

HOUSE BILL No. 2346

By Representative Carter

2-8

AN ACT concerning insurance; enacting the unfair claims settlement practices act; amending K.S.A. 2004 Supp. 40-2404 and repealing the existing section.

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

New Section 1. For the purposes of this act: (a) "Commissioner" means the commissioner of insurance.

(b) "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by the policy.

(c) "Insurer" means a person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and third party administrators. Insurer shall also include any insurance company, nonprofit medical and hospital service corporation, municipal group-funded pool, fraternal benefit society, health maintenance organization, or any other entity which offers a health benefit plan subject to the Kansas Statutes Annotated and amendments thereto. For purposes of this act, each of these foregoing entities shall be deemed to be engaged in the business of insurance.

(d) "Person" means a natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations.

(e) "Policy" or "certificate" means a contract of insurance, indemnity, medical, health or hospital service, or annuity issued. "Policy" or "certificate" shall not include any contract of workers' compensation, fidelity, suretyship or boiler and machinery insurance.

New Sec. 2. No domestic, foreign or alien insurer transacting business in this state shall commit any improper claims practice. Any act defined in section 3, and amendments thereto, shall be deemed to be an improper claims practice if such act:

(a) Is committed flagrantly and in conscious disregard of this act or any rules promulgated hereunder; or

(b) has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

New Sec. 3. Any of the following acts committed by an insurer in violation of section 2, and amendments thereto, constitutes an unfair

- 1 claims practice:
- 2 (a) Knowingly misrepresenting to claimants and insureds relevant
3 facts or policy provisions relating to coverages at issue.
- 4 (b) Failing to acknowledge pertinent communications with respect to
5 claims arising under its policies with reasonable promptness.
- 6 (c) Failing to adopt and implement reasonable standards for the
7 prompt investigation and settlement of claims arising under such insurer's
8 policies.
- 9 (d) Not attempting in good faith to effectuate prompt, fair and eq-
10 uitable settlement of claims submitted in which liability has become rea-
11 sonably clear;
- 12 (e) Compelling any insured or beneficiary to institute a lawsuit to
13 recover any amount due under such insurer's policy by offering substan-
14 tially less than the amount ultimately recovered in any lawsuits brought
15 by such insured or beneficiary.
- 16 (f) Refusing to pay any claim without conducting a reasonable
17 investigation.
- 18 (g) Failing to affirm or deny coverage of any claim within a reasonable
19 time after having completed such insurer's investigation related to such
20 claim.
- 21 (h) Attempting to settle or settling any claim for less than the amount
22 that a reasonable person would believe the insured or beneficiary was
23 entitled by reference to written or printed advertising material accom-
24 panying or made part of an application.
- 25 (i) Attempting to settle or settling claims on the basis of an application
26 that was materially altered without notice to, or knowledge or consent of,
27 the insured.
- 28 (j) Making any claim payment to an insured or beneficiary without
29 indicating the coverage under which each payment is being made.
- 30 (k) Unreasonably delaying the investigation or payment of any claim
31 by requiring both a formal proof of loss form and subsequent verification
32 that would result in duplication of information and verification appearing
33 in the formal proof of loss form.
- 34 (l) In the case of any claim denial or offer of compromise settlement,
35 failing to promptly provide a reasonable and accurate explanation of the
36 basis for such actions.
- 37 (m) Failing to provide any form necessary to present a claim with
38 reasonable explanations regarding the use of such form within 15 calendar
39 days of receipt of a request therefor.
- 40 (n) Failing to adopt and implement reasonable standards to assure
41 that the repairs of a repairer owned by, or required to be used by, the
42 insurer are performed in a workmanlike manner.
- 43 New Sec. 4. Whenever the commissioner has reasonable cause to

1 believe that an insurer doing business in this state is engaging in any unfair
2 claims practice and that a proceeding in respect thereto would be in the
3 public interest, the commissioner shall issue and serve upon the insurer
4 a statement of the charges in that respect and a notice of hearing, which
5 shall set a hearing date not less than 30 days from the date of the notice.

6 New Sec. 5. After notice and an opportunity for a hearing in accord-
7 ance with the Kansas administrative procedures act, if the commissioner
8 finds an insurer has engaged in an unfair claims practice, the commis-
9 sioner shall issue written order containing the commissioner's findings.
10 The order shall also require the insurer to cease and desist from engaging
11 in the act or practice which violates any provision of this act. In addition,
12 at the commissioner's discretion, the commissioner may order one or
13 more of the following: (a) Except as provided in subsection (b), payment
14 of a civil penalty of not more than \$1,000 for each violation but not to
15 exceed an aggregate penalty of \$100,000.

16 (b) If the violation was committed flagrantly and in conscious disre-
17 gard of any provision of this act, the civil penalty shall not be more than
18 \$25,000 for each violation but not to exceed an aggregate penalty of
19 \$250,000.

20 (c) Suspension or revocation of the insurer's license if such insurer
21 knew or reasonably should have known it was in violation of this act.

22 New Sec. 6. An insurer that violates a cease and desist order of the
23 commissioner and, while the order is in effect, may, at the discretion of
24 the commissioner after notice and an opportunity for a hearing in ac-
25 cordance with the Kansas administrative procedures act, be subject to
26 one or more of the following: (a) Payment of a civil penalty of not more
27 than \$25,000 for each violation but not to exceed an aggregate penalty of
28 \$250,000. (b) Suspension or revocation of the insurer's license if such
29 insurer knew or reasonably should have known it was in violation of this
30 act.

31 New Sec. 7. The commissioner may promulgate reasonable rules and
32 regulations for the administration of this act.

33 New Sec. 8. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, the invalidity does not affect
35 other provisions or applications of this act which can be given effect with-
36 out the invalid provision or application, and to this end the provisions of
37 this act are severable.

38 New Sec. 9. (a) Sections 1 through 9, and amendments thereto, shall
39 be known as and may be cited as the unfair claims settlement practices
40 act.

41 (b) This act shall be administered by the commissioner.

42 Sec. 10. K.S.A. 2004 Supp. 40-2404 is hereby amended to read as
43 follows: 40-2404. The following are hereby defined as unfair methods of

- 1 competition and unfair or deceptive acts or practices in the business of
2 insurance:
- 3 (1) *Misrepresentations and false advertising of insurance policies.*
4 Making, issuing, circulating or causing to be made, issued or circulated,
5 any estimate, illustration, circular, statement, sales presentation, omission
6 or comparison which:
- 7 (a) Misrepresents the benefits, advantages, conditions or terms of any
8 insurance policy;
- 9 (b) misrepresents the dividends or share of the surplus to be received
10 on any insurance policy;
- 11 (c) makes any false or misleading statements as to the dividends or
12 share of surplus previously paid on any insurance policy;
- 13 (d) is misleading or is a misrepresentation as to the financial condition
14 of any person, or as to the legal reserve system upon which any life insurer
15 operates;
- 16 (e) uses any name or title of any insurance policy or class of insurance
17 policies misrepresenting the true nature thereof;
- 18 (f) is a misrepresentation for the purpose of inducing or tending to
19 induce the lapse, forfeiture, exchange, conversion or surrender of any
20 insurance policy;
- 21 (g) is a misrepresentation for the purpose of effecting a pledge or
22 assignment of or effecting a loan against any insurance policy; or
- 23 (h) misrepresents any insurance policy as being shares of stock.
- 24 (2) *False information and advertising generally.* Making, publishing,
25 disseminating, circulating or placing before the public, or causing, directly
26 or indirectly, to be made, published, disseminated, circulated or placed
27 before the public, in a newspaper, magazine or other publication, or in
28 the form of a notice, circular, pamphlet, letter or poster, or over any radio
29 or television station, or in any other way, an advertisement, announce-
30 ment or statement containing any assertion, misrepresentation or state-
31 ment with respect to the business of insurance or with respect to any
32 person in the conduct of such person's insurance business, which is un-
33 true, deceptive or misleading.
- 34 (3) *Defamation.* Making, publishing, disseminating or circulating, di-
35 rectly or indirectly, or aiding, abetting or encouraging the making, pub-
36 lishing, disseminating or circulating of any oral or written statement or
37 any pamphlet, circular, article or literature which is false, or maliciously
38 critical of or derogatory to the financial condition of any person, and which
39 is calculated to injure such person.
- 40 (4) *Boycott, coercion and intimidation.* Entering into any agreement
41 to commit, or by any concerted action committing, any act of boycott,
42 coercion or intimidation resulting in or tending to result in unreasonable
43 restraint of the business of insurance, or by any act of boycott, coercion

1 or intimidation monopolizing or attempting to monopolize any part of the
2 business of insurance.

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

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

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

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

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

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

1 existed at the time the policy was issued.

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

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

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

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

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

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

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

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

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

43 (vi) Any person who underwrites or rates a risk on the basis of pre-

1 existing physical or mental condition as set forth in subsection (7)(d)(v),
2 shall treat such underwriting or rating as an adverse underwriting decision
3 pursuant to K.S.A. 40-2,112, and amendments thereto.

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

8 (8) *Rebates.* (a) Except as otherwise expressly provided by law, know-
9 ingly permitting, offering to make or making any contract of life insur-
10 ance, life annuity or accident and health insurance, or agreement as to
11 such contract other than as plainly expressed in the insurance contract
12 issued thereon; paying, allowing, giving or offering to pay, allow or give,
13 directly or indirectly, as inducement to such insurance, or annuity, any
14 rebate of premiums payable on the contract, any special favor or advan-
15 tage in the dividends or other benefits thereon, or any valuable consid-
16 eration or inducement whatever not specified in the contract; or giving,
17 selling, purchasing or offering to give, sell or purchase as inducement to
18 such insurance contract or annuity or in connection therewith, any stocks,
19 bonds or other securities of any insurance company or other corporation,
20 association or partnership, or any dividends or profits accrued thereon,
21 or anything of value whatsoever not specified in the contract.

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

25 (i) In the case of any contract of life insurance or life annuity, paying
26 bonuses to policyholders or otherwise abating their premiums in whole
27 or in part out of surplus accumulated from nonparticipating insurance.
28 Any such bonuses or abatement of premiums shall be fair and equitable
29 to policyholders and for the best interests of the company and its
30 policyholders;

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

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

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

- 1 ~~—(a)— Misrepresenting pertinent facts or insurance policy provisions re-~~
- 2 ~~lating to coverages at issue;~~
- 3 ~~—(b)— failing to acknowledge and act reasonably promptly upon com-~~
- 4 ~~munications with respect to claims arising under insurance policies;~~
- 5 ~~—(c)— failing to adopt and implement reasonable standards for the~~
- 6 ~~prompt investigation of claims arising under insurance policies;~~
- 7 ~~—(d)— refusing to pay claims without conducting a reasonable investi-~~
- 8 ~~gation based upon all available information;~~
- 9 ~~—(e)— failing to affirm or deny coverage of claims within a reasonable~~
- 10 ~~time after proof of loss statements have been completed;~~
- 11 ~~—(f)— not attempting in good faith to effectuate prompt, fair and equi-~~
- 12 ~~table settlements of claims in which liability has become reasonably clear;~~
- 13 ~~—(g)— compelling insureds to institute litigation to recover amounts due~~
- 14 ~~under an insurance policy by offering substantially less than the amounts~~
- 15 ~~ultimately recovered in actions brought by such insureds;~~
- 16 ~~—(h)— attempting to settle a claim for less than the amount to which a~~
- 17 ~~reasonable person would have believed that such person was entitled by~~
- 18 ~~reference to written or printed advertising material accompanying or~~
- 19 ~~made part of an application;~~
- 20 ~~—(i)— attempting to settle claims on the basis of an application which~~
- 21 ~~was altered without notice to, or knowledge or consent of the insured;~~
- 22 ~~—(j)— making claims payments to insureds or beneficiaries not accom-~~
- 23 ~~panied by a statement setting forth the coverage under which payments~~
- 24 ~~are being made;~~
- 25 ~~—(k)— making known to insureds or claimants a policy of appealing from~~
- 26 ~~arbitration awards in favor of insureds or claimants for the purpose of~~
- 27 ~~compelling them to accept settlements or compromises less than the~~
- 28 ~~amount awarded in arbitration;~~
- 29 ~~—(l)— delaying the investigation or payment of claims by requiring an~~
- 30 ~~insured, claimant or the physician of either to submit a preliminary claim~~
- 31 ~~report and then requiring the subsequent submission of formal proof of~~
- 32 ~~loss forms, both of which submissions contain substantially the same~~
- 33 ~~information;~~
- 34 ~~—(m)— failing to promptly settle claims, where liability has become rea-~~
- 35 ~~sonably clear, under one portion of the insurance policy coverage in order~~
- 36 ~~to influence settlements under other portions of the insurance policy cov-~~
- 37 ~~erage; or~~
- 38 ~~—(n)— failing to promptly provide a reasonable explanation of the basis~~
- 39 ~~in the insurance policy in relation to the facts or applicable law for denial~~
- 40 ~~of a claim or for the offer of a compromise settlement.~~
- 41 ~~—(10)—*Failure to maintain complaint handling procedures.* Failure of~~
- 42 ~~any person, who is an insurer on an insurance policy, to maintain a com-~~
- 43 ~~plete record of all the complaints which it has received since the date of~~

1 its last examination under K.S.A. 40-222, and amendments thereto; but
2 no such records shall be required for complaints received prior to the
3 effective date of this act. The record shall indicate the total number of
4 complaints, their classification by line of insurance, the nature of each
5 complaint, the disposition of the complaints, the date each complaint was
6 originally received by the insurer and the date of final disposition of each
7 complaint. For purposes of this subsection, “complaint” means any writ-
8 ten communication primarily expressing a grievance related to the acts
9 and practices set out in this section.

10 ~~(11)~~ (10) *Misrepresentation in insurance applications.* Making false
11 or fraudulent statements or representations on or relative to an applica-
12 tion for an insurance policy, for the purpose of obtaining a fee, commis-
13 sion, money or other benefit from any insurer, agent, broker or individual.

14 ~~(12)~~ (11) *Statutory violations.* Any violation of any of the provisions
15 of K.S.A. 40-216, 40-276a, 40-2,155 or 40-1515 and amendments thereto.

16 ~~(13)~~ (12) *Disclosure of information relating to adverse underwriting*
17 *decisions and refund of premiums.* Failing to comply with the provisions
18 of K.S.A. 40-2,112, and amendments thereto, within the time prescribed
19 in such section.

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

31 (b) No insured named in a title insurance policy or contract nor any
32 other person directly or indirectly connected with the transaction involv-
33 ing the issuance of the policy or contract, including, but not limited to,
34 mortgage lender, real estate broker, builder, attorney or any officer, em-
35 ployee, agent representative or solicitor thereof, or any other person may
36 knowingly receive or accept, directly or indirectly, any rebate, reduction
37 or abatement of any charge, or any special favor or advantage or any
38 monetary consideration or inducement referred to in ~~(14)~~ (13)(a).

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

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

42 (ii) the payment of an earned commission to a duly appointed title
43 insurance agent for services actually performed in the issuance of the

- 1 policy of title insurance; or
2 (iii) the payment of reasonable entertainment and advertising
3 expenses.
- 4 (d) Nothing in this section prohibits the division of rates and charges
5 between or among a title insurance company and its agent, or one or
6 more title insurance companies and one or more title insurance agents,
7 if such division of rates and charges does not constitute an unlawful rebate
8 under the provisions of this section and is not in payment of a forwarding
9 fee or a finder's fee.
- 10 (e) As used in paragraphs (e) through (i)(7) of this subpart, unless the
11 context otherwise requires:
- 12 (i) "Associate" means any firm, association, organization, partnership,
13 business trust, corporation or other legal entity organized for profit in
14 which a producer of title business is a director, officer or partner thereof,
15 or owner of a financial interest; the spouse or any relative within the
16 second degree by blood or marriage of a producer of title business who
17 is a natural person; any director, officer or employee of a producer of title
18 business or associate; any legal entity that controls, is controlled by, or is
19 under common control with a producer of title business or associate; and
20 any natural person or legal entity with whom a producer of title business
21 or associate has any agreement, arrangement or understanding or pursues
22 any course of conduct, the purpose or effect of which is to evade the
23 provisions of this section.
- 24 (ii) "Financial interest" means any direct or indirect interest, legal or
25 beneficial, where the holder thereof is or will be entitled to 1% or more
26 of the net profits or net worth of the entity in which such interest is held.
27 Notwithstanding the foregoing, an interest of less than 1% or any other
28 type of interest shall constitute a "financial interest" if the primary pur-
29 pose of the acquisition or retention of that interest is the financial benefit
30 to be obtained as a consequence of that interest from the referral of title
31 business.
- 32 (iii) "Person" means any natural person, partnership, association, co-
33 operative, corporation, trust or other legal entity.
- 34 (iv) "Producer of title business" or "producer" means any person,
35 including any officer, director or owner of 5% or more of the equity or
36 capital or both of any person, engaged in this state in the trade, business,
37 occupation or profession of:
- 38 (A) Buying or selling interests in real property;
39 (B) making loans secured by interests in real property; or
40 (C) acting as broker, agent, representative or attorney for a person
41 who buys or sells any interest in real property or who lends or borrows
42 money with such interest as security.
- 43 (v) "Refer" means to direct or cause to be directed or to exercise any

1 power or influence over the direction of title insurance business, whether
2 or not the consent or approval of any other person is sought or obtained
3 with respect to the referral.

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

12 (g) No title insurer or title agent may accept an order for title insur-
13 ance business, issue a title insurance policy, or receive or retain any pre-
14 mium, or charge in connection with any transaction if: (i) The title insurer
15 or title agent knows or has reason to believe that the transaction will
16 constitute controlled business for that title insurer or title agent, and (ii)
17 70% or more of the closed title orders of that title insurer or title agent
18 during the 12 full calendar months immediately preceding the month in
19 which the transaction takes place is derived from controlled business. The
20 prohibitions contained in this subparagraph shall not apply to transactions
21 involving real estate located in a county that has a population, as shown
22 by the last preceding decennial census, of 10,000 or less.

23 (h) Within 90 days following the end of each business year, as estab-
24 lished by the title insurer or title agent, each title insurer or title agent
25 shall file with the department of insurance and any title insurer with which
26 the title agent maintains an underwriting agreement, a report executed
27 by the title insurer's or title agent's chief executive officer or designee,
28 under penalty of perjury, stating the percent of closed title orders origi-
29 nating from controlled business. The failure of a title insurer or title agent
30 to comply with the requirements of this section, at the discretion of the
31 commissioner, shall be grounds for the suspension or revocation of a
32 license or other disciplinary action, with the commissioner able to miti-
33 gate any such disciplinary action if the title insurer or title agent is found
34 to be in substantial compliance with competitive behavior as defined by
35 federal housing and urban development statement of policy 1996-2.

36 (i) (1) No title insurer or title agent may accept any title insurance
37 order or issue a title insurance policy to any person if it knows or has
38 reason to believe that such person was referred to it by any producer of
39 title business or by any associate of such producer, where the producer,
40 the associate, or both, have a financial interest in the title insurer or title
41 agent to which business is referred unless the producer has disclosed in
42 writing to the person so referred the fact that such producer or associate
43 has a financial interest in the title insurer or title agent, the nature of the

1 financial interest and a written estimate of the charge or range of charges
2 generally made by the title insurer or agent for the title services. Such
3 disclosure shall include language stating that the consumer is not obli-
4 gated to use the title insurer or agent in which the referring producer or
5 associate has a financial interest and shall include the names and tele-
6 phone numbers of not less than three other title insurers or agents which
7 operate in the county in which the property is located. If fewer than three
8 insurers or agents operate in that county, the disclosure shall include all
9 title insurers or agents operating in that county. Such written disclosure
10 shall be signed by the person so referred and must have occurred prior
11 to any commitment having been made to such title insurer or agent.

12 (2) No producer of title business or associate of such producer shall
13 require, directly or indirectly, as a condition to selling or furnishing any
14 other person any loan or extension thereof, credit, sale, property, contract,
15 lease or service, that such other person shall purchase title insurance of
16 any kind through any title agent or title insurer if such producer has a
17 financial interest in such title agent or title insurer.

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

22 (4) Nothing in this subpart (i) shall prohibit any producer of title
23 business or associate of such producer from referring title business to any
24 title insurer or title agent of such producer's or associate's choice, and, if
25 such producer or associate of such producer has any financial interest in
26 the title insurer, from receiving income, profits or dividends produced or
27 realized from such financial interest, so long as:

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

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

32 (c) the receipt of income, profits or dividends constitutes only a re-
33 turn on the investment of the producer or associate.

34 (5) Any producer of title business or associate of such producer who
35 violates the provisions of paragraphs (i)(2) through (i)(4), or any title in-
36 surer or title agent who accepts an order for title insurance knowing that
37 it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other
38 action which may be taken by the commissioner of insurance, shall be
39 subject to a fine by the commissioner in an amount equal to five times
40 the premium for the title insurance and, if licensed pursuant to K.S.A.
41 58-3034 et seq., and amendments thereto, shall be deemed to have com-
42 mitted a prohibited act pursuant to K.S.A. 58-3602, and amendments
43 thereto, and shall be liable to the purchaser of such title insurance in an

1 amount equal to the premium for the title insurance.

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

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

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

16 ~~(15)~~ (14) *Disclosure of nonpublic personal information.* (a) No person
17 shall disclose any nonpublic personal information contrary to the provi-
18 sions of title V of the Gramm-Leach-Bliley act of 1999 (public law 106-
19 102). The commissioner may adopt rules and regulations necessary to
20 carry out this section. Such rules and regulations shall be consistent with
21 and not more restrictive than the model regulation adopted on September
22 26, 2000, by the national association of insurance commissioners entitled
23 “Privacy of consumer financial and health information regulation”.

24 (b) Any rules and regulations adopted by the commissioner which
25 implement article V of the model regulation adopted on September 26,
26 2000, by the national association of insurance commissioners entitled
27 “Privacy of consumer financial and health information regulation” shall
28 become effective on and after February 1, 2002.

29 (c) Nothing in this paragraph ~~(15)~~ (14) shall be deemed or construed
30 to authorize the promulgation or adoption of any regulation which pre-
31 empts, supersedes or is inconsistent with any provision of Kansas law
32 concerning requirements for notification of, or obtaining consent from, a
33 parent, guardian or other legal custodian of a minor relating to any matter
34 pertaining to the health and medical treatment for such minor.

35 Sec. 11. K.S.A. 2004 Supp. 40-2404 is hereby repealed.

36 Sec. 12. This act shall take effect and be in force from and after its
37 publication in the statute book.

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