

HOUSE BILL No. 2209

By Committee on Insurance

1-30

AN ACT relating to title insurance; requiring certain disclosures and prohibiting certain practices; amending K.S.A. 40-2404 and repealing the existing section.

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

New Section 1. As used in this act, unless the context otherwise requires:

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

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

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

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

(1) Buying or selling interests in real property;

1 (2) making loans secured by interests in real property; or
2 (3) acting as broker, agent, representative or attorney for a person
3 who buys or sells any interest in real property or who lends or borrows
4 money with such interest as security.

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

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

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

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

39 (d) Nothing in this act shall prohibit any producer of title business or
40 associate of such producer from referring title business to any title insurer
41 or title agent of such producer's or associate's choice, and, if such pro-
42 ducer or associate of such producer has any financial interest in the title
43 insurer, from receiving income, profits or dividends produced or realized

1 from such financial interest, so long as:

2 (1) Such financial interest is disclosed to the purchaser of the title
3 insurance in accordance with section 2, and amendments thereto;

4 (2) the payment of income, profits or dividends is not in exchange
5 for the referral of business; and

6 (3) the receipt of income, profits or dividends constitutes only a re-
7 turn on the investment of the producer or associate.

8 (e) Any producer of title business or associate of such producer who
9 violates the provisions of this section, or any title insurer or title agent
10 who accepts an order for title insurance knowing that it is in violation of
11 this section, in addition to any other action which may be taken by the
12 commissioner of insurance, shall be subject to a fine by the commissioner
13 in an amount equal to five times the premium for the title insurance and,
14 if licensed pursuant to K.S.A. 58-3034, *et seq.*, and amendments thereto,
15 shall be deemed to have committed a prohibited act pursuant to K.S.A.
16 58-3602, and amendments thereto, and shall be liable to the purchaser
17 of such title insurance in an amount equal to the premium for the title
18 insurance.

19 New Sec. 3. Any title insurer or title agent that is a competitor of
20 any title insurer or title agent that, subsequent to the effective date of
21 this act, has violated or is violating the provisions of this act, shall have a
22 cause of action against such title insurer or title agent and, upon estab-
23 lishing the existence of a violation of any such provision, shall be entitled,
24 in addition to any other damages or remedies provided by law, to such
25 equitable or injunctive relief as the court deems proper. In any such
26 action under this subsection, the court may award to the successful party
27 the court costs of the action together with reasonable attorney's fees.

28 New Sec. 4. The commissioner shall also require each title agent to
29 provide core title services as required by the real estate settlement pro-
30 cedures act.

31 New Sec. 5. The commissioner of insurance may adopt rules and
32 regulations necessary to carry out the provisions of this act.

33 Sec. 6. K.S.A. 40-2404 is hereby amended to read as follows: 40-
34 2404. The following are hereby defined as unfair methods of competition
35 and unfair or deceptive acts or practices in the business of insurance:

36 (1) *Misrepresentations and false advertising of insurance policies.*
37 Making, issuing, circulating or causing to be made, issued or circulated,
38 any estimate, illustration, circular, statement, sales presentation, omission
39 or comparison which:

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

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

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

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

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

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

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

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

14 (2) *False information and advertising generally.* Making, publishing,
15 disseminating, circulating or placing before the public, or causing, directly
16 or indirectly, to be made, published, disseminated, circulated or placed
17 before the public, in a newspaper, magazine or other publication, or in
18 the form of a notice, circular, pamphlet, letter or poster, or over any radio
19 or television station, or in any other way, an advertisement, announce-
20 ment or statement containing any assertion, misrepresentation or state-
21 ment with respect to the business of insurance or with respect to any
22 person in the conduct of such person's insurance business, which is un-
23 true, deceptive or misleading.

24 (3) *Defamation.* Making, publishing, disseminating or circulating, di-
25 rectly or indirectly, or aiding, abetting or encouraging the making, pub-
26 lishing, disseminating or circulating of any oral or written statement or
27 any pamphlet, circular, article or literature which is false, or maliciously
28 critical of or derogatory to the financial condition of any person, and which
29 is calculated to injure such person.

30 (4) *Boycott, coercion and intimidation.* Entering into any agreement
31 to commit, or by any concerted action committing, any act of boycott,
32 coercion or intimidation resulting in or tending to result in unreasonable
33 restraint of the business of insurance, or by any act of boycott, coercion
34 or intimidation monopolizing or attempting to monopolize any part of the
35 business of insurance.

36 (5) *False statements and entries.* (a) Knowingly filing with any super-
37 visory or other public official, or knowingly making, publishing, dissemi-
38 nating, circulating or delivering to any person, or placing before the pub-
39 lic, or knowingly causing directly or indirectly, to be made, published,
40 disseminated, circulated, delivered to any person, or placed before the
41 public, any false material statement of fact as to the financial condition
42 of a person.

43 (b) Knowingly making any false entry of a material fact in any book,

1 report or statement of any person or knowingly omitting to make a true
2 entry of any material fact pertaining to the business of such person in any
3 book, report or statement of such person.

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

11 (7) *Unfair discrimination.* (a) Making or permitting any unfair dis-
12 crimination between individuals of the same class and equal expectation
13 of life in the rates charged for any contract of life insurance or life annuity
14 or in the dividends or other benefits payable thereon, or in any other of
15 the terms and conditions of such contract.

16 (b) Making or permitting any unfair discrimination between individ-
17 uals of the same class and of essentially the same hazard in the amount
18 of premium, policy fees or rates charged for any policy or contract of
19 accident or health insurance or in the benefits payable thereunder, or in
20 any of the terms or conditions of such contract, or in any other manner
21 whatever.

22 (c) Refusing to insure, or refusing to continue to insure, or limiting
23 the amount, extent or kind of coverage available to an individual, or charg-
24 ing an individual a different rate for the same coverage solely because of
25 blindness or partial blindness. With respect to all other conditions, in-
26 cluding the underlying cause of the blindness or partial blindness, persons
27 who are blind or partially blind shall be subject to the same standards of
28 sound actuarial principles or actual or reasonably anticipated experience
29 as are sighted persons. Refusal to insure includes denial by an insurer of
30 disability insurance coverage on the grounds that the policy defines “dis-
31 ability” as being presumed in the event that the insured loses such per-
32 son’s eyesight. However, an insurer may exclude from coverage disabili-
33 ties consisting solely of blindness or partial blindness when such condition
34 existed at the time the policy was issued.

35 (d) Refusing to insure, or refusing to continue to insure, or limiting
36 the amount, extent or kind of coverage available for accident and health
37 and life insurance to an applicant who is the proposed insured or charge
38 a different rate for the same coverage or excluding or limiting coverage
39 for losses or denying a claim incurred by an insured as a result of abuse
40 based on the fact that the applicant who is the proposed insured is, has
41 been, or may be the subject of domestic abuse, except as provided in
42 subpart (v). “Abuse” as used in this subsection (7)(d) means one or more
43 acts defined in subsection (a) or (b) of K.S.A. 60-3102 and amendments

1 thereto between family members, current or former household members,
2 or current or former intimate partners.

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

8 (ii) Nothing in this section shall be construed to prohibit a person
9 from declining to issue an insurance policy insuring the life of an individ-
10 ual who is, has been or has the potential to be the subject of abuse if the
11 perpetrator of the abuse is the applicant or would be the owner of the
12 insurance policy.

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

17 (iv) No person shall refuse to insure, refuse to continue to insure,
18 limit the amount, extent or kind of coverage available to an individual or
19 charge a different rate for the same coverage solely because of physical
20 or mental condition, except where the refusal, limitation or rate differ-
21 ential is based on sound actuarial principles.

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

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

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

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

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

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

41 (8) *Rebates.* (a) Except as otherwise expressly provided by law, know-
42 ingly permitting, offering to make or making any contract of life insur-
43 ance, life annuity or accident and health insurance, or agreement as to

1 such contract other than as plainly expressed in the insurance contract
2 issued thereon; paying, allowing, giving or offering to pay, allow or give,
3 directly or indirectly, as inducement to such insurance, or annuity, any
4 rebate of premiums payable on the contract, any special favor or advan-
5 tage in the dividends or other benefits thereon, or any valuable consid-
6 eration or inducement whatever not specified in the contract; or giving,
7 selling, purchasing or offering to give, sell or purchase as inducement to
8 such insurance contract or annuity or in connection therewith, any stocks,
9 bonds or other securities of any insurance company or other corporation,
10 association or partnership, or any dividends or profits accrued thereon,
11 or anything of value whatsoever not specified in the contract.

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

15 (i) In the case of any contract of life insurance or life annuity, paying
16 bonuses to policyholders or otherwise abating their premiums in whole
17 or in part out of surplus accumulated from nonparticipating insurance.
18 Any such bonuses or abatement of premiums shall be fair and equitable
19 to policyholders and for the best interests of the company and its
20 policyholders;

21 (ii) in the case of life insurance policies issued on the industrial debit
22 plan, making allowance to policyholders who have continuously for a spec-
23 ified period made premium payments directly to an office of the insurer
24 in an amount which fairly represents the saving in collection expenses; or

25 (iii) readjustment of the rate of premium for a group insurance policy
26 based on the loss or expense experience thereunder, at the end of the
27 first or any subsequent policy year of insurance thereunder, which may
28 be made retroactive only for such policy year.

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

34 (a) Misrepresenting pertinent facts or insurance policy provisions re-
35 lating to coverages at issue;

36 (b) failing to acknowledge and act reasonably promptly upon com-
37 munications with respect to claims arising under insurance policies;

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

40 (d) refusing to pay claims without conducting a reasonable investi-
41 gation based upon all available information;

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

1 (f) not attempting in good faith to effectuate prompt, fair and equi-
2 table settlements of claims in which liability has become reasonably clear;

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

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

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

12 (j) making claims payments to insureds or beneficiaries not accom-
13 panied by a statement setting forth the coverage under which payments
14 are being made;

15 (k) making known to insureds or claimants a policy of appealing from
16 arbitration awards in favor of insureds or claimants for the purpose of
17 compelling them to accept settlements or compromises less than the
18 amount awarded in arbitration;

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

24 (m) failing to promptly settle claims, where liability has become rea-
25 sonably clear, under one portion of the insurance policy coverage in order
26 to influence settlements under other portions of the insurance policy cov-
27 erage; or

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

31 (10) *Failure to maintain complaint handling procedures.* Failure of
32 any person, who is an insurer on an insurance policy, to maintain a com-
33 plete record of all the complaints which it has received since the date of
34 its last examination under K.S.A. 40-222, and amendments thereto; but
35 no such records shall be required for complaints received prior to the
36 effective date of this act. The record shall indicate the total number of
37 complaints, their classification by line of insurance, the nature of each
38 complaint, the disposition of the complaints, the date each complaint was
39 originally received by the insurer and the date of final disposition of each
40 complaint. For purposes of this subsection, "complaint" means any writ-
41 ten communication primarily expressing a grievance related to the acts
42 and practices set out in this section.

43 (11) *Misrepresentation in insurance applications.* Making false or

1 fraudulent statements or representations on or relative to an application
2 for an insurance policy, for the purpose of obtaining a fee, commission,
3 money or other benefit from any insurer, agent, broker or individual.

4 (12) *Statutory violations.* Any violation of any of the provisions of
5 K.S.A. 40-276a, ~~40-2,155~~ or 40-1515, and amendments thereto, ~~or K.S.A.~~
6 ~~40-2,155 and amendments thereto.~~

7 (13) *Disclosure of information relating to adverse underwriting de-*
8 *isions and refund of premiums.* Failing to comply with the provisions of
9 K.S.A. 40-2,112, and amendments thereto, within the time prescribed in
10 such section.

11 (14) *Rebates and other inducements in title insurance.* (a) No title
12 insurance company or title insurance agent, or any officer, employee,
13 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,
14 allow or give, directly or indirectly, as an inducement to obtaining any
15 title insurance business, any rebate, reduction or abatement of any rate
16 or charge made incident to the issuance of such insurance, any special
17 favor or advantage not generally available to others of the same classifi-
18 cation, or any money, thing of value or other consideration or material
19 inducement. The words “charge made incident to the issuance of such
20 insurance” includes, without limitations, escrow, settlement and closing
21 charges.

22 (b) No insured named in a title insurance policy or contract nor any
23 other person directly or indirectly connected with the transaction involv-
24 ing the issuance of the policy or contract, including, but not limited to,
25 mortgage lender, real estate broker, builder, attorney or any officer, em-
26 ployee, agent representative or solicitor thereof, or any other person may
27 knowingly receive or accept, directly or indirectly, any rebate, reduction
28 or abatement of any charge, or any special favor or advantage or any
29 monetary consideration or inducement referred to in (14)(a).

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

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

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

36 (iii) the payment of reasonable entertainment and advertising
37 expenses.

38 (d) Nothing in this section prohibits the division of rates and charges
39 between or among a title insurance company and its agent, or one or
40 more title insurance companies and one or more title insurance agents,
41 if such division of rates and charges does not constitute an unlawful rebate
42 under the provisions of this section and is not in payment of a forwarding
43 fee or a finder’s fee.

1 (e) No title insurer or title agent may accept any order for, issue a
2 title insurance policy to, or provide services to, an applicant if it knows
3 or has reason to believe that the applicant was referred to it by any pro-
4 ducer of title business or by any associate of such producer, where the
5 producer, the associate, or both, have a financial interest in the title in-
6 surer or title agent to which business is referred unless the producer has
7 disclosed to the buyer, seller and lender the financial interest of the pro-
8 ducer of title business or associate referring the title insurance business.

9 ~~—(f) No title insurer or title agent may accept an order for title insur-~~
10 ~~ance business, issue a title insurance policy, or receive or retain any pre-~~
11 ~~mium, or charge in connection with any transaction if: (i) The title insurer~~
12 ~~or title agent knows or has reason to believe that the transaction will~~
13 ~~constitute controlled business for that title insurer or title agent, and (ii)~~
14 ~~20% or more of the gross operating revenue of that title insurer or title~~
15 ~~agent during the six full calendar months immediately preceding the~~
16 ~~month in which the transaction takes place is derived from controlled~~
17 ~~business. The prohibitions contained in this subparagraph shall not apply~~
18 ~~to transactions involving real estate located in a county that has a popu-~~
19 ~~lation, as shown by the last preceding decennial census, of 10,000 or less.~~

20 ~~—(g) The commissioner shall adopt any regulations necessary to carry~~
21 ~~out the provisions of this act.~~

22 (15) *Disclosure of nonpublic personal information.* No person shall
23 disclose any nonpublic personal information to a nonaffiliated third party
24 contrary to the provisions of title V of the Gramm-Leach-Bliley act of
25 1999 (public law 106-102). The commissioner may adopt rules and reg-
26 ulations necessary to carry out this section. Such rules and regulations
27 shall be consistent with and not more restrictive than standards contained
28 in regulations promulgated under title V of the Gramm-Leach-Bliley act
29 of 1999 (public law 106-102) by federal regulatory agencies governing
30 financial institutions doing business in Kansas.

31 Sec. 7. K.S.A. 40-2404 is hereby repealed.

32 Sec. 8. This act shall take effect and be in force from and after its
33 publication in the statute book.

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