

## HOUSE BILL No. 2322

By Committee on Insurance

2-7

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9 AN ACT concerning insurance; enacting the insurance unfair trade prac-  
10 tices act; amending K.S.A. 40-2,108, 40-1612, 40-2209o, 40-2215, 40-  
11 2442 and 40-3909 and K.S.A. 2004 Supp. 40-4909, 40-4910 and 40-  
12 5014 and repealing the existing sections; also repealing K.S.A. 40-2401,  
13 40-2402, 40-2403, 40-2404a, 40-2405, 40-2406, 40-2407, 40-2408, 40-  
14 2411, 40-2412, 40-2413, 40-2414, 40-2415, 40-2416, 40-2417, 40-2418,  
15 40-2419, 40-2420 and 40-2421 and K.S.A. 2004 Supp. 40-2404.  
16

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

18 New Section 1. For the purposes of this act: (a) “Affiliate” means  
19 any company that controls, is controlled by, or is under common control  
20 with another company.

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

22 (c) “Customer” means an individual who purchases, applies to pur-  
23 chase, or is solicited to purchase insurance products primarily for per-  
24 sonal, family or household purposes.

25 (d) “Depository institution” means a bank or savings association. De-  
26 pository institution does not include an insurance company.

27 (e) “Insured” means the party named on a policy or certificate as the  
28 individual with legal rights to the benefits provided by such policy.

29 (f) “Insurer” means any person, reciprocal exchange, interinsurer,  
30 Lloyd’s insurer, fraternal benefit society and any other legal entity en-  
31 gaged in the business of insurance, including producers, adjusters and  
32 third-party administrators. Insurer includes any health benefit plan as  
33 such term is defined in K.S.A. 40-4602 and amendments thereto. For  
34 purposes of this act, these foregoing entities shall be deemed to be en-  
35 gaged in the business of insurance.

36 (g) “Person” means a natural or artificial entity, including, but not  
37 limited to, individuals, partnerships, associations, trusts or corporations.

38 (h) “Policy” or “certificate” means a contract of insurance, indemnity,  
39 medical, health or hospital service, suretyship, or annuity issued, proposed  
40 for issuance, or intended for issuance by any insurer.

41 (i) “Producer” or “insurance producer” means a person required to  
42 be licensed under the laws of this state to sell, solicit or negotiate insur-  
43 ance. Producer also includes an insurance agent as such term is defined

1 in K.S.A. 40-4902 and amendments thereto.

2 New Sec. 2. It is an unfair trade practice for any insurer to commit  
3 any practice defined in section 3, and amendments thereto, if such prac-  
4 tice: (a) Is committed flagrantly and in conscious disregard of this act or  
5 of any rules promulgated hereunder; or

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

8 New Sec. 3. The following practices are hereby defined as unfair  
9 trade practices in the business of insurance when committed in violation  
10 of section 2 and amendments thereto:

11 (a) *Misrepresentations and False Advertising of Insurance Policies.*  
12 Making, issuing, circulating or causing to be made, issued or circulated,  
13 any estimate, illustration, circular or statement, sales presentation, omis-  
14 sion or comparison that:

15 (1) Misrepresents the benefits, advantages, conditions or terms of any  
16 policy;

17 (2) misrepresents the dividends or share of the surplus to be received  
18 on any policy;

19 (3) makes a false or misleading statement as to the dividends or share  
20 of surplus previously paid on any policy;

21 (4) misleads or misrepresents the financial condition of any insurer,  
22 or the legal reserve system upon which any life insurer operates;

23 (5) uses any name or title of any policy or class of policies that mis-  
24 represents the true nature thereof;

25 (6) is a misrepresentation, including any intentional misquote of pre-  
26 mium rate, for the purpose of inducing or tending to induce the purchase,  
27 lapse, forfeiture, exchange, conversion or surrender of any policy;

28 (7) is a misrepresentation for the purpose of effecting a pledge or  
29 assignment of or effecting a loan against any policy; or

30 (8) misrepresents any policy as being shares of stock.

31 (b) *False Information and Advertising Generally.* Making, publishing,  
32 disseminating, circulating or placing before the public, or causing, directly  
33 or indirectly, to be made, published, disseminated, circulated or placed  
34 before the public, in a newspaper, magazine or other publication, or in  
35 the form of a notice, circular, pamphlet, letter or poster, or over any radio  
36 or television station, or in any other way, an advertisement, announce-  
37 ment or statement containing any assertion, representation or statement  
38 with respect to the business of insurance or with respect to any insurer  
39 in the conduct of its insurance business, which is untrue, deceptive or  
40 misleading.

41 (c) *Defamation.* Making, publishing, disseminating or circulating, di-  
42 rectly or indirectly, or aiding, abetting or encouraging the making, pub-  
43 lishing, disseminating or circulating of any oral or written statement or

- 1 any pamphlet, circular, article or literature which is false, or maliciously  
2 critical of or derogatory to the financial condition of any insurer, and  
3 which is calculated to injure such insurer.
- 4 (d) *Boycott, Coercion and Intimidation.* Entering into any agreement  
5 to commit, or by any concerted action committing any act of boycott,  
6 coercion or intimidation resulting in or tending to result in unreasonable  
7 restraint of, or monopoly in, the business of insurance.
- 8 (e) *False Statements and Entries.* (1) Knowingly filing with any su-  
9 pervisory or other public official, or knowingly making, publishing, dis-  
10 seminating, circulating or delivering to any person, or placing before the  
11 public, or knowingly causing, directly or indirectly, to be made, published,  
12 disseminated, circulated, delivered to any person or placed before the  
13 public, any false material statement of fact as to the financial condition  
14 of an insurer.
- 15 (2) Knowingly making any false entry of a material fact in any book,  
16 report or statement of any insurer or knowingly omitting to make a true  
17 entry of any material fact pertaining to the business of such insurer in  
18 any book, report or statement of such insurer, or knowingly making any  
19 false material statement to any insurance department official.
- 20 (f) *Stock Operations and Advisory Board Contracts.* Issuing or deliv-  
21 ering or permitting agents, officers or employees to issue or deliver,  
22 agency company stock or other capital stock, or benefit certificates or  
23 shares in any common law corporation, or securities or any special or  
24 advisory board contracts or other contracts of any kind promising returns  
25 and profits as an inducement to purchase insurance.
- 26 (g) *Unfair Discrimination.* (1) Making or permitting any unfair dis-  
27 crimination between individuals of the same class and equal expectation  
28 of life in the rates charged for any life insurance policy or annuity or in  
29 the dividends or other benefits payable thereon, or in any other of the  
30 terms and conditions of such policy.
- 31 (2) Making or permitting any unfair discrimination between individ-  
32 uals of the same class and of essentially the same hazard in the amount  
33 of premium, policy fees or rates charged for any accident or health in-  
34 surance policy or in the benefits payable thereunder, or in any of the  
35 terms or conditions of such policy, or in any other manner.
- 36 (3) Making or permitting any unfair discrimination between individ-  
37 uals or risks of the same class and of essentially the same hazard by re-  
38 fusing to insure, refusing to renew, canceling or limiting the amount of  
39 insurance coverage on a property or casualty risk solely because of the  
40 geographic location of the risk, unless such action is the result of the  
41 application of sound underwriting and actuarial principles related to ac-  
42 tual or reasonably anticipated loss experience.
- 43 (4) Making or permitting any unfair discrimination between individ-

1 uals or risks of the same class and of essentially the same hazards by  
2 refusing to insure, refusing to renew, canceling or limiting the amount of  
3 insurance coverage on the residential property risk, or the personal prop-  
4 erty contained therein, solely because of the age of the residential  
5 property.

6 (5) Refusing to insure, refusing to continue to insure, or limiting the  
7 amount of coverage available to an individual because of the sex, marital  
8 status, race, religion or national origin of the individual; however, nothing  
9 in this subsection shall prohibit an insurer from taking marital status into  
10 account for the purpose of defining persons eligible for dependent ben-  
11 efits. Nothing in this paragraph shall prohibit or limit the operation of  
12 fraternal benefit societies.

13 (6) To terminate, or to modify coverage or to refuse to issue or refuse  
14 to renew any property or casualty policy solely because the applicant or  
15 insured or any employee of either is mentally or physically impaired;  
16 provided that this subsection shall not apply to accident and health in-  
17 surance sold by a casualty insurer and, provided further, that this subsec-  
18 tion shall not be interpreted to modify any other provision of law relating  
19 to the termination, modification, issuance or renewal of any insurance  
20 policy or contract.

21 (7) Refusing to insure solely because another insurer has refused to  
22 write a policy, or has canceled or has refused to renew an existing policy  
23 in which that person was the named insured. Nothing in this paragraph  
24 shall prevent the termination of an excess insurance policy on account of  
25 the failure of the insured to maintain any required underlying insurance.

26 (8) Violation of any of K.S.A. 40-276, 40-278, 40-2,120, 40-2,122, 40-  
27 410 and 40-411 and amendments thereto.

28 (h) *Rebates.* (1) Except as otherwise expressly provided by law, know-  
29 ingly permitting or offering to make or making any life insurance policy  
30 or annuity, or accident and health insurance or other insurance, or agree-  
31 ment as to such contract other than as plainly expressed in the policy  
32 issued thereon, or paying or allowing, or giving or offering to pay, allow,  
33 or give, directly or indirectly, as inducement to such policy, any rebate of  
34 premiums payable on the policy, or any special favor or advantage in the  
35 dividends or other benefits thereon, or any valuable consideration or in-  
36 ducement whatever not specified in the policy; or giving, or selling, or  
37 purchasing or offering to give, sell or purchase as inducement to such  
38 policy or annuity or in connection therewith, any stocks, bonds or other  
39 securities of any insurance company or other corporation, association or  
40 partnership, or any dividends or profits accrued thereon, or anything of  
41 value whatsoever not specified in the policy.

42 (2) Nothing in subsection (g) or paragraph (1) of subsection (h) of  
43 this section shall be construed to include within the definition of discrim-

1 ination or rebates any of the following practices:

2 (A) In the case of life insurance policies or annuities, paying bonuses  
3 to policyholders or otherwise abating their premiums in whole, or in part,  
4 out of surplus accumulated from nonparticipating insurance, provided  
5 that any such bonuses or abatement of premiums shall be fair and equi-  
6 table to policyholders and for the best interests of the company and its  
7 policyholders;

8 (B) in the case of life insurance policies issued on the industrial debit  
9 plan, making allowance to policyholders who have continuously for a spec-  
10 ified period made premium payments directly to an office of the insurer  
11 in an amount that fairly represents the saving in collection expenses;

12 (C) readjusting the rate of premium for a group insurance policy  
13 based on the loss or expense thereunder, at the end of the first or any  
14 subsequent policy year of insurance thereunder, which may be made ret-  
15 roactive only for such policy year; or

16 (D) engaging in an arrangement that would not violate section 106  
17 of the bank holding company act amendments of 1972 (12 U.S.C. 1972),  
18 or section 5(q) of the home owners' loan act, 12 U.S.C. 1464(q) as in  
19 effect on the effective date of this act.

20 (i) *Prohibited Group Enrollments*. No insurer shall offer more than  
21 one group policy of insurance through any person unless such person is  
22 licensed, at a minimum, as a limited insurance representative, except that  
23 this prohibition shall not apply to any employer/employee relationship or  
24 to any such enrollment.

25 (j) *Failure to Maintain Marketing and Performance Records*. Failure  
26 of an insurer to maintain its books, records, documents and other business  
27 records in such an order that data regarding complaints, claims, rating,  
28 underwriting and marketing are accessible and retrievable for examina-  
29 tion by the insurance commissioner. Data for at least the current calendar  
30 year and the two preceding years shall be maintained.

31 (k) *Failure to Maintain Complaint Handling Procedures*. Failure of  
32 any insurer to maintain a complete record of all the complaints it received  
33 since the date of its last examination under K.S.A. 40-222 and amend-  
34 ments thereto. This record shall indicate the total number of complaints,  
35 the insurer's classification by line of insurance, the nature of each com-  
36 plaint, the disposition of each complaint and the time required to process  
37 each complaint. For purposes of this paragraph, "complaint" shall mean  
38 any written communication primarily expressing a grievance.

39 (l) *Misrepresentation in Insurance Applications*. Making false or  
40 fraudulent statements or representations on or relative to an application  
41 for a policy, for the purpose of obtaining a fee, commission, money or  
42 other benefit from any provider or individual person.

43 (m) *Unfair Financial Planning Practices*. An insurance producer who:

1 (1) Holds out such insurance producer, directly or indirectly, to the  
2 public as a “financial planner”, “investment adviser”, “consultant”, “fi-  
3 nancial counselor”, or any other specialist engaged in the business of  
4 giving financial planning or advice relating to investments, insurance, real  
5 estate, tax matters or trust and estate matters when such person is in fact  
6 engaged only in the sale of policies. This provision does not preclude any  
7 person who holds some form of formal recognized financial planning or  
8 consultant certification or designation from using this certification or des-  
9 ignation when they are only selling insurance. This provision does not  
10 permit any person to charge an additional fee for services that are cus-  
11 tomarily associated with the solicitation, negotiation or servicing of  
12 policies.

13 (2) (A) Engaging in the business of financial planning without dis-  
14 closing to the client prior to the execution of the agreement provided for  
15 in paragraph (3) of this section, or solicitation of the sale of a product or  
16 service that:

17 (i) Such producer is also an insurance salesperson; and  
18 (ii) a commission for the sale of an insurance product will be received  
19 in addition to a fee for financial planning, if such is the case.

20 (B) The disclosure requirement under this subsection may be met by  
21 including it in any disclosure required by federal or state securities law.

22 (3) (A) Charging fees other than commissions for financial planning  
23 by insurance producers unless such fees are based upon a written agree-  
24 ment, signed by the party to be charged in advance of the performance  
25 of the services under the agreement. A copy of the agreement must be  
26 provided to the party to be charged at the time the agreement is signed  
27 by the party.

28 (i) The services for which the fee is to be charged must be specifically  
29 stated in the agreement.

30 (ii) The amount of the fee to be charged or how it will be determined  
31 or calculated must be specifically stated in the agreement.

32 (iii) The agreement must state that the client is under no obligation  
33 to purchase any insurance product through the insurance producer or  
34 consultant.

35 (B) The insurance producer shall retain a copy of the agreement for  
36 not less than three years after completion of services, and a copy shall be  
37 available to the commissioner upon request.

38 (n) *Failure to file or to certify information regarding the endorsement*  
39 *or sale of long-term care insurance.* Failure of any insurer to:

40 (1) File with the insurance department the following material:

41 (A) The policy and certificate;

42 (B) a corresponding outline of coverage; and

43 (C) all advertisements requested by the insurance department; or

- 1 (2) certify annually that the association has complied with the re-  
2 sponsibilities for disclosure, advertising, compensation arrangements or  
3 other information required by the commissioner, as set forth by rule and  
4 regulation.
- 5 (o) *Failure to Provide Claims History.* (1) *Loss Informa-*  
6 *tion—operty and Casualty.* Failure of a company issuing property  
7 and casualty insurance to provide the following loss information for the  
8 three previous policy years to the first named insured within 30 days of  
9 receipt of the first named insured's written request:
- 10 (A) On all claims, date and description of occurrence, and total  
11 amount of payments; and
- 12 (B) for any occurrence not included in subparagraph (A) of this par-  
13 agraph, the date and description of occurrence.
- 14 (2) Should the first named insured be requested by a prospective  
15 insurer to provide detailed loss information in addition to that required  
16 under paragraph (1) of this subsection, the first named insured may mail  
17 or deliver a written request to the insurer for the additional information.  
18 No prospective insurer shall request more detailed loss information than  
19 reasonably required to underwrite the same line or class of insurance.  
20 The insurer shall provide information under this subparagraph to the first  
21 named insured as soon as possible, but in no event later than 20 days of  
22 receipt of the written request. Notwithstanding any other provision of  
23 this subsection, no insurer shall be required to provide loss reserve in-  
24 formation, and no prospective insurer may refuse to insure an applicant  
25 solely because the prospective insurer is unable to obtain loss reserve  
26 information.
- 27 (3) The commissioner may promulgate regulations to exclude the  
28 providing of the loss information as outlined in paragraph (1) of this sub-  
29 section for any line or class of insurance where it can be shown that the  
30 information is not needed for that line or class of insurance, or where the  
31 provision of loss information otherwise is required by law.
- 32 (4) (A) Information provided under paragraph (2) of this subsection  
33 shall not be subject to discovery by any party other than the insured, the  
34 insurer and the prospective insurer.
- 35 (B) The provisions of this paragraph shall expire on July 1, 2010,  
36 unless the legislature reviews and reenacts this provision pursuant to  
37 K.S.A. 45-229, and amendments thereto, prior to July 1, 2010.
- 38 (p) Violating any provision of K.S.A. 40-216, 40-276a, 40-2,155 or 40-  
39 1515 and amendments thereto.
- 40 New Sec. 4. (a) (1) No person or depository institution, or affiliate  
41 of a depository institution may require as a condition precedent to the  
42 lending of money or extension of credit, or any renewal thereof, that the  
43 person to whom such money or credit is extended or whose obligation a

1 creditor is to acquire or finance, negotiate any policy or renewal thereof  
2 through a particular insurer or group of insurers or agent or broker or  
3 group of agents or brokers.

4 (2) No person or depository institution, or affiliate of a depository  
5 institution, may reject an insurance policy solely because the policy has  
6 been issued or underwritten by a person who is not associated with the  
7 depository institution or affiliate when insurance is required in connection  
8 with a loan or extension of credit.

9 (b) No person or depository institution, or affiliate of a depository  
10 institution, who lends money or extends credit may:

11 (1) As a condition for extending credit or offering any product or  
12 service that is equivalent to an extension of credit, require that a customer  
13 obtain insurance from a depository institution or an affiliate of a deposi-  
14 tory institution, or a particular insurer or producer. This provision does  
15 not prohibit a person or depository institution, or affiliate of a depository  
16 institution, from informing a customer or prospective customer that in-  
17 surance is required in order to obtain a loan or credit, or that loan or  
18 credit approval is contingent upon the procurement by the customer of  
19 acceptable insurance, or that insurance is available from the person or  
20 depository institution, or affiliate of a depository institution;

21 (2) unreasonably reject a policy furnished by the customer or bor-  
22 rower for the protection of the property securing the credit or lien. A  
23 rejection shall not be deemed unreasonable if it is based on reasonable  
24 standards, uniformly applied, relating to the extent of coverage required  
25 and the financial soundness and the services of an insurer. Such standards  
26 shall not discriminate against any particular type of insurer, nor shall such  
27 standards call for rejection of a policy because it contains coverage in  
28 addition to that required in the credit transaction;

29 (3) require that any customer, borrower, mortgagor, purchaser, in-  
30 surer, broker or agent pay a separate charge, in connection with the han-  
31 dling of any policy required as security for a loan on real estate, or pay a  
32 separate charge to substitute the policy of one insurer for that of another.  
33 This paragraph does not include the interest that may be charged on  
34 premium loans or premium advancements in accordance with the terms  
35 of the loan or credit document. Further, this paragraph does not apply  
36 to charges that would be required when the person or depository insti-  
37 tution or affiliate of a depository institution is the licensed producer pro-  
38 viding the insurance;

39 (4) require any procedures or conditions of duly licensed producers  
40 or insurers not customarily required of those producers or insurers affil-  
41 iated or in any way connected with the person who lends money or ex-  
42 tends credit;

43 (5) use an advertisement or other insurance promotional material that

- 1 would cause a reasonable person to mistakenly believe that the federal  
2 government or the state is responsible for the insurance sales activity of,  
3 or stands behind the credit of, the person, depository institution or its  
4 affiliate;
- 5 (6) use an advertisement or other insurance promotional material that  
6 would cause a reasonable person to mistakenly believe that the federal  
7 government or the state guarantees any returns on insurance products or  
8 is a source of payment on any insurance obligation of or sold by the  
9 person, depository institution or its affiliate;
- 10 (7) act as a producer unless properly licensed in accordance with the  
11 provisions of uniform insurance agents licensing act, K.S.A. 40-4901 et  
12 seq. and amendments thereto;
- 13 (8) pay or receive any commission, brokerage fee or other compen-  
14 sation as a producer, unless the person holds a valid producer's license  
15 for the applicable class of insurance, except that an unlicensed person  
16 may make a referral to a licensed producer provided that the person does  
17 not discuss specific insurance policy terms and conditions. The unlicensed  
18 person may be compensated for the referral, however, in the case of a  
19 referral of a customer, the unlicensed person may be compensated only  
20 if the compensation is a fixed dollar amount for each referral that does  
21 not depend on whether the customer purchases the insurance product  
22 from the licensed producer. Furthermore, any person who accepts de-  
23 posits from the public in an area where such transactions are routinely  
24 conducted in the depository institution may receive for each customer  
25 referral no more than a one-time, nominal fee of a fixed dollar amount  
26 for each referral that does not depend on whether the referral results in  
27 a transaction;
- 28 (9) solicit or sell insurance, other than credit insurance or flood in-  
29 surance, unless the solicitation or sale is completed through documents  
30 separate from any credit transactions;
- 31 (10) include the expense of insurance premiums, other than credit  
32 insurance premiums or flood insurance premiums, in the primary credit  
33 transaction without the express written consent of the customer;
- 34 (11) solicit or sell insurance unless its insurance sales activities are,  
35 to the extent practicable, physically separated from areas where retail  
36 deposits are routinely accepted by depository institutions; or
- 37 (12) solicit or sell insurance unless it maintains separate and distinct  
38 books and records relating to the insurance transactions, including all files  
39 relating to and reflecting consumer complaints.
- 40 (c) Every person or depository institution, or affiliate of a depository  
41 institution that lends money or extends credit and who solicits insurance  
42 primarily for personal, family or household purposes shall disclose to the  
43 customer in writing that the insurance related to the credit extension may

1 be purchased from an insurer or producer of the customer's choice, sub-  
2 ject only to the lender's right to reject a given insurer or agent as provided  
3 in paragraph (2) of subsection (b) of this section. Such disclosure shall  
4 inform the customer that the customer's choice of insurer or producer  
5 will not affect the credit decision or credit terms in any way, except that  
6 the depository institution may impose reasonable requirements concern-  
7 ing the creditworthiness of the insurer and the scope of coverage chosen  
8 as provided in paragraph (2) of subsection (b) of this section.

9 (d) (1) A depository institution that solicits, sells, advertises or offers  
10 insurance, and any person who solicits, sells, advertises or offers insurance  
11 on behalf of a depository institution or on the premises of a depository  
12 institution shall disclose to the customer in writing, where practicable and  
13 in a clear and conspicuous manner, prior to a sale, that the insurance:

14 (A) Is not a deposit;

15 (B) is not insured by the federal deposit insurance corporation or any  
16 other agency of the federal government;

17 (C) is not guaranteed by the depository institution, its affiliate (if ap-  
18 plicable) or any person that is soliciting, selling, advertising or offering  
19 insurance (if applicable); and

20 (D) where appropriate, involves investment risk, including the possi-  
21 ble loss of value.

22 (2) For purposes of the requirements in paragraph (1), an affiliate of  
23 a depository institution is subject to these requirements only to the extent  
24 that it sells, solicits, advertises or offers insurance products or annuities  
25 at an office of a depository institution or on behalf of a depository insti-  
26 tution. These requirements apply only when an individual purchases, ap-  
27 plies to purchase or is solicited to purchase insurance products or annu-  
28 ities primarily for personal, family or household purposes and only to the  
29 extent that the disclosure would be accurate.

30 (3) A depository institution that solicits, sells, advertises or offers in-  
31 surance, and any person who solicits, sells, advertises or offers insurance  
32 on behalf of a depository institution or on the premises of a depository  
33 institution shall obtain written acknowledgment of the receipt of the dis-  
34 closure from the customer at the time the customer receives the disclo-  
35 sure or at the time of the initial purchase of the insurance policy. If the  
36 solicitation is conducted by telephone, the person or depository institution  
37 shall obtain an oral acknowledgment of receipt of the disclosure, maintain  
38 sufficient documentation to show that the acknowledgment was given by  
39 the customer, and make reasonable efforts to obtain a written acknow-  
40 ledgment from the customer. If a customer affirmatively consents to re-  
41 ceiving the disclosures electronically and if the disclosures are provided  
42 in a format that the customer may retain or obtain later, the person or  
43 depository institution, may provide the disclosure and obtain acknow-

1 ledgment of the receipt of the disclosure from the customer using elec-  
2 tronic media.

3 (4) For the purposes of paragraph (1), a person shall be deemed to  
4 be selling, soliciting, advertising or offering insurance on behalf of a de-  
5 pository institution, whether at an office of the depository institution or  
6 another location, if at least one of the following applies:

7 (A) The person represents to the customer that the sale, solicitation,  
8 advertisement or offer of the insurance is by or on behalf of the depository  
9 institution;

10 (B) the depository institution refers a customer to the person who  
11 sells insurance and the depository institution has a contractual arrange-  
12 ment to receive commissions or fees derived from the sale of insurance  
13 resulting from the referral; or

14 (C) documents evidencing the sale, solicitation, advertisement or of-  
15 fer of insurance identify or refer to the depository institution.

16 (e) The commissioner shall have the power to examine and investi-  
17 gate those insurance activities of any person, depository institution, affil-  
18 iate of a depository institution or insurer that the commissioner believes  
19 may be in violation of this section. The person, depository institution,  
20 affiliate of a depository institution or insurer shall make its insurance  
21 books and records available to the commissioner and the commissioner's  
22 staff for inspection upon reasonable notice. An affected person may sub-  
23 mit to the commissioner a complaint or material pertinent to the enforce-  
24 ment of this subsection.

25 (f) Nothing herein shall prevent a person or depository institution, or  
26 affiliate of a depository institution, who lends money or extends credit  
27 from placing insurance on real or personal property in the event the  
28 mortgagor, borrower or purchaser has failed to provide required insur-  
29 ance in accordance with the terms of the loan or credit document.

30 (g) Nothing contained in this section shall apply to credit related  
31 insurance.

32 New Sec. 5. (a) The commissioner shall have power to examine and  
33 investigate the affairs of every person or insurer in this state in order to  
34 determine whether such person or insurer has been or is engaged in any  
35 unfair trade practice prohibited by this act.

36 (b) In the case of depository institutions, the commissioner shall have  
37 the power to examine and investigate the insurance activities of depository  
38 institutions, in order to determine whether the depository institution has  
39 been or is engaged in any unfair trade practice prohibited by this act. The  
40 commissioner shall notify the appropriate federal banking agency of the  
41 commissioner's intent to examine or investigate a depository institution  
42 and advise the appropriate federal banking agency of the suspected vio-  
43 lations of state law prior to commencing the examination or investigation.

1 New Sec. 6. (a) (1) Whenever the commissioner shall have reason to  
2 believe that any insurer, person, depository institution or affiliate of a  
3 depository institution has been engaged or is engaging in this state in any  
4 unfair trade practice whether or not defined in this act, and that a pro-  
5 ceeding by the commissioner in respect thereto would be in the interest  
6 of the public, the commissioner shall issue and serve upon such insurer,  
7 person, depository institution or affiliate of a depository institution, a  
8 statement of the charges in that respect and a notice of a hearing thereon  
9 to be held at a time and place fixed in the notice, which shall not be less  
10 than 30 days after the date of the service thereof.

11 (2) With respect to a depository institution, the commissioner's au-  
12 thority to call a hearing is limited to the depository institution's insurance  
13 underwriting, sales, solicitation and cross marketing activities. The com-  
14 missioner shall provide a copy of the notice of hearing to the appropriate  
15 federal banking agency when a depository institution is involved.

16 (b) At the time and place fixed for the hearing, the insurer, person,  
17 depository institution or affiliate of a depository institution shall have an  
18 opportunity to be heard and to show cause why an order should not be  
19 made by the commissioner requiring the insurer, person, depository in-  
20 stitution or affiliate of a depository institution to cease and desist from  
21 the acts, methods or practices so complained of. Upon good cause shown,  
22 the commissioner shall permit any person to intervene, appear and be  
23 heard at the hearing by counsel or in person.

24 (c) Any hearing held under this section shall be conducted in accord-  
25 ance with the Kansas administrative procedures act.

26 (d) To the extent that the powers conferred by this subsection are  
27 not inconsistent with the Kansas administrative procedure act, the com-  
28 missioner may administer oaths, examine and cross examine witnesses,  
29 receive oral and documentary evidence, and shall have the power to sub-  
30 poena witnesses, compel their attendance, and require the production of  
31 books, papers, records, correspondence or other documents the commis-  
32 sioner deems relevant to the inquiry, provided, however, that in the case  
33 of depository institutions, the commissioner shall have the power to re-  
34 quire the production of books, papers, records, correspondence or other  
35 documents that the commissioner deems relevant to the inquiry only on  
36 the insurance activities of the depository institution. The commissioner,  
37 may, and upon the request of any party, shall cause to be made a steno-  
38 graphic record of all the evidence and all the proceedings at the hearing.  
39 If no stenographic record is made and if a judicial review is sought, the  
40 commissioner shall prepare a statement of the evidence and proceeding  
41 for use on review. In case of a refusal of any person to comply with any  
42 subpoena or to testify with respect to any matter concerning which he  
43 may be lawfully interrogated, on application of the commissioner, the

1 district court of Shawnee county, Kansas, or the county where the person  
2 resides, may issue an order requiring such person to comply with the  
3 subpoena and to testify; and any failure to obey any order of such court  
4 may be punished by the court as contempt.

5 (e) To the extent that the powers conferred by this subsection are  
6 not inconsistent with the Kansas administrative procedure act, statements  
7 of charges, notices, orders and other processes of the commissioner under  
8 this act may be served by anyone duly authorized by the commissioner,  
9 either in the manner provided by law for service of process in civil actions,  
10 or by registering and mailing a copy thereof to the person affected by the  
11 statement, notice, order or other process at the person's residence or  
12 principal office or place of business. The verified return by the person so  
13 serving the statement, notice, order or other process, setting forth the  
14 manner of service, shall be proof of the same, and the return postcard  
15 receipt for the statement, notice, order or other process, registered and  
16 mailed as specified, shall be proof of the service of the same.

17 New Sec. 7. (a) If after notice and opportunity for a hearing in ac-  
18 cordance with the Kansas administrative procedures act, the commis-  
19 sioner finds that an insurer, person, depository institution or affiliate of a  
20 depository institution has engaged in an unfair trade practice, the com-  
21 missioner shall reduce the findings to writing and shall issue and cause  
22 to be served upon the insurer, person, depository institution or affiliate  
23 of a depository institution charged with the violation, a copy of the find-  
24 ings in an order requiring the insurer, person, depository institution or  
25 affiliate of a depository institution to cease and desist from engaging in  
26 the act or practice and the commissioner may, at the commissioner's  
27 discretion order any combination of the following:

28 (1) Payment of a monetary penalty of not more than \$1,000 for each  
29 violation, but not to exceed an aggregate penalty of \$100,000, unless the  
30 violation was committed flagrantly in a conscious disregard of this act, in  
31 which case the penalty shall not be more than \$25,000 for each violation  
32 not to exceed an aggregate penalty of \$250,000.

33 (2) Suspension or revocation of the insurer's license if the insurer  
34 knew or reasonably should have known that it was in violation of this act.

35 (b) In the case of a depository institution, the commissioner shall, if  
36 practicable, notify the appropriate federal regulator before imposing a  
37 monetary penalty on a depository institution or suspending or revoking  
38 the depository institution's insurer's license, and provide to the federal  
39 regulator a copy of the findings.

40 New Sec. 8. (a) Any insurer, person, depository institution or affiliate  
41 of a depository institution subject to an order of the commissioner under  
42 section 7 or section 10, and amendments thereto, may obtain a review of  
43 the order pursuant to the Kansas act for judicial review and enforcement

1 of agency actions.

2 (b) No order of the commissioner issued under this act or order of a  
3 court to enforce the same shall in any way relieve or absolve any person  
4 affected by such order from any liability under any other laws of this state.

5 New Sec. 9. If after any hearing under section 6 or section 10, and  
6 amendments thereto, the report of the commissioner does not charge a  
7 violation of this act, then any intervenor in the proceedings may obtain a  
8 review of the order pursuant to the Kansas act for judicial review and  
9 enforcement of agency actions. Upon review, the court shall have au-  
10 thority to issue appropriate orders and decrees in connection therewith,  
11 including, if the court finds that it is to the interest of the public, orders  
12 enjoining and restraining the continuance of any method of competition,  
13 act or practice which it finds, notwithstanding the report of the commis-  
14 sioner, constitutes a violation of this act, and containing penalties pursuant  
15 to section 7 and amendments thereto.

16 New Sec. 10. Any insurer, person, depository institution or affiliate  
17 of a depository institution that violates a cease and desist order of the  
18 commissioner and while such order is in effect, may after notice and an  
19 opportunity for a hearing under the Kansas administrative procedures act,  
20 at the discretion of the commissioner, be subject to any combination of:  
21 (a) A civil penalty of not more than \$25,000 for each and every act or  
22 violation not to exceed an aggregate of \$250,000 pursuant to any such  
23 hearing.

24 (b) Suspension or revocation of the insurer's license.

25 New Sec. 11. The commissioner may promulgate reasonable rules  
26 and regulations and issue orders as are necessary or proper to administer  
27 and effectuate the provisions of this act. Such rules and regulations shall  
28 be promulgated in accordance with the rules and regulations filing act.

29 New Sec. 12. The powers vested in the commissioner by this act shall  
30 be additional to any other powers to enforce any penalties, fines or for-  
31 feitures authorized by law with respect to the methods, acts and practices  
32 hereby declared to be unfair or deceptive.

33 New Sec. 13. If any person shall ask to be excused from attending  
34 and testifying or from producing any books, papers, records, correspon-  
35 dence or other documents at any hearing on the grounds that the testi-  
36 mony or evidence required may tend to incriminate or subject the person  
37 to a penalty or forfeiture, and shall notwithstanding be directed to give  
38 testimony or produce evidence, the person shall nonetheless comply with  
39 the direction, but shall not thereafter be prosecuted or subjected to any  
40 penalty or forfeiture for or on account of any transaction, matter or thing  
41 concerning which the person may testify or produce evidence thereto,  
42 and no testimony so given or evidence produced shall be received against  
43 the person upon any criminal action, investigation or proceeding; pro-

1 vided, however, that no person so testifying shall be exempt from pros-  
2 ecution or punishment for any perjury committed while so testifying and  
3 the testimony or evidence so given or produced shall be admissible against  
4 the person upon any criminal action, investigation or proceeding con-  
5 cerning such perjury, nor shall the person be exempt from the refusal,  
6 revocation or suspension of any license, permission or authority con-  
7 ferred, or to be conferred, pursuant to the insurance law of this state.  
8 Any such person may execute, acknowledge and file in the office of the  
9 commissioner a statement expressly waiving immunity or privilege in re-  
10 spect to any transaction, matter or thing specified in the statement and  
11 thereupon the testimony of the person or evidence in relation to the  
12 transaction, matter or thing may be received or produced before any  
13 judge or justice, court, tribunal, grand jury or otherwise, and if so received  
14 or produced the person shall not be entitled to any immunity or privilege  
15 on account of any testimony the person may give or evidence produced.

16 New Sec. 14. If any provision of this act, or the application of the  
17 provision to any person or circumstances, shall be held invalid, the re-  
18 mainder of the act, and the application of the provision to person or  
19 circumstances other than those as to which it is held invalid, shall not be  
20 affected thereby.

21 New Sec. 15. (a) Sections 1 through 15, and amendments thereto,  
22 shall be known and may be cited as the unfair insurance trade practices  
23 act.

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

25 (c) No provision of this act shall be construed to create or imply a  
26 private cause of action for a violation of this act.

27 New Sec. 16. (a) No title insurance company or title insurance agent,  
28 or any officer, employee, attorney, agent or solicitor thereof, may pay,  
29 allow or give, or offer to pay, allow or give, directly or indirectly, as an  
30 inducement to obtaining any title insurance business, any rebate, reduc-  
31 tion or abatement of any rate or charge made incident to the issuance of  
32 such insurance, any special favor or advantage not generally available to  
33 others of the same classification, or any money, thing of value or other  
34 consideration or material inducement. The words "charge made incident  
35 to the issuance of such insurance" includes, without limitations, escrow,  
36 settlement and closing charges.

37 (b) No insured named in a title insurance policy or contract nor any  
38 other person directly or indirectly connected with the transaction involv-  
39 ing the issuance of the policy or contract, including, but not limited to,  
40 mortgage lender, real estate broker, builder, attorney or any officer, em-  
41 ployee, agent representative or solicitor thereof, or any other person may  
42 knowingly receive or accept, directly or indirectly, any rebate, reduction  
43 or abatement of any charge, or any special favor or advantage or any

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

- 1 (A) Buying or selling interests in real property;  
2 (B) making loans secured by interests in real property; or  
3 (C) acting as broker, agent, representative or attorney for a person  
4 who buys or sells any interest in real property or who lends or borrows  
5 money with such interest as security.
- 6 (v) "Refer" means to direct or cause to be directed or to exercise any  
7 power or influence over the direction of title insurance business, whether  
8 or not the consent or approval of any other person is sought or obtained  
9 with respect to the referral.
- 10 (f) No title insurer or title agent may accept any order for, issue a  
11 title insurance policy to, or provide services to, an applicant if it knows  
12 or has reason to believe that the applicant was referred to it by any pro-  
13 ducer of title business or by any associate of such producer, where the  
14 producer, the associate, or both, have a financial interest in the title in-  
15 surer or title agent to which business is referred unless the producer has  
16 disclosed to the buyer, seller and lender the financial interest of the pro-  
17 ducer of title business or associate referring the title insurance business.
- 18 (g) No title insurer or title agent may accept an order for title insur-  
19 ance business, issue a title insurance policy, or receive or retain any pre-  
20 mium, or charge in connection with any transaction if: (i) The title insurer  
21 or title agent knows or has reason to believe that the transaction will  
22 constitute controlled business for that title insurer or title agent, and (ii)  
23 70% or more of the closed title orders of that title insurer or title agent  
24 during the 12 full calendar months immediately preceding the month in  
25 which the transaction takes place is derived from controlled business. The  
26 prohibitions contained in this subparagraph shall not apply to transactions  
27 involving real estate located in a county that has a population, as shown  
28 by the last preceding decennial census, of 10,000 or less.
- 29 (h) Within 90 days following the end of each business year, as estab-  
30 lished by the title insurer or title agent, each title insurer or title agent  
31 shall file with the department of insurance and any title insurer with which  
32 the title agent maintains an underwriting agreement, a report executed  
33 by the title insurer's or title agent's chief executive officer or designee,  
34 under penalty of perjury, stating the percent of closed title orders origi-  
35 nating from controlled business. The failure of a title insurer or title agent  
36 to comply with the requirements of this section, at the discretion of the  
37 commissioner, shall be grounds for the suspension or revocation of a  
38 license or other disciplinary action, with the commissioner able to miti-  
39 gate any such disciplinary action if the title insurer or title agent is found  
40 to be in substantial compliance with competitive behavior as defined by  
41 federal housing and urban development statement of policy 1996-2.
- 42 (i) (1) No title insurer or title agent may accept any title insurance  
43 order or issue a title insurance policy to any person if it knows or has

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

18 (2) No producer of title business or associate of such producer shall  
19 require, directly or indirectly, as a condition to selling or furnishing any  
20 other person any loan or extension thereof, credit, sale, property, contract,  
21 lease or service, that such other person shall purchase title insurance of  
22 any kind through any title agent or title insurer if such producer has a  
23 financial interest in such title agent or title insurer.

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

28 (4) Nothing in this subpart (i) shall prohibit any producer of title  
29 business or associate of such producer from referring title business to any  
30 title insurer or title agent of such producer's or associate's choice, and, if  
31 such producer or associate of such producer has any financial interest in  
32 the title insurer, from receiving income, profits or dividends produced or  
33 realized from such financial interest, so long as:

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

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

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

40 (5) Any producer of title business or associate of such producer who  
41 violates the provisions of paragraphs (i)(2) through (i)(4), or any title in-  
42 surer or title agent who accepts an order for title insurance knowing that  
43 it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other

1 action which may be taken by the commissioner of insurance, shall be  
2 subject to a fine by the commissioner in an amount equal to five times  
3 the premium for the title insurance and, if licensed pursuant to K.S.A.  
4 58-3034 et seq., and amendments thereto, shall be deemed to have com-  
5 mitted a prohibited act pursuant to K.S.A. 58-3602, and amendments  
6 thereto, and shall be liable to the purchaser of such title insurance in an  
7 amount equal to the premium for the title insurance.

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

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

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

22 New Sec. 17. (a) No person shall disclose any nonpublic personal  
23 information contrary to the provisions of title V of the Gramm-Leach-  
24 Bliley act of 1999 (public law 106-102). The commissioner may adopt  
25 rules and regulations necessary to carry out this section. Such rules and  
26 regulations shall be consistent with and not more restrictive than the  
27 model regulation adopted on September 26, 2000, by the national asso-  
28 ciation of insurance commissioners entitled "Privacy of consumer finan-  
29 cial and health information regulation".

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

35 (c) Nothing in this section shall be deemed or construed to authorize  
36 the promulgation or adoption of any regulation which preempts, super-  
37 sedes or is inconsistent with any provision of Kansas law concerning  
38 requirements for notification of, or obtaining consent from, a parent,  
39 guardian or other legal custodian of a minor relating to any matter per-  
40 taining to the health and medical treatment for such minor.

41 Sec. 18. K.S.A. 40-2,108 is hereby amended to read as follows: 40-  
42 2,108. The commissioner shall promulgate such rules and regulations as  
43 are necessary to carry out the provisions of this act. Violations of this act

1 shall be violations of the unfair *insurance* trade practices act, K.S.A. 40-  
2 2407 and 40-2411 *and amendments thereto*. This act shall not apply if the  
3 commissioner determines nonrenewal or policy limitation is necessary to  
4 preserve insurance company solvency or protect policyholders interests.

5 Sec. 19. K.S.A. 40-1612 is hereby amended to read as follows: 40-  
6 1612. In addition to the provisions of this article, the provisions set forth  
7 in the following sections of the Kansas Statutes Annotated, and amend-  
8 ments thereto, which govern other types of insurance companies shall  
9 apply to reciprocals to the extent that such provisions do not conflict with  
10 the provisions of this article: ~~Sections~~ K.S.A. 40-208, 40-209, 40-214, 40-  
11 215, 40-216, 40-218, 40-220, 40-221a, 40-222, 40-223, 40-224, 40-225,  
12 40-229, 40-229a, 40-231, 40-233, 40-234, 40-234a, 40-235, 40-236, 40-  
13 237, 40-238, 40-239, 40-240, 40-241, 40-242, 40-244, 40-245, 40-246 ex-  
14 cept as to contracts written through traveling salaried representatives to  
15 whom no commissions are paid, 40-246a, 40-247, 40-248, 40-249, 40-250,  
16 40-251, 40-253, 40-254, 40-256, 40-281, 40-2,125, 40-2,126, 40-2,127, 40-  
17 2,128, 40-2,156, 40-2,156a, 40-2,157, 40-2,159, 40-952, 40-2001, 40-2002,  
18 40-2003, 40-2004, 40-2005, 40-2006 and ~~40-2404~~ section 3 and article 2a  
19 of the Kansas Statutes Annotated, and amendments thereto, and any  
20 other provision of law pertaining to insurance which specifically refers to  
21 reciprocals.

22 Sec. 20. K.S.A. 40-2209o is hereby amended to read as follows: 40-  
23 2209o. Violations of this act shall be treated as violations of the unfair  
24 *insurance* trade practices act and subject to the penalties prescribed by  
25 ~~K.S.A. 40-2407 and 40-2411 and amendments thereto~~ *therein*.

26 Sec. 21. K.S.A. 40-2215 is hereby amended to read as follows: 40-  
27 2215. (a) No individual policy of accident and sickness insurance as de-  
28 fined in K.S.A. 40-2201 and amendments thereto shall be issued or de-  
29 livered to any person in this state nor shall any application, rider or  
30 endorsement be used in connection therewith, until a copy of the form  
31 thereof and of the classification of risks and the premium rates pertaining  
32 thereto, have been filed with the commissioner of insurance.

33 (b) No group or blanket policy or certificate of accident and sickness  
34 insurance providing hospital, medical or surgical expense benefits shall  
35 be issued or delivered to any person in this state, nor shall any application,  
36 rider or endorsement be used in connection therewith, until a copy of  
37 the form thereof and of the classification of risks and the premium rates  
38 pertaining thereto has been filed with the commissioner of insurance.

39 (c) No such policy shall be issued, nor shall any application, rider or  
40 endorsement be used in connection therewith, until the expiration of 30  
41 days after it has been filed unless the commissioner gives written approval  
42 thereof.

43 (d) The commissioner may, within 30 days after the filing of any form,

1 disapprove such form: (1) If, in the case of any form required to be filed  
2 pursuant to subsection (a), the benefits provided therein are unreasonable  
3 in relation to the premium charged; or (2) if, in the case of any form  
4 required to be filed pursuant to subsection (a) or (b), it contains a pro-  
5 vision or provisions which are unjust, unfair, inequitable, misleading, de-  
6 ceptive or encourage misrepresentation of such policy. If the commis-  
7 sioner notifies the insurer which has filed any such form that it does not  
8 comply with the provisions of article 22 of chapter 40 of the Kansas Stat-  
9 utes Annotated, and amendments thereto, it shall be unlawful thereafter  
10 for such insurer to issue such form or use it in connection with any policy.  
11 In such notice the commissioner shall specify the reasons for disapproval  
12 and state that a hearing will be granted within 20 days after request in  
13 writing by the insurer.

14 (e) (1) Any risk classifications, premium rates, rating formulae, and  
15 all modifications thereof applicable to Kansas residents shall not establish  
16 an unreasonable, excessive or unfairly discriminatory rate or, with respect  
17 to group or blanket sickness and accident policies providing hospital,  
18 medical or surgical expense benefits issued pursuant to K.S.A. 40-2209  
19 or 40-2210, and amendments thereto, discriminate against any individuals  
20 eligible for participation in a group, or establish rating classifications  
21 within a group that are based on medical conditions. In no event shall  
22 the rates charged to any group to which this subsection applies increase  
23 by more than 75% during any annual period unless the insurer can clearly  
24 document a material and significant change in the risk characteristics of  
25 the group.

26 (2) All rates for sickness and accident insurance providing hospital,  
27 medical or surgical expense benefits covering Kansas residents shall be  
28 made in accordance with the following provisions and due consideration  
29 shall be given to: (A) Past and prospective loss experience; (B) past and  
30 prospective expenses; (C) adequate contingency reserves; and (D) all  
31 other relevant factors within and without the state.

32 (3) Nothing in this act is intended to prohibit or discourage reason-  
33 able competition or discourage or prohibit uniformity of rates except to  
34 the extent necessary to accomplish the aforementioned purpose. The  
35 commissioner is hereby authorized to issue such rules and regulations as  
36 are necessary and not inconsistent with this act.

37 (f) The provisions of subsection (e) shall not apply to any medicare  
38 supplement policy as defined by the commissioner pursuant to rule and  
39 regulation, any policy of long-term care insurance as defined by K.S.A.  
40 40-2227 and amendments thereto, any specified disease, specified acci-  
41 dent or accident only coverage, credit insurance, hospital confinement  
42 indemnity or any disability income protection policy.

43 (g) The commissioner may at any time, after a hearing of which not

1 less than 20 days' written notice shall be given to the insurer, withdraw  
2 approval of any such form or disapprove any rate filed in accordance with  
3 subsection (a) in the event the commissioner finds such filing no longer  
4 meets the requirements of this section or of article 22 of chapter 40 of  
5 the Kansas Statutes Annotated, and amendments thereto. It shall be un-  
6 lawful for the insurer to issue such form or use it in connection with any  
7 policy after the effective date of such withdrawal of approval.

8 (h) Violations of subsection (e) shall be treated as violations of the  
9 unfair *insurance* trade practices act and subject to the penalties pre-  
10 scribed by ~~K.S.A. 40-2407 and 40-2411 and amendments thereto~~ *therein*.

11 (i) Hearings under this section shall be conducted in accordance with  
12 the provisions of the Kansas administrative procedure act.

13 Sec. 22. K.S.A. 40-2442 is hereby amended to read as follows: 40-  
14 2442. (a) Within 30 days after receipt of any claim, and amendments  
15 thereto, any insurer issuing a policy of accident and sickness insurance  
16 shall pay a clean claim for reimbursement in accordance with this section  
17 or send a written or electronic notice acknowledging receipt of and the  
18 status of the claim. Such notice shall include the date such claim was  
19 received by the insurer and state that:

20 (1) The insurer refuses to reimburse all or part of the claim and spec-  
21 ify each reason for denial; or

22 (2) additional information is necessary to determine if all or any part  
23 of the claim will be reimbursed and what specific additional information  
24 is necessary.

25 (b) If any insurer issuing a policy of accident and sickness insurance  
26 fails to comply with subsection (a), such insurer shall pay interest at the  
27 rate of 1% per month on the amount of the claim that remains unpaid  
28 30 days after the receipt of the claim. The interest paid pursuant to this  
29 subsection shall be included in any late reimbursement without requiring  
30 the person who filed the original claim to make any additional claim for  
31 such interest.

32 (c) After receiving a request for additional information, the person  
33 claiming reimbursement shall submit all additional information requested  
34 by the insurer within 30 days after receipt of the request for additional  
35 information. Failure to furnish such additional information within the  
36 time required shall not invalidate nor reduce the claim if it was not rea-  
37 sonably possible to give such information within such time, provided such  
38 proof is furnished as soon as possible as defined (within the time pre-  
39 scribed) in paragraph (7) of subsection (A) of K.S.A. 40-2203, and amend-  
40 ments thereto.

41 (d) Within 15 days after receipt of all the requested additional infor-  
42 mation, an insurer issuing a policy of accident and sickness insurance shall  
43 pay a clean claim in accordance with this section or send a written or

1 electronic notice that states:

2 (1) Such insurer refuses to reimburse all or part of the claim; and  
3 (2) specifies each reason for denial. Any insurer issuing a policy of  
4 accident and sickness insurance that fails to comply with this subsection  
5 shall pay interest on any amount of the claim that remains unpaid at the  
6 rate of 1% per month.

7 (e) The provisions of subsection (b) shall not apply when there is a  
8 good faith dispute about the legitimacy of the claim, or when there is a  
9 reasonable basis supported by specific information that such claim was  
10 submitted fraudulently.

11 (f) Any violation of this act by an insurer issuing a policy of accident  
12 and sickness insurance with flagrant and conscious disregard of the pro-  
13 visions of this act or with such frequency as to constitute a general busi-  
14 ness practice shall be considered a violation of the unfair *insurance* trade  
15 practices act in ~~K.S.A. 40-2401 et seq. and amendments thereto.~~

16 (g) The commissioner of insurance shall adopt rules and regulations  
17 necessary to carry out the provisions of the Kansas health care prompt  
18 payment act.

19 Sec. 23. K.S.A. 40-3909 is hereby amended to read as follows: 40-  
20 3909. Insurers complying with this act, or attempting in good faith to  
21 comply with this act, shall be immune from civil and criminal liability and  
22 such actions shall not be deemed in violation of ~~K.S.A. 40-2404 section 3~~  
23 and ~~any~~ amendments thereto, including withholding payment of any in-  
24 surance proceeds pursuant to this act, or releasing or disclosing any in-  
25 formation pursuant to this act.

26 Sec. 24. K.S.A. 2004 Supp. 40-4909 is hereby amended to read as  
27 follows: 40-4909. (a) The commissioner may deny, suspend, revoke or  
28 refuse renewal of any license issued under this act if the commissioner  
29 finds that the applicant or license holder has:

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

32 (2) Violated:

33 (A) Any provision of chapter 40 of the Kansas Statutes Annotated,  
34 and amendments thereto, or any rule and regulation promulgated  
35 thereunder;

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

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

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

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

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

- 1 (5) Intentionally misrepresented the provisions, terms and conditions
- 2 of an actual or proposed insurance contract or application for insurance.
- 3 (6) Been convicted of a misdemeanor or felony.
- 4 (7) Admitted to or been found to have committed any insurance un-
- 5 fair trade practice or fraud in violation of ~~K.S.A. 40-2404 and amendments~~
- 6 ~~hereto~~ *the unfair insurance trade practices act*.
- 7 (8) Used any fraudulent, coercive, or dishonest practice, or demon-
- 8 strated any incompetence, untrustworthiness or financial irresponsibility
- 9 in the conduct of business in this state or elsewhere.
- 10 (9) Had an insurance agent license, or its equivalent, denied, sus-
- 11 pended or revoked in any other state, district or territory.
- 12 (10) Forged another person's name to an application for insurance or
- 13 to any document related to an insurance transaction.
- 14 (11) Improperly used notes or any other reference material to com-
- 15 plete an examination for an insurance license issued under this act.
- 16 (12) Knowingly accepted insurance business from an individual who
- 17 is not licensed.
- 18 (13) Failed to comply with any administrative or court order imposing
- 19 a child support obligation upon the applicant or license holder.
- 20 (14) Failed to pay any state income tax or comply with any adminis-
- 21 trative or court order directing payment of state income tax.
- 22 (15) Rebated the whole or any part of any insurance premium or
- 23 offered in connection with the presentation of any contract of insurance
- 24 any other inducement not contained in the contract of insurance.
- 25 (16) Made any misleading representation or incomplete comparison
- 26 of policies to any person for the purposes of inducing or tending to induce
- 27 such person to lapse, forfeit or surrender such person's insurance then in
- 28 force.
- 29 (b) In addition, the commissioner may suspend, revoke or refuse re-
- 30 newal of any license issued under this act if the commissioner finds that
- 31 the interests of the insurer or the insurable interests of the public are not
- 32 properly served under such license.
- 33 (c) Any action taken under this section which affects any license or
- 34 imposes any administrative penalty shall be taken only after notice and
- 35 an opportunity for a hearing conducted in accordance with the provisions
- 36 of the Kansas administrative procedures act.
- 37 (d) The license of any business entity may be suspended, revoked or
- 38 refused renewal if the insurance commissioner finds that any violation
- 39 committed by an individual licensee employed by or acting on behalf of
- 40 such business entity was known by or should have been known by one or
- 41 more of the partners, officers or managers acting on behalf of the business
- 42 entity and:
- 43 (1) Such violation was not reported to the insurance commissioner

1 by such business entity; or

2 (2) such business entity failed to take any corrective action.

3 (e) None of the following actions shall deprive the commissioner of  
4 any jurisdiction or right to institute or proceed with any disciplinary pro-  
5 ceeding against such license, to render a decision suspending, revoking  
6 or refusing to renew such license, or to establish and make a record of  
7 the facts of any violation of law for any lawful purpose:

8 (1) The imposition of an administrative penalty under this section;

9 (2) the lapse or suspension of any license issued under this act by  
10 operation of law;

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

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

17 (f) Whenever the commissioner imposes any administrative penalty  
18 or denies, suspends, revokes or refuses renewal of any license pursuant  
19 to subsection (a), any costs incurred as a result of conducting an admin-  
20 istrative hearing authorized under the provisions of this section shall be  
21 assessed against the person who is the subject of the hearing or any busi-  
22 ness entity represented by such person who is the party to the matters  
23 giving rise to the hearing. As used in this subsection, "costs" shall include  
24 witness fees, mileage allowances, any costs associated with the reproduc-  
25 tion of documents which become a part of the hearing record and the  
26 expense of making a record of the hearing.

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

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

36 (1) Censure the person; or

37 (2) issue an order imposing an administrative penalty up to a maxi-  
38 mum of \$500 for each violation but not to exceed \$2,500 for the same  
39 violation occurring within any six consecutive calendar months from the  
40 date of the original violation unless such person knew or should have  
41 known that the violative act could give rise to disciplinary action under  
42 subsection (a). If such person knew or reasonably should have known the  
43 violative act could give rise to any disciplinary proceeding authorized by

1 subsection (a), the commissioner may impose a penalty up to a maximum  
2 of \$1,000 for each violation but not to exceed \$5,000 for the same violation  
3 occurring within any six consecutive calendar months from the date of  
4 the imposition of the original administrative penalty.

5 Sec. 25. K.S.A. 2004 Supp. 40-4910 is hereby amended to read as  
6 follows: 40-4910. (a) No insurance company or insurance agent shall pay  
7 a commission, service fee, brokerage or other valuable consideration to a  
8 person for selling, soliciting or negotiating insurance in this state if that  
9 person is required to be licensed under this act and is not so licensed.

10 (b) No person shall accept a commission, service fee, brokerage or  
11 other valuable consideration for selling, soliciting or negotiating insurance  
12 in this state if that person is required to be licensed under this act and is  
13 not so licensed.

14 (c) Renewal or other deferred commissions may be paid to a person  
15 for selling, soliciting or negotiating insurance in this state if:

16 (1) Such person was required to be licensed under this act at the time  
17 the sale, solicitation or negotiation of insurance occurred; and

18 (2) such person was licensed as required by this act when the sale,  
19 solicitation or negotiation of insurance occurred.

20 (d) An insurance agent may place a kind or kinds of business, for  
21 which such insurance agent is licensed pursuant to this act, with an insurer  
22 for which such insurance agent is not an agent, by placing such business  
23 through an agent of such insurer.

24 (e) An insurance agent may divide or share in commissions with other  
25 agents licensed to write the same kind or kinds of insurance provided the  
26 solicitation of such business shall be subject to subsection (d).

27 (f) Any insurance agent may pay or assign a commission, service fee,  
28 brokerage or any other valuable consideration to an insurance agency or  
29 any financial holding company which does not sell, solicit or negotiate  
30 insurance in this state unless such payment or assignment violates any  
31 provision of ~~K.S.A. 40-2404~~ *section 3* and amendments thereto.

32 Sec. 26. K.S.A. 2004 Supp. 40-5014 is hereby amended to read as  
33 follows: 40-5014. Any violation of this act shall also be considered an  
34 unfair or deceptive act or practice under ~~K.S.A. 40-2404~~ *section 3*, and  
35 amendments thereto, and subject to the penalties contained in ~~K.S.A. 40-~~  
36 ~~2401 et seq.~~, and amendments thereto *the unfair insurance trade prac-*  
37 *tices act.*

38 Sec. 27. K.S.A. 40-2,108, 40-1612, 40-2209o, 40-2215, 40-2401, 40-  
39 2402, 40-2403, 40-2404a, 40-2405, 40-2406, 40-2407, 40-2408, 40-2411,  
40 40-2412, 40-2413, 40-2414, 40-2415, 40-2416, 40-2417, 40-2418, 40-  
41 2419, 40-2420, 40-2421, 40-2442 and 40-3909 and K.S.A. 2004 Supp. 40-  
42 2404, 40-4909, 40-4910 and 40-5014 are hereby repealed.

1     Sec. 28. This act shall take effect and be in force from and after its  
2     publication in the statute book.