

SENATE BILL No. 311

By Committee on Financial Institutions and Insurance

1-16

AN ACT concerning insurance; relating to the issuance of insurance policies in a foreign language; amending K.S.A. 40-216 and K.S.A. 2003 Supp. 40-2404 and repealing the existing sections.

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

Section 1. K.S.A. 40-216 is hereby amended to read as follows: 40-216. (a) No insurance company shall hereafter transact business in this state until certified copies of its charter and amendments thereto shall have been filed with and approved by the commissioner of insurance. A copy of the bylaws and amendments thereto of insurance companies organized under the laws of this state shall also be filed with and approved by the commissioner of insurance. The commissioner may also require the filing of such other documents and papers as are necessary to determine compliance with the laws of this state. No contract of insurance or indemnity shall be issued or delivered in this state until the form of the same has been filed with the commissioner of insurance, nor if the commissioner of insurance gives written notice within 30 days of such filing, to the company proposing to issue such contract, showing wherein the form of such contract does not comply with the requirements of the laws of this state; but the failure of any insurance company to comply with this section shall not constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation to file its contracts of insurance or indemnity either individually or by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer.

Under such rules and regulations as the commissioner of insurance shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing forms of contracts of insurance or indemnity, which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make an examination to ascertain whether any forms affected by such order meet the standards of this code.

(b) ~~Prior to the 2000 legislative session, the Kansas insurance department shall conduct a study and report to the Kansas legislature on~~

1 ~~the laws of other states governing rate filings and policy or contract forms~~
2 ~~for personal and commercial, including large commercial risks. The study~~
3 ~~shall also identify recent trends in regulation and the potential impact on~~
4 ~~consumers, carriers and agents. The commissioner of insurance shall allow~~
5 ~~any insurance company authorized to transact business in this state to~~
6 ~~deliver to any person in this state any contract of insurance or indemnity,~~
7 ~~including any explanatory materials, written in any language other than~~
8 ~~the English language under the following conditions:~~

9 (1) *The insured or applicant for insurance who is given a copy of the*
10 *same contract of insurance or indemnity or explanatory materials written*
11 *in the English language;*

12 (2) *the English language version of the contract for insurance or in-*
13 *demnity or explanatory materials delivered shall be the controlling ver-*
14 *sion; and*

15 (3) *any contract of insurance or indemnity or explanatory materials*
16 *written in any language other than English shall contain a disclosure*
17 *statement in 10 point boldface type, printed in both the English language*
18 *and the other language used, stating the English version of the contract*
19 *of insurance or indemnity is the official or controlling version and that*
20 *the version is written in any language other than English is furnished for*
21 *informational purposes only.*

22 (c) *All contracts of insurance or indemnity that are required to be*
23 *filed with the commissioner of insurance shall be accompanied by any*
24 *version of such contract of insurance or indemnity written in any language*
25 *other than the English language.*

26 (d) *Any insurance company or insurer, including any agent or em-*
27 *ployee thereof, who knowingly misrepresents the content of a contract of*
28 *insurance or indemnity or explanatory materials written in a language*
29 *other than the English language shall be deemed to have violated the*
30 *unfair trade practice law.*

31 (e) *For the purposes of this section, the term “contract of insurance*
32 *or indemnity” shall include any rider, endorsement or application per-*
33 *taining to such contract of insurance or indemnity.*

34 Sec. 2. K.S.A. 2003 Supp. 40-2404 is hereby amended to read as
35 follows: 40-2404. The following are hereby defined as unfair methods of
36 competition and unfair or deceptive acts or practices in the business of
37 insurance:

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

42 (a) *Misrepresents the benefits, advantages, conditions or terms of any*
43 *insurance policy;*

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

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

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

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

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

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

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

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

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

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

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

1 of a person.

2 (b) Knowingly making any false entry of a material fact in any book,
3 report or statement of any person or knowingly omitting to make a true
4 entry of any material fact pertaining to the business of such person in any
5 book, report or statement of such person.

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

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

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

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

37 (d) Refusing to insure, or refusing to continue to insure, or limiting
38 the amount, extent or kind of coverage available for accident and health
39 and life insurance to an applicant who is the proposed insured or charge
40 a different rate for the same coverage or excluding or limiting coverage
41 for losses or denying a claim incurred by an insured as a result of abuse
42 based on the fact that the applicant who is the proposed insured is, has
43 been, or may be the subject of domestic abuse, except as provided in

1 subpart (v). “Abuse” as used in this subsection (7)(d) means one or more
2 acts defined in subsection (a) or (b) of K.S.A. 60-3102 and amendments
3 thereto between family members, current or former household members,
4 or current or former intimate partners.

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

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

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

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

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

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

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

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

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

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

43 (8) *Rebates.* (a) Except as otherwise expressly provided by law, know-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and practices set out in this section.

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

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

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

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

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

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

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

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

38 (iii) the payment of reasonable entertainment and advertising
39 expenses.

40 (d) Nothing in this section prohibits the division of rates and charges
41 between or among a title insurance company and its agent, or one or
42 more title insurance companies and one or more title insurance agents,
43 if such division of rates and charges does not constitute an unlawful rebate

1 under the provisions of this section and is not in payment of a forwarding
2 fee or a finder's fee.

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

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

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

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

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

37 (c) Nothing in this paragraph (15) shall be deemed or construed to
38 authorize the promulgation or adoption of any regulation which 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 per-
42 taining to the health and medical treatment for such minor.

43 Sec. 3. K.S.A. 40-216 and K.S.A. 2003 Supp. 40-2404 are hereby

1 repealed.

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

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