

Approved: 1-25-95
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on January 19, 1995 in Room 254-E of the Capitol.

Members present were: Senator Jones
Senator Oleen
Senator Papay
Senator Parkinson
Senator Praeger
Senator Ramirez
Senator Tillotson
Senator Vidricksen
Senator Walker

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Kim Perkins, Committee Secretary

Conferees appearing before the committee: Jean Duncan, Director of Kansas Real Estate Commission
Art Neuedel, Executive Director of Racing Commission
Gene Robben, Reinventing Kansas Government Committee
Mike Laughon, Southwestern Bell
Cindy Lash, Division of Post Audit
Gloria Timmer, Chair Steering Committee Reinventing Kansas Government

Others attending: See attached list

Sen. Oleen announced that the committee will hear requests for introduction of bills and called on Jean Duncan, director of Kansas Real Estate Commission who explained a draft which shall be known and may be cited as the brokerage relationships in real estate transactions (Attachment 1). Sen. Vidricksen made a motion to introduce the draft, and it was seconded by Sen. Parkinson. The motion passed.

Continuing with introduction of bills, Sen. Oleen called on Art Nuehedel, Executive Director of the Kansas Racing Commission, who explained a draft concerning racing with parimutuel wagering (Attachment 2). Sen. Parkinson made a motion to introduce it, and it was seconded by Sen. Jones; the motion passed.

Sen. Oleen announced that there were several groups who would be making presentations to the committee and introduced Gene Robben who came before the committee to present the findings of the Internal Audit section to the Reinventing Kansas Government Studies (Available from Legislative Research Department). Sen. Vidricksen asked Gene Robben whether the RKG committee had considered hiring more staff for the legislative post audit department to audit agencies rather than having internal auditors complete the process. Gene Robben responded that the committee did not address that issue. Sen. Vidricksen then asked if the task force was set up by the former Governor Finney and Gene Robben answered affirmatively. Sen. Oleen clarified that the task of the RKG investigating committee was to take a look at state agencies, some have internal audits and some do not, and to make recommendations. Sen. Oleen then asked if the RKG committee had come to the conclusion that all agencies should have some form of audit. Gene Robbins answered that it was not their intention to have all agencies do internal audits, but to recommend that the larger agencies, for example the Department of Administration, which are not currently doing audits to begin doing so. (Attach. #3)

Sen. Ramirez commented that the information being presented by the Reinventing Kansas Government committee was scheduled to be heard in several Senate committees. Sen. Oleen affirmed that the agenda had been set so that members of the committee had access to the information and a chance to ask question of the RKG committee members.

Sen. Oleen introduced Mike Laughon, governmental affairs director of Southwestern Bell, who gave a presentation of the Purchasing Professional Services section of the Reinventing Kansas Government studies (Available from Legislative Research Department). Sen. Vidricksen referred to a post audit report done several years ago on the purchasing of food products by the Department of Corrections. Mike Laughon was

CONTINUATION SHEET

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Statehouse, at 11:10 a.m. on January 19, 1995

not familiar with the audit and Sen. Oleen asked agency members to research the information. Sen. Oleen asked the amount of time involved in the study of the PPS and Mike Laughon responded that the committee met once a week for approximately 3 months in addition to interviewing sessions with state employees.

Sen. Oleen introduced Gloria Timmer to give an overview of the status of the Reinventing Kansas Government Studies, Gloria Timmer reported that the study is currently on hold due to the change of administration. Governor Graves had not acted on it yet, but copies of the reports have been sent to him and he has met with some of the various committee participants.

Sen. Oleen introduced Cindy Lash, Division of Post Audit, to give a presentation on the Racing Commission's Use of its Subpoena Powers (Available from Legislative Research Department). Cindy Lash explained in the report that the Division of Post Audit had no recommendations because they found that the Commission was not misusing its subpoena powers.

Sen. Oleen asked for committee action on approving Committee minutes for the Committee Meeting on January 19. Sen. Jones made a motion the Minutes be approved, and it was seconded by Sen. Papay; the motion passed.

The meeting adjourned at 11:55

The next meeting is scheduled for January 25, 1995.

1-11-95 - Kansas Real Estate Commission (Agency legislation)

New Section 1. Title of act. This act shall be known and may be cited as the brokerage relationships in real estate transactions act.

New Sec. 2. Definitions. As used in this act, unless the context otherwise requires:

(a) "Affiliated licensee" means any individual licensed as a salesperson or broker under the Kansas real estate brokers' and salespersons' license act who is employed by a broker or affiliated with a broker as an independent contractor.

(b) "Agency" means every relationship in which a real estate broker acts for or represents another, by the latter's express written authority, in a real estate transaction. "Agency" also means the relationship in which a broker, by verbal authorization pursuant to paragraph (d)(2) of New Section 3, acts for or represents any agency of the federal government in the sale of property owned by the federal agency.

(c) "Agency agreement" means a written agreement setting forth the terms and conditions of the relationship between a broker and the broker's client.

(d) "Broker" means (1) an individual licensed as a broker under the Kansas real estate brokers' and salespersons' license act who has an agency with a seller, buyer, landlord, or tenant, or (2) a corporation, partnership, association or limited liability company, whose officers, members and persons employed by or

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associated with the corporation, partnership, association or limited liability company are licensed pursuant to K.S.A. 58-3042 and amendments thereto, who has an agency with a seller, buyer, landlord, or tenant. The term "broker" includes the broker's affiliated licensees except where the context would otherwise indicate. If an individual broker is indicated by the context, the term "broker" means the supervising broker as defined by K.S.A. 58-3035 and amendments thereto.

(e) "Brokerage firm" means the business entity of a broker, whether a proprietorship, partnership, corporation, association, or limited liability company.

(f) "Buyer's agent" means a broker who has an agency with a buyer. The term includes the broker's affiliated licensees.

(g) "Client" means a seller, landlord, buyer or tenant who has an agency with a broker.

(h) "Commission" means the Kansas real estate commission.

(i) "Confidential information" means information made confidential by statute, rule, regulation, or written instructions from the client unless the information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee.

(j) "Customer" means a seller, landlord, buyer, or tenant in a real estate transaction in which a broker is involved but who has not entered into an agency with the broker.

(k) "Designated agent" means a licensee affiliated with a broker who has been designated by the broker, or the broker's duly

authorized representative, to act as the agent of a broker's buyer client to the exclusion of all other affiliated licensees.

(l) "Disclosed dual agent" means a broker who, with the written informed consent of all parties to a contemplated real estate transaction, has entered into an agency with and therefore represents both the seller and buyer or both the landlord and tenant. The term includes the broker's affiliated licensees.

(m) "Landlord's agent" means a broker who has entered into an agency with a landlord. The term includes the broker's affiliated licensees.

(n) "Licensee" means any person licensed under the Kansas real estate brokers' and salespersons' license act as a broker or salesperson.

(o) "Seller's agent" means a broker who has an agency with a seller. The term includes the broker's affiliated licensees and subagents of the broker.

(p) "Statutory agent" means a broker who is a seller's agent, a buyer's agent, a landlord's agent, a tenant's agent, or a disclosed dual agent in a real estate transaction.

(q) "Tenant's agent" means a broker who has an agency with a prospective tenant. The term includes the broker's affiliated licensees.

New Sec. 3. Written agency agreements. (a) A broker shall act only as a statutory agent in any real estate transaction. A licensee may act as a disclosed dual agent but shall not act as an undisclosed dual agent or in a dual capacity of agent and

undisclosed principal in any transaction.

(b) A broker may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent if the broker complies with this act in establishing the relationships for each transaction.

(c) Before an agency agreement is signed, the broker or an affiliated licensee shall advise the prospective buyer or seller of alternative agency relationships pursuant to New Section 10.

(d)(1) Except as provided in paragraph (d)(2), an agency agreement with a seller or landlord shall be signed prior to the licensee's engaging in any of the activities enumerated in subsection (e) of K.S.A. 58-3035 and amendments thereto as an employee of, or on behalf of, the seller or landlord.

(2) If the real estate which is to be offered for sale is owned by any agency of the federal government, a broker may, on behalf of the owner, engage in activities enumerated in subsection (e) of K.S.A. 58-3035 and amendments thereto after obtaining verbal authorization from the federal agency for which services are to be performed.

(e) An agency agreement with a buyer or tenant shall be signed at or prior to the first showing of a property if the licensee is acting in the capacity of a buyer's agent. If the first showing is an open house and the buyer seeks representation from the licensee holding the open house:

(1) the licensee may obtain a written agency agreement with the buyer and act as a disclosed dual agent pursuant to New Section 8; or

(2) if the property was not listed by the licensee holding the open house, the licensee may obtain a written agency agreement with the buyer and act as a designated agent pursuant to New Section 9.

(f) An agency agreement shall set forth the terms and conditions of the relationship, including a fixed date of expiration, and shall specify the duties and obligations pursuant to New Section 6 or New Section 7, including, but not limited to, any duty of confidentiality and the terms of compensation. The agreement shall be signed by the party to be represented and by the broker or a licensee affiliated with the broker. A copy of the agreement shall be furnished to the client at the time the client signs the agreement. If, at the time the client signs the agreement, the agreement is not signed by the broker or a licensee affiliated with the broker, the broker or a licensee affiliated with the broker shall furnish a copy of the agreement to the client within a reasonable time after the agreement is signed by the broker or a licensee affiliated with the broker.

(g) An agency agreement with a seller or landlord shall include any potential for the seller's agent or landlord's agent to act as a disclosed dual agent.

(h) An agency agreement with a buyer or tenant shall include any potential for the buyer's agent or tenant's agent to act as a

disclosed dual agent or for an affiliated licensee to act as a designated agent.

(i) An agency agreement shall not contain an authorization for the broker to sign or initial any document on behalf of the broker's client in a real estate transaction or authorization for the broker to act as attorney-in-fact for the client.

(j) An agency agreement with a seller shall not provide that the broker's commission be based on the difference between the gross sales price and the net proceeds to the owner.

(k) The broker shall not assign, sell or otherwise transfer a written agency agreement to another broker without the express written consent of all parties to the original agreement.

(l) A licensee shall not solicit an agency agreement from a seller or landlord if the licensee knows that the seller or landlord has, with regard to the property, an agency agreement granting an exclusive right to sell or exclusive agency to another broker.

(m) A licensee shall not solicit an agency agreement from a buyer or tenant if the licensee knows that the buyer or tenant has a written agency agreement granting exclusive representation to another broker.

(n) A licensee shall not induce any party to break any agency agreement.

(o) A licensee shall not negotiate a sale, exchange or lease of real estate directly with a buyer or tenant if the licensee knows that the buyer or tenant has an agency agreement granting

exclusive representation to another broker.

(p) A licensee shall not negotiate a sale, exchange or lease of real estate directly with a seller or landlord if the licensee knows that the seller or landlord has an agency agreement granting an exclusive right to sell or exclusive agency to another broker.

New Sec. 4. Termination of relationships. (a) The relationships set forth in New Section 3 shall commence at the time that the client engages the broker, and shall continue until:

(1) A transaction is closed according to the agreement of the parties; or

(2) if a transaction is not closed according to the agreement of the parties, the earlier of:

(A) Any date of expiration agreed upon by the parties in the agency agreement or in any amendments thereto; or

(B) any authorized termination of the relationship.

(b) Except as otherwise agreed in writing, a broker owes no further duties to the client after termination, expiration, or the closing of a transaction according to the agreement of the parties, except:

(1) To account for all moneys and property relating to the engagement; and

(2) to keep confidential all information received during the course of the engagement which was made confidential by request or instructions from the client, unless:

(A) The client permits the disclosure by subsequent word or conduct;

(B) such disclosure is required by law; or

(C) the information becomes public from a source other than the broker.

New Sec. 5. Compensation. (a) Compensation is presumed to come from the transaction and shall be determined by agency agreements entered into pursuant to New Section 3.

(b) Payment of compensation by itself shall not establish an agency between the party who paid the compensation and the broker or any affiliated licensee.

(c) In any transaction, the broker's compensation may be paid by the seller, the landlord, the buyer, or the tenant. A broker may be compensated by more than one party for services in a transaction if the parties consent in writing to the multiple payments at or before the time of entering into a contract to buy, sell, or lease.

(d) A broker may:

(1) Pay a commission or compensation to any licensee affiliated with the broker for performing services under this act;

(2) with the written agreement of the seller or landlord, share a commission with another broker who acted as subagent of the seller or landlord;

(3) with the written agreement of the seller or landlord, share a commission with a buyer's broker or a tenant's broker; and

(4) pay a referral fee to a person who is licensed as a broker in this or another jurisdiction, provided that written disclosure is made to the client of any financial interest that the

broker has in the brokerage firm receiving the referral fee.

New Sec. 6. Minimum requirements of a seller's agent. (a)

A seller's agent or a landlord's agent shall be a statutory agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client;

(2) to exercise reasonable skill and care for the client;

(3) to promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(A) Seeking a price and terms which are acceptable to the client, except that an agency agreement with a seller may provide that the broker shall not be obligated to continue to market the property after an offer has been accepted by the seller;

(B) presenting, in a timely manner, all written offers, counteroffers and back-up offers to and from the client when such offer is received prior to the closing of the sale unless the seller instructs the broker in the agency agreement not to submit offers after an offer has been accepted by the seller;

(C) disclosing to the client all adverse material facts actually known by the licensee about the buyer or tenant; and

(D) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) to comply with all requirements of this act and rules and

regulations adopted hereunder; and

(6) to comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

(b) If pursuant to paragraph (a)(d)(D) above, the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.

(c) A seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(d)(1) A seller's or landlord's agent owes no duty or obligation to a customer, except that a licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to:

(A) Any environmental hazards affecting the property which are required by law to be disclosed;

(B) the physical condition of the property;

(C) any material defects in the property;

(D) any material defects in the title to the property; or

(E) any material limitation on the client's ability to perform under the terms of the contract.

(2) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any qualified third party.

(3) Except as provided in paragraph (d)(4), a seller's or landlord's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

(4) A licensee shall disclose to the client or customer any facts known by the licensee that contradict any information included in a written report described in paragraph (d)(3).

(5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

For purpose of this subsection, "qualified third party" means a federal, state or local governmental agency or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the

industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report.

(e) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(f) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer subagency and pay compensation to other brokers.

(g) A seller or landlord may agree in writing with a seller's or landlord's agent that the broker may offer to cooperate with a buyer's or tenant's agent or to cooperate with and pay compensation to a buyer's or tenant's agent.

(h) If the seller or landlord has authorized the broker to offer cooperation with other licensees pursuant to subsection (f) or (g), the broker shall not refuse permission to another licensee to show, or to present an offer to purchase, a listed property unless specifically instructed by the seller in writing. The broker shall provide a copy of the written instructions to another licensee upon request.

(i) A seller's or landlord's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence to be fraudulent or malicious conduct.

New Sec. 7. Minimum requirements of a buyer's agent. (a) A buyer's or a tenant's agent shall be a statutory agent with the following duties and obligations:

(1) To perform the terms of the written agreement made with the client;

(2) to exercise reasonable skill and care for the client;

(3) to promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(A) Seeking a price and terms which are acceptable to the client, except that an agency agreement may provide that the licensee shall not be obligated to seek other properties after the client enters into a purchase contract;

(B) presenting, in a timely manner, all written offers, counteroffers and back-up offers to and from the client when such offer is received prior to the closing of the sale unless the buyer instructs the broker in the agency agreement not to submit offers after the client enters into a purchase contract;

(C) disclosing to the client all adverse material facts actually known by the licensee; and

(D) advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) to comply with all requirements of this act and rules and regulations adopted hereunder; and

(6) to comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

(b) If pursuant to paragraph (a)(3)(D) above, the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters.

(c) A buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(d)(1) A buyer's or tenant's agent owes no duty or obligation to a customer, except that the licensee shall disclose to any customer all adverse material facts actually known by the licensee, including but not limited to material facts concerning the client's financial ability to perform the terms of the transaction.

(2) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any qualified third party.

(3) Except as provided in paragraph (d)(4), a buyer's or tenant's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the physical condition of the property has been prepared by a qualified third party and provided to the client or customer.

(4) A licensee shall disclose to the client or customer any facts known by the licensee that contradict any information included in a written report described in paragraph (d)(3).

(5) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a licensee shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson.

For purpose of this subsection, "qualified third party" means a federal, state or local governmental agency or any person whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the third party in order to prepare the written report.

(e) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This subsection is intended to allow a buyer's or tenant's agent to show

competing buyers or tenants the same property and to assist competing buyers or tenants in attempting to purchase or lease a particular property.

(f) Except as provided in subsection (e) of New Section 3, a licensee may not act as a buyer's agent on any property shown to the buyer while the licensee was acting as an agent or subagent of the seller without the written agreement of the seller. If the licensee has knowledge that another licensee affiliated with the broker showed the property to the buyer while acting as an agent or subagent of the seller, the licensee shall obtain the written agreement of the seller before acting as the buyer's agent.

(g) A buyer or tenant may agree in writing with a buyer's or tenant's agent that the agent may receive compensation from a seller's or landlord's agent.

(h) A buyer's or tenant's agent shall not be liable for punitive or exemplary damages for the licensee's failure to perform any of the duties set forth in this section, unless such failure is shown by clear and convincing evidence to be fraudulent or malicious conduct.

New Sec. 8. Minimum requirements of a disclosed dual agent.

(a)(1) A licensee may act as a dual agent only with the informed consent of all parties to the transaction. The informed consent shall be evidenced by a Dual Agency Consent Agreement which shall include, at a minimum, the duties and obligations included in this section.

(2) If, pursuant to subsections (g) and (h) of New Section 3,

the agency agreements include a potential for the seller's or landlord's agent and the buyer's or tenant's agent to act as a disclosed dual agent, the Dual Agency Consent Agreement shall be signed by the buyer no later than the first showing of the property and by the seller no later than the presentation of the offer to purchase. If the agency agreements did not include a potential for the seller's or landlord's agent and the buyer's or tenant's agent to act as a disclosed dual agent, the Dual Agency Consent Agreement shall be signed by the buyer and seller prior to the first showing of the property.

(b) A disclosed dual agent shall be a statutory agent for both the seller and buyer or the landlord and tenant.

(c) A disclosed dual agent shall not represent the interest of either the buyer or the seller to the detriment of the other. The buyer and seller shall have the responsibility of determining the price they will pay or accept, and they may rely on information provided by the disclosed dual agent. The broker shall cease to serve as either seller's or buyer's sole and exclusive agent.

(d) The following information shall not be disclosed by a disclosed dual agent without the informed consent of the client to whom the information pertains:

(A) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(B) that a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(C) what the motivating factors are for any client buying,

selling, or leasing the property; or

(D) that a client will agree to financing terms other than those offered.

(e) A disclosed dual agent shall not disclose to one client any confidential information or personal confidences about the other client which might place one party at an advantage over the other party unless the disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation.

(f) No cause of action for any person shall arise against a disclosed dual agent for making any required or permitted disclosure.

(g) By making any required or permitted disclosure, a disclosed dual agent does not terminate the dual agency relationship.

(h) In a dual agency relationship, there shall be no imputation of knowledge or information between any client and the disclosed dual agent or among licensees within the brokerage firm engaged as a dual agent.

(i) In any transaction, a broker may without liability withdraw from representing a client if either client does not consent to a disclosed dual agency. Such withdrawal shall not prejudice the ability of the broker to continue to represent the other client in the transaction, nor limit the broker from representing the client in other transactions not involving a dual agency. Such withdrawal shall not limit the ability of the broker

to receive a referral fee for referring a client to a broker of a different brokerage firm.

New Sec. 9. Separate representation within one brokerage firm. (a) A broker may personally, or through the broker's duly authorized licensed representative, specifically designate, in a written buyer agency agreement obtained pursuant to New Section 3, an affiliated licensee who will be acting as legal agent of the buyer client to the exclusion of all other affiliated licensees. After verbal notice has been given to the buyer client, another affiliated licensee may be temporarily appointed as a designated agent.

(b) With the exception of a property listed by the designated agent, a designated agent shall not act as an agent of any owner of property listed with the broker when representing a specific buyer client.

(c) If a designated agent also acts as agent of the seller of property listed by the designated agent, the agent and the broker shall be disclosed dual agents pursuant to New Section 8.

(d) If the broker performs any duty or obligation set forth in paragraph (a)(3) of New Section 6, the broker and the designated agent or agents shall be disclosed dual agents pursuant to New Section 8.

(e) The broker shall not be considered to be acting for more than one party in the transaction provided that the broker is not a disclosed dual agent pursuant to subsection (c) or (d) above.

(f) Unless acting as a disclosed dual agent pursuant to

subsection (c) or (d) above, a designated agent shall not be considered a dual agent nor shall the licensee be liable for acting as an undisclosed dual agent merely by performing licensed services in accordance with the provisions of this section.

New Sec. 10. Disclosure of agency relationships. (a)(1) The commission shall adopt a regulation to prescribe the language which shall be included in a form entitled Disclosure of Alternative Agency Relationships.

(2) At the discretion of the broker, the Disclosure of Alternative Agency Relationships form may be either a separate document or may be contained in the agency agreement with the client.

(3) Except as provided in paragraph (a)(4), a licensee shall furnish a prospective buyer or seller with a copy of the Disclosure of Alternative Agency Relationships form at the first occurrence of either of the following events regarding real estate transactions:

(A) A face-to-face meeting with the prospective buyer or seller; or

(B) a written communication from the licensee.

The licensee shall obtain the signature of the prospective buyer or seller, and the date of the signature, on the Disclosure of Alternative Agency Relationships form. If the buyer or seller refuses to sign the form, the licensee shall note that fact on a copy of the form and shall sign and date the form. The signed or noted copy of the form shall be retained by the broker for three years.

(4) A licensee is not required to provide a copy of the form to a prospective buyer or seller in the following instances:

(A) The licensee is acting solely as a principal and not as an agent for another;

(B) the written communication from the licensee is a solicitation of business;

(C) the face-to-face meeting occurs at an open house and there is no substantive discussion regarding a transaction; or

(D) the face-to-face meeting is a mere solicitation of business and there is no substantive discussion regarding a transaction.

(b)(1) Except for instances when a licensee is providing information through an advertisement or other form of public notice of the licensee's representation of a client, a licensee representing a client in a proposed real estate transaction shall disclose the representation at the time of every contact with another licensee representing the other party. The disclosure may be made orally or in writing.

(2) Each time a licensee is contacted by another licensee who requests permission to show property to a prospective buyer, the licensee shall inquire whether or not the licensee represents the buyer.

(c) The disclosure of the agency relationship between all licensees involved and the seller and buyer shall be included in any contract for sale or lease and in any lot reservation agreement.

New Sec. 11. Imputed knowledge. (a) A client shall not be liable for a misrepresentation of his or her statutory agent arising out of the agency agreement unless the client knew of the misrepresentation.

(b) A statutory agent shall not be liable for a misrepresentation of his or her client arising out of the agency agreement unless the licensee knew of the misrepresentation.

(c) A statutory agent shall not be liable for an innocent misrepresentation in information provided to the seller or landlord or to the buyer or tenant if the licensee does not have personal knowledge of the error, inaccuracy, or omission that is the basis for the misrepresentation.

New Sec. 12. Overrides common law. The provisions of this act shall supersede the duties and responsibilities of the parties under the common law including fiduciary responsibilities of an agent to a principal.

New Sec. 13. Rules and regulations. The commission shall provide suggested forms of agency agreements and, by rules and regulations, provide such other prohibitions, limitations and conditions relating thereto as the commission may prescribe.

Sec. 14. K.S.A. 1994 Supp. 58-3034 is hereby amended to read as follows: 58-3034. (a) This act shall be known and may be cited as the real estate brokers' and salespersons' license act.

~~(b)---Nothing in this act shall be construed to grant any person a private right of action for damages or to eliminate any right of action pursuant to other statutes or at common law.~~

Sec. 15. K.S.A. 1994 Supp. 58-3035 is hereby amended to read as follows: 58-3035. As used in this act, unless the context otherwise requires:

(a) "Advance listing fee" means any fee charged for services related to promoting the sale or lease of real estate and paid in advance of the rendering of such services, including any fees charged for listing, advertising or offering for sale or lease any real estate, but excluding any fees paid solely for advertisement or for listing in a publication issued for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the listing.

(b) ~~"Agency agreement" means a written agreement between the principal and the licensee setting forth the terms and conditions of the relationship.~~

~~(e)~~ "Associate broker" means an individual who has a broker's license and who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection ~~(f)~~ (e).

~~(d)~~ (c) "Branch broker" means an individual who has a broker's license and who has been designated to supervise a branch office and the activities of salespersons and associate brokers assigned to the branch office.

~~(e)~~ (d) "Branch office" means a place of business other than the principal place of business of a broker.

~~(f)~~ (e) "Broker" means an individual, other than a

salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

- (1) Sells, exchanges, purchases or leases real estate.
- (2) Offers to sell, exchange, purchase or lease real estate.
- (3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.
- (4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.
- (5) Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction.
- (6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.
- (7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.
- (8) Assists in or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.
- (9) Engages in the business of charging an advance listing fee.
- (10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are

directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list.

~~(g) "Commercial or investment real estate property" means any real estate for which the present use is other than:--(1) One to four residential units; or (2) for agricultural purposes.~~

~~(h) (f)~~ "Commission" means the Kansas real estate commission.

~~(i) (g)~~ "Lease" means rent or lease for nonresidential use.

~~(j) (h)~~ "License" means any person licensed under this act as a broker or salesperson.

~~(k) (i)~~ "Office" means a broker's place of business, where records may be maintained and licenses displayed, whether or not it is the broker's principal place of business.

~~(l) (j)~~ "Person" means any individual or any foreign or domestic corporation, partnership or association.

~~(m) (k)~~ "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or nonfreehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests.

~~(n) (l)~~ "Salesperson" means an individual, other than an associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection ~~(f) (e)~~.

~~(o) (m)~~ "Supervising broker" means an individual, other than a branch broker, who has a broker's license and who has been designated as the broker who is responsible for the supervision of

the primary office of a broker and the activities of salespersons and associate brokers who are assigned to such office and all of whom are licensed pursuant to subsection (b) of K.S.A. 58-3042 and amendments thereto. "Supervising broker" also means a broker who operates a sole proprietorship and with whom associate brokers or salespersons are affiliated as employees or independent contractors.

Sec. 16. K.S.A. 1994 Supp. 58-3050 is hereby amended to read as follows: 58-3050. (a) The license of any licensee may be revoked, suspended or restricted or a licensee may be censured, if:

(1) The commission finds that the license has been obtained by false or fraudulent representation or that the licensee has committed a violation of this act or rules and regulations adopted hereunder, or that the licensee has committed a violation of the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, whether the licensee acted as an agent or a principal in the real estate transaction.

(2) the licensee has entered a plea of guilty or *nolo contendere* to, or has been convicted of: (A) Forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or any other similar offense; (B) a crime involving moral turpitude; or (C) any felony charge; or

(3) the licensee has been finally adjudicated and found to be guilty of violation of the federal fair housing act (42 U.S.C. 3601 *et seq.*) or K.S.A. 44-1015 through 44-1029, and amendments thereto.

(b) In addition to or in lieu of any other administrative,

civil or criminal remedy provided by law, the commission, in accordance with the Kansas administrative procedure act and upon a finding that a licensee has violated a provision of this act or of a rule and regulation adopted hereunder, or that a licensee has violated a provision of the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, may impose on such licensee a civil fine not exceeding \$500 for each violation.

(c) If a broker or salesperson has been declared by a court of competent jurisdiction, the commission shall suspend the broker's or salesperson's license for the period of disability.

(d) No complaint alleging violation of this act or rules and regulations adopted hereunder, or alleging violation of the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, shall be commenced more than three years from the date of the occurrence which is the subject of the complaint.

(e) All administrative proceedings pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act.

(f) Notwithstanding any provision of this act or the brokerage relationships in real estate transactions act to the contrary, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536 and amendments thereto, to summarily suspend the license of any licensee if the commission has reasonable cause to believe that the licensee's trust account

is in unsound condition or that the licensee is misappropriating funds belonging to other persons.

(g) If a licensee has entered a plea of guilty or *nolo contendere* to, or has been convicted of, any felony charge, the commission may use emergency adjudicative proceedings, as provided by K.S.A. 77-536 and amendments thereto to suspend, revoke or restrict the licensee's license.

(h) When the real estate license of an individual is revoked and that individual's name is included in the trade or business name of a real estate brokerage business, the commission may deny continued use of the trade or business name if, in the opinion of the commission, it would be confusing or misleading to the public.

If the revocation of the individual's license is appealed to district court and a stay of the commission's order is granted by the court, the commission may not deny continued use of the trade or business name until such time as the district court upholds the order of the commission.

Sec. 17. K.S.A. 1994 Supp. 58-3062 is hereby amended to read as follows: 58-3062. (a) No licensee, whether acting as an agent or a principal, shall:

(1) Intentionally use advertising that is misleading or inaccurate in any material particular or that in any way misrepresents any property, terms, values, policies or services of the business conducted, or uses the trade name, collective membership mark, service mark or logo of any organization owning such name, mark or logo without being authorized to do so.

(2) Fail to account for and remit any money which comes into the licensee's possession and which belongs to others.

(3) Misappropriate moneys required to be deposited in a trust account pursuant to K.S.A. 58-3061 and amendments thereto, convert such moneys to the licensee's personal use or commingle the money or other property of the licensee's principals with the licensee's own money or property, except that nothing herein shall prohibit a broker from having funds in an amount not to exceed \$100 in the broker's trust account to pay expenses for the use and maintenance of such account.

(4) Accept, give or charge any rebate or undisclosed commission, or pay a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction or who holds a corporate real estate license in another jurisdiction if the licensee knows that the payment of the referral fee will result in the payment of a rebate by the out-of-state licensee.

(5) Represent or attempt to represent a broker without the broker's express knowledge and consent.

(6) ~~Act in a dual capacity of agent and undisclosed principal in any transaction.~~

~~(7)~~ Guarantee or authorize any person to guarantee future profits that may result from the resale of real property.

~~(8)~~ (7) Place a sign on any property offering it for sale or lease without the written consent of the owner or the owner's authorized agent.

~~(9)~~ (8) Offer real estate for sale or lease without the

knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.

~~(10)~~ (9) Induce any party to break any agency agreement or contract of sale or lease.

~~(11)~~ Solicit a listing or negotiate a sale, exchange or lease of real estate directly with an owner or lessor if the licensee knows that such owner or lessor has, with regard to the property, a written agency agreement granting an exclusive right to sell or lease to another broker.

~~(12)~~ Solicit an agency agreement or negotiate a sale, exchange or lease of real estate directly with a buyer or lessee if the licensee knows that such buyer or lessee has a written agency agreement granting exclusive representation to another broker.

~~(13)~~ Except for a commercial or investment real estate property or any property owned by any agency of the federal government, fail to obtain a written agency agreement, including a fixed date of expiration, signed by the party to be represented and by the licensee or fail to furnish a copy of the agreement to the principal within a reasonable time. The licensee shall not assign, sell or otherwise transfer a written agency agreement to another broker without the express written consent of all parties to the original listing agreement.

~~(14)~~ If the licensee represents the seller, fail to disclose to a prospective buyer that: (A) The licensee is or will be acting as agent of the seller with the duty to represent the seller's

~~interest; (B) the license will not be the agent of the prospective buyer; and (C) information given to the licensee will be disclosed to the seller. The disclosure shall be made orally or in writing when the licensee agrees to assist the prospective buyer to locate and inspect property and shall be made in any contract for sale and in any lot reservation agreement.~~

~~(15) If the licensee represents the buyer, fail to disclose to a prospective seller or seller's agent that: (A) The licensee is or will be acting as agent of the buyer with the duty to represent the buyer's interest; (B) the license will not be the agent of the seller; and (C) information given to the licensee will be disclosed to the buyer. The disclosure shall be made orally or in writing no later than the showing of the property and shall be made in any contract for sale and in any lot reservation agreement.~~

~~(16) If the licensee represents both the buyer and seller, the licensee shall immediately disclose in writing: (A) That the licensee is acting as agent for both buyer and seller; and (B) the compensation arrangement. The disclosure shall be signed by both the buyer and the seller. If the exclusive right to sell agreement and the buyer's agency agreement include the disclosure of the possibility of dual agency, the written disclosure, for each specific transaction, shall be signed by the buyer no later than the first showing of the property and by the seller no later than the presentation of the offer to purchase. In addition, the disclosure of the agency relationship between all licensees involved and the principals shall, be included in any contract for~~

~~sale-and-in-any-lot-reservation-agreement--~~

~~(17)~~ (10) Offer or give prizes, gifts or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate.

~~(18)--Enter-into-a-listing-agreement-on-real-property-in-which the-broker's-commission-is-based-upon-the-difference-between-the-grows-sales-price-and-the-net-proceeds-to-the-owner-~~

(19) (11) Fail to see that financial obligations and commitments between the parties to an agreement to sell, exchange or lease real estate are in writing, expressing the exact agreement of the parties or to provide, within a reasonable time, copies thereof to all parties involved.

(20) (12) Procure a signature to a purchase contract which has no definite purchase price, method of payment, description of property or method of determining the closing date.

~~(21) (13) Include-in-any-agency-agreement-an-authorization-to sign-or-initial-any-document-on-behalf-of-the-licensee's-principal in-a-real-estate-transaction-or-authorization-to-act-as-attorney-in-fact-for-the-principal---The-licensee-shall-not~~ Commit forgery or, unless authorized to do so by a duly executed power of attorney, sign or initial any contractual agreement on behalf of another person in a real estate transaction.

(22) (14) Engage in fraud or make any substantial misrepresentation.

(23) (15) Represent to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation

of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

~~(24)~~ (16) Fail to make known to any purchaser or lessee any interest the licensee has in the real estate the licensee is selling or leasing or to make known to any seller or lessor any interest the license will have in the real estate the licensee is purchasing or leasing.

~~(25)~~ (17) Fail to inform both the buyer, at the time an offer is made, and the seller, at the time an offer is presented, that certain closing costs must be paid and the approximate amount of such costs.

~~(26)~~ (18) Fail without just cause to surrender any document or instrument to the rightful owner.

~~(27)~~ (19) Accept anything other than cash as earnest money unless that fact is communicated to the owner prior to the owner's acceptance of the offer to purchase, and such fact is shown in the purchase agreement.

~~(28)~~ (20) Fail to deposit any check or cash received as an earnest money deposit or as a deposit on the purchase of a lot within five business days after the purchase agreement or lot reservation agreement is signed by all parties, unless otherwise specifically provided by written agreement of all parties to the purchase agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.

~~(29)~~ (21) Fail in response to a request by the commission or the director to produce any document, book or record in the licensee's possession or under the licensee's control that concerns, directly or indirectly, any real estate transaction or the licensee's real estate business.

~~(30)~~ ~~If the licensee represents the seller, fail to promptly submit any written offer to the licensee's principal when such offer is received prior to the closing of the sale or fail to promptly submit to the prospective buyer or buyer's agent any counteroffer made by the seller, including any back up offers properly identified as such.~~

~~(31)~~ ~~If the licensee represents the buyer, fail to promptly submit any written offer to the seller or seller's agent or fail to promptly submit to the licensee's principal any counteroffer made by the seller, including any back up offers properly identified as such.~~

~~(32)~~ (22) Refuse to appear or testify under oath at any hearing held by the commission.

~~(33)~~ (23) Demonstrate incompetency to act as a broker, associate broker or salesperson.

~~(34)~~ ~~Fail to disclose, or ascertain and disclose, to any person with whom the licensee is dealing, any material information which relates to the property with which the licensee is dealing and which such licensee knew or should have known.~~

~~(35)~~ (24) Knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or

any special favor or advance or any monetary consideration or inducement, involving the issuance of a title insurance policy or contract concerning which the licensee is directly or indirectly connected, from a title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof.

~~(36)~~ (25) Engage in the purchase of one-, two-, three- or four-family dwellings, including condominiums and cooperatives, or the acquisition of any right, title or interest therein, including any equity or redemption interests, if:

(A)(i) At the time of such purchase, the dwellings are subject to a right of redemption pursuant to foreclosure of a mortgage on such dwellings; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder or judgment creditor who held such mortgage; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the judgment lien arising from the foreclosure of such mortgage, as payments become due under the loan, regardless of whether the licensee is obligated to do so;

(B)(i) the dwellings are subject to a loan which is secured by a mortgage and which is in default at the time of such purchase or in default within one year after such purchase; (ii) the licensee fails to give written notice of the purchase, within 20 days thereafter, to the mortgage holder; and (iii) the licensee, unless otherwise required by law or court order, fails to apply any rent proceeds from the dwellings to the mortgage as the payment

comes due, regardless of whether the licensee is obligated on the loan; or

(C) the licensee fails to notify, at the time of rental, any person renting any such dwelling of the extent and nature of the licensee's interest in such dwelling and the probable time until possession will be taken by the mortgage holder or judgment creditor.

~~(b) Failure to comply with any requirement of subsection (a)(13), (14), (15) or (16) or their corollary rules and regulations shall not by itself render any agreement void or voidable nor shall it constitute a defense to any action to enforce such agreement or any action for breach of such agreement.~~

~~(c) The commission may provide suggested forms of agency disclosure and agency agreements and, by rules and regulations, provide such other prohibitions, limitations and conditions relating thereto as the commission may prescribe.~~

~~(d) No salesperson or associate broker shall:~~

~~(1) Accept a commission or other valuable consideration from anyone other than the salesperson's or associate broker's employing broker or the broker with whom the salesperson or associate broker is associated.~~

~~(2) Fail to place, as soon after receipt as practicable, any deposit money or other funds entrusted to the salesperson or associate broker in the custody of the broker whom the salesperson or associate broker represents.~~

~~(e) (c) No broker shall:~~

(1) Pay a commission or compensation to any person for performing the services of an associate broker or salesperson unless such person is licensed under this act and employed by or associated with the broker. ~~except that nothing herein shall prohibit the payment of a referral fee to a person who is properly licensed as a broker or salesperson in another jurisdiction.~~

(2) Fail to deliver to the seller in every real estate transaction, at the time the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker for the seller, or fail to deliver to the buyer a complete statement showing all money received in the transaction from such buyer and how and for what the same was disbursed, or fail to retain true copies of such statements in the broker's files, except that the furnishing of such statements to the seller and buyer by an escrow agent shall relieve the broker's responsibility to the seller and the buyer.

(3) Fail to properly supervise the activities of an associate or employed salesperson or associate broker.

(4) Lend the broker's license to a salesperson, or permit a salesperson to operate as a broker.

(5) Fail to provide to the principal a written report every 30 days, along with a final report, itemizing disbursements made by the broker from advance listing fees.

~~(f)~~ (d) If a purchase agreement provides that the earnest money be held by an escrow agent other than a real estate broker, unless otherwise specifically provided by written agreement of all

parties to the purchase agreement, no listing broker shall:

(1) Fail to deliver the purchase agreement and earnest money deposit to the escrow agent named in the purchase agreement within five business days after the purchase agreement is signed by all parties; or

(2) fail to obtain and keep in the transaction file a receipt from the escrow agent showing date of delivery of the purchase agreement and earnest money deposit.

(e) Nothing in this section shall be construed to grant any person a private right of action for damages or to eliminate any right of action pursuant to other statutes or common law.

Sec. 18. K.S.A. 58-3064 is hereby amended to read as follows:
Whenever any person has engaged in any act or practice that constitutes a violation of this act or rules and regulations adopted hereunder, or that constitutes a violation of the brokerage relationships in real estate transactions act or rules and regulations adopted thereunder, the commission may institute an action in the district court of the county in which the person resides or in the district court in the county in which such act or practice occurred for an injunction to enforce compliance with ~~this~~ the act or rules and regulations ~~adopted hereunder~~. The commission shall not be required to give any bond or pay any filing fee for initiating such action. Upon a showing that the person has engaged in any act or practice in violation of ~~this~~ the act or rules and regulations ~~adopted hereunder~~, the court may enjoin all such acts or practices and may make any orders necessary to conserve, protect

and disburse any funds involved.

Sec. 19. K.S.A. 58-3065 is hereby amended to read as follows: (a) Willful violation of any provision of this act or the brokerage relationships in real estate transactions act is a misdemeanor punishable by imprisonment for not more than ~~twelve~~ ~~(12)~~ 12 months or a fine of not less than ~~one-hundred-dollars~~ ~~(\$100)~~ \$100 or more than ~~one-thousand-dollars~~ ~~(\$1,000)~~, \$1,000, or both, for the first offense and imprisonment for not more than ~~twelve~~ ~~(12)~~ 12 months or a fine of not less than ~~one-thousand~~ ~~dollars~~ ~~(\$1,000)~~ \$1,000 or more than ~~ten--thousand--dollars~~ ~~(\$10,000)~~, \$10,000, or both, for a second or subsequent offense.

(b) Nothing in this act or in the brokerage relationships in real estate transactions act shall be construed as requiring the commission or the director to report minor violations of ~~this-act~~ the acts for criminal prosecution whenever the commission or the director believes that the public interest will be adequately served by other administrative action.

Sec. 20. K.S.A. 1994 Supp. 58-3068 is hereby amended to read as follows: (a) Moneys in the real estate recovery revolving fund shall be used in the manner provided by this act to reimburse persons who suffer monetary damages by reason of any of the following acts committed in connection with any transaction involving the sale of real estate in this state by any broker or salesperson who was licensed under the laws of this state at the time the act was committed or by any unlicensed employee of such broker or salesperson:

(1) Violation of any of the following provisions of this act:

(A) K.S.A. 58-3061 and amendments thereto; or

(B) subsection (a)(2), (3), ~~(22), (27) or (28)~~ (14), (19) or (20) or subsection ~~(d)(2)~~ (b)(2) of K.S.A. 5-3062 and amendments thereto; ~~or~~

(2) violation of any of the provisions of the brokerage relationships in real estate transactions act; or

(3) obtaining money or property by any act which would constitute any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, 21-3706, 21-3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

(b) Any person may seek recovery from the real estate recovery revolving fund under the following conditions:

(1) Such person has received final judgment in a court of competent jurisdiction of this state in any action wherein the cause of action was based on any of the acts described in subsection (a);

(2) the claim is made within two years after the date that final judgment is entered;

(3) such person has caused to be issued a writ of execution upon such judgment, and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of the judgment debtor's property pursuant to such execution was insufficient to satisfy the judgment;

(4) such person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, subject to being sold or applied in satisfaction of the judgment, and by such search such person has discovered no such property or assets, or that such person has discovered such property and assets and that such person has taken all necessary action and proceedings for the application thereof to the judgment and that the amount thereby realized was insufficient to satisfy the judgment;

(5) any amounts recovered by such person from the judgment debtor, or from any other source, has been applied to the damages awarded by the court; and

(6) such person is not a person who is precluded by subsection (c) from making a claim for recovery.

(c) A person shall not be qualified to make a claim for recovery from the real estate recovery revolving fund, if:

(1) The person is the spouse of the judgment debtor or a personal representative of such spouse;

(2) the person acted as principal or agent in the real estate transaction which is the subject of the claim and is a licensed broker or salesperson or is a partnership, association, limited liability company or corporation whose partners, members, officers and employees are licensed as provided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

(3) such person's claim is based upon a real estate transaction in which the licensed broker or salesperson was acting

on the broker's or salesperson's own behalf with respect to property owned or controlled by such broker or salesperson.

Sec. 21. K.S.A. 74-4202 is hereby amended to read as follows:

74-4202. (a) Within ~~thirty-(30)~~ 30 days after the appointment of the members to be regularly appointed within any year, the commission shall meet in the city of Topeka for the purpose of organizing by selecting from its membership a chairperson and such other officers as the commission may deem necessary and appropriate. A majority of the members of the commission shall constitute a quorum for the exercise of the powers or authority conferred upon it.

(b) The commission shall receive applications for, and issue licenses to, brokers and salespersons, as provided in this act, and shall administer the provisions of this act and the brokerage relationships in real estate transactions act. The commission may do all things necessary and convenient for carrying into effect the provisions of ~~this-act~~ the acts and may adopt rules and regulations not inconsistent with ~~it-~~ the acts. For the purpose of ~~this-act,~~ the acts, the commission shall make all necessary investigations, and every licensee shall furnish to the commission such evidence as the licensee may have as to any violation of ~~this-act~~ the acts or any rules and regulations adopted ~~hereunder-~~ thereunder. The commission may enforce any order by an action in the district court of the county where the alleged violator resides or where the violation allegedly occurred.

(c) Each member of the commission shall be paid compensation,

subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(d) The commission shall hold meetings and hearings in the city of Topeka or at such places as it shall determine at such times as it may designate and on request of two (2) or more of its members.

(e) The commission shall maintain an office in the city of Topeka, and all files, records and property of the commission shall at all times be and remain therein. ~~All records kept in the office of the commission under authority of this act shall be open to public inspection under such reasonable rules and regulations as the commission may prescribe.~~

(f) The commission shall adopt a seal by which it shall attest its proceedings. Copies of all records and papers required by law or the commission to be filed in the office of the commission, when duly certified by the director, assistant director or chairperson of the commission and attested by the seal of the commission, shall be received in evidence in all courts of the state of Kansas equally and with like effect as the originals.

Sec. 22. Repeal of existing sections.

Sec. 23. Effective date.

STATE OF KANSAS



KANSAS RACING COMMISSION

3400 Van Buren
Topeka, Kansas 66611-2228
(913) 296-5800
FAX (913) 296-0900

MEMORANDUM

TO: The Honorable Senator Lana Oleen
Chair
Senate Federal & State Affairs Committee

and

Honorable Members of
The Senate Federal & State Affairs Committee

FROM: Art J. Neuhedel ^(AN)
Executive Director
Kansas Racing Commission

DATE: January 18, 1995

SUBJECT: 1995 Proposed Agency Legislation

Attached please find our consolidated legislative proposal for the 1995 Kansas legislature. This bill consolidates and supersedes Kansas racing commission legislative proposals No. 1 and No. 2 submitted to Gloria Timmer of the Division of the Budget and Gary Reser on October 14, 1994 and December 28, 1994 respectively.

cc: Al Ledoux
Governor's Legislative Liaison

Kansas Racing Commissioners

KRC General Counsel

Sen. Fed. & State
1-19-95
Attachment 2

AGENCY OR DEPARTMENT NAME--PROPOSAL NUMBER

Kansas Racing Commission - Consolidated Proposal No. 1

BILL TITLE

An act concerning racing with parimutuel wagering; amending K.S.A. 74-8803, K.S.A. 1994 Supp. 74-8804, K.S.A. 1994 Supp. 74-8810, K.S.A. 1994 Supp. 74-8818 and K.S.A. 1994 Supp. 74-8836.

BILL SUMMARY

Extends terms of racing commissioners from three to four years. Makes fingerprinting for licensure mandatory rather than discretionary. Permits employees or appointees, except the executive director, of the commission to own racing animals that compete in races simulcast into the state of Kansas. Retains the prohibition against commissioners and the executive director owning racing animals competing in either live or simulcast races. Corrects the omission of sons-in-law and daughters-in-law from the list of persons prohibited from holding licenses issued by the commission or having business dealings with the owner or lessee of a racetrack facility in Kansas. Clarifies the number of racing stewards or judges to be appointed, clarifies the chain of command; and provides for greater flexibility in scheduling to avoid over-time. Permits qualified employees of the commission to fill in temporarily as stewards or racing judges. Revises the requirements relating to the ratio of live races to simulcast races to avoid violations of the act resulting from causes beyond the control of a licensee. Provides for the commission to define a "racing week" for fair association race meetings. See, draft bill attached.

FISCAL IMPACT

- Reduces over-time costs for racing stewards and judges.
- Saves travel cost for alternate judges or stewards.

POLICY IMPLICATIONS/BACKGROUND

- The amendment to K.S.A. 74-8804(m) is necessary to comply with Pub. L. 92-544 per notification received by the attorney general from the U.S. Department of Justice Federal Bureau of Investigation on June 22, 1994.
- The amendment to K.S.A. 74-8810(b)(2) is needed because present law puts an employee in the position of having to monitor simulcast programs broadcast in to the state to ensure his racing animal does not participate. The amended language would only prohibit participation by employees or appointees in live races conducted in this state. The

prohibition against the executive director or member of the commission owning racing animals is strengthened.

- The amendment to K.S.A. 74-8810(c) is needed to correct the omission of sons-in-law and daughters-in-law being prohibited from holding a commission-issued license.
- Due to recent adverse fair labor standards act rulings in the area of employee overtime, K.S.A. 74-8818(a) needs amended language to give the commission discretion to appoint three or more full or part-time stewards or racing judges to provide scheduling flexibility to ensure alternates receive sufficient hours for cross-training and avoid excessive overtime problems. The amendment to K.S.A. 74-8818(b) would give discretion to use commission employees as alternate officials, other than as an emergency appointment.
- The amendment to K.S.A. 74-8836(b)(1) would permit a "full card" of simulcasting when less than the minimum of ten scheduled live horse races or 13 scheduled live greyhound races per day are unable to be conducted due to circumstances outside of an organization licensee's control. The amendment to K.S.A. 74-8836(b)(2) would provide the commission with greater flexibility in setting the starting and ending dates of fair association race meets by permitting the commission to determine a "racing week" by rules and regulations.

IMPACT ON OTHER STATE AGENCIES

None.

An act concerning racing with parimutuel wagering; amending K.S.A. 74-8803, K.S.A. 1994 Supp. 74-8804, K.S.A. 1994 Supp. 74-8810, K.S.A. 1994 Supp. 74-8818 and K.S.A. 1994 Supp. 74-8836.

Be it enacted by the Legislature of the State of Kansas:

Section 1. On and after July 1, 1995, K.S.A. 74-8803 is hereby amended to read as follows: 74-8803.

(a) There is hereby created the Kansas racing commission, consisting of five members who shall be appointed by the governor, subject to confirmation by the senate as provided by K.S.A. 75-4315b and amendments thereto.

(b) The members of the commission shall meet the following qualifications:

(1) Each member shall be a citizen of the United States and an actual resident of Kansas at the time of appointment and during such member's term of office with the commission;

(2) each member shall have been a resident of Kansas for a continuous period of not less than five years immediately preceding appointment to the commission; and

(3) no member shall have been convicted of a felony under the laws of any state or of the United States at any time prior to appointment or during such member's term of office with the commission.

(c) The governor shall make appointments to the commission in such a manner that:

(1) Not more than three members belong to the same political party at the time of appointment and during their terms of office with the commission; and

(2) subject to the provisions of K.S.A. 1992 Supp. 75-4315c, each congressional district has at least one member residing in such district at the time of appointment.

(d) ~~Of the members first appointed to the commission, the governor shall designate one whose term shall expire June 30, 1988, two whose terms shall expire June 30, 1989, and two whose terms shall expire June 30, 1990. After the expiration of such initial terms, e~~Each member shall be appointed for a term of ~~three~~ four years and until a successor is appointed and qualified.

(e) A vacancy on the commission shall be filled for the unexpired term by appointment by the governor.

(f) The commission shall meet at such times and places within this state as the chairperson or a majority of the commission members determines. A majority of the members shall constitute a quorum for the conduct of commission business.

(g) The members of the commission annually shall elect a chairperson, vice-chairperson and secretary from the membership of the commission. No member of the commission shall serve more than two consecutive terms as the chairperson.

(h) Members of the commission shall receive such compensation as determined by the governor, subject to the limitations of appropriations therefor, and, when attending meetings of the commission, or a subcommittee meeting thereof approved by the

commission, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

Sec. 2. On and after July 1, 1995, K.S.A. 1994 Supp. 8804 is hereby amended to read as follows: 74-8804.

(a) During race meetings, the commission and its designated employees may observe and inspect all racetrack facilities operated by licensees and all racetracks simulcasting races to racetrack facilities in Kansas, including but not limited to all machines, equipment and facilities used for parimutuel wagering.

(b) Commission members and hearing officers designated by the commission may administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition was in aid of a civil action in the district court.

(c) The commission may examine, or cause to be examined by any agent or representative designated by the commission, any books, papers, records or memoranda of any licensee, or of any racetrack or business involved in simulcasting races to racetrack facilities in Kansas, for the purpose of ascertaining compliance with any provision of this act or any rule and regulation adopted hereunder.

(d) The commission may issue subpoenas to compel access to or for the production of any books, papers, records or memoranda in the custody or control of any licensee or officer, member, employee or agent of any licensee, or to compel the appearance of any licensee or officer, member, employee or agent of any licensee, or of any racetrack or business involved in simulcasting races to racetrack facilities in this state, for the purpose of ascertaining compliance with any of the provisions of this act or any rule and regulation adopted hereunder. Subpoenas issued pursuant to this subsection may be served upon individuals and corporations in the same manner provided in K.S.A. 60-304 and amendments thereto for the service of process by any officer authorized to serve subpoenas in civil actions or by the commission or an agent or representative designated by the commission. In the case of the refusal of any person to comply with any such subpoena, the executive director may make application to the district court of any county where such books, papers, records, memoranda or person is located for an order to comply.

(e) The commission shall allocate equitably race meeting dates, racing days and hours to all organization licensees and assign such dates and hours so as to minimize conflicting dates and hours within the same geographic market area.

(f) The commission shall have the authority, after notice and an opportunity for hearing in accordance with rules and regulations adopted by the commission, to exclude, or cause to be expelled, from any race meeting or racetrack facility, or to prohibit a licensee from conducting business with any person:

(1) Who has violated the provisions of this act or any rule and regulation or order of the commission;

(2) who has been convicted of a violation of the racing or gambling laws of this or any other state or of the United States

or has been adjudicated of committing as a juvenile an act which, if committed by an adult, would constitute such a violation; or

(3) whose presence, in the opinion of the commission, reflects adversely on the honesty and integrity of horse or greyhound racing or interferes with the orderly conduct of a race meeting.

(g) The commission shall review and approve all proposed construction and major renovations to racetrack facilities owned or leased by licensees.

(h) The commission shall review and approve all proposed contracts with racetracks or businesses involved in simulcasting races to racetrack facilities in Kansas.

(i) The commission may suspend a horse or greyhound from participation in races if such horse or greyhound has been involved in any violation of the provisions of this act or any rule and regulation or order of the commission.

(j) The commission, within 72 hours after any action taken by a steward or racing judge and upon appeal by any interested party or upon its own initiative, may overrule any decision of a steward or racing judge, other than a decision regarding disqualifications for interference during the running of a race, if the preponderance of evidence indicates that:

(1) The steward or racing judge mistakenly interpreted the law;

(2) new evidence of a convincing nature is produced; or

(3) the best interests of racing and the state may be better served.

A decision of the commission to overrule any decision of a steward or racing judge shall not change the distribution of parimutuel pools to the holders of winning tickets. A decision of the commission which would affect the distribution of purses in any race shall not result in a change in that distribution unless a written claim is submitted to the commission within 48 hours after completion of the contested race by one of the owners or trainers of a horse or greyhound which participated in such race and a preponderance of evidence clearly indicates to the commission that one or more of the grounds for protest, as provided for in rules and regulations of the commission, has been substantiated.

(k) The commission, after notice and a hearing in accordance with rules and regulations adopted by the commission, may impose a civil fine not exceeding \$5,000 for each violation of any provision of this act, or any rule and regulation of the commission, for which no other penalty is provided.

(l) The commission shall adopt rules and regulations specifying and regulating:

(1) Those drugs and medications which may be administered, and possessed for administration, to a horse or greyhound within the confines of a racetrack facility; and

(2) that equipment for administering drugs or medications to horses or greyhounds which may be possessed within the confines of a racetrack facility.

(m) The commission may adopt rules and regulations providing for the testing of any licensees of the commission, and any officers, directors and employees thereof, to determine whether they are users of any controlled substances.

(n) The commission may shall require fingerprinting of all persons necessary to verify qualification for any license, including a simulcasting license, issued pursuant to this act. The commission shall submit such fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such persons and obtaining records of criminal arrests and convictions.

(o) The commission may receive from commission security personnel, the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as necessary for the purpose of determining qualifications of licensees of the commission, employees of the commission, applicants for employment by the commission, and applicants for licensure by the commission, including applicants for simulcasting licenses. Upon the written request of the chairperson of the commission, the commission may receive from the district courts such information relating to juvenile proceedings as necessary for the purpose of determining qualifications of licensees of and applicants for licensure by the commission. Such information, other than conviction data, shall be confidential and shall not be disclosed except to members and employees of the commission as necessary to determine qualifications of such licensees and applicants. Any other disclosure of such confidential information is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license issued under this act.

(p) The commission, in accordance with K.S.A. 75-4319 and amendments thereto, may recess for a closed or executive meeting to receive and discuss information received by the commission pursuant to subsection (o) and to negotiate with licensees of or applicants for licensure by the commission regarding any such information.

(q) The commission shall adopt such rules and regulations as necessary to implement and enforce the provisions of this act.

Sec. 3. On and after July 1, 1995, K.S.A. 1994 Supp. 74-8810 is hereby amended to read as follows: 74-8810 (a) It is a class A nonperson misdemeanor for any person to have a financial interest, directly or indirectly, in any racetrack facility within the state of Kansas or in any host facility for a simulcast race displayed in this state:

(1) While such person is a member of the commission or during the five years immediately following such person's term as a member of the commission; or

(2) while such person is an officer, director or member of an organization licensee, other than a fair association or

horsemen's nonprofit organization, or during the five years immediately following the time such person is an officer, director or member of such an organization licensee.

(b) It is a class A nonperson misdemeanor for any member, employee or appointee of the commission, including stewards and racing judges, to knowingly:

(1) Participate in the operation of or have a financial interest in any business which has been issued a concessionaire license, racing or wagering equipment or services license, facility owner license or facility manager license, or any business which sells goods or services to an organization licensee;

(2) Participate directly or indirectly as an owner, owner-trainer or trainer of a horse or greyhound, or as jockey of a horse, entered in a race meeting conducted in this state except that in the case of an employee or appointee of the commission, including stewards and racing judges, but not the executive director, the prohibition in this subsection shall apply only to live race meetings conducted in this state.

(3) place a wager on an entry in a horse or greyhound race conducted by an organization licensee; or

(4) accept any compensation, gift, loan, entertainment, favor or service from any licensee, except such suitable facilities and services within a racetrack facility operated by an organization licensee as may be required to facilitate the performance of the member's, employee's or appointee's official duties.

(c) It is a class A misdemeanor for any member, employee or appointee of the commission, or any spouse, parent, grandparent, brother, sister, child, son-in-law, daughter-in-law, grandchild, uncle, aunt, parent-in-law, brother-in-law or sister-in-law thereof, to:

(1) Hold any license issued by the commission, except that a steward or racing judge shall hold an occupation license to be such a steward or judge; or

(2) enter into any business dealing, venture or contract with an owner or lessee of a racetrack facility in Kansas.

(d) It is a class A nonperson misdemeanor for any officer, director or member of an organization licensee, other than a fair association or horsemen's nonprofit organization, to:

(1) Receive, for duties performed as an officer or director of such licensee, any compensation or reimbursement or payment of expenses in excess of the amounts provided by K.S.A. 75-3223 and amendments thereto for board members' compensation, mileage and expenses; or

(2) enter into any business dealing, venture or contract with the organization licensee or, other than in the capacity of an officer or director of the organization licensee, with a facility owner licensee, facility manager licensee, racing or wagering equipment or services license or concessionaire licensee, or with any host facility for a simulcast race displayed in this state.

(e) It is a class A nonperson misdemeanor for any facility owner licensee or facility manager licensee, other than a

horsemen's association, or any officer, director, employee, stockholder or shareholder thereof or any person having an ownership interest therein, to participate directly or indirectly as an owner, owner-trainer or trainer of a horse or greyhound, or as a jockey of a horse, entered in a live race conducted in this state.

(f) It is a class A nonperson misdemeanor for any licensee of the commission, or any person who is an officer, director, member or employee of a licensee, to place a wager at a racetrack facility located in Kansas on an entry in a horse or greyhound race if:

(1) The commission has by rules and regulations designated such person's position as a position which could influence the outcome of such race or the parimutuel wagering thereon; and

(2) such race is conducted at or simulcast to the racetrack facility where the licensee is authorized to engage in licensed activities.

(g) It is a class B nonperson misdemeanor for any person to use any animal or fowl in the training or racing of racing greyhounds.

(h) It is a class A nonperson misdemeanor for any person to:

(1) Sell a parimutuel ticket or an interest in such a ticket to a person knowing such person to be under 18 years of age, upon conviction of the first offense;

(2) accept, transmit or deliver, from a person outside a racetrack facility, anything of value to be wagered in any parimutuel system of wagering within a racetrack facility, upon conviction of the first offense;

(3) administer or conspire to administer any drug or medication to a horse or greyhound within the confines of a racetrack facility in violation of rules and regulations of the commission, upon conviction of the first offense;

(4) possess or conspire to possess, within the confines of a racetrack facility, any drug or medication for administration to a horse or greyhound in violation of rules and regulations of the commission, upon conviction of the first offense;

(5) possess or conspire to possess, within the confines of a racetrack facility, equipment for administering drugs or medications to horses or greyhounds in violation of rules and regulations of the commission, upon conviction of the first offense;

(6) enter any horse or greyhound in any race knowing such horse or greyhound to be ineligible to compete in such race pursuant to K.S.A. 74-8812 and amendments thereto; or

(7) prepare or cause to be prepared an application for registration of a horse pursuant to K.S.A. 74-8830 and amendments thereto knowing that such application contains false information.

(i) It is a severity level 8, nonperson felony for any person to:

(1) Sell a parimutuel ticket or an interest in such a ticket to a person knowing such person to be under 18 years of age, upon conviction of the second or a subsequent offense;

(2) accept, transmit or deliver, from any person outside a racetrack facility, anything of value to be wagered in any parimutuel system of wagering within a racetrack facility, upon the second or a subsequent conviction;

(3) conduct or assist in the conduct of a horse or greyhound race, or the display of a simulcast race, where the parimutuel system of wagering is used or is intended to be used and where no license has been issued to an organization to conduct or simulcast such race;

(4) enter any horse or greyhound in any race conducted by an organization licensee knowing that the class or grade in which such horse or greyhound is entered is not the true class or grade or knowing that the name under which such horse or greyhound is entered is not the name under which such horse or greyhound has been registered and has publicly performed;

(5) use or conspire to use any device, other than an ordinary whip for horses or a mechanical lure for greyhounds, for the purpose of affecting the speed of any horse or greyhound at any time during a race conducted by an organization licensee;

(6) possess or conspire to possess, within the confines of a racetrack facility, any device, other than an ordinary whip for horses or a mechanical lure for greyhounds, designed or intended to affect the speed of a horse or greyhound;

(7) administer or conspire to administer any drug or medication to a horse or greyhound within the confines of a racetrack facility in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;

(8) possess or conspire to possess, within the confines of a racetrack facility, any drug or medication for administration to a horse or greyhound in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;

(9) possess or conspire to possess, within the confines of a racetrack facility, equipment for administering drugs or medications to horses or greyhounds in violation of rules and regulations of the commission, upon conviction of the second or a subsequent offense;

(10) sponge the nostrils or windpipe of a a horse for the purpose of stimulating or depressing such horse or affecting its speed at any time during a race meeting conducted by an organization licensee;

(11) alter or attempt to alter the natural outcome of any race conducted by, or any simulcast race displayed by, an organization licensee or transmit or receive an altered race or delayed broadcast race if parimutuel wagering is conducted or solicited after off time of the race;

(12) influence or attempt to influence, by the payment or promise of payment of money or other valuable consideration, any person to alter the natural outcome of any race conducted by, or any simulcast race displayed by, an organization licensee;

(13) influence or attempt to influence or attempt to influence any member, employee or appointee of the commission, by the payment or promise of payment of money or other valuable

consideration, in the performance of any official duty of that member, employee or appointee;

(14) fail to report to the commission or to one of its employees or appointees knowledge of any violation of this act by another person for the purpose of stimulating or depressing any horse or greyhound, or affecting its speed, at any time during any race conducted by an organization licensee;

(15) commit any of the following acts with respect to the prior racing record, pedigree, identity or ownership of a registered horse or greyhound in any matter related to the breeding, buying, selling or racing of the animal: (A) Falsify, conceal or cover up, by any trick, scheme or device, a material fact; (B) make any false, fictitious or fraudulent statement or representation; or (C) make or use any false writing or document knowing that it contains any false, fictitious or fraudulent statement or entry; or

(16) pass or attempt to pass, cash or attempt to cash any altered or forged parimutuel ticket knowing it to have been altered or forged.

(j) No person less than 18 years of age shall purchase a parimutuel ticket or an interest in such a ticket. Any person violating this subsection shall be subject to adjudication as a juvenile offender pursuant to the Kansas juvenile offenders code.

Sec. 4. On and after July 1, 1995, K.S.A. 1994 Supp. 74-8818 is hereby amended to read as follows:

74-8818(a) The commission shall appoint at least three individuals to serve as full-time stewards or racing judges at each horse or greyhound race meeting; provided that no more than three such judges or stewards shall be on duty at any one time at any racing performance. One shall be designated as the chief steward or chief racing judge and the other two as associate stewards or associate racing judges. Such stewards and racing judges shall be employees of the commission who shall serve at the pleasure of the commission under the supervision of the executive director and shall be in the unclassified service under the Kansas civil service act. The commission also may contract with individuals to serve as stewards or racing judges as needed in the absence of a full-time steward or racing judge. The compensation of the stewards and racing judges shall be an amount fixed by the commission and shall be paid by the commission. The commission may require an organization licensee to reimburse the commission for compensation paid to the stewards and racing judges for their services performed at race meetings conducted by that organization licensee. Any moneys received by the commission for that purpose shall be remitted promptly by the commission to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the racing reimbursable expense fund created by K.S.A. 74-8827 and amendments thereto. All other racing officials at a race meeting shall be approved by the commission and compensated by the organization licensee. The stewards, racing judges and other racing officials shall enforce the civil provisions of this act and any rules and

regulations of the commission and shall submit written reports of the activities and conduct of the race meetings to the commission.

(b) Except in the case of an otherwise qualified employee of the commission serving as a racing judge or steward on a temporary basis, each steward or racing judge shall be required to obtain an occupation license from the commission pursuant to K.S.A. 74-8816 and amendments thereto prior to performing any duties as a steward or a judge.

(c) The commission shall require each applicant for a license as a steward or racing judge to pass an examination on matters relating to the duties of stewards or racing judges unless the applicant submits proof satisfactory to the commission that the applicant has passed an examination in another jurisdiction which the commission finds equivalent to the examination given by the commission. Examinations shall be held at such times and places as determined by the commission. Notice of the times and places of the examinations shall be given as determined by the commission. The commission shall prepare both written and oral examinations to be taken by person applying for licensure as stewards or racing judges, requesting and taking into consideration suggestions from representatives of horsemen and horsewomen, greyhound owners, organization licensees, stewards, racing judges and other interested and knowledgeable parties as to the content thereof.

(d) The commission may examine any person who:

(1) Has not been convicted of a crime involving moral turpitude or of a felony;

(2) has completed an accredited senior high school or its equivalent;

(3) has been given a physical examination by a licensed physician within 60 days prior to the date of application for the steward's or racing judge's examination, indicating at least 20/20 vision or vision corrected to at least 20/20, and normal hearing ability;

(4) has: (A) At least five years' experience in the horse or greyhound racing industry as a licensed trainer or jockey; (B) at least 10 years' experience in the horse or greyhound racing industry as a licensed owner whose experience, knowledge, ability and integrity relative to the industry are known to the commission; (C) at least three years' experience as a licensed racing official, racing secretary, assistant racing secretary or director of racing; or (D) experience in the racing industry of a character and for a length of time sufficient, in the opinion of the commission, to be substantially equivalent to the experience requirement of subsection (d)(4)(A), (B) or (C).

(e) For the purpose of subsection (d)(4), one year's experience shall mean at least 100 days actually worked within one calendar year. An original license for a steward or racing judge issued pursuant to the provisions of this act shall be issued for the calendar year in which it is issued and shall be renewable for a period not to exceed three years as established by rules and regulations of the commission. The commission shall establish a license fee schedule consistent with the

different period for which such licenses may be granted. The license shall be valid at all race meetings in this state during the period for which it is issued, unless it is suspended or revoked prior to the expiration of such period.

Sec. 5. On and after July 1, 1995, K.S.A. 74-8836 is hereby amended to read as follows: 74-8836. (a) Any organization licensee that conducts at least 150 days of live racing during a calendar year or a fair association that conducts fewer than 22 days of live racing during a calendar year may apply to the commission for a simulcasting license to display simulcast horse or greyhound races and to conduct intertrack parimutuel wagering thereon. If the organization licensee conducts races at a racetrack facility that is owned by a facility owner licensee, both licensees shall join in the application. A simulcasting license granted to a fair association that conducts fewer than 22 days of live racing shall restrict the fair association's display of simulcast races to a number of days, including days on which it conducts live races, equal to not more than twice the number of days on which it conducts live races.

(b)(1) A simulcasting license granted to an organization licensee other than a fair association shall authorize the display of simulcast races at the racetrack facility where the live races are conducted so long as the licensee conducts at least 8 live races per day and an average of 10 live races per day per racing week. If a simulcasting licensee conducts live horse races on a day when simulcast races are displayed by the licensee and the licensee conducts fewer than an average of 10 live horse races on such day per day per, racing week not less than 80% of the races on which wagers are taken by the licensee during such day racing week shall be live races conducted by the licensee unless approved by the recognized horsemen's group or upon a finding by the commission that the organization licensee was unable to do so for reasonable cause. If a simulcast licensee conducts live greyhound races on a day when simulcast races are displayed by the licensee and the licensee ~~conducts~~ schedules fewer than 13 live greyhound races during a performance on such day, not less than 80% of the races on which wagers are taken by the licensee during such performance shall be live races conducted by the licensee.

(2) A simulcasting license granted to a fair association shall authorize the display of simulcast races at the racetrack facility where the races are conducted only if live races are scheduled for two or more days of the same calendar week, except that the licensee may conduct simulcast races in the week immediately before and immediately after a live meeting if the total number of days on which simulcast races are displayed does not exceed the total authorized in subsection (a). In no case shall the live meet or simulcast races allowed under this subsection exceed nine consecutive racing weeks. For purposes of this subsection, a calendar racing week shall be measured from Monday through the following Sunday. a

seven day period commencing and ending as defined by commission rules and regulations.

(3) Notwithstanding the provisions of subsection (a), (b)(1) or (b)(2), a fair association may apply to the commission for not more than five additional days of simulcasting of special events. In addition, the commission may authorize a fair association to display additional simulcast races but, if such fair association is less than 100 miles from an organization licensee that is not a fair association, it must also secure written consent from that organization licensee.

(4) Notwithstanding the provision of subsection (b)(1), if an emergency causes the cancellation of all or any live races scheduled for a day or performance by a simulcasting licensee, the commission or the commission's designee may authorize the licensee to display any simulcast races previously scheduled for such a day or performance.

(5) Notwithstanding the provisions of subsection (b)(1), the commission may authorize the licensee to display simulcast special racing events as designated by the commission.

(c) The application for a simulcasting license shall be filed with the commission at a time and place prescribed by rules and regulations of the commission. The application shall be in a form and include such information as the commission prescribes.

(d) To qualify for a simulcasting license the applicant shall:

(1) Comply with the interstate horse racing act of 1978 (15 U.S.C. 3001 et seq.) as in effect December 31, 1991;

(2) submit with the application a written approval of the proposed simulcasting schedule signed by: (A) The recognized horsemen's group for the track, if the applicant is licensed to conduct only horse races; (B) the recognized greyhound owners' group, if the applicant is licensed to conduct only greyhound races and only greyhound races are to be simulcast; (C) both the recognized greyhound owners' group and a recognized horsemen's group, if the applicant is licensed to conduct only greyhound races and horse races are to be simulcast; (D) the recognized greyhound owners' group, if the applicant is licensed to conduct both greyhound and horse races, only greyhound races are to be simulcast and races are to be simulcast only while the applicant is conducting live greyhound races; (E) the recognized horsemen's group for the track, if the applicant is licensed to conduct both greyhound and horse races, only horse races are to be simulcast and races are to be simulcast only while the applicant is conducting live horse races; or (F) both the recognized greyhound owners' group and the recognized horsemen's group for the track, if the applicant is licensed to conduct both greyhound races and horse races and horse races are to be simulcast while the applicant is conducting live greyhound races or greyhound races are to be simulcast while the applicant is conducting live horse races; and

(3) submit, in accordance with rules and regulations of the commission and before the simulcasting of a race, a written copy of each contract or agreement which the applicant proposes to enter into with regard to such race, and any proposed modification of any such contract or agreement.

(e) The term of a simulcasting license shall be one year.

(f) A simulcasting licensee may apply to the commission or its designee for changes in the licensee's approved simulcasting schedule if such changes are approved by the respective recognized greyhound owners' group or recognized horsemen's group needed throughout the term of the license. Application shall be made upon forms furnished by the commission and shall contain such information as the commission prescribes.

(g) Except as provided by subsection (j), the takeout for simulcast horse and greyhound races shall be the same as it is for the live horse and greyhound races conducted during the current or next live race meeting at the racetrack facility where the simulcast races are displayed. For simulcast races the tax imposed on amounts wagered shall be as provided by K.S.A. 74-8823 and amendments thereto. The simulcasting licensee shall be entitled to retain sufficient revenue to pay expenses directly related to the simulcast race or performance. The commission, by rules and regulations, shall define what constitutes such expenses. Of the balance of the takeout remaining after deduction of taxes and expenses, 50% shall be paid to the simulcasting licensee. The remainder shall be used for purses, as follows:

(1) For purses for greyhound races conducted by the licensee, if the simulcast race is a greyhound race and the licensee conducts only live greyhound races;

(2) for purses for horse races conducted by the licensee, if the simulcast race is a horse race and the licensee conducts only live horse races;

(3) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast race is a greyhound race and the licensee does not conduct or is not currently conducting live greyhound races; or

(4) for purses, as determined by both the recognized horsemen's group and the recognized greyhound owners' group, if the simulcast is a horse race and the licensee does not conduct or is not currently conducting live horse races.

(h) Except as provided by subsection (j):

(1) If a simulcasting licensee has a license to conduct live horse races and the licensee displays a simulcast horse race:
(A) All breakage proceeds shall be remitted by the licensee to the commission not later than the 15th day of the month following the race from which the breakage is derived and the commission shall promptly remit any such proceeds received to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the Kansas horse breeding development fund created by K.S.A. 748829 and amendments thereto; and (B) all unclaimed ticket proceeds shall be remitted by the licensee to the commission on the 61st day after the end of the calendar year and the commission shall promptly remit any such proceeds received to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the Kansas horse breeding development fund created by K.S.A. 74-8829 and amendments thereto.

(2) If a simulcasting licensee has a license to conduct live greyhound races and the licensee displays a simulcast greyhound race, breakage and unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 745-8821 and 74-8822, and amendments thereto, for breakage and unclaimed winning ticket proceeds from live greyhound races.

(3) If a simulcasting licensee has a license to conduct live racing of only horses and the licensee displays a simulcast greyhound race, unclaimed winning ticket proceeds shall be distributed in the manner provided by K.S.A. 74-8822, and amendments thereto, for unclaimed winning ticket proceeds from live greyhound races. Breakage for such races shall be distributed for use to benefit greyhound racing as determined by the commission.

(4) If a simulcasting licensee has a license to conduct live racing of only greyhounds and the licensee displays a simulcast horse race: (A) All breakage proceeds shall be remitted by the licensee to the commission not later than the 15th day of the month following the race from which the breakage is derived and the commission shall promptly remit any such proceeds received to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the Kansas horse breeding development fund created by K.S.A. 74-8829 and amendments thereto; and (B) all unclaimed ticket proceeds shall be remitted by the licensee to the commission on the 61st day after the end of the calendar year and the commission shall promptly remit any such proceeds received to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the Kansas horse breeding development fund created by K.S.A. 74-8829 and amendments thereto.

(i) The commission may approve a request by two or more simulcasting licensees to combine wagering pools within the state of Kansas pursuant to rules and regulations adopted by the commission.

(j)(1) The commission may authorize any simulcasting licensee to participate in an interstate combined wagering pool with one or more other racing jurisdictions.

(2) If a licensee participates in an interstate pool, the licensee may adopt the takeout of the host jurisdiction or facility, except that the takeout shall not be more than 20% on win, place and show bets and not more than 25% on all other bets. The amount and manner of paying purses from the takeout in an interstate pool shall be as provided by subsection (g).

(3) The tax imposed on amounts wagered in an interstate pool shall be as provided by K.S.A. 74-8823 and amendments thereto. Parimutuel taxes may not be imposed on any amounts wagered within this jurisdiction.

(4) Breakage for interstate combined wagering pools shall be calculated in accordance with the statutes and rules and regulations of the host jurisdiction and shall be allocated among the participating jurisdictions in a manner agreed to among the jurisdictions. Breakage allocated to this jurisdiction shall be distributed as provided by subsection (h).

(5) Upon approval of the respective recognized greyhound owners' group or recognized horsemen's group, the commission may permit an organization licensee to simulcast to other racetrack facilities or off-track wagering or intertrack wagering facilities in other jurisdictions one or more races conducted by such licensee, use one or more races conducted by such licensee for an intrastate combined wagering pool at off-track wagering or intertrack wagering locations outside the commission's jurisdiction and may allow parimutuel pools in other jurisdictions to be combined with parimutuel pools in the commission's jurisdiction for the purpose of establishing an interstate combined wagering pool.

(6) The participation by a simulcasting licensee in a combined interstate wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction which the licensee is physically located.

(k) If the organization licensee, facility owner licensee if any and the recognized horsemen's group or recognized greyhound owners' group are unable to agree concerning a simulcasting application, the matter may be submitted to the commission for determination at the written request of any party in accordance with rules and regulations of the commission.

(l) This section shall be part of and supplemental to the Kansas parimutuel racing act.

Sec. 6. On and after July 1, 1995, K.S.A. 1994 Supp. 74-8803; K.S.A. 1994 Supp. 74-8804; K.S.A. 1994 Supp. 74-8810; K.S.A. 1994 Supp. 74-8818; and K.S.A. 1994 Supp. 74-8836 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after July 1, 1995.

For: Senate Committee on Federal and State Affairs
Chairperson: Senator Oleen
From: Gene Robben, Office of Inspector General - KDOT
Subject: Reinventing Kansas Government - Internal Audit
Date: January 19, 1995

Thank you, Madame. Chairperson, members of the committee. On behalf of the Reinventing Kansas Government - Internal Audit team, I would like to express our appreciation for the opportunity to visit with you about internal auditing in Kansas State Government today. First, permit me to introduce the team members:

Randy Tongier, Legislative Post Audit
Rita Barnard, SRS Internal Audit
Nick Kramer, Department of Revenue, Internal Audit Manager
Rolando Mayans, Bank IV, has taken a position in Minnesota.

My presentation is structured to accomplish three goals:

- to provide some background for the committee regarding the mission of internal auditors in state government
- to briefly highlight some of the testwork and information included in our report
- to discuss the findings and recommendations contained therein.

Project Overview

It is important to distinguish between *internal auditing* and *external auditing*. The purpose of external auditing is primarily to express an opinion on the organization's financial statements.

Internal auditors on the other hand, work *within* an organization and perform a much wider range of functions.

Our work is performed to determine whether --

- acceptable policies and procedures are followed,
- established standards are met,
- resources are used efficiently and effectively,
- and the agency's objectives are being achieved.

Almost every private enterprise employs an internal audit staff for the same reasons that state government agencies employ them to --

- reduce the costs of operations,
- enhance productivity,
- improve efficiency,
- and streamline processes.

As internal auditors in the executive branch of state government, we review processes in our respective agencies each day to identify potential improvements which will allow us to better serve the citizens of Kansas.

At the state and federal level, there are constant calls for eliminating bureaucracy and streamlining systems. Internal auditors in government are uniquely positioned and possess the requisite knowledge and skills to evaluate programs and processes.

Walk-Through of the Audit Report

Beginning on page 5, we list the benefits obtained through internal auditing, and on page 6 we list some of the typical testwork that we conduct.

Pages 6 and 7 show the different types of audits, although it is common to combine several objectives in one integrated audit. Cost reduction is always a concern. The box on page 7 shows just one example of how cost reduction can be achieved through an internal audit.

On page 9, we summarize our survey of state agencies that have an internal audit staff. The agency heads were unanimous in their opinion that internal auditing was useful to the agency, contributes to the overall agency mission, and that they personally use the results of audits in their decision-making process.

On page 12, we summarize the results from our survey of other states. Detailed survey information is presented in Appendix F. We asked the other states whether any used or considered a centralized approach, where all of the state's internal auditors would be housed under one agency. No other state, to our knowledge, is using this approach, although the State of Arizona has tried and abandoned this idea. Clearly, to provide effective service, internal auditors must report directly to the agency heads.

Some states have enacted legislation that requires the establishment of internal audit units in large state agencies. Kansas does not have such legislation.

We also surveyed five companies in Topeka that employ internal auditors. On page 15, and again in Appendix G, we summarize the results of this survey. In talking with our counterparts, we learned that our processes, our methods, and our objectives are similar. We follow the same professional guidelines and we experience similar problems. Using these audit departments as a benchmark, we believe we are on the right track.

In contrast, however, the private companies tend to employ larger staffs, require their auditors to have more education, require their audit directors to hold professional certifications, report to higher levels of the organization, and include EDP auditors on their staffs.

On page 17, we list the key elements of our vision for the future, and on page 18 we show what internal auditors must do to accomplish this vision. On page 19, we list our ideas for what agency managers and elected officials can do to help us achieve our vision of providing greater service through internal auditing.

On page 21, we list our recommendations, which include a Quick Hit Initiative and 3 other Major Initiatives. Let's spend some time talking about these recommendations.

Quick Hit Initiative - The Kansas State Internal Auditors Forum

We are proud to report that our Quick Hit Initiative, true to its description, has already been accomplished. We have established the Kansas State Internal Audit Forum for the sharing of best practices. We soon will hold our second meeting,

By having all state internal auditors meet routinely, the Internal Auditors Forum will continue the RKG effort by continual review of internal audit functions and through sharing of best practices.

Major Initiative One - The Governor's Executive Order

Initiative Number 1 recommends that the Governor issue an Executive Order containing 5 subparts. I'll cover each of these subparts individually.

Subpart A directs that the mission of the internal audit functions be more clearly defined. Our survey of internal audit directors in state government agencies, noted in Appendix E reflects that the agency internal audit groups operate under rules and guidelines established by the audit director and the agency itself. An internal audit charter should be adopted to define the authority, accountability, and responsibility of the internal audit group in a more uniform and consistent manner across state agencies.

Subpart B. provides for a proper reporting structure. Our survey shows that audit directors currently report to various levels of management within their respective agencies, as shown again in Appendix E. To ensure the auditors' independence and that audit recommendations are implemented, the internal audit director and the unit should report directly to the agency head.

Subpart C calls for the creation of a Governor's Central Audit Group to assist agencies lacking an internal audit function. Our study notes that there is a significant exposure in numerous executive branch agencies that is not being addressed on a current basis.

Subpart D establishes a Governor's Audit Committee to provide oversight and direction of audits conducted by the central audit group.

Subpart E directs the audit committee to recommend which additional state agencies should create internal audit groups.

Major Initiative Two - Enhancing EDP Audit Capabilities

Initiative Number 2 outlines our recommendation for enhancing EDP, electronic data processing, audit capabilities.

As you know, most of the processing of vital information in state government is accomplished using the computer. Many of the controls in a system are embedded in the computer applications, in the program logic as written by the programmer/analysts. To assess these controls, we need to employ specialized internal auditing skills.

Promoting Operational Efficiency. The first thing that comes to mind in the area of operational efficiency is the design and installation of new computer systems. Some systems have been developed and installed very successfully, but who would argue that improvement isn't necessary? We can list countless program acronyms, KBITS, KFIS, CAMA, CAESCES -- systems put in place by various state agencies which have been cited by Legislative Post Audit for having implementation problems. Common problems are that projects are not adequately planned, contracts with vendors are unclear and unenforceable, costs are underestimated, and problems are not discovered until it's too late.

Yet, the state has never hired and assigned an individual with EDP audit expertise to work on these projects. Recall from page 14 that 22% of the internal audit work performed in the private enterprises we surveyed is devoted to EDP considerations. Every private company surveyed, as shown on page 49, has an EDP audit function.

The Department of Revenue has recognized this need and has hired the State's first EDP auditor. Her primary responsibility will be to evaluate and lend her expertise to the Department's reengineering effort which will initiate this spring.

Major Initiative Three - Establishing More Stringent Educational and Experience Requirements

Our final initiative, presented on page 30, is that the State establish more stringent educational and experience requirements for internal audit positions.

To achieve our vision, we see a need for internal auditors with a skill level significantly higher than that contemplated by current applicable personnel classifications.

We would suggest a minimum requirement of a bachelor's degree in accounting, business administration, or public administration, with specific course work in auditing or evaluation.

Finally, we suggest that directors of large internal audit staffs hold a professional certification.

Conclusion

To summarize, the Internal Audit team found the Reinventing Kansas Government project to be a very worthwhile study. We took away several important lessons. We learned that our focus, our methods, and our qualifications are comparable to that of our private sector counterparts. In short, we provide the same level of expertise and assistance to managers of our agencies as private industry internal auditors provide to their CEO's. The similarities far outweigh the differences. We now find that internal auditors and other state financial managers are frequently hired by private industry for their talent and expertise.

Make no mistake about it, internal auditing in a state government environment provides the same opportunities for improving operations that are provided in private enterprise. If anything, the public demand for responsive, efficient, well-run government institutions - and the commitment of elected officials to provide it for them - increases the demand for effective internal audit functions. To right-size government entails careful analysis, program review, and the design of processes that are effective without being costly, redundant, and burdensome on the public. Internal auditors support the call for improvement. We stand ready to assist you in this endeavor.

This concludes my presentation. My colleagues and I will be happy to answer any questions that you may have.