

## LEGISLATIVE BILL 349

Approved by the Governor May 10, 1973

Introduced by Interim on Advertising, Waldron, 42, Chmn.

AN ACT relating to insurance; to adopt the model unfair competition and trade practices act; and to repeal Chapter 44, article 15, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. The purpose of this act is to regulate trade practices in the business of insurance, in accordance with the intent of the Congress of the United States as expressed in Public Law 79-15, by defining, or providing for the determination of, all practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Person shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds type insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, and adjusters, and shall also mean medical service corporations and hospital service corporations as defined in section 21-1509, Reissue Revised Statutes of Nebraska, 1943, and for purposes of this act, such medical and hospital service corporations shall be deemed to be engaged in the business of insurance;

(2) Director shall mean the Director of Insurance; and

(3) Insurance policy or insurance contract shall mean any contract of insurance, indemnity, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person.

Sec. 3. No person shall engage in this state in any trade practice which is defined in this act as an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Sec. 4. The following shall be unfair methods of competition and unfair or deceptive acts or practices

in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

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

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

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

(d) Misleads or misrepresents the financial condition of any person or the legal reserve system upon which any life insurer operates;

(e) Uses any name or title of any insurance policy or class of insurance policies which misrepresents the true nature thereof;

(f) Misrepresents for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

(g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) Misrepresents any insurance policy as being shares of stock;

(2) Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading;

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any

pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person;

(4) Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;

(5) (a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person; or

(b) Making any false entry of a material fact in any book, report, or statement of any person or omitting to make a true entry of any material fact pertaining to the business of such person in any book, report, or statement of such person;

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

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

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner;

(8) (a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity, or accident and health insurance, or agreement as to any such

contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract; or

(b) Nothing in subdivision (7) or (8) (a) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices: (i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders; (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Committing or performing with such frequency as to indicate a general business practice any act which:

(a) Misrepresents pertinent facts or insurance policy provisions relating to coverage at issue;

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

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

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

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

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

(g) Compels an insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by insureds;

(h) Attempts to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempts to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(j) Makes claims payments to an insured or beneficiary not accompanied by a statement setting forth the coverage under which the payments are being made;

(k) Makes known to an insured or claimant a policy of appealing from arbitration awards in favor of insured or claimant for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

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

(m) Fails to promptly settle claims, when liability has become clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(n) Fails to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a

claim or for the offer of a compromise settlement;

(10) Failing of any person to maintain a complete record of all the complaints received since the date of its last examination pursuant to section 44-107, Reissue Revised Statutes of Nebraska, 1943. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition thereof, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

(11) Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurers, agent, broker, or individual; and

(12) Violating any provision of section 44-360, 44-361, 44-362, 44-363, 44-364, 44-365, 44-369, or 44-392, Reissue Revised Statutes of Nebraska, 1943.

Sec. 5. (1) No person shall:

(a) Require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(b) Unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing any credit or lien;

(c) Require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another; or

(d) Use or disclose information resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor, or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement.

(2) (a) Subdivision (1) (c) of this section shall not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument;

(b) For purposes of subdivision (1) (b) of this section, disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required;

(c) The director may investigate the affairs of any person to whom this subsection applies to determine whether such person has violated this subsection. If a violation is found, the violator shall be subject to the same procedures and penalties as are applicable to other provisions of this act; and

(d) For purposes of this section, person shall include any individual, corporation, association, partnership, or other legal entity.

Sec. 6. The Director of Insurance shall have power to examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 3 of this act.

Sec. 7. (1) Whenever the Director of Insurance shall have reason to believe that any person has engaged or is engaging in this state in any unfair method of competition or in any unfair or deceptive act or practice whether or not defined in section 4 or 5 of this act, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service thereof.

(2) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the director requiring such person to cease and desist from the acts, methods, or practices so complained of. Upon good cause shown, the director shall permit any person to intervene, appear, and be heard at such hearing by

counsel or in person.

(3) Nothing contained in this act shall require the observance at any such hearing of formal rules of pleading or evidence.

(4) The director, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The director may, and upon the request of any interested party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the director shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter concerning which he may be lawfully interrogated, the district court of Lancaster County or the county where such party resides, on application of the director, may require such person to comply with such subpoena and to testify, and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

(5) Statements of charges, notices, orders, and other processes of the director under this act may be served by anyone duly authorized by the director, either in the manner provided by law for service of process in civil actions or by mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business by either certified or registered mail, return receipt requested. The verified return by the person so serving such statement, notice, order or other process, setting forth the manner of such service, shall be proof of the same, and the return receipt for such statement, notice, order, or other process, registered and mailed, shall be proof of the service of the same.

Sec. 8. (1) If, after such hearing, the director shall find that the person charged has engaged in an unfair method of competition, or an unfair or deceptive act or practice he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act or practice, and if the act or practice is a violation of section 4 or 5 of this act, the director may order any



one or more of the following:

(a) Payment of a monetary penalty of not more than one thousand dollars for each act or violation but not to exceed an aggregate penalty of ten thousand dollars unless the person knew or reasonably should have known that he was in violation of this act, in which case the penalty shall be not more than five thousand dollars for each act or violation but not to exceed an aggregate penalty of fifty thousand dollars in any six-month period; or

(b) Suspension or revocation of the person's license if he knew or reasonably should have known that he was in violation of this act.

(2) Until the expiration of the time allowed under section 9 of this act for filing a petition for review, if no such petition has been duly filed, or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the district court, the director may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(3) After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed, the director may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

Sec. 9. (1) Any person subject to an order of the director under section 8 of this act may obtain a review of such order by filing in the district court of Lancaster County, within thirty days from the date of the service of such order, a petition praying that the order be set aside. A copy of such petition shall be forthwith served upon the director, and thereupon the director forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order. Upon such filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order, and may enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree modifying, affirming, or reversing the order of

the director, in whole or in part. The findings of the director as to the facts, if supported by the evidence, shall be conclusive.

(2) To the extent that the order is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the director. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the director, the court may order such additional evidence to be taken before the director and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The director may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which, if supported by the evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(3) An order issued by the director under section 8 of this act shall become final:

(a) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed, except that the director may thereafter modify or set aside his order to the extent provided in subsection (2) of section 8 of this act; or

(b) Upon the final decision of the court if the court directs that the order of the director be affirmed or the petition for review dismissed.

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

Sec. 10. If, after any hearing as provided by section 7 or 11 of this act, the report of the director does not charge a violation of this act, then any intervenor as provided by section 7 of this act may, within ten days after the service of such report, file a petition in the district court of Lancaster County for a review of such report. Upon such review, the court may issue appropriate orders and decrees, including an order to enjoin and restrain any method of competition, act, or practice which it finds, notwithstanding such report of the director, to constitute a violation of this act and invoke penalties pursuant to section 8 of this act.

Sec. 11. Any person who violates a cease and desist order of the director under section 8 of this act may after notice and hearing and upon order of the director be subject to:

- (1) A fine of not more than ten thousand dollars for each and every act or violation; or
- (2) Suspension or revocation of such person's license.

Sec. 12. The director may, after notice and hearing, promulgate reasonable rules and regulations as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by section 4 or 5 of this act, but such regulations shall not enlarge upon or extend the provisions of sections 4 and 5 of this act. Such regulations shall be subject to review in accordance with Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 13. The powers vested in the director by this act shall be additional to any other powers to enforce any penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices declared by this act to be unfair or deceptive.

Sec. 14. If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence, or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall be directed to give such testimony or produce such evidence, he must comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation, or proceeding. No such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him in any criminal action, investigation, or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation, or suspension of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance laws of this state. Any such individual may execute, acknowledge and file in the office of the director a statement expressly waiving such immunity or

privilege in respect to any transaction, matter, or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produce.

Sec. 15. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Sec. 16. That Chapter 44, article 15, Reissue Revised Statutes of Nebraska, 1943, is repealed.