

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on March 5, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the Committee:

Melissa Calderwood, Principal Analyst, Research Department
Luke Bell, KAR Vice President of Governmental Affairs, Kansas Association of Realtors (Attachment 1)
Martha Neu Smith, Executive Director, Kansas Manufactured Housing (Attachment 2)
Kathleen Olsen, Kansas Bankers Association, (written only) (Attachment 3) and (Attachment 4)

Others attending:

See attached list.

The Chair called the meeting to order.

Hearing on

HB 2092 - Prohibiting transfer fee covenants.

Melissa Calderwood, Principal Analyst, Research Department, gave an overview of **HB 2092**. Ms. Calderwood stated that **HB 2092**, as amended, would enact new law to specify that transfer fee covenants recorded on and after July 1, 2009 shall not run with the title to real property and would not be binding or enforceable in law or in equity against any subsequent owner, purchaser, or mortgagee of any interest in real property as an equitable servitude or otherwise. Additionally, the bill would declare transfer fee covenants, on and after the effective date of this act, to be against public policy and any such covenant would be void and unenforceable. She said the bill was introduced by the House Committee on Financial Institutions at the request of the Kansas Association of Realtors whose representative indicated that a private transfer fee covenant is essentially a sophisticated extortion scheme that robs a homeowner of the equity in his or her home by holding clear and marketable title to the property hostage. She said **HB 2092** would have no fiscal effect on state revenues or expenditures.

Luke Bell, Kansas Association of Realtors, testified in support of **HB 2092**. Mr. Bell said **HB 2092** would prohibit the use of private transfer fee covenants in real property deeds. He said private transfer fees are a relatively new scheme where the original owner of a property adds a covenant to the deed that requires all future owners of the property to pay a large "transfer fee" to the original owner of the property or a designated third party whenever they transfer ownership of the property. Mr. Bell said unless future owners of the property pay the large transfer fee to the original owner of the property, they will not be able to transfer marketable title to the property to another party, which means that potential buyers will not be able to obtain title insurance and mortgage financing. He said his association believes a private transfer fee covenant is essentially a sophisticated extortion scheme that robs a homeowner of the equity in his or her home by holding clear and marketable title to the property hostage. He added that this legislation would prohibit private transfer fee schemes by reinforcing existing Kansas common law prohibitions against unreasonable restraints on alienation and against covenants that do not "touch and concern" the land. He added that if adopted, this statute would make these private transfer fee covenants unenforceable against future owners of the property, thereby preserving the marketability and transferability of real property in this state. (Attachment 1)

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on March 5, 2009, in Room 136-N of the Capitol.

The Chair asked Mr. Bell to get for the Committee copies of testimony from John Peterson. Mr. Bell said he would do so.

The Chair closed the hearing on **HB 2092**.

Hearing on

HB 2091 - Exempting modular homes from Kansas manufactured housing act.

Melissa Calderwood gave an overview of **HB 2091**.

Ms. Calderwood stated that this bill would amend existing law to clarify that the provisions of the Kansas Manufactured Housing Act will not apply to modular homes. She said a “modular home” is defined elsewhere in the Act to mean “a structure which is transportable in one or more sections; designed to be used as a dwelling on a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; and certified by its manufacturer as being constructed in accordance with a nationally recognized building code.”

Martha Neu Smith testified on behalf of Kansas Manufactured Housing Association in support of **HB 2091**. Ms. Smith stated that the Association requested the introduction of **HB 2091** to provide statutory clarification within the Kansas Manufactured Housing Act in light of a recent bankruptcy case that was brought by the Kansas Bankers Association. She said the bankruptcy case involved a lender, which had taken a mortgage on a modular home and the land it was attached to; the Bankruptcy Trustee tried unsuccessfully to argue that since the lender had not perfected its lien on the certificate of title that the lender had not properly perfected its lien according to the Kansas Manufactured Housing Act. She noted that the Manufactured Housing Act was designed to provide state regulation of the mobile and manufactured housing industry and part of the regulation is the issuance of a certificate of title for these two forms of housing. She said this titling requirement is due to the fact that both mobile and manufactured housing have been engineered to be either an improvement to the real estate or personal property. She added that the Kansas Manufactured Housing Act only mentions “modular home” within the definitions. She said as defined in the act, modular homes are built to local codes and must be on a permanent foundation. She noted that modular homes are never considered personal property; consequently, they are not issued a certificate of title. In conclusion, she said the Association believes the Bankruptcy Court ruled correctly in judgment for the lender, but to forgo any future confusion we believe it would be good to clarify that the requirements of the Kansas Manufactured Housing Act do not apply to modular housing. She said the new language in **HB 2091** only provides clarification but does not make any change to the current regulations of mobile or manufactured housing. (Attachment 2)

Kathleen Olsen, Kansas Bankers Association, presented written testimony only. (Attachments 3 and 4)

The Chair closed the hearing on **HB 2091**.

Action on

SB 260 - No cause of action for recovery of certain loss while operating uninsured motor vehicle.

Senator Kelsey moved to pass SB 260 out favorably. Senator Barnett seconded. Motion carried.

Action on

HB 2091 - Exempting modular homes from Kansas manufactured housing act.

Senator Steineger moved to pass HB 2091 out favorably. Senator Brownlee seconded. Motion carried.

Action on

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on March 5, 2009, in Room 136-N of the Capitol.

HB 2092 - Prohibiting transfer fee covenants.

Senator Steineger moved to pass HB 2092 out favorably. Senator Brownlee seconded. Motion carried.

The next meeting is scheduled for March 10, 2009.

The meeting was adjourned at 10:30 a.m.