

## SENATE BILL No. 439

By Committee on Financial Institutions and Insurance

1-17

---

9 AN ACT concerning insurance; establishing advertising standards for life  
10 insurance policies and annuities; amending K.S.A. 2007 Supp. 40-4909  
11 and repealing the existing section.  
12

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

14 New Section 1. For the purposes of this act: (a) “Advertisement”  
15 means a written or oral presentation of materials, opinion or information  
16 promoting the reader’s, viewer’s or listener’s interest in insurance, or  
17 promoting the insurer or the insurance producer.

18 (b) “Commissioner” means the commissioner of insurance.

19 (c) “Insurer” means an insurance company required to be licensed  
20 under the laws of this state to provide life insurance products, including  
21 annuities.

22 (d) “Insurance” means any contract offering life insurance products  
23 required to be filed with the Kansas insurance commissioner which serves  
24 as a contractual mechanism for shifting the burdens of pure risks by pool-  
25 ing them.

26 (e) “Insurance producer” means a person required to be licensed  
27 under the laws of this state to sell, solicit or negotiate life insurance,  
28 including annuities.

29 (f) “Public presentation” means any meeting involving more than five  
30 members of the public in which an insurance producer participates in  
31 any manner with the intent to sell insurance policies or annuity contracts  
32 at the meeting, prior to the meeting, or subsequent to the meeting.

33 New Sec. 2. Every insurer shall establish and at all times maintain a  
34 system of control over the content, form and method of dissemination of  
35 all advertisements of its policies. All such advertisements, regardless of  
36 the writer, creator, designer or presenter, shall be the joint responsibility  
37 of the insurer and the insurance producer.

38 New Sec. 3. (a) Advertisements shall be truthful and not misleading  
39 in fact or by implication. The form and content of an advertisement of a  
40 policy shall be sufficiently complete and clear so as to avoid deception.  
41 No advertisement shall have the capacity or tendency to mislead or  
42 deceive.

43 (b) Whether an advertisement has the capacity or tendency to mis-

1 lead or deceive shall be determined by the commissioner using the stan-  
2 dards set forth in subsections (1) and (2) of K.S.A. 40-2404 and amend-  
3 ments thereto. The commissioner may examine the overall impression  
4 that the advertisement may be reasonably expected to create upon a per-  
5 son of average education or intelligence within the segment of the public  
6 to which it is directed in determining if the advertisement is truthful and  
7 not misleading.

8 (c) If the commissioner determines that an advertisement has the  
9 capacity or tendency to mislead or deceive the public, the commissioner  
10 may require an insurer or insurance producer to submit all or any part of  
11 the advertising material for review or approval prior to use.

12 (d) No advertisement shall use the terms “investment,” “investment  
13 plan,” “founder’s plan,” “charter plan,” “deposit,” “expansion plan,”  
14 “profit,” “profits,” “profit sharing,” “interest plan,” “savings,” “savings  
15 plan,” “private pension plan,” “retirement plan” or any other similar term  
16 in connection with a life insurance policy or annuity in a context or under  
17 such circumstances or conditions as to have the capacity or tendency to  
18 mislead a purchaser or prospective purchaser of such policy to believe  
19 that such purchaser or prospective purchaser will or may receive some-  
20 thing other than a life insurance policy or annuity or some benefit not  
21 available to other persons of the same class and equal expectation of life.

22 (e) Oral advertisements shall conform to the same standards of ac-  
23 curacy and truthfulness as required of written advertisements.

24 New Sec. 4. (a) No insurance producer may participate in a public  
25 presentation without first filing notice with the commissioner of insurance  
26 at least 30 days in advance of the public presentation. Notice shall include  
27 the time, date and location of the public meeting and shall identify each  
28 presenter, including all natural persons and business entities, in the public  
29 presentation; as well as identify the sponsor of the public presentation.

30 (b) Notice to the commissioner shall include an example of any writ-  
31 ten and electronic materials distributed before, during or after to atten-  
32 dees. Any materials disapproved by the commissioner shall not be dis-  
33 seminated or used.

34 New Sec. 5. (a) The name of the insurer shall be clearly identified  
35 in all advertisements, and if any specific individual policy is advertised it  
36 shall be identified either by form number or other appropriate descrip-  
37 tion. If an application for life insurance or an annuity is a part of the  
38 advertisement, the name of the insurer shall be shown on the application.  
39 An advertisement shall not use a trade name, an insurance group desig-  
40 nation, name of the parent company of the insurer, name of a particular  
41 division of the insurer, service mark, slogan, symbol or other device or  
42 reference without disclosing the name of the insurer, if the advertisement  
43 would have the capacity or tendency to mislead or deceive as to the true

1 identify of the insurer or create the impression that a company other than  
2 the insurer would have any responsibility for the financial obligation un-  
3 der a policy.

4 (b) No advertisement shall use any combination of words, symbols or  
5 physical materials that by their content, phraseology, shape, color or other  
6 characteristics are so similar to a combination of words, symbols or phys-  
7 ical materials used by a governmental program or agency or otherwise  
8 appear to be of such a nature that they tend to mislead prospective in-  
9 sureds into believing that the solicitation is in some manner connected  
10 with a governmental program or agency.

11 New Sec. 6. No insurance producer may contact a public presenta-  
12 tion attendee without such attendee's explicit approval and shall cease  
13 any contact at such time as the attendee indicates that such attendee  
14 desires a cessation.

15 New Sec. 7. (a) Each insurer shall maintain at its home or principal  
16 office a complete file containing a specimen copy of every printed, pub-  
17 lished or prepared advertisement of its individual policies and specimen  
18 copies of typical printed, published or prepared advertisements of its  
19 blanket, franchise and group policies, hereafter disseminated in this state,  
20 with a notation indicating the manner and extent of distribution and the  
21 form number of any life insurance policy or annuity advertised. Such file  
22 shall be subject to inspection by the commissioner. All such advertise-  
23 ments shall be maintained in such file for a period of either five years or  
24 until the filing of the next regular report on the examination of the insurer,  
25 whichever is the longer period of time.

26 (b) Each insurer subject to the provisions of this act shall file with  
27 the commissioner an annual statement containing a certificate of com-  
28 pliance executed by an authorized officer of the insurer stating that to  
29 the best of such insurer's knowledge, information and belief the adver-  
30 tisements that were disseminated by or on behalf of the insurer in this  
31 state during the preceding statement year, or during the portion of the  
32 year when these rules were in effect, complied or were made to comply  
33 in all respects with the provisions of these rules and the insurance laws  
34 of this state. The annual statement shall be filed with the commissioner  
35 on or before April 1 of each year.

36 New Sec. 8. An insurer or its officers, directors, producers or em-  
37 ployees that violate any of the provisions of this act, or knowingly partic-  
38 ipate in or abet such violation, shall be subject to a fine up to \$1,000 for  
39 each violation and suspension or revocation of its certificate of authority  
40 or license.

41 New Sec. 9. It is not intended that this act conflict with or supersede  
42 any law or rule and regulation currently in force or subsequently adopted  
43 in this state governing specific aspects of the sale or replacement of life

1 insurance including, but not limited to, laws or rules and regulations deal-  
2 ing with life insurance cost comparison indices, deceptive practices in the  
3 sale of life insurance, replacement of life insurance policies, illustration  
4 of life insurance policies, and annuity disclosure. Consequently, no dis-  
5 closure pursuant to or required under those laws shall be deemed to be  
6 an advertisement within the meaning of this act.

7 New Sec. 10. The commissioner may, after notice and hearing,  
8 promulgate reasonable rules and regulations necessary to carry out the  
9 provisions of this act.

10 New Sec. 11. Sections 1 through 11, and amendments thereto, shall  
11 be known and may be cited as the advertising of life insurance and an-  
12 nuities act.

13 Sec. 12. K.S.A. 2007 Supp. 40-4909 is hereby amended to read as  
14 follows: 40-4909. (a) The commissioner may deny, suspend, revoke or  
15 refuse renewal of any license issued under this act if the commissioner  
16 finds that the applicant or license holder has:

17 (1) Provided incorrect, misleading, incomplete or untrue information  
18 in the license application.

19 (2) Violated:

20 (A) Any provision of chapter 40 of the Kansas Statutes Annotated,  
21 and amendments thereto, or any rule and regulation promulgated  
22 thereunder;

23 (B) any subpoena or order of the commissioner;

24 (C) any insurance law or regulation of another state; or

25 (D) any subpoena or order issued by the regulatory official for insur-  
26 ance in another state.

27 (3) Obtained or attempted to obtain a license under this act through  
28 misrepresentation or fraud.

29 (4) Improperly withheld, misappropriated or converted any moneys  
30 or properties received in the course of doing insurance business.

31 (5) Intentionally misrepresented the provisions, terms and conditions  
32 of an actual or proposed insurance contract or application for insurance.

33 (6) Been convicted of a misdemeanor or felony.

34 (7) Admitted to or been found to have committed any insurance un-  
35 fair trade practice or fraud in violation of K.S.A. 40-2404 and amendments  
36 thereto.

37 (8) Used any fraudulent, coercive, or dishonest practice, or demon-  
38 strated any incompetence, untrustworthiness or financial irresponsibility  
39 in the conduct of business in this state or elsewhere.

40 (9) Had an insurance agent license, or its equivalent, denied, sus-  
41 pended or revoked in any other state, district or territory.

42 (10) Forged another person's name to an application for insurance or  
43 to any document related to an insurance transaction.

- 1 (11) Improperly used notes or any other reference material to com-  
2 plete an examination for an insurance license issued under this act.
- 3 (12) Knowingly accepted insurance business from an individual who  
4 is not licensed.
- 5 (13) Failed to comply with any administrative or court order imposing  
6 a child support obligation upon the applicant or license holder.
- 7 (14) Failed to pay any state income tax or comply with any adminis-  
8 trative or court order directing payment of state income tax.
- 9 (15) Rebated the whole or any part of any insurance premium or  
10 offered in connection with the presentation of any contract of insurance  
11 any other inducement not contained in the contract of insurance.
- 12 (16) Made any misleading representation or incomplete comparison  
13 of policies to any person for the purposes of inducing or tending to induce  
14 such person to lapse, forfeit or surrender such person's insurance then in  
15 force.
- 16 (17) *Violated or knowingly participated in or abetted a violation of*  
17 *the advertising of life insurance and annuities act and amendments*  
18 *thereto.*
- 19 (b) In addition, the commissioner may suspend, revoke or refuse re-  
20 newal of any license issued under this act if the commissioner finds that  
21 the interests of the insurer or the insurable interests of the public are not  
22 properly served under such license.
- 23 (c) Any action taken under this section which affects any license or  
24 imposes any administrative penalty shall be taken only after notice and  
25 an opportunity for a hearing conducted in accordance with the provisions  
26 of the Kansas administrative procedures act.
- 27 (d) The license of any business entity may be suspended, revoked or  
28 refused renewal if the insurance commissioner finds that any violation  
29 committed by an individual licensee employed by or acting on behalf of  
30 such business entity was known by or should have been known by one or  
31 more of the partners, officers or managers acting on behalf of the business  
32 entity and:
- 33 (1) Such violation was not reported to the insurance commissioner  
34 by such business entity; or
- 35 (2) such business entity failed to take any corrective action.
- 36 (e) None of the following actions shall deprive the commissioner of  
37 any jurisdiction or right to institute or proceed with any disciplinary pro-  
38 ceeding against such license, to render a decision suspending, revoking  
39 or refusing to renew such license, or to establish and make a record of  
40 the facts of any violation of law for any lawful purpose:
- 41 (1) The imposition of an administrative penalty under this section;  
42 (2) the lapse or suspension of any license issued under this act by  
43 operation of law;

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

3 (4) the licensee's voluntary surrender of any license issued under this  
4 act. No such disciplinary proceeding shall be instituted against any li-  
5 censee after the expiration of two years from the termination of the  
6 license.

7 (f) Whenever the commissioner imposes any administrative penalty  
8 or denies, suspends, revokes or refuses renewal of any license pursuant  
9 to subsection (a), any costs incurred as a result of conducting an admin-  
10 istrative hearing authorized under the provisions of this section shall be  
11 assessed against the person who is the subject of the hearing or any busi-  
12 ness entity represented by such person who is the party to the matters  
13 giving rise to the hearing. As used in this subsection, "costs" shall include  
14 witness fees, mileage allowances, any costs associated with the reproduc-  
15 tion of documents which become a part of the hearing record and the  
16 expense of making a record of the hearing.

17 (g) No person whose license as an agent or broker had been sus-  
18 pended or revoked shall be employed by any insurance company doing  
19 business in this state either directly, indirectly, as an independent con-  
20 tractor or otherwise to negotiate or effect contracts of insurance, sure-  
21 tyship or indemnity or perform any act toward the solicitation of or trans-  
22 action of any business of insurance during the period of such suspension  
23 or revocation.

24 (h) In lieu of taking any action under subsection (a), the commis-  
25 sioner may:

26 (1) Censure the person; or

27 (2) issue an order imposing an administrative penalty up to a maxi-  
28 mum of \$500 for each violation but not to exceed \$2,500 for the same  
29 violation occurring within any six consecutive calendar months from the  
30 date of the original violation unless such person knew or should have  
31 known that the violative act could give rise to disciplinary action under  
32 subsection (a). If such person knew or reasonably should have known the  
33 violative act could give rise to any disciplinary proceeding authorized by  
34 subsection (a), the commissioner may impose a penalty up to a maximum  
35 of \$1,000 for each violation but not to exceed \$5,000 for the same violation  
36 occurring within any six consecutive calendar months from the date of  
37 the imposition of the original administrative penalty.

38 Sec. 13. K.S.A. 2007 Supp. 40-4909 is hereby repealed.

39 Sec. 14. This act shall take effect and be in force from and after its  
40 publication in the statute book.