

**SENATE BILL No. 116**

By Committee on Ways and Means

2-4

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1 AN ACT concerning real estate brokers and salespersons, relating to  
2 payment of referral fees; amending K.S.A. 58-3076 and 58-30,105 and  
3 K.S.A. 2012 Supp. 58-3038 and 58-3062 and repealing the existing  
4 sections.  
5

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

7 Section 1. K.S.A. 2012 Supp. 58-3038 is hereby amended to read as  
8 follows: 58-3038. (a) Except as provided by subsection (b), no action shall  
9 be instituted or recovery be had in any court of this state by any person for  
10 compensation for any act or service, the performance of which requires a  
11 license under this act, unless such person was duly licensed under this act  
12 at the time of offering to perform any such act or service or procuring any  
13 promise to contract for the payment of compensation for any such  
14 contemplated act or service.

15 (b) Subsection (a) shall not apply to associations, corporations,  
16 limited liability companies, limited liability partnerships, partnerships or  
17 professional corporations whose partners, members, officers and  
18 employees are licensed as provided by subsection (b) of K.S.A. 58-3042,  
19 and amendments thereto.

20 ~~(c) Except as provided by K.S.A. 58-3076, and amendments thereto,~~  
21 ~~nothing herein shall preclude a person who is properly licensed as a broker~~  
22 ~~or salesperson in another jurisdiction from collecting a referral fee.~~

23 Sec. 2. K.S.A. 2012 Supp. 58-3062 is hereby amended to read as  
24 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction  
25 broker or a principal, shall:

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

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

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

36 (4) Pay a referral fee to *or receive a referral fee from* a person who is

1 properly licensed as a broker or salesperson in Kansas or another  
2 jurisdiction or who holds a corporate real estate license in another  
3 jurisdiction ~~if the licensee knows that the payment of the referral fee will~~  
4 ~~result in the payment of a rebate by the Kansas or out-of-state licensee.~~

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

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

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

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

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

15 (10) Pay a commission or compensation to any person, not licensed  
16 under this act, for performing any activity for which a license is required  
17 under this act.

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

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

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

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

30 (15) Fail to make known to any purchaser or lessee any interest the  
31 licensee has in the real estate the licensee is selling or leasing or to make  
32 known to any seller or lessor any interest the licensee will have in the real  
33 estate the licensee is purchasing or leasing.

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

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

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

42 (19) Fail to deposit any check or cash received as an earnest money  
43 deposit or as a deposit on the purchase of a lot within five business days

1 after the purchase agreement or lot reservation agreement is signed by all  
2 parties, unless otherwise specifically provided by written agreement of all  
3 parties to the purchase agreement or lot reservation agreement, in which  
4 case the licensee shall deposit the check or cash received on the date  
5 provided by such written agreement.

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

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

12 (22) Demonstrate incompetency to act as a broker, associate broker or  
13 salesperson.

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

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

25 (A) (i) At the time of such purchase, the dwellings are subject to a  
26 right of redemption pursuant to foreclosure of a mortgage on such  
27 dwellings; (ii) the licensee fails to give written notice of the purchase,  
28 within 20 days thereafter, to the mortgage holder or judgment creditor who  
29 held such mortgage; and (iii) the licensee, unless otherwise required by  
30 law or court order, fails to apply any rent proceeds from the dwellings to  
31 the judgment lien arising from the foreclosure of such mortgage, as  
32 payments become due under the loan, regardless of whether the licensee is  
33 obligated to do so;

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

42 (C) the licensee fails to notify, at the time of rental, any person  
43 renting any such dwelling of the extent and nature of the licensee's interest

1 in such dwelling and the probable time until possession will be taken by  
2 the mortgage holder or judgment creditor.

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

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

10 (b) No salesperson or associate broker shall:

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

15 (A) A salesperson or associate broker may accept a commission or  
16 other valuable consideration from a licensee who employs the salesperson  
17 or associate broker as a personal assistant provided that: (i) The licensee  
18 and the salesperson or associate broker who is employed as a personal  
19 assistant are licensed under the supervision of the same broker; and (ii)  
20 the supervising broker agrees in writing that the personal assistant may be  
21 paid by the licensee.

22 (B) If a salesperson or associate broker has organized as an  
23 association, corporation, limited liability company, limited liability  
24 partnership, partnership or professional corporation, the commission or  
25 other valuable consideration may be paid by the licensee's broker to such  
26 association, corporation, limited liability company, limited liability  
27 partnership, partnership or professional corporation. This provision shall  
28 not alter any other provisions of this act.

29 (2) Fail to place, as soon after receipt as practicable, any deposit  
30 money or other funds entrusted to the salesperson or associate broker in  
31 the custody of the broker whom the salesperson or associate broker  
32 represents.

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

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

43 (4) Except as provided by subsection (b), pay a commission or

1 compensation to any person for performing any activity for which a  
2 license is required under this act.

3 (5) (A) Fail to disclose to such salesperson's or associate broker's  
4 supervising broker or branch broker that such salesperson or associate  
5 broker is performing any activity for which a license is required under  
6 K.S.A. 58-3036, and amendments thereto; or (B) perform any activity for  
7 which a license is required under K.S.A. 58-3036, and amendments  
8 thereto, outside the supervision of the supervising broker or branch broker.  
9 The provisions of this subsection shall not apply to any activity or person  
10 exempted from the real estate brokers' and salespersons' license act  
11 pursuant to K.S.A. 58-3037, and amendments thereto.

12 (6) Fail to submit to the supervising broker or branch broker, within  
13 10 business days, any document that must be maintained in the supervising  
14 broker's or branch broker's business records for each real estate  
15 transaction. The ten-day period shall commence when the document is  
16 executed by the client or customer or, if a signature is not required or is not  
17 obtained, upon presentation of a document to the client or customer.

18 (c) No broker shall:

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

22 (2) Fail to deliver to the seller in every real estate transaction, at the  
23 time the transaction is closed, a complete, detailed closing statement  
24 showing all of the receipts and disbursements handled by the broker for  
25 the seller, or fail to deliver to the buyer a complete statement showing all  
26 money received in the transaction from such buyer and how and for what  
27 the same was disbursed, or fail to retain true copies of such statements in  
28 the broker's files, except that the furnishing of such statements to the seller  
29 and buyer by an escrow agent shall relieve the broker's responsibility to  
30 the seller and the buyer.

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

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

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

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

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

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

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

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

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

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

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

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

34 The commission may adopt rules and regulations to require that such  
35 purchase agreement which provides that the earnest money be held by an  
36 escrow agent other than a real estate broker include: (1) Notification of  
37 whether or not the escrow agent named in the purchase agreement  
38 maintains a surety bond; and (2) notification that statutes governing the  
39 disbursement of earnest money held in trust accounts of real estate brokers  
40 do not apply to earnest money deposited with the escrow agent named in  
41 the purchase agreement.

42 (e) No licensee shall:

43 (1) Threaten to engage in or engage in physical abuse or engage in

1 harassment towards:

2 (A) A client or customer;

3 (B) another licensee;

4 (C) commission members or staff;

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

6 (E) staff from any real estate trade association or multiple listing  
7 service; or

8 (F) any person from another business or industry whose services are  
9 requested or required as part of a real estate transaction.

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

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

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

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

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

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

30 (g) Nothing in this section shall be construed to grant any person a  
31 private right of action for damages or to eliminate any right of action  
32 pursuant to other statutes or common law.

33 Sec. 3. K.S.A. 58-3076 is hereby amended to read as follows: 58-  
34 3076. ~~(a)~~ A licensee or anyone on behalf of any such licensee or firm,  
35 whether licensed in this state or in another state shall not solicit *or receive*  
36 a referral fee ~~without reasonable cause. Reasonable cause shall not exist~~  
37 ~~unless one of the following conditions exists:~~

38 ~~(1) An actual introduction of business has been made;~~

39 ~~(2) a contractual referral fee relationship exists; or~~

40 ~~(3) a contractual cooperative brokerage relationship exists.~~

41 ~~(b) A licensee or anyone on behalf of any such licensee or firm,~~  
42 ~~whether licensed in this state or in another shall not:~~

43 ~~(1) Threaten to reduce or withhold employee relocation benefits or~~

1 take other action adverse to the interest of a client or customer of a real  
2 estate licensee; or

3 ~~(2) counsel a client or customer of another real estate licensee on how~~  
4 ~~to terminate or amend an existing agency agreement or sales contract.~~  
5 ~~Communicating corporate relocation policy or benefits to a transferring~~  
6 ~~employee shall not be considered a violation of this paragraph, as long as~~  
7 ~~the communication does not involve advice or encouragement on how to~~  
8 ~~terminate or amend an existing agency contract.~~

9 Sec. 4. K.S.A. 58-30,105 is hereby amended to read as follows: 58-  
10 30,105. (a) Compensation is presumed to come from the transaction and  
11 shall be determined by agency or transaction broker agreements entered  
12 into pursuant to K.S.A. 58-30,103, and amendments thereto.

13 (b) Payment of compensation by itself shall not establish an agency  
14 between the party who paid the compensation and the broker or any  
15 affiliated licensee.

16 (c) In any transaction, the broker's compensation may be paid by the  
17 seller, the landlord, the buyer or the tenant. A broker may be compensated  
18 by more than one party for services in a transaction if the parties consent  
19 in writing to the multiple payments at or before the time of entering into a  
20 contract to buy, sell or lease.

21 (d) A broker may:

22 (1) Pay a commission or compensation to any licensee affiliated with  
23 the broker for performing services under this act; *and*

24 (2) with the written agreement of the seller, landlord, buyer or tenant  
25 share a commission with another broker who acted as a transaction broker,  
26 a subagent or an agent of the other party; ~~and~~

27 ~~(3) pay a referral fee to a person who is licensed as a broker under the~~  
28 ~~real estate brokers' and salespersons' license act or under the law of~~  
29 ~~another jurisdiction, provided that written disclosure is made to the client~~  
30 ~~of any financial interest that the broker has in the brokerage firm receiving~~  
31 ~~the referral fee.~~

32 (e) *A broker may not pay or receive a referral fee.*

33 Sec. 5. K.S.A. 58-3076 and 58-30,105 and K.S.A. 2012 Supp. 58-  
34 3038 and 58-3062 are hereby repealed.

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