

HOUSE BILL No. 2041

By Committee on Insurance

1-17

1 AN ACT concerning insurance; relating to unfair or deceptive acts or
2 practices; life insurance; living organ donors; amending K.S.A. 2018
3 Supp. 40-2404 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2018 Supp. 40-2404 is hereby amended to read as
7 follows: 40-2404. The following are hereby defined as unfair methods of
8 competition and unfair or deceptive acts or practices in the business of
9 insurance:

10 (1) *Misrepresentations and false advertising of insurance policies.*
11 Making, issuing, circulating or causing to be made, issued or circulated,
12 any estimate, illustration, circular, statement, sales presentation, omission
13 or comparison ~~which~~ that:

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

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

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

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

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

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

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

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

31 (2) *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 the
35 form of a notice, circular, pamphlet, letter or poster, or over any radio or
36 television station, or in any other way, an advertisement, announcement or

1 statement containing any assertion, misrepresentation or statement with
2 respect to the business of insurance or with respect to any person in the
3 conduct of such person's insurance business,—~~which~~ *that* is untrue,
4 deceptive or misleading.

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

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

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

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

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

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

40 (b) Making or permitting any unfair discrimination between
41 individuals of the same class and of essentially the same hazard in the
42 amount of premium, policy fees or rates charged for any policy or contract
43 of accident or health insurance or in the benefits payable thereunder, or in

1 any of the terms or conditions of such contract, or in any other manner
2 whatever.

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

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

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

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

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

41 (iv) No person shall refuse to insure, refuse to continue to insure,
42 limit the amount, extent or kind of coverage available to an individual or
43 charge a different rate for the same coverage solely because of physical or

1 mental condition, except where the refusal, limitation or rate differential is
2 based on sound actuarial principles.

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

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

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

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

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

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

22 (e) *Refusing to insure, or refusing to continue to insure, or limiting*
23 *the amount, extent or kind of coverage available for life insurance to an*
24 *individual, or charging an individual a different rate for the same*
25 *coverage, solely because of such individual's status as a living organ*
26 *donor. With respect to all other conditions, persons who are living organ*
27 *donors shall be subject to the same standards of sound actuarial*
28 *principles or actual or reasonably anticipated experience as are persons*
29 *who are not organ donors.*

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

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

4 (i) In the case of any contract of life insurance or life annuity, paying
5 bonuses to policyholders or otherwise abating their premiums in whole or
6 in part out of surplus accumulated from nonparticipating insurance. Any
7 such bonuses or abatement of premiums shall be fair and equitable to
8 policyholders and for the best interests of the company and its
9 policyholders;

10 (ii) in the case of life insurance policies issued on the industrial debit
11 plan, making allowance to policyholders who have continuously for a
12 specified period made premium payments directly to an office of the
13 insurer in an amount ~~which~~ *that* fairly represents the saving in collection
14 expenses; or

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

19 (9) *Unfair claim settlement practices.* It is an unfair claim settlement
20 practice if any of the following or any rules and regulations pertaining
21 thereto are: ~~(A)~~ *either* committed flagrantly and in conscious disregard of
22 such provisions, or ~~(B)~~ committed with such frequency as to indicate a
23 general business practice: :

24 (a) Misrepresenting pertinent facts or insurance policy provisions
25 relating to coverages at issue;

26 (b) failing to acknowledge and act reasonably promptly upon
27 communications with respect to claims arising under insurance policies;

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

30 (d) refusing to pay claims without conducting a reasonable
31 investigation based upon all available information;

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

34 (f) not attempting in good faith to effectuate prompt, fair and
35 equitable settlements of claims in which liability has become reasonably
36 clear;

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

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

1 (i) attempting to settle claims on the basis of an application—~~which~~
2 *that* was altered without notice to, or knowledge or consent of the insured;

3 (j) making claims payments to insureds or beneficiaries not
4 accompanied by a statement setting forth the coverage under which
5 payments are being made;

6 (k) making known to insureds or claimants a policy of appealing from
7 arbitration awards in favor of insureds or claimants for the purpose of
8 compelling them to accept settlements or compromises less than the
9 amount awarded in arbitration;

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

15 (m) failing to promptly settle claims, where liability has become
16 reasonably clear, under one portion of the insurance policy coverage in
17 order to influence settlements under other portions of the insurance policy
18 coverage; or

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

22 (10) *Failure to maintain complaint handling procedures.* Failure of
23 any person, who is an insurer on an insurance policy, to maintain a
24 complete record of all the complaints—~~which~~ *that* it has received since the
25 date of its last examination under K.S.A. 40-222, and amendments thereto;
26 but no such records shall be required for complaints received prior to the
27 effective date of this act. The record shall indicate the total number of
28 complaints, their classification by line of insurance, the nature of each
29 complaint, the disposition of the complaints, the date each complaint was
30 originally received by the insurer and the date of final disposition of each
31 complaint. For purposes of this subsection, "complaint" means any written
32 communication primarily expressing a grievance related to the acts and
33 practices set out in this section.

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

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

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

1 (14) *Rebates and other inducements in title insurance.* (a) No title
2 insurance company or title insurance agent, or any officer, employee,
3 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,
4 allow or give, directly or indirectly, as an inducement to obtaining any title
5 insurance business, any rebate, reduction or abatement of any rate or
6 charge made incident to the issuance of such insurance, any special favor
7 or advantage not generally available to others of the same classification, or
8 any money, thing of value or other consideration or material inducement.
9 The words "charge made incident to the issuance of such insurance"
10 includes, without limitations, escrow, settlement and closing charges.

11 (b) No insured named in a title insurance policy or contract nor any
12 other person directly or indirectly connected with the transaction involving
13 the issuance of the policy or contract, including, but not limited to,
14 mortgage lender, real estate broker, builder, attorney or any officer,
15 employee, agent representative or solicitor thereof, or any other person
16 may knowingly receive or accept, directly or indirectly, any rebate,
17 reduction or abatement of any charge, or any special favor or advantage or
18 any monetary consideration or inducement referred to in *subsection* (14)
19 (a).

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

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

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

26 (iii) the payment of reasonable entertainment and advertising
27 expenses.

28 (d) Nothing in this section prohibits the division of rates and charges
29 between or among a title insurance company and its agent, or one or more
30 title insurance companies and one or more title insurance agents, if such
31 division of rates and charges does not constitute an unlawful rebate under
32 the provisions of this section and is not in payment of a forwarding fee or a
33 finder's fee.

34 (e) As used in ~~paragraphs (c) through (i)(7) of this subpart~~
35 *subsections (14)(e) through (14)(i)*, unless the context otherwise requires:

36 (i) "Associate" means any firm, association, organization, partnership,
37 business trust, corporation or other legal entity organized for profit in
38 which a producer of title business is a director, officer or partner thereof,
39 or owner of a financial interest; the spouse or any relative within the
40 second degree by blood or marriage of a producer of title business who is a
41 natural person; any director, officer or employee of a producer of title
42 business or associate; any legal entity that controls, is controlled by, or is
43 under common control with a producer of title business or associate; and

1 any natural person or legal entity with whom a producer of title business or
2 associate has any agreement, arrangement or understanding or pursues any
3 course of conduct, the purpose or effect of which is to evade the provisions
4 of this section.

5 (ii) "Financial interest" means any direct or indirect interest, legal or
6 beneficial, where the holder thereof is or will be entitled to 1% or more of
7 the net profits or net worth of the entity in which such interest is held.
8 Notwithstanding the foregoing, an interest of less than 1% or any other
9 type of interest shall constitute a "financial interest" if the primary purpose
10 of the acquisition or retention of that interest is the financial benefit to be
11 obtained as a consequence of that interest from the referral of title
12 business.

13 (iii) "Person" means any natural person, partnership, association,
14 cooperative, corporation, trust or other legal entity.

15 (iv) "Producer of title business" or "producer" means any person,
16 including any officer, director or owner of 5% or more of the equity or
17 capital or both of any person, engaged in this state in the trade, business,
18 occupation or profession of:

19 (A) Buying or selling interests in real property;

20 (B) making loans secured by interests in real property; or

21 (C) acting as broker, agent, representative or attorney for a person
22 who buys or sells any interest in real property or who lends or borrows
23 money with such interest as security.

24 (v) "Refer" means to direct or cause to be directed or to exercise any
25 power or influence over the direction of title insurance business, whether
26 or not the consent or approval of any other person is sought or obtained
27 with respect to the referral.

28 (f) No title insurer or title agent may accept any order for, issue a title
29 insurance policy to, or provide services to, an applicant if it knows or has
30 reason to believe that the applicant was referred to it by any producer of
31 title business or by any associate of such producer, where the producer, the
32 associate, or both, have a financial interest in the title insurer or title agent
33 to which business is referred unless the producer has disclosed to the
34 buyer, seller and lender the financial interest of the producer of title
35 business or associate referring the title insurance business.

36 (g) No title insurer or title agent may accept an order for title
37 insurance business, issue a title insurance policy, or receive or retain any
38 premium, or charge in connection with any transaction if: (i) The title
39 insurer or title agent knows or has reason to believe that the transaction
40 will constitute controlled business for that title insurer or title agent; ; and
41 (ii) 70% or more of the closed title orders of that title insurer or title agent
42 during the 12 full calendar months immediately preceding the month in
43 which the transaction takes place is derived from controlled business. The

1 prohibitions contained in this ~~subparagraph~~ *paragraph* shall not apply to
2 transactions involving real estate located in a county that has a population,
3 as shown by the last preceding decennial census, of 10,000 or less.

4 (h) Within 90 days following the end of each business year, as
5 established by the title insurer or title agent, each title insurer or title agent
6 shall file with the department of insurance and any title insurer with which
7 the title agent maintains an underwriting agreement, a report executed by
8 the title insurer's or title agent's chief executive officer or designee, under
9 penalty of perjury, stating the percent of closed title orders originating
10 from controlled business. The failure of a title insurer or title agent to
11 comply with the requirements of this section, at the discretion of the
12 commissioner, shall be grounds for the suspension or revocation of a
13 license or other disciplinary action, with the commissioner able to mitigate
14 any such disciplinary action if the title insurer or title agent is found to be
15 in substantial compliance with competitive behavior as defined by federal
16 housing and urban development statement of policy 1996-2.

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

36 (2) No producer of title business or associate of such producer shall
37 require, directly or indirectly, as a condition to selling or furnishing any
38 other person any loan or extension thereof, credit, sale, property, contract,
39 lease or service, that such other person shall purchase title insurance of any
40 kind through any title agent or title insurer if such producer has a financial
41 interest in such title agent or title insurer.

42 (3) No title insurer or title agent may accept any title insurance order
43 or issue a title insurance policy to any person it knows or has reason to

1 believe that the name of the title company was pre-printed in the sales
2 contract, prior to the buyer or seller selecting that title company.

3 (4) Nothing in this ~~subpart (i)~~ *paragraph* shall prohibit any producer
4 of title business or associate of such producer from referring title business
5 to any title insurer or title agent of such producer's or associate's choice,
6 and, if such producer or associate of such producer has any financial
7 interest in the title insurer, from receiving income, profits or dividends
8 produced or realized from such financial interest, so long as:

9 (a) Such financial interest is disclosed to the purchaser of the title
10 insurance in accordance with ~~part paragraphs (i)(1) through (i)(4) of this~~
11 ~~subpart~~;

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

14 (c) the receipt of income, profits or dividends constitutes only a return
15 on the investment of the producer or associate.

16 (5) Any producer of title business or associate of such producer who
17 violates the provisions of paragraphs (i)(2) through (i)(4), or any title
18 insurer or title agent who accepts an order for title insurance knowing that
19 it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other
20 action ~~which~~ *that* may be taken by the commissioner of insurance, shall be
21 subject to a fine by the commissioner in an amount equal to five times the
22 premium for the title insurance and, if licensed pursuant to K.S.A. 58-3034
23 et seq., and amendments thereto, shall be deemed to have committed a
24 prohibited act pursuant to K.S.A. 58-3602, and amendments thereto, and
25 shall be liable to the purchaser of such title insurance in an amount equal
26 to the premium for the title insurance.

27 (6) Any title insurer or title agent that is a competitor of any title
28 insurer or title agent that, subsequent to the effective date of this act, has
29 violated or is violating the provisions of ~~subpart (i)~~ *this paragraph*, shall
30 have a cause of action against such title insurer or title agent and, upon
31 establishing the existence of a violation of any such provision, shall be
32 entitled, in addition to any other damages or remedies provided by law, to
33 such equitable or injunctive relief as the court deems proper. In any such
34 action under this subsection, the court may award to the successful party
35 the court costs of the action together with reasonable attorney fees.

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

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

40 (15) *Disclosure of nonpublic personal information.* (a) No person
41 shall disclose any nonpublic personal information contrary to the
42 provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law
43 106-102). The commissioner may adopt rules and regulations necessary to

1 carry out this ~~section~~ *subsection*. Such rules and regulations shall be
2 consistent with and not more restrictive than the model regulation adopted
3 on September 26, 2000, by the national association of insurance
4 commissioners entitled "Privacy of consumer financial and health
5 information regulation".

6 ~~(b) Any rules and regulations adopted by the commissioner which~~
7 ~~implement article V of the model regulation adopted on September 26,~~
8 ~~2000, by the national association of insurance commissioners entitled~~
9 ~~"Privacy of consumer financial and health information regulation" shall~~
10 ~~become effective on and after February 1, 2002.~~

11 (e) Nothing in this ~~paragraph (15)~~ *subsection* shall be deemed or
12 construed to authorize the promulgation or adoption of any regulation
13 ~~which~~ *that* preempts, supersedes or is inconsistent with any provision of
14 Kansas law concerning requirements for notification of, or obtaining
15 consent from, a parent, guardian or other legal custodian of a minor
16 relating to any matter pertaining to the health and medical treatment for
17 such minor.

18 Sec. 2. K.S.A. 2018 Supp. 40-2404 is hereby repealed.

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