

## HOUSE BILL No. 2691

By Committee on Commerce, Labor and Economic Development

2-10

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1 AN ACT concerning real estate brokers; relating to the real estate brokers'  
2 and salespersons' license act; prohibiting the denial of access or  
3 membership in a multiple-listing service based on certain  
4 circumstances; amending K.S.A. 2021 Supp. 58-3062 and repealing the  
5 existing section.

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

8 Section 1. K.S.A. 2021 Supp. 58-3062 is hereby amended to read as  
9 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction  
10 broker or a principal, shall:

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

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

20 (3) Accept, give or charge any rebate or undisclosed commission.

21 (4) Pay a referral fee to a person who is properly licensed as a broker  
22 or salesperson in Kansas or another jurisdiction or who holds a corporate  
23 real estate license in another jurisdiction if the licensee knows that the  
24 payment of the referral fee will result in the payment of a rebate by the  
25 Kansas or out-of-state licensee.

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

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

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

32 (8) Offer real estate for sale or lease without the knowledge and  
33 consent of the owner or the owner's authorized agent or on terms other  
34 than those authorized by the owner or the owner's authorized agent.

35 (9) Induce any party to break any contract of sale or lease.

36 (10) Pay a commission or compensation to any person, not licensed

1 under this act, for performing any activity for which a license is required  
2 under this act.

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

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

10 (13) Engage in fraud or make any substantial misrepresentation.

11 (14) Represent to any lender, guaranteeing agency or any other  
12 interested party, either verbally or through the preparation of false  
13 documents, an amount in excess of the true and actual sale price of the real  
14 estate or terms differing from those actually agreed upon.

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

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

22 (17) Fail without just cause to surrender any document or instrument  
23 to the rightful owner.

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

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

34 (20) Fail to respond in a timely manner to any request from the  
35 commission or the commission's designee for documents or information  
36 that concerns directly or indirectly any real estate transaction or the  
37 licensee's real estate business.

38 (21) Refuse to appear or testify under oath at any hearing held by the  
39 commission.

40 (22) Demonstrate incompetency to act as a broker, associate broker or  
41 salesperson.

42 (23) Except as provided by K.S.A. 40-2404, and amendments thereto,  
43 knowingly receive or accept, directly or indirectly, any rebate, reduction or

1 abatement of any charge, or any special favor or advantage or any  
2 monetary consideration or inducement, involving the issuance of a title  
3 insurance policy or contract concerning which the licensee is directly or  
4 indirectly connected, from a title insurance company or title insurance  
5 agent, or any officer, employee, attorney, agent or solicitor thereof.

6 (24) Engage in the purchase of one-, two-, three- or four-family  
7 dwellings, including condominiums and cooperatives, or the acquisition of  
8 any right, title or interest therein, including any equity or redemption  
9 interests, if:

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

19 (B) (i) the dwellings are subject to a loan which is secured by a  
20 mortgage and which is in default at the time of such purchase or in default  
21 within one year after such purchase; (ii) the licensee fails to give written  
22 notice of the purchase, within 20 days thereafter, to the mortgage holder;  
23 and (iii) the licensee, unless otherwise required by law or court order, fails  
24 to apply any rent proceeds from the dwellings to the mortgage as the  
25 payments come due, regardless of whether the licensee is obligated on the  
26 loan; or

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

31 (25) Commit forgery or, unless authorized to do so by a duly  
32 executed power of attorney, sign or initial any contractual agreement on  
33 behalf of another person in a real estate transaction.

34 (26) Enter into contracts with persons not licensed by the commission  
35 to perform services requiring a license under K.S.A. 58-3034 et seq., and  
36 amendments thereto, except as provided by K.S.A. 58-3077, and  
37 amendments thereto.

38 (b) No salesperson or associate broker shall:

39 (1) Except as provided in subparagraph (A) or (B), accept a  
40 commission or other valuable consideration from anyone other than the  
41 broker by whom the licensee is employed or with whom the licensee is  
42 associated as an independent contractor.

43 (A) A salesperson or associate broker may accept a commission or

1 other valuable consideration from a licensee who employs the salesperson  
2 or associate broker as a personal assistant provided that: (i) The licensee  
3 and the salesperson or associate broker who is employed as a personal  
4 assistant are licensed under the supervision of the same broker; and (ii) the  
5 supervising broker agrees in writing that the personal assistant may be paid  
6 by the licensee.

7 (B) If a salesperson or associate broker has organized as an  
8 association, corporation, limited liability company, limited liability  
9 partnership, partnership or professional corporation, the commission or  
10 other valuable consideration may be paid by the licensee's broker to such  
11 association, corporation, limited liability company, limited liability  
12 partnership, partnership or professional corporation. This provision shall  
13 not alter any other provisions of this act.

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

18 (3) (A) Except as provided by subparagraph (B), be employed by or  
19 associated with a licensee at any one time other than the supervising  
20 broker who employs such salesperson or associate broker or with who the  
21 salesperson or associate broker is associated as an independent contractor.

22 (B) An associate broker may be employed by or associated with more  
23 than one supervising broker at any one time if each supervising broker  
24 who employs or associates with the associate broker consents to such  
25 multiple employment or association. Such consent shall be on a form  
26 provided by the commission and shall not be effective until a signed copy  
27 of the completed form has been filed with the commission.

28 (4) Except as provided by subsection (b), pay a commission or  
29 compensation to any person for performing any activity for which a  
30 license is required under this act.

31 (5) (A) Fail to disclose to such salesperson's or associate broker's  
32 supervising broker or branch broker that such salesperson or associate  
33 broker is performing any activity for which a license is required under  
34 K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for  
35 which a license is required under K.S.A. 58-3036, and amendments  
36 thereto, outside the supervision of the supervising broker or branch broker.  
37 The provisions of this subsection shall not apply to any activity or person  
38 exempted from the real estate brokers' and salespersons' license act  
39 pursuant to K.S.A. 58-3037, and amendments thereto.

40 (6) Fail to submit to the supervising broker or branch broker, within  
41 10 business days, any document that must be maintained in the supervising  
42 broker's or branch broker's business records for each real estate  
43 transaction. The ten-day period shall commence when the document is

1 executed by the client or customer or, if a signature is not required or is not  
2 obtained, upon presentation of a document to the client or customer.

3 (c) No broker shall:

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

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

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

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

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

23 (d) (1) If a purchase agreement provides that the earnest money be  
24 held by an escrow agent other than a real estate broker, no listing broker  
25 shall:

26 (A) Fail to deliver the purchase agreement and earnest money deposit  
27 to the escrow agent named in the purchase agreement within five business  
28 days after the purchase agreement is signed by all parties unless otherwise  
29 specifically provided by written agreement of all parties to the purchase  
30 agreement, in which case the broker shall deliver the purchase agreement  
31 and earnest money deposit to the escrow agent named in the purchase  
32 agreement on the date provided by such written agreement; or

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

36 (2) If a purchase agreement provides that the earnest money be held  
37 by an escrow agent other than a real estate broker and the property was not  
38 listed with a broker, no broker for the buyer shall:

39 (A) Fail to deliver the purchase agreement and earnest money deposit  
40 to the escrow agent named in the purchase agreement within five business  
41 days after the purchase agreement is signed by all parties unless otherwise  
42 specifically provided by written agreement of all parties to the purchase  
43 agreement, in which case the broker shall deliver the purchase agreement

1 and earnest money deposit to the escrow agent named in the purchase  
2 agreement on the date provided by such written agreement; or

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

6 (3) If a purchase agreement provides that the earnest money be held  
7 by an escrow agent other than a real estate broker and neither the seller nor  
8 buyer is represented by a broker, no transaction broker shall:

9 (A) Fail to deliver the purchase agreement and earnest money deposit  
10 to the escrow agent named in the purchase agreement within five business  
11 days after the purchase agreement is signed by all parties unless otherwise  
12 specifically provided by written agreement of all parties to the purchase  
13 agreement, in which case the broker shall deliver the purchase agreement  
14 and earnest money deposit to the escrow agent named in the purchase  
15 agreement on the date provided by such written agreement; or

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

19 The commission may adopt rules and regulations to require that such  
20 purchase agreement which provides that the earnest money be held by an  
21 escrow agent other than a real estate broker include: (1) Notification of  
22 whether or not the escrow agent named in the purchase agreement  
23 maintains a surety bond; and (2) notification that statutes governing the  
24 disbursement of earnest money held in trust accounts of real estate brokers  
25 do not apply to earnest money deposited with the escrow agent named in  
26 the purchase agreement.

27 (e) No licensee shall:

28 (1) Threaten to engage in or engage in physical abuse or engage in  
29 harassment towards:

30 (A) A client or customer or a former client or customer;

31 (B) another licensee;

32 (C) commission members or staff;

33 (D) staff of the office of administrative hearings;

34 (E) staff from any real estate trade association or multiple listing  
35 service; or

36 (F) any person from another business or industry whose services are  
37 requested or required as part of a real estate transaction;

38 (2) threaten to file or file a lien on residential property;

39 (3) conduct real estate business with impaired judgment or objectivity  
40 as the result of mental illness or addiction to alcohol or controlled  
41 substances;

42 (4) be finally adjudicated by a federal or state agency and found to be  
43 guilty of a violation of a federal or state law regulating the real estate

- 1 industry or regulating a closely related industry whose licensees or  
2 members are commonly involved in real estate matters;
- 3 (5) be finally adjudicated by a federal or state agency and found to be  
4 guilty of a violation of a federal or state law prohibiting discrimination  
5 against any client or customer on the basis of color, race, gender, religion,  
6 national origin, age, disability or familial status; or
- 7 (6) intentionally misappropriate or misuse any personal property or  
8 real property of a client or customer.
- 9 (f) No applicant or licensee shall:
- 10 (1) Engage in fraud or make any substantial misrepresentation to the  
11 commission;
- 12 (2) commit forgery in any representation or document submitted to  
13 the commission;
- 14 (3) sign or initial, on behalf of another person, any application, for or  
15 accompanying document submitted to the commission unless authorized to  
16 do so by a duly executed power of attorney;
- 17 (4) interfere with any investigation, administrative proceeding, quasi-  
18 judicial proceeding or any other disciplinary matter of the commission,  
19 including, but not limited to:
- 20 (A) Threatening to engage in or engaging in physical abuse or  
21 harassment toward any witness, complainant or individual listed in  
22 subsection (e)(1);
- 23 (B) destroying evidence;
- 24 (C) refusing or failing to appear or testify under oath at any hearing;  
25 or
- 26 (D) refusing or failing to respond in a timely manner to any request  
27 from the commission or the commission's designee for documents or  
28 information that concerns directly or indirectly any real estate transaction  
29 or the licensee's real estate business;
- 30 (5) fail without just cause to surrender any document or instrument to  
31 the rightful owner; or
- 32 (6) demonstrate incompetency to act as a broker, associate broker or  
33 salesperson in dealings with the commission, including the repeated failure  
34 to:
- 35 (A) Submit required forms to the commission in a timely and  
36 complete manner;
- 37 (B) make available to the commission all records relating to the real  
38 estate business; or
- 39 (C) comply with the provisions of this subsection.
- 40 (g) A branch broker shall not be employed by or associated with more  
41 than one supervising broker at any one time unless each supervising broker  
42 who employs or associates with the branch broker consents to such  
43 multiple employment or association. Such consent shall be on a form

1 provided by the commission and shall not be effective until a signed copy  
2 of the completed form has been filed with the commission.

3 (h) *No person, entity or organization shall deny any person access to*  
4 *or membership or participation in any multiple-listing service, real estate*  
5 *brokers' organization or any other service, organization or facility relating*  
6 *to the business of selling or renting real property, or to discriminate*  
7 *against such person in the terms or conditions of such access, membership*  
8 *or participation based on that person's beliefs or the lawful expression of*  
9 *those beliefs in a nonprofessional setting that does not involve real estate-*  
10 *related activities or transactions and where such expression is not*  
11 *otherwise violative of the real estate brokers' and salespersons' license*  
12 *act.*

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

16 Sec. 2. K.S.A. 2021 Supp. 58-3062 is hereby repealed.

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