

Senate Substitute for HOUSE BILL No. 2281

By Committee on Public Health and Welfare

3-19

1 AN ACT concerning the commissioner of insurance; relating to powers,
2 duties and functions relating to the vision care services act and the
3 medical assistance fee fund; amending K.S.A. 2014 Supp. 40-2404, 40-
4 3213, 40-5905 and 40-5906 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) There is hereby created in the state treasury the
8 medical assistance fee fund. The commissioner of insurance shall remit to
9 the state treasurer, in accordance with the provisions of K.S.A. 75-4215,
10 and amendments thereto, all moneys collected or received by the
11 commissioner from health maintenance organizations and medicare
12 provider organizations for the fees specified in K.S.A. 40-3213, and
13 amendments thereto. Upon receipt of each such remittance, the state
14 treasurer shall deposit the entire amount in the state treasury to the credit
15 of the medical assistance fee fund.

16 (b) Moneys in the medical assistance fee fund shall be expended for
17 the purpose of medicaid medical assistance payments. All expenditures
18 from the medical assistance fee fund shall be made in accordance with
19 appropriation act upon warrants of the director of accounts and reports
20 issued pursuant to vouchers approved by the secretary of health and
21 environment or the secretary's designee.

22 (c) On or before the 10th of each month, the director of accounts and
23 reports shall transfer from the state general fund to the medical assistance
24 fee fund interest earnings based on:

25 (1) The average daily balance of moneys in the medical programs fee
26 fund for the preceding month; and

27 (2) the net earnings rate of the pooled money investment portfolio for
28 the preceding month.

29 (d) The medical assistance fee fund shall be used for the purposes set
30 forth in this act and for no other governmental purposes. It is the intent of
31 the legislature that the fund shall remain intact and inviolate for the
32 purposes set forth in this act, and moneys in the fund shall not be subject
33 to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and
34 amendments thereto.

35 (e) The secretary of health and environment shall prepare and deliver
36 to the legislature on or before the first day of each regular legislative

1 session, a report which summarizes all expenditures from the medical
2 assistance fee fund, fund revenues and recommendations regarding the
3 adequacy of the fund to support necessary medical assistance programs.

4 (f) The provisions of this section shall expire on December 31, 2017.

5 Sec. 2. K.S.A. 2014 Supp. 40-2404 is hereby amended to read as
6 follows: 40-2404. The following are hereby defined as unfair methods of
7 competition and unfair or deceptive acts or practices in the business of
8 insurance:

9 (1) *Misrepresentations and false advertising of insurance policies.*

10 Making, issuing, circulating or causing to be made, issued or circulated,
11 any estimate, illustration, circular, statement, sales presentation, omission
12 or comparison which:

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

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

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

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

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

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

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

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

30 (2) *False information and advertising generally.* Making, publishing,
31 disseminating, circulating or placing before the public, or causing, directly
32 or indirectly, to be made, published, disseminated, circulated or placed
33 before the public, in a newspaper, magazine or other publication, or in the
34 form of a notice, circular, pamphlet, letter or poster, or over any radio or
35 television station, or in any other way, an advertisement, announcement or
36 statement containing any assertion, misrepresentation or statement with
37 respect to the business of insurance or with respect to any person in the
38 conduct of such person's insurance business, which is untrue, deceptive or
39 misleading.

40 (3) *Defamation.* Making, publishing, disseminating or circulating,
41 directly or indirectly, or aiding, abetting or encouraging the making,
42 publishing, disseminating or circulating of any oral or written statement or
43 any pamphlet, circular, article or literature which is false, or maliciously

1 critical of or derogatory to the financial condition of any person, and
2 which is calculated to injure such person.

3 (4) *Boycott, coercion and intimidation.* Entering into any agreement
4 to commit, or by any concerted action committing, any act of boycott,
5 coercion or intimidation resulting in or tending to result in unreasonable
6 restraint of the business of insurance, or by any act of boycott, coercion or
7 intimidation monopolizing or attempting to monopolize any part of the
8 business of insurance.

9 (5) *False statements and entries.* (a) Knowingly filing with any
10 supervisory or other public official, or knowingly making, publishing,
11 disseminating, circulating or delivering to any person, or placing before
12 the public, or knowingly causing directly or indirectly, to be made,
13 published, disseminated, circulated, delivered to any person, or placed
14 before the public, any false material statement of fact as to the financial
15 condition of a person.

16 (b) Knowingly making any false entry of a material fact in any book,
17 report or statement of any person or knowingly omitting to make a true
18 entry of any material fact pertaining to the business of such person in any
19 book, report or statement of such person.

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

27 (7) *Unfair discrimination.* (a) Making or permitting any unfair
28 discrimination between individuals of the same class and equal expectation
29 of life in the rates charged for any contract of life insurance or life annuity
30 or in the dividends or other benefits payable thereon, or in any other of the
31 terms and conditions of such contract.

32 (b) Making or permitting any unfair discrimination between
33 individuals of the same class and of essentially the same hazard in the
34 amount of premium, policy fees or rates charged for any policy or contract
35 of accident or health insurance or in the benefits payable thereunder, or in
36 any of the terms or conditions of such contract, or in any other manner
37 whatever.

38 (c) Refusing to insure, or refusing to continue to insure, or limiting
39 the amount, extent or kind of coverage available to an individual, or
40 charging an individual a different rate for the same coverage solely
41 because of blindness or partial blindness. With respect to all other
42 conditions, including the underlying cause of the blindness or partial
43 blindness, persons who are blind or partially blind shall be subject to the

1 same standards of sound actuarial principles or actual or reasonably
2 anticipated experience as are sighted persons. Refusal to insure includes
3 denial by an insurer of disability insurance coverage on the grounds that
4 the policy defines "disability" as being presumed in the event that the
5 insured loses such person's eyesight. However, an insurer may exclude
6 from coverage disabilities consisting solely of blindness or partial
7 blindness when such condition existed at the time the policy was issued.

8 (d) Refusing to insure, or refusing to continue to insure, or limiting
9 the amount, extent or kind of coverage available for accident and health
10 and life insurance to an applicant who is the proposed insured or charge a
11 different rate for the same coverage or excluding or limiting coverage for
12 losses or denying a claim incurred by an insured as a result of abuse based
13 on the fact that the applicant who is the proposed insured is, has been, or
14 may be the subject of domestic abuse, except as provided in subpart (v).
15 "Abuse" as used in this subsection (7)(d) means one or more acts defined
16 in ~~subsection (a) or (b) of K.S.A. 60-3102(a) or (b)~~, and amendments
17 thereto, between family members, current or former household members,
18 or current or former intimate partners.

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

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

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

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

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

42 (A) The person routinely underwrites or rates such condition in the
43 same manner with respect to an insured or an applicant who is not a victim

1 of abuse;

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

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

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

10 (vii) The provisions of subsection (d) shall apply to all policies of life
11 and accident and health insurance issued in this state after the effective
12 date of this act and all existing contracts which are renewed on or after the
13 effective date of this act.

14 (8) *Rebates.* (a) Except as otherwise expressly provided by law,
15 knowingly permitting, offering to make or making any contract of life
16 insurance, life annuity or accident and health insurance, or agreement as to
17 such contract other than as plainly expressed in the insurance contract
18 issued thereon; paying, allowing, giving or offering to pay, allow or give,
19 directly or indirectly, as inducement to such insurance, or annuity, any
20 rebate of premiums payable on the contract, any special favor or advantage
21 in the dividends or other benefits thereon, or any valuable consideration or
22 inducement whatever not specified in the contract; or giving, selling,
23 purchasing or offering to give, sell or purchase as inducement to such
24 insurance contract or annuity or in connection therewith, any stocks, bonds
25 or other securities of any insurance company or other corporation,
26 association or partnership, or any dividends or profits accrued thereon, or
27 anything of value whatsoever not specified in the contract.

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

31 (i) In the case of any contract of life insurance or life annuity, paying
32 bonuses to policyholders or otherwise abating their premiums in whole or
33 in part out of surplus accumulated from nonparticipating insurance. Any
34 such bonuses or abatement of premiums shall be fair and equitable to
35 policyholders and for the best interests of the company and its
36 policyholders;

37 (ii) in the case of life insurance policies issued on the industrial debit
38 plan, making allowance to policyholders who have continuously for a
39 specified period made premium payments directly to an office of the
40 insurer in an amount which fairly represents the saving in collection
41 expenses; or

42 (iii) readjustment of the rate of premium for a group insurance policy
43 based on the loss or expense experience thereunder, at the end of the first

1 or any subsequent policy year of insurance thereunder, which may be
2 made retroactive only for such policy year.

3 (9) *Unfair claim settlement practices.* It is an unfair claim settlement
4 practice if any of the following or any rules and regulations pertaining
5 thereto are: (A) Committed flagrantly and in conscious disregard of such
6 provisions, or (B) committed with such frequency as to indicate a general
7 business practice.

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

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

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

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

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

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

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

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

28 (i) attempting to settle claims on the basis of an application which
29 was altered without notice to, or knowledge or consent of the insured;

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

33 (k) making known to insureds or claimants a policy of appealing from
34 arbitration awards in favor of insureds or claimants for the purpose of
35 compelling them to accept settlements or compromises less than the
36 amount awarded in arbitration;

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

42 (m) failing to promptly settle claims, where liability has become
43 reasonably clear, under one portion of the insurance policy coverage in

1 order to influence settlements under other portions of the insurance policy
2 coverage; or

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

6 (10) *Failure to maintain complaint handling procedures.* Failure of
7 any person; who is an insurer on an insurance policy, to maintain a
8 complete record of all the complaints which it has received since the date
9 of its last examination under K.S.A. 40-222, and amendments thereto; but
10 no such records shall be required for complaints received prior to the
11 effective date of this act. The record shall indicate the total number of
12 complaints, their classification by line of insurance, the nature of each
13 complaint, the disposition of the complaints, the date each complaint was
14 originally received by the insurer and the date of final disposition of each
15 complaint. For purposes of this subsection, "complaint" means any written
16 communication primarily expressing a grievance related to the acts and
17 practices set out in this section.

18 (11) *Misrepresentation in insurance applications.* Making false or
19 fraudulent statements or representations on or relative to an application for
20 an insurance policy, for the purpose of obtaining a fee, commission,
21 money or other benefit from any insurer, agent, broker or individual.

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

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

28 (14) *Rebates and other inducements in title insurance.* (a) No title
29 insurance company or title insurance agent, or any officer, employee,
30 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,
31 allow or give, directly or indirectly, as an inducement to obtaining any title
32 insurance business, any rebate, reduction or abatement of any rate or
33 charge made incident to the issuance of such insurance, any special favor
34 or advantage not generally available to others of the same classification, or
35 any money, thing of value or other consideration or material inducement.
36 The words "charge made incident to the issuance of such insurance"
37 includes, without limitations, escrow, settlement and closing charges.

38 (b) No insured named in a title insurance policy or contract nor any
39 other person directly or indirectly connected with the transaction involving
40 the issuance of the policy or contract, including, but not limited to,
41 mortgage lender, real estate broker, builder, attorney or any officer,
42 employee, agent representative or solicitor thereof, or any other person
43 may knowingly receive or accept, directly or indirectly, any rebate,

1 reduction or abatement of any charge, or any special favor or advantage or
2 any monetary consideration or inducement referred to in *subsection* (14)
3 (a).

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

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

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

10 (iii) the payment of reasonable entertainment and advertising
11 expenses.

12 (d) Nothing in this section prohibits the division of rates and charges
13 between or among a title insurance company and its agent, or one or more
14 title insurance companies and one or more title insurance agents, if such
15 division of rates and charges does not constitute an unlawful rebate under
16 the provisions of this section and is not in payment of a forwarding fee or a
17 finder's fee.

18 (e) As used in paragraphs (e) through (i)(7) of this subpart, unless the
19 context otherwise requires:

20 (i) "Associate" means any firm, association, organization, partnership,
21 business trust, corporation or other legal entity organized for profit in
22 which a producer of title business is a director, officer or partner thereof,
23 or owner of a financial interest; the spouse or any relative within the
24 second degree by blood or marriage of a producer of title business who is a
25 natural person; any director, officer or employee of a producer of title
26 business or associate; any legal entity that controls, is controlled by, or is
27 under common control with a producer of title business or associate; and
28 any natural person or legal entity with whom a producer of title business or
29 associate has any agreement, arrangement or understanding or pursues any
30 course of conduct, the purpose or effect of which is to evade the provisions
31 of this section.

32 (ii) "Financial interest" means any direct or indirect interest, legal or
33 beneficial, where the holder thereof is or will be entitled to 1% or more of
34 the net profits or net worth of the entity in which such interest is held.
35 Notwithstanding the foregoing, an interest of less than 1% or any other
36 type of interest shall constitute a "financial interest" if the primary purpose
37 of the acquisition or retention of that interest is the financial benefit to be
38 obtained as a consequence of that interest from the referral of title
39 business.

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

42 (iv) "Producer of title business" or "producer" means any person,
43 including any officer, director or owner of 5% or more of the equity or

1 capital or both of any person, engaged in this state in the trade, business,
2 occupation or profession of:

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

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

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

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

12 (f) No title insurer or title agent may accept any order for, issue a title
13 insurance policy to, or provide services to, an applicant if it knows or has
14 reason to believe that the applicant was referred to it by any producer of
15 title business or by any associate of such producer, where the producer, the
16 associate, or both, have a financial interest in the title insurer or title agent
17 to which business is referred unless the producer has disclosed to the
18 buyer, seller and lender the financial interest of the producer of title
19 business or associate referring the title insurance business.

20 (g) No title insurer or title agent may accept an order for title
21 insurance business, issue a title insurance policy, or receive or retain any
22 premium, or charge in connection with any transaction if: (i) The title
23 insurer or title agent knows or has reason to believe that the transaction
24 will constitute controlled business for that title insurer or title agent, and
25 (ii) 70% or more of the closed title orders of that title insurer or title agent
26 during the 12 full calendar months immediately preceding the month in
27 which the transaction takes place is derived from controlled business. The
28 prohibitions contained in this subparagraph shall not apply to transactions
29 involving real estate located in a county that has a population, as shown by
30 the last preceding decennial census, of 10,000 or less.

31 (h) Within 90 days following the end of each business year, as
32 established by the title insurer or title agent, each title insurer or title agent
33 shall file with the department of insurance and any title insurer with which
34 the title agent maintains an underwriting agreement, a report executed by
35 the title insurer's or title agent's chief executive officer or designee, under
36 penalty of perjury, stating the percent of closed title orders originating
37 from controlled business. The failure of a title insurer or title agent to
38 comply with the requirements of this section, at the discretion of the
39 commissioner, shall be grounds for the suspension or revocation of a
40 license or other disciplinary action, with the commissioner able to mitigate
41 any such disciplinary action if the title insurer or title agent is found to be
42 in substantial compliance with competitive behavior as defined by federal
43 housing and urban development statement of policy 1996-2.

1 (i) (1) No title insurer or title agent may accept any title insurance
2 order or issue a title insurance policy to any person if it knows or has
3 reason to believe that such person was referred to it by any producer of
4 title business or by any associate of such producer, where the producer, the
5 associate, or both, have a financial interest in the title insurer or title agent
6 to which business is referred unless the producer has disclosed in writing
7 to the person so referred the fact that such producer or associate has a
8 financial interest in the title insurer or title agent, the nature of the
9 financial interest and a written estimate of the charge or range of charges
10 generally made by the title insurer or agent for the title services. Such
11 disclosure shall include language stating that the consumer is not obligated
12 to use the title insurer or agent in which the referring producer or associate
13 has a financial interest and shall include the names and telephone numbers
14 of not less than three other title insurers or agents which operate in the
15 county in which the property is located. If fewer than three insurers or
16 agents operate in that county, the disclosure shall include all title insurers
17 or agents operating in that county. Such written disclosure shall be signed
18 by the person so referred and must have occurred prior to any commitment
19 having been made to such title insurer or agent.

20 (2) No producer of title business or associate of such producer shall
21 require, directly or indirectly, as a condition to selling or furnishing any
22 other person any loan or extension thereof, credit, sale, property, contract,
23 lease or service, that such other person shall purchase title insurance of any
24 kind through any title agent or title insurer if such producer has a financial
25 interest in such title agent or title insurer.

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

30 (4) Nothing in this subpart (i) shall prohibit any producer of title
31 business or associate of such producer from referring title business to any
32 title insurer or title agent of such producer's or associate's choice, and, if
33 such producer or associate of such producer has any financial interest in
34 the title insurer, from receiving income, profits or dividends produced or
35 realized from such financial interest, so long as:

36 (a) Such financial interest is disclosed to the purchaser of the title
37 insurance in accordance with part (i)(1) through (4) of this subpart;

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

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

42 (5) Any producer of title business or associate of such producer who
43 violates the provisions of paragraphs (i)(2) through (i)(4), or any title

1 insurer or title agent who accepts an order for title insurance knowing that
2 it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other
3 action which may be taken by the commissioner of insurance, shall be
4 subject to a fine by the commissioner in an amount equal to five times the
5 premium for the title insurance and, if licensed pursuant to K.S.A. 58-3034
6 et seq., and amendments thereto, shall be deemed to have committed a
7 prohibited act pursuant to K.S.A. 58-3602, and amendments thereto, and
8 shall be liable to the purchaser of such title insurance in an amount equal
9 to the premium for the title insurance.

10 (6) Any title insurer or title agent that is a competitor of any title
11 insurer or title agent that, subsequent to the effective date of this act, has
12 violated or is violating the provisions of subpart (i), shall have a cause of
13 action against such title insurer or title agent and, upon establishing the
14 existence of a violation of any such provision, shall be entitled, in addition
15 to any other damages or remedies provided by law, to such equitable or
16 injunctive relief as the court deems proper. In any such action under this
17 subsection, the court may award to the successful party the court costs of
18 the action together with reasonable attorney fees.

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

21 (j) The commissioner shall adopt any regulations necessary to carry
22 out the provisions of this act.

23 (15) *Disclosure of nonpublic personal information.* (a) No person
24 shall disclose any nonpublic personal information contrary to the
25 provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law
26 106-102). The commissioner may adopt rules and regulations necessary to
27 carry out this section. Such rules and regulations shall be consistent with
28 and not more restrictive than the model regulation adopted on September
29 26, 2000, by the national association of insurance commissioners entitled
30 "Privacy of consumer financial and health information regulation".

31 (b) Any rules and regulations adopted by the commissioner which
32 implement article V of the model regulation adopted on September 26,
33 2000, by the national association of insurance commissioners entitled
34 "Privacy of consumer financial and health information regulation" shall
35 become effective on and after February 1, 2002.

36 (c) Nothing in this paragraph (15) shall be deemed or construed to
37 authorize the promulgation or adoption of any regulation which preempts,
38 supersedes or is inconsistent with any provision of Kansas law concerning
39 requirements for notification of, or obtaining consent from, a parent,
40 guardian or other legal custodian of a minor relating to any matter
41 pertaining to the health and medical treatment for such minor.

42 (16) *Violation of the vision care services act. Failure of an insurer,
43 health insurer, health benefit plan or vision care insurance provider to*

1 *comply with the provisions of K.S.A. 2014 Supp. 40-5901 et seq., and*
2 *amendments thereto, shall constitute a violation of the vision care services*
3 *act and a violation of the unfair trade practice law, K.S.A. 40-2401 et seq.,*
4 *and amendments thereto.*

5 Sec. 3. K.S.A. 2014 Supp. 40-3213 is hereby amended to read as
6 follows: 40-3213. (a) Every health maintenance organization and medicare
7 provider organization subject to this act shall pay to the commissioner the
8 following fees:

- 9 (1) For filing an application for a certificate of authority, \$150;
- 10 (2) for filing each annual report, \$50;
- 11 (3) for filing an amendment to the certificate of authority, \$10.

12 (b) Every health maintenance organization subject to this act shall
13 pay annually to the commissioner at the time such organization files its
14 annual report, a privilege fee in an amount equal to 1% per annum of the
15 total of all premiums, subscription charges or any other term which may be
16 used to describe the charges made by such organization to enrollees,
17 *except during the period beginning January 1, 2015, and ending*
18 *December 31, 2017, a privilege fee shall be 5½%.* In such computations
19 all such organizations shall be entitled to deduct therefrom any premiums
20 or subscription charges returned on account of cancellations and dividends
21 returned to enrollees. If the commissioner shall determine at any time that
22 the application of the privilege fee would cause a denial of, reduction in or
23 elimination of federal financial assistance to the state or to any health
24 maintenance organization subject to this act, the commissioner is hereby
25 authorized to terminate the operation of such privilege fee.

26 (c) For the purpose of insuring the collection of the privilege fee
27 provided for by subsection (b), every health maintenance organization
28 subject to this act and required by subsection (b) to pay such privilege fee
29 shall at the time it files its annual report, as required by K.S.A. 40-3220,
30 and amendments thereto, make a return, generated by or at the direction of
31 its chief officer or principal managing director, under penalty of K.S.A.
32 2014 Supp. 21-5824, and amendments thereto, to the commissioner,
33 stating the amount of all premiums, assessments and charges received by
34 the health maintenance organization, whether in cash or notes, during the
35 year ending on the last day of the preceding calendar year. Upon the
36 receipt of such returns the commissioner of insurance shall verify the same
37 and assess the fees upon such organization on the basis and at the rate
38 provided herein and such fees shall thereupon become due and payable.

39 (d) Premiums or other charges received by an insurance company
40 from the operation of a health maintenance organization subject to this act
41 shall not be subject to any fee or tax imposed under the provisions of
42 K.S.A. 40-252, and amendments thereto.

43 (e) Fees charged under this section shall be remitted to the state

1 treasurer in accordance with the provisions of K.S.A. 75-4215, and
2 amendments thereto. Upon receipt of each such remittance, the state
3 treasurer shall deposit the entire amount in the state treasury to the credit
4 of the state general fund, *except during the period beginning January 1,*
5 *2015, and ending on December 31, 2017, such deposit shall be to the*
6 *credit of the medical assistance fee fund created by section 2, and*
7 *amendments thereto.*

8 Sec. 4. K.S.A. 2014 Supp. 40-5905 is hereby amended to read as
9 follows: 40-5905. For the purposes of this act:

10 (a) (1) "Covered service" means any service or material for which:

11 (A) Reimbursement from the vision care insurance or health benefit
12 plan is provided for by an insured's vision care insurance plan or health
13 benefit plan contract subject to the application of the vision care insurance
14 or health benefit plan's deductibles, copayments or coinsurance; or

15 (B) a reimbursement would be available subject to the application of
16 any contractual limitations of deductibles or copayments required under
17 the vision care discount plan coinsurance.

18 (2) "Covered services" does not include any services or materials
19 covered or provided at a nominal or de minimus rate.

20 (b) "Contractual discount" means a percentage reduction from a
21 vision care provider's usual and customary rate for providing covered
22 services and materials required under a participating provider agreement.

23 (c) "Discount card" shall have the meaning ascribed to such term in
24 K.S.A. 50-1,100, and amendments thereto.

25 (d) "Health benefit plan" shall have the meaning ascribed to such
26 term in K.S.A. 40-4602, and amendments thereto.

27 (e) "Health insurer" shall have the meaning ascribed to such term in
28 K.S.A. 40-4602, and amendments thereto.

29 (f) "Material" includes, but is not limited to, lenses, devices
30 containing lenses, prisms, lens treatments and coatings, contact lenses,
31 orthoptics, vision training and any prosthetic device necessary to correct,
32 relieve, or treat any defect or abnormal condition of the human eye or its
33 adnexa.

34 (g) "Participating provider agreement" includes a health benefit plan,
35 vision care insurance or a vision care discount plan.

36 (h) "Participating provider" shall have the meaning ascribed to such
37 term in K.S.A. 40-4602, and amendments thereto.

38 (i) "Vision care insurance" means an integrated health benefit plan or
39 vision care insurance policy or contract which provides vision benefits
40 pertaining to the provision of covered services or materials.

41 (j) "Vision care provider" means an optometrist licensed by the board
42 of examiners in optometry or an ophthalmologist licensed by the state
43 board of healing arts.

1 (k) "Vision care discount plan" means any entity ~~governed by K.S.A.~~
2 ~~50-1,100, and amendments thereto~~, which has been specifically authorized
3 by the vision care providers to provide discounts to patients, *but which*
4 *plan is not insurance nor a discount card as defined in K.S.A. 50-1,100,*
5 *and amendments thereto.*

6 Sec. 5. K.S.A. 2014 Supp. 40-5906 is hereby amended to read as
7 follows: 40-5906. (a) K.S.A. 2014 Supp. 40-5901 through 40-5906, and
8 amendments thereto, shall be known and may be cited as the vision care
9 services act.

10 (b) *The commissioner of insurance shall administer the provisions of*
11 *the vision care services act and may adopt such rules and regulations as*
12 *necessary to carry out the provisions of the act as it applies to any insurer,*
13 *health insurer, health benefit plan or vision care insurance provider. Such*
14 *rules and regulations shall be adopted no later than January 1, 2016.*

15 (c) *Any violation of the vision care services act by an insurer, health*
16 *insurer, health benefit plan or vision care insurance provider shall also be*
17 *a violation of the unfair trade practice law, K.S.A. 40-2401 et seq., and*
18 *amendments thereto, and subject to the penalties contained therein.*

19 (d) *The attorney general shall administer the provisions of the vision*
20 *care services act as it applies to discount cards and vision care discount*
21 *plans and may adopt such rules and regulations as necessary to carry out*
22 *the provisions of the act. Such rules and regulations shall be adopted no*
23 *later than January 1, 2016.*

24 Sec. 6. K.S.A. 2014 Supp. 40-2404, 40-3213, 40-5905 and 40-5906
25 are hereby repealed.

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