

HOUSE BILL No. 2635

By Committee on Insurance and Pensions

2-8

1 AN ACT concerning insurance; relating to the unfair trade practices act;
2 adopting the national association of insurance commissioner's
3 amendments thereto; excluding commercial property and casualty
4 insurance producers, brokers and insurers from prohibitions on giving
5 rebates, discounts, gifts or other valuable consideration as an
6 inducement to sales; amending K.S.A. 40-966, 40-2404 and 40-4909
7 and repealing the existing sections.
8

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

10 Section 1. K.S.A. 40-966 is hereby amended to read as follows: 40-
11 966. (a) *Except as provided in subsection (b), no broker or agent producer*
12 *shall knowingly charge, demand or receive a premium for any policy of*
13 *insurance except in accordance with the provisions of this act. No insurer*
14 *or employee thereof; and no broker or agent producer shall pay, allow, or*
15 *give, or offer to pay, or allow to give, directly or indirectly, as an*
16 *inducement to insurance, or after insurance has been effected, any rebate,*
17 *discount, abatement, credit or reduction of the premium named in a policy*
18 *of insurance, or any special favor or advantage in the dividends or other*
19 *benefits to accrue thereon, or any valuable consideration or inducement*
20 *whatever, not specified in the policy of insurance, except to the extent*
21 *provided for in an applicable filing or otherwise permitted by law. No*
22 *insured named in a policy of insurance, or any employee of such insured*
23 *shall knowingly receive or accept directly or indirectly, any such rebate,*
24 *discount, abatement, credit or reduction of premium, or any such special*
25 *favor or valuable consideration or inducement. Nothing in this section*
26 *shall be construed as prohibiting the payment of commissions or other*
27 *compensation to duly licensed agents and brokers, nor as prohibiting any*
28 *insurer from allowing or returning to its participating policyholder,*
29 *members or subscribers, dividends, savings or unabsorbed premium*
30 *deposits.*

31 *(b) (1) The provisions of subsection (a) shall not apply to the offering*
32 *to make or making of any contract of commercial property and casualty*
33 *insurance.*

34 *(2) The exclusion provided under paragraph (1) shall not apply to*
35 *producer commission reductions not included in insurance company rate*
36 *filings.*

1 (c) As used in this section ~~the word~~, "insurance" includes suretyship
2 and ~~the word~~ "policy" includes bond.

3 Sec. 2. K.S.A. 40-2404 is hereby amended to read as follows: 40-
4 2404. The following are hereby defined as unfair methods of competition
5 and unfair or deceptive acts or practices in the business of insurance:

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

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

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

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

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

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

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

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

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

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

37 (3) *Defamation.* Making, publishing, disseminating or circulating,
38 directly or indirectly, or aiding, abetting or encouraging the making,
39 publishing, disseminating or circulating of any oral or written statement or
40 any pamphlet, circular, article or literature that is false, or maliciously
41 critical of or derogatory to the financial condition of any person, and that
42 is calculated to injure such person.

43 (4) *Boycott, coercion and intimidation.* Entering into any agreement

1 to commit, or by any concerted action committing, any act of boycott,
2 coercion or intimidation resulting in or tending to result in unreasonable
3 restraint of the business of insurance, or by any act of boycott, coercion or
4 intimidation monopolizing or attempting to monopolize any part of the
5 business of insurance.

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

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

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

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

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

35 (c) Refusing to insure, or refusing to continue to insure, or limiting
36 the amount, extent or kind of coverage available to an individual, or
37 charging an individual a different rate for the same coverage solely
38 because of blindness or partial blindness. With respect to all other
39 conditions, including the underlying cause of the blindness or partial
40 blindness, persons who are blind or partially blind shall be subject to the
41 same standards of sound actuarial principles or actual or reasonably
42 anticipated experience as are sighted persons. Refusal to insure includes
43 denial by an insurer of disability insurance coverage on the grounds that

1 the policy defines "disability" as being presumed in the event that the
2 insured loses such person's eyesight. However, an insurer may exclude
3 from coverage disabilities consisting solely of blindness or partial
4 blindness when such condition existed at the time the policy was issued.

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

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

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

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

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

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

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

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

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

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

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

11 (e) Refusing to insure, or refusing to continue to insure, or limiting
12 the amount, extent or kind of coverage available for life insurance to an
13 individual, or charging an individual a different rate for the same coverage,
14 solely because of such individual's status as a living organ donor. With
15 respect to all other conditions, persons who are living organ donors shall
16 be subject to the same standards of sound actuarial principles or actual or
17 reasonably anticipated experience as are persons who are not organ
18 donors.

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

34 (ii) (A) *The provisions of subparagraph (i) shall not apply to the*
35 *offering to make or making of any contract of commercial property and*
36 *casualty insurance.*

37 (B) *The exclusion provided in clause (A) shall not apply to producer*
38 *commission reductions not included in insurance company rate filings.*

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

42 (i) In the case of any contract of life insurance or life annuity, paying
43 bonuses to policyholders or otherwise abating their premiums in whole or

1 in part out of surplus accumulated from nonparticipating insurance. Any
2 such bonuses or abatement of premiums shall be fair and equitable to
3 policyholders and for the best interests of the company and its
4 policyholders;

5 (ii) in the case of life insurance policies issued on the industrial debit
6 plan, making allowance to policyholders who have continuously for a
7 specified period made premium payments directly to an office of the
8 insurer in an amount that fairly represents the saving in collection
9 expenses; ~~or~~

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

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

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

22 (A) *Relates to the insurance coverage; and*

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

24 (1) *Provide loss mitigation or loss control;*

25 (2) *reduce claim costs or claim settlement costs;*

26 (3) *provide education about liability risks or risk of loss to persons or*
27 *property;*

28 (4) *monitor or assess risk, identify sources of risk or develop*
29 *strategies for eliminating or reducing risk;*

30 (5) *enhance health;*

31 (6) *enhance financial wellness through items such as education or*
32 *financial planning services;*

33 (7) *provide post-loss services;*

34 (8) (a) *incentivize behavioral changes to improve the health or*
35 *reduce the risk of death or disability of a customer;*

36 (b) *as used in this section, "customer" means a policyholder,*
37 *potential policyholder, certificate holder, potential certificate holder,*
38 *insured, potential insured or applicant; or*

39 (9) *assist in the administration of the employee or retiree benefit*
40 *insurance coverage.*

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

1 (D) *If the insurer or producer is providing the product or service*
2 *offered, the insurer or producer shall ensure that the customer is provided*
3 *with contact information, upon request, to assist the customer with*
4 *questions regarding the product or service.*

5 (E) *The commissioner may adopt rules and regulations when*
6 *implementing the permitted practices set forth in this section to ensure*
7 *consumer protection. Such rules and regulations, consistent with*
8 *applicable law, may address, among other issues, consumer data*
9 *protections and privacy, consumer disclosure and unfair discrimination.*

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

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

22 (vi) *An insurer or a producer may:*

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

31 (B) *Offer or give non-cash gifts, items or services, including meals to*
32 *or charitable donations on behalf of a customer, to commercial or*
33 *institutional customers in connection with the marketing, sale, purchase or*
34 *retention of contracts of insurance, as long as the cost is reasonable in*
35 *comparison to the premium or proposed premium and the cost of the gift*
36 *or service is not included in any amounts charged to another person or*
37 *entity. The offer shall be made in a manner that is not unfairly*
38 *discriminatory. The customer shall not be required to purchase, continue*
39 *to purchase or renew a policy in exchange for the gift, item or service.*

40 (C) *Conduct raffles or drawings to the extent permitted by state law,*
41 *as long as there is no financial cost to entrants to participate, the drawing*
42 *or raffle does not obligate participants to purchase insurance, the prizes*
43 *are not valued in excess of a reasonable amount determined by the*

1 *commissioner and the drawing or raffle is open to the public. The raffle or*
2 *drawing shall be offered in a manner that is not unfairly discriminatory.*
3 *The customer shall not be required to purchase, continue to purchase or*
4 *renew a policy in exchange for the gift, item or service.*

5 *(c) An insurer, producer or representative of an insurer or producer*
6 *shall not offer or provide insurance as an inducement to the purchase of*
7 *another policy.*

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

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

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

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

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

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

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

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

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

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

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

38 (k) making known to insureds or claimants a policy of appealing from
39 arbitration awards in favor of insureds or claimants for the purpose of
40 compelling them to accept settlements or compromises less than the
41 amount awarded in arbitration;

42 (l) delaying the investigation or payment of claims by requiring an
43 insured, claimant or the physician of either to submit a preliminary claim

1 report and then requiring the subsequent submission of formal proof of
2 loss forms, both of which submissions contain substantially the same
3 information;

4 (m) failing to promptly settle claims, where liability has become
5 reasonably clear, under one portion of the insurance policy coverage in
6 order to influence settlements under other portions of the insurance policy
7 coverage; or

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

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

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

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

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

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

43 (b) No insured named in a title insurance policy or contract nor any

1 other person directly or indirectly connected with the transaction involving
2 the issuance of the policy or contract, including, but not limited to,
3 mortgage lender, real estate broker, builder, attorney or any officer,
4 employee, agent representative or solicitor thereof, or any other person
5 may knowingly receive or accept, directly or indirectly, any rebate,
6 reduction or abatement of any charge, or any special favor or advantage or
7 any monetary consideration or inducement referred to in subsection (14)
8 (a).

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

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

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

15 (iii) the payment of reasonable entertainment and advertising
16 expenses.

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

23 (e) As used in subsections (14)(e) through (14)(i), unless the context
24 otherwise requires:

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

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

1 business.

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

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

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

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

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

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

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

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

36 (h) Within 90 days following the end of each business year, as
37 established by the title insurer or title agent, each title insurer or title agent
38 shall file with the department of insurance and any title insurer with which
39 the title agent maintains an underwriting agreement, a report executed by
40 the title insurer's or title agent's chief executive officer or designee, under
41 penalty of perjury, stating the percent of closed title orders originating
42 from controlled business. The failure of a title insurer or title agent to
43 comply with the requirements of this section, at the discretion of the

1 commissioner, shall be grounds for the suspension or revocation of a
2 license or other disciplinary action, with the commissioner able to mitigate
3 any such disciplinary action if the title insurer or title agent is found to be
4 in substantial compliance with competitive behavior as defined by federal
5 housing and urban development statement of policy 1996-2.

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

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

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

35 (4) Nothing in this paragraph shall prohibit any producer of title
36 business or associate of such producer from referring title business to any
37 title insurer or title agent of such producer's or associate's choice, and, if
38 such producer or associate of such producer has any financial interest in
39 the title insurer, from receiving income, profits or dividends produced or
40 realized from such financial interest, so long as:

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

43 (b) the payment of income, profits or dividends is not in exchange for

1 the referral of business; and

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

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

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

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

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

28 (15) *Disclosure of nonpublic personal information.* (a) No person
29 shall disclose any nonpublic personal information contrary to the
30 provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law
31 106-102). The commissioner may adopt rules and regulations necessary to
32 carry out this subsection. Such rules and regulations shall be consistent
33 with and not more restrictive than the model regulation adopted on
34 September 26, 2000, by the national association of insurance
35 commissioners entitled "Privacy of consumer financial and health
36 information regulation".

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

43 Sec. 3. K.S.A. 40-4909 is hereby amended to read as follows: 40-

- 1 4909. (a) The commissioner may deny, suspend, revoke or refuse renewal
2 of any license issued under this act if the commissioner finds that the
3 applicant or license holder has:
- 4 (1) Provided incorrect, misleading, incomplete or untrue information
5 in the license application.
 - 6 (2) Violated:
 - 7 (A) Any provision of chapter 40 of the Kansas Statutes Annotated,
8 and amendments thereto, or any rules and regulations promulgated
9 thereunder;
 - 10 (B) any subpoena or order of the commissioner;
 - 11 (C) any insurance law or regulation of another state; or
 - 12 (D) any subpoena or order issued by the regulatory official for
13 insurance in another state.
 - 14 (3) Obtained or attempted to obtain a license under this act through
15 misrepresentation or fraud.
 - 16 (4) Improperly withheld, misappropriated or converted any moneys
17 or properties received in the course of doing insurance business.
 - 18 (5) Intentionally misrepresented the provisions, terms and conditions
19 of an actual or proposed insurance contract or application for insurance.
 - 20 (6) Been convicted of a misdemeanor or felony.
 - 21 (7) Admitted to or been found to have committed any insurance
22 unfair trade practice or fraud in violation of K.S.A. 40-2404, and
23 amendments thereto.
 - 24 (8) Used any fraudulent, coercive, or dishonest practice, or
25 demonstrated any incompetence, untrustworthiness or financial
26 irresponsibility in the conduct of business in this state or elsewhere.
 - 27 (9) Had an insurance agent license, or its equivalent, denied,
28 suspended or revoked in any state, district or territory.
 - 29 (10) Forged another person's name to an application for insurance or
30 to any document related to an insurance transaction.
 - 31 (11) Improperly used notes or any other reference material to
32 complete an examination for an insurance license issued under this act.
 - 33 (12) Knowingly accepted insurance business from an individual who
34 is not licensed.
 - 35 (13) Failed to comply with any administrative or court order
36 imposing a child support obligation upon the applicant or license holder.
 - 37 (14) Failed to pay any state income tax or comply with any
38 administrative or court order directing payment of state income tax.
 - 39 (15) *Except as otherwise permitted by law*, rebated the whole or any
40 part of any insurance premium or offered in connection with the
41 presentation of any contract of insurance any other inducement not
42 contained in the contract of insurance.
 - 43 (16) Made any misleading representation or incomplete comparison

1 of policies to any person for the purposes of inducing or tending to induce
2 such person to lapse, forfeit or surrender such person's insurance then in
3 force.

4 (17) Failed to respond to an inquiry from the commissioner within 15
5 business days.

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

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

- 13 (A) Applicant's age at the time of the conduct;
- 14 (B) recency of the conduct;
- 15 (C) reliability of the information concerning the conduct;
- 16 (D) seriousness of the conduct;
- 17 (E) factors underlying the conduct;
- 18 (F) cumulative effect of the conduct or information;
- 19 (G) evidence of rehabilitation;
- 20 (H) applicant's social contributions since the conduct;
- 21 (I) applicant's candor in the application process; and
- 22 (J) materiality of any omissions or misrepresentations.

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

- 25 (A) Present moral fitness of the applicant;
- 26 (B) demonstrated consciousness by the applicant of the wrongful
27 conduct and disrepute that the conduct has brought to the insurance
28 profession;
- 29 (C) extent of the applicant's rehabilitation;
- 30 (D) seriousness of the original conduct;
- 31 (E) applicant's conduct subsequent to discipline;
- 32 (F) amount of time that has elapsed since the original discipline;
- 33 (G) applicant's character, maturity and experience at the time of
34 revocation; and
- 35 (H) applicant's present competence and skills in the insurance
36 industry.

37 (d) Any action taken under this section that affects any license or
38 imposes any administrative penalty shall be taken only after notice and an
39 opportunity for a hearing conducted in accordance with the provisions of
40 the Kansas administrative ~~procedures~~ *procedure* act.

41 (e) The license of any business entity may be suspended, revoked or
42 refused renewal if the insurance commissioner finds that any violation
43 committed by an individual licensee employed by or acting on behalf of

1 such business entity was known by or should have been known by one or
2 more of the partners, officers or managers acting on behalf of the business
3 entity and:

4 (1) Such violation was not reported to the insurance commissioner by
5 such business entity; or

6 (2) such business entity failed to take any corrective action.

7 (f) None of the following actions shall deprive the commissioner of
8 any jurisdiction or right to institute or proceed with any disciplinary
9 proceeding against such license, to render a decision suspending, revoking
10 or refusing to renew such license, or to establish and make a record of the
11 facts of any violation of law for any lawful purpose:

12 (1) The imposition of an administrative penalty under this section;

13 (2) the lapse or suspension of any license issued under this act by
14 operation of law;

15 (3) the licensee's failure to renew any license issued under this act; or

16 (4) the licensee's voluntary surrender of any license issued under this
17 act. No such disciplinary proceeding shall be instituted against any
18 licensee after the expiration of two years from the termination of the
19 license.

20 (g) Whenever the commissioner imposes any administrative penalty
21 or denies, suspends, revokes or refuses renewal of any license pursuant to
22 subsection (a), any costs incurred as a result of conducting an
23 administrative hearing authorized under the provisions of this section shall
24 be assessed against the person who is the subject of the hearing or any
25 business entity represented by such person who is the party to the matters
26 giving rise to the hearing. As used in this subsection, "costs" shall include
27 witness fees, mileage allowances, any costs associated with the
28 reproduction of documents that become a part of the hearing record and
29 the expense of making a record of the hearing.

30 (h) No person whose license as an agent or broker had been
31 suspended or revoked shall be employed by any insurance company doing
32 business in this state either directly, indirectly, as an independent
33 contractor or otherwise to negotiate or effect contracts of insurance,
34 suretyship or indemnity or perform any act toward the solicitation of or
35 transaction of any business of insurance during the period of such
36 suspension or revocation.

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

39 (1) Censure the person; or

40 (2) issue an order imposing an administrative penalty up to a
41 maximum of \$500 for each violation but not to exceed \$2,500 for the same
42 violation occurring within any six consecutive calendar months from the
43 date of the original violation unless such person knew or should have

1 known that the violative act could give rise to disciplinary action under
2 subsection (a). If such person knew or reasonably should have known the
3 violative act could give rise to any disciplinary proceeding authorized by
4 subsection (a), the commissioner may impose a penalty up to a maximum
5 of \$1,000 for each violation but not to exceed \$5,000 for the same
6 violation occurring within any six consecutive calendar months from the
7 date of the imposition of the original administrative penalty.

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

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

14 Sec. 4. K.S.A. 40-966, 40-2404 and 40-4909 are hereby repealed.

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