

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:18 a.m. on March 12, 2002 in Room 521-S of the Capitol.

All members were present except: Rep. Bob Grant - excused
Rep. Doug Patterson - excused
Rep. Rick Rehorn - excused
Rep. Candy Ruff - excused

Committee staff present: Bob Nugent, Revisor of Statutes
Renaë Jeffries, Revisor of Statutes
Carol Doel, Acting Secretary

Conferees appearing before the committee: Sherry C. Diel, Kansas Real Estate Commission
Anne Spiess, Kansas City Realtors

Others attending: See attached list

Hearing on SB 439 - Real estate brokers and salespersons; licensure; disciplinary action; dual agency.

Written testimony supporting **SB 439** and **SB 440** from Bill Yanek, Director of Governmental Relations, Kansas Association of Realtors (KAR) was distributed to members of the committee. (Attachment 1)

Sherry C. Diel, Executive Director of the Kansas Real Estate Commission, appeared as a proponent for **SB 439**. The Commission requested the introduction of the bill to clarify the authority of the Commission and to make some corrections to the Kansas Real Estate Brokers' and Salespersons' License Act and the Kansas Brokerage Relationships in Real Estate Transactions Act. Ms. Diel explained the six changes which the bill would make to existing law. (Attachment 2) She answered questions from the committee.

Bob Nugent, Revisor, distributed balloons for **SB 439** and **SB 440** that contain technical changes requested by Sherry Diel to clean up the bills. (Attachment 3)

Ann Spiess, Kansas Government Affairs Director, Kansas City Regional Association of Realtors, gave written testimony and rose only to say that her organization was in support of **SB 439**. (Attachment 4)

No others were present to testify and Chairman Lane closed the hearing on **SB 439**.

Hearing on SB 440 - Real estate brokers and salespersons; multiple affiliation, restrictions.

Sherry Diel testified in support of **SB 440** and explained the proposed legislation. The Real Estate Commission requested the bill to limit the practice of a licensee being affiliated with more than one real estate brokerage at any one time, either as an employee or as an independent contractor. (Attachment 5)

Ann Spiess rose again to say that her organization was in support of **SB 440**

There were no questions from the committee and the hearing on **SB 440** was closed by Chairman Lane.

Representative Welshimer needed a clarification on **SB 439** and Chairman Lane recommended that she work with Sherry Diel and Bob Nugent and bring a new balloon to committee.

Chairman Lane adjourned the meeting at 10:05 a.m.

The next scheduled meeting will be March 13, 2002.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: March 12, 2002

NAME	REPRESENTING
Sherry Diel	KS Real Estate Commission
Anne Spiess	KCRAR - K.C. Realtors



TO: HOUSE BUSINESS, COMMERCE, AND LABOR COMMITTEE

FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS

DATE: MARCH 12, 2002

SUBJECT: SB 439—Real estate brokers and salespersons; licensure; disciplinary action; dual agency.

SB 440—Real estate brokers and salespersons; multiple affiliation, restrictions.

Thank you for the opportunity to present written testimony regarding Senate bills 439 and 440. The Kansas Association of REALTORS® supports the proposed changes in both Senate Bill 439 and Senate Bill 440.

Senate Bill 439's modification of the 3-year statute of limitations as it applies to the Real Estate Commission's ability to "refuse to grant, renew, or condition the issuance of a license if the applicant has obtained a license by false or fraudulent representation or the licensee has violated an order of the Real Estate Commission" is a needed change. Senate Bill 439 protects both consumers and the real estate industry from applicants or licensees who may benefit from the 3-year statute of limitations on conduct that is "not reasonably ascertainable" by the Real Estate Commission, but should not be granted a license renewal or issuance. This bill would begin running the 3-year statute of limitations when the alleged conduct is "reasonably ascertainable" by the Real Estate Commission.

Senate Bill 440 ensures that a licensee will be employed or associated with only one supervising broker at any one time. Restricting the licensee to one supervising broker will serve to clarify the licensee's relationship with his or her supervising broker and the licensee's agency relationship with the consumer. These restrictions are needed to protect the consumer. It is critical when a consumer employs a real estate agent that the consumer knows who the agent is working for and in what type of agency capacity that agent is performing his or her duties. Senate Bill 440 achieves this objective.

We respectfully request your favorable consideration of this legislation.

House Business, Commerce & Labor Committee

3-12-2002

Attachment 1

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SHERRY C. DIEL
EXECUTIVE DIRECTOR

Memo To: Chairman Lane and Members of the House Business, Commerce and Labor Committee
From: Sherry C. Diel, Executive Director
RE: SB 439—Clean up/technical amendment to state laws concerning regulation and licensure of real estate brokers and salespersons
Date: March 12, 2002

The Kansas Real Estate Commission requested the introduction of SB 439 to clarify the authority of the Commission and to make some technical corrections to the Kansas Real Estate Brokers' and Salespersons' License Act (K.S.A. 58-3034 *et seq.*), and the Kansas Brokerage Relationships in Real Estate Transactions Act (K.S.A. 58-30,101 *et seq.*).

SB 439 would make the following changes to existing law:

- (1) Correct the reference to the definition of "broker" as subsection (f) of K.S.A. 58-3035 instead of subsection (e) as it appears throughout the real estate statutes enforced by the Commission;
- (2) Would amend K.S.A. 58-3050 to clarify that the Commission may revoke, suspend or take other appropriate administrative action against a license if the licensee violates a lawful order of the Commission;
- (3) Would amend K.S.A. 58-3043 to clarify that the Commission is authorized to consider the same factors for renewal of a license that are considered for issuance of an original license;
- (4) Would amend K.S.A. 58-3050 to change the applicable statute of limitations for any licensee who violates a lawful order of the Commission or makes a false or fraudulent representation on their application for licensure to three years from the date the misrepresentation or omission is reasonably ascertainable by the Commission¹;

¹ The three-year statute of limitations would continue to apply to other violations of the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034 *et seq.*, the Kansas Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,101 *et seq.*, or any regulations promulgated thereunder.

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- (5) Would also amend K.S.A. 58-3050 to allow the Commission to condition a license as a result of a disciplinary proceeding conducted in accordance with the Kansas Administrative Procedures Act; and
- (6) Would amend K.S.A. 58-30,103(a) to clarify that "dual agency" is prohibited in Kansas, regardless of whether such dual representation is disclosed to the principals in the real estate transaction.

Explanation of Senate-Passed Bill

The clarification to K.S.A. 58-3050 that the Commission may revoke, suspend or take other appropriate action against a license if the licensee violates a lawful order of the Commission would provide the Commission with an option of pursuing a less costly administrative remedy. The clarification would prevent a licensee from arguing that the Commission can only enforce an agency order by pursuing an injunction in district court.

The amendment to K.S.A. 58-3043 would clarify that the Commission has the authority to consider criminal history, violations of the real estate laws, and other relevant factors which occurred subsequent to the salesperson's or broker's original licensure for purposes of approving renewal of the license for the next two-year period.

The amendment to K.S.A. 58-3050 would toll the three-year statute of limitations for any type of misrepresentation made by the applicant during the application process until the misrepresentation was reasonably ascertainable by the Commission. The Commission requested the amendment because we have encountered a few instances where it was discovered after the statute of limitations ran that the applicant did not disclose past criminal history or a substantial number of unsatisfied judgments on their application. The information omitted or misrepresented by the applicant would have constituted grounds for denial of the license pursuant to K.S.A. 58-3043 had the Commission been aware of the applicant's actual history.

The other amendment to K.S.A. 58-3050 would add an alternative for the Commission to place conditions on a license for a set period of time instead of imposing long-term suspension or revocation of a license. The Commission, after an opportunity for a hearing, could set certain conditions for the license to remain in effect, which is similar to probation. For example, the Commission could establish specific reporting requirements or establish requirements for more intensive supervision by the supervising broker for the duration of the agency order.

The amendment to K.S.A. 58-30,103(a) would correct what appears to be an inadvertent oversight when the Kansas Brokerage Relationships in Real Estate Transactions Act was passed in 1996 and substantially revised in 1997. The amendment would simply clarify that dual agency (or entering into an agency relationship with both the buyer and seller in the same transaction) is prohibited in Kansas, regardless of whether or not the dual agency is disclosed to the principals to the transaction. This section appears to contradict existing law, which provides that if a

real estate licensee is representing both the buyer and the seller in the same transaction then the licensee must give up his agency relationship with both the buyer and seller.

Explanation of House Committee Balloon Amendments

The balloon amendments to K.S.A. 58-3045 and K.S.A. 58-3047 would clarify that a supervising broker's consent to a transfer or a late renewal of the license of a salesperson or broker under their supervision is evidenced by the supervising broker's signature on a form approved by the Commission for that purpose.

The other balloon would amend K.S.A. 58-30,103(p) to clarify that a licensee may not contact a seller or landlord directly if the licensee knows that an exclusive agency relationship exists between the seller and another broker. Under current law, there is nothing to prohibit the licensee from contacting the seller or landlord; rather, the prohibition goes only to negotiating a sale or lease under these circumstances. This amendment would mirror the language of subsection (o) which prevents a licensee from contacting a buyer or tenant directly if the licensee knows an exclusive agency relationship exists between the buyer and another broker.

Fiscal Impact

The Commission estimates there would be no increase in the Commission's expenditures if SB 439 becomes law, nor would the proposed legislation require an increase in staffing.

Thank you for consideration of the Commission's request to amend existing law. I will be happy to answer any questions from the Committee.

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Section 9

58-3047

**Chapter 58.--PERSONAL AND REAL PROPERTY
PART 6.--MISCELLANEOUS PROVISIONS
Article 30.--REAL ESTATE BROKERS AND SALESPERSONS**

58-3047. Issuance of license; cancellation and reinstatement. (a) The commission shall issue a license as broker or salesperson to each applicant who is qualified under and complies with all provisions of this act and rules and regulations adopted hereunder. The form of license shall be prescribed by the commission.

(b) A salesperson's or associate broker's license shall be delivered or mailed to the supervising broker or branch broker, if applicable, and shall be kept in the custody and control of such broker until canceled or until the salesperson or associate broker leaves employment by or association with the broker.

(c) Immediately upon the termination of a salesperson or associate broker from employment by or association with a broker, the supervising broker or branch broker, if applicable, shall return such salesperson's or associate broker's license to the commission for cancellation. A license canceled but not suspended or revoked may be reinstated at any time during the period for which it was issued upon receipt of the fee for reinstatement prescribed by K.S.A. 58-3063 and amendments thereto and an application therefor in a form prescribed by the commission.

(d) Except as provided in subsection (e), upon a change in the name under which a broker is licensed or a change in the location of a broker's office, the broker shall, within 10 days, return to the commission, for cancellation and reinstatement under the new name or location of the broker, the broker's license, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto.

(e) Upon a change in the name under which a supervising broker is licensed or a change in the location of a supervising broker's office, the supervising broker shall, within 10 days, return to the commission together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto, for cancellation and reinstatement under the new name or location of the supervising broker: (1) The license of the supervising broker; (2) the license of any other broker who is associated with the supervising broker and whose license requires reinstatement under the new name or location; and (3) the licenses of all salespersons and associate brokers employed by or associated with the supervising broker. Upon a change in the name under which a branch broker is licensed or a change in

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the location of a branch broker's office, the branch broker shall, within 10 days, return to the commission, for cancellation and reinstatement under the new name or location of the branch broker, the license of the branch broker and the licenses of all salespersons and associate brokers assigned to the branch office, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto. Upon a change in the broker designated as the branch broker or supervising broker of an office, the supervising broker shall, within 10 days, return to the commission, for cancellation, the licenses of the brokers who are affected by the change, together with the reinstatement fee prescribed by K.S.A. 58-3063 and amendments thereto.

(f) When any salesperson or associate broker is discharged for a violation of any of the provisions of this act, a certified written statement of the facts with reference thereto shall be filed forthwith with the commission by the supervising broker.

History: L. 1980, ch. 164, § 14; L. 1986, ch. 209, § 9; July 1.

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Section 8

58-3045

Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUS PROVISIONS Article 30.--REAL ESTATE BROKERS AND SALESPERSONS

58-3045. Expiration of license; renewal. (a) Except for a temporary salesperson's license issued pursuant to subsection (f) of K.S.A. 58-3039, and amendments thereto, each license issued or renewed by the commission shall expire on a date determined in accordance with a schedule established by rules and regulations of the commission, which date shall be not more than two years from the date of issuance or renewal. Except as otherwise provided by this act, applicants for issuance or renewal of a license must satisfy all applicable requirements prior to issuance or renewal of the license.

(b) (1) Except for a temporary salesperson's license issued pursuant to subsection (f) of K.S.A. 58-3039, and amendments thereto, each license shall be renewable upon the filing of a renewal application on or before the renewal date, which is the last calendar day of the month preceding the license expiration date. Such application shall be made on a form provided by the commission and accompanied by (A) the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, and (B) evidence of compliance with the requirements of K.S.A. 58-3046a and amendments thereto or the licensee's license with the licensee's request that the license be deactivated on the renewal date pursuant to K.S.A. 58-3049, and amendments thereto.

(2) Failure to comply with paragraph (1) on or before the renewal date will automatically cancel the license on the license expiration date unless the license is renewed pursuant to subsection (c) prior to the expiration date.

(c) Any licensee who failed to comply with the requirements of subsection (b)(1), may have the licensee's license reinstated and renewed by the payment of the renewal fee prescribed by K.S.A. 58-3063, and amendments thereto, and a late fee of \$50, if such fees are remitted to the commission not later than six months following the expiration date of such license and accompanied by (1) an application for late renewal obtained from the commission, and (2) evidence of compliance with the requirements of K.S.A. 58-3046a and amendments thereto or a written request that the licensee's license be renewed on deactivated status pursuant to K.S.A. 58-3049 and amendments thereto.

(d) An application for renewal filed in compliance with the requirements of subsection (b) shall entitle the applicant to continue operating under the applicant's existing license

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after its specified expiration date, unless such license has been suspended or revoked and has not been reinstated or unless such license is restricted, until such time as the commission determines whether the application fulfills such requirements.

History: L. 1980, ch. 164, § 12; L. 1984, ch. 313, § 87; L. 1986, ch. 209, § 7; L. 1997, ch. 65, § 9; Oct. 1.

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“and consent of the new supervising broker
as evidenced by the supervising broker’s
signature on the form required by the
commission”

2

“and consent of the new supervising broker
as evidenced by the supervising broker’s
signature on the application for late renewal
provided by the commission; and”

1

1 the party to be represented and by the broker or a licensee affiliated with
2 the broker. A copy of the agreement shall be furnished to the client at
3 the time the client signs the agreement. If, at the time the client signs
4 the agreement, the agreement is not signed by the broker or a licensee
5 affiliated with the broker, the broker or a licensee affiliated with the
6 broker shall furnish a copy of the agreement to the client within a rea-
7 sonable time after the agreement is signed by the broker or a licensee
8 affiliated with the broker.

9 (g) An agency agreement with a seller or landlord shall include any
10 potential:

11 (1) for the seller's agent or landlord's agent to act as a transaction
12 broker;

13 (2) for an affiliated licensee to act as a designated agent for the buyer
14 and the designated agent's supervising broker or branch broker, and an
15 affiliated licensee if applicable, to act as a transaction broker; or

16 (3) for the broker to designate an affiliated licensee to act as the
17 designated agent for the seller on the broker's personal listing pursuant
18 to subsection (b)(2) of K.S.A. 58-30,109 and amendments thereto.

19 (h) An agency agreement with a buyer or tenant shall include any
20 potential:

21 (1) For the buyer's agent or tenant's agent to act as a transaction
22 broker; or

23 (2) For an affiliated licensee to act as a designated agent for the seller
24 and the designated agent's supervising broker or branch broker, and an
25 affiliated licensee if applicable, to act as a transaction broker.

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

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

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

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

contact the buyer or tenant or

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

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1 agreement.

2 (o) If a licensee knows that a buyer or tenant has an agency agreement
3 granting exclusive representation to another broker, the licensee shall not
4 contact the buyer or tenant and shall not initiate negotiations for the sale,
5 exchange or lease of real estate with the buyer or tenant. The licensee
6 may negotiate the sale, exchange or lease of real estate directly with the
7 buyer or tenant with the informed consent of the buyer or tenant. The
8 informed consent shall be evidenced by a consent agreement signed by
9 the buyer or tenant prior to any such direct negotiation. The consent
10 agreement shall acknowledge the buyer or tenant agency agreement and
11 that the buyer or tenant may be liable for compensation under the terms
12 of the agency agreement. The commission, by rules and regulations, shall
13 adopt a consent agreement to be used by licensees pursuant to this
14 subsection.

contact the seller or landlord or

15 (p) A licensee shall not negotiate a sale, exchange or lease of real
16 estate directly with a seller or landlord if the licensee knows that the seller
17 or landlord has an agency agreement granting an exclusive right to sell or
18 exclusive agency to another broker. A buyer's or tenant's agent or a sub-
19 agent may present an offer to the seller or landlord if the seller's or
20 landlord's agent is present.

21 Sec. 8. K.S.A. 58-3043 and K.S.A. 2001 Supp. 58-3036, 58-3037, 58-
22 3039, 58-3042, 58-3050 and 58-30,103 are hereby repealed.

23 Sec. 9. This act shall take effect and be in force from and after its
24 publication in the statute book.

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1 another person in a real estate transaction.

2 (b) No salesperson or associate broker shall:

3 (1) Except as provided in paragraph (A) or (B), accept a commission
4 or other valuable consideration from anyone other than the broker by
5 whom the licensee is employed or with whom the licensee is associated
6 as an independent contractor.

7 (A) A salesperson or associate broker may accept a commission or
8 other valuable consideration from a licensee who employs the salesperson
9 or associate broker as a personal assistant provided that: (i) the licensee
10 and the salesperson or associate broker who is employed as a personal
11 assistant are licensed under the supervision of the same broker, and (ii)
12 the supervising broker agrees in writing that the personal assistant may
13 be paid by the licensee.

14 (B) If a salesperson or associate broker has (i) organized as a profes-
15 sional corporation pursuant to K.S.A. 17-2706 *et seq.*, and amendments
16 thereto, (ii) incorporated under the Kansas general corporation code con-
17 tained in K.S.A. 17-6001 *et seq.*, and amendments thereto, (iii) organized
18 under the Kansas limited liability company act contained in K.S.A. 2001
19 Supp. 17-7662 *et seq.*, and amendments thereto, or (iv) has organized as
20 a limited liability partnership as defined in K.S.A. 2001 Supp. 56a-101,
21 and amendments thereto, the commission or other valuable consideration
22 may be paid by the licensee's broker to such professional corporation,
23 corporation, limited liability company or limited liability partnership. This
24 provision shall not alter any other provisions of this act.

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

29 (3) (A) *Except as provided by paragraph (B), be employed by or as-*
30 *sociated with a licensee at any one time other than the supervising broker*
31 *who employs such salesperson or associate broker or with who the sales-*
32 *person or associate broker is associated as an independent contractor.*

associates

33 (B) *An associate broker may be employed by or associated with more*
34 *than one supervising broker at any one time if each supervising broker*
35 *who employs or [associated] with the associate broker consents in writing*
36 *to such multiple employment or association. Such consent shall be on*
37 *a form provided by the commission and shall not be effective until*
38 *a signed copy of the form has been filed with the commission.*

completed

39 (c) No broker shall:

40 (1) Pay a commission or compensation to any person for performing
41 the services of an associate broker or salesperson unless such person is
42 licensed under this act and employed by or associated with the broker.

43 (2) Fail to deliver to the seller in every real estate transaction, at the

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1 nor buyer is represented by a broker, no transaction broker shall:

2 (A) Fail to deliver the purchase agreement and earnest money de-
3 posit to the escrow agent named in the purchase agreement within five
4 business days after the purchase agreement is signed by all parties unless
5 otherwise specifically provided by written agreement of all parties to the
6 purchase agreement, in which case the broker shall deliver the purchase
7 agreement and earnest money deposit to the escrow agent named in the
8 purchase agreement on the date provided by such written agreement; or

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

12 The commission may adopt rules and regulations to require that such
13 purchase agreement which provides that the earnest money be held by
14 an escrow agent other than a real estate broker include: (1) notification
15 of whether or not the escrow agent named in the purchase agreement
16 maintains a surety bond, and (2) notification that statutes governing the
17 disbursement of earnest money held in trust accounts of real estate bro-
18 kers do not apply to earnest money deposited with the escrow agent
19 named in the purchase agreement.

20 *(e) A branch broker shall not be employed by or associated with more
21 than one supervising broker at any one time unless each supervising bro-
22 ker who employs or associates with the branch broker consents in writing
23 to such multiple employment or association. Such consent shall be on
24 a form provided by the commission and shall not be effective until
25 a signed copy of the form has been filed with the commission.*

completed

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

29 Sec. 2. K.S.A. 2001 Supp. 58-3062 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its
31 publication in the statute book.



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TO: House Business, Commerce and Labor Committee
Rep. Al Lane – Chair

FROM: Anne Spiess, Kansas Government Affairs Director
Kansas City Regional Association of Realtors

DATE: March 12, 2002

RE: SB 439 and SB 440

Mr. Chairman and Members of the Committee, thank you for the opportunity to submit written testimony to you today. The Kansas City Regional Association of Realtors (KCRAR) supports both SB 439 and SB 440, which were introduced at the request of the Kansas Real Estate Commission (KREC).

SB 439 is considered a technical cleanup bill. One of the bill's more major provisions would be to eliminate the 3-year statute of limitations that applies to the granting or renewal of a license if a licensee is found to have obtained the license by false or fraudulent representation, or if the licensee has violated any lawful order or directive of the Commission.

SB 440 deals with the issue of multiple affiliations. Language in the bill states that no salesperson or associate shall, be employed by or associated with a licensee at any one time other than the employing supervising broker who employs or associates with the licensee or associate. The bill also indicates that an associate or branch broker may be employed or associated with more than one supervising broker if each supervising broker consents in writing.

Again, KCRAR supports SB 439 and SB 440 and would ask for the Committee's favorable consideration of these bills.

**House Business, Commerce & Labor Committee
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Attachment 4**



BILL GRAVES, GOVERNOR

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SHERRY C. DIEL
EXECUTIVE DIRECTOR

Memo To: Chairman Lane and Members of the House Business, Commerce and Labor Committee
From: Sherry C. Diel, Executive Director
RE: SB 440—Multiple Company Affiliation of Real Estate Brokers and Salespersons.
Date: March 12, 2002

Background for the Proposed Amendment.

The Kansas Real Estate Commission requested introduction of SB 440 to limit the practice of a licensee being affiliated with more than one real estate brokerage at any one time, either as an employee or as an independent contractor. The Commission refers to this practice as “multiple company affiliation”.

Each real estate brokerage appoints a broker to serve as the “supervising broker”. The supervising broker is often the owner or a principal in the brokerage company. The supervising broker of the main company may appoint a broker to serve as the branch broker of the company’s branch offices. The supervising broker or branch broker is responsible for supervision of any salespersons or associate brokers who are affiliated with the brokerage.

Until April of 2001, the Commission had a long-standing rule in place that a licensee could not affiliate with or be employed by more than one supervising broker at any one time unless the supervising brokers were located at the same address. An associate broker and branch broker challenged this long-standing rule. At the Commission’s request, an informal Attorney General opinion was issued that determined the Commission had no statutory authority to prohibit a real estate salesperson or broker from affiliating with more than one company at the same time.

The informal opinion from the Attorney General’s Office was based upon the theory that there was no prohibition in the Prohibited Acts section of the law or elsewhere to support the Commission’s’ policy. The Commission immediately drafted a temporary regulation to at least limit the ability of a real estate salesperson from being affiliated with more than one supervising broker. The Attorney General’s Office determined that there was also no statutory authority to support the Commission’s proposed temporary regulation.

Thereafter, the Commission received many inquiries and several requests for duplicate licensure reflecting that the licensee was affiliated with more than one real estate brokerage at the same time. The Commission became concerned that this multiple company affiliation would not only cause consumer protection problems, but would also

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Attachment 5

cause enforcement problems. The Commission quickly was presented with a case where a licensee who was affiliated with more than one brokerage at the same time unknowingly violated the section of the Kansas Brokerage Relationships in Real Estate Transactions Act, K.S.A. 58-30,103(a), which prohibits undisclosed dual agency. In addition, nothing requires a salesperson or associate broker who decide to affiliate with more than one brokerage at the same time to advise each supervising broker of their dual status.

Other Jurisdictions' Experience.

The Commission polled other jurisdictions to determine whether other states prohibited salespersons and brokers from affiliating with more than one company at any one time. All jurisdictions but one who responded to the Commission's poll stated that they do prohibit a salesperson from affiliating with more than one company at any one time. The responses were mixed as to whether an associate broker or branch broker could affiliate with more than one company at any one time. Nebraska allowed multiple affiliation of an associate broker or a branch broker if both supervising brokers consented to the arrangement. The majority of states did not prohibit a supervising broker from affiliating with more than one company at any one time.

The Proposed Legislation.

After significant discussion, the Commission approved requesting legislation that would set up three different levels to either prohibit, restrict or allow a licensee to affiliate with more than one brokerage at any one time, depending on their licensure status. The proposed legislation would prohibit or authorize multiple company affiliation as follows:

- (1) A real estate salesperson would be prohibited from being employed by or associated with more than one supervising broker at any one time;
- (2) An associate broker or branch broker could be employed by or associated as an independent contractor with more than one supervising broker at any one time if the supervising brokers of each brokerage notify the Commission in writing that they consent to the arrangement; and
- (3) A supervising broker (also known as an owner broker or employing broker) would not be prohibited from affiliating with more than one company at any one time.

A salesperson has limited authority under the law and must always work under the supervision of a branch broker or supervising broker. An associate broker must still work under the supervision of a branch broker or a supervising broker, but they are required to have significant real estate related experience before they are granted a broker's license. Consequently, the Commission felt that it was appropriate to allow for multiple company affiliation in those instances where each supervising broker was made aware of the associate broker's or branch broker's desire to work for more than one brokerage and each supervising broker consented to the arrangement. The Commission felt, as do many other jurisdictions, that the supervising broker who is

generally a principal in the brokerage company should be allowed to affiliate with more than company.

The balloon amendments are purely technical in nature.

If SB 440 becomes law, the Commission does not anticipate that it will have any fiscal impact on the Commission's operations and will not require any additional staffing.

Thank you for your consideration of the Commission's requested amendments. I will be happy to respond to questions.

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