

Approved: April 26, 1996
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on March 18, 1996 in Room 313-S of the Capitol.

All members were present except:

Representative Candy Ruff - Absent
Representative Dee Yoh - Absent

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Paul Morrison, Johnson County District Attorney
Dave Debenham, Deputy Attorney General Criminal Division

Others attending: See attached list

Hearings on **SB 609** - expanding the definition of rape to include when the offenders is in a position of authority over the victim, were opened.

Paul Morrison, Johnson County District Attorney, appeared before the committee as a proponent of the bill. He explained that he had spent a lot of time researching how other states deal with this issue. The Senate amended in "medical", but this problem is not limited to just medical personal but anyone in an authority position, including police officers, teachers or bosses. (Attachment 1)

Chairman O'Neal asked if the position of authority could be someone other than a professional authority. Mr. Morrison replied that he couldn't think of any.

Dave Debenham, Deputy Attorney General Criminal Division, appeared before the committee in support of the original language. (Attachment 2)

Hearings on **SB 609** were closed.

SB 609 - expanding the definition of rape to include when the offenders is in a position of authority over the victim

Representative Snowbarger made a motion to return the bill to its original form. Representative Grant seconded the motion.

Representative Ott made a substitute motion to return the bill to its original form and add "professional authority". Representative Mays seconded the motion. The motion carried.

Representative Garner motion to have rape, in these cases, be a severity level 5. Representative Pauls seconded the motion. The motion failed.

Representative Garner made a motion to have rape, in these cases, be a severity level 4. Representative Pauls seconded the motion. The motion carried.

Representative Grant made a motion to have the provisions of her balloon amended into the bill. (Attachment 3) Representative Ott seconded the motion. The motion carried.

Representative Mays made a motion to amend in **HB 2992** - amendment to definition of capitol punishment. Representative Grant seconded the motion. The motion carried.

Representative Pauls made a motion to amend in **SB 622** - smoke detectors; installation required; criminal penalty. Representative Spangler seconded the motion. The motion carried.

Representative Garner made a motion that would make it clear that any offense created by this bill would be a secondary offense. Representative Adkins seconded the motion. With permission of the second, Representative Garner withdrew his motion because lines 1-4 of the bill addressed his concerns.

Representative O'Neal made a motion to amend in "negligence" on page 2, lines 7,8,11 & 12. Representative Pauls seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313 S-Statehouse, at 3:30 p.m. on March 18, 1996.

Representative Miller made a motion to report **SB 609** favorably for passage as amended. Representative Mays seconded the motion. The motion failed.

Representative Snowbarger made a motion to reconsider the committee's action. Representative Adkins seconded the motion. The motion carried.

Representative Adkins made a motion to return **SB 609** to its original form, have rape be treated as a severity level 4 and amend the Grant amendment into the bill. Representative Goodwin seconded the motion. The motion carried.

Representative Adkins made a motion to report **SB 609** favorably for passage as amended. Representative Grant seconded the motion.

Representative Pauls made a motion to amend in **SB 622** - smoke detectors; installation required; criminal penalty. Representative Haley seconded the motion. The motion failed.

The motion to report **SB 609** as amended carried.

SB 710 - exempt certain commercial or investment transactions from brokerage relationships in real estate transaction act

Chairman O'Neal stated that the sub committee recommended that there be a 7 member task force created to study the issue.

Representative Merritt made a motion to adopt his a balloon amendment (Attachment 3). Representative Miller seconded the motion.

Representative Mays made a substitute motion that would place a one year moratorium on commercial and reenact the statutes dealing with commercial; delete the necessity to sign the DAAR form; create a task force and place a sunset of July 1997. Representative Standifer seconded the motion. The motion failed.

The motion to adopt the Merritt balloon failed.

Representative Merritt made a motion that would place a one year moratorium on commercial and reenact the statutes dealing with commercial; not require the use of the DAAR form; create a task force and place a sunset of July 1997. Representative Mays seconded the motion.

Representative Miller made a substitute motion that would place a one year moratorium on commercial and reenact the statutes dealing with commercial; delete the necessity to sign the DAAR form; create a task force to be assigned by the chairman of the commission and report back to the Legislature January 1, 1997 and place a sunset of July 1997. Representative Adkins seconded the motion. The motion carried.

Representative Goodwin made a motion to have the task force "geographically diverse". Representative Spangler seconded the motion. The motion failed.

Representative Spangler made a motion to table **SB 710**. The motion received no second.

Representative May made a motion to report **SB 710** favorably for passage as amended. Representative Ott seconded the motion. The motion carried.

The committee meeting adjourned at 6:00 p.m. The next meeting is scheduled for March 20, 1996.

HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: March 18, 96

NAME	REPRESENTING
Jacque Oakes	Ks. Auctioneers Assoc.
Mark Kusa	OJA
Dodie Lacey	KCD
Tracy Graybill	WSC
Rebecca (Berman)	KS State Bar No. Comm.
Tom Green	
Jan Duncan	KREC
LWA Brown	Peterson Public Affairs Group

District Attorney's Office

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COMMENTS

RE: Senate Bill 609
March 18, 1996

I'm here today to support passage of Senate Bill 609. This Bill expands the authority of the rape statute to cover serious sexual abuse committed under the guise of medical "treatment".

In 1994, an individual in our county performed pelvic examinations on several female patients at a local hospital after telling them he was there to perform medical examinations. Not knowing any better, all of these ladies allowed this man to penetrate them. It was later discovered that he was a sexual pervert who had bluffed his way into obtaining the consent of the victims. These victims have suffered as a result of these "examinations" and have suffered as much as any other rape victim.

This amendment allows for situations where people impersonate medical personnel in order to molest patients as well as situations where legitimate medical personnel act inappropriately. This law makes sense. It is the right thing to do.

Thanks for your time.

Paul J. Morrison, District Attorney
Johnson County, Kansas

House Judiciary
3-18-96
Attachment 1



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

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STATEMENT OF
DEPUTY ATTORNEY GENERAL DAVID B. DEBENHAM
BEFORE THE HOUSE JUDICIARY COMMITTEE
RE: SENATE BILL 609
MARCH 18, 1996

Chairman Michael O'Neal and Members of the Committee:

I appear before you today on behalf of Attorney General Carla J. Stovall, to ask for your support of Senate Bill 609, as amended. This bill would expand the definition of rape to include those situations in which a victim has consented to an act of "sexual intercourse" [as that term is defined under K.S.A. 21-3501(1)] only because of a representation that this was necessary as part of a medical procedure when in fact the actions taken by the defendant were not part of a proper medical procedure.

The crime of rape is one of the most traumatic and brutal crimes that can occur to a woman. Whether this crime takes place by force or deception does not deviate or diminish the fact that the crime has occurred. In fact, when the crime of rape takes place only due to a representation that the procedure is a necessary part of a medical examination or procedure, the woman is victimized twice. Once when the sexual intercourse takes place and then when the victim discovers there was no basis for her submission or no basis for her submission to that individual.

The first example occurs when a professional in the health care area penetrates the female sex organs of a patient by use of the professional's finger, male sex organ or any other object and there was no basis for this penetration as part of a recognized health care practice. This could occur when a physician has sexual intercourse with a patient who came in for migraine headaches and was told this was the only way to alleviate the problem.

The second example occurs when a woman submits to a pelvic examination, in which she is penetrated, by an individual who was represented to be a doctor and then finds out that this individual is not a doctor.

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Attachment 2

Neither of these examples should be condoned as anything less than the rape of a woman. To have individuals escape criminal liability for their actions, which only occurred because of the trust placed in their apparent authority, places the responsibility for this demeaning act on the woman instead of with the perpetrator where it belongs.

Last year Attorney General Stovall was instrumental in forming the Kansas Organization for Victim Assistance (KOVA) and the STOP Violence Against Women and Children's Committee. KOVA and the Violence Against Women and Children's Committee are made up of professionals who work with crime victims and those who have been victims of crime. These two groups are also supportive of this bill.

On behalf of the Attorney General, I would urge your favorable consideration of Senate Bill 609.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1996

SENATE BILL No. 710

By Committee on Judiciary

2-14

12 AN ACT concerning ~~the brokerage relationships in real estate transac-~~
13 ~~tions act; amending K.S.A. 1995 Supp. 58-30,101 and repealing the~~
14 ~~existing section~~

real estate transactions; relating to agency relation-
ships; repealing the brokerage relationships in real estate transactions
act; amending K.S.A. 1995 Supp. 58-3036, 58-3037, 58-3042, 58-3050,
58-3062, 58-3064, 58-3065, 58-3068 and 74-4202 and repealing the
existing sections; also repealing K.S.A. 1995 Supp. 58-3035a, 58-3039a
and 58-30,101 through 58-30,112.

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

17 ~~[Section 1. K.S.A. 1995 Supp. 58-30,101 is hereby amended to read~~
18 ~~as follows: 58-30,101. (a) K.S.A. 1995 Supp. 58-30,101 through 58-30,112~~
19 ~~shall be known and may be cited as the brokerage relationships in real~~
20 ~~estate transactions act.~~

21 ~~(b) The provisions of this act shall not apply to transactions regarding~~
22 ~~the sale or lease of commercial or investment real estate property. Com-~~
23 ~~mmercial or real estate property means any real estate for which the present~~
24 ~~use is other than one to four residential units [Any application of this~~
25 ~~act to transactions regarding the sale or lease of commercial or in-~~
26 ~~vestment real estate property shall] be suspended and shall not be~~
27 ~~enforceable during the period commencing on the effective date of~~
28 ~~this act and ending one year from such effective date. [Commercial~~
29 ~~or real estate property means any real estate for which the present~~
30 ~~use is other than one to four residential units.]~~

31 Sec. 2. K.S.A. 1995 Supp. 58-30,101 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book ~~Kansas register~~

Insert the attached Sections.

House Judiciary
3-18-96
Attachment 3

Section 1. K.S.A. 1995 Supp. 58-3036 is hereby amended to read as follows: 58-3036. Unless exempt from this act under K.S.A. 58-3037 and amendments thereto, no person shall:

(a) Directly or indirectly engage in or conduct or represent that such person engages in or conducts the business of a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(b) Directly or indirectly act or represent that such person acts as a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(c) Perform or offer, attempt or agree to perform any act described in subsection ~~(e)~~ (f) of K.S.A. 58-3035 and amendments thereto, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act.

Sec. 2. K.S.A. 1995 Supp. 58-3037 is hereby amended to read as follows: 58-3037. The provisions of this act shall not apply to:

(a) Any person, other than a person licensed under this act, who directly performs any of the acts within the scope of this act with reference to such person's own property.

(b) Any person who directly performs any of the acts within the scope of this act with reference to property that such person is authorized to transfer in any way by a power of attorney from the owner, provided that such person receives no commission or other compensation, direct or indirect, for performing any such act.

(c) Services rendered by an attorney licensed to practice in this state in performing such attorney's professional duties as an attorney.

(d) Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency.

(e) Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee.

(f) Any multiple listing service wholly owned by a nonprofit organization or association of brokers.

(g) Any nonprofit referral system or organization of brokers formed for the purpose of referral of prospects for the sale or listing of real estate.

(h) Railroads or other public utilities regulated by the state of Kansas, or their subsidiaries, affiliated corporations, officers or regular employees, unless performance of any of the acts described in subsection ~~(e)~~ (f) of K.S.A. 58-3035 and amendments thereto is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or

other public utility or affiliated or subsidiary corporation thereof.

(i) The sale or lease of real estate by an employee of a corporation which owns or leases such real estate, if such employee owns not less than 5% of the stock of such corporation.

(j) The sale or lease of new homes by a person, partnership, association or domestic corporation who constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, partnership or association or by any employee of such corporation who owns less than 5% of the stock of such corporation.

(k) The lease of real estate for agricultural purposes.

Sec. 3. K.S.A. 1995 Supp. 58-3042 is hereby amended to read as follows: 58-3042. (a) No real estate license shall give authority to any person other than the person to whom the license is issued.

(b) No license shall be granted to a corporation, partnership, association or limited liability company. Each person who is an officer of a corporation or a member of a partnership, association or limited liability company and who performs any act described in subsection ~~(e)~~ (f) of K.S.A. 58-3035 and amendments thereto shall be a licensed broker, and each person who is employed by or associated with a corporation, partnership, association or limited liability company and who performs any act described in subsection ~~(e)~~ (f) of K.S.A. 58-3035 and amendments thereto shall be a licensed broker or licensed salesperson.

Sec. 4. K.S.A. 1995 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-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

rules and regulations adopted hereunder, ~~or--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 disabled 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--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. 5. K.S.A. 1995 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.

(5) 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.

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

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

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

~~(8)~~ (9) 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)~~ (10) 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)~~ (11) Induce any party to break any agency agreement or contract of sale or lease.

(12) 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.

(13) 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.

(14) 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.

(15) 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 licensee 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.

(16) 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 licensee 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 first showing of the property and shall be made in any contract for sale and in any lot reservation agreement.

(17) 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.

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

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

(20) 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.

(21) 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.

(22) 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.

(23) Engage in fraud or make any substantial misrepresentation.

(24) 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.

~~(17)~~ (25) 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 licensee will have in the real estate the licensee is purchasing or leasing.

~~(18)~~ (26) 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.

~~(19)~~ (27) Fail without just cause to surrender any document or instrument to the rightful owner.

~~(20)~~ (28) 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.

~~(21)~~ (29) 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 or lot reservation agreement, in which case the licensee shall deposit the check or cash received on the date provided by such written agreement.

~~(22)~~ (30) 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.

(31) 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.

(32) 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.

~~(23)~~ (33) Refuse to appear or testify under oath at any hearing held by the commission.

~~(24)~~ (34) Demonstrate incompetency to act as a broker, associate broker or salesperson.

(35) 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.

~~(25)~~ (36) Knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or

any special favor or advantage 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.

(26) (37) 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 payments come 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) 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 associated 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) 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.

(g) 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. 6. K.S.A. 1995 Supp. 58-3064 is hereby amended to read as follows: 58-3064. Whenever any person has engaged in any act or practice that constitutes a violation of this act or rules and regulations adopted hereunder ~~or-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 the act or rules and regulations. 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 the act or rules and regulations, the court may enjoin all such acts or practices and may make any orders necessary to conserve, protect and disburse any funds involved.

Sec. 7. K.S.A. 1995 Supp. 58-3065 is hereby amended to read as follows: 58-3065. (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 12 months or a fine of not less than \$100 or more than \$1,000, or both, for the first offense and imprisonment for not more than 12 months or a fine of not less than \$1,000 or more than \$10,000, or both, for a second or subsequent offense.

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

Sec. 8. K.S.A. 1995 Supp. 58-3068 is hereby amended to read as follows: 58-3068. (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), ~~(15), (20) or (21)~~ (23), (28) or (29) or subsection ~~(b)(2)~~ (d)(2) of K.S.A. 58-3062 and amendments thereto; or

(2) ~~violation---of---any---provision---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. 9. K.S.A. 1995 Supp. 74-4202 is hereby amended to read as follows: 74-4202. (a) Within 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 the acts act and may adopt rules and regulations not inconsistent with the acts act. For the purpose of the acts act, 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 ~~the--acts of the act~~ or any rules and regulations adopted under the acts act. 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.

(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. 10. K.S.A. 1995 Supp. 58-3035a, 58-3036, 58-3037, 58-3039a, 58-3042, 58-3050, 58-3062, 58-3064, 58-3065, 58-3068, 58-30,101 through 58-30,112 and 74-4202 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.