

Missouri Revised Statutes

Chapter 375

Provisions Applicable to All Insurance Companies

August 28, 2016

Unfair practices defined.

375.936. Any of the following practices, if committed in violation of section [375.934](#), are hereby defined as unfair trade practices in the business of insurance:

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

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

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

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

(5) "False statements and entries:"

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) "Rebates":

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

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

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

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

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

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

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

(11) "Unfair discrimination":

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

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

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

(d) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling or limiting the

amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property;

(e) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the gender or marital status of the individual; however, nothing in this paragraph shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;

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

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

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

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

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

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

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

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

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

a. He is also an insurance salesperson; and

b. That a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case. The disclosure requirement under this paragraph may be met by including it in any disclosure required by federal or state securities law;

(c) Charging fees, other than commissions, for financial planning by insurance agents, brokers or consultants, unless such fees are based upon a written agreement, which is signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the agreement shall be provided to the party to be charged at the time the agreement is signed by the party and:

a. The services for which the fee is to be charged must be specifically stated in the agreement;

b. The amount of the fee to be charged or how it will be determined or calculated must be specifically stated in the agreement;

c. The agreement must state that the client is under no obligation to purchase any insurance product through the insurance agent, broker or consultant.

The insurance agent, broker or consultant shall retain a copy of the agreement for not less than three years after completion of services, and a copy shall be available to the director upon request;

(13) Any violation of section [375.445](#).

(L. 1959 H.B. 251 § 4, A.L. 1967 p. 516, A.L. 1969 p. 512, A.L. 1971 H.B. 508, A.L. 1976 S.B. 666, A.L. 1978 H.B. 1447, A.L. 1983 H.B. 127, A.L. 1991 S.B. 53)