

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE.

The meeting was called to order by Chairperson Senator Nancey Harrington at 10:30 a.m. on February 12, 2002 in Room 245-N of the Capitol.

All members were present.

Committee staff present: Russell Mills, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor
Nikki Kraus, Committee Secretary

Conferees appearing before the committee: Sherry Diel, Exec. Dir. Kansas Real Estate Commission
Bill Yanek, Kansas Association of Relators

Others attending: Please see attached

Chairperson Harrington opened the hearing on:

SB 439--Real estate brokers and salespersons; licensure; disciplinary action; dual agency and
SB 440--Real estate brokers and salespersons; multiple affiliation, restrictions

Sherry Diel, Executive Director of the Kansas Real Estate Commission, presented testimony to the committee in favor of **SB 439**. (Attachment 1)

Chairperson Harrington asked the committee for questions. Senator Gooch asked Ms. Diel if the first bill meant that even if someone had held a license for three years and then applied for renewal, upon which time something that they had done before the licensing came to light, the license could be revoked. Ms. Diel stated that the bill is not as much about renewals as violations against the license itself, such as misrepresenting themselves at the time of licensure. Senator Gooch expressed some concern about a statute of limitations.

Senator Teichman asked Ms. Diel if complaints against licensees are investigated. Ms. Diel stated that the Kansas Real Estate Commission does not do background checks, although they used to do them randomly. She stated that now, licensees are asked six questions which they answer and disclose any criminal history.

Senator Vratil stated that the statute of limitations in this bill is written differently and that Senator Gooch had a good point in bringing that up. Senator Vratil stated that if there is fraudulent misrepresentation at the time of licensure and it is not discovered until the time of renewal three years later, the license should not be revoked because of it. He stated that the bill might need to be amended.

Sherry Diel, Executive Director of the Kansas Real Estate Commission, presented testimony to the committee in favor of **SB 440**. (Attachment 2)

Chairperson Harrington asked the committee for questions. Senator Vratil asked Ms. Diel what the purpose of the consent of the supervising broker, and why the bill was requiring it to be written as opposed to oral. Ms. Diel stated that it was not like a contract, but there is a form which comes back to the commission in order for it to confirm that both parties have consented. Chairperson Harrington stated that the committee would probably hold over the bill to clarify any concerns.

Theresa Kiernan asked Senator Vratil if his concern was that the consent was written, and Senator Vratil stated that he was still not sure of the purpose of the bill. He stated that he did not see what requiring the agreement in writing serves. Ms. Kiernan stated that under current law this cannot be done unless written. After additional discussion, Chairperson Harrington stated that the committee may not take up the bill today so that Senator Vratil can have a chance to speak with Ms. Kiernan further.

Bill Yanek, Kansas Association of Relators, then presented testimony in favor of the bills. (Attachment 3)

Chairperson Harrington directed the committee to the written testimony of Anne Spiess, Kansas Government Affairs Director, Kansas City Regional Association of Realtors, in support of the bills. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE at on February 12, 2002 in Room 245-N of the Capitol.

Chairperson Harrington stated that the committee would take up SB 439 and SB 440 next week.

Chairperson Harrington then stated that the committee would look at working SB 405–Consumption of alcohol in certain places; state fair board and SB 407–Keg registration act and the confirmation of Joyce Glasscock.

Senator Barnett stated that he would like express his appreciation to the committee for hearing SB 407. He stated that he would like an amendment to section four to omit the language “criminal prosecution or proceeding.” Senator Barnett made a motion to amend SB 407. Senator Lyon seconded the motion. The motion to amend passed.

Senator Gilstrap asked Senator Barnett if the keg tags will be provided to retailers. Senator Barnett replied that the tags would be provided without cost to the state. Senator Gilstrap stated that he would like to know if the concern from the Attorney General was addressed, and Senator Barnett confirmed that.

In response to a question from Senator Gooch, Senator Barnett stated that there would be a uniform identification system throughout the state. Senator Gooch asked Senator Vratil for legal language help, and Senator Vratil replied that Rules and Regs intend to adopt a standard for the identification.

Russell Mills stated that he had a question about line 30, and Theresa Kiernan stated that the amendment included conforming amendments to the bill.

Senator Barnett made a motion to recommend SB 407 favorable for passage. Senator Lyon seconded that motion. The motion passed unanimously.

Chairperson Harrington stated that she had spoken with Representative Doug Mays about the House bill similar to SB 405, and Rebecca Rice had stated that the House bill was more preferable. In response to a question from Senator Brungardt, the Chair stated Ms. Rice stated that the House bill was better for wine tasting, but did not elaborate. Russell Mills stated that on the second page of the bill, there were two exemptions for the state fair to allow alcohol on parimutuel racing days and on wine tasting days. Mr. Mills stated that the law now allows the fair board to designate certain buildings in which alcohol can be consumed.

Senator Gooch asked if the content of the House bill was consistent with the intent of the Fair Board, and Theresa Kiernan stated that the House bill keeps the law as it is and allows the Fair Board to designate certain buildings. Senator Vratil stated that on page three beginning on line 16, the bill says the Fair Board may exempt themselves from the general provision, and that would make the change redundant. He stated that he believed that the Senate bill is better. Mr. Mills stated that the House committee was concerned that the State Fair may allow alcohol during fair days.

Senator Vratil made a motion to recommend SB 405 favorable for passage. Senator Teichman seconded the motion. The motion passed.

Chairperson Harrington stated that Senator Barnett would carry SB 407 on the floor and Senator Brungardt would carry SB 405.

Chairperson Harrington stated that the committee needed to address the issue of the confirmation of Joyce Glasscock for the position of Secretary of the Department of Administration.

Senator Teichman made a motion to confirm Joyce Glasscock. Senator Barnett seconded that motion. The motion passed.

Senator O’Connor made a motion to approve the minutes. Senator Gilstrap seconded the motion. The motion passed.

The meeting was adjourned at 12:00 p.m. The next meeting will be held on February 13, 2002 at 10:30 a.m.



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SHERRY C. DIEL
EXECUTIVE DIRECTOR

Memo To: Chairman Harrington and Members of the Senate Federal and State
Affairs Committee
From: Sherry C. Diel, Executive Director
RE: SB 439—An Act concerning real estate brokers and salespersons
Date: February 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 eliminate the statute of limitations for any licensee who makes a false or fraudulent representation on their application for licensure and any instances where a licensee violates a lawful order of the Commission¹;
- (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.

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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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 eliminate the three-year statute of limitations for any type of misrepresentation made by the applicant during the application process. 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 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.

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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SHERRY C. DIEL
EXECUTIVE DIRECTOR

Memo To: Chairman Harrington and Members of the Senate Federal and State
Affairs Committee
From: Sherry C. Diel, Executive Director
RE: SB 440—Multiple Company Affiliation of Real Estate Brokers and
Salespersons.
Date: February 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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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 consent to the arrangement in writing; 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 in writing 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.

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.



TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS

DATE: FEBRUARY 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 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 elimination 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, but should not be granted a license renewal or issuance merely because their improper actions occurred more than three years prior to attempting to obtain the license or renewal.

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.

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TO: Senate Federal and State Affairs Committee
Senator Nancey Harrington – Chair

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

DATE: February 12, 2002

RE: SB 439 and SB 440

Madame Chair 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.

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