House Committee also amended the bill to change the maximum allowable registration fee to \$50 and make members of the board of directors or property managers who knowingly violate provisions of the KUCIOBORA liable for the payment of a civil penalty in an action brought by the Attorney General.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General (Office) estimates a total cost of \$218,136 for the Office to hire an assistant attorney general,

investigator, and part-time administrative assistant, in addition to costs associated with rent, training, travel, and supplies. The Office also states the cost would be offset by \$240,750 in estimated revenue from common interest communities that currently exist if a \$250 fee was charged. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.