

56-8-104. Unfair methods of competition and unfair or deceptive acts or practices defined. —

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

(1) False Information and Advertising. 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 such person's insurance business, which is untrue, deceptive, misleading, or 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 as 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 of such policy or class of policies;

(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 effecting a pledge or assignment of or effecting a loan against any insurance policy;

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

(I) Makes false or deceptive representations in any advertisement or solicitation for services or products that such services or products have sponsorship, approval, affiliation or connection with a bank, savings and loan association, savings bank or subsidiary or affiliate thereof; or

(J) Uses the name or logo of any bank, savings and loan association, savings bank or subsidiary or affiliate thereof without the express written consent of the person whose name is used;

(2) Defamation. Making, publishing, disseminating, or circulating, or placing before the public, 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 maliciously derogatory to the financial condition of any person, and which is calculated to injure such person;

(3) 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 (3)(B) shall be interpreted as defining or determining as an **unfair** method of competition or an **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 such act is committed in connection with an intention on the part of such 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 the provisions of this subdivision (3) (B) because of any act of an agent of that company, which act has not been authorized or approved or acquiesced in by the company;

(4) 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 a person;

(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 story of any material fact pertaining to the business of such person in any book, report or statement of such person; or

(C) Knowingly making any financial statement or report whereby a contingent premium or any other contingent assessment is included or shown as an asset of the company;

(5) Stock Operations and Advisory Board Contract. 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;

(6) 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 premiums, 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 whatsoever;

(C) Making or permitting any **unfair** discrimination between risks of the same class and essentially the same hazards and having substantially the same degree of protection against fire, and fixing, charging, or collecting of any rate or premium which discriminates unfairly between risks in the application of charges and credits, against the risk of fire and allied hazards, casualty, or indemnity contracts. In order to secure better enforcement of this subdivision (6)(C), the commissioner may require the filing of schedules, rates, forms, rules, regulations, and such other information as may be required of any person or its agents, and it is the duty of every such person, or its agents, promptly to make reply to such inquiries in writing. The commissioner may also require the insured to submit any policy of

insurance to the commissioner for inspection; or

(D) Inquiring into or requiring any applicant who has reached the age of majority for a health and accident policy to reveal the occupation of any member of such applicant's family who is not to be covered under the terms of any such policy;

(7) Rebates.

(A) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of 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, 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 whatsoever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance contract 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 (6) or (7)(A) shall be construed as including within the definition of "discrimination" or "rebates" any of the following **practices**:

(i) In the case of any contract of life insurance or life annuity, 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 interest of the company and its policyholders;

(ii) In the case of insurance policies issued on the industrial debit plan, making allowances 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; or

(iii) 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; and

(C) Nothing in this subdivision (7) shall prevent a company from 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 such restraint system is the safety of a child and compliance with § [55-9-602](#);

(8) Unfair Claim Settlement Practices.

(A) Subject to the conditions set forth in subdivision (8)(B), knowingly committing or performing any of the following acts with such frequency as to indicate, in the opinion of the commissioner, a general business practice; provided, that the commissioner shall have sole enforcement authority for this subdivision (8) and, notwithstanding any other laws of this state, a private right of action shall not be maintained under this subdivision (8):

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

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

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

(iv) Offering substantially less than the amounts ultimately recovered in actions brought by such insureds; provided, that equal consideration shall be given to the relationship between the amounts claimed and the amounts ultimately recovered through litigation;

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

(vi) Attempting to settle **claims** on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(vii) 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;

(viii) Delaying the investigation or payment of **claims** by requiring an insured, 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; provided, that nothing herein is intended to prevent or discourage an insurer from requiring a sworn proof of loss when in its judgment such is necessary in order to establish either the liability or amount to which a claimant is entitled;

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

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

(xi) Failing to make payment of workers' compensation benefits as such payment is required by the commissioner of the department of labor and workforce development or by title [50](#), chapter 6.

(B) Nothing contained in subdivision (8)(A) shall be construed as obligating any insurer to make a decision upon any claim without sufficient investigation and information to determine if such claim, or any part thereof, is false, fraudulent or for an excessive amount;

(9) Lessening Competition by Stock Transaction. Acquisition, by a domestic insurance company of the state of Tennessee, of stock or other share capital of another such company engaged in an insurance business of the same type or class, where the effect of such acquisition is to substantially lessen competition between the two (2) companies, or to restrain commerce, or create a monopoly. This subdivision does not apply to companies purchasing such stock solely for investment and not using the same by voting, or otherwise, to bring about, or attempt to bring about, the substantial lessening of competition;

(10) Dual Office Holding. Holding office, at the same time, as a director of two (2) or more domestic insurance companies of the state of Tennessee, engaged in the same type or class of insurance business, by any individual, if such companies are or have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any antitrust law of the United States or of

the state of Tennessee;

(11) Unfair Replacement Transaction Practices.

(A) With respect to any policy of life insurance in a replacement transaction, as the term has been defined by the commissioner:

(i) In the case of any insurer, failing to provide an unconditional refund offer of at least twenty (20) days from the date of delivery of the policy;

(ii) In the case of any insurer, failing to send by certified or registered mail any notice required by statute or rule to an existing insurer; or

(iii) In the case of a life insurance agent, failing to give notice to an applicant for life insurance of the adverse consequences which may result from surrendering an existing life insurance policy prior to the determination of insurability by the replacing insurer. The notice shall be in the form prescribed by the commissioner and receipt of such notice shall be acknowledged by signature of the applicant. A copy of the signed notice shall be provided to the existing insurer in accordance with rules adopted by the commissioner.

(B) In addition to the **practices** described in subdivisions (11)(A)(i)-(iii), the commissioner shall establish by regulation additional requirements with respect to replacement transactions which are effected by a life insurance agent who has been licensed less than one hundred twenty (120) days. Such additional requirements shall include a prohibition against such agent taking an application for a life insurance policy in a replacement transaction prior to the existing company receiving reasonable notice of the proposed transaction;

(12) 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 and/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 such information is granted by the commissioner on any specific risk;

(13) Changing Classification and Rate After Policy Expiration or Renewal. With respect to commercial risk insurance, making a change in the classification or rates more than one (1) year after the renewal or expiration date of that policy without the written consent of the insured. This provision does not apply where the insured has failed to cooperate, given misleading information, or made material misrepresentations or omissions. Nothing herein shall prohibit an insurer from making such change where the policy specifically allows for such change; and

(14) Issuing declinations of accident and health coverage.

(A) With respect to any licensed agent:

(i) Issuing a letter of declination of accident and health insurance to a consumer without underwriting the risk pursuant to the insurability guidelines of each health insurance company, hospital and medical service corporation, health maintenance organization or other authorized person represented by such licensed agent; or

(ii) Issuing a letter of declination of accident and health coverage to a consumer if the consumer is insurable by any health insurance company, hospital and medical service corporation, health maintenance organization, or other authorized person represented by such licensed agent.

(B) Nothing in subdivision (14)(A) shall be construed as requiring any licensed agent to provide a letter of declination of accident and health coverage to a consumer for the purpose of making the consumer eligible for TennCare benefits and services.

[Acts 1981, ch. 347, § 5; 1982, ch. 921, §§ 1, 2; 1985, ch. 349, § 1; 1989, ch. 564, § 7; 1993, ch. 198, § 1; 1993, ch. 369, § 1; 2000, ch. 851, § 2; 2003, ch. 31, §§ 6, 7; 2004, ch. 962, § 40.]