

[As Amended by House Committee of the Whole]

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Session of 2006

## HOUSE BILL No. 2788

By Committee on Commerce and Labor

2-1

12 AN ACT **relating to real estate**; concerning real estate brokers and  
13 salespersons; relating to expiration, suspension or revocation of li-  
14 censes and civil fines; **concerning contracts for sale of residential**  
15 **real estate**; amending K.S.A. 58-3050 and repealing the existing  
16 section.

17

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

19 New Section 1. (a) When the license of a supervising broker or  
20 branch broker expires, the licenses of all licensees associated with or em-  
21 ployed by the supervising broker or branch broker shall automatically be  
22 placed on inactive status within five calendar days after written notice is  
23 issued by the commission to the associated or employed licensee unless  
24 notification is provided to the commission prior to the expiration date of  
25 the license that another broker will assume the role as the supervising  
26 broker or branch broker or the licensee transfers to another supervising  
27 broker or branch broker.

28 (b) If notification is not received by the commission prior to the ex-  
29 piration date of the supervising broker's or branch broker's license that  
30 another broker will act as supervising broker or branch broker, the su-  
31 pervising broker or branch broker whose license expires shall return to  
32 the commission the licenses of all licensees associated or employed by  
33 the supervising broker or branch broker before or immediately upon the  
34 expiration date of the supervising broker's or branch broker's license.

35 New Sec. 2. (a) When the license of a supervising broker or branch  
36 broker is suspended or revoked, the licenses of all licensees associated  
37 with or employed by the supervising broker or branch broker shall au-  
38 tomatically be placed on inactive status within five calendar days after  
39 written notice is issued by the commission to the associated or employed  
40 licensee for the duration of the suspension or revocation, unless the li-  
41 censee transfers to another supervising broker or branch broker. If  
42 deemed in the public interest until pending transactions are closed, the  
43 commission may authorize another broker to act as the supervising or

1 branch broker during any period of suspension or revocation.

2 (b) If another broker is not authorized by the commission to act as  
3 the supervising broker or branch broker during the period of suspension  
4 or revocation, the supervising broker or branch broker whose license is  
5 suspended or revoked shall return to the commission the licenses of all  
6 licensees associated or employed by the supervising broker or branch  
7 broker within five days of the effective date of the order of suspension or  
8 revocation.

9 New Sec. 3. A licensee whose license is suspended or revoked may  
10 receive any personally earned commission during the period of suspen-  
11 sion or revocation only for those acts performed and for which commis-  
12 sion was personally earned when the person was actively licensed prior  
13 to the effective date of the suspension or revocation. This statute is not  
14 intended to determine if a licensee is entitled to compensation; such  
15 entitlement would depend upon the terms of the licensee's written em-  
16 ployment or independent contractor agreement with their former super-  
17 vising broker or branch broker and is a matter of contract law.

18 New Sec. 4. (a) All listings and brokerage agreements must be can-  
19 celed by the supervising broker or branch broker whose license expires  
20 on or before the expiration date of their license unless notification is  
21 provided to the commission prior to the expiration date of the supervising  
22 broker's or branch broker's license that another broker will act as the  
23 supervising broker or branch broker.

24 (b) All listings and brokerage agreements must be canceled by the  
25 supervising broker or branch broker whose license is suspended or re-  
26 voked within five days of the effective date of the order of suspension or  
27 revocation, unless the commission notifies the broker in writing that the  
28 commission has authorized another broker to act as the supervising bro-  
29 ker or branch broker during the period of suspension or revocation.

30 (c) At the time a listing or brokerage agreement is canceled as pro-  
31 vided in subsection (a) or (b), the supervising broker or branch broker  
32 shall advise the seller or landlord, or buyer or tenant, that the seller or  
33 landlord, or buyer or tenant, may enter into a listing or brokerage agree-  
34 ment with another broker of their choice.

35 (d) A supervising broker or branch broker whose license expires or  
36 is suspended or revoked may not sell or assign listings and brokerage  
37 agreements to another broker without the written consent of the owner  
38 of the property, and any sale or assignment of a listing or brokerage agree-  
39 ment must be completed prior to the expiration of the supervising bro-  
40 ker's or branch broker's license or the effective date of the order of sus-  
41 pension or revocation.

42 New Sec. 5. (a) A supervising broker or branch broker whose license  
43 is expired or is suspended or revoked may not personally finalize any

1 pending closings. This responsibility must be given to another broker, an  
2 attorney, a financial institution or an escrow company.

3 (b) If the commission has not authorized another broker to act as the  
4 supervising broker or branch broker, transfer of the responsibility for  
5 finalizing a pending closing shall be done with the written approval of all  
6 parties to the transaction.

7 (c) If the commission has not authorized another broker to act as the  
8 supervising broker or branch broker, all parties to the transaction shall  
9 be advised of the facts concerning the situation concerning the status of  
10 the license of the supervising broker or branch broker and shall be pro-  
11 vided the name, address and telephone number of the responsible entity  
12 where all trust and escrow moneys will be held in accordance with the  
13 written agreement of the parties to the transaction.

14 New Sec. 6. If the commission has not authorized another broker to  
15 act as the supervising broker or branch broker, all advertising under the  
16 supervising broker's or branch broker's name or trade name, including,  
17 but not limited to, signage, must be removed or covered within five days  
18 after the expiration date of the supervising broker's or branch broker's  
19 license or the effective date of the order of suspension or revocation.

20 Sec. 7. K.S.A. 58-3050 is hereby amended to read as follows: 58-  
21 3050. (a) The commission may refuse to grant or renew a license and the  
22 license of any licensee may be revoked, suspended, conditioned or re-  
23 stricted or a licensee may be censured, if:

24 (1) The licensee has committed a violation of this act or rules and  
25 regulations adopted hereunder, or the brokerage relationships in real es-  
26 tate transactions act or rules and regulations adopted thereunder, whether  
27 the licensee acted as an agent or a principal in the real estate transaction;

28 (2) the licensee has entered a plea of guilty or *nolo contendere* to, or  
29 has been convicted of: (A) Forgery, embezzlement, obtaining money un-  
30 der false pretenses, larceny, extortion, conspiracy to defraud or any other  
31 similar offense; (B) a crime involving moral turpitude; or (C) any felony  
32 charge;

33 (3) the licensee has been finally adjudicated and found to be guilty  
34 of violation of the federal fair housing act (42 U.S.C. 3601 et seq.) or  
35 K.S.A. 44-1015 through 44-1029, and amendments thereto;

36 (4) the licensee has obtained a license by false or fraudulent  
37 representation;

38 (5) the licensee has violated any lawful order or directive of the com-  
39 mission; or

40 (6) the licensee has committed a violation in another state and dis-  
41 ciplinary action taken against such licensee resulted in the suspension,  
42 probation or revocation of such licensee's real estate license in such other  
43 state.

- 1 (b) In addition to or in lieu of any other administrative, civil or crim-  
2 inal remedy provided by law, the commission, in accordance with the  
3 Kansas administrative procedure act and upon a finding that a licensee  
4 has violated a provision of this act or rules and regulations adopted here-  
5 under, or the brokerage relationships in real estate transactions act or  
6 rules and regulations adopted thereunder, may impose on such licensee  
7 a civil fine not exceeding ~~\$500~~ \$1,000 for each violation. *A civil fine not*  
8 *exceeding \$10,000 per violation may be imposed if the commission makes*  
9 *specific findings that egregious circumstances exist and that the licensee:*
- 10 (1) *Misappropriated funds belonging to another person;*
  - 11 (2) *engaged in fraud or made any substantial misrepresentation;*
  - 12 (3) *represented to a lender, guaranteeing agency or any other inter-*  
13 *ested party, either verbally or through the preparation of false documents,*  
14 *an amount in excess of the true and actual sale price of the real estate or*  
15 *terms differing from those actually agreed upon;*
  - 16 (4) *committed forgery or signed or initialed a contractual agreement*  
17 *on behalf of another person in a real estate transaction unless authorized*  
18 *to do so by a duly executed power of attorney;*
  - 19 (5) *failed to promote the interests of the client with the utmost good*  
20 *faith, loyalty and fidelity; or*
  - 21 (6) *failed to disclose to a customer all adverse material facts actually*  
22 *known by the licensee regarding environmental hazards affecting the*  
23 *property that are required by law to be disclosed, the physical condition*  
24 *of the property, material defects in the real property, defects in the title*  
25 *to the real property or the client's ability to perform under the terms of*  
26 *the agreement.*
- 27 (c) *In all matters pending before the Kansas real estate commission,*  
28 *the commission shall have the power to revoke the license of any licensee*  
29 *who voluntarily surrenders such licensee's license or who does not renew*  
30 *their license pending investigation of misconduct or while charges of mis-*  
31 *conduct against the licensee are pending or anticipated.*
- 32 ~~(d)~~ (d) If a broker or salesperson has been declared disabled by a  
33 court of competent jurisdiction, the commission shall suspend the bro-  
34 ker's or salesperson's license for the period of disability.
- 35 ~~(e)~~ (e) (1) Except as provided by paragraph (2) of this subsection, no  
36 complaint alleging violation of this act or rules and regulations adopted  
37 hereunder, or the brokerage relationships in real estate transactions act  
38 or rules and regulations adopted thereunder, shall be commenced more  
39 than three years from the date of the occurrence which is the subject of  
40 the complaint.
- 41 (2) Unless the violation is not reasonably ascertainable, complaints  
42 alleging violation of subsection (a)(4) or (a)(5) shall be commenced within  
43 three years from the date of the occurrence of the violation. If the vio-

1 lation is not reasonably ascertainable, complaints alleging violation of sub-  
2 section (a)(4) or (a)(5) shall be commenced within three years from the  
3 date of violation is ascertained by the commission.

4 ~~(e)~~ (f) All administrative proceedings pursuant to this section shall be  
5 conducted in accordance with the Kansas administrative procedure act.

6 ~~(f)~~ (g) Notwithstanding any provision of this act or the brokerage  
7 relationships in real estate transactions act to the contrary, the commis-  
8 sion may use emergency adjudicative proceedings, as provided by K.S.A.  
9 77-536, and amendments thereto, to summarily suspend the license of  
10 any licensee if the commission has reasonable cause to believe that the  
11 licensee's trust account is in unsound condition or that the licensee is  
12 misappropriating funds belonging to other persons.

13 ~~(g)~~ (h) If a licensee has entered a plea of guilty or *nolo contendere*  
14 to, or has been convicted of, any felony charge, the commission may use  
15 emergency adjudicative proceedings, as provided by K.S.A. 77-536, and  
16 amendments thereto, to suspend, revoke, condition or restrict the li-  
17 censee's license.

18 ~~(h)~~ (i) When the real estate license of an individual is revoked and  
19 that individual's name is included in the trade or business name of a real  
20 estate brokerage business, the commission may deny continued use of  
21 the trade or business name if, in the opinion of the commission, it would  
22 be confusing or misleading to the public.

23 If the revocation of the individual's license is appealed to district court  
24 and a stay of the commission's order is granted by the court, the com-  
25 mission may not deny continued use of the trade or business name until  
26 such time as the district court upholds the order of the commission.

27 **New Sec. 8. On and after the effective date of this act, each**  
28 **contract for the sale of residential real estate shall contain as part**  
29 **of such contract the following language:**

30 **"Kansas law requires persons who are convicted of certain sex-**  
31 **ually violent crimes after April 14, 1994, to register with the sheriff**  
32 **of the county in which they reside. If you as the buyer desire in-**  
33 **formation regarding those registrants, you may find information**  
34 **on the homepage of the Kansas Bureau of Investigation (KBI) at**  
35 **~~http://www.accesskansas.org/kbi~~ [http://www.Kansas.gov/kbi] or by**  
36 **contacting the local sheriff's office."**

37 Sec. 8 9. K.S.A. 58-3050 is hereby repealed.

38 Sec. 9 10. This act shall take effect and be in force from and after  
39 its publication in the statute book.