

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 4, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Dale Swenson - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes

Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Representative Doug Patterson

Billy Yanek, Kansas Association of Realtors

Barbara Conant, Kansas Trial Lawyers Association

Tom Lauhon, American Residential Inspections

Kerry Parham, Home Inspector, Wichita

Representative Patterson requested a committee bill that would clarify the provisions of the ignition interlock statutes. He made the motion to have the request introduced as a committee bill. Representative Long seconded the motion. The motion carried.

Hearings on **HB 2100 - Home inspections; contractual language limiting liability void**, were opened.

Representative Doug Patterson appeared as the sponsor of the proposed bill. He testified that those people who are considering purchasing a home sometimes hire a home inspection service at a cost of \$200 - \$400, to find any defects in the house. The problem has arisen when the inspector determines that there are no defects in the house and the buyer purchases the house only to find out a short time after they move in that there are defects that cost a substantial amount of money to repair. The only recourse is to fix the home and notify the person who did the home inspection and get back the inspection fee, because the contract they signed holds the inspector not liable for any defects that they might have missed and if any show up then their only obligation is to return the inspection fee.

He provided the court with two current Court of Appeals opinions (Attachment 1):

- In *Moler v. Melzer*, Moler brought suit against Apex Building inspectors, alleging he had purchased a home based on a favorable inspection report prepared by Apex. Moler brought suit to recover the cost of damages for repairing structural problems that Apex had failed to discover. The court ruled that the contract between the parties limiting Apex's liability to the cost of the inspection was valid and enforceable.
- In *Corral v. Rollins Protective Services Company*, Corral hired Rollins Protection Company to install and service a fire & burglary alarm system. A fire occurred and the alarm system failed to function. There was substantial damage and a suit was filed against Rollins for the

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amount of loss asserting five separate causes of action based upon (1) negligence, (2) strict liability, (3) breach of implied warranty, (4) breach of express warranty and (5) violation of Kansas Consumer Protection Act. The petition was later amended to include an alleged violation of the Magnuson-Moss Warranty Act. The trial court granted summary judgement upon Corral's claims of breach of implied warranty and violation of the Kansas Consumer Protection Act, but the Appeals Court reversed that judgement. The judgement granting summary judgement and partial summary judgement on the other claims was sustained.

Bill Yanek, Kansas Association of Realtors, appeared as a proponent of the bill. He informed the committee that realtors and their clients rely on the expertise of qualified third party inspections to identify defects and believe that consumers should be protected from home inspectors who disclaim or limit their liability. (Attachment 2).

Barbara Conant, Kansas Trial Lawyers Association, requested an amendment which would expand the bill to include termite, septic system, swimming pools, spas, tennis courts and playground equipment inspections (Attachment 3).

Written testimony in support of the proposed bill was provided by Kansas Building Industry Association (Attachment 4).

Tom Lauhon, American Residential Inspections, appeared before the committee as a proponent of the bill. He believes that unlimiting liability would be detrimental to inspectors and would cause the cost of inspections to rise and their insurance rates to increase. He suggested that the insurance companies require inspection companies to put the limited liability clause in their contracts.

Kerry Parham, Home Inspector, Wichita, also agreed that the bill would increase cost of inspections and insurance. He commented that the public needs to research home inspection companies before they hire one.

The hearings on **HB 2100** were closed.

The committee meeting adjourned at 5:00 p.m. The next committee meeting was scheduled for Wednesday, February 5, 2003 at 3:30 p.m. in room 313-S.