

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 25, 2008 in Room 526-S of the Capitol.

All members were present except:
Senator James Barnett- excused

Committee staff present:
Dennis Hodgins, Kansas Legislative Research Department
Melissa Doeblin, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:
Kip Peterson, Kansas Board of Regents

Others attending:
See attached list.

Introduction of Bill:

Kip Peterson, Kansas Board of Regents, appeared requesting new language to comply with statute designating the Salina Area Technical School as the Salina Area Technical College. (Attachment 1)

Senator Gilstrap moved that this request should be introduced as a committee bill. Senator Lynn seconded the motion. The motion carried.

Final Action:

SB 677 - Prescribing fees for the photo fee fund

Senator Francisco moved to adopt the language on page 1, line 34 "not more than \$12.00". Senator Reitz seconded the motion. The motion carried.

Senator Reitz moved to pass SB 677 out favorably. Senator Vratil seconded the motion. The motion carried

HB 2772 - Real estate appraisers, full licensure

Senator Vratil moved to adopt the language in the KDOT balloon page 4, new section (i), but limited to the appraisers for Kansas Department of Transportation. Senator Reitz seconded the motion. The motion carried. (Attachment 2)

Senator Francisco moved to adopt the language on page 4 new section (j) in the Independent Insurance amendment. Senator Reitz seconded the motion. The motion carried. (Attachment 3)

Senator Reitz moved to pass HB 2772 out favorably as amended. Senator Vratil seconded the motion. The motion carried.

HB 2746 - Amendments to real estate brokers' and salespersons' license act; advertising

Senator Vratil moved to adopt the language on page 2, line 24 after ownership add ", leasehold or easement". Senator Lynn seconded the motion. The motion carried. (Attachment 4)

Senator Francisco moved to adopt the language in the balloon provided by staff on page 9 and 16. (Attachment 5) Senator Reitz seconded the motion. The motion carried.

Senator Lynn moved to pass HB 2746 out favorably as amended. Senator Vratil seconded the motion. The

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 25, 2008 in Room 526-S of the Capitol.

motion carried.

SB 659 - State officers and legislators, salaries and compensation increases; establishing a legislative compensation commission and abolishing the existing compensation commission; certain expense allowances and multi-year market adjustments

Senator Francisco moved to strike the language on page 6, line 36 thru 38 after 75-3110 and insert new language "The attorney general shall receive an annual salary in an amount not less than the salary provided for district judges in KSA 75-3120g and 75-3120l, and amendments thereto". Senator Reitz seconded the motion. The motion carried.

Senator Reitz moved to pass **SB 659** out favorably as amended. Senator Vratil seconded the motion. The motion carried.

The meeting was adjourned at 11:20 am. The next scheduled meeting is March 26, 2008.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 3-25-08

NAME	REPRESENTING
Spencer Duncan	Capitol Connection
Kip Peterson	KBOR
Kathy Olsen	ICs Bankers Assn.
Jane Pataw	KOSE
Sean Miller	CAPITOL STRATEGIES
J. Clark	federico Consulting
Nancy A. Scott	KSCAA
Terry Heidner	KDOT
Jill Fritchett	KREAB
Emily Geier	HLF
Terry Mitchell	KDOR
Carmen Albritt	KDOR
Jim Conant	KDOR
David R. Corbin	KDOR
Tom Palace	PMCA OF KS
Phil Brady	KLBA

Senate Bill No.
By Committee on Federal and State Affairs

An act designating the Salina area technical school as the Salina area technical college.

Be it enacted.....

Section 1. (a) The Salina area technical school is authorized to be converted to and established as a technical college and, upon such conversion and establishment as provided by law, shall be officially designated as the Salina area technical college.

(b) Whenever the Salina area technical school is referred to or designated by or in any statute, contract or other document, such reference or designation shall be deemed to apply to the Salina area technical college.

Sec. 2. SB

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2772

By Committee on Commerce and Labor

2-6

10 AN ACT concerning real estate appraisers; relating to licensure, penal-
 11 ties and exceptions; amending K.S.A. ~~58-4103~~ **58-4102**, **58-4103**, **58-**
 12 **4117** and **58-4118** and repealing the existing ~~section~~ **sections**.
 13

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

15 Section 1. **K.S.A. 58-4102 is hereby amended to read as follows:**
 16 **58-4102. As used in this act:**

17 (a) **“Appraisal” or “real estate appraisal” means an analysis,**
 18 **opinion or conclusion prepared by a real estate appraiser relating**
 19 **to the nature, quality, value or utility of specified interests in, or**
 20 **aspects of, identified real estate. An appraisal may be classified by**
 21 **subject matter into either a valuation or an analysis. A valuation is**
 22 **an estimate of the value of real estate or real property. An analysis**
 23 **is a study of real estate or real property other than estimating**
 24 **value.**

25 (b) **“Appraisal assignment” means an engagement for which an**
 26 **appraiser is employed or retained to act, or would be perceived**
 27 **by third parties or the public as acting, as a disinterested party in**
 28 **rendering an unbiased analysis, opinion or conclusion relating to**
 29 **the nature, quality, value or utility of specified interests in, or as-**
 30 **pects of, identified real estate.**

31 (c) *“Brokers price opinion” and “comparative market analysis”*
 32 *means an analysis, opinion or conclusion prepared by an individual li-*
 33 *censed as a real estate broker or salesperson pursuant to K.S.A. 58-3034*
 34 *et seq., and amendments thereto, relating to the price of specified interests*
 35 *in or aspects of identified real estate property that is provided to a poten-*
 36 *tial customer, client or third party in the ordinary course of business.*

37 (d) **“Board” means the real estate appraisal board established**
 38 **pursuant to the provisions of this act.**

39 (d) (e) **“Federal law” means title XI of the financial institutions**
 40 **reform, recovery and enforcement act of 1989 (12 U.S.C. 3331 et**
 41 **seq.) and any other federal law, and any regulations adopted pur-**
 42 **suant thereto.**

43 (e) (f) **“Federally related transaction” means any real estate-**

1 related financial transaction which: (1) A federal financial institu-
2 tions regulatory agency or the resolution trust corporation en-
3 gages in, contracts for or regulates; and (2) requires the services
4 of an appraiser.

5 ~~(f)~~ (g) “Real estate” means an identified parcel or tract of land,
6 including improvements, if any.

7 ~~(g)~~ (h) “Real estate appraisal organization” means any nation-
8 ally recognized organization of professional appraisers.

9 ~~(h)~~ (i) “Real estate-related financial transaction” means any
10 transaction involving: (1) The sale, lease, purchase, investment in
11 or exchange of real property, including interests in property or the
12 financing thereof; (2) the refinancing of real property or interests
13 in real property; ~~and~~ (3) the use of real property or interests in
14 property as security for a loan or investment, including mortgage-
15 backed securities; or (4) a *federally related transaction*.

16 ~~(i)~~ (j) “Real property” means one or more defined interests,
17 benefits and rights inherent in the ownership of real estate.

18 ~~(j)~~ (k) “Specialized services” means those appraisal services
19 which do not fall within the definition of appraisal assignment.
20 Specified services may include valuation work and analysis work.
21 Regardless of the intention of the client or employer, if the ap-
22 praiser would be perceived by third parties or the public as acting
23 as a disinterested party in rendering an unbiased analysis, opinion
24 or conclusion, the work is classified as an appraisal assignment and
25 not specialized services.

26 ~~(k)~~ (l) A “state certified appraiser” means a person who devel-
27 ops and communicates real estate appraisals and who holds a cur-
28 rent, valid certificate issued to such person under the provisions
29 of this act.

30 ~~(l)~~ (m) A “state licensed appraiser” means a person who devel-
31 ops and communicates real estate appraisals and holds a current,
32 valid license issued to such person under the provisions of this act.

33 ~~(m)~~ (n) “Written appraisal” means a written statement used in
34 connection with a ~~federally related~~ *real estate-related financial trans-*
35 *action that is independently and impartially prepared by a licensed*
36 *or certified appraiser setting forth an opinion of defined value of*
37 *an adequately described property as of a specific date, supported*
38 *by presentation and analysis of relevant market information.*

39 (o) “Appraiser” means a person who develops and communicates real
40 estate appraisals for real estate-related financial transactions and holds a
41 current valid certification or license issued to such person under the pro-
42 visions of K.S.A. 58-4101 et seq., and amendments thereto.

43 Sec. 2. K.S.A. 58-4103 is hereby amended to read as follows: 58-4103.

1 (a) Except as provided in subsection (b), no person, other than a state
2 certified or licensed appraiser, shall:

3 (1) Engage in any written appraisal in connection with a ~~federally~~
4 ~~related real estate-related financial~~ transaction ~~for which certification or~~
5 ~~licensure is required pursuant to federal law; or;~~

6 (2) assume or use the title of state certified or licensed appraiser or
7 any title, designation or abbreviation likely to create the impression of
8 certification *or licensure* as a real estate appraiser by this state; *or*

9 (3) *advertise or otherwise represent in any manner that such person*
10 *is a state certified or licensed appraiser.*

11 (b) The board shall recognize on a temporary basis the certification
12 or license of an appraiser issued by another state ~~in accordance with~~
13 ~~federal law~~ if:

14 (1) The property to be appraised is part of a ~~federally related real~~
15 ~~estate-related financial~~ transaction ~~pursuant to federal law;~~

16 (2) the appraiser's business in this state is of a temporary nature; and

17 (3) the appraiser registers with the board, as prescribed by the board.

18 (c) Violation of subsection (a) is a ~~class B misdemeanor severity level~~
19 ~~10, nonperson felony~~ **class A nonperson misdemeanor.**

20 (d) ~~The provisions of this act requiring certification or licensure or~~
21 ~~the issuance of a certificate or license authorizing the practice of real~~
22 ~~estate appraisal shall not be construed to prevent a person who is not a~~
23 ~~state certified or licensed real estate appraiser from appraising real estate~~
24 ~~for compensation if state certification or licensure is not required pur-~~
25 ~~suant to federal law.~~

26 —(e) An individual who is not a state certified or licensed appraiser may
27 assist in the preparation of an appraisal if: (1) The assistant is under the
28 direct supervision of an individual who is a state licensed or certified
29 appraiser; and (2) the final appraisal document is approved and signed by
30 an individual who is a state certified or licensed appraiser.

31 (e) (1) *The provisions of paragraph (1) of subsection (a) shall not be*
32 *applicable to financial institutions engaging in real estate-related financial*
33 *transactions and otherwise subject to K.S.A. 58-4101 et seq., and amend-*
34 *ments thereto, when the following conditions are met:*

35 (A) *An employee of the financial institution conducts an appraisal as*
36 *defined in subsection (a) of K.S.A. 58-4102, and amendments thereto, or*
37 *conducts an evaluation in accordance with state and federal banking reg-*
38 *ulations; and*

39 (B) *when the loan that is the subject of such appraisal is not intended*
40 *to be sold in the secondary market and is intended to be held by the*
41 *financial institution for the life of the loan.*

42 (2) *If the financial institution disposes of the loan granted under par-*
43 *agraph (1)(B) of this subsection in the secondary market, such financial*

1 institution shall be required to obtain an appraisal by a state licensed or
2 certified appraiser as required by paragraph (1) of subsection (a). The
3 employee of the financial institution that conducted the prior appraisal
4 shall not be considered to be an appraiser under the law unless such
5 person is a state certified or licensed appraiser.

6 (f) The provisions of paragraph (1) of subsection (a) shall not preclude
7 an individual licensed as a real estate broker or salesperson pursuant to
8 K.S.A. 58-3034 et seq., and amendments thereto, from performing and
9 providing a comparative market analysis or broker's price opinion to a
10 customer, client or third party for compensation in the ordinary course
11 of business. In no event shall such comparative market analysis or broker's
12 price opinion be referred to as an appraisal nor shall such individual
13 represent such individual's self as a certified or licensed appraiser under
14 this act unless such person is a state certified or licensed appraiser.

15 (g) The provisions of paragraph (1) of subsection (a) shall not pre-
16 clude an individual licensed as a certified public accountant pursuant to
17 K.S.A. 1-301 et seq., and amendments thereto, from performing and pro-
18 viding services as a certified public accountant or as otherwise allowed
19 by law. In no event shall any report by a certified public accountant be
20 referred to as an appraisal or such certified public accountant represent
21 such individual's self as a state certified or licensed appraiser unless such
22 certified public accountant is a state certified or licensed appraiser.

23 (h) The provisions of paragraph (1) of subsection (a) shall not pre-
24 clude an individual licensed as an attorney pursuant to K.S.A. 7-103 et
25 seq., and amendments thereto, from performing and providing services
26 as an attorney or as otherwise allowed by law. In no event shall any report
27 by an attorney be referred to as an appraisal or such attorney represent
28 such individual's self as a state certified or licensed appraiser unless such
29 attorney is a state certified or licensed appraiser.

30 **Sec. 3. K.S.A. 58-4117 is hereby amended to read as follows:**
31 **58-4117. (a) As a prerequisite to renewal of a certificate or license,**
32 **the appraiser shall present evidence satisfactory to the board of**
33 **having met the continuing education requirements.**

34 (b) **The basic continuing education requirement for renewal of**
35 **a certificate or license shall be the completion by the applicant,**
36 **during the immediately preceding term of certification or licen-**
37 **sure, of the number of hours of classroom instruction which have**
38 **been established pursuant to K.S.A. 58-4109 and amendments**
39 **thereto and which have received the approval of the board.**

40 (c) **No amendment or repeal of a rule and regulation adopted**
41 **by the board shall operate to deprive an applicant of credit toward**
42 **renewal of a certificate or license for any course of instruction**
43 **completed by the applicant prior to the amendment or repeal of**

to KDOT

(i) The provisions of paragraph (1) of subsection (a) shall not be applicable to employees of a governmental entity performing appraisals for such governmental entity for the purpose of real property acquisition or disposal of real property by such governmental entity. In no event shall such employee performing such appraisal represent such individual's self as a state certified or licensed appraiser unless such employee is a state certified or licensed appraiser.

1 the rule and regulation which would have qualified for continuing
2 education credit under the rule and regulation as it existed prior
3 to the repeal or amendment.

4 (d) A certificate or license that has been revoked as a result of
5 disciplinary action by the board shall not be reinstated unless the
6 applicant presents evidence of completion of the continuing edu-
7 cation required pursuant to this act. ~~This requirement of evidence of~~
8 ~~continuing education shall not be imposed upon an applicant for rein-~~
9 ~~statement who has been required to successfully complete an examination~~
10 ~~as a condition of reinstatement.~~

11 Sec. 4. K.S.A. 58-4118 is hereby amended to read as follows:
12 58-4118. (a) The board may investigate the actions of a state cer-
13 tified or licensed appraiser and may revoke, condition, limit or
14 suspend the certificate or license of the appraiser, or censure the
15 appraiser, for any of the following acts or omissions:

16 (1) Procuring or attempting to procure a certificate or license
17 pursuant to this act by knowingly making a false statement, sub-
18 mitting false information, refusing to provide complete informa-
19 tion in response to a question in an application for certification or
20 licensure or any form of fraud or misrepresentation;

21 (2) failing to meet the minimum qualifications established by
22 this act;

23 (3) paying money, other than provided for by this act, to any
24 member or employee of the board to procure a certificate or li-
25 cense under this act;

26 (4) a plea of guilty or nolo contendere to, or conviction of: (A)
27 Forgery, embezzlement, obtaining money under false pretenses,
28 larceny, extortion, conspiracy to defraud or any other similar of-
29 fense; (B) a crime involving moral turpitude; or (C) any felony
30 charge;

31 (5) an act or omission involving dishonesty, fraud or misrep-
32 resentation, with the intent to substantially benefit the appraiser
33 or another person or with the intent to substantially injure another
34 person;

35 (6) violation of any of the standards for the development or
36 communication of real estate appraisals as provided in this act;

37 (7) failure or refusal without good cause to exercise reasonable
38 diligence in developing an appraisal, preparing an appraisal report
39 or communicating an appraisal;

40 (8) negligence or incompetence in developing an appraisal,
41 preparing an appraisal report or communicating an appraisal;

42 (9) willfully disregarding or violating any provision of this act
43 or rules and regulations of the board for the administration and

1 enforcement of the provisions of this act;

2 (10) accepting an appraisal assignment, described in K.S.A. 58-
3 4122, and amendments thereto, when the employment itself is con-
4 tingent upon the appraiser reporting a predetermined estimate,
5 analysis or opinion, or when the fee to be paid is contingent upon
6 the opinion, conclusion or valuation reached, or upon the conse-
7 quences resulting from the appraisal assignment;

8 (11) violating the confidential nature of governmental records
9 to which the appraiser gained access through employment or en-
10 gagement as an appraiser by a governmental agency;

11 (12) entry of a final civil judgment against the person on
12 grounds of fraud, misrepresentation or deceit in the making of any
13 appraisal of real property;

14 (13) disciplinary action in relation to appraisal work, including,
15 but not limited to, denial, revocation or suspension of a license or
16 certificate by another state, district or territory of the United
17 States or another country; or

18 (14) receipt of an order of prohibition in relation to appraisal
19 work, by consent or otherwise, issued by an agency of the federal
20 government.

21 (b) In addition to or in lieu of any other administrative, civil or
22 criminal remedy provided by law, the board upon a finding that a
23 state certified or licensed appraiser has violated any provision of
24 this act or of any rules and regulations adopted hereunder or upon
25 a finding that a person who is not a state certified or licensed appraiser
26 has violated any provision of subsection (a) of K.S.A. 58-4103, and amend-
27 ments thereto, may impose upon such appraiser or such person a civil
28 fine not exceeding \$1,000 for each violation. All moneys collected
29 by the board from such fines shall be remitted to the state trea-
30 surer in accordance with the provisions of K.S.A. 75-4215, and
31 amendments thereto. Upon receipt of each such remittance, the
32 state treasurer shall deposit the entire amount in the state treasury
33 to the credit of the state general fund.

34 (c) In a disciplinary proceeding based upon a civil judgment,
35 the appraiser shall be afforded an opportunity to present matters
36 in mitigation and extenuation but may not collaterally attack the
37 civil judgment.

38 (d) If the board determines that a person has violated any provision
39 of subsection (a) of K.S.A. 58-4103, and amendments thereto, in addition
40 to any other penalties imposed by law, the board may issue a cease and
41 desist order against such person.

42 (e) All administrative proceedings pursuant to this section shall
43 be conducted in accordance with the Kansas administrative pro-

1 **cedure act.**

2 Sec. ~~2~~ **5.** K.S.A. ~~58-4103~~ is **58-4102, 58-4103, 58-4117 and 58-**
3 **4118 are** hereby repealed.

4 Sec. ~~3~~ **6.** This act shall take effect and be in force from and after its
5 publication in the statute book.

1 institution shall be required to obtain an appraisal by a state licensed or
2 certified appraiser as required by paragraph (1) of subsection (a). The
3 employee of the financial institution that conducted the prior appraisal
4 shall not be considered to be an appraiser under the law unless such
5 person is a state certified or licensed appraiser.

6 (f) The provisions of paragraph (1) of subsection (a) shall not preclude
7 an individual licensed as a real estate broker or salesperson pursuant to
8 K.S.A. 58-3034 et seq., and amendments thereto, from performing and
9 providing a comparative market analysis or broker's price opinion to a
10 customer, client or third party for compensation in the ordinary course
11 of business. In no event shall such comparative market analysis or broker's
12 price opinion be referred to as an appraisal nor shall such individual
13 represent such individual's self as a certified or licensed appraiser under
14 this act unless such person is a state certified or licensed appraiser.

15 (g) The provisions of paragraph (1) of subsection (a) shall not pre-
16 clude an individual licensed as a certified public accountant pursuant to
17 K.S.A. 1-301 et seq., and amendments thereto, from performing and pro-
18 viding services as a certified public accountant or as otherwise allowed
19 by law. In no event shall any report by a certified public accountant be
20 referred to as an appraisal or such certified public accountant represent
21 such individual's self as a state certified or licensed appraiser unless such
22 certified public accountant is a state certified or licensed appraiser.

23 (h) The provisions of paragraph (1) of subsection (a) shall not pre-
24 clude an individual licensed as an attorney pursuant to K.S.A. 7-103 et
25 seq., and amendments thereto, from performing and providing services
26 as an attorney or as otherwise allowed by law. In no event shall any report
27 by an attorney be referred to as an appraisal or such attorney represent
28 such individual's self as a state certified or licensed appraiser unless such
29 attorney is a state certified or licensed appraiser.

30 **Sec. 3. K.S.A. 58-4117 is hereby amended to read as follows:**
31 **58-4117. (a) As a prerequisite to renewal of a certificate or license,**
32 **the appraiser shall present evidence satisfactory to the board of**
33 **having met the continuing education requirements.**

34 (b) The basic continuing education requirement for renewal of
35 a certificate or license shall be the completion by the applicant,
36 during the immediately preceding term of certification or licen-
37 sure, of the number of hours of classroom instruction which have
38 been established pursuant to K.S.A. 58-4109 and amendments
39 thereto and which have received the approval of the board.

40 (c) No amendment or repeal of a rule and regulation adopted
41 by the board shall operate to deprive an applicant of credit toward
42 renewal of a certificate or license for any course of instruction
43 completed by the applicant prior to the amendment or repeal of

(i) The provision of paragraph (1) of subsection
(a) shall not preclude an individual licensed as an insurance
agent pursuant to K.S.A. 40-4901 et seq., and amendments
thereto, or for an individual retained by an insurance company
while acting within the scope of the Kansas insurance code
from performing and providing services as an insurance agent
or an individual retained by an insurance company as otherwis
allowed by law. In no event shall any report by an insurance
agent or individual retained by an insurance company be
referred to as an appraisal or such insurance agent or
individual retained by an insurance company represent
such individual's self as a state certified or licensed
appraiser unless such insurance agent or individual
retained by an insurance company is a state certified
or licensed appraiser.

(i) "Interest" means: (1) ~~Having any type of ownership in the real estate involved in the transaction, including a leasehold or easement,~~ or (2) ~~an officer, member, partner or shareholder of any entity that owns such real estate excluding an ownership interest of less than 5% in a publicly traded entity~~ any type of ownership in the real estate involved in the transaction, including a leasehold or easement, held by an officer, member, partner or shareholder of any entity that owns such real estate excluding an ownership interest of less than 5% in a publicly traded entity.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2746

By Committee on Commerce and Labor

2-4

12 AN ACT concerning real estate brokers and salespersons; relating to li-
13 censure, prohibited acts, advertising and definitions; amending K.S.A.
14 58-3067, 58-3068 and 74-4202 and K.S.A. 2007 Supp. 58-3035, 58-
15 3043, 58-3047, 58-3050 and 58-3062 and repealing the existing
16 sections.

17

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

19 Section 1. K.S.A. 2007 Supp. 58-3035 is hereby amended to read as
20 follows: 58-3035. As used in this act, unless the context otherwise
21 requires:

22 (a) "Act" means the real estate brokers' and salespersons' license act.

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

31 (c) "Associate broker" means an individual who has a broker's license
32 and who is employed by another broker or is associated with another
33 broker as an independent contractor and participates in any activity de-
34 scribed in subsection (f).

35 (d) "Branch broker" means an individual who has a broker's license
36 and who has been designated to supervise a branch office and the activ-
37 ities of salespersons and associate brokers assigned to the branch office.

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

40 (f) "Broker" means an individual, other than a salesperson, who ad-
41 vertises or represents that such individual engages in the business of buy-
42 ing, selling, exchanging or leasing real estate or who, for compensation,
43 engages in any of the following activities as an employee of, or on behalf

1 (1) Is currently licensed under this act;
 2 (2) has entered a plea of guilty or nolo contendere to, or has been
 3 convicted of any offense specified in subsection (b); and

4 (3) has disclosed such plea or conviction in such person's application
 5 for any license or renewal thereof on or before July 1, 2007, prior to the
 6 commission's action on such application.

7 (d) (1) In addition to or in lieu of any other administrative, civil or
 8 criminal remedy provided by law, the commission, in accordance with the
 9 Kansas administrative procedure act and upon a finding that a licensee
 10 has violated a provision of this act or rules and regulations adopted here-
 11 under, or the brokerage relationships in real estate transactions act or
 12 rules and regulations adopted ~~thereunder~~, may impose on such licensee
 13 a civil fine not exceeding ~~\$500~~ \$1,000 for each violation.

thereunder

14 (2) A civil fine not exceeding \$5,000 per violation may be imposed if
 15 the commission makes specific findings that aggravating circumstances
 16 exist and that the licensee:

17 (A) Misappropriated funds belonging to another person;

18 (B) engaged in fraud or made any substantial misrepresentation;

19 (C) represented to a lender, guaranteeing agency or any other inter-
 20 ested party, either verbally or through the preparation of false documents,
 21 an amount in excess of the true and actual sale price of the real estate or
 22 terms differing from those actually agreed upon;

23 (D) committed forgery or signed or initialed a contractual agreement
 24 on behalf of another person in a real estate transaction unless authorized
 25 to do so by a duly executed power of attorney; or

26 (E) intentionally failed to disclose to a client or customer all adverse
 27 material facts actually known by the licensee regarding environmental
 28 hazards affecting the property that are required by law to be disclosed,
 29 the physical condition of the property, material defects in the real prop-
 30 erty, defects in the title to the real property or the client's or customer's
 31 ability to perform under the terms of the agreement.

32 (e) For the purposes of subsection (d), the term "aggravating circum-
 33 stances" means:

34 (1) The licensee's conduct involved fraud or deceit; and (A)

35 (2) the licensee's conduct directly resulted in substantial loss or cre-
 36 ated a significant risk of substantial loss to a customer or client; (B)

37 ~~(3) the licensee's conduct resulted in substantial financial gain to the~~
 38 ~~licensee; or~~

39 ~~(4) the licensee has a history of prior disciplinary actions involving~~ (C)
 40 ~~violations similar to the violations described in subsection (d)(2).~~

41 ~~(e)~~ (f) In all matters pending before the commission, the commission
 42 shall have the power to revoke the license of any licensee who voluntarily
 43 surrenders such licensee's license or who does not renew such license

1 not listed with a broker, no broker for the buyer 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 (3) If a purchase agreement provides that the earnest money be held
13 by an escrow agent other than a real estate broker and neither the seller
14 nor buyer is represented by a broker, no transaction broker shall:

15 (A) Fail to deliver the purchase agreement and earnest money de-
16 posit to the escrow agent named in the purchase agreement within five
17 business days after the purchase agreement is signed by all parties unless
18 otherwise specifically provided by written agreement of all parties to the
19 purchase agreement, in which case the broker shall deliver the purchase
20 agreement and earnest money deposit to the escrow agent named in the
21 purchase agreement on the date provided by such written agreement; or

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

25 The commission may adopt rules and regulations to require that such
26 purchase agreement which provides that the earnest money be held by
27 an escrow agent other than a real estate broker include: (1) Notification
28 of whether or not the escrow agent named in the purchase agreement
29 maintains a surety bond, and (2) notification that statutes governing the
30 disbursement of earnest money held in trust accounts of real estate bro-
31 kers do not apply to earnest money deposited with the escrow agent
32 named in the purchase agreement.

33 (e) **No licensee shall:**

34 (1) **Threaten to engage in or engage in physical abuse towards**
35 **a client, customer or another licensee;**

36 (2) **threaten to file a lien on residential property;**

37 (3) **engage in harassment towards a client, customer or another**
38 **licensee;**

39 (4) **conduct real estate business with impaired judgment or ob-**
40 **jectivity as the result of mental illness or addiction to alcohol or**
41 **controlled substances;**

42 (5) **be finally adjudicated by a federal or state agency and**
43 **found to be guilty of a violation of a federal or state law regulating**

or file