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To: Senate Commerce Committee
From: Patrick Vogelsberg, VP of Governmental Affairs
Date: February 19th, 2019

Re: Testimony in support of **SB 168**.

Honorable Chairwoman Lynn and members of the Senate Commerce Committee:

On behalf of the Kansas Association of REALTORS® (KAR), thank you for the opportunity to appear before you today in support of **SB 168**, which would re-enact the Kansas Home Inspectors Competence and Financial Responsibility Act. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR represents nearly 10,000 members involved in residential, agricultural and commercial real estate and has advocated on behalf of the state's property owners for over 95 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

Legislative History of Kansas Regulation of the Home Inspector Industry

During the 2008 Legislative Session, the Kansas Legislature overwhelmingly approved 2008 HB 2315, which established the Kansas Home Inspectors Professional Competence and Financial Responsibility Act. At that time, this legislation was supported by consumer advocates, professional home inspectors and REALTORS® with the intent of creating a limited amount of regulation over the home inspection industry.

Kansas REALTORS® believed at the time, and continue to believe, that the passage of this legislation was a major step forward in protecting consumers from receiving home inspection services from unqualified individuals and ensuring that the home inspection industry was regulated by the state in a manner that would protect consumers. As a result of continuous dialogue with members of the home inspection industry at the time, the act represented a carefully-constructed compromise to protect consumers while at the same time not unduly harming the home inspection industry.

During the 2009 Legislative Session, the Kansas Legislature enacted legislation to make several substantive and technical changes to the act based upon feedback received from members of the home inspection industry. In order to ensure that these changes did not cause unintended consequences and to ensure that the changes were reviewed again by the Kansas Legislature after several years, a conference committee inserted a sunset clause into the statute. This sunset went into effect July 1st, 2013.

During the 2013 Legislative Session, KAR supported 2013 SB 37 which would have eliminated the sunset provision and made the act permanent. To our knowledge at the time, there were no reports of pending litigation against the Kansas Home Inspectors Registration Board (KHIRB) and no major problems with the Act

were reported by professional home inspectors registered by KHIRB over the previous four years the Act was in effect. Accordingly, we believed that the “due diligence” period required by the sunset clause was satisfactorily completed and asked the Legislature to remove the sunset clause and permanently extend the provisions contained in the act.

KHIRB was completely self-funded through the minimal registration fees paid by registered home inspectors and no appropriations were allocated from the state general fund (SGF) to offset the costs of regulating the home inspection industry. In our opinion, the very small footprint of the Board was sufficient to adequately regulate the industry and did not impose a significant burden on registered home inspectors.

The Legislature agreed with our reasoning in 2013 and passed 2013 SB 37 (36-3 in the Senate and 102-17).

Although the Kansas Legislature overwhelmingly passed legislation to remove the sunset and permanently extend the law, Governor Brownback made the misguided and unfortunate decision to veto these common-sense and reasonable consumer protections for Kansas home buyers.

Governor Brownback’s stated rationale for the veto was that he felt there were not enough Kansas citizens being economically harmed by home inspectors and, regardless, KHIRB lacked adequate resources. The Governor did recognize that the Legislature wanted the regulations to continue and he offered that he would sign legislation that would have extended the act for a period of two more years. Unfortunately, the Legislature did not attempt a veto-override or had the time to send the Governor another bill extending the sunset. As a result, home inspectors operating in Kansas were no longer regulated by the state after July 1st, 2013.

2019 SB 168

In 2019, Kansas remains in a continually shrinking minority of states that does not regulate the home inspection industry. Currently, 37 states¹ have enacted statutes or regulations governing home inspectors with Ohio being the most recent.²

SB 168 would establish the Kansas Home Inspectors Licensing Board and create a regulatory framework for the home inspection industry in the state of Kansas.

Rationale

As the number of consumers taking advantage of home inspections in the home-buying process continues to increase, it is increasingly important that consumers receive home inspection services from a qualified professional who will adequately identify defects and problems. The intent of this legislation is not to enact overly burdensome regulations on the home inspection industry or unfairly restrict actions in the private marketplace. Instead, it is to create a minimum level of regulation that ensures consumers receive at least a basic level of service in the home inspection setting.

¹ Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin.

² Ohio SB 255, 133rd Gen. Assembly (January 4th, 2019)

Routinely, KAR members recommend home inspections. Under K.S.A. 58-30-106(d)(1), real estate licensees are required to disclose to the buyer all “material facts actually known” by the real estate licensee. REALTORS® are not property inspection experts; therefore, they recommend that their clients seek home inspection services from a qualified home inspector in order to ascertain the true condition of the property that is for sale. As a result, consumers rely on the expertise and qualifications of the home inspector for protection in the real estate transaction.

Under current Kansas law, there are absolutely no requirements that an individual must meet to offer his or her services as a home inspector to members of the public. If an individual wanted to begin the practice of home inspection in the state of Kansas, all he or she needs to do currently is to simply start offering to the public his or her services as a home inspector. There are absolutely no required mechanisms in place by which consumers can ascertain whether or not a home inspector is qualified to conduct home inspections or has received any training or education in the profession.

Components of SB 168

SB 168 would establish the Kansas Home Inspectors Licensing Board to oversee the regulation of the home inspection industry. SB 168 would create an independent state board made up of a majority of home inspectors who would regulate the home inspection industry by establishing registration qualifications; requiring proof of liability insurance and financial responsibility assurance mechanisms; and disciplining home inspectors who harm consumers through negligent or deficient home inspections.

SB 168 would also prohibit home inspectors from limiting their liability for errors and omissions during the home inspection to the price of the home inspection. Currently, nothing prevents a home inspector from including a provision in a home inspection contract which limits their liability for errors and omissions to the price of the home inspection. In fact, it is quite common for home inspectors to limit their liability in the home inspection contract to the price of the inspection.

When a home inspector fails to adequately follow his or her standards of practice in conducting a home inspection and a consumer suffers a harm which directly results from the errors and omissions of the home inspector, it is fundamentally unfair for that consumer to have absolutely no recourse against the home inspector for his or her negligence. A major responsibility for someone who purports to call themselves a professional is accepting responsibility and providing recovery to a consumer who is harmed by errors and omissions in the process of providing professional services.

SB 168 would prohibit a home inspector from including any provision in an agreement to conduct a home inspection that would disclaim liability for any errors and omissions that may arise during a home inspection or limit the amount of damages for liability for any errors and omissions to less than \$2,000 in the aggregate for each home inspection. Furthermore, any limit of liability above \$2,000, must be provided to the customer in writing to be in effect.

SB 168 will simply ensure that if a consumer is legitimately harmed by a negligent home inspection that the consumer has the ability to obtain reasonable compensation from the negligent home inspector to recover for the harm that directly resulted from the negligent home inspection.

Key Provisions of SB 168 are:

- Provides definitions for the purposes of the act.
- Establishes the Kansas home inspector licensing board and gives the board duties and powers.

- Establishes conduct that would cause a licensee to be suspended, revoked, penalized, or an applicant being denied licensure.
- Establishes criminal history prohibitions.
- Sets fees for licensure and renewal.
- Requires general liability insurance and proof of financial responsibility.
- Establishes pre-licensure education and experience.
- Provides exemptions to home inspector licensure.
- Prohibits limiting liability to below \$2,000 and if limiting liability at all, must be provided to client in writing.
- Provides a statutory limit to 12 months from the home inspection to bring a claim. Claim may only be brought by the client that inspection was conducted for.

Below is a breakdown of the sections of the bill with page references.

Section	Section Subject	Page number(s)
Section 1	Citation of Act	1
Section 2	Definitions	1 to 3
Section 3	Establishes the Kansas Home Inspectors Licensing Board	3 to 4
Section 4	Duties and Powers of the Board	4 to 5
Section 5	Applications for Licensure - Approval, denial, suspend or revoke	5 to 7
Section 6	Fees	8
Section 7	Injunctive relief	8
Section 8	Representation by Attorney General	8
Section 9	Home Inspectors License Fee Fund	8
Section 10	Requirements for Licensure - Financial Responsibility; examinations; continuing education; document retention, education; experience; background check	8 to 11
Section 11	Individuals exempted from the Act	11 to 12
Section 12	Penalties for unlicensed activity	12
Section 13	Standard of care; limitation on liability.	13
Section 14	Representations to the public; identification on documents	13 to 14
Section 15	Enactment	14

Conclusion

The purchase of a home is the single largest purchase that most Kansans will make over their lifetimes. When your child spends more than a hundred thousand dollars and commits their financial future to a 30-year mortgage on that purchase, would you want the individual providing them with a report on the physical condition of the property to have passed a test and to be required to maintain some financial responsibility for errors in the inspection? If the answer is YES, then please support SB 168.

We strongly support common-sense and reasonable regulation of the home inspection industry. Thank you for your time and consideration of this very important legislation that will help protect your constituents when they buy a home. We ask that the committee pass SB 168 out of committee favorably.

Respectfully submitted,

A handwritten signature in black ink that reads "Patrick Vogelsberg". The signature is written in a cursive style with a large, prominent initial "P".

Patrick Vogelsberg, JD
Vice President of Governmental Affairs
Kansas Association of REALTORS®

Attachment

Requested technical amendments to SB 168

Section 2, page 3, line 12 - insert new (k).

(k) “Psychometrically valid licensing examination” means an examination documented to be developed and administered in accordance with the current Standards for Educational and Psychological Testing.

Section 10, page 9, line 36-40 – reword (4) to the following:

(4) have successfully completed and passed a psychometrically valid licensing examination as approved by the board unless the applicant was previously registered by the state of Kansas as a registered home inspector under the provisions of K.S.A. 58-4501 through K.S.A. 58-4514, as in effect prior to July 1, 2013.

Section 10, page 11, line 3

Change “commission” to “board”.