

23-66-206. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) “Boycott, coercion, and intimidation” means 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 unreasonable restraint of, or monopoly in, the business of insurance;

(2) “Churning of business” means a situation in which the licensee replaces an existing policy of life insurance or accident and health insurance, or both, and that replacement is:

(A) Not in accordance with § 23-66-307; or

(B) Without objective demonstration by the licensee of the purpose of replacing the policy for the benefit and betterment of the insured;

(3) “Defamation” means 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 of any pamphlet, circular, article, or literature that is false or maliciously critical of or derogatory to the financial condition of any person and that is calculated to injure that person;

(4)(A) “Failure to maintain complaint handling procedures” means failing to adopt and implement reasonable standards for the prompt handling of complaints received by the person from insureds or claimants, or from the Insurance Commissioner on behalf of insureds or claimants, and failing to keep a record thereof.

(B) A complete complaints register of all complaints that the person has received since the date of its last examination shall be maintained. This complaints register shall indicate:

(i) The total number of complaints;

(ii) The classification of complaints by line of insurance;

(iii) The nature of each complaint;

(iv) The disposition of each complaint;

(v) The time it took to process each complaint; and

(vi) Such other information as the commissioner may reasonably require

by way of regulations.

(C) For purposes of this subdivision (4), “complaint” means any written communication primarily expressing a grievance;

(5) “Failure to maintain conflict of interest procedures” means failing to adopt and implement on or before the next financial or market conduct examination conducted by the commissioner on and after passage of this act and thereafter maintain written conflict of interest procedures and provisions, in form and format satisfactory to the commissioner, designed to identify and resolve promptly any general or pecuniary conflicts of interest as to officers, directors, managers, supervisors, and other key personnel of domestic insurers, including, but not limited to, domestic stock and mutual insurers, domestic stipulated premium insurers, domestic mutual assessment life and disability insurers, domestic health maintenance organizations, domestic farmers' mutual aid associations, domestic hospital or medical service corporations, and domestic fraternal benefit societies;

(6) “False information and advertising generally” means 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 person in the conduct of his or her insurance business that is untrue, deceptive, or misleading;

(7) “False statements and entries” means:

(A) Filing with any supervisory or other public official or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public or causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of a person with intent to deceive; and

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

(8) “Misrepresentation and false advertising of insurance policies” means making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustrations, circular, statement, sales presentation, omission, or comparison, which:

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

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

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

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

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

(F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

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

(H) Misrepresents any insurance policy as being shares of stock;

(9)(A) “Policy cancellations” means cancellations of insurance coverage on a property or casualty risk that has been in force over sixty (60) days or after the effective date of a renewal policy or an annual anniversary date unless the cancellation is based upon at least one (1) of the following reasons:

(i) Nonpayment of premium;

(ii) Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;

(iii) The occurrence of a material change in the risk that substantially increases any hazard insured against after policy issuance;

(iv) Violation of any local fire, health, safety, building, or construction regulation or ordinances with respect to any insured property or the occupancy of the property that substantially increases any hazard insured against under the policy;

(v) Nonpayment of membership dues in those cases in which the bylaws, agreements, or other legal instruments of the insurer issuing the policy require payment as a condition of the issuance and maintenance of the policy; or

(vi) A material violation of a material provision of the policy.

(B) Cancellations of property and casualty policies shall only be effective when notice of cancellation is mailed or delivered by the insurer to the named insured and to any lienholder or loss payee named in the policy at least twenty (20) days prior to the effective date of cancellation. However, when cancellation is for nonpayment of premium, at least ten (10) days' notice of cancellation accompanied by the reason for cancellation shall be given.

(C) The provisions of this subdivision (9) shall not be applicable to any policy providing coverage for workers' compensation or employers' liability or to any policy providing coverage for personal automobile liability, automobile physical damage, or automobile collision, or any combination thereof;

(10)(A) "Rebates", except as otherwise expressly provided by law, means the act of knowingly:

(i) Permitting or offering to make or making any life, health, and annuity insurance contract, or agreement as to the contract, other than as plainly expressed in the insurance contract issued thereon;

(ii) Paying, allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance contract 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

(iii) Giving, selling, or purchasing or offering to give, sell, or purchase as inducement to the insurance contract or in connection with the contract 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 insurance contract.

(B) Nothing in subdivision (10)(A) or subdivision (14) of this section shall be construed as including within the definitions of discrimination or rebates any of the following practices:

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

(ii) 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 that fairly represents the saving in collection expenses;

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense under the policy at the end of the first or any subsequent policy year of insurance under the policy, which may be made retroactive only for the policy year; or

(iv) Engaging in an arrangement that does not violate section 106 of the Bank Holding Company Act Amendments of 1972, 12 U.S.C. § 1972, as interpreted by the Board of Governors of the Federal Reserve System, or section 1464(q) of the Home Owners Loan Act, 12 U.S.C. § 1461 et seq.;

(11) “Stock operations and advisory board contracts” means 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 that promise returns and profits as an inducement to insurance;

(12) “Underwriting: refusing certain risks” means refusing to issue or limiting the amount of coverage on a property or casualty risk based upon knowledge of an insurer's nonrenewal of the applicant's previous property or casualty policy or contract;

(13) “Unfair claims settlement practices” means committing or performing with such frequency as to indicate a general business practice any of the following:

(A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(B) Failing to acknowledge and act reasonably and promptly upon communications with respect to claims arising under insurance policies;

(C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(F) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(G) Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured;

(H) Making claim payments to policyholders or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

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

(J) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts of applicable law for denial of a claim or for the offer of a compromise settlement;

(K) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by those insureds;

(L) Attempting to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application;

(M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(N) Failing to promptly settle claims, when liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; and

(O) Requiring as a condition of payment of a claim that repairs must be made by a particular contractor, supplier, or repair shop;

(14) “Unfair discrimination” means:

(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 a 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 and health insurance, or in the benefits payable thereunder, or in any of the terms or conditions of the contract, or in any other manner whatever;

(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 unless:

(i) The refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;

(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 on the personal property contained therein because of the age of the residential property unless:

(i) The refusal, cancellation, or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;

(E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the marital status of the individual. However, nothing in this subdivision (14)(E) shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;

(F) Terminating or modifying coverage or refusing to issue or refusing to renew any policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired. However, this subdivision (14)(F) 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; and

(G)(i) Refusing to insure or continue to insure an individual or risks solely because of the individual’s race, color, creed, national origin, citizenship, status as a victim of domestic abuse, or sex.

(ii) As used in subdivision (14)(G)(i) of this section, “domestic abuse” means:

(a) Physical harm, bodily injury, or assault between family or household members;

(b) The infliction of fear of imminent physical harm, bodily injury, or assault between family members or household members; or

(c) Sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state; and

(15)(A) “Unfair financial planning practices” includes an insurance producer:

(i)(a) Holding himself or herself out, directly or indirectly, to the public as a financial planner, investment adviser, 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, if the insurance producer is, in fact, engaged only in the sale of policies.

(b) However, subdivision (15)(A)(i)(a) of this section does not preclude a person who holds some form of formal recognized financial planning or consultant certification or designation from using the certification or designation when the person is only selling insurance.

(c) Subdivision (15)(A)(i)(a) of this section does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation, or servicing of policies;

(ii)(a) Engaging in the business of financial planning without disclosing in writing to the client, prior to the execution of the agreement provided for in subdivision (15)(A)(iii) of this section, or solicitation of the sale of a product or service that:

(1) He or she is also an insurance salesperson; and

(2) A commission for the sale of an insurance product will be received in addition to a fee for financial planning, if the sale involves a commission.

(b) The disclosure requirement under this subdivision (15)(A)(ii) may be met by including it in any written disclosure required by federal or state securities law; and

(iii)(a)(1) Charging fees other than commissions for financial planning by an insurance producer unless the fees are based upon a written agreement that is signed by the party to be charged in advance of the performance of the services under the agreement.

(2) A copy of the agreement under subdivision (15)(A)(iii)(a)(1) of this section must be provided to the party to be charged at the time the agreement is signed by the party.

(3) The services for which the fee is to be charged must be specifically stated in the agreement.

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

(5) The agreement must state that the client is under no obligation to purchase any insurance product through the insurance producer or financial consultant.

(b) The insurance producer shall retain a copy of the agreement for not less than three (3) years after completion of services, and a copy shall be available to the commissioner upon request.

(B) “Unfair financial planning practices” does not include funeral expense insurance and prepaid funeral benefits contracts.