

56-8-104. Unfair trade practices defined.

The following practices are defined as unfair trade practices in the business of insurance by any person:

(1) Misrepresentations and False Advertising of Insurance Policies. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

(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 a false or misleading statement 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 of the policy or class of policies;

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

(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;

(2) 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 its insurance business, that is untrue, deceptive or misleading;

(3) 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 that is false, or maliciously critical of or derogatory to the financial condition of any insurer, and that is calculated to injure the insurer;

(4) Boycott, Coercion and Intimidation.

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

(B) By any act of boycott, coercion or intimidation, monopolizing or attempting to monopolize any part of the business of insurance; provided, that nothing in this subdivision (4)(B) shall be interpreted as defining or determining as an unfair method of competition or any unfair or deceptive act or practice in the business of insurance any act of boycott, coercion or intimidation on the part of any person, unless the act is committed in connection with an intention on the part of the person to monopolize, or attempt to monopolize, any material part of the business of insurance; and provided further, that no insurance company shall be held to have violated this subdivision (4)(B) because of any act of a producer of that company, which act has not been authorized or approved or acquiesced in by the company;

(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 of an insurer; or

(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 the insurer in any book, report or statement of the insurer, or knowingly making any false material statement to any insurance department official;

(6) 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 purchase insurance;

(7) 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 life insurance policy or annuity or in the dividends or other benefits payable on any policy or annuity, or in any other of the terms and conditions of the policy;

(B) (i) Refusing life insurance to, refusing to continue life insurance of, or limiting the amount, extent, or kind of life insurance coverage available to an individual based on the individual's past lawful travel experiences; or

(ii) (a) Refusing life insurance to, refusing to continue life insurance of, limiting the amount, extent, or kind of life insurance available to an individual, or determining the premium of life insurance based on the individual's future lawful travel plans unless:

(1) The risk of loss for individuals who travel to a specified destination at a specified time is reasonably anticipated to be greater than if the individuals did not travel to that destination at that time; and

(2) The risk classification is based on sound actuarial principles and actual or reasonably anticipated experience;

(b) An action shall be deemed to meet the requirements for exemption under subdivision (7)(B)(ii)(a) if it is taken because either one (1) of the following is true with respect to the travel destination:

(1) The director of the centers for disease control and prevention of the department of health and human services has issued alerts or warnings regarding serious health-related conditions or an epidemic or pandemic alert or response; or

(2) There is an ongoing armed conflict involving the military of a sovereign nation foreign to the destination;

(iii) (a) The commissioner is authorized to promulgate rules necessary to implement this subdivision (7)(B) and is authorized to provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy;

(b) An insurer shall make any pertinent underwriting guidelines and supporting analyses available to the commissioner on request;

(C) 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 accident or health insurance policy or in the benefits payable under any accident or health insurance policy, or in any of the terms or conditions of the policy, or in any other manner;

(D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience;

(E) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained in the residential property, solely because of the age of the residential property;

(F) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, race, religion, national origin, marital status, income, or educational background of the individual; however, nothing in

this subdivision (7) shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits and nothing shall prohibit price distinctions between persons pursuant to underwriting and actuarial principles;

(G) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided, that this subdivision (7) shall not apply to medical malpractice insurance or accident and health insurance sold by a casualty insurer; and, provided further, that this subdivision (7) 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; or

(H) Refusing to insure solely because another insurer has refused to write a policy, or has canceled or has refused to renew an existing policy in which that person was the named insured. Nothing contained in this subdivision (7)(H) shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance;

(8) Rebates.

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

(B) Nothing in subdivision (7) or this subdivision (8)(A) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of life insurance policies or annuities, paying bonuses to 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 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) Readjusting the rate of premium for a group insurance policy based on the loss or expense under the group insurance policy, at the end of the first or any subsequent policy year of insurance under the group insurance policy, that may be made retroactive only for the policy year; or

(iv) Offering a child passenger restraint system or a discount in premium equal to the amount of the purchase price of a child passenger restraint system to policyholders, when the purpose of the restraint system is the safety of a child and complies with § 55-9-602;

(9) Prohibited Group Enrollments. No insurer shall offer more than one (1) group policy of insurance through any person unless the person is licensed, at a minimum, as a limited lines producer; however, this prohibition shall not apply to employer/employee relationships, nor to any such enrollments;

(10) Failure to Maintain Marketing and Performance Records. Failure of an insurer to maintain its books, records, documents and other business records in such an order that data regarding claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained;

(11) Failure to Maintain Complaint Handling Procedures. Failure of any insurer to maintain a complete record of all the complaints it received since the date of its last examination under § 56-1-408. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this

subdivision (11), “ complaint” means a written communication expressing dissatisfaction or disagreement with the decision or action of an insurer; provided, however, that a communication submitted as part of the insurer's usual and customary claims process shall not be considered as a complaint;

(12) 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 provider or individual person;

(13) Failure to File or to Certify Information Regarding the Endorsement or Sale of Long-term Care Insurance. Failure of any insurer to:

(A) File with the insurance department the following material:

(i) The policy and certificate;

(ii) A corresponding outline of coverage; and

(iii) All advertisements requested by the insurance department; or

(B) Certify annually that the association has complied with the responsibilities for disclosure, advertising, compensation arrangements, or other information required by the commissioner, as set forth by rule;

(14) Failure to Provide Claims History.

(A) Failure of a company issuing property and casualty insurance to provide the following loss information for the three (3) previous policy years to the first named insured within thirty (30) days of receipt of the first named insured's written request:

(i) On all claims, date and description of occurrence, and total amount of payments; and

(ii) For any occurrence not included in subdivision (14)(A)(i), the date and description of occurrence;

(B) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under subdivision (14)(A), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this subdivision (14)(B) to the first named insured as soon as possible, but in no event later than twenty (20) days of receipt of the written request. Notwithstanding any other provision of this section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an applicant solely because the prospective insurer is unable to obtain loss reserve information;

(C) The commissioner is authorized to promulgate rules to exclude the provision of the loss information as outlined in subdivision (14)(A) for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance, or where the provision of loss information otherwise is required by law;

(D) Information provided under subdivision (14)(B) shall not be subject to discovery by any party other than the insured, the insurer and the prospective insurer;

(15) Unfair Replacement Transaction Practices. Replacing a life insurance policy or an annuity contract in a manner contrary to rules promulgated by the commissioner pursuant to this part;

(16) Unfair Utilization of Proprietary Information. With respect to any policy of insurance underwritten in a pool, residual market mechanism, joint underwriting authority or assigned risk plan, any information contained in a policy application or obtained in the servicing of such a policy of insurance cannot be used in any manner by the servicing carrier or its representatives for the purpose of soliciting any form of insurance, except when permission to use the information is granted by the commissioner on any specific risk;

(17) Changing Classification and Rate After Policy Expiration or Renewal. With respect to commercial risk insurance, making a change in the classification or rates either more than one (1) year after the policy's renewal date or the expiration date if the policy was not renewed without the written consent of the insured; provided, that no consent is necessary if the change is in the favor of the insured. This

subdivision (17) does not apply where the insured has failed to cooperate, given misleading information, or made material misrepresentations or omissions;

(18) Preferences or Distinctions in Certain Insurance Transactions prohibited.

(A) Making, offering to make, or permitting any preference or distinction in property, marine, casualty, or surety insurance as to form or policy, certificate, premium, rate, benefits, or conditions of insurance, based upon membership, nonmembership, or employment of any person or persons by or in any particular group, association, corporation, or organization, or making the preference or distinction available in any event based upon any fictitious grouping of persons;

(B) The restrictions and limitations of this subdivision (18) do not extend or apply to life, health and accident, disability or workers' compensation insurance or to plans to provide legal services. Nothing in this subdivision (18) shall apply to any domestic company that confines its insurance business and operations to this state and to the provision of insurance solely for the benefit of its members, or members of its parent or sponsoring organization;

(C) Notwithstanding any other provision of this title, dues paid before or after March 22, 1996, to a nonprofit association, membership in which entitles the members to apply for insurance from insurance companies described in subdivision (18)(B), shall not be considered as gross premium or consideration for insurance;

(D) Notwithstanding any other provision of this title to the contrary, an insurer may make, offer to make, or permit a preference or distinction in property, marine, casualty or surety insurance as to form or policy, certificate, premium, rate, benefits or conditions of insurance based upon membership in an association of professionals with more than five thousand (5,000) dues-paying members in this state with members residing or practicing in at least eighty (80) counties within the state;

(19) Disclosure of Nonpublic Personal Information.

(A) Disclosing nonpublic personal information contrary to Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, compiled in 15 U.S.C. § 6801 et seq., or violating a rule lawfully promulgated under this part;

(B) (i) The commissioner shall not impose civil penalties against, or revoke or suspend the license of, a person who violates subdivision (19)(A), unless the violator intentionally violated subdivision (19)(A) or committed violations of subdivision (19)(A) in sufficient number as to indicate a lack of the use of due diligence on the part of the violator in complying with subdivision (19)(A);

(ii) For purposes of subdivision (19)(A):

(a) “ Nonpublic personal information” means nonpublic personal information as defined in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102; and

(b) “ Person” means an entity or individual holding or required by law to hold a certificate of authority or license, or the functional equivalent of a certificate of authority or license, under this title;

(C) Any rules promulgated pursuant to this subdivision (19) shall be no more restrictive than Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102;

(20) False, Misleading, Deceptive or Unfair Practices Concerning Sales to Members of the Armed Forces. Notwithstanding any other provision in this title, the commissioner shall have the authority to adopt rules to protect service members of the United States armed forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair; and

(21) (A) Unauthorized Use of Lender Information. It is unlawful for any person to make, publish, disseminate, circulate, or place before the public, or cause, 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 the Internet or any radio or television, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the sale, distribution, offering for sale or advertising of any loan, refinance, insurance or any other product or service that is untrue, deceptive, or misleading.

(B) For purposes of subdivision (21)(A), “ lender” means any bank, savings and loan association, savings bank, trust company, credit union, industrial loan and thrift

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company, mortgage company, mortgage broker, or any subsidiary or affiliate of a bank, savings and loan association, savings bank, trust company, credit union, industrial loan and thrift company, mortgage company, or mortgage broker.

[Acts 2008, ch. 1079, §§ 1, 5.]