

CHAPTER 103

Substitute for HOUSE BILL No. 2345

AN ACT concerning insurance; relating to life insurance companies; relating to insurance payments for certain property claims; amending K.S.A. 2009 Supp. 40-401 and 50-626 and repealing the existing sections.

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

Section 1. K.S.A. 2009 Supp. 40-401 is hereby amended to read as follows: 40-401. Any 10 or more persons, a majority of whom are citizens of this state, may associate in accordance with the provisions of this code and form an incorporated company, upon either the stock or mutual plan, to make insurance upon the lives of persons and every insurance appertaining thereto or connected therewith and to grant, purchase or dispose of annuities, and to issue funding agreements, guaranteed investment contracts and synthetic guaranteed investment contracts. Such companies may incorporate: (a) In their policies provisions or conditions for the waiver of premiums or for the granting of an annuity to the insured, or for special surrender values or other benefits in the event the insured shall from any cause become unemployed or totally and permanently disabled; (b) in their policies provisions for acceleration of life or annuity benefits in advance of the time they would otherwise be payable subject to such reserve and other regulatory standards as the commissioner may prescribe by rules and regulations, except that any provision providing for acceleration of life or annuity benefits for persons diagnosed as having a medical condition usually requiring continuous confinement for the rest of the person's life in a nursing home or other eligible facility as defined in the policy, may also provide for acceleration of benefits upon diagnosis of such condition even if the person is not confined in a nursing home or similar facility; (c) in their policies and annuity contracts provisions or conditions for waiver of surrender charges upon terms and conditions as specified in the policy or contract, subject to rules and regulations adopted by the commissioner of insurance; or (d) in their policies provisions for the payment of a larger sum if death is caused by accident than if it results from any other causes.

Prior to the payment of any accelerated benefit, the insurer shall receive from any assignee or irrevocable beneficiary of the policy a signed acknowledgment of concurrence for the payment. For the purposes of this section, "totally and permanently disabled" means disabled continuously for a period, such period to be specified in any such provision, of not less than 60 days nor more than one year, except this provision shall not apply to and specifically excludes group life insurance. Such company may make insurance on the health of individuals, against accidental personal injury, disablement or death and against loss, liability or expense on account thereof. Such company so transacting such health and accident insurance business, or either kind, shall maintain statutory and separate reserves for such business, shall issue such contracts only in separate policies except as otherwise permitted herein and shall make separate reports to the commissioner of insurance of the premiums received and expenses and losses incurred in connection with such business, except that such reports will not be required for accelerated benefits incorporated in a life or annuity policy. Long-term care insurance meeting the applicable requirements of K.S.A. 40-2227 and 40-2228, and amendments thereto, may be incorporated in life insurance policies *and annuities* if approved by the commissioner.

The business of life insurance in this state shall not be in any way conducted or transacted by any company which in this state makes insurance on marine, fire, inland or any other like risks, except that, life, health and accident insurance on the group or industrial plan may be combined in one policy, which shall show the premium charged for life insurance and the premium charged for health and accident insurance, and the insured, at the insured's option, may discontinue either and by payment of the stated premium continue the other. The amount of capital stock of a company organized on the stock plan shall be not less than \$600,000.

Companies organized on the mutual plan shall be required to have applications from at least 200 persons for insurance upon their lives, aggregating not less than \$400,000, upon which one full annual premium in cash shall have been paid. No such company shall transact any business

of insurance until, if a stock company, all the capital stock named in its charter has been paid in cash including all contributions to surplus to be made by the original purchasers of such stock. The surplus shall be at least \$600,000, and at least \$400,000 in securities authorized by this code shall have been deposited with the commissioner of insurance pursuant to K.S.A. 40-229a, and amendments thereto, and if a mutual company, a guaranty fund of at least \$1,200,000, and at least \$400,000 of which shall be in securities as authorized in this code and deposited with the commissioner of insurance pursuant to K.S.A. 40-229a and amendments thereto. The guaranty fund may be returned to the contributors with interest at 6% per annum whenever the surplus shall equal the amount of such guaranty fund and interest, and no company shall transact any business of insurance unless it shall maintain the capital or surplus or both required of a company commencing to transact business, or, if a mutual company, the required number and amount of applications for insurance have been received and the annual premiums collected in cash. The securities deposited pursuant to this section shall be held by the commissioner of insurance in trust for the benefit and protection of the policyholders or creditors, or both, of the company depositing the same and may be withdrawn only upon order of the commissioner of insurance.

The commissioner of insurance may adopt rules and regulations to implement the provisions of this section.

New Sec. 2. (a) For insurance policies issued or renewed on or after July 1, 2010, a property insurer shall transmit claims payments directly to the primary policyholder by check or other allowable payment method, payable to the primary policyholder only, without requiring dual endorsement from any mortgageholder or lienholder for amounts payable under the insurance policy for personal property and contents, additional living expenses and other covered items that are not subject to a recorded security interest.

(b) This section shall be a part of and supplemental to the insurance code of the state of Kansas.

Sec. 3. K.S.A. 2009 Supp. 50-626 is hereby amended to read as follows: 50-626. (a) No supplier shall engage in any deceptive act or practice in connection with a consumer transaction.

(b) Deceptive acts and practices include, but are not limited to, the following, each of which is hereby declared to be a violation of this act, whether or not any consumer has in fact been misled:

(1) Representations made knowingly or with reason to know that:

(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;

(B) the supplier has a sponsorship, approval, status, affiliation or connection that the supplier does not have;

(C) property is original or new, if such property has been deteriorated, altered, reconditioned, repossessed or is second-hand or otherwise used to an extent that is materially different from the representation;

(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;

(E) the consumer will receive a rebate, discount or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of benefit is contingent on an event occurring after the consumer enters into the transaction;

(F) property or services has uses, benefits or characteristics unless the supplier relied upon and possesses a reasonable basis for making such representation; or

(G) use, benefit or characteristic of property or services has been proven or otherwise substantiated unless the supplier relied upon and possesses the type and amount of proof or substantiation represented to exist;

(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;

(3) the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact;

(4) disparaging the property, services or business of another by making, knowingly or with reason to know, false or misleading representations

of material facts;

(5) offering property or services without intent to sell them;

(6) offering property or services without intent to supply reasonable, expectable public demand, unless the offer discloses the limitation;

(7) making false or misleading representations, knowingly or with reason to know, of fact concerning the reason for, existence of or amounts of price reductions, or the price in comparison to prices of competitors or one's own price at a past or future time;

(8) falsely stating, knowingly or with reason to know, that a consumer transaction involves consumer rights, remedies or obligations;

(9) falsely stating, knowingly or with reason to know, that services, replacements or repairs are needed;

(10) falsely stating, knowingly or with reason to know, the reasons for offering or supplying property or services at sale or discount prices;

(11) sending or delivering a solicitation for goods or services which could reasonably be interpreted or construed as a bill, invoice or statement of account due, unless:

(A) Such solicitation contains the following notice, on its face, in conspicuous and legible type in contrast by typography, layout or color with other printing on its face:

“THIS IS A SOLICITATION FOR THE PURCHASE OF GOODS OR SERVICES AND NOT A BILL, INVOICE OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS UNLESS YOU ACCEPT THIS OFFER”; and

(B) such solicitation, if made by any classified telephone directory service not affiliated with a local telephone service in the area of service, contains the following notice, on its face, in a prominent and conspicuous manner:

“ _____ IS NOT AFFILIATED WITH
(name of telephone directory service)

ANY LOCAL TELEPHONE COMPANY”;

(12) using, in any printed advertisement, an assumed or fictitious name for the conduct of such person's business that includes the name of any municipality, community or region or other description of the municipality, community or region in this state in such a manner as to suggest that such person's business is located in such municipality, community or region unless: (A) Such person's business is, in fact, located in such municipality, community or region; or (B) such person includes in any such printed advertisement the complete street and city address of the location from which such person's business is actually conducted. If located outside of Kansas, the state in which such person's business is located also shall be included. The provisions of this subsection shall not apply to the use of any trademark or service mark registered under the laws of this state or under federal law; any such name that, when applied to the goods or services of such person's business, is merely descriptive of them; or any such name that is merely a surname. Nothing in this subsection shall be construed to impose any liability on any publisher when such publisher had no knowledge the business was not, in fact, located in such municipality, community or region; ~~and~~

(13) (A) making an oral solicitation for products or services based on a mortgage trigger lead unless the solicitation clearly and conspicuously states in the initial phase of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied and that the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied;

(B) making a written solicitation for products or services based on a mortgage trigger lead unless the solicitation clearly and conspicuously states on the first page of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied and that the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied. Clear and conspicuous shall include legible type in contrast by typography, layout or color with other printing on the first page of the correspondence; and

(C) any solicitor under clause (A) or (B) shall be in compliance with the provisions of the Kansas mortgage business act, unless otherwise ex-

empted from such act, and any other law or regulation; and

(14) failing to release funds representing an insurance settlement payment for damage to real property subject to a mortgage by the mortgage holder to the mortgagor within 30 days after receiving written proof that the damaged property is replaced or otherwise repaired to the satisfaction of the mortgagor and the mortgage holder. Any person who submits false information regarding the condition of the property shall be liable in damages to the mortgage holder or the mortgage holder's assignee for the amount of the funds together with interest thereon, attorney fees, and any additional damages that the mortgage holder or the mortgage holder's assignee has incurred.

Sec. 4. K.S.A. 2009 Supp. 40-401 and 50-626 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2010.
