AN ACT concerning real estate brokers and salespersons; application of licensure provisions to trusts; authorizing the Kansas real estate commission to issue cease and desist orders; amending K.S.A. 58-3036 and 58-3065 and K.S.A. 2021 Supp. 58-3035, 58-3037 and 58-3042 and repealing the existing sections.

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

Section 1. K.S.A. 2021 Supp. 58-3035 is hereby amended to read as follows: 58-3035. As used in this act, unless the context otherwise requires:

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

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

(c) "Associate broker" means an individual who has a broker's license and a broker licensee who is employed by another broker or is associated with another broker as an independent contractor and participates in any activity described in subsection (f).

(d) "Branch broker" means an individual who has a broker's license and a broker licensee who has been designated to supervise a branch office and the activities of salespersons and associate brokers assigned to the branch office.

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

(f) "Broker" means an individual a licensee, other than a salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee of real estate:

1. Sells, exchanges, purchases or leases real estate.
2. Offers to sell, exchange, purchase or lease real estate.
(3) Negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.

(4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.

(5) Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction.

(6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate, markets for sale, exchanges or otherwise deals in assignable contracts for the purchase or sale of, or options on real estate or improvements thereon.

(7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.

(8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.

(9) Engages in the business of charging an advance listing fee.

(10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list.

(g) "Commission" means the Kansas real estate commission.

(h) "Exchange" means a type of sale or purchase of real estate.

(i) "Interest" means:

(1) Having any type of ownership in the real estate involved in the transaction; 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.

(j) "Lease" means rent or lease for nonresidential use.

(k) "Licensee" means any person licensed under this act as a broker or salesperson.

(l) (1) "Office" means any permanent location where one or more licensees regularly conduct real estate business as described in subsection (f) or a location that is held out as an office.

(2) "Office" does not mean a model home office in a new home subdivision if the real estate transaction files are maintained in the primary office or branch office.

(m) "Primary office" means a supervising broker's principal place of business for each company created or established by the broker.

(n) "Real estate" means any interest or estate in land, including any leasehold or condominium, whether corporeal, incorporeal, freehold or nonfreehold and whether the real estate is situated in this state or elsewhere, but does not include oil and gas leases, royalties and other mineral interests, and rights of way and easements acquired for the
purpose of constructing roadways, pipelines, conduits, wires and facilities related to these types of improvement projects for private and public utilities, municipalities, federal and state governments, or any political subdivision. For purpose of this act, any rights of redemption are considered to be an interest in real estate.

(o) "Salesperson" means an individual a licensee, other than an associate broker, who is employed by a broker or is associated with a broker as an independent contractor and participates in any activity described in subsection (f).

(p) "Supervising broker" means an individual a broker licensee, other than a branch broker, who has a broker's license and who has been designated as the broker who is responsible for the supervision of the primary office of a broker and the activities of salespersons and associate brokers who are assigned to such office and all of whom are licensed pursuant to subsection (b) of K.S.A. 58-3042(b), and amendments thereto. "Supervising broker" also means a broker who operates a sole proprietorship and with whom associate brokers or salespersons are affiliated as employees or independent contractors.

Sec. 2. K.S.A. 58-3036 is hereby amended to read as follows: 58-3036. Unless exempt from this act under K.S.A. 58-3037, and amendments thereto, no person acting individually or as an employee, owner, officer or member of an association, corporation, limited liability company, limited liability partnership, partnership, professional corporation or trust shall:

(a) Directly or indirectly engage in or conduct or represent that such person engages in or conducts the business of a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(b) Directly or indirectly act or represent that such person acts as a broker, associate broker or salesperson within this state unless such person is licensed as such a broker, associate broker or salesperson in accordance with this act.

(c) Perform or offer, attempt or agree to perform any act described in subsection (f) of K.S.A. 58-3035(f), and amendments thereto, whether as a part of a transaction or as an entire transaction, unless such person is licensed pursuant to this act.

Sec. 3. K.S.A. 2021 Supp. 58-3037 is hereby amended to read as follows: 58-3037. The provisions of this act shall not apply to:

(a) Any person, other than a person licensed under this act, who directly performs any of the acts within the scope of this act with reference to such person's own property real estate, except such person shall not buy, sell, offer to buy or sell, market for sale, exchange or otherwise deal in assignable contracts for the purchase or sale of or options on real estate or improvements thereon.
(b) Any person who directly performs any of the acts within the scope of this act with reference to property that such person is authorized to transfer in any way by a power of attorney from the owner, provided that such person receives no commission or other compensation, direct or indirect, for performing any such act.

(c) Services rendered by an attorney licensed to practice in this state in performing such attorney's professional duties as an attorney.

(d) Any person acting as receiver, trustee in bankruptcy, administrator, executor or guardian, or while acting under a court order or under the authority of a will or a trust instrument or as a witness in any judicial proceeding or other proceeding conducted by the state or any governmental subdivision or agency.

(e) Any officer or employee of the federal or state government, or any political subdivision or agency thereof, when performing the official duties of the officer or employee.

(f) Any multiple listing service wholly owned by a nonprofit organization or association of brokers.

(g) Any nonprofit referral system or organization of brokers formed for the purpose of referral of prospects for the sale or listing of real estate.

(h) Railroads or other public utilities regulated by the state of Kansas, or their subsidiaries, affiliated corporations, officers or regular employees, unless performance of any of the acts described in subsection (f) of K.S.A. 58-3035(f), and amendments thereto, is in connection with the sale, purchase, lease or other disposition of real estate or investment therein unrelated to the principal business activity of such railroad or other public utility or affiliated or subsidiary corporation thereof.

(i) The sale or lease of real estate by an employee of a person, association, corporation, limited liability company, limited liability partnership, partnership or professional corporation which or trust that owns or leases such real estate, if such employee owns 5% or greater interest in such association, limited liability company, limited liability partnership, partnership or professional corporation or trust or of the stock of such corporation, except such employee shall not buy, sell, offer to buy or sell, market for sale, exchange or otherwise deal in assignable contracts for the purchase or sale of or options on real estate or improvements thereon.

(j) The sale or lease of new homes by a person, association, corporation, limited liability company, limited liability partnership or professional corporation or trust who constructed such homes, but the provisions of this act shall apply to the sale or lease of any such homes by any employee of such person, association, corporation, limited liability company, limited liability partnership, partnership or professional corporation or trust if such employee owns less than 5% interest in such
association, limited liability company, limited liability partnership, partnership or, professional corporation or trust or by any employee of a corporation who owns less than 5% of the stock of such corporation.

(k) The lease of real estate for agricultural purposes.

Sec. 4. K.S.A. 2021 Supp. 58-3042 is hereby amended to read as follows: 58-3042. (a) No real estate license shall give authority to any person other than the person to whom the license is issued.

(b) No license shall be granted to an association, corporation, limited liability company, limited liability partnership, partnership or, professional corporation or trust. Each person who is an owner, officer or member of an association, corporation, limited liability company, limited liability partnership, partnership or, professional corporation or trust and who performs any act described in subsection (f) of K.S.A. 58-3035(f), and amendments thereto, and each person who is employed by or associated with an association, corporation, limited liability company, limited liability partnership, partnership or, professional corporation or trust and who performs any act described in subsection (f) of K.S.A. 58-3035(f), and amendments thereto, shall be a licensed broker or licensed salesperson.

(c) If any person who is an owner, officer or member of an association, corporation, limited liability company, limited liability partnership or, professional corporation or trust performs any act described in subsection (f) of K.S.A. 58-3035(f), and amendments thereto, a primary office shall be established and a supervising broker shall be designated pursuant to K.S.A. 58-3060, and amendments thereto, to supervise the office and any employed or associated salespersons or associate brokers and the supervising broker shall obtain approval for the supervising broker's business name or trade name pursuant to K.S.A. 58-3079, and amendments thereto.

Sec. 5. K.S.A. 58-3065 is hereby amended to read as follows: 58-3065. (a) Willful violation of any provision of this act or the brokerage relationships in real estate transactions act is a misdemeanor punishable by imprisonment for not more than 12 months or a fine of not less than $100 or more than $1,000, or both, for the first offense and imprisonment for not more than 12 months or a fine of not less than $1,000 or more than $10,000, or both, for a second or subsequent offense.

(b) Nothing in this act or the brokerage relationships in real estate transactions act shall be construed as requiring the commission or the director to report minor violations of the acts for criminal prosecution whenever the commission or the director believes that the public interest will be adequately served by other administrative action.

(c) If the commission determines that a person has practiced without a valid broker's or salesperson's license issued by the commission, in addition to any other penalties imposed by law, the commission, in
accordance with the Kansas administrative procedure act, may issue a
cease and desist order against such unlicensed person or associated
association, corporation, limited liability company, limited liability
partnership, partnership, professional corporation or trust.

Sec. 6. K.S.A. 58-3036 and 58-3065 and K.S.A. 2021 Supp. 58-3035,
58-3037 and 58-3042 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its
publication in the statute book.