

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 551

By: Montgomery

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5
6 AS INTRODUCED

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

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

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

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

23 1. Misrepresentations and false advertising of policy
24 contracts. Making, issuing, circulating, or causing to be made,
25 issued or circulated, any estimate, illustration, circular or
26 statement misrepresenting the terms of any policy issued or to be
27 issued or the benefits or advantages promised thereby or the

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

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

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

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

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

22 5. False financial statements. Filing with any supervisory or
23 other public official, or making, publishing, disseminating,
24 circulating or delivering to any person, or placing before the
25

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

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

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

19 7. Unfair discrimination.

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

1 in any other of the terms and conditions of such
2 contract.

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

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

22 8. Rebates.

23 ~~(a) Except~~ a. except as otherwise expressly provided by
24 law, knowingly permitting or offering to make or

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

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

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

14 (2) ~~In~~ in the case of life or accident and health
15 insurance policies issued on the industrial debit
16 or weekly premium plan, making allowance to
17 policyholders who have continuously for a
18 specified period made premium payments directly
19 to an office of the insurer in an amount which
20 fairly represents the saving in collection
21 expense~~†, 1~~

22 (3) ~~Making~~ making a readjustment of the rate of
23 premium for a policy based on the loss or expense
24 experience thereunder, at the end of the first or

1 any subsequent policy year of insurance
2 thereunder, which may be made retroactive only
3 for such policy year~~+~~l

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

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

12 (6) ~~Paying~~ paying commissions or other compensation
13 to duly licensed agents or brokers, or allowing
14 or returning to participating policyholders,
15 members or subscribers, dividends, savings or
16 unabsorbed premium deposits~~+~~l

17 ~~(e)~~ ~~As~~ c. as used in this section, the word "insurance"
18 includes suretyship and the word "policy" includes
19 bond~~+~~l

20 d. the offer or provision by insurers or producers, by or
21 through employees, affiliates, or third-party
22 representatives, of value-added products or services
23 at no or reduced cost when such products or services

1 are not specified in the policy of insurance if the
2 product of service:

3 (1) relates to the insurance coverage, and

4 (2) is primarily designed to satisfy one or more of
5 the following:

6 (a) provide loss mitigation or loss control,

7 (b) reduce claim or claim settlement costs,

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

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

13 (e) enhance health,

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

17 (g) provide post-loss services,

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

21 (i) assist in the administration of the employee
22 or retiree benefit insurance coverage,

23 (3) the cost to the insurer or producer offering the
24 product or service to any given customer must be

1 reasonable in comparison to that customer's
2 premiums or insurance coverage for the policy
3 class,

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

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

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

23 (7) if an insurer or producer does not have
24 sufficient evidence but has a good-faith belief

1 that the product or service meets the criteria in
2 subparagraph e of this paragraph, the insurer or
3 producer may provide the product or service in a
4 manner that is not unfairly discriminatory as
5 part of a pilot or testing program for no more
6 than one year. An insurer or producer shall
7 notify the Department of such a pilot or testing
8 program offered to consumers in this state prior
9 to launching and may proceed with the program
10 unless the Department objects within twenty-one
11 days of notice,

12 e. an insurer or a producer may:

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

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

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

1 the exercise by any such vendor or lender of the right to approve or
2 disapprove any insurer selected to underwrite the insurance; but any
3 disapproval of any insurer shall be on reasonable grounds.

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

10 (a) Any employment.

11 (b) Any shares of stock or other securities issued or at
12 any time to be issued or any interest therein or
13 rights thereto.

14 (c) Any advisory board contract, or any similar contract,
15 agreement or understanding, offering, providing for,
16 or promising any special profits.

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

20 (e) Any special favor, advantage or other benefit in the
21 payment, method of payment or credit for payment of
22 the premium through the use of credit cards, credit
23 card facilities, credit card lists, or wholesale or
24 retail credit accounts of another person. The

1 provisions of this paragraph shall not apply to
2 individual policies insuring against loss resulting
3 from bodily injury or death by accident as defined by
4 Article 44 of the Oklahoma Insurance Code.

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

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

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

18 (a) mentions the name of an unrelated and unaffiliated
19 financial institution,

20 (b) mentions an insurance product or the possible lack of
21 insurance coverage,

22 (c) does not mention the actual or trade name of the
23 insurance agency or company on whose behalf the
24 notification or solicitation is provided, and
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1 (d) thereby creates an impression or implication,
2 including by omission, that the financial institution
3 or a financial-institution-authorized entity is or may
4 be the one making the notification or solicitation.

5 Nothing in this paragraph shall be interpreted to prohibit the
6 reference to or use of the name of a financial institution made
7 pursuant to a contractual agreement between the insurer and the
8 financial institution.

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

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