

{As Amended by House Committee of the Whole}

Session of 2019

SENATE BILL No. 67

By Committee on Financial Institutions and Insurance

1-31

1 AN ACT concerning life insurance; **{relating to unfair or deceptive acts**
2 **or practices;}** establishing the unclaimed life insurance benefits act;
3 **amending K.S.A. 2018 Supp. 40-2404 and repealing the existing**
4 **section}.**

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

7 **{New}** Section 1. The provisions of sections 1 through 3, and
8 amendments thereto, shall be known and may be cited as the unclaimed
9 life insurance benefits act.

10 **{New}** Sec. 2. As used in the unclaimed life insurance benefits act:

11 (a) "Contract" means an annuity contract. The term "contract" shall
12 not include an annuity used to fund an employment-based retirement plan
13 or program where: (1) The insurer does not perform the record-keeping
14 services; or (2) the insurer is not committed by terms of the annuity
15 contract to pay death benefits to the beneficiaries of specific plan
16 participants.

17 (b) "Death master file" means the United States social security
18 administration's death master file or any other database or service that is at
19 least as comprehensive as the United States social security administration's
20 death master file for determining that a person has reportedly died.

21 (c) "Death master file match" means a search of the death master file
22 that results in a match of the social security number or the name and date
23 of birth of an insured, annuity owner or retained asset account holder.

24 (d) "Knowledge of death" means: (1) Receipt of an original or valid
25 copy of a certified death certificate; or (2) a death master file match
26 validated by the insurer in accordance with section 3(a), and amendments
27 thereto.

28 (e) "Policy" means any policy or certificate of life insurance that
29 provides a death benefit. The term "policy" shall not include: (1) Any
30 policy or certificate of life insurance that provides a death benefit under an
31 employee benefit plan: (A) Subject to the employee retirement income
32 security act of 1974 (29 U.S.C. § 1002); or (B) under any federal
33 employee benefit program; (2) any policy or certificate of life insurance
34 that is used to fund a preneed funeral contract or prearrangement; (3) any
35 policy or certificate of credit life or accidental death insurance; or (4) any
36 policy issued to a group master policyholder for which the insurer does not

1 provide record keeping services.

2 (f) "Record keeping services" means those circumstances under
3 which the insurer has agreed with a group policy or contract customer to
4 be responsible for obtaining, maintaining and administering in its own or
5 its agents' systems information about each individual insured under an
6 insured's group insurance contract, or a line of coverage thereunder, at
7 least the following information: (1) Social security number or name and
8 date of birth; (2) beneficiary designation information; (3) coverage
9 eligibility; (4) benefit amount; and (5) premium payment status.

10 (g) "Retained asset account" means any mechanism whereby the
11 settlement of proceeds payable under a policy or contract is accomplished
12 by the insurer or an entity acting on behalf of the insurer depositing the
13 proceeds into an account with check or draft writing privileges, where
14 those proceeds are retained by the insurer or its agent, pursuant to a
15 supplementary contract not involving annuity benefits other than death
16 benefits.

17 {New} Sec. 3. (a) An insurer shall perform a comparison of its
18 insureds' in-force policies, contracts, and retained asset accounts against a
19 death master file, on at least a semi-annual basis, by using the full death
20 master file once and thereafter using the death master file update files for
21 future comparisons to identify potential matches of its insureds. For those
22 potential matches identified as a result of a death master file match, the
23 insurer shall:

24 (1) Within 90 days of a death master file match:

25 (A) Complete a good faith effort that shall be documented by the
26 insurer to confirm the death of the insured or retained asset account holder
27 against other available records and information;

28 (B) determined whether benefits are due in accordance with the
29 applicable policy or contract. If benefits are due in accordance with the
30 applicable policy or contract:

31 (i) Use good faith efforts that shall all be documented by the insurer
32 to locate the beneficiary or beneficiaries; and

33 (ii) provide the appropriate claim forms or instructions to the
34 beneficiary or beneficiaries to make a claim including the need to provide
35 an official death certificate, if applicable under the policy contract.

36 (2) With respect to group life insurance, insurers shall confirm the
37 possible death of an insured when the insurers maintain at least the
38 following information of those covered under a policy or certificate: (A)
39 Social security number or name and date of birth; (B) beneficiary
40 designation information; (C) coverage eligibility; (D) benefit amount; and
41 (E) premium payment status.

42 (3) Every insurer shall implement procedures to account for:

43 (A) Common nicknames, initials used in lieu of a first or middle

1 name, use of a middle name, compound first and middle names and
2 interchanged first and middle names;

3 (B) compound last names, maiden or married names, and hyphens,
4 blank spaces or apostrophes in last names;

5 (C) transposition of the month and date portions of the date of birth;
6 and

7 (D) incomplete social security numbers.

8 (4) To the extent permitted by law, the insurer may disclose
9 minimum, necessary personal information about the insured or beneficiary
10 to a person who the insurer reasonably believes may be able to assist the
11 insurer locate the beneficiary or a person otherwise entitled to payment of
12 the claims proceeds.

13 (b) An insurer or its service provider shall not charge any beneficiary
14 or other authorized representative for any fees or costs associated with a
15 death master file search or verification of a death master file match
16 conducted pursuant to this section.

17 (c) The benefits from a policy, contract or a retained asset account,
18 plus any applicable accrued contractual interest shall first be payable to the
19 designated beneficiaries or owners, and in the event the beneficiaries or
20 owners can not be found, shall escheat to the state as unclaimed property
21 pursuant to K.S.A. 58-3936, and amendments thereto. Interest payable
22 under K.S.A. 40-447, and amendments thereto, shall not be payable as
23 unclaimed property.

24 (d) An insurer shall notify the state treasurer upon the expiration of
25 the statutory time period for escheat that:

26 (1) A policy or contract beneficiary or retained asset account holder
27 has not submitted a claim with the insurer; and

28 (2) the insurer has complied with subsection (a) and has been unable,
29 after good faith efforts, documented by the insurer, to contact the retained
30 asset account holder, beneficiary or beneficiaries.

31 (e) Upon such notice, an insurer shall immediately submit the
32 unclaimed policy or contract benefits or unclaimed retained asset accounts,
33 plus any applicable accrued interest, to the state treasurer in accordance
34 with the unclaimed property act.

35 (f) Failure to meet any requirement of this section with such
36 frequency as to constitute a general business practice shall be considered
37 an unfair or deceptive act or practice under K.S.A. 40-2404, and
38 amendments thereto, and subject to the penalties contained under K.S.A.
39 40-2401 et seq., and amendments thereto. Nothing herein shall be
40 construed to create or imply a private cause of action for a violation of this
41 section.

42 **{Sec. 4. K.S.A. 2018 Supp. 40-2404 is hereby amended to read as**
43 **follows: 40-2404. The following are hereby defined as unfair methods**

1 of competition and unfair or deceptive acts or practices in the business
2 of insurance:

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

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

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

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

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

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

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

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

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

24 (2) *False information and advertising generally.* Making,
25 publishing, disseminating, circulating or placing before the public, or
26 causing, directly or indirectly, to be made, published, disseminated,
27 circulated or placed before the public, in a newspaper, magazine or
28 other publication, or in the form of a notice, circular, pamphlet, letter
29 or poster, or over any radio or television station, or in any other way,
30 an advertisement, announcement or statement containing any
31 assertion, misrepresentation or statement with respect to the business
32 of insurance or with respect to any person in the conduct of such
33 person's insurance business,—~~which~~ that is untrue, deceptive or
34 misleading.

35 (3) *Defamation.* Making, publishing, disseminating or circulating,
36 directly or indirectly, or aiding, abetting or encouraging the making,
37 publishing, disseminating or circulating of any oral or written
38 statement or any pamphlet, circular, article or literature—~~which~~ that is
39 false, or maliciously critical of or derogatory to the financial condition
40 of any person, and—~~which~~ that is calculated to injure such person.

41 (4) *Boycott, coercion and intimidation.* Entering into any
42 agreement to commit, or by any concerted action committing, any act
43 of boycott, coercion or intimidation resulting in or tending to result in

1 unreasonable restraint of the business of insurance, or by any act of
2 boycott, coercion or intimidation monopolizing or attempting to
3 monopolize any part of the business of insurance.

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

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

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

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

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

34 (c) Refusing to insure, or refusing to continue to insure, or
35 limiting the amount, extent or kind of coverage available to an
36 individual, or charging an individual a different rate for the same
37 coverage solely because of blindness or partial blindness. With respect
38 to all other conditions, including the underlying cause of the blindness
39 or partial blindness, persons who are blind or partially blind shall be
40 subject to the same standards of sound actuarial principles or actual
41 or reasonably anticipated experience as are sighted persons. Refusal to
42 insure includes denial by an insurer of disability insurance coverage
43 on the grounds that the policy defines "disability" as being presumed

1 in the event that the insured loses such person's eyesight. However, an
2 insurer may exclude from coverage disabilities consisting solely of
3 blindness or partial blindness when such condition existed at the time
4 the policy was issued.

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

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

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

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

31 (iv) No person shall refuse to insure, refuse to continue to insure,
32 limit the amount, extent or kind of coverage available to an individual
33 or charge a different rate for the same coverage solely because of
34 physical or mental condition, except where the refusal, limitation or
35 rate differential is based on sound actuarial principles.

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

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

43 (B) the fact that an individual is, has been or may be the subject

1 of abuse may not be considered a physical or mental condition; and

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

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

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

13 (e) *Refusing to insure, or refusing to continue to insure, or limiting*
14 *the amount, extent or kind of coverage available for life insurance to an*
15 *individual, or charging an individual a different rate for the same*
16 *coverage, solely because of such individual's status as a living organ*
17 *donor. With respect to all other conditions, persons who are living organ*
18 *donors shall be subject to the same standards of sound actuarial*
19 *principles or actual or reasonably anticipated experience as are persons*
20 *who are not organ donors.*

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

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

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

1 company and its policyholders;

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

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

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

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

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

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

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

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

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

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

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

37 (i) attempting to settle claims on the basis of an application ~~which~~
38 that was altered without notice to, or knowledge or consent of the
39 insured;

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

43 (k) making known to insureds or claimants a policy of appealing

1 from arbitration awards in favor of insureds or claimants for the
2 purpose of compelling them to accept settlements or compromises less
3 than the amount awarded in arbitration;

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

9 (m) failing to promptly settle claims, where liability has become
10 reasonably clear, under one portion of the insurance policy coverage
11 in order to influence settlements under other portions of the insurance
12 policy coverage; or

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

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

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

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

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

39 (14) *Rebates and other inducements in title insurance.* (a) No title
40 insurance company or title insurance agent, or any officer, employee,
41 attorney, agent or solicitor thereof, may pay, allow or give, or offer to
42 pay, allow or give, directly or indirectly, as an inducement to obtaining
43 any title insurance business, any rebate, reduction or abatement of

1 any rate or charge made incident to the issuance of such insurance,
2 any special favor or advantage not generally available to others of the
3 same classification, or any money, thing of value or other
4 consideration or material inducement. The words "charge made
5 incident to the issuance of such insurance" includes, without
6 limitations, escrow, settlement and closing charges.

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

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

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

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

23 (iii) the payment of reasonable entertainment and advertising
24 expenses.

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

31 (e) As used in ~~paragraphs (e) through (i)(7) of this subpart~~
32 subsections (14)(e) through (14)(i), unless the context otherwise
33 requires:

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

1 agreement, arrangement or understanding or pursues any course of
2 conduct, the purpose or effect of which is to evade the provisions of
3 this section.

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

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

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

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

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

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

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

27 (f) No title insurer or title agent may accept any order for, issue a
28 title insurance policy to, or provide services to, an applicant if it knows
29 or has reason to believe that the applicant was referred to it by any
30 producer of title business or by any associate of such producer, where
31 the producer, the associate, or both, have a financial interest in the
32 title insurer or title agent to which business is referred unless the
33 producer has disclosed to the buyer, seller and lender the financial
34 interest of the producer of title business or associate referring the title
35 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
38 any premium, or charge in connection with any transaction if: (i) The
39 title insurer or title agent knows or has reason to believe that the
40 transaction will constitute controlled business for that title insurer or
41 title agent; and (ii) 70% or more of the closed title orders of that title
42 insurer or title agent during the 12 full calendar months immediately
43 preceding the month in which the transaction takes place is derived

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

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

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

39 (2) No producer of title business or associate of such producer
40 shall require, directly or indirectly, as a condition to selling or
41 furnishing any other person any loan or extension thereof, credit, sale,
42 property, contract, lease or service, that such other person shall
43 purchase title insurance of any kind through any title agent or title

1 insurer if such producer has a financial interest in such title agent or
2 title insurer.

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

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

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

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

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

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

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

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

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

6 (15) *Disclosure of nonpublic personal information.* (a) No person
7 shall disclose any nonpublic personal information contrary to the
8 provisions of title V of the Gramm-Leach-Bliley act of 1999 (public
9 law 106-102). The commissioner may adopt rules and regulations
10 necessary to carry out this ~~section~~ subsection. Such rules and
11 regulations shall be consistent with and not more restrictive than the
12 model regulation adopted on September 26, 2000, by the national
13 association of insurance commissioners entitled "Privacy of consumer
14 financial and health information regulation".

15 ~~(b) Any rules and regulations adopted by the commissioner which~~
16 ~~implement article V of the model regulation adopted on September 26,~~
17 ~~2000, by the national association of insurance commissioners entitled~~
18 ~~"Privacy of consumer financial and health information regulation" shall~~
19 ~~become effective on and after February 1, 2002.~~

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

27 Sec. 5. K.S.A. 2018 Supp. 40-2404 is hereby repealed.}

28 Sec. ~~4~~ {6.} This act shall take effect and be in force from and after its
29 publication in the statute book.