

HOUSE BILL No. 2041

By Committee on Commerce and Labor

1-20

9 AN ACT relating to insurance; concerning title insurers and agents;
10 amending K.S.A. 2008 Supp. 40-2404 and repealing the existing
11 section.

12

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

14 Section 1. K.S.A. 2008 Supp. 40-2404 is hereby amended to read as
15 follows: 40-2404. The following are hereby defined as unfair methods of
16 competition and unfair or deceptive acts or practices in the business of
17 insurance:

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

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

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

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

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

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

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

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

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

39 (2) *False information and advertising generally.* Making, publishing,
40 disseminating, circulating or placing before the public, or causing, directly
41 or indirectly, to be made, published, disseminated, circulated or placed
42 before the public, in a newspaper, magazine or other publication, or in
43 the form of a notice, circular, pamphlet, letter or poster, or over any radio

1 or television station, or in any other way, an advertisement, announce-
2 ment or statement containing any assertion, misrepresentation or state-
3 ment with respect to the business of insurance or with respect to any
4 person in the conduct of such person's insurance business, which is un-
5 true, deceptive or misleading.

6 (3) *Defamation.* Making, publishing, disseminating or circulating, di-
7 rectly or indirectly, or aiding, abetting or encouraging the making, pub-
8 lishing, disseminating or circulating of any oral or written statement or
9 any pamphlet, circular, article or literature which is false, or maliciously
10 critical of or derogatory to the financial condition of any person, and which
11 is calculated to injure such person.

12 (4) *Boycott, coercion and intimidation.* Entering into any agreement
13 to commit, or by any concerted action committing, any act of boycott,
14 coercion or intimidation resulting in or tending to result in unreasonable
15 restraint of the business of insurance, or by any act of boycott, coercion
16 or intimidation monopolizing or attempting to monopolize any part of the
17 business of insurance.

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

25 (b) Knowingly making any false entry of a material fact in any book,
26 report or statement of any person or knowingly omitting to make a true
27 entry of any material fact pertaining to the business of such person in any
28 book, report or statement of such person.

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

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

41 (b) Making or permitting any unfair discrimination between individ-
42 uals of the same class and of essentially the same hazard in the amount
43 of premium, policy fees or rates charged for any policy or contract of

1 accident or health insurance or in the benefits payable thereunder, or in
2 any of the terms or conditions of such contract, or in any other manner
3 whatever.

4 (c) Refusing to insure, or refusing to continue to insure, or limiting
5 the amount, extent or kind of coverage available to an individual, or charg-
6 ing an individual a different rate for the same coverage solely because of
7 blindness or partial blindness. With respect to all other conditions, in-
8 cluding the underlying cause of the blindness or partial blindness, persons
9 who are blind or partially blind shall be subject to the same standards of
10 sound actuarial principles or actual or reasonably anticipated experience
11 as are sighted persons. Refusal to insure includes denial by an insurer of
12 disability insurance coverage on the grounds that the policy defines “dis-
13 ability” as being presumed in the event that the insured loses such per-
14 son’s eyesight. However, an insurer may exclude from coverage disabili-
15 ties consisting solely of blindness or partial blindness when such condition
16 existed at the time the policy was issued.

17 (d) Refusing to insure, or refusing to continue to insure, or limiting
18 the amount, extent or kind of coverage available for accident and health
19 and life insurance to an applicant who is the proposed insured or charge
20 a different rate for the same coverage or excluding or limiting coverage
21 for losses or denying a claim incurred by an insured as a result of abuse
22 based on the fact that the applicant who is the proposed insured is, has
23 been, or may be the subject of domestic abuse, except as provided in
24 subpart (v). “Abuse” as used in this subsection (7)(d) means one or more
25 acts defined in subsection (a) or (b) of K.S.A. 60-3102 and amendments
26 thereto between family members, current or former household members,
27 or current or former intimate partners.

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

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

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

42 (iv) No person shall refuse to insure, refuse to continue to insure,
43 limit the amount, extent or kind of coverage available to an individual or

1 charge a different rate for the same coverage solely because of physical
2 or mental condition, except where the refusal, limitation or rate differ-
3 ential is based on sound actuarial principles.

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

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

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

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

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

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

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

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

40 (i) In the case of any contract of life insurance or life annuity, paying
41 bonuses to policyholders or otherwise abating their premiums in whole
42 or in part out of surplus accumulated from nonparticipating insurance.
43 Any such bonuses or abatement of premiums shall be fair and equitable

- 1 to policyholders and for the best interests of the company and its
2 policyholders;
- 3 (ii) in the case of life insurance policies issued on the industrial debit
4 plan, making allowance to policyholders who have continuously for a spec-
5 ified period made premium payments directly to an office of the insurer
6 in an amount which fairly represents the saving in collection expenses; or
7 (iii) readjustment of the rate of premium for a group insurance policy
8 based on the loss or expense experience thereunder, at the end of the
9 first or any subsequent policy year of insurance thereunder, which may
10 be made retroactive only for such policy year.
- 11 (9) *Unfair claim settlement practices*. It is an unfair claim settlement
12 practice if any of the following or any rules and regulations pertaining
13 thereto are: (A) Committed flagrantly and in conscious disregard of such
14 provisions, or (B) committed with such frequency as to indicate a general
15 business practice.
- 16 (a) Misrepresenting pertinent facts or insurance policy provisions re-
17 lating to coverages at issue;
- 18 (b) failing to acknowledge and act reasonably promptly upon com-
19 munications with respect to claims arising under insurance policies;
- 20 (c) failing to adopt and implement reasonable standards for the
21 prompt investigation of claims arising under insurance policies;
- 22 (d) refusing to pay claims without conducting a reasonable investi-
23 gation based upon all available information;
- 24 (e) failing to affirm or deny coverage of claims within a reasonable
25 time after proof of loss statements have been completed;
- 26 (f) not attempting in good faith to effectuate prompt, fair and equi-
27 table settlements of claims in which liability has become reasonably clear;
- 28 (g) compelling insureds to institute litigation to recover amounts due
29 under an insurance policy by offering substantially less than the amounts
30 ultimately recovered in actions brought by such insureds;
- 31 (h) attempting to settle a claim for less than the amount to which a
32 reasonable person would have believed that such person was entitled by
33 reference to written or printed advertising material accompanying or
34 made part of an application;
- 35 (i) attempting to settle claims on the basis of an application which
36 was altered without notice to, or knowledge or consent of the insured;
- 37 (j) making claims payments to insureds or beneficiaries not accom-
38 panied by a statement setting forth the coverage under which payments
39 are being made;
- 40 (k) making known to insureds or claimants a policy of appealing from
41 arbitration awards in favor of insureds or claimants for the purpose of
42 compelling them to accept settlements or compromises less than the
43 amount awarded in arbitration;

- 1 (l) delaying the investigation or payment of claims by requiring an
2 insured, claimant or the physician of either to submit a preliminary claim
3 report and then requiring the subsequent submission of formal proof of
4 loss forms, both of which submissions contain substantially the same
5 information;
- 6 (m) failing to promptly settle claims, where liability has become rea-
7 sonably clear, under one portion of the insurance policy coverage in order
8 to influence settlements under other portions of the insurance policy cov-
9 erage; or
- 10 (n) failing to promptly provide a reasonable explanation of the basis
11 in the insurance policy in relation to the facts or applicable law for denial
12 of a claim or for the offer of a compromise settlement.
- 13 (10) *Failure to maintain complaint handling procedures.* Failure of
14 any person, who is an insurer on an insurance policy, to maintain a com-
15 plete record of all the complaints which it has received since the date of
16 its last examination under K.S.A. 40-222, and amendments thereto; but
17 no such records shall be required for complaints received prior to the
18 effective date of this act. The record shall indicate the total number of
19 complaints, their classification by line of insurance, the nature of each
20 complaint, the disposition of the complaints, the date each complaint was
21 originally received by the insurer and the date of final disposition of each
22 complaint. For purposes of this subsection, “complaint” means any writ-
23 ten communication primarily expressing a grievance related to the acts
24 and practices set out in this section.
- 25 (11) *Misrepresentation in insurance applications.* Making false or
26 fraudulent statements or representations on or relative to an application
27 for an insurance policy, for the purpose of obtaining a fee, commission,
28 money or other benefit from any insurer, agent, broker or individual.
- 29 (12) *Statutory violations.* Any violation of any of the provisions of
30 K.S.A. 40-216, 40-276a, 40-2,155 or 40-1515 and amendments thereto.
- 31 (13) *Disclosure of information relating to adverse underwriting de-*
32 *cisions and refund of premiums.* Failing to comply with the provisions of
33 K.S.A. 40-2,112, and amendments thereto, within the time prescribed in
34 such section.
- 35 (14) *Rebates and other inducements in title insurance.* (a) No title
36 insurance company or title insurance agent, or any officer, employee,
37 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,
38 allow or give, directly or indirectly, as an inducement to obtaining any
39 title insurance business, any rebate, reduction or abatement of any rate
40 or charge made incident to the issuance of such insurance, any special
41 favor or advantage not generally available to others of the same classifi-
42 cation, or any money, thing of value or other consideration or material
43 inducement. The words “charge made incident to the issuance of such

1 insurance” includes, without limitations, escrow, settlement and closing
2 charges.

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

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

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

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

17 (iii) the payment of reasonable entertainment and advertising
18 expenses.

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

25 (e) As used in paragraphs (e) through (i)(7) of this subpart, unless the
26 context otherwise requires:

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

39 (ii) “Financial interest” means any direct or indirect interest, legal or
40 beneficial, where the holder thereof is or will be entitled to 1% or more
41 of the net profits or net worth of the entity in which such interest is held.
42 Notwithstanding the foregoing, an interest of less than 1% or any other
43 type of interest shall constitute a “financial interest” if the primary pur-

- 1 pose of the acquisition or retention of that interest is the financial benefit
2 to be obtained as a consequence of that interest from the referral of title
3 business.
- 4 (iii) "Person" means any natural person, partnership, association, co-
5 operative, corporation, trust or other legal entity.
- 6 (iv) "Producer of title business" or "producer" means any person,
7 including any officer, director or owner of 5% or more of the equity or
8 capital or both of any person, engaged in this state in the trade, business,
9 occupation or profession of:
- 10 (A) Buying or selling interests in real property;
11 (B) making loans secured by interests in real property; or
12 (C) acting as broker, agent, representative or attorney for a person
13 who buys or sells any interest in real property or who lends or borrows
14 money with such interest as security.
- 15 (v) "Refer" means to direct or cause to be directed or to exercise any
16 power or influence over the direction of title insurance business, whether
17 or not the consent or approval of any other person is sought or obtained
18 with respect to the referral.
- 19 (f) No title insurer or title agent may accept any order for, issue a
20 title insurance policy to, or provide services to, an applicant if it knows
21 or has reason to believe that the applicant was referred to it by any pro-
22 ducer of title business or by any associate of such producer, where the
23 producer, the associate, or both, have a financial interest in the title in-
24 surer or title agent to which business is referred unless the producer has
25 disclosed to the buyer, seller and lender the financial interest of the pro-
26 ducer of title business or associate referring the title insurance business.
- 27 ~~(g) No title insurer or title agent may accept an order for title insur-~~
28 ~~ance business, issue a title insurance policy, or receive or retain any pre-~~
29 ~~mium, or charge in connection with any transaction if: (i) The title insurer~~
30 ~~or title agent knows or has reason to believe that the transaction will~~
31 ~~constitute controlled business for that title insurer or title agent, and (ii)~~
32 ~~70% or more of the closed title orders of that title insurer or title agent~~
33 ~~during the 12 full calendar months immediately preceding the month in~~
34 ~~which the transaction takes place is derived from controlled business. The~~
35 ~~prohibitions contained in this subparagraph shall not apply to transactions~~
36 ~~involving real estate located in a county that has a population, as shown~~
37 ~~by the last preceding decennial census, of 10,000 or less.~~
- 38 ~~(h)~~ (g) Within 90 days following the end of each business year, as
39 established by the title insurer or title agent, each title insurer or title
40 agent shall file with the department of insurance and any title insurer
41 with which the title agent maintains an underwriting agreement, a report
42 executed by the title insurer's or title agent's chief executive officer or
43 designee, under penalty of perjury, stating the percent of closed title

1 orders originating from controlled business. The failure of a title insurer
2 or title agent to comply with the requirements of this section, at the
3 discretion of the commissioner, shall be grounds for the suspension or
4 revocation of a license or other disciplinary action, with the commissioner
5 able to mitigate any such disciplinary action if the title insurer or title
6 agent is found to be in substantial compliance with competitive behavior
7 as defined by federal housing and urban development statement of policy
8 1996-2.

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

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

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

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

- 1 (a) Such financial interest is disclosed to the purchaser of the title
2 insurance in accordance with part (i)(1) through (4) of this subpart;
- 3 (b) the payment of income, profits or dividends is not in exchange
4 for the referral of business; and
- 5 (c) the receipt of income, profits or dividends constitutes only a re-
6 turn on the investment of the producer or associate.
- 7 (5) Any producer of title business or associate of such producer who
8 violates the provisions of paragraphs (i)(2) through (i)(4), or any title in-
9 surer or title agent who accepts an order for title insurance knowing that
10 it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other
11 action which may be taken by the commissioner of insurance, shall be
12 subject to a fine by the commissioner in an amount equal to five times
13 the premium for the title insurance and, if licensed pursuant to K.S.A.
14 58-3034 et seq., and amendments thereto, shall be deemed to have com-
15 mitted a prohibited act pursuant to K.S.A. 58-3602, and amendments
16 thereto, and shall be liable to the purchaser of such title insurance in an
17 amount equal to the premium for the title insurance.
- 18 (6) Any title insurer or title agent that is a competitor of any title
19 insurer or title agent that, subsequent to the effective date of this act, has
20 violated or is violating the provisions of subpart (i), shall have a cause of
21 action against such title insurer or title agent and, upon establishing the
22 existence of a violation of any such provision, shall be entitled, in addition
23 to any other damages or remedies provided by law, to such equitable or
24 injunctive relief as the court deems proper. In any such action under this
25 subsection, the court may award to the successful party the court costs
26 of the action together with reasonable attorney fees.
- 27 (7) The commissioner shall also require each title agent to provide
28 core title services as required by the real estate settlement procedures
29 act.
- 30 ~~(j)~~(i) The commissioner shall adopt any regulations necessary to carry
31 out the provisions of this act.
- 32 (15) *Disclosure of nonpublic personal information.* (a) No person
33 shall disclose any nonpublic personal information contrary to the provi-
34 sions of title V of the Gramm-Leach-Bliley act of 1999 (public law 106-
35 102). The commissioner may adopt rules and regulations necessary to
36 carry out this section. Such rules and regulations shall be consistent with
37 and not more restrictive than the model regulation adopted on September
38 26, 2000, by the national association of insurance commissioners entitled
39 “Privacy of consumer financial and health information regulation”.
- 40 (b) Any rules and regulations adopted by the commissioner which
41 implement article V of the model regulation adopted on September 26,
42 2000, by the national association of insurance commissioners entitled
43 “Privacy of consumer financial and health information regulation” shall

1 become effective on and after February 1, 2002.
2 (c) Nothing in this paragraph (15) shall be deemed or construed to
3 authorize the promulgation or adoption of any regulation which preempts,
4 supersedes or is inconsistent with any provision of Kansas law concerning
5 requirements for notification of, or obtaining consent from, a parent,
6 guardian or other legal custodian of a minor relating to any matter per-
7 taining to the health and medical treatment for such minor.
8 Sec. 2. K.S.A. 2008 Supp. 40-2404 is hereby repealed.
9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.