

HOUSE BILL No. 2465

By Committee on Commerce, Labor and Economic Development

Requested by Representative Brunk

1-15

1 AN ACT concerning discrimination; enacting the professionals' freedom
2 of expression act; providing protection for professionals and businesses
3 against adverse action as a result of an expression of beliefs by such
4 professional or business that is unrelated to such profession or business;
5 including such protections within the real estate brokers' and
6 salespersons' license act; amending K.S.A. 58-3034 and 58-3062 and
7 repealing the existing sections.
8

9 WHEREAS, The provisions of sections 1 and 2 and the amendments to
10 K.S.A. 58-3034 and 58-3062 shall be known and may be cited as the
11 professionals' freedom of expression act.

12 Now, therefore:

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

14 New Section 1. (a) Notwithstanding any other law, no governmental
15 entity or private licensing organization shall:

16 (1) Deny, revoke or suspend the license or any other certificate or
17 authorization required to do business of any professional or business based
18 solely on the beliefs of such professional or business or the lawful
19 expression of such beliefs by such professional or business in a setting that
20 is unrelated to such profession or business; or

21 (2) penalize, discipline, censure, disadvantage, discriminate against,
22 retaliate against or take any other adverse action against a professional or
23 business based solely on the beliefs of such professional or business or the
24 lawful expression of such beliefs by such professional or business in a
25 setting that is unrelated to such profession or business.

26 (b) Any person who has been injured or who is substantially likely to
27 be injured as a result of a violation of this section shall have a cause of
28 action against the governmental entity or private licensing organization
29 that committed such violation. In any such action, the court may award
30 actual damages, costs, attorney fees and such injunctive relief as the court
31 deems necessary.

32 (c) As used in this section:

33 (1) "Beliefs" mean any sincerely held religious beliefs, including, but
34 not limited to, beliefs regarding marriage, family or sexuality.

35 (2) "Governmental entity" means any state, county or city agency,

1 department, division, bureau or any political subdivision thereof that issues
2 licenses to or certifies or accredits individuals or businesses.

3 (3) "Private licensing organization" means any private or quasi-public
4 organization or association that issues licenses to or certifies or accredits
5 individuals or businesses.

6 New Sec. 2. (a) No individual, organization or association shall do
7 any of the following, based solely on the beliefs of a licensee or the lawful
8 expression of such beliefs by such licensee in a setting that is unrelated to
9 the real estate activities or transactions when such expression does not
10 otherwise violate the real estate brokers' and salespersons' license act:

11 (1) Deny any licensee access to, membership in or participation with
12 any multiple listing service or any real estate brokers' organization;

13 (2) discriminate against any licensee with respect to the terms and
14 conditions of access to, membership in or participation with any multiple
15 listing service or real estate brokers' organization; or

16 (3) discipline or take any other adverse action against any licensee
17 pursuant to the rules of any multiple listing service or real estate brokers'
18 organization.

19 (b) It shall be unlawful for any real estate brokers' organization or any
20 other organization or association that owns, controls, manages or
21 otherwise operates a multiple listing service to require membership in such
22 organization or association as a condition to having full access to such
23 multiple listing service. If any fee is required to be paid for access to any
24 such multiple listing service, then the fee required to be paid for such
25 access by nonmembers of such organization or association shall not exceed
26 the fee required to be paid by members of such organization or association.

27 (c) Any person who has been injured or who is substantially likely to
28 be injured as a result of a violation of this section shall have a cause of
29 action against the individual, organization or association that committed
30 such violation. In any such action, the court may award actual damages,
31 costs, attorney fees and such injunctive relief as the court deems necessary.

32 (d) As used in this section:

33 (1) "Beliefs" means any sincerely held religious beliefs, including,
34 but not limited to, beliefs regarding marriage, family or sexuality.

35 (2) "Real estate activities and transactions" means any actions,
36 activities and transactions carried out by a licensee in such licensee's
37 capacity as a real estate professional or in association with such licensee's
38 real estate business.

39 (e) This section shall be a part of and supplemental to the real estate
40 brokers' and salespersons' license act.

41 Sec. 3. K.S.A. 58-3034 is hereby amended to read as follows: 58-
42 3034. K.S.A. 58-3034 through ~~58-3077, and 58-3078 through 58-3085~~ 58-
43 3086, and amendments thereto, *and section 2, and amendments thereto,*

1 shall be known and may be cited as the real estate brokers' and
2 salespersons' license act.

3 Sec. 4. K.S.A. 58-3062 is hereby amended to read as follows: 58-
4 3062. (a) No licensee, whether acting as an agent, transaction broker or a
5 principal, shall:

6 (1) Fail to account for and remit any money ~~which~~ *that* comes into
7 the licensee's possession and ~~which~~ *that* belongs to others.

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

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

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

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

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

25 (7) Place a sign on any property offering ~~it~~ *such property* for sale or
26 lease without the written consent of the owner or the owner's authorized
27 agent.

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

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

32 (10) Pay a commission or compensation to any person, not licensed
33 under this act, for performing any activity for which ~~a~~ *such* license is
34 required ~~under this act~~.

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

39 (12) Procure a signature to a purchase contract ~~which~~ *that* has no
40 definite purchase price, method of payment, description of property or
41 method of determining the closing date.

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

43 (14) Represent to any lender, guaranteeing agency or any other

1 interested party, either verbally or through the preparation of false
2 documents, an amount in excess of the true and actual sale price of the real
3 estate or terms differing from those actually agreed upon.

4 (15) Fail to make known to any purchaser or lessee any interest the
5 licensee has in the real estate the licensee is selling or leasing or to make
6 known to any seller or lessor any interest the licensee will have in the real
7 estate the licensee is purchasing or leasing.

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

11 (17) Fail, without just cause, to surrender any document or instrument
12 to the rightful owner.

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

16 (19) Fail to deposit any check or cash received as an earnest money
17 deposit or as a deposit on the purchase of a lot within five business days
18 after the purchase agreement or lot reservation agreement is signed by all
19 parties, unless otherwise specifically provided by written agreement of all
20 parties to the purchase agreement or lot reservation agreement, in which
21 case, the licensee shall deposit the check or cash received on the date
22 provided by such written agreement.

23 (20) Fail to respond in a timely manner to any request from the
24 commission or the commission's designee for documents or information
25 that concerns, directly or indirectly, any real estate transaction or the
26 licensee's real estate business.

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

29 (22) Demonstrate incompetency to act as a broker, associate broker or
30 salesperson.

31 (23) Except as provided by K.S.A. 40-2404, and amendments thereto,
32 knowingly receive or accept, directly or indirectly, any rebate, reduction or
33 abatement of any charge, or any special favor or advantage or any
34 monetary consideration or inducement, involving the issuance of a title
35 insurance policy or contract concerning which the licensee is directly or
36 indirectly connected, from a title insurance company or title insurance
37 agent, or any officer, employee, attorney, agent or solicitor thereof.

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

42 (A) (i) At the time of such purchase, the dwellings are subject to a
43 right of redemption pursuant to foreclosure of a mortgage on such

1 dwellings; (ii) the licensee fails to give written notice of the purchase,
2 within 20 days thereafter, to the mortgage holder or judgment creditor who
3 held such mortgage; and (iii) the licensee, unless otherwise required by
4 law or court order, fails to apply any rent proceeds from the dwellings to
5 the judgment lien arising from the foreclosure of such mortgage, as
6 payments become due under the loan, regardless of whether the licensee is
7 obligated to do so;

8 (B) (i) the dwellings are subject to a loan ~~which~~ that is secured by a
9 mortgage ~~and which~~ that is in default at the time of such purchase or in
10 default within one year after such purchase; (ii) the licensee fails to give
11 written notice of the purchase, within 20 days thereafter, to the mortgage
12 holder; and (iii) the licensee, unless otherwise required by law or court
13 order, fails to apply any rent proceeds from the dwellings to the mortgage
14 as the payments come due, regardless of whether the licensee is obligated
15 on the loan; or

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

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

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

27 (b) No salesperson or associate broker shall:

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

32 (A) A salesperson or associate broker may accept a commission or
33 other valuable consideration from a licensee who employs the salesperson
34 or associate broker as a personal assistant provided that: (i) The licensee
35 and the salesperson or associate broker who is employed as a personal
36 assistant are licensed under the supervision of the same broker; and (ii) the
37 supervising broker agrees in writing that the personal assistant may be paid
38 by the licensee.

39 (B) If a salesperson or associate broker has organized as an
40 association, corporation, limited liability company, limited liability
41 partnership, partnership or professional corporation, the commission or
42 other valuable consideration may be paid by the licensee's broker to such
43 association, corporation, limited liability company, limited liability

1 partnership, partnership or professional corporation. This provision shall
2 not alter any other provisions of this act.

3 (2) Fail to place, as soon after receipt as practicable, any deposit
4 money or other funds entrusted to the salesperson or associate broker in
5 the custody of the broker whom the salesperson or associate broker
6 represents.

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

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

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

20 (5) (A) Fail to disclose to such salesperson's or associate broker's
21 supervising broker or branch broker that such salesperson or associate
22 broker is performing any activity for which a license is required under
23 K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for
24 which a license is required under K.S.A. 58-3036, and amendments
25 thereto, outside the supervision of the supervising broker or branch broker.
26 The provisions of this subsection shall not apply to any activity or person
27 exempted from the real estate brokers' and salespersons' license act
28 pursuant to K.S.A. 58-3037, and amendments thereto.

29 (6) Fail to submit to the supervising broker or branch broker, within
30 10 business days, any document that must be maintained in the supervising
31 broker's or branch broker's business records for each real estate
32 transaction. The ten-day period shall commence when the document is
33 executed by the client or customer or, if a signature is not required or is not
34 obtained, upon presentation of a document to the client or customer.

35 (c) No broker shall:

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

39 (2) Fail to deliver to the seller in every real estate transaction, at the
40 time the transaction is closed, a complete, detailed closing statement
41 showing all of the receipts and disbursements handled by the broker for
42 the seller, or fail to deliver to the buyer a complete statement showing all
43 money received in the transaction from such buyer and how and for what

1 the same was disbursed, or fail to retain true copies of such statements in
2 the broker's files, except that the furnishing of such statements to the seller
3 and buyer by an escrow agent shall relieve the broker's responsibility to
4 the seller and the buyer.

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

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

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

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

15 (A) Fail to deliver the purchase agreement and earnest money deposit
16 to the escrow agent named in the purchase agreement within five business
17 days after the purchase agreement is signed by all parties unless otherwise
18 specifically provided by written agreement of all parties to the purchase
19 agreement, in which case, the broker shall deliver the purchase agreement
20 and earnest money deposit to the escrow agent named in the purchase
21 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 (2) If a purchase agreement provides that the earnest money be held
26 by an escrow agent other than a real estate broker and the property was not
27 listed with a broker, no broker for the buyer shall:

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

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

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

41 ~~(A)~~(i) Fail to deliver the purchase agreement and earnest money
42 deposit to the escrow agent named in the purchase agreement within five
43 business days after the purchase agreement is signed by all parties unless

1 otherwise specifically provided by written agreement of all parties to the
2 purchase agreement, in which case the broker shall deliver the purchase
3 agreement and earnest money deposit to the escrow agent named in the
4 purchase agreement on the date provided by such written agreement; or

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

8 (B) The commission may adopt rules and regulations to require that
9 such purchase agreement which provides that the earnest money be held
10 by an escrow agent other than a real estate broker include:

11 ~~(H)~~(i) Notification of whether or not the escrow agent named in the
12 purchase agreement maintains a surety bond; and

13 ~~(2)~~(ii) notification that statutes governing the disbursement of earnest
14 money held in trust accounts of real estate brokers do not apply to earnest
15 money deposited with the escrow agent named in the purchase agreement.

16 (e) No licensee shall:

17 (1) Threaten to engage in or engage in physical abuse or engage in
18 harassment towards:

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

20 (B) another licensee;

21 (C) commission members or staff;

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

23 (E) staff from any real estate trade association or multiple listing
24 service; or

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

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

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

31 (4) be finally adjudicated by a federal or state agency and found to be
32 guilty of a violation of a federal or state law regulating the real estate
33 industry or regulating a closely related industry whose licensees or
34 members are commonly involved in real estate matters;

35 (5) be finally adjudicated by a federal or state agency and found to be
36 guilty of a violation of a federal or state law prohibiting discrimination
37 against any client or customer on the basis of color, race, gender, religion,
38 national origin, age, disability or familial status; or

39 (6) intentionally misappropriate or misuse any personal property or
40 real property of a client or customer.

41 (f) No applicant or licensee shall:

42 (1) Engage in fraud or make any substantial misrepresentation to the
43 commission;

1 (2) commit forgery in any representation or document submitted to
2 the commission;

3 (3) sign or initial, on behalf of another person, any application, for or
4 accompanying document submitted to the commission unless authorized to
5 do so by a duly executed power of attorney;

6 (4) interfere with any investigation, administrative proceeding, quasi-
7 judicial proceeding or any other disciplinary matter of the commission,
8 including, but not limited to:

9 (A) Threatening to engage in or engaging in physical abuse or
10 harassment toward any witness, complainant or individual listed in
11 subsection (e)(1);

12 (B) destroying evidence;

13 (C) refusing or failing to appear or testify under oath at any hearing;
14 or

15 (D) refusing or failing to respond in a timely manner to any request
16 from the commission or the commission's designee for documents or
17 information that concerns directly or indirectly any real estate transaction
18 or the licensee's real estate business;

19 (5) fail without just cause to surrender any document or instrument to
20 the rightful owner; or

21 (6) demonstrate incompetency to act as a broker, associate broker or
22 salesperson in dealings with the commission, including the repeated failure
23 to:

24 (A) Submit required forms to the commission in a timely and
25 complete manner;

26 (B) make available to the commission all records relating to the real
27 estate business; or

28 (C) comply with the provisions of this subsection.

29 (g) A branch broker shall not be employed by or associated with more
30 than one supervising broker at any one time unless each supervising broker
31 who employs or associates with the branch broker consents to such
32 multiple employment or association. Such consent shall be on a form
33 provided by the commission and shall not be effective until a signed copy
34 of the completed form has been filed with the commission.

35 (h) *A violation of section 2, and amendments thereto, by a licensee*
36 *shall constitute a prohibited act under this section.*

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

40 Sec. 5. K.S.A. 58-3034 and 58-3062 are hereby repealed.

41 Sec. 6. This act shall take effect and be in force from and after its
42 publication in the statute book.