

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 312

Introduced by Scheer, 19; Chambers, 11; Crawford, 45; Howard, 9;
Kintner, 2.

Read first time January 17, 2013

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to insurance; to amend section 44-1525, Reissue
- 2 Revised Statutes of Nebraska; to designate certain acts
- 3 by insurers as unfair trade practices; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-1525, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-1525 Any of the following acts or practices, if
4 committed in violation of section 44-1524, shall be unfair trade
5 practices in the business of insurance:

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

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

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

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

15 (d) Misleads as to or misrepresents the financial
16 condition of any insurer or the legal reserve system upon which any
17 life insurer operates;

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

20 (f) Misrepresents for the purpose of inducing or tending
21 to induce the purchase, lapse, forfeiture, exchange, conversion, or
22 surrender of any policy, including intentionally misquoting any
23 premium rate;

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

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

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

12 (3) Making, publishing, disseminating, or circulating,
13 directly or indirectly, or aiding, abetting, or encouraging the
14 making, publishing, disseminating, or circulating of any oral or
15 written statement or any pamphlet, circular, article, or literature
16 which is false or maliciously critical of or derogatory to the
17 financial condition of any insurer and which is calculated to injure
18 such insurer;

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

23 (5)(a) Knowingly filing with any supervisory or other
24 public official, or knowingly making, publishing, disseminating,
25 circulating, or delivering to any person, or placing before the

1 public, or knowingly causing, directly or indirectly, to be made,
2 published, disseminated, circulated, delivered to any person, or
3 placed before the public, any false material statement of fact as to
4 the financial condition of an insurer; or

5 (b) Knowingly making any false entry of a material fact
6 in any book, report, or statement of any insurer or knowingly
7 omitting to make a true entry of any material fact pertaining to the
8 business of such insurer in any book, report, or statement of such
9 insurer;

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

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

21 (b) Making or permitting any unfair discrimination
22 between individuals of the same class involving essentially the same
23 hazards in the amount of premium, policy fees, or rates charged for
24 any sickness and accident insurance policy or in the benefits payable
25 thereunder, in any of the terms or conditions of such policy, or in

1 any other manner, except that this subdivision shall not limit the
2 negotiation of preferred provider policies and contracts under
3 sections 44-4101 to 44-4113;

4 (c) Making or permitting any unfair discrimination
5 between individuals or risks of the same class and of essentially the
6 same hazards by refusing to issue, refusing to renew, canceling, or
7 limiting the amount of insurance coverage on a property or casualty
8 risk because of the geographic location of the risk unless:

9 (i) The refusal, cancellation, or limitation is for a
10 business purpose which is not a pretext for unfair discrimination; or

11 (ii) The refusal, cancellation, or limitation is required
12 by law, rule, or regulation;

13 (d) Making or permitting any unfair discrimination
14 between individuals or risks of the same class and of essentially the
15 same hazards by refusing to issue, refusing to renew, canceling, or
16 limiting the amount of insurance coverage on a residential property
17 risk, or the personal property contained therein, because of the age
18 of the residential property unless:

19 (i) The refusal, cancellation, or limitation is for a
20 business purpose which is not a pretext for unfair discrimination; or

21 (ii) The refusal, cancellation, or limitation is required
22 by law, rule, or regulation;

23 (e) Refusing to insure, refusing to continue to insure,
24 or limiting the amount of coverage available to an individual solely
25 because of the sex or marital status of the individual. This

1 subdivision shall not prohibit an insurer from taking marital status
2 into account for the purpose of defining individuals eligible for
3 dependent benefits; or

4 (f) Terminating or modifying coverage or refusing to
5 issue or refusing to renew any property or casualty insurance policy
6 solely because the applicant or insured or any employee of the
7 applicant or insured is mentally or physically impaired unless:

8 (i) The termination, modification, or refusal is for a
9 business purpose which is not a pretext for unfair discrimination; or

10 (ii) The termination, modification, or refusal is
11 required by law, rule, or regulation.

12 This subdivision (f) shall not apply to any sickness and
13 accident insurance policy sold by a casualty insurer and shall not be
14 interpreted to modify any other provision of law relating to the
15 termination, modification, issuance, or renewal of any policy;

16 (8)(a) Except as otherwise expressly provided by law:

17 (i) Knowingly permitting or offering to make or making
18 any life insurance policy, annuity, or sickness and accident
19 insurance policy, or agreement as to any such policy or annuity,
20 other than as plainly expressed in the policy or annuity issued
21 thereon, or paying, allowing, or giving, or offering to pay, allow,
22 or give, directly or indirectly, as inducement to such policy or
23 annuity, any rebate of premiums payable on the policy or annuity, or
24 any special favor or advantage in the dividends or other benefits
25 thereon, or any valuable consideration or inducement whatever not

1 specified in the policy or annuity; or

2 (ii) Giving, selling, purchasing, or offering to give,
3 sell, or purchase as inducement to such policy or annuity or in
4 connection therewith any stocks, bonds, or other securities of any
5 insurer or other corporation, association, partnership, or limited
6 liability company, or any dividends or profits accrued thereon, or
7 anything of value not specified in the policy or annuity.

8 (b) Nothing in subdivision (7) or (8)(a) of this section
9 shall be construed as including within the definition of
10 discrimination or rebates any of the following acts or practices:

11 (i) In the case of any life insurance policy or annuity,
12 paying bonuses to policyholders or otherwise abating their premiums
13 in whole or in part out of surplus accumulated from nonparticipating
14 insurance if such bonuses or abatement of premiums are fair and
15 equitable to policyholders and for the best interests of the insurer
16 and its policyholders;

17 (ii) In the case of life insurance policies issued on the
18 industrial debit plan, making allowance to policyholders who have
19 continuously for a specified period made premium payments directly to
20 an office of the insurer in an amount which fairly represents the
21 saving in collection expenses; or

22 (iii) Readjustment of the rate of premium for a group
23 insurance policy based on the loss or expense thereunder, at the end
24 of the first or any subsequent policy year of insurance thereunder,
25 which may be made retroactive only for such policy year;

1 (9) Failing of any insurer to maintain a complete record
2 of all the complaints received since the date of its last examination
3 conducted pursuant to the Insurers Examination Act. This record shall
4 indicate the total number of complaints, their classification by line
5 of insurance, the nature of each complaint, the disposition of each
6 complaint, and the time it took to process each complaint. For
7 purposes of this subdivision, complaint shall mean any written
8 communication primarily expressing a grievance;

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

13 (11) Failing of any insurer, upon receipt of a written
14 inquiry from the department, to respond to such inquiry or request
15 additional reasonable time to respond within fifteen working days;

16 (12) Accepting applications for or writing any policy of
17 insurance sold, negotiated, or solicited by an insurance producer or
18 business entity not licensed or appointed as required by the
19 Insurance Producers Licensing Act; ~~and~~

20 (13) Refusing to issue, refusing to renew, canceling, or
21 limiting the amount of coverage on a property and casualty risk due
22 to weather-related casualties to the risk;

23 (14) Surcharging by an insurer of a policyholder for a
24 property and casualty loss on which the insurer did not pay a claim;

25 (15) Surcharging by an insurer of a policyholder for a

1 property and casualty loss due to weather-related casualties to a
2 previously occupied or noncovered property; and

3 ~~(13)~~—(16) Violating any provision of section 44-320,
4 44-348, 44-360, 44-361, 44-369, 44-393, 44-515 to 44-518, 44-522,
5 44-523, 44-7,101, 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812,
6 44-4817, or 44-5266, the Privacy of Insurance Consumer Information
7 Act, or the Unfair Discrimination Against Subjects of Abuse in
8 Insurance Act.

9 Sec. 2. Original section 44-1525, Reissue Revised
10 Statutes of Nebraska, is repealed.