

HOUSE BILL No. 2043

By Committee on Insurance

Requested by Eric Turek, Kansas Insurance Department

1-21

1 AN ACT concerning insurance; relating to unfair and deceptive acts or
2 practices; requiring agents and insurers to respond to inquiries from the
3 commissioner of insurance within 14 calendar days; authorizing certain
4 rebate pilot programs to exceed one year in duration; amending K.S.A.
5 2024 Supp. 40-2404 and 40-4909 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 2024 Supp. 40-2404 is hereby amended to read as
9 follows: 40-2404. The following are hereby defined as unfair methods of
10 competition and unfair or deceptive acts or practices in the business of
11 insurance:

12 (1) *Misrepresentations and false advertising of insurance policies.*
13 Making, issuing, circulating or causing to be made, issued or circulated,
14 any estimate, illustration, circular, statement, sales presentation, omission
15 or comparison that:

16 (a) Misrepresents the benefits, advantages, conditions or terms of any
17 insurance policy;

18 (b) misrepresents the dividends or share of the surplus to be received
19 on any insurance policy;

20 (c) makes any false or misleading statements as to the dividends or
21 share of surplus previously paid on any insurance policy;

22 (d) is misleading or is a misrepresentation as to the financial
23 condition of any person, or as to the legal reserve system upon which any
24 life insurer operates;

25 (e) uses any name or title of any insurance policy or class of
26 insurance policies misrepresenting the true nature thereof;

27 (f) is a misrepresentation for the purpose of inducing or tending to
28 induce the lapse, forfeiture, exchange, conversion or surrender of any
29 insurance policy;

30 (g) is a misrepresentation for the purpose of effecting a pledge or
31 assignment of or effecting a loan against any insurance policy; or

32 (h) misrepresents any insurance policy as being shares of stock.

33 (2) *False information and advertising generally.* Making, publishing,
34 disseminating, circulating or placing before the public, or causing, directly
35 or indirectly, to be made, published, disseminated, circulated or placed

1 before the public, in a newspaper, magazine or other publication, or in the
2 form of a notice, circular, pamphlet, letter or poster, or over any radio or
3 television station, or in any other way, an advertisement, announcement or
4 statement containing any assertion, misrepresentation or statement with
5 respect to the business of insurance or with respect to any person in the
6 conduct of such person's insurance business, that is untrue, deceptive or
7 misleading.

8 (3) *Defamation*. Making, publishing, disseminating or circulating,
9 directly or indirectly, or aiding, abetting or encouraging the making,
10 publishing, disseminating or circulating of any oral or written statement or
11 any pamphlet, circular, article or literature that is false, or maliciously
12 critical of or derogatory to the financial condition of any person, and that
13 is calculated to injure such person.

14 (4) *Boycott, coercion and intimidation*. Entering into any agreement
15 to commit, or by any concerted action committing, any act of boycott,
16 coercion or intimidation resulting in or tending to result in unreasonable
17 restraint of the business of insurance, or by any act of boycott, coercion or
18 intimidation monopolizing or attempting to monopolize any part of the
19 business of insurance.

20 (5) *False statements and entries*. (a) Knowingly filing with any
21 supervisory or other public official, or knowingly making, publishing,
22 disseminating, circulating or delivering to any person, or placing before
23 the public, or knowingly causing directly or indirectly, to be made,
24 published, disseminated, circulated, delivered to any person, or placed
25 before the public, any false material statement of fact as to the financial
26 condition of a person.

27 (b) Knowingly making any false entry of a material fact in any book,
28 report or statement of any person or knowingly omitting to make a true
29 entry of any material fact pertaining to the business of such person in any
30 book, report or statement of such person.

31 (6) *Stock operations and advisory board contracts*. Issuing or
32 delivering or permitting agents, officers or employees to issue or deliver,
33 agency company stock or other capital stock, or benefit certificates or
34 shares in any common-law corporation, or securities or any special or
35 advisory board contracts or other contracts of any kind promising returns
36 and profits as an inducement to insurance. Nothing herein shall prohibit
37 the acts permitted by K.S.A. 40-232, and amendments thereto.

38 (7) *Unfair discrimination*. (a) Making or permitting any unfair
39 discrimination between individuals of the same class and equal expectation
40 of life in the rates charged for any contract of life insurance or life annuity
41 or in the dividends or other benefits payable thereon, or in any other of the
42 terms and conditions of such contract.

43 (b) Making or permitting any unfair discrimination between

1 individuals of the same class and of essentially the same hazard in the
2 amount of premium, policy fees or rates charged for any policy or contract
3 of accident or health insurance or in the benefits payable thereunder, or in
4 any of the terms or conditions of such contract, or in any other manner
5 whatever.

6 (c) Refusing to insure, or refusing to continue to insure, or limiting
7 the amount, extent or kind of coverage available to an individual, or
8 charging an individual a different rate for the same coverage solely
9 because of blindness or partial blindness. With respect to all other
10 conditions, including the underlying cause of the blindness or partial
11 blindness, persons who are blind or partially blind shall be subject to the
12 same standards of sound actuarial principles or actual or reasonably
13 anticipated experience as are sighted persons. Refusal to insure includes
14 denial by an insurer of disability insurance coverage on the grounds that
15 the policy defines "disability" as being presumed in the event that the
16 insured loses such person's eyesight. However, an insurer may exclude
17 from coverage disabilities consisting solely of blindness or partial
18 blindness when such condition existed at the time the policy was issued.

19 (d) Refusing to insure, or refusing to continue to insure, or limiting
20 the amount, extent or kind of coverage available for accident and health
21 and life insurance to an applicant who is the proposed insured or charge a
22 different rate for the same coverage or excluding or limiting coverage for
23 losses or denying a claim incurred by an insured as a result of abuse based
24 on the fact that the applicant who is the proposed insured is, has been, or
25 may be the subject of domestic abuse, except as provided in subsection (7)
26 (d)(v). "Abuse" as used in this paragraph means one or more acts defined
27 in K.S.A. 60-3102, and amendments thereto, between family members,
28 current or former household members, or current or former intimate
29 partners.

30 (i) An insurer may not ask an applicant for life or accident and health
31 insurance who is the proposed insured if the individual is, has been or may
32 be the subject of domestic abuse or seeks, has sought or had reason to seek
33 medical or psychological treatment or counseling specifically for abuse,
34 protection from abuse or shelter from abuse.

35 (ii) Nothing in this section shall be construed to prohibit a person
36 from declining to issue an insurance policy insuring the life of an
37 individual who is, has been or has the potential to be the subject of abuse if
38 the perpetrator of the abuse is the applicant or would be the owner of the
39 insurance policy.

40 (iii) No insurer that issues a life or accident and health policy to an
41 individual who is, has been or may be the subject of domestic abuse shall
42 be subject to civil or criminal liability for the death or any injuries suffered
43 by that individual as a result of domestic abuse.

1 (iv) No person shall refuse to insure, refuse to continue to insure,
2 limit the amount, extent or kind of coverage available to an individual or
3 charge a different rate for the same coverage solely because of physical or
4 mental condition, except where the refusal, limitation or rate differential is
5 based on sound actuarial principles.

6 (v) Nothing in this section shall be construed to prohibit a person
7 from underwriting or rating a risk on the basis of a preexisting physical or
8 mental condition, even if such condition has been caused by abuse,
9 provided that:

10 (A) The person routinely underwrites or rates such condition in the
11 same manner with respect to an insured or an applicant who is not a victim
12 of abuse;

13 (B) the fact that an individual is, has been or may be the subject of
14 abuse may not be considered a physical or mental condition; and

15 (C) such underwriting or rating is not used to evade the intent of this
16 section or any other provision of the Kansas insurance code.

17 (vi) Any person who underwrites or rates a risk on the basis of
18 preexisting physical or mental condition as set forth in subsection (7)(d)
19 (v), shall treat such underwriting or rating as an adverse underwriting
20 decision pursuant to K.S.A. 40-2,112, and amendments thereto.

21 (vii) The provisions of this paragraph shall apply to all policies of life
22 and accident and health insurance issued in this state after the effective
23 date of this act and all existing contracts that are renewed on or after the
24 effective date of this act.

25 (e) Refusing to insure, or refusing to continue to insure, or limiting
26 the amount, extent or kind of coverage available for life insurance to an
27 individual, or charging an individual a different rate for the same coverage,
28 solely because of such individual's status as a living organ donor. With
29 respect to all other conditions, persons who are living organ donors shall
30 be subject to the same standards of sound actuarial principles or actual or
31 reasonably anticipated experience as are persons who are not organ
32 donors.

33 (8) *Rebates.* (a) Except as otherwise expressly provided by law,
34 knowingly permitting, offering to make or making any contract of life
35 insurance, life annuity or accident and health insurance, or agreement as to
36 such contract other than as plainly expressed in the insurance contract
37 issued thereon; paying, allowing, giving or offering to pay, allow or give,
38 directly or indirectly, as inducement to such insurance, or annuity, any
39 rebate of premiums payable on the contract, any special favor or advantage
40 in the dividends or other benefits thereon, or any valuable consideration or
41 inducement whatever not specified in the contract; or giving, selling,
42 purchasing or offering to give, sell or purchase as inducement to such
43 insurance contract or annuity or in connection therewith, any stocks, bonds

1 or other securities of any insurance company or other corporation,
2 association or partnership, or any dividends or profits accrued thereon, or
3 anything of value whatsoever not specified in the contract.

4 (b) Nothing in subsection (7) or (8)(a) shall be construed as including
5 within the definition of discrimination or rebates any of the following
6 practices:

7 (i) In the case of any contract of life insurance or life annuity, paying
8 bonuses to policyholders or otherwise abating their premiums in whole or
9 in part out of surplus accumulated from nonparticipating insurance. Any
10 such bonuses or abatement of premiums shall be fair and equitable to
11 policyholders and for the best interests of the company and its
12 policyholders;

13 (ii) in the case of life insurance policies issued on the industrial debit
14 plan, making allowance to policyholders who have continuously for a
15 specified period made premium payments directly to an office of the
16 insurer in an amount that fairly represents the saving in collection
17 expenses;

18 (iii) readjustment of the rate of premium for a group insurance policy
19 based on the loss or expense experience thereunder, at the end of the first
20 or any subsequent policy year of insurance thereunder, which may be
21 made retroactive only for such policy year;

22 (iv) engaging in an arrangement that would not violate section 106 of
23 the bank holding company act amendments of 1972, as interpreted by the
24 board of governors of the federal reserve system or section 5(q) of the
25 home owners' loan act;

26 (v) the offer or provision by insurers or producers, by or through
27 employees, affiliates or third-party representatives, of value-added
28 products or services at no or reduced cost when such products or services
29 are not specified in the policy of insurance if the product or service:

30 (A) Relates to the insurance coverage; and

31 (B) is primarily designed to satisfy one or more of the following:

32 (1) Provide loss mitigation or loss control;

33 (2) reduce claim costs or claim settlement costs;

34 (3) provide education about liability risks or risk of loss to persons or
35 property;

36 (4) monitor or assess risk, identify sources of risk or develop
37 strategies for eliminating or reducing risk;

38 (5) enhance health;

39 (6) enhance financial wellness through items such as education or
40 financial planning services;

41 (7) provide post-loss services;

42 (8) (a) incentivize behavioral changes to improve the health or reduce
43 the risk of death or disability of a customer;

1 (b) as used in this section, "customer" means a policyholder, potential
2 policyholder, certificate holder, potential certificate holder, insured,
3 potential insured or applicant; or

4 (9) assist in the administration of the employee or retiree benefit
5 insurance coverage.

6 (C) The cost to the insurer or producer offering the product or service
7 to any given customer shall be reasonable in comparison to such
8 customer's premiums or insurance coverage for the policy class.

9 (D) If the insurer or producer is providing the product or service
10 offered, the insurer or producer shall ensure that the customer is provided
11 with contact information, upon request, to assist the customer with
12 questions regarding the product or service.

13 (E) The commissioner may adopt rules and regulations when
14 implementing the permitted practices set forth in this section to ensure
15 consumer protection. Such rules and regulations, consistent with
16 applicable law, may address, among other issues, consumer data
17 protections and privacy, consumer disclosure and unfair discrimination.

18 (F) The availability of the value-added product or service shall be
19 based on documented objective criteria and offered in a manner that is not
20 unfairly discriminatory. The documented criteria shall be maintained by
21 the insurer or producer and produced upon request by the commissioner.

22 (G) (1) If an insurer or producer does not have sufficient evidence but
23 has a good-faith belief that the product or service meets the criteria in
24 subsection (8)(b)(v)(B), the insurer or producer may provide the product or
25 service in a manner that is not unfairly discriminatory as part of a pilot or
26 testing program for not more than one year. An insurer or producer shall
27 notify the commissioner of such a pilot or testing program offered to
28 consumers in this state prior to launching and may proceed with the
29 program unless the commissioner objects within 21 days of notice.

30 (2) *If the insurer or producer is unable to determine sufficient*
31 *evidence within the one-year pilot or testing period, the insurer or*
32 *producer may request that such pilot or testing period be extended for*
33 *such additional time as necessary to determine if the product or service*
34 *meets the criteria described in subsection (8)(b)(v)(B).*

35 (vi) An insurer or a producer may:

36 (A) Offer or give non-cash gifts, items or services, including meals to
37 or charitable donations on behalf of a customer, in connection with the
38 marketing, sale, purchase or retention of contracts of insurance, as long as
39 the cost does not exceed an amount determined to be reasonable by the
40 commissioner per policy year per term. The offer shall be made in a
41 manner that is not unfairly discriminatory. The customer shall not be
42 required to purchase, continue to purchase or renew a policy in exchange
43 for the gift, item or service.

1 (B) Conduct raffles or drawings to the extent permitted by state law,
2 as long as there is no financial cost to entrants to participate, the drawing
3 or raffle does not obligate participants to purchase insurance, the prizes are
4 not valued in excess of a reasonable amount determined by the
5 commissioner and the drawing or raffle is open to the public. The raffle or
6 drawing shall be offered in a manner that is not unfairly discriminatory.
7 The customer shall not be required to purchase, continue to purchase or
8 renew a policy in exchange for the gift, item or service.

9 (c) An insurer, producer or representative of an insurer or producer
10 shall not offer or provide insurance as an inducement to the purchase of
11 another policy.

12 (9) *Unfair claim settlement practices.* It is an unfair claim settlement
13 practice if any of the following or any rules and regulations pertaining
14 thereto are either committed flagrantly and in conscious disregard of such
15 provisions, or committed with such frequency as to indicate a general
16 business practice:

17 (a) Misrepresenting pertinent facts or insurance policy provisions
18 relating to coverages at issue;

19 (b) failing to acknowledge and act reasonably promptly upon
20 communications with respect to claims arising under insurance policies;

21 (c) failing to adopt and implement reasonable standards for the
22 prompt investigation of claims arising under insurance policies;

23 (d) refusing to pay claims without conducting a reasonable
24 investigation based upon all available information;

25 (e) failing to affirm or deny coverage of claims within a reasonable
26 time after proof of loss statements have been completed;

27 (f) not attempting in good faith to effectuate prompt, fair and
28 equitable settlements of claims in which liability has become reasonably
29 clear;

30 (g) compelling insureds to institute litigation to recover amounts due
31 under an insurance policy by offering substantially less than the amounts
32 ultimately recovered in actions brought by such insureds;

33 (h) attempting to settle a claim for less than the amount to which a
34 reasonable person would have believed that such person was entitled by
35 reference to written or printed advertising material accompanying or made
36 part of an application;

37 (i) attempting to settle claims on the basis of an application that was
38 altered without notice to, or knowledge or consent of the insured;

39 (j) making claims payments to insureds or beneficiaries not
40 accompanied by a statement setting forth the coverage under which
41 payments are being made;

42 (k) making known to insureds or claimants a policy of appealing from
43 arbitration awards in favor of insureds or claimants for the purpose of

1 compelling them to accept settlements or compromises less than the
2 amount awarded in arbitration;

3 (l) delaying the investigation or payment of claims by requiring an
4 insured, claimant or the physician of either to submit a preliminary claim
5 report and then requiring the subsequent submission of formal proof of
6 loss forms, both of which submissions contain substantially the same
7 information;

8 (m) failing to promptly settle claims, where liability has become
9 reasonably clear, under one portion of the insurance policy coverage in
10 order to influence settlements under other portions of the insurance policy
11 coverage; or

12 (n) failing to promptly provide a reasonable explanation of the basis
13 in the insurance policy in relation to the facts or applicable law for denial
14 of a claim or for the offer of a compromise settlement.

15 (10) *Failure to respond to an inquiry.* An insurer's failing, upon
16 receipt of any inquiry from the insurance department concerning a
17 complaint or inquiry related to a particular matter, within 14 calendar
18 days of receipt of such inquiry to furnish the department with an adequate
19 response to such inquiry.

20 (11) *Failure to maintain complaint handling procedures.* Failure of
21 any person, who is an insurer on an insurance policy, to maintain a
22 complete record of all the complaints that it has received since the date of
23 its last examination under K.S.A. 40-222, and amendments thereto; ~~but,~~
24 *except that* no such records shall be required for complaints received prior
25 to the effective date of this act. The record shall indicate the total number
26 of complaints, their classification by line of insurance, the nature of each
27 complaint, the disposition of the complaints, the date each complaint was
28 originally received by the insurer and the date of final disposition of each
29 complaint. For purposes of this ~~subsection~~ *section*, "complaint" means any
30 written communication primarily expressing a grievance related to the acts
31 and practices set out in this section.

32 ~~(11)~~(12) *Misrepresentation in insurance applications.* Making false
33 or fraudulent statements or representations on or relative to an application
34 for an insurance policy, for the purpose of obtaining a fee, commission,
35 money or other benefit from any insurer, agent, broker or individual.

36 ~~(12)~~(13) *Statutory violations.* Any violation of any of the provisions
37 of K.S.A. 40-216, 40-276a, 40-2,155 or 40-1515, and amendments thereto.

38 ~~(13)~~(14) *Disclosure of information relating to adverse underwriting*
39 *decisions and refund of premiums.* Failing to comply with the provisions of
40 K.S.A. 40-2,112, and amendments thereto, within the time prescribed in
41 such section.

42 ~~(14)~~(15) *Rebates and other inducements in title insurance.* (a) No title
43 insurance company or title insurance agent, or any officer, employee,

1 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,
2 allow or give, directly or indirectly, as an inducement to obtaining any title
3 insurance business, any rebate, reduction or abatement of any rate or
4 charge made incident to the issuance of such insurance, any special favor
5 or advantage not generally available to others of the same classification, or
6 any money, thing of value or other consideration or material inducement.
7 ~~The words "Charge made incident to the issuance of such insurance"~~
8 includes, without limitations, escrow, settlement and closing charges.

9 (b) No insured named in a title insurance policy or contract nor any
10 other person directly or indirectly connected with the transaction involving
11 the issuance of the policy or contract, including, but not limited to,
12 mortgage lender, real estate broker, builder, attorney or any officer,
13 employee, agent representative or solicitor thereof, or any other person
14 may knowingly receive or accept, directly or indirectly, any rebate,
15 reduction or abatement of any charge, or any special favor or advantage or
16 any monetary consideration or inducement referred to in subsection ~~(14)(a)~~
17 *(15)(a)*.

18 (c) Nothing in this section shall be construed as prohibiting:

19 (i) The payment of reasonable fees for services actually rendered to a
20 title insurance agent in connection with a title insurance transaction;

21 (ii) the payment of an earned commission to a duly appointed title
22 insurance agent for services actually performed in the issuance of the
23 policy of title insurance; or

24 (iii) the payment of reasonable entertainment and advertising
25 expenses.

26 (d) Nothing in this section prohibits the division of rates and charges
27 between or among a title insurance company and its agent, or one or more
28 title insurance companies and one or more title insurance agents, if such
29 division of rates and charges does not constitute an unlawful rebate under
30 the provisions of this section and is not in payment of a forwarding fee or a
31 finder's fee.

32 (e) As used in subsections ~~(14)(e)~~ *(15)(e)* through ~~(14)(i)~~ *(15)(i)*,
33 unless the context otherwise requires:

34 (i) "Associate" means any firm, association, organization, partnership,
35 business trust, corporation or other legal entity organized for profit in
36 which a producer of title business is a director, officer or partner thereof,
37 or owner of a financial interest; the spouse or any relative within the
38 second degree by blood or marriage of a producer of title business who is a
39 natural person; any director, officer or employee of a producer of title
40 business or associate; any legal entity that controls, is controlled by, or is
41 under common control with a producer of title business or associate; and
42 any natural person or legal entity with whom a producer of title business or
43 associate has any agreement, arrangement or understanding or pursues any

1 course of conduct, the purpose or effect of which is to evade the provisions
2 of this section.

3 (ii) "Financial interest" means any direct or indirect interest, legal or
4 beneficial, where the holder thereof is or will be entitled to 1% or more of
5 the net profits or net worth of the entity in which such interest is held.
6 Notwithstanding the foregoing, an interest of less than 1% or any other
7 type of interest shall constitute a "financial interest" if the primary purpose
8 of the acquisition or retention of that interest is the financial benefit to be
9 obtained as a consequence of that interest from the referral of title
10 business.

11 (iii) "Person" means any natural person, partnership, association,
12 cooperative, corporation, trust or other legal entity.

13 (iv) "Producer of title business" or "producer" means any person,
14 including any officer, director or owner of 5% or more of the equity or
15 capital or both of any person, engaged in this state in the trade, business,
16 occupation or profession of:

17 (A) Buying or selling interests in real property;

18 (B) making loans secured by interests in real property; or

19 (C) acting as broker, agent, representative or attorney for a person
20 who buys or sells any interest in real property or who lends or borrows
21 money with such interest as security.

22 (v) "Refer" means to direct or cause to be directed or to exercise any
23 power or influence over the direction of title insurance business, whether
24 or not the consent or approval of any other person is sought or obtained
25 with respect to the referral.

26 (f) No title insurer or title agent may accept any order for, issue a title
27 insurance policy to, or provide services to, an applicant if it knows or has
28 reason to believe that the applicant was referred to it by any producer of
29 title business or by any associate of such producer, where the producer, the
30 associate, or both, have a financial interest in the title insurer or title agent
31 to which business is referred unless the producer has disclosed to the
32 buyer, seller and lender the financial interest of the producer of title
33 business or associate referring the title insurance business.

34 (g) No title insurer or title agent may accept an order for title
35 insurance business, issue a title insurance policy, or receive or retain any
36 premium, or charge in connection with any transaction if: (i) The title
37 insurer or title agent knows or has reason to believe that the transaction
38 will constitute controlled business for that title insurer or title agent; and
39 (ii) 70% or more of the closed title orders of that title insurer or title agent
40 during the 12 full calendar months immediately preceding the month in
41 which the transaction takes place is derived from controlled business. The
42 prohibitions contained in this paragraph shall not apply to transactions
43 involving real estate located in a county that has a population, as shown by

1 the last preceding decennial census, of 10,000 or less.

2 (h) Within 90 days following the end of each business year, as
3 established by the title insurer or title agent, each title insurer or title agent
4 shall file with the department of insurance and any title insurer with which
5 the title agent maintains an underwriting agreement, a report executed by
6 the title insurer's or title agent's chief executive officer or designee, under
7 penalty of perjury, stating the percent of closed title orders originating
8 from controlled business. The failure of a title insurer or title agent to
9 comply with the requirements of this section, at the discretion of the
10 commissioner, shall be grounds for the suspension or revocation of a
11 license or other disciplinary action, with the commissioner able to mitigate
12 any such disciplinary action if the title insurer or title agent is found to be
13 in substantial compliance with competitive behavior as defined by federal
14 housing and urban development statement of policy 1996-2.

15 (i) (1) No title insurer or title agent may accept any title insurance
16 order or issue a title insurance policy to any person if it knows or has
17 reason to believe that such person was referred to it by any producer of
18 title business or by any associate of such producer, where the producer, the
19 associate, or both, have a financial interest in the title insurer or title agent
20 to which business is referred unless the producer has disclosed in writing to
21 the person so referred the fact that such producer or associate has a
22 financial interest in the title insurer or title agent, the nature of the
23 financial interest and a written estimate of the charge or range of charges
24 generally made by the title insurer or agent for the title services. Such
25 disclosure shall include language stating that the consumer is not obligated
26 to use the title insurer or agent in which the referring producer or associate
27 has a financial interest and shall include the names and telephone numbers
28 of not less than three other title insurers or agents that operate in the
29 county in which the property is located. If fewer than three insurers or
30 agents operate in that county, the disclosure shall include all title insurers
31 or agents operating in that county. Such written disclosure shall be signed
32 by the person so referred and must have occurred prior to any commitment
33 having been made to such title insurer or agent.

34 (2) No producer of title business or associate of such producer shall
35 require, directly or indirectly, as a condition to selling or furnishing any
36 other person any loan or extension thereof, credit, sale, property, contract,
37 lease or service, that such other person shall purchase title insurance of any
38 kind through any title agent or title insurer if such producer has a financial
39 interest in such title agent or title insurer.

40 (3) No title insurer or title agent may accept any title insurance order
41 or issue a title insurance policy to any person it knows or has reason to
42 believe that the name of the title company was pre-printed in the sales
43 contract, prior to the buyer or seller selecting that title company.

1 (4) Nothing in this paragraph shall prohibit any producer of title
2 business or associate of such producer from referring title business to any
3 title insurer or title agent of such producer's or associate's choice; and, if
4 such producer or associate of such producer has any financial interest in
5 the title insurer, from receiving income, profits or dividends produced or
6 realized from such financial interest, ~~so long as if:~~

7 (a) Such financial interest is disclosed to the purchaser of the title
8 insurance in accordance with paragraphs (i)(1) through (i)(4);

9 (b) the payment of income, profits or dividends is not in exchange for
10 the referral of business; and

11 (c) the receipt of income, profits or dividends constitutes only a return
12 on the investment of the producer or associate.

13 (5) Any producer of title business or associate of such producer who
14 violates the provisions of paragraphs (i)(2) through (i)(4), or any title
15 insurer or title agent who accepts an order for title insurance knowing that
16 it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other
17 action that may be taken by the commissioner of insurance, shall be
18 subject to a fine by the commissioner in an amount equal to five times the
19 premium for the title insurance and, if licensed pursuant to K.S.A. 58-3034
20 et seq., and amendments thereto, shall be deemed to have committed a
21 prohibited act pursuant to K.S.A. 58-3602, and amendments thereto, and
22 shall be liable to the purchaser of such title insurance in an amount equal
23 to the premium for the title insurance.

24 (6) Any title insurer or title agent that is a competitor of any title
25 insurer or title agent that, subsequent to the effective date of this act, has
26 violated or is violating the provisions of this paragraph, shall have a cause
27 of action against such title insurer or title agent and, upon establishing the
28 existence of a violation of any such provision, shall be entitled, in addition
29 to any other damages or remedies provided by law, to such equitable or
30 injunctive relief as the court deems proper. In any such action under this
31 subsection, the court may award to the successful party the court costs of
32 the action together with reasonable attorney fees.

33 (7) The commissioner shall also require each title agent to provide
34 core title services as required by the real estate settlement procedures act.

35 (j) The commissioner shall adopt any rules and regulations necessary
36 to carry out the provisions of this act.

37 ~~(15)(16)~~ *Disclosure of nonpublic personal information.* (a) No person
38 shall disclose any nonpublic personal information contrary to the
39 provisions of title V of the Gramm-Leach-Bliley act of 1999-~~4~~, public law
40 106-102). The commissioner may adopt rules and regulations necessary to
41 carry out this subsection. Such rules and regulations shall be consistent
42 with and not more restrictive than the model regulation adopted on
43 September 26, 2000, by the national association of insurance

1 commissioners entitled "Privacy of consumer financial and health
2 information regulation"."

3 (b) Nothing in this subsection shall be deemed or construed to
4 authorize the promulgation or adoption of any regulation that preempts,
5 supersedes or is inconsistent with any provision of Kansas law concerning
6 requirements for notification of, or obtaining consent from, a parent,
7 guardian or other legal custodian of a minor relating to any matter
8 pertaining to the health and medical treatment for such minor.

9 Sec. 2. K.S.A. 2024 Supp. 40-4909 is hereby amended to read as
10 follows: 40-4909. (a) The commissioner may deny, suspend, revoke or
11 refuse renewal of any license issued under this act if the commissioner
12 finds that the applicant or license holder has:

13 (1) Provided incorrect, misleading, incomplete or untrue information
14 in the license application-;

15 (2) violated *any*:

16 (A) ~~any~~ Provision of chapter 40 of the Kansas Statutes Annotated,
17 and amendments thereto, or any rules and regulations promulgated
18 thereunder;

19 (B) ~~any~~ subpoena or order of the commissioner;

20 (C) ~~any~~ insurance law or regulation of another state; or

21 (D) ~~any~~ subpoena or order issued by the regulatory official for
22 insurance in another state.

23 (3) obtained or attempted to obtain a license under this act through
24 misrepresentation or fraud-;

25 (4) improperly withheld, misappropriated or converted any moneys or
26 properties received in the course of doing insurance business-;

27 (5) intentionally misrepresented the provisions, terms and conditions
28 of an actual or proposed insurance contract or application for insurance-;

29 (6) been convicted of a misdemeanor or felony-;

30 (7) admitted to or been found to have committed any insurance unfair
31 trade practice or fraud in violation of K.S.A. 40-2404, and amendments
32 thereto-;

33 (8) used any fraudulent, coercive, or dishonest practice, or
34 demonstrated any incompetence, untrustworthiness or financial
35 irresponsibility in the conduct of business in this state or elsewhere-;

36 (9) had an insurance agent license, or its equivalent, denied,
37 suspended or revoked in any state, district or territory-;

38 (10) forged another person's name to an application for insurance or
39 to any document related to an insurance transaction-;

40 (11) improperly used notes or any other reference material to
41 complete an examination for an insurance license issued under this act-;

42 (12) knowingly accepted insurance business from an individual who
43 is not licensed-;

1 (13) failed to comply with any administrative or court order imposing
2 a child support obligation upon the applicant or license holder-;

3 (14) failed to pay any state income tax or comply with any
4 administrative or court order directing payment of state income tax-;

5 (15) except as otherwise permitted by law, rebated the whole or any
6 part of any insurance premium or offered in connection with the
7 presentation of any contract of insurance any other inducement not
8 contained in the contract of insurance-;

9 (16) made any misleading representation or incomplete comparison
10 of policies to any person for the purposes of inducing or tending to induce
11 such person to lapse, forfeit or surrender such person's insurance then in
12 force-; *and*

13 (17) failed to respond to an inquiry from the commissioner within 15
14 business days, *or failed to respond to an inquiry within 14 calendar days*
15 *from the commissioner concerning a complaint, as defined in K.S.A. 40-*
16 *2404, and amendments thereto, or an inquiry related to a particular*
17 *matter.*

18 (b) In addition, the commissioner may deny, suspend, revoke or
19 refuse renewal of any license issued under this act if the commissioner
20 finds that the interests of the insurer or the insurable interests of the public
21 are not properly served under such license.

22 (c) (1) When considering whether to deny, suspend, revoke or refuse
23 to renew the application of an individual who has been convicted of a
24 misdemeanor or felony, the commissioner shall consider the:

25 (A) Applicant's age at the time of the conduct;

26 (B) recency of the conduct;

27 (C) reliability of the information concerning the conduct;

28 (D) seriousness of the conduct;

29 (E) factors underlying the conduct;

30 (F) cumulative effect of the conduct or information;

31 (G) evidence of rehabilitation;

32 (H) applicant's social contributions since the conduct;

33 (I) applicant's candor in the application process; and

34 (J) materiality of any omissions or misrepresentations.

35 (2) In determining whether to reinstate or grant to an applicant a
36 license that has been revoked, the commissioner shall consider the:

37 (A) Present moral fitness of the applicant;

38 (B) demonstrated consciousness by the applicant of the wrongful
39 conduct and disrepute that the conduct has brought to the insurance
40 profession;

41 (C) extent of the applicant's rehabilitation;

42 (D) seriousness of the original conduct;

43 (E) applicant's conduct subsequent to discipline;

- 1 (F) amount of time that has elapsed since the original discipline;
- 2 (G) applicant's character, maturity and experience at the time of
3 revocation; and
- 4 (H) applicant's present competence and skills in the insurance
5 industry.
- 6 (d) Any action taken under this section that affects any license or
7 imposes any administrative penalty shall be taken only after notice and an
8 opportunity for a hearing conducted in accordance with the provisions of
9 the Kansas administrative procedure act.
- 10 (e) The license of any business entity may be suspended, revoked or
11 refused renewal if the insurance commissioner finds that any violation
12 committed by an individual licensee employed by or acting on behalf of
13 such business entity was known by or should have been known by one or
14 more of the partners, officers or managers acting on behalf of the business
15 entity and:
- 16 (1) Such violation was not reported to the insurance commissioner by
17 such business entity; or
- 18 (2) such business entity failed to take any corrective action.
- 19 (f) None of the following actions shall deprive the commissioner of
20 any jurisdiction or right to institute or proceed with any disciplinary
21 proceeding against such license, ~~to~~ render a decision suspending, revoking
22 or refusing to renew such license; ~~or to~~ establish and make a record of the
23 facts of any violation of law for any *of the following* lawful ~~purpose~~
24 *purposes*:
- 25 (1) The imposition of an administrative penalty under this section;
- 26 (2) the lapse or suspension of any license issued under this act by
27 operation of law;
- 28 (3) the licensee's failure to renew any license issued under this act; or
- 29 (4) the licensee's voluntary surrender of any license issued under this
30 act. No such disciplinary proceeding shall be instituted against any
31 licensee after the expiration of two years from the termination of the
32 license.
- 33 (g) Whenever the commissioner imposes any administrative penalty
34 or denies, suspends, revokes or refuses renewal of any license pursuant to
35 subsection (a), any costs incurred as a result of conducting an
36 administrative hearing authorized under the provisions of this section shall
37 be assessed against the person who is the subject of the hearing or any
38 business entity represented by such person who is the party to the matters
39 giving rise to the hearing. As used in this subsection, "costs" ~~shall include~~
40 *includes* witness fees, mileage allowances, any costs associated with the
41 reproduction of documents that become a part of the hearing record and
42 the expense of making a record of the hearing.
- 43 (h) No person whose license as an agent or broker had been

1 suspended or revoked shall be employed by any insurance company doing
2 business in this state either directly, indirectly, as an independent
3 contractor or otherwise to negotiate or effect contracts of insurance,
4 suretyship or indemnity or perform any act toward the solicitation of or
5 transaction of any business of insurance during the period of such
6 suspension or revocation.

7 (i) In lieu of taking any action under subsection (a), the commissioner
8 may:

9 (1) Censure the person; or

10 (2) issue an order imposing an administrative penalty up to a
11 maximum of \$500 for each violation but not to exceed \$2,500 for the same
12 violation occurring within any six consecutive calendar months from the
13 date of the original violation unless such person knew or should have
14 known that the violative act could give rise to disciplinary action under
15 subsection (a). If such person knew or reasonably should have known the
16 violative act could give rise to any disciplinary proceeding authorized by
17 subsection (a), the commissioner may impose a penalty up to a maximum
18 of \$1,000 for each violation but not to exceed \$5,000 for the same
19 violation occurring within any six consecutive calendar months from the
20 date of the imposition of the original administrative penalty.

21 (j) (1) An applicant to whom a license has been denied after a hearing
22 shall not apply for a license again until after the expiration of a period of
23 one year from the date of the commissioner's order.

24 (2) A licensee whose license was revoked shall not apply for a license
25 again until after the expiration of a period of two years from the date of the
26 commissioner's order.

27 Sec. 3. K.S.A. 2024 Supp. 40-2404 and 40-4909 are hereby repealed.

28 Sec. 4. This act shall take effect and be in force from and after its
29 publication in the statute book.