

HOUSE BILL No. 2404

By Committee on Federal and State Affairs

2-10

1 AN ACT concerning environmental, social and governance standards
2 involving contracts, investments and business practices; relating to
3 ideological boycotts or other discriminatory conduct; enacting the
4 Kansas protection of pensions and businesses against ideological
5 interference act; directing the board of trustees of the Kansas public
6 employees retirement system to divest from investments with entities
7 engaged in ideological boycotts; establishing conditions and procedures
8 for divestment; requiring the state treasurer to publish a list of financial
9 companies and financial institutions engaged in ideological boycotts;
10 authorizing the state treasurer to disqualify listed financial institutions
11 from receiving deposit of state moneys; prohibiting governmental
12 contracts without written verification that a contractor is not engaged in
13 ideological boycotts; directing fiduciaries of governmental plans that
14 provide retirement benefits, defer employee income or invest taxpayer
15 moneys to act only in the financial interest of such plans; requiring
16 registered investment advisers to make certain disclosures to clients and
17 obtain written consent of clients prior to investing client funds in
18 investments engaged in ideological boycotts; providing for civil and
19 criminal penalties; amending K.S.A. 75-4208 and K.S.A. 2022 Supp.
20 40-2404 and repealing the existing sections.

21

22 *Be it enacted by the Legislature of the State of Kansas:*

23

24 New Section 1. (a) The provisions of sections 1 through 29, and
25 amendments thereto, shall be known and may be cited as the Kansas
26 protection of pensions and businesses against ideological interference act.

26

(b) As used in this act:

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(1) "Act" means the Kansas protection of pensions and businesses
28 against ideological interference act.

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(2) "Banking contract" means a contract entered into by the treasurer
30 or the pooled money investment board and a financial institution pursuant
31 to article 42 of chapter 75 of the Kansas Statutes Annotated, and
32 amendments thereto, to receive deposit of state moneys in operating
33 accounts or investment accounts.

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(3) "Board" means the board of trustees of the Kansas public
35 employees retirement system.

36

(4) "Company" means any organization, association, corporation,

1 partnership, joint venture, limited partnership, limited liability partnership,
2 limited liability company or other entity of business association, including
3 a wholly owned subsidiary, majority-owned subsidiary, parent company or
4 affiliate of such entities or business associations that exists for the purpose
5 of making a profit.

6 (5) "Direct holdings" means, with respect to a financial company, all
7 securities of that financial company held directly by the system in an
8 account or fund in which the system owns all shares or interests.

9 (6) "Financial company" means a publicly traded financial services,
10 banking or investment company.

11 (7) "Financial institution" means a bank, national banking
12 association, trust company, savings and loan association, building and
13 loan association, mutual savings bank, credit union, payment processor or
14 savings bank.

15 (8) "Financial services company" means a financial institution,
16 insurance company or other company that provides investment services.

17 (9) "Fossil fuels" means coal, natural gas or oil.

18 (10) "Governmental entity" means:

19 (A) The state of Kansas or any political subdivision thereof,
20 including, but not limited to, any county, city, municipality, agency, airport
21 authority, community mental health center, drainage district, groundwater
22 management district, hospital district, housing authority, metropolitan
23 transit authority, port authority, public building commission, rural water
24 district, school district or township; or

25 (B) any school, college, university, administration, authority or other
26 enterprise operated by the state or any political subdivision thereof.

27 (11) "Governmental plan" means any plan, fund or program that is
28 established, provided or maintained by a governmental entity to:

29 (A) Provide retirement income or other retirement benefits to
30 employees or former employees;

31 (B) defer income by employees for a period of time extending to the
32 termination of covered employment or beyond; or

33 (C) invest taxpayer money for any purpose.

34 (12) "Ideological boycott" means, without an ordinary business
35 purpose, refusing to deal with, refusing or limiting investment in,
36 terminating business activities with or otherwise taking any commercial
37 action that is intended to penalize, inflict economic harm on, limit
38 commercial relations with or change or limit the activities of a company
39 because the company, without violating controlling state or federal law:

40 (A) Engages in the exploration, production, utilization, transportation,
41 sale or manufacturing of fossil fuel-based energy and does not commit or
42 pledge to meet environmental standards beyond applicable federal and
43 state law;

1 (B) engages in the exploration, production, utilization, transportation,
2 sale or manufacturing of nuclear energy and does not commit or pledge to
3 meet environmental standards beyond applicable federal and state law;

4 (C) engages in production of agriculture;

5 (D) engages in production of lumber;

6 (E) engages in mining;

7 (F) engages in the exploration, production, utilization, transportation,
8 sale or manufacturing of any other natural resource;

9 (G) emits greenhouse gases or does not disclose or offset such
10 greenhouse gas emissions;

11 (H) engages, facilitates or supports the manufacture, import,
12 distribution, marketing, advertising, lawful use or sale of firearms,
13 ammunition or component parts and accessories of firearms or
14 ammunition;

15 (I) does not meet, is not expected to meet or does not commit to meet
16 environmental standards or disclosure criteria, in particular to eliminate,
17 reduce, offset or disclose greenhouse gas emissions;

18 (J) is governed by a corporate board or other officers whose race,
19 ethnicity, sex or sexual orientation meets or does not meet any criterion;

20 (K) does not facilitate or assist employees in obtaining abortions,
21 assisted suicide or gender reassignment services; or

22 (L) engages with, facilitates, employs, supports, does business with,
23 represents or advocates for any company described by any of
24 subparagraphs (A) through (K).

25 (13) "Indirect holdings" means, with respect to a financial company,
26 all securities of that financial company held in an account or fund, such as
27 a mutual fund, managed by one or more persons not employed by the
28 system, which owns shares or interests together with other investors not
29 subject to the provisions of this act. "Indirect holdings" does not include
30 money invested under a plan described by sections 401(k) or 457 of the
31 federal internal revenue code.

32 (14) "Insurance company" means the same as defined in K.S.A. 40-
33 201, and amendments thereto.

34 (15) "Listed financial company" means a financial company listed by
35 the treasurer pursuant to section 7, and amendments thereto.

36 (16) "Natural resources" means fossil fuels, minerals, metal ores or
37 any other nonrenewable or finite resource that cannot be readily replaced
38 by natural means with the speed at which it is consumed.

39 (17) "Nonpecuniary factor" means any factor intended to further or
40 promote any environmental, governance, ideological, political, social or
41 other nontraditional goal or standard.

42 (18) (A) "Ordinary business purpose" means any purpose directly
43 related to:

- 1 (i) Promoting the financial success or stability of a financial
2 institution;
- 3 (ii) mitigating risk to a financial institution;
- 4 (iii) complying with legal or regulatory requirements; or
- 5 (iv) limiting liability of a financial institution.
- 6 (B) "Ordinary business purpose" does not mean any purpose to
7 further social, political or ideological interests. A company may reasonably
8 be determined to have taken an action or considered a factor with the
9 purpose to further social, political or ideological interests based upon
10 evidence indicating that such a purpose is included in, but not limited to:
- 11 (i) Branding, advertising, statements, explanations, reports, letters to
12 clients, communications with portfolio companies, statements of principles
13 or commitments; or
- 14 (ii) participating in, affiliation with or status as a signatory to any
15 coalition, initiative, joint statement of principles or agreement.
- 16 (19) "Person" means any natural person, partnership, association,
17 joint stock company, trust or corporation.
- 18 (20) "Registered investment adviser" means an investment adviser
19 that provides financial or investment advice to clients and is registered
20 either with the United States securities and exchange commission or with
21 the state of Kansas under the Kansas uniform securities act, or both.
- 22 (21) "Restricted financial institution" means a financial institution
23 included in the most recently updated restricted financial institution list.
- 24 (22) "Restricted financial institution list" means the list of financial
25 institutions prepared, maintained and published by the treasurer pursuant
26 to section 15, and amendments thereto.
- 27 (23) "Security" means any note, stock, treasury stock, security future,
28 bond, debenture, evidence of indebtedness, certificate of interest or
29 participation in any profit-sharing agreement, collateral-trust certificate,
30 preorganization certificate or subscription, transferable share, investment
31 contract, voting-trust certificate, certificate of deposit for a security,
32 fractional undivided interest in oil, gas or other mineral rights, any put,
33 call, straddle, option or privilege on any security, including a certificate of
34 deposit, or on any group or index of securities, including any interest
35 therein or based on the value thereof, or any put, call, straddle, option or
36 privilege entered into on a national securities exchange relating to foreign
37 currency or, in general, any interest or instrument commonly known as a
38 "security," or any certificate of interest or participation in, temporary or
39 interim certificate for, receipt for, guarantee of, or warrant or right to
40 subscribe to or purchase any of the foregoing.
- 41 (24) "Social credit score" means any rating, scoring, analysis,
42 assessment, list, standard, guidance, criterion or tabulation that includes,
43 without violating controlling state or federal law, a negative assessment of

1 whether a person is engaging in any of the following lawful activities
 2 within this state:

3 (A) Not committing or pledging to meet environmental standards
 4 beyond applicable state or federal law in the exploration, production,
 5 utilization, transportation, sale or manufacturing of fossil fuel-based
 6 energy, nuclear energy, agriculture, timber, mining or any other natural
 7 resource;

8 (B) the emitting of greenhouse gases or refusing to disclose, reduce
 9 or offset such greenhouse gas emissions;

10 (C) not meeting, not expecting to meet or not committing to meet any
 11 environmental goals, including emissions, standards or disclosures;

12 (D) not meeting, not expecting to meet or not committing to meet any
 13 corporate board or company employment composition goals, including
 14 standards or disclosures based upon characteristics protected under K.S.A.
 15 44-1001 et seq., and amendments thereto;

16 (E) the manufacturing, distribution or sale of firearms, firearms
 17 accessories, ammunition or ammunition components;

18 (F) the governing of a corporate board or other officers whose race,
 19 ethnicity, sex or sexual orientation meets or does not meet any criterion;

20 (G) refusing to facilitate or assist employees in obtaining abortions,
 21 assisted suicide or gender reassignment services;

22 (H) exercising such person's freedom of speech as protected by either
 23 the first amendment to the constitution of the United States or section 11 of
 24 the Kansas bill of rights, if the financial services company were considered
 25 to be a state actor, including the person's political opinions, political
 26 speech, political donations, political affiliations or other expressive
 27 activities;

28 (I) exercising such person's free exercise of religion as protected by
 29 any of the first amendment to the constitution of the United States, the
 30 federal religious freedom restoration act of 1993, section 7 of the Kansas
 31 bill of rights or the Kansas preservation of religious freedom act, if the
 32 financial services company were considered to be a state actor, including
 33 all aspects of the person's religious observance and practice, as well as
 34 belief and affiliation; or

35 (J) engaging with, facilitating of, employing by, supporting of, doing
 36 business with, representing of or advocating for any person who does
 37 business with a person described by subparagraphs (A) through (I).

38 (25) "System" means the Kansas public employees retirement system.

39 (26) "Treasurer" means the state treasurer.

40 New Sec. 2. With respect to actions taken in compliance with this act,
 41 including all good faith determinations regarding financial companies as
 42 required by this act and any reliance on such good faith determinations, the
 43 state, the board, the system and the treasurer are exempt from any

1 conflicting statutory or common law obligations, including any obligations
2 with respect to making investments, divesting from any investment,
3 preparing or maintaining any list of financial companies or choosing asset
4 managers, investment funds or investments for the system's securities
5 portfolios.

6 New Sec. 3. In a cause of action based on an action, inaction,
7 decision, divestment, investment, financial company communication,
8 report or other determination made or taken in compliance with this act,
9 without regard to whether the person performed services for
10 compensation, the state shall indemnify and hold harmless for actual
11 damages, court costs and attorney fees adjudged against, and defend:

12 (a) An employee, a member of the board or any other officer of the
13 system;

14 (b) a contractor of the system;

15 (c) a former employee, a former member of the board or any other
16 former officer of the system who was an employee, member of the board
17 or other officer when the act or omission occurred on which the damages
18 are based;

19 (d) a former contractor of the system who was a contractor when the
20 act or omission occurred on which the damages are based; and

21 (e) the system.

22 New Sec. 4. (a) A person, including a member, retiree or beneficiary
23 of the system, an association, a research firm, a financial company or any
24 other person may not sue or pursue a private cause of action against the
25 state, the board, the system or the treasurer for any claim or cause of
26 action, including breach of fiduciary duty, or for violation of any
27 constitutional, statutory or regulatory requirement in connection with any
28 action, inaction, decision, divestment, investment, financial company
29 communication, report or other determination made or taken in
30 compliance with this act.

31 (b) A person who files suit against the state, the board, the system or
32 the treasurer in violation of this section is liable for paying the costs and
33 attorney fees of the party sued in violation of this section.

34 New Sec. 5. (a) No person, company or governmental entity shall
35 take action to penalize or threaten to penalize any financial institution or
36 financial company for complying with this act.

37 (b) Any party taking such action shall have caused harm to the state
38 by interfering with the state's sovereign interests in administering the
39 state's programs, the state's commercial relationship with financial
40 institutions and the financial companies of this state.

41 New Sec. 6. The treasurer and the board may rely on a financial
42 company's response to a notice or communication made under this act
43 without conducting any further investigation, research or inquiry.

1 New Sec. 7. (a) The treasurer shall prepare, maintain and provide to
2 the board a list of all financial companies that engage in ideological
3 boycotts. Such list shall be known as the restricted financial company list.
4 In maintaining the list, the treasurer may:

5 (1) Review and rely on publicly available information regarding
6 financial companies, as appropriate in the treasurer's sole discretion,
7 including information provided by the state, nonprofit organizations,
8 research firms, international organizations and governmental entities; and

9 (2) request written verification from a financial company that such
10 company does not engage in ideological boycotts.

11 (b) A financial company that fails to provide to the treasurer a written
12 verification under subsection (a)(2) before the 31st day after receiving the
13 request from the treasurer is presumed to be engaged in an ideological
14 boycott.

15 (c) In determining whether to include a financial company on the
16 restricted financial company list, the treasurer shall consider, but not be
17 limited to, the following:

18 (1) A financial company's certification that it is not engaged in
19 ideological boycotts;

20 (2) publicly available statements or information made by the financial
21 company, including statements by a member of such financial company's
22 governing body, an executive director of the financial company or any
23 other officer or employee of the financial company with the authority to
24 issue policy statements on behalf of such financial company; and

25 (3) information published by a state or federal governmental entity.

26 (d) In determining whether to include a financial company on the
27 restricted financial company list, the treasurer shall not rely solely on the
28 following:

29 (1) Statements or complaints by a boycotted company; or

30 (2) media reports of a financial company's ideological boycott.

31 (e) A financial company shall not be compelled to produce or disclose
32 any data or information deemed confidential, privileged or otherwise
33 protected from disclosure by state or federal law.

34 (f) For any financial company that the treasurer determines is
35 engaged in an ideological boycott, the treasurer shall send a written notice
36 to such financial company at least 45 days prior to including such financial
37 company on the restricted financial company list. Such written notice shall
38 state that:

39 (1) The treasurer has determined that the financial company is a
40 restricted financial company;

41 (2) the financial company will be placed on the restricted financial
42 company list in 45 days unless, within 30 days following receipt of the
43 written notice, the restricted financial company demonstrates that such

1 financial company is not engaged in an ideological boycott; and

2 (3) such restricted financial list is published on the treasurer's website
3 and sent to the board, the president of the senate, the speaker of the house
4 of representatives and the attorney general.

5 (g) Following a restricted financial company's inclusion on the
6 restricted financial company list, the treasurer shall remove such financial
7 company from such list if the financial company demonstrates that such
8 financial company has ceased all ideological boycotts.

9 (h) The treasurer shall update the list annually or more often as the
10 treasurer considers necessary, but not more often than quarterly, based on
11 information from sources listed in subsection (a), among other sources.

12 (i) Not later than the 30th day after the date the list of financial
13 companies that engage in ideological boycotts is first provided to the board
14 or updated, the treasurer shall file the list with the president of the senate,
15 the speaker of the house of representatives and the attorney general and
16 post the list on the treasurer's website in a location that is easily accessible
17 to the public. The treasurer shall include at the top of such list a citation to
18 this section, a brief summary of the purpose of the list and a statement that
19 inclusion on the list is not an indication of unsafe or unsound operating
20 conditions of any financial institution or any risk of consumer deposits.

21 New Sec. 8. Not later than the 30th day after the date the board
22 receives the list provided under section 7, and amendments thereto, the
23 board shall notify the treasurer of the listed financial companies in which
24 the system owns direct holdings or indirect holdings.

25 New Sec. 9. (a) For each listed financial company identified under
26 section 8, and amendments thereto, the board shall send a written notice:

27 (1) Informing the financial company of its status as a listed financial
28 company;

29 (2) warning the financial company that it may become subject to
30 divestment by the board after the expiration of the period prescribed by
31 subsection (b); and

32 (3) offering the financial company the opportunity to clarify its
33 activities related to companies prescribed by section 1(b)(4), and
34 amendments thereto.

35 (b) Not later than the 90th day after the date the financial company
36 receives notice under subsection (a), the financial company shall cease
37 engaging in ideological boycotts in order to avoid divestment by the board.

38 (c) If, during the time provided by subsection (b), the financial
39 company ceases engaging in ideological boycotts, the treasurer shall
40 remove the financial company from the list maintained under section 7,
41 and amendments thereto. In which case, the provisions of this act shall no
42 longer apply to such financial company unless such financial company
43 resumes engaging in ideological boycotts.

1 (d) If, after the time provided by subsection (b) expires, the financial
2 company continues to engage in ideological boycotts, the board shall sell,
3 redeem, divest or withdraw all publicly traded securities of the financial
4 company, except securities described by section 11, and amendments
5 thereto, according to the schedule provided by section 10, and
6 amendments thereto.

7 New Sec. 10. (a) When the board is required to sell, redeem, divest or
8 withdraw all publicly traded securities of a listed financial company, the
9 board shall comply with the following schedule:

10 (1) At least 50% of those assets shall be removed from the system's
11 assets under management not later than the 180th day after the date the
12 financial company receives notice under section 9, and amendments
13 thereto, or subsection (b) unless the board determines that a later date is
14 more prudent, based on a good faith exercise of the board's fiduciary
15 discretion and subject to paragraph (2); and

16 (2) 100% of such assets shall be removed from the system's assets
17 under management not later than the 360th day after the date the financial
18 company receives notice under section 9, and amendments thereto, or
19 subsection (b).

20 (b) If a financial company that ceased engaging in ideological
21 boycotts after receiving notice under section 9, and amendments thereto,
22 resumes such financial company's boycott, the board shall send a written
23 notice to the financial company informing such financial company that the
24 board will sell, redeem, divest or withdraw all publicly traded securities of
25 the financial company according to the schedule in subsection (a).

26 (c) Except as provided by subsection (a), the board may delay the
27 schedule for divestment under such subsection only to the extent that the
28 board determines, in the board's good faith judgment and consistent with
29 the board's fiduciary duty, that divestment from listed financial companies
30 will likely result in a loss in value or a benchmark deviation as provided
31 by section 12(b), and amendments thereto. If the board delays the schedule
32 for divestment, the board shall submit a report to the treasurer, the
33 president of the senate, the speaker of the house of representatives and the
34 attorney general stating the reasons and justification for the board's delay
35 in divestment from listed financial companies. The report shall include
36 documentation supporting the board's determination that the divestment
37 would result in a loss in value or a benchmark deviation as provided by
38 section 12(b), and amendments thereto, including objective numerical
39 estimates. The board shall update the report every six months.

40 New Sec. 11. The board is also required to divest from any indirect
41 holdings in actively or passively managed investment funds or private
42 equity funds containing listed financial companies. The board shall submit
43 letters to the managers of each investment fund containing listed financial

1 companies requesting that they remove such financial companies from the
2 fund or create a similar actively or passively managed fund with indirect
3 holdings devoid of listed financial companies. If a manager creates a
4 similar fund with substantially the same management fees and
5 substantially the same level of investment risk and anticipated return, the
6 board may replace all applicable investments with investments in the
7 similar fund in a time frame consistent with prudent fiduciary standards
8 but not later than the 450th day after the date the fund is created. If a
9 manager does not create such similar fund, the board shall divest from
10 such indirect holdings in actively or passively managed investment funds
11 or private equity funds.

12 New Sec. 12. (a) Except as provided by this section, the system may
13 not acquire securities of a listed financial company.

14 (b) The board may cease divesting from one or more listed financial
15 companies only if clear and convincing evidence shows that:

16 (1) The system has suffered or will suffer a greater than 25% loss in
17 the hypothetical value of all assets under management by the system as a
18 result of having to divest from listed financial companies under this act; or

19 (2) an individual portfolio that uses a benchmark-aware strategy
20 would be subject to an aggregate expected deviation from its benchmark of
21 greater than 25% as a result of having to divest from listed financial
22 companies under this act.

23 (c) The board may cease divesting from a listed financial company as
24 provided by this section only to the extent necessary to ensure that the
25 system does not suffer a loss in value or deviate from its benchmark as
26 described by subsection (b).

27 (d) Before the board may cease divesting from a listed financial
28 company under this section, the board shall provide a written report to the
29 treasurer, the president of the senate, the speaker of the house of
30 representatives and the attorney general stating the reason and
31 justification, supported by clear and convincing evidence, for deciding to
32 cease divestment or to remain invested in a listed financial company.

33 (e) The board shall update the report required by subsection (d)
34 semiannually, as applicable.

35 (f) This section does not apply to reinvestment in a financial company
36 that is no longer a listed financial company.

37 New Sec. 13. Not later than the first day of the regular session of the
38 legislature, each year, the board shall file a report with the treasurer, the
39 president of the senate, the speaker of the house of representatives and the
40 attorney general that:

41 (a) Identifies all securities sold, redeemed, divested or withdrawn in
42 compliance with section 10, and amendments thereto;

43 (b) identifies all prohibited investments under section 12, and

1 amendments thereto; and

2 (c) summarizes any changes made under section 11, and amendments
3 thereto.

4 New Sec. 14. The attorney general may bring any action necessary to
5 enforce the provisions of sections 1 through 14, and amendments thereto,
6 and to investigate potential violations of sections 1 through 14, and
7 amendments thereto.

8 New Sec. 15. (a) On or before July 1, 2024, the treasurer shall
9 prepare and maintain a list of financial institutions that are engaged
10 ideological boycotts.

11 (b) The treasurer shall post the list, designated as a restricted financial
12 institutions list, on the treasurer's website and submit a copy of such list to
13 the governor, the attorney general, the president of the senate and the
14 speaker of the house of representatives.

15 (c) The treasurer shall include a citation to this section and a brief
16 summary of the purpose of the list at the top of such list, including a
17 statement that inclusion on the list is not an indication of unsafe or
18 unsound operating conditions of any financial institution or any risk of
19 consumer deposits.

20 (d) The treasurer shall update the restricted financial institution list
21 annually and may update such list more frequently as the treasurer deems
22 necessary.

23 New Sec. 16. (a) The treasurer shall send a written notice to a
24 financial institution 45 days prior to including such financial institution on
25 the restricted financial institution list. Such written notice shall provide
26 that:

27 (1) The treasurer has determined that the financial institution is a
28 restricted financial institution;

29 (2) the financial institution will be placed on the restricted financial
30 institution list in 45 days unless, within 30 days following receipt of the
31 written notice, the restricted financial institution demonstrates that such
32 financial institution is not engaged in ideological boycotts;

33 (3) such restricted financial institution list is published on the
34 treasurer's website; and

35 (4) the financial institution's placement on the list may render such
36 financial institution ineligible to enter into or renew any banking contracts
37 with the state of Kansas.

38 (b) Following a restricted financial institution's inclusion on the
39 restricted financial institution list, the treasurer shall remove such financial
40 institution from such list if the financial institution demonstrates that such
41 financial institution has ceased engaging in ideological boycotts.

42 New Sec. 17. (a) In determining whether to include a financial
43 institution on the restricted financial institution list, the treasurer shall

1 consider, but not be limited to, the following:

2 (1) A financial institution's certification that it is not engaged in
3 ideological boycotts;

4 (2) publicly available statements or information made by the financial
5 institution, including statements by a member of such financial institution's
6 governing body, an executive director of the financial institution or any
7 other officer or employee of the financial institution with the authority to
8 issue policy statements on behalf of such financial institution; or

9 (3) information published by a state or federal governmental entity.

10 (b) In determining whether to include a financial institution on the
11 restricted financial institution list, the treasurer shall not rely solely on the
12 following:

13 (1) Statements or complaints by a boycotted company; or

14 (2) media reports of a financial institution's engaging in ideological
15 boycotts.

16 (c) A financial institution shall not be compelled to produce or
17 disclose any data or information deemed confidential, privileged or
18 otherwise protected from disclosure by state or federal law.

19 New Sec. 18. Notwithstanding any provision of article 42 of chapter
20 75 of the Kansas Statutes Annotated, and amendments thereto, to the
21 contrary, the treasurer is authorized to:

22 (a) Disqualify a financial institution on the restricted financial
23 institution list from the awarding of an agreement to receive deposit of
24 state moneys in operating accounts or investment accounts in accordance
25 with K.S.A. 75-4205 or 75-4209, and amendments thereto, or from any
26 other official selection process to enter into a banking contract with the
27 state;

28 (b) refuse to enter into a banking contract with a restricted financial
29 institution based on such financial institution's inclusion on the restricted
30 financial institution list; and

31 (c) require, as a provision of any banking contract commencing on or
32 after July 1, 2024, an agreement by the financial institution not to engage
33 in ideological boycotts for the duration of the contract.

34 New Sec. 19. A public agency, public official, public employee or
35 member or employee of a financial institution shall be immune from
36 liability with respect to actions taken in compliance with this act.

37 New Sec. 20. (a) Except as provided in subsection (b), the provisions
38 of this act shall apply to all contracts for deposit of state moneys for terms
39 commencing on or after July 1, 2024, and shall not apply to contracts for
40 terms ending prior to July 1, 2024.

41 (b) The provisions of sections 15 through 19, and amendments
42 thereto, shall apply only to financial institutions with total assets of
43 \$20,000,000,000 or greater.

1 New Sec. 21. (a) This section shall apply only to a contract that:

2 (1) Is between a governmental entity and a company with 10 or more
3 full-time employees; and

4 (2) has a value of \$100,000 or more that is to be paid wholly or partly
5 from public funds of the governmental entity.

6 (b) Except as provided in subsection (c), a governmental entity shall
7 not enter into a contract with a company for goods or services unless the
8 contract contains a written verification from the company that such
9 company:

10 (1) Does not engage in ideological boycotts; and

11 (2) will not engage in ideological boycotts during the term of the
12 contract.

13 (c) The provisions of subsection (b) shall not apply to a contract if the
14 governmental entity determines and documents that the goods or services
15 are not otherwise available on commercially reasonable terms or if
16 subsection (b) is determined to be inconsistent with the governmental
17 entity's constitutional or statutory duties.

18 (d) The provisions of this section shall apply to all contracts entered
19 into on or after July 1, 2023. A contract entered into before such date is
20 governed by the law in effect on the date the contract was entered into, and
21 the former law is continued in effect for that purpose.

22 New Sec. 22. (a) A fiduciary shall discharge the fiduciary's duties
23 with respect to a governmental plan solely in the financial interest of the
24 participants and beneficiaries of the governmental plan for the exclusive
25 purpose of providing financial benefit to the participants and beneficiaries,
26 defraying reasonable expenses of administering the governmental plan.

27 (b) A fiduciary shall only consider pecuniary factors when evaluating
28 an investment or otherwise discharging such fiduciary's duties with respect
29 to a governmental plan. A fiduciary shall not consider any nonpecuniary
30 factors when evaluating an investment or discharging such fiduciary's
31 duties with respect to a governmental plan.

32 (c) A fiduciary may reasonably be determined to have considered
33 nonpecuniary factors based upon evidence indicating an intent to further
34 an ideological boycott through portfolio company engagement, board or
35 shareholder votes or otherwise as a fiduciary. Such evidence may include,
36 but not be limited to:

37 (1) Branding, advertising, statements, explanations, reports, letters to
38 clients, communications with portfolio companies, statements of principles
39 or commitments; or

40 (2) participation in, affiliation with or status as a signatory to, any
41 coalition, initiative, joint statement of principles or agreement.

42 New Sec. 23. (a) A governmental entity that establishes, maintains or
43 manages a governmental plan shall not grant proxy voting authority to any

1 person who is not a part of the governmental entity, unless such person
2 follows guidelines consistent with the governmental entity's obligation to
3 consider only pecuniary factors.

4 (b) Any shares held directly or indirectly by a governmental plan
5 shall be voted only in the financial interest of the governmental plan. Such
6 shares shall not be voted to further nonpecuniary factors. No governmental
7 plan assets shall be entrusted to any fiduciary that engages with companies
8 or commits voting shares based upon nonpecuniary factors.

9 (c) A fiduciary or governmental entity administering a governmental
10 plan shall not adopt a practice of following the recommendations of a
11 proxy advisory firm or other service provider unless the proxy advisory
12 firm's or the service provider's voting guidelines are consistent with the
13 fiduciary's or governmental entity's obligation to act only on pecuniary
14 factors.

15 (d) Unless no economically practicable alternative is available,
16 governmental plan public retirement system assets shall not be entrusted to
17 a fiduciary, unless that fiduciary has a practice of, and in writing commits
18 to, following guidelines when engaging with portfolio companies and
19 voting shares or proxies that match the governmental entity's obligation to
20 act solely upon pecuniary factors.

21 (e) All proxy votes shall be tabulated and reported annually to the
22 board. For each vote, the report shall contain a vote caption, the plan's
23 vote, the recommendation of company management and, if applicable, the
24 proxy advisor's recommendation. Such reports shall be posted on the
25 system's website for review by the public.

26 (f) The provisions of sections 21 through 23, and amendments
27 thereto, or any contract subject to the provisions of sections 21 through 23,
28 and amendments thereto, may be enforced by the attorney general. The
29 attorney general may investigate possible violations of sections 21 through
30 23, and amendments thereto, according to the investigative authority
31 provided in K.S.A. 50-631, and amendments thereto.

32 (g) In addition to any other remedies available at law or equity, a
33 company who serves as a fiduciary and who violates the provisions of
34 sections 21 through 23, and amendments thereto, shall be obligated to pay
35 damages to the governmental entity in an amount equal to three times all
36 moneys paid to the company by the governmental entity for the company's
37 services.

38 New Sec. 24. (a) To provide fair access to financial services, a
39 financial services company shall not:

40 (1) Discriminate in the provision of financial services against a
41 person based on the person's social credit score, including by refusing to
42 provide a person new or ongoing financial services of any kind, refraining
43 from continuing to provide a person existing financial services,

1 terminating a person's existing financial services or refusing to make each
2 financial service such financial services company offers to all persons in
3 the geographic market served by the financial services company on a
4 nondiscriminatory basis;

5 (2) agree, conspire or coordinate, directly or indirectly, including
6 through any intermediary or third party, with another company or group of
7 companies, to discriminate in the provision of financial services against a
8 person based on the person's social credit score, including by refusing to
9 provide a person new or ongoing financial services of any kind, refraining
10 from continuing to provide a person existing financial services,
11 terminating a person's existing financial services or deny any person a
12 financial service such financial services company offers except to the
13 extent justified by such person's documented failure to meet quantitative,
14 impartial risk-based financial standards established in advance by such
15 financial services company;

16 (3) deny any person a financial service such financial services
17 company offers, other than as provided by paragraph (2), when the effect
18 of the denial is to prevent, limit or otherwise disadvantage the person:

19 (A) From entering or competing in a market or business segment; or

20 (B) in such a way that benefits another person or business activity in
21 which the financial services company has a financial interest; and

22 (4) deny, in coordination with others, any person a financial service
23 such financial services company offers.

24 New Sec. 25. (a) A financial services company shall not utilize
25 standards or guidelines based on nonfinancial or ideological criteria,
26 including the criteria constituting an ideological boycott as defined in
27 section 1, and amendments thereto, in determining whether or not to
28 provide any financial service to a person or company.

29 (b) A financial services company shall disclose to any person or
30 company denied a financial service with the specific data, information,
31 criteria and standard used to support such denial. Such disclosure shall be
32 provided in writing in bold 14-point font.

33 New Sec. 26. (a) (1) Except as provided in paragraph (2), a financial
34 services company that violates the provisions of sections 24 through 27,
35 and amendments thereto, commits a deceptive act or practice and shall be
36 subject to enforcement by the attorney general pursuant to K.S.A. 50-626,
37 and amendments thereto.

38 (2) A financial services company that is a credit union that violates
39 the provisions of sections 24 through 27, and amendments thereto,
40 commits an unsound practice and shall be subject to civil enforcement by
41 the credit union administrator pursuant to K.S.A. 17-2206, and
42 amendments thereto.

43 (b) An insurance company that violates the provisions of sections 24

1 through 27, and amendments thereto, commits an unfair or deceptive act or
2 practice under K.S.A. 40-2404, and amendments thereto, and shall be
3 subject to the penalties contained under K.S.A. 40-2401 et seq., and
4 amendments thereto.

5 (c) Notwithstanding enforcement under subsection (a) or (b), upon
6 conviction of five or more violations of this act, a financial services
7 company shall be guilty of a class C nonperson misdemeanor.

8 New Sec. 27. The state bank commissioner, the commissioner of
9 insurance and the credit union administrator shall adopt rules and
10 regulations for the enforcement of sections 24 through 27, and
11 amendments thereto. Such rules and regulations shall be adopted on or
12 before July 1, 2024.

13 New Sec. 28. (a) A registered investment adviser shall disclose to
14 such registered investment adviser's clients, prior to the investment of any
15 moneys owned by the client in or through any mutual fund, actively or
16 passively managed equity fund, company or financial institution that is
17 engaged in ideological boycotts, is a listed financial company or is on the
18 restricted financial institutions list prepared, maintained and published by
19 the treasurer pursuant to section 15, and amendments thereto, that such
20 mutual fund, actively or passively managed equity fund, company or
21 financial institution is engaged in ideological boycotts and that such
22 ideological boycotts may limit the client's return on investment.

23 (b) Prior to the investment of a client's funds, a registered investment
24 adviser shall obtain written consent from such registered investment
25 adviser's client stating that the client is fully aware of and consents to the
26 investment of funds owned by the client or through any mutual fund,
27 actively or passively managed equity fund, company or financial
28 institution that is engaged in ideological boycotts. Such written consent
29 shall consist of the following disclosure:

30 "The institution managing this fund is engaged in ideological boycotts.
31 If such boycotts are used in managing your fund, these boycotts may
32 reduce the fund's returns compared to the fund's historical performance or
33 the performance of funds that do not use ideological boycotts. You may
34 have the option to chose a similar fund that does not use ideological
35 boycotts. By signing below, you consent to have your investment managed
36 by this institution even if the institution engages in ideological boycott
37 investment practices that may reduce your returns compared to historical
38 performance or other funds."

39 (c) Conduct prohibited by this section shall be considered an act,
40 practice or course of business that operates or would operate as a fraud or
41 deceit in accordance with K.S.A. 17-12a502, and amendments thereto.

42 (d) Nothing in this section shall be construed to establish any
43 requirements for registration, capital, custody, margin, financial

1 responsibility, making and keeping of records, bonding or financial or
2 operational reporting for a registered investment adviser that differ from
3 the requirements established under federal law to the extent that such
4 requirements are applicable to the registered investment adviser.

5 (e) The provisions of this section, or any contract or practice subject
6 to this section, may be enforced by the attorney general. The attorney
7 general may investigate possible violations of this section in accordance
8 with the provisions of K.S.A. 50-631, and amendments thereto.

9 New Sec. 29. The provisions of this act are severable. If any portion
10 of the act is declared unconstitutional or invalid, or the application of any
11 portion of the act to any person or circumstance is held unconstitutional or
12 invalid, the invalidity shall not affect other portions of the act that can be
13 given effect without the invalid portion or application, and the
14 applicability of such other portions of the act to any person or
15 circumstance shall remain valid and enforceable.

16 Sec. 30. K.S.A. 40-2404 is hereby amended to read as follows: 40-
17 2404. The following are hereby defined as unfair methods of competition
18 and unfair or deceptive acts or practices in the business of insurance:

19 (1) *Misrepresentations and false advertising of insurance policies.*
20 Making, issuing, circulating or causing to be made, issued or circulated,
21 any estimate, illustration, circular, statement, sales presentation, omission
22 or comparison that:

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

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

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

29 (d) is misleading or is a misrepresentation as to the financial
30 condition of any person, or as to the legal reserve system upon which any
31 life insurer operates;

32 (e) uses any name or title of any insurance policy or class of
33 insurance policies misrepresenting the true nature thereof;

34 (f) is a misrepresentation for the purpose of inducing or tending to
35 induce the lapse, forfeiture, exchange, conversion or surrender of any
36 insurance policy;

37 (g) is a misrepresentation for the purpose of effecting a pledge or
38 assignment of or effecting a loan against any insurance policy; or

39 (h) misrepresents any insurance policy as being shares of stock.

40 (2) *False information and advertising generally.* Making, publishing,
41 disseminating, circulating or placing before the public, or causing, directly
42 or indirectly, to be made, published, disseminated, circulated or placed
43 before the public, in a newspaper, magazine or other publication, or in the

1 form of a notice, circular, pamphlet, letter or poster, or over any radio or
2 television station, or in any other way, an advertisement, announcement or
3 statement containing any assertion, misrepresentation or statement with
4 respect to the business of insurance or with respect to any person in the
5 conduct of such person's insurance business, that is untrue, deceptive or
6 misleading.

7 (3) *Defamation.* Making, publishing, disseminating or circulating,
8 directly or indirectly, or aiding, abetting or encouraging the making,
9 publishing, disseminating or circulating of any oral or written statement or
10 any pamphlet, circular, article or literature that is false, or maliciously
11 critical of or derogatory to the financial condition of any person, and that
12 is calculated to injure such person.

13 (4) *Boycott, coercion and intimidation.* Entering into any agreement
14 to commit, or by any concerted action committing, any act of boycott,
15 coercion or intimidation resulting in or tending to result in unreasonable
16 restraint of the business of insurance, or by any act of boycott, coercion or
17 intimidation monopolizing or attempting to monopolize any part of the
18 business of insurance.

19 (5) *False statements and entries.* (a) Knowingly filing with any
20 supervisory or other public official, or knowingly making, publishing,
21 disseminating, circulating or delivering to any person, or placing before
22 the public, or knowingly causing directly or indirectly, to be made,
23 published, disseminated, circulated, delivered to any person, or placed
24 before the public, any false material statement of fact as to the financial
25 condition of a person.

26 (b) Knowingly making any false entry of a material fact in any book,
27 report or statement of any person or knowingly omitting to make a true
28 entry of any material fact pertaining to the business of such person in any
29 book, report or statement of such person.

30 (6) *Stock operations and advisory board contracts.* Issuing or
31 delivering or permitting agents, officers or employees to issue or deliver,
32 agency company stock or other capital stock, or benefit certificates or
33 shares in any common-law corporation, or securities or any special or
34 advisory board contracts or other contracts of any kind promising returns
35 and profits as an inducement to insurance. Nothing herein shall prohibit
36 the acts permitted by K.S.A. 40-232, and amendments thereto.

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

42 (b) Making or permitting any unfair discrimination between
43 individuals of the same class and of essentially the same hazard in the

1 amount of premium, policy fees or rates charged for any policy or contract
2 of accident or health insurance or in the benefits payable thereunder, or in
3 any of the terms or conditions of such contract, or in any other manner
4 whatever.

5 (c) Refusing to insure, or refusing to continue to insure, or limiting
6 the amount, extent or kind of coverage available to an individual, or
7 charging an individual a different rate for the same coverage solely
8 because of blindness or partial blindness. With respect to all other
9 conditions, including the underlying cause of the blindness or partial
10 blindness, persons who are blind or partially blind shall be subject to the
11 same standards of sound actuarial principles or actual or reasonably
12 anticipated experience as are sighted persons. Refusal to insure includes
13 denial by an insurer of disability insurance coverage on the grounds that
14 the policy defines "disability" as being presumed in the event that the
15 insured loses such person's eyesight. However, an insurer may exclude
16 from coverage disabilities consisting solely of blindness or partial
17 blindness when such condition existed at the time the policy was issued.

18 (d) Refusing to insure, or refusing to continue to insure, or limiting
19 the amount, extent or kind of coverage available for accident and health
20 and life insurance to an applicant who is the proposed insured or charge a
21 different rate for the same coverage or excluding or limiting coverage for
22 losses or denying a claim incurred by an insured as a result of abuse based
23 on the fact that the applicant who is the proposed insured is, has been, or
24 may be the subject of domestic abuse, except as provided in subsection (7)
25 (d)(v). "Abuse" as used in this paragraph means one or more acts defined
26 in K.S.A. 60-3102, and amendments thereto, between family members,
27 current or former household members, or current or former intimate
28 partners.

29 (i) An insurer may not ask an applicant for life or accident and health
30 insurance who is the proposed insured if the individual is, has been or may
31 be the subject of domestic abuse or seeks, has sought or had reason to seek
32 medical or psychological treatment or counseling specifically for abuse,
33 protection from abuse or shelter from abuse.

34 (ii) Nothing in this section shall be construed to prohibit a person
35 from declining to issue an insurance policy insuring the life of an
36 individual who is, has been or has the potential to be the subject of abuse if
37 the perpetrator of the abuse is the applicant or would be the owner of the
38 insurance policy.

39 (iii) No insurer that issues a life or accident and health policy to an
40 individual who is, has been or may be the subject of domestic abuse shall
41 be subject to civil or criminal liability for the death or any injuries suffered
42 by that individual as a result of domestic abuse.

43 (iv) No person shall refuse to insure, refuse to continue to insure,

1 limit the amount, extent or kind of coverage available to an individual or
2 charge a different rate for the same coverage solely because of physical or
3 mental condition, except where the refusal, limitation or rate differential is
4 based on sound actuarial principles.

5 (v) Nothing in this section shall be construed to prohibit a person
6 from underwriting or rating a risk on the basis of a preexisting physical or
7 mental condition, even if such condition has been caused by abuse,
8 provided that:

9 (A) The person routinely underwrites or rates such condition in the
10 same manner with respect to an insured or an applicant who is not a victim
11 of abuse;

12 (B) the fact that an individual is, has been or may be the subject of
13 abuse may not be considered a physical or mental condition; and

14 (C) such underwriting or rating is not used to evade the intent of this
15 section or any other provision of the Kansas insurance code.

16 (vi) Any person who underwrites or rates a risk on the basis of
17 preexisting physical or mental condition as set forth in subsection (7)(d)
18 (v), shall treat such underwriting or rating as an adverse underwriting
19 decision pursuant to K.S.A. 40-2,112, and amendments thereto.

20 (vii) The provisions of this paragraph shall apply to all policies of life
21 and accident and health insurance issued in this state after the effective
22 date of this act and all existing contracts that are renewed on or after the
23 effective date of this act.

24 (e) Refusing to insure, or refusing to continue to insure, or limiting
25 the amount, extent or kind of coverage available for life insurance to an
26 individual, or charging an individual a different rate for the same coverage,
27 solely because of such individual's status as a living organ donor. With
28 respect to all other conditions, persons who are living organ donors shall
29 be subject to the same standards of sound actuarial principles or actual or
30 reasonably anticipated experience as are persons who are not organ
31 donors.

32 (8) *Rebates.* (a) Except as otherwise expressly provided by law,
33 knowingly permitting, offering to make or making any contract of life
34 insurance, life annuity or accident and health insurance, or agreement as to
35 such contract other than as plainly expressed in the insurance contract
36 issued thereon; paying, allowing, giving or offering to pay, allow or give,
37 directly or indirectly, as inducement to such insurance, or annuity, any
38 rebate of premiums payable on the contract, any special favor or advantage
39 in the dividends or other benefits thereon, or any valuable consideration or
40 inducement whatever not specified in the contract; or giving, selling,
41 purchasing or offering to give, sell or purchase as inducement to such
42 insurance contract or annuity or in connection therewith, any stocks, bonds
43 or other securities of any insurance company or other corporation,

1 association or partnership, or any dividends or profits accrued thereon, or
2 anything of value whatsoever not specified in the contract.

3 (b) Nothing in subsection (7) or (8)(a) shall be construed as including
4 within the definition of discrimination or rebates any of the following
5 practices:

6 (i) In the case of any contract of life insurance or life annuity, paying
7 bonuses to policyholders or otherwise abating their premiums in whole or
8 in part out of surplus accumulated from nonparticipating insurance. Any
9 such bonuses or abatement of premiums shall be fair and equitable to
10 policyholders and for the best interests of the company and its
11 policyholders;

12 (ii) in the case of life insurance policies issued on the industrial debit
13 plan, making allowance to policyholders who have continuously for a
14 specified period made premium payments directly to an office of the
15 insurer in an amount that fairly represents the saving in collection
16 expenses; or

17 (iii) readjustment of the rate of premium for a group insurance policy
18 based on the loss or expense experience thereunder, at the end of the first
19 or any subsequent policy year of insurance thereunder, which may be
20 made retroactive only for such policy year.

21 (9) *Unfair claim settlement practices.* It is an unfair claim settlement
22 practice if any of the following or any rules and regulations pertaining
23 thereto are either committed flagrantly and in conscious disregard of such
24 provisions, or committed with such frequency as to indicate a general
25 business practice:

26 (a) Misrepresenting pertinent facts or insurance policy provisions
27 relating to coverages at issue;

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

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

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

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

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

39 (g) compelling insureds to institute litigation to recover amounts due
40 under an insurance policy by offering substantially less than the amounts
41 ultimately recovered in actions brought by such insureds;

42 (h) attempting to settle a claim for less than the amount to which a
43 reasonable person would have believed that such person was entitled by

1 reference to written or printed advertising material accompanying or made
2 part of an application;

3 (i) attempting to settle claims on the basis of an application that was
4 altered without notice to, or knowledge or consent of the insured;

5 (j) making claims payments to insureds or beneficiaries not
6 accompanied by a statement setting forth the coverage under which
7 payments are being made;

8 (k) making known to insureds or claimants a policy of appealing from
9 arbitration awards in favor of insureds or claimants for the purpose of
10 compelling them to accept settlements or compromises less than the
11 amount awarded in arbitration;

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

17 (m) failing to promptly settle claims, where liability has become
18 reasonably clear, under one portion of the insurance policy coverage in
19 order to influence settlements under other portions of the insurance policy
20 coverage; or

21 (n) failing to promptly provide a reasonable explanation of the basis
22 in the insurance policy in relation to the facts or applicable law for denial
23 of a claim or for the offer of a compromise settlement.

24 (10) *Failure to maintain complaint handling procedures.* Failure of
25 any person, who is an insurer on an insurance policy, to maintain a
26 complete record of all the complaints that it has received since the date of
27 its last examination under K.S.A. 40-222, and amendments thereto; but no
28 such records shall be required for complaints received prior to the effective
29 date of this act. The record shall indicate the total number of complaints,
30 their classification by line of insurance, the nature of each complaint, the
31 disposition of the complaints, the date each complaint was originally
32 received by the insurer and the date of final disposition of each complaint.
33 For purposes of this subsection, "complaint" means any written
34 communication primarily expressing a grievance related to the acts and
35 practices set out in this section.

36 (11) *Misrepresentation in insurance applications.* Making false or
37 fraudulent statements or representations on or relative to an application for
38 an insurance policy, for the purpose of obtaining a fee, commission,
39 money or other benefit from any insurer, agent, broker or individual.

40 (12) *Statutory violations.* (a) Any violation of any of the provisions of
41 K.S.A. 40-216, 40-276a, 40-2,155 or 40-1515, and amendments thereto.

42 (b) *Any violation of the provisions of sections 24 through 27, and*
43 *amendments thereto.*

1 (13) *Disclosure of information relating to adverse underwriting*
2 *decisions and refund of premiums.* Failing to comply with the provisions of
3 K.S.A. 40-2,112, and amendments thereto, within the time prescribed in
4 such section.

5 (14) *Rebates and other inducements in title insurance.* (a) No title
6 insurance company or title insurance agent, or any officer, employee,
7 attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay,
8 allow or give, directly or indirectly, as an inducement to obtaining any title
9 insurance business, any rebate, reduction or abatement of any rate or
10 charge made incident to the issuance of such insurance, any special favor
11 or advantage not generally available to others of the same classification, or
12 any money, thing of value or other consideration or material inducement.
13 The words "charge made incident to the issuance of such insurance"
14 includes, without limitations, escrow, settlement and closing charges.

15 (b) No insured named in a title insurance policy or contract nor any
16 other person directly or indirectly connected with the transaction involving
17 the issuance of the policy or contract, including, but not limited to,
18 mortgage lender, real estate broker, builder, attorney or any officer,
19 employee, agent representative or solicitor thereof, or any other person
20 may knowingly receive or accept, directly or indirectly, any rebate,
21 reduction or abatement of any charge, or any special favor or advantage or
22 any monetary consideration or inducement referred to in subsection (14)
23 (a).

24 (c) Nothing in this section shall be construed as prohibiting:

25 (i) The payment of reasonable fees for services actually rendered to a
26 title insurance agent in connection with a title insurance transaction;

27 (ii) the payment of an earned commission to a duly appointed title
28 insurance agent for services actually performed in the issuance of the
29 policy of title insurance; or

30 (iii) the payment of reasonable entertainment and advertising
31 expenses.

32 (d) Nothing in this section prohibits the division of rates and charges
33 between or among a title insurance company and its agent, or one or more
34 title insurance companies and one or more title insurance agents, if such
35 division of rates and charges does not constitute an unlawful rebate under
36 the provisions of this section and is not in payment of a forwarding fee or a
37 finder's fee.

38 (e) As used in subsections (14)(e) through (14)(i), unless the context
39 otherwise requires:

40 (i) "Associate" means any firm, association, organization, partnership,
41 business trust, corporation or other legal entity organized for profit in
42 which a producer of title business is a director, officer or partner thereof,
43 or owner of a financial interest; the spouse or any relative within the

1 second degree by blood or marriage of a producer of title business who is a
2 natural person; any director, officer or employee of a producer of title
3 business or associate; any legal entity that controls, is controlled by, or is
4 under common control with a producer of title business or associate; and
5 any natural person or legal entity with whom a producer of title business or
6 associate has any agreement, arrangement or understanding or pursues any
7 course of conduct, the purpose or effect of which is to evade the provisions
8 of this section.

9 (ii) "Financial interest" means any direct or indirect interest, legal or
10 beneficial, where the holder thereof is or will be entitled to 1% or more of
11 the net profits or net worth of the entity in which such interest is held.
12 Notwithstanding the foregoing, an interest of less than 1% or any other
13 type of interest shall constitute a "financial interest" if the primary purpose
14 of the acquisition or retention of that interest is the financial benefit to be
15 obtained as a consequence of that interest from the referral of title
16 business.

17 (iii) "Person" means any natural person, partnership, association,
18 cooperative, corporation, trust or other legal entity.

19 (iv) "Producer of title business" or "producer" means any person,
20 including any officer, director or owner of 5% or more of the equity or
21 capital or both of any person, engaged in this state in the trade, business,
22 occupation or profession of:

23 (A) Buying or selling interests in real property;

24 (B) making loans secured by interests in real property; or

25 (C) acting as broker, agent, representative or attorney for a person
26 who buys or sells any interest in real property or who lends or borrows
27 money with such interest as security.

28 (v) "Refer" means to direct or cause to be directed or to exercise any
29 power or influence over the direction of title insurance business, whether
30 or not the consent or approval of any other person is sought or obtained
31 with respect to the referral.

32 (f) No title insurer or title agent may accept any order for, issue a title
33 insurance policy to, or provide services to, an applicant if it knows or has
34 reason to believe that the applicant was referred to it by any producer of
35 title business or by any associate of such producer, where the producer, the
36 associate, or both, have a financial interest in the title insurer or title agent
37 to which business is referred unless the producer has disclosed to the
38 buyer, seller and lender the financial interest of the producer of title
39 business or associate referring the title insurance business.

40 (g) No title insurer or title agent may accept an order for title
41 insurance business, issue a title insurance policy, or receive or retain any
42 premium, or charge in connection with any transaction if: (i) The title
43 insurer or title agent knows or has reason to believe that the transaction

1 will constitute controlled business for that title insurer or title agent; and
2 (ii) 70% or more of the closed title orders of that title insurer or title agent
3 during the 12 full calendar months immediately preceding the month in
4 which the transaction takes place is derived from controlled business. The
5 prohibitions contained in this paragraph shall not apply to transactions
6 involving real estate located in a county that has a population, as shown by
7 the last preceding decennial census, of 10,000 or less.

8 (h) Within 90 days following the end of each business year, as
9 established by the title insurer or title agent, each title insurer or title agent
10 shall file with the department of insurance and any title insurer with which
11 the title agent maintains an underwriting agreement, a report executed by
12 the title insurer's or title agent's chief executive officer or designee, under
13 penalty of perjury, stating the percent of closed title orders originating
14 from controlled business. The failure of a title insurer or title agent to
15 comply with the requirements of this section, at the discretion of the
16 commissioner, shall be grounds for the suspension or revocation of a
17 license or other disciplinary action, with the commissioner able to mitigate
18 any such disciplinary action if the title insurer or title agent is found to be
19 in substantial compliance with competitive behavior as defined by federal
20 housing and urban development statement of policy 1996-2.

21 (i) (1) No title insurer or title agent may accept any title insurance
22 order or issue a title insurance policy to any person if it knows or has
23 reason to believe that such person was referred to it by any producer of
24 title business or by any associate of such producer, where the producer, the
25 associate, or both, have a financial interest in the title insurer or title agent
26 to which business is referred unless the producer has disclosed in writing
27 to the person so referred the fact that such producer or associate has a
28 financial interest in the title insurer or title agent, the nature of the
29 financial interest and a written estimate of the charge or range of charges
30 generally made by the title insurer or agent for the title services. Such
31 disclosure shall include language stating that the consumer is not obligated
32 to use the title insurer or agent in which the referring producer or associate
33 has a financial interest and shall include the names and telephone numbers
34 of not less than three other title insurers or agents that operate in the
35 county in which the property is located. If fewer than three insurers or
36 agents operate in that county, the disclosure shall include all title insurers
37 or agents operating in that county. Such written disclosure shall be signed
38 by the person so referred and must have occurred prior to any commitment
39 having been made to such title insurer or agent.

40 (2) No producer of title business or associate of such producer shall
41 require, directly or indirectly, as a condition to selling or furnishing any
42 other person any loan or extension thereof, credit, sale, property, contract,
43 lease or service, that such other person shall purchase title insurance of any

1 kind through any title agent or title insurer if such producer has a financial
2 interest in such title agent or title insurer.

3 (3) No title insurer or title agent may accept any title insurance order
4 or issue a title insurance policy to any person it knows or has reason to
5 believe that the name of the title company was pre-printed in the sales
6 contract, prior to the buyer or seller selecting that title company.

7 (4) Nothing in this paragraph shall prohibit any producer of title
8 business or associate of such producer from referring title business to any
9 title insurer or title agent of such producer's or associate's choice, and, if
10 such producer or associate of such producer has any financial interest in
11 the title insurer, from receiving income, profits or dividends produced or
12 realized from such financial interest, so long as:

13 (a) Such financial interest is disclosed to the purchaser of the title
14 insurance in accordance with paragraphs (i)(1) through (i)(4);

15 (b) the payment of income, profits or dividends is not in exchange for
16 the referral of business; and

17 (c) the receipt of income, profits or dividends constitutes only a return
18 on the investment of the producer or associate.

19 (5) Any producer of title business or associate of such producer who
20 violates the provisions of paragraphs (i)(2) through (i)(4), or any title
21 insurer or title agent who accepts an order for title insurance knowing that
22 it is in violation of paragraphs (i)(2) through (i)(4), in addition to any other
23 action that may be taken by the commissioner of insurance, shall be
24 subject to a fine by the commissioner in an amount equal to five times the
25 premium for the title insurance and, if licensed pursuant to K.S.A. 58-3034
26 et seq., and amendments thereto, shall be deemed to have committed a
27 prohibited act pursuant to K.S.A. 58-3602, and amendments thereto, and
28 shall be liable to the purchaser of such title insurance in an amount equal
29 to the premium for the title insurance.

30 (6) Any title insurer or title agent that is a competitor of any title
31 insurer or title agent that, subsequent to the effective date of this act, has
32 violated or is violating the provisions of this paragraph, shall have a cause
33 of action against such title insurer or title agent and, upon establishing the
34 existence of a violation of any such provision, shall be entitled, in addition
35 to any other damages or remedies provided by law, to such equitable or
36 injunctive relief as the court deems proper. In any such action under this
37 subsection, the court may award to the successful party the court costs of
38 the action together with reasonable attorney fees.

39 (7) The commissioner shall also require each title agent to provide
40 core title services as required by the real estate settlement procedures act.

41 (j) The commissioner shall adopt any regulations necessary to carry
42 out the provisions of this act.

43 (15) *Disclosure of nonpublic personal information.* (a) No person

1 shall disclose any nonpublic personal information contrary to the
2 provisions of title V of the Gramm-Leach-Bliley act of 1999 (public law
3 106-102). The commissioner may adopt rules and regulations necessary to
4 carry out this subsection. Such rules and regulations shall be consistent
5 with and not more restrictive than the model regulation adopted on
6 September 26, 2000, by the national association of insurance
7 commissioners entitled "Privacy of consumer financial and health
8 information regulation".

9 (b) Nothing in this subsection shall be deemed or construed to
10 authorize the promulgation or adoption of any regulation that preempts,
11 supersedes or is inconsistent with any provision of Kansas law concerning
12 requirements for notification of, or obtaining consent from, a parent,
13 guardian or other legal custodian of a minor relating to any matter
14 pertaining to the health and medical treatment for such minor.

15 Sec. 31. K.S.A. 75-4208 is hereby amended to read as follows: 75-
16 4208. (a) *Except as provided in subsection (b)*, the board shall follow the
17 procedure prescribed in rules and regulations adopted under the provisions
18 of K.S.A. 75-4232, *and amendments thereto*, in designating banks to
19 receive deposit of state moneys in operating accounts and investment
20 accounts. The board shall determine which banks shall receive state
21 operating and investment accounts and shall designate the types of
22 accounts to be awarded each such bank and the initial amount of each
23 award. Such initial awards which are operating accounts shall be made as
24 provided in K.S.A. 75-4205, and amendments thereto. Such initial awards
25 which are investment accounts shall be awarded as is provided in K.S.A.
26 75-4209, and amendments thereto. Upon making the awards provided for
27 above, the board shall notify each bank of its award, and that the same is
28 subject to approval of securities to be pledged as prescribed in this act.

29 (b) *The board shall not designate a bank to receive deposit of state*
30 *moneys in operating accounts or investment accounts if such bank has*
31 *been listed by the state treasurer as a restricted financial institution as*
32 *provided in section 15, and amendments thereto. Any agreement awarding*
33 *the deposit of state moneys in operating accounts or investment accounts*
34 *for a term commencing on or after July 1, 2024, shall comply with the*
35 *provisions of section 18, and amendments thereto.*

36 Sec. 32. K.S.A. 75-4208 and K.S.A. 2022 Supp. 40-2404 are hereby
37 repealed.

38 Sec. 33. This act shall take effect and be in force from and after its
39 publication in the statute book.