

1 **SENATE FLOOR VERSION**

2 February 21, 2023

3 **AS AMENDED**

4 SENATE BILL NO. 551

By: Montgomery of the Senate

and

Sneed of the House

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8 An Act relating to unfair insurance practices;
9 amending 36 O.S. 2021, Section 1204, which relates to
10 definitions of unfair methods of competition and
11 unfair or deceptive acts; modifying rebate actions to
12 be considered unfair methods of competition and
13 unfair and deceptive acts in the business of
14 insurance; providing for the Insurance Commissioner
15 to promulgate rules; providing exemptions for certain
16 actions by an insurer or producer; and providing an
17 effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 36 O.S. 2021, Section 1204, is
20 amended to read as follows:

21 Section 1204. The following are hereby defined as unfair
22 methods of competition and unfair and deceptive acts or practices in
23 the business of insurance:

24 1. Misrepresentations and false advertising of policy
contracts. Making, issuing, circulating, or causing to be made,
issued or circulated, any estimate, illustration, circular or
statement misrepresenting the terms of any policy issued or to be

1 issued or the benefits or advantages promised thereby or the
2 dividends or share of the surplus to be received thereon, or making
3 any false or misleading statement as to the dividends or share of
4 surplus previously paid on similar policies, or making any
5 misleading representation or any misrepresentation as to the
6 financial condition of any insurer, or as to the legal reserve
7 system upon which any life insurer operates, or using any name or
8 title of any policy or class of policies misrepresenting the true
9 nature thereof, or making any misrepresentation to any policyholder
10 insured in any company for the purpose of inducing or tending to
11 induce such policyholder to lapse, forfeit, or surrender his or her
12 insurance.

13 2. False information and advertising generally. Making,
14 publishing, disseminating, circulating, or placing before the
15 public, or causing, directly or indirectly, to be made, published,
16 disseminated, circulated, or placed before the public, in a
17 newspaper, magazine, or other publication, or in the form of a
18 notice, circular, pamphlet, letter or poster, or over any radio or
19 television station, or in any other way an advertisement,
20 announcement or statement containing any assertion, representation
21 or statement with respect to the business of insurance or with
22 respect to any person in the conduct of his or her insurance
23 business which is untrue, deceptive or misleading. No insurance
24 company shall issue, or cause to be issued, any policy of insurance

1 of any type or description upon life, or property, real or personal,
2 whenever such policy of insurance is to be furnished or delivered to
3 the purchaser or bailee of any property, real or personal, as an
4 inducement to purchase or bail said property, real or personal, and
5 no other person shall advertise, offer or give free insurance,
6 insurance without cost or for less than the approved or customary
7 rate, in connection with the sale or bailment of real or personal
8 property, except as provided in Section 4101 of this title. No
9 person that is not an insurer shall assume or use any name which
10 deceptively infers or suggests that it is an insurer.

11 3. Defamation. Making, publishing, disseminating, or
12 circulating, directly or indirectly, or aiding, abetting or
13 encouraging the making, publishing, disseminating or circulating of
14 any oral or written statement or any pamphlet, circular, article or
15 literature which is false, or maliciously critical of or derogatory
16 to the financial condition of an insurer, and which is calculated to
17 injure any person engaged in the business of insurance.

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

23 5. False financial statements. Filing with any supervisory or
24 other public official, or making, publishing, disseminating,

1 circulating or delivering to any person, or placing before the
2 public or causing directly or indirectly, to be made, published,
3 disseminated, circulated, delivered to any person or placed before
4 the public, any false statement of financial condition of an insurer
5 with intent to deceive.

6 Making any false entry in any book, report or statement of any
7 insurer with intent to deceive any agent or examiner lawfully
8 appointed to examine into its condition or into any of its affairs,
9 or any public official to whom such insurer is required by law to
10 report, or who has authority by law to examine into its condition or
11 into any of its affairs, or, with like intent, willfully omitting to
12 make a true entry of any material fact pertaining to the business of
13 such insurer in any book, report or statement of such insurer.

14 6. Stock operations and advisory board contracts. Issuing or
15 delivering or permitting agents, officers, or employees to issue or
16 deliver agency company stock or other capital stock, or benefit
17 certificates or shares in any common-law corporation, or securities
18 or any special or advisory board contracts or other contracts of any
19 kind promising returns and profits as an inducement to insurance.

20 7. Unfair discrimination.

21 ~~(a)~~ Making a. making or permitting any unfair
22 discrimination between individuals of the same class
23 and equal expectation of life in the rates charged for
24 any contract of life insurance or of life annuity or

1 in the dividends or other benefits payable thereon, or
2 in any other of the terms and conditions of such
3 contract.

4 ~~(b)~~ Making b. making or permitting any unfair
5 discrimination between individuals of the same class
6 and of essentially the same hazard in the amount of
7 premium, policy fees, or rates charged for any policy
8 or contract of accident or health insurance or in the
9 benefits payable thereunder, or in any of the terms or
10 conditions of such contract, or in any other manner
11 whatever.

12 ~~(c)~~ As c. as to kinds of insurance other than life and
13 accident and health, no person shall make or permit
14 any unfair discrimination in favor of particular
15 persons, or between insureds or subjects of insurance
16 having substantially like insuring, risk, and exposure
17 factors, or expense elements, in the terms or
18 conditions of any insurance contract, or in the rate
19 or amount of premium charged therefor. This
20 subsection shall not apply as to any premium rate in
21 effect pursuant to Article 9 of the Oklahoma Insurance
22 Code.

23 8. Rebates.
24

1 ~~(a) Except~~ a. except as otherwise expressly provided by
2 law, knowingly permitting or offering to make or
3 making any contract of insurance or agreement as to
4 such contract other than as plainly expressed in the
5 contract issued thereon; or paying or allowing, or
6 giving or offering to pay, allow or give, directly or
7 indirectly, as inducement to any contract of
8 insurance, any rebate of premiums payable on the
9 contract, or any special favor or advantage in the
10 dividends or other benefits thereon, or any valuable
11 consideration or inducement whatever not specified in
12 the contract; except in accordance with an applicable
13 rate filing, rating plan or rating system filed with
14 and approved by the Insurance Commissioner; or giving
15 or selling or purchasing or offering to give, sell, or
16 purchase as inducement to such insurance, or in
17 connection therewith, any stocks, bonds or other
18 securities of any company, or any dividends or profits
19 accrued thereon, or anything of value whatsoever not
20 specified in the contract or receiving or accepting as
21 inducement to contracts of insurance, any rebate of
22 premium payable on the contract, or any special favor
23 or advantage in the dividends or other benefit to
24

1 accrue thereon, or any valuable consideration or
2 inducement not specified in the contract~~†,‡~~

3 ~~(b) Nothing~~ b. nothing in subsection 7 or paragraph ~~(a) a~~
4 of this subsection shall be construed as including
5 within the definition of discrimination or rebates any
6 of the following practices:

7 (1) ~~In~~ in the case of any contract of life insurance
8 or life annuity, paying bonuses to policyholders
9 or otherwise abating their premiums in whole or
10 in part out of surplus accumulated from
11 nonparticipating insurance, provided, that any
12 such bonuses or abatement of premiums shall be
13 fair and equitable to policyholders and for the
14 best interest of the company and its
15 policyholders~~†,‡~~

16 (2) ~~In~~ in the case of life or accident and health
17 insurance policies issued on the industrial debit
18 or weekly premium plan, making allowance to
19 policyholders who have continuously for a
20 specified period made premium payments directly
21 to an office of the insurer in an amount which
22 fairly represents the saving in collection
23 expense~~†,‡~~

1 (3) ~~Making~~ making a readjustment of the rate of
2 premium for a policy based on the loss or expense
3 experience thereunder, at the end of the first or
4 any subsequent policy year of insurance
5 thereunder, which may be made retroactive only
6 for such policy year~~+~~.

7 (4) ~~In~~ in the case of life insurance companies,
8 allowing its bona fide employees to receive a
9 commission on the premiums paid by them on
10 policies on their own lives~~+~~.

11 (5) ~~Issuing~~ issuing life or accident and health
12 policies on a salary saving or payroll deduction
13 plan at a reduced rate commensurate with the
14 savings made by the use of such plan~~+~~. and

15 (6) ~~Paying~~ paying commissions or other compensation
16 to duly licensed agents or brokers, or allowing
17 or returning to participating policyholders,
18 members or subscribers, dividends, savings or
19 unabsorbed premium deposits~~+~~.

20 ~~(e)~~ As c. as used in this section, the word "insurance"
21 includes suretyship and the word "policy" includes
22 bond~~+~~.

23 d. the offer or provision by insurers or producers, by or
24 through employees, affiliates, or third-party

1 representatives, of value-added products or services
2 at no or reduced cost when such products or services
3 are not specified in the policy of insurance if the
4 product **or** service:

5 (1) relates to the insurance coverage, and

6 (2) is primarily designed to satisfy one or more of
7 the following:

8 (a) provide loss mitigation or loss control,

9 (b) reduce claim or claim settlement costs,

10 (c) provide education about liability risks or
11 risk of loss to persons or property,

12 (d) monitor or assess risk, identify sources of
13 risk, or develop strategies for eliminating
14 or reducing risk,

15 (e) enhance health,

16 (f) enhance financial wellness through items
17 such as education or financial planning
18 services,

19 (g) provide post-loss services,

20 (h) incent behavioral changes to improve the
21 health or reduce the risk of dead or
22 disability of a customer, or

23 (i) assist in the administration of the employee
24 or retiree benefit insurance coverage,

1 (3) the cost to the insurer or producer offering the
2 product or service to any given customer must be
3 reasonable in comparison to that customer's
4 premiums or insurance coverage for the policy
5 class,

6 (4) if the insurer or producer is providing the
7 product or service offered, the insurer or
8 producer shall ensure that the customer is
9 provided with contact information to assist the
10 customer with questions regarding the product or
11 service,

12 (5) the Commissioner may adopt regulations when
13 implementing the permitted practices set forth in
14 statute to ensure consumer protection. Such
15 regulations, consistent with applicable law, may
16 address consumer data protections and privacy,
17 consumer disclosure, and unfair discrimination,
18 among other issues as deemed necessary,

19 (6) the availability of the value-added product or
20 service shall be based on documented objective
21 criteria and offered in a manner that is not
22 unfairly discriminatory. The documented criteria
23 shall be maintained by the insurer or producer
24 and produced upon request by the Department, and

1 (7) if an insurer or producer does not have
2 sufficient evidence but has a good-faith belief
3 that the product or service meets the criteria in
4 **division 2 of subparagraph d** of this paragraph,
5 the insurer or producer may provide the product
6 or service in a manner that is not unfairly
7 discriminatory as part of a pilot or testing
8 program for no more than one year. An insurer or
9 producer shall notify the Department of such a
10 pilot or testing program offered to consumers in
11 this state prior to launching and may proceed
12 with the program unless the Department objects
13 within twenty-one days of notice,

14 e. an insurer or a producer may:

15 (1) offer or give non-cash gifts, items, or services
16 including meals to or charitable donations on
17 behalf of a customer, in connection with the
18 marketing, sale, purchase, or retention of
19 contracts of insurance, provided the cost does
20 not exceed an amount determined to be reasonable
21 by the Commissioner per policy year per term.
22 The offer shall be made in a manner that is not
23 unfairly discriminatory. The customer shall not
24 be required to purchase, continue to purchase or

1 renew a policy in exchange for the gift, item, or
2 service,

3 (2) offer or give non-cash gifts, items, or services
4 including meals to or charitable donations on
5 behalf of a customer, to commercial or
6 institutional customers in connection with the
7 marketing, sale, purchase, or retention of
8 contracts of insurance, as long as the cost is
9 reasonable in comparison to the premium or
10 proposed premium and the cost of the gift or
11 service is not included in any amounts charged to
12 another person or entity. The offer must be made
13 in a manner that is not unfairly discriminatory.
14 The customer may not be required to purchase,
15 continue to purchase, or renew a policy in
16 exchange for the gift, item, or service, and

17 (3) **conduct raffles or drawings to the extent**
18 **permitted by state law, as long as there is no**
19 **financial cost to entrants to participate, the**
20 **drawing or raffle does not obligate participants**
21 **to purchase insurance, the prizes are not valued**
22 **in excess of a reasonable amount determined by**
23 **the Commissioner and the drawing or raffle is**
24 **open to the public. The raffle or drawing shall**

1 be offered in a manner that is not unfairly
2 discriminatory. The customer may not be required
3 to purchase, continue to purchase, or renew a
4 policy in exchange for the gift, item, or
5 service, and

6 f. an insurer, producer, or representative of the insurer
7 or producer may not offer or provide insurance as an
8 inducement to the purchase of another policy or
9 otherwise use the words "free", "no cost", or words of
10 similar import, in an advertisement in connection with
11 the inducement.

12 9. Coercion prohibited. Requiring as a condition precedent to
13 the purchase of, or the lending of money upon the security of, real
14 or personal property, that any insurance covering such property, or
15 liability arising from the ownership, maintenance or use thereof, be
16 procured by or on behalf of the vendee or by the borrower in
17 connection with such purchase or loan through any particular person
18 or agent or in any particular insurer, or requiring the payment of a
19 reasonable fee as a condition precedent to the replacement of
20 insurance coverage on mortgaged property at the anniversary date of
21 the policy; provided, however, that this provision shall not prevent
22 the exercise by any such vendor or lender of the right to approve or
23 disapprove any insurer selected to underwrite the insurance; but any
24 disapproval of any insurer shall be on reasonable grounds.

1 10. Inducements. No insurer, agent, broker, solicitor, or
2 other person shall, as an inducement to insurance or in connection
3 with any insurance transaction, provide in any policy for or offer,
4 sell, buy, or offer or promise to buy, sell, give, promise, or allow
5 to the insured or prospective insured or to any other person in his
6 or her behalf in any manner whatsoever:

7 (a) Any employment.

8 (b) Any shares of stock or other securities issued or at
9 any time to be issued or any interest therein or
10 rights thereto.

11 (c) Any advisory board contract, or any similar contract,
12 agreement or understanding, offering, providing for,
13 or promising any special profits.

14 (d) Any prizes, goods, wares, merchandise, or tangible
15 property of an aggregate value in excess of One
16 Hundred Dollars (\$100.00).

17 (e) Any special favor, advantage or other benefit in the
18 payment, method of payment or credit for payment of
19 the premium through the use of credit cards, credit
20 card facilities, credit card lists, or wholesale or
21 retail credit accounts of another person. The
22 provisions of this paragraph shall not apply to
23 individual policies insuring against loss resulting
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1 from bodily injury or death by accident as defined by
2 Article 44 of the Oklahoma Insurance Code.

3 11. Premature disposal of premium notes prohibited. No insurer
4 or agent thereof shall hypothecate, sell, or dispose of a promissory
5 note received in payment of any part of a premium on a policy of
6 insurance applied for prior to the delivery of the policy.

7 12. Fraudulent statement in application; penalty. Any
8 insurance agent, examining physician, or other person who knowingly
9 or willfully makes a false or fraudulent statement or representation
10 in or relative to an application for insurance, or who makes any
11 such statement to obtain a fee, commission, money, or benefit shall
12 be guilty of a misdemeanor.

13 13. Deceptive use of financial institution's name in
14 notification or solicitation. Verbally or by any other means
15 notifying or soliciting any person in a manner that:

16 (a) mentions the name of an unrelated and unaffiliated
17 financial institution,

18 (b) mentions an insurance product or the possible lack of
19 insurance coverage,

20 (c) does not mention the actual or trade name of the
21 insurance agency or company on whose behalf the
22 notification or solicitation is provided, and

23 (d) thereby creates an impression or implication,
24 including by omission, that the financial institution

1 or a financial-institution-authorized entity is or may
2 be the one making the notification or solicitation.
3 Nothing in this paragraph shall be interpreted to prohibit the
4 reference to or use of the name of a financial institution made
5 pursuant to a contractual agreement between the insurer and the
6 financial institution.

7 SECTION 2. This act shall become effective November 1, 2023.

8 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE
9 February 21, 2023 - DO PASS AS AMENDED
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