

FIRST REGULAR SESSION

HOUSE BILL NO. 531

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES CONWAY (14) (Sponsor), NANCE, KELLEY (126), BRATTIN, BAHR, HUBBARD, SPRENG, HAEFNER, WYATT AND BROWN (85) (Co-sponsors).

1376L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 375.141, 375.932, and 375.936, RSMo, and to enact in lieu thereof three new sections relating to unfair insurance practices and fraud.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 375.141, 375.932, and 375.936, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 375.141, 375.932, and 375.936, to read as follows:

375.141. 1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

(2) Violating any insurance [laws, or violating any] **law or regulation, or failing to comply with a** subpoena or order of the director or of another insurance commissioner in any other state;

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony or crime involving moral turpitude;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (7) Having admitted or been found to have committed any insurance unfair trade practice
16 or fraud;

17 (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence,
18 untrustworthiness or financial irresponsibility in the conduct of business in this state or
19 elsewhere;

20 (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked
21 in any other state, province, district or territory;

22 (10) Signing the name of another to an application for insurance or to any document
23 related to an insurance transaction without authorization;

24 (11) Improperly using notes or any other reference material to complete an examination
25 for an insurance license;

26 (12) Knowingly acting as an insurance producer when not licensed or accepting
27 insurance business from an individual knowing that person is not licensed;

28 (13) Failing to comply with an administrative or court order imposing a child support
29 obligation; or

30 (14) Failing to comply with any administrative or court order directing payment of state
31 or federal income tax.

32 2. In the event that the action by the director is not to renew or to deny an application for
33 a license, the director shall notify the applicant or licensee in writing and advise the applicant or
34 licensee of the reason for the denial or nonrenewal. Appeal of the nonrenewal or denial of the
35 application for a license shall be made pursuant to the provisions of chapter 621.

36 3. The license of a business entity licensed as an insurance producer may be suspended,
37 revoked, renewal refused or an application may be refused if the director finds that a violation
38 by an individual insurance producer was known or should have been known by one or more of
39 the partners, officers or managers acting on behalf of the business entity and the violation was
40 neither reported to the director nor corrective action taken.

41 4. The director may also revoke or suspend pursuant to subsection 1 of this section any
42 license issued by the director where the licensee has failed to renew or has surrendered such
43 license.

44 5. Every insurance producer licensed in this state shall notify the director of any change
45 of address, on forms prescribed by the director, within thirty days of the change. If the failure to
46 notify the director of the change of address results in an inability to serve the insurance producer
47 with a complaint as provided by sections 621.045 to 621.198, then the director may immediately
48 revoke the license of the insurance producer until such time as service may be obtained.

49 6. An insurance producer shall report to the director any administrative action taken
50 against the producer in another jurisdiction or by another governmental agency in this state

51 within thirty days of the final disposition of the matter. This report shall include a copy of the
52 order, consent order or other relevant legal documents.

53 7. Within thirty days of the initial pretrial hearing date, a producer shall report to the
54 director any criminal prosecution for a felony or a crime involving moral turpitude of the
55 producer taken in any jurisdiction. The report shall include a copy of the indictment or
56 information filed, the order resulting from the hearing and any other relevant legal documents.

375.932. When used in sections 375.930 to 375.948, the following terms mean:

2 (1) **"Cold lead advertising", making use directly or indirectly of a method of**
3 **marketing that fails to disclose in a clear and conspicuous manner that the purpose of the**
4 **marketing is an insurance sales solicitation and that contact will be made by an insurance**
5 **producer or insurance company;**

6 (2) "Consultant", an individual, partnership or corporation who, for a fee, holds himself
7 or itself out to the public as engaged in the business of offering any advice, counsel, opinion or
8 service with respect to the benefits, advantages or disadvantages promised under any policy of
9 insurance that could be issued in this state;

10 [(2)] (3) "Director", the director of the department of insurance, financial institutions and
11 professional registration of this state;

12 [(3)] (4) "Insurer", any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal
13 benefit society, and any other legal entity engaged in the business of insurance, including agents,
14 brokers, adjusters and third-party administrators. "Insurer" also includes health services
15 corporations, health maintenance organizations, prepaid limited health care service plans, dental,
16 optometric and other similar health service plans. For purposes of sections 375.930 to 375.948
17 such entities shall be deemed to be engaged in the business of insurance. "Insurer" shall also
18 include all companies organized, incorporated or doing business under the provisions of chapters
19 325, 375, 376, 377, 378, 379, 381 and 383;

20 [(4)] (5) "Person", any natural or artificial entity, including, but not limited to,
21 individuals, partnerships, associations, trusts or corporations;

22 [(5)] (6) "Policy", "certificate" or "contract" includes any contract of insurance,
23 indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for
24 issuance, or intended for issuance by any insurer.

375.936. Any of the following practices, if committed in violation of section 375.934,
2 are hereby defined as unfair trade practices in the business of insurance:

3 (1) "Boycott, coercion, intimidation", entering into any agreement to commit, or by any
4 concerted action committing any act of boycott, coercion or intimidation resulting in or tending
5 to result in an unreasonable restraint of, or monopoly in, the business of insurance;

6 (2) "Defamation", making, publishing, disseminating, or circulating, directly or
7 indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating
8 of any oral or written statement or any pamphlet, circular, article or literature which is false, or
9 maliciously critical of or derogatory to the financial condition of any insurer, and which is
10 calculated to injure such insurer;

11 (3) "Failure to maintain complaint handling procedures", failure of any person to
12 maintain a complete record of all the complaints which it has received for a period of not less
13 than three years. This record shall indicate the total number of complaints, their classification
14 by line of insurance, the nature of each complaint, the disposition of these complaints, and the
15 time it took to process each complaint. For purposes of this subdivision, "complaint" shall mean
16 any written communication primarily expressing a grievance;

17 (4) "False information and advertising generally", making, publishing, disseminating,
18 circulating or placing before the public, or causing, directly or indirectly, to be made, published,
19 disseminated, circulated, or placed before the public, in a newspaper, magazine or other
20 publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio or
21 television station, or in any other way, an advertisement, announcement or statement containing
22 any assertion, representation or statement with respect to the business of insurance or with
23 respect to any insurer in the conduct of his insurance business, which is untrue, deceptive or
24 misleading;

25 (5) "False statements and entries:"

26 (a) Knowingly filing with any supervisory or other public official, or knowingly making,
27 publishing, disseminating, circulating or delivering to any person, or placing before the public,
28 or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated,
29 delivered to any person, or placed before the public, any false material statement of fact as to the
30 financial condition or dealings of an insurer;

31 (b) Knowingly making any false entry of a material fact in any book, report or statement
32 of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the
33 business of such insurer in any book, report or statement of such insurer;

34 (6) "Misrepresentations and false advertising of insurance policies", making, issuing,
35 circulating, or causing to be made, issued or circulated, any estimate, illustrations, circular or
36 statement, sales presentation, omission, or comparison which:

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

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

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

41 (d) Is misleading or is a misrepresentation as to the financial condition of any insurer,
42 or as to the legal reserve system upon which any life insurer operates;

43 (e) Uses any name or title of any policy or class of policies misrepresenting the true
44 nature thereof;

45 (f) Is a misrepresentation for the purpose of inducing or tending to induce the purchase,
46 lapse, forfeiture, exchange, conversion, or surrender of any policy, including any intentional
47 misquote of a premium rate;

48 (g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or
49 effecting a loan against any policy; or

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

51 (7) "Misrepresentation in insurance applications", making false or fraudulent statements
52 or representations on or relative to an application for a policy, for the purpose of obtaining a fee,
53 commission, money, or other benefit from any insurer, agent, agency, broker or other person;

54 (8) "Prohibited group enrollments", no insurer shall offer more than one group contract
55 of insurance through any person unless such person is licensed pursuant to law; however, this
56 prohibition shall not apply to employer-employee relationships, nor to any such enrollments;

57 (9) "Rebates":

58 (a) Except as otherwise expressly provided by law, knowingly permitting or offering to
59 make or making any contract of life insurance, life annuity, accident and health insurance or
60 other insurance, or agreement as to such contract other than as plainly expressed in the insurance
61 contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give,
62 directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums
63 payable on the contract, or any special favor or advantage in the dividends or other benefits
64 thereon, or any valuable consideration or inducement whatever not specified in the contract; or
65 giving, or selling, or purchasing or offering or to give, sell, or purchase as inducement to such
66 insurance contract or annuity or in connection therewith, any stocks, bonds or other securities
67 of any insurance company or other corporation, association, or partnership, or any dividends or
68 profits accrued thereon, or anything of value whatsoever not specified in the contract;

69 (b) Nothing in subdivision (11) or paragraph (a) of this subdivision shall be construed
70 as including within the definition of discrimination or rebates any of the following practices:

71 a. In the case of any contract of life insurance or life annuity, paying bonuses to
72 nonparticipating policyholders or otherwise abating their premiums in whole or in part out of
73 surplus accumulated from nonparticipating insurance; provided that any such bonuses or
74 abatement of premiums shall be fair and equitable to policyholders and for the best interest of
75 the company and its policyholders;

76 b. In the case of life insurance policies issued on the industrial debit plan, making
77 allowance to policyholders who have continuously for a specified period made premium
78 payments directly to an office of the insurer in an amount which fairly represents the saving in
79 collection expenses;

80 c. Readjustment of the rate of premium for a group insurance policy based on the loss
81 or expense experience thereunder, at the end of the first or any subsequent policy year of
82 insurance thereunder, which may be made retroactive only for such policy year;

83 (10) "Stock operations and advisory board contracts", issuing or delivering or permitting
84 agents, officers or employees to issue or deliver, agency company stock or other capital stock,
85 or benefit certificates or shares in any common law corporation, or securities or any special or
86 advisory board contracts or other contracts of any kind promising returns and profits as an
87 inducement to insurance;

88 (11) "Unfair discrimination":

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

93 (b) Making or permitting any unfair discrimination between individuals of the same class
94 and of essentially the same hazard in the amount of premium, policy fees, or rates charged for
95 any policy or contract of accident or health insurance or in the benefits payable thereunder, or
96 in any of the terms or conditions of such contract, or in any other manner whatever, including
97 any unfair discrimination by not permitting the insured full freedom of choice in the selection
98 of any duly licensed physician, surgeon, optometrist, chiropractor, dentist, psychologist,
99 pharmacist, pharmacy, or podiatrist; except that the terms of this paragraph shall not apply to
100 health maintenance organizations licensed pursuant to chapter 354;

101 (c) Making or permitting any unfair discrimination between individuals or risks of the
102 same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling
103 or limiting the amount of insurance coverage on a property or casualty risk because of the
104 geographic location of the risk;

105 (d) Making or permitting any unfair discrimination between individuals or risks of the
106 same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling
107 or limiting the amount of insurance coverage on a residential property risk, or the personal
108 property contained therein, because of the age of the residential property;

109 (e) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage
110 available to an individual because of the gender or marital status of the individual; however,

111 nothing in this paragraph shall prohibit an insurer from taking marital status into account for the
112 purpose of defining persons eligible for dependent benefits;

113 (f) Refusing to insure solely because another insurer has refused to issue a policy, or has
114 canceled or has refused to renew an existing policy for which that person was the named insured,
115 nor shall any insurance company or its agent or representative require any applicant or
116 policyholder to divulge in a written application or otherwise whether any insurer has canceled
117 or refused to renew or issue to the applicant or policyholder a policy of insurance, provided that
118 an insurer may require the name of the prior carrier in order to verify the applicant's previous
119 claims or medical history;

120 (g) Canceling or refusing to insure or refusing to continue to insure a policy solely
121 because of race, gender, color, creed, national origin, or ancestry of anyone who is or seeks to
122 become insured;

123 (h) Terminating, or modifying coverage or refusing to issue or refusing to renew any
124 property or casualty policy or contract of insurance solely because the applicant or insured or any
125 employee of either is mentally or physically impaired; except that this paragraph shall not apply
126 to accident and health insurance sold by a casualty insurer and, in addition, this paragraph shall
127 not be interpreted to modify any other provision of law relating to the termination, modification,
128 issuance or renewal of any insurance policy or contract;

129 (i) The provisions of paragraphs (c), (d), (e), (f), (g), and (h) of this subdivision shall not
130 apply if:

131 a. The refusal, cancellation, limitation, termination or modification is for a business
132 purpose which is not a mere pretext for unfair discrimination, or

133 b. The refusal, cancellation, limitation, termination or modification is required by law
134 or regulatory mandate;

135 (12) "Unfair financial planning practices", an insurance producer, agent, broker or
136 consultant:

137 (a) Holding himself out, directly or indirectly, to the public as a financial planner,
138 investment adviser, financial consultant, financial counselor, or any other specialist engaged in
139 the business of giving financial planning or advice relating to investments, insurance, real estate,
140 tax matters, or trust and estate matters when such person is in fact engaged only in the sale of
141 policies; provided, however, an insurance producer, agent, broker or consultant who has passed
142 a professional course of study may use the symbol of the professional designation on his or her
143 business card or stationery;

144 (b) Engaging in the business of financial planning without disclosing to the client prior
145 to the execution of the agreement provided for in paragraph (c) of this subdivision or solicitation
146 of the sale of a product or service that:

- 147 a. He is also an insurance salesperson; and
- 148 b. That a commission for the sale of an insurance product will be received in addition
149 to a fee for financial planning, if such is the case. The disclosure requirement under this
150 paragraph may be met by including it in any disclosure required by federal or state securities law;
- 151 (c) Charging fees, other than commissions, for financial planning by insurance agents,
152 brokers or consultants, unless such fees are based upon a written agreement, which is signed by
153 the party to be charged in advance of the performance of the services under the agreement. A
154 copy of the agreement shall be provided to the party to be charged at the time the agreement is
155 signed by the party and:
- 156 a. The services for which the fee is to be charged must be specifically stated in the
157 agreement;
- 158 b. The amount of the fee to be charged or how it will be determined or calculated must
159 be specifically stated in the agreement;
- 160 c. The agreement must state that the client is under no obligation to purchase any
161 insurance product through the insurance agent, broker or consultant. The insurance agent, broker
162 or consultant shall retain a copy of the agreement for not less than three years after completion
163 of services, and a copy shall be available to the director upon request;
- 164 (13) Any violation of section 375.445;
- 165 **(14) "Unfair solicitation methods". It shall be considered an unfair trade practice**
166 **under sections 375.930 to 375.948 for an insurance producer or business entity producer**
167 **to:**
- 168 **(a) Sell, solicit, or negotiate the purchase of Medicare products in this state through**
169 **the use of cold lead advertising;**
- 170 **(b) Use an appointment that was made to discuss or solicit the sale of Medicare**
171 **products to solicit sales of life, health, or annuity products, unless the consumer specifically**
172 **requests such Medicare product solicitation in writing and the other nonMedicare**
173 **products to be discussed are clearly identified to the consumer in writing at least forty-**
174 **eight hours in advance of the appointment;**
- 175 **(c) Use an appointment that was made to discuss or solicit the sale of life, health,**
176 **or annuity products, or to consult with an individual regarding enrollment in any state or**
177 **federal public assistance programs, to discuss or solicit the sale of any Medicare products,**
178 **unless the consumer specifically requests such additional Medicare product solicitation**
179 **prior to the appointment. Such specific request shall not include a general interest**
180 **response to a written or electronic mass mailing or solicitation;**
- 181 **(d) Solicit the sale of Medicare products door-to-door anywhere within this state,**
182 **prior to or without receiving a specific invitation or request for a sales appointment at least**

183 **forty-eight hours prior to such appointment. Such specific invitation or request for a sales**
184 **appointment shall not include a general interest response to a written or electronic mass**
185 **mailing or solicitation;**

186 **(e) Solicit the sale of Medicare products to any individual, resident, patient, or**
187 **occupant in any senior living facility or apartment complex, nursing home, retirement**
188 **community, or residential care facility without providing twenty-four hours prior notice**
189 **to the management or supervisory personnel of such facility. Such prior notice shall**
190 **clearly identify each person or persons with whom such insurance producer or business**
191 **entity producer will be meeting, and shall disclose the producer or business entity**
192 **producer's and Missouri license number, business address and telephone number, the**
193 **products to be discussed, and the insurance company or companies for whose insurance**
194 **products the appointment is to discuss. No other solicitations or contact shall be made to**
195 **any other person or persons during such appointment or visit who were not included or**
196 **disclosed within such notice;**

197 **(f) Solicit the sale of Medicare products in a manner which would violate any**
198 **marketing regulations or guidelines promulgated or published by the Centers for Medicare**
199 **and Medicaid Services (CMS);**

200 **(g) Solicit the sale of Medicare products on the premises of any public or social**
201 **welfare agency or facility providing financial, health, or food assistance to the elderly or**
202 **disabled. Such prohibition shall not include educational events or fairs which are**
203 **presented or offered in accordance with CMS marketing guidelines.**

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205 **As used in this subdivision, "Medicare products" included Medicare Part C, also known**
206 **as Medicare Advantage, Medicare Part D, and any and all Medicare supplement or**
207 **Medigap plans.**