UNFAIR TRADE PRACTICES ACT

Table of Contents

Prefatory Note: By adopting amendments to this model act in June 1990, the NAIC separated provisions dealing with unfair claims settlement into a newly adopted Unfair Claims Settlement Practices Model Act, to make clearer distinction between general unfair trade practices and more specific unfair claim settlement issues and to focus on market conduct practices and market conduct regulation. By doing so, the NAIC is not recommending that states repeal existing acts, but states may modify them for the purpose of capturing the substantive changes. However, for those states wishing to completely rewrite their comprehensive approach to unfair claims practices, this separation of unfair claims from unfair trade practices is recommended.

Section 1. Purpose

The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress) and the Gramm-Leach-Bliley Act (Public Law 106-102, 106th Congress), by defining, or providing for the determination of, all such practices in this state that constitute unfair methods of competition or unfair unf 8neceptive-6((ticsr)6prtices in6((t5n(7o)-l4s,3(idnc6n(tbry6)ped bTJ16.7.3653 TD0.002 4c.103389wi
company.

B. "Commissioner" means the commissioner of insurance of this state.

Drafting Note: Insert the appropriate term for the chief insurance regulatory official wherever the term "commissioner" appears.

C. "Customer" means an individual who purchases, applies to purchase, or is solicited to purchase insurance products primarily for personal, family or household purposes.

D. "Depository institution" means a bank or savings association. The term depository institution does not include an insurance company.

E. "Health Insurance Lead Generator" means a[n]y entity that utilizes a lead-generating device to:~~engages in any of the following activities:.~~

(1) of what is, or what purports to be, an health insurance product or service that the entity is not licensed to sell directly to ~~consumers~~ customer;

(2) Identifies ~~consumer~~ customer who may want to learn more about an health insurance product; or

~~F.~~(3) Sells or transmits ~~consumer~~ customer information to insurers or producers for follow-up contact and sales activity.

F. "Lead-generating device" means any communication directed to the public that, regardless of form, content, or stated purpose, is intended to result in the compilation or qualification of a list containing names and other personal information to be used to solicit residents of this State for the purchase of ~~[accident and sickness/Medicare supplement] insurance.~~what is or what purports to be a health insurance product or service.

Drafting Note: Public means all the general public and any person.

G. "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy.

H. "Insurer" means any person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including producers, adjusters and third- party

© 2021 National Association of Insurance Commissioners

(3) Makes a false or misleading statement as to the dividends or share of surplus previously paid on any policy; or

(4) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the

© 2021 National Association of Insurance Commissioners

~~G.~~H. Unfair Discrimination.

(1) 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 thereon, or in any other of the terms and conditions of such policy.

(2)

© 2021 National Association of Insurance Commissioners

or producer must ensure that the customer is provided with contact information to

© 2021 National Association of Insurance Commissioners

Drafting Note: Section 104 (d)(2)(B)(viii) of the Gramm-Leach-Bliley Act provides that any state restrictions on anti-tying may not prevent a depository institution or affiliate from engaging in any activity that would not violate Section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System has stated that nothing in its interpretation on combined-balance discount arrangements is intended to override any other applicable state and federal law. FRB SR 95-32 (SUP). Section 5(q) of the Home Owners' Loan Act is the analogous provision to Section 106 for thrift institutions. The Office of Thrift Supervision has a regulation 12 C.F.R. 563.36 that allows combined-balance discounts if certain requirements are met.

Drafting Note: Each state may wish to examine its rating laws to ensure that it contains sufficient provisions against rebating. If a state do

© 2021 National Association of Insurance Commissioners

insured information.

~~O.~~Q. Violating any one of Sections [insert applicable sections].

Drafting Note: Insert section numbers of any other sections of the state's insurance laws deemed desirable or necessary to include as an unfair trade practice, such as cancellation and nonrenewal laws.

Section 5. Favored Agent or Insurer; Coercion of Debtors

A. No person or depository institution, or affiliate of a depository institution may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a particular insurer or group of insurers or agent or broker or group of agents or brokers. Further, no person or depository institution, or affiliate of a depository institution, may reject an insurance policy solely because the policy has been issued or underwritten by a person who is not associated with the depository institution or affiliate when insurance is required in connection with a loan or extension of credit.

B. No person or depository institution, or affiliate of a depository institution, who lends money or extends credit may:

(1)

© 2021 National Association of Insurance Commissioners

(8) Pay or receive any commission, brokerage fee or other compensation as a producer, unless the person holds a valid producer's license for the applicable class of insurance. However, an unlicensed person may make a referral to a licensed producer provided that the person does not discuss specific insurance policy terms and conditions. The unlicensed person may be compensated for the referral; however, in the case of a referral of a customer, the unlicensed person may be compensated only if

© 2021 National Association of Insurance Commissioners

(d) Where appropriate, involves investment risk, including the possible loss of value.

(2) For purposes of these requirements, an affiliate of a depository institution is subject to these requirements only to the extent that it sells, solicits, advertises, or offers insurance products or

© 2021 National Association of Insurance Commissioners

Section 6. Power of Commissioner

The commissioner shall have power to examine and investigate the affairs of every person or insurer or health insurance lead generator in this state in order to determine whether such person or

© 2021 National Association of Insurance Commissioners

Section 8. Cease and Desist and Penalty Orders

A.

© 2021 National Association of Insurance Commissioners

Section 15. Separability Provision

If any provision of this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to person or circumstances other than those as to which it is held

© 2008 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

What are the state pages?

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column, Previous Version column, or Related Activity column based on the definitions listed in the key below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.

How do you use them?

States and territories are listed alphabetically in the chart. Locate the state or territory you are interested in, and depending on which column the citation falls under, you will know whether the NAIC Legal Division has deemed a state's law to be adoption of a model or not. To perform further research, use the citations to locate state laws.

Who do I speak to if I have questions?

If you have questions or believe information related to a state should be updated, please contact Jennifer Neuerburg at jneuerburg@naic.org.

Disclaimer: *This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.*

© 2021 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

UNFAIR TRADE PRACTICES ACT

NAIC MEMBER	MODEL ADOPTION	PREVIOUS VERSION	RELATED ACTIVITY
Delaware		DEL. CODE ANN. tit. 18, §§ 2301 to 2314 (1953/2013).	
District of Columbia		D.C. CODE §§ 31-2231.01 to 31-2231.25 (2000/2012).	
Florida			

© 2021 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

NAIC MEMBER	MODEL ADOPTION	PREVIOUS VERSION	RELATED ACTIVITY
Louisiana		LA. REV. STAT. ANN. §§ 22:1961 to 22:1973 (1966/2014).	
Maine		ME. REV. STAT. ANN. tit. 24-A, §§ 2151 to 2182 (1970/2001).	BULLETIN 384 (2012).
Maryland		MD. CODE ANN., INS. §§ 27-101 to 27-219 (1957/2014).	MD. CODE REGS. 31.15.01.01 to 31.15.14.9999 (1970/2014); BULLETIN 2014-23 (2014).
Massachusetts		MASS. GEN. LAWS ch. 176D, §§ 1 to 14 (1972/2012).	BULLETIN B-2010-10 (2010).
Michigan		MICH. COMP. LAWS §§ 500.2001 to 500.2093	

© 2021 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

NAIC MEMBER	MODEL ADOPTION	PREVIOUS VERSION	RELATED ACTIVITY
South Dakota		S.D. CODIFIED LAWS §§ 58-33-1 to 58-33-46.1 (1966/2000); §§ 58-33-66 to 58-33-69 (1986/1989).	
Tennessee		TENN. CODE ANN. 56-8-104 (2012).	
Texas		TEX. INS. CODE ANN. §§ 541.001 to 541.454 (2005/2013).	28 TEX. ADMIN. CODE §§ 21.1 to 21.122 (1981/2010).
Utah			UTAH ADMIN. CODE r. 590-154 (1993/2013) (unfair marketing practices); BULLETIN 2013-5 (2013); BULLETIN 2015-8 (2015); 28.203.2010

© 2021 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

Proceeding Citations

Cited to the Proceedings of the NAIC

On June 5, 1944, the Supreme Court handed down the decision in the *Southeastern Underwriters* case, (*United States v. Southeastern Underwriters Association* 64 U.S. 1162) which reversed the fundamental basis underlying state regulation of the business of insurance by holding that insurance was commerce. One of the immediate effects of this decision was to make applicable to the insurance business a number of federal acts which were, in many cases, in direct conflict with the provision of state laws. **1945 Proceedings 26.**

Immediately after *Southeastern Underwriters*, proposals were considered by Congress to put insurance regulation back in the hands of the states. One suggestion was an amendment to the Federal Trade Commission Act eliminating insurance business from the scope of that act. **1945 Proceedings 28.**

Public Law 15 of the 79th Congress (known as the McCarran-Ferguson Act) was adopted to specifically declare that Congress felt continued regulation of insurance by the states was in the public interest. The Federal Trade Commission Act would not

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 4 (cont.)

A member of other subjects were considered by the committee for inclusion, but after consideration were excluded. Fraud, barratry, bribery, and making of political contributions were excluded, as preferably being dealt with as unfair trade practices generally, and not as unfair trade practices confined to the insurance business. **1946 Proc. 146.**

At the time the model was adopted, the drafters again cautioned that no statute could specify every act, method or practice which might be unfair or deceptive. All that can be expected is a reasonably adequate coverage of sufficient extent to reflect

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 4G (cont.)

While considering amendments to the Unfair Trade Practices Act dealing with redlining and similar discriminatory practices, the task force also recommended addition of a provision to prohibit discrimination based on the sex or marital status of an individual. Although the initial thought was to adopt a provision related to auto insurance, the paragraph drafted covers all lines of insurance. **1979 Proc. II 552-554.**

In 1977 a task force was appointed to consider the issue of "redlining," especially with respect to personal lines insurance. More specifically, the committee was charged to develop a definition of redlining and consider its relationship to the unfair trade practices laws in the states. **1977 Proc. II 627.**

A statement of principles and objectives adopted by the Availability of Essential Insurance Subcommittee stated there was evidence that some insurers were refusing to insure, refusing to renew, or limiting the amount or type of property and automobile insurance coverage available to individuals because of the geographic location of a particular risk. The availability of insurance should not be dependent on the geographic location of a particular risk. It is the position of the NAIC that the insurance industry has been perceived to be redlining, and the perception can only be altered by implementing such practices as stating exact reasons for rejections, cancellations and nonrenewals. The insurance industry should also abandon underwriting "short-cuts" such as refusing to accept an application solely because the applicant was refused coverage by another carrier. **1978 Proc. I 628.**

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 4G (cont.)

At the next drafting session it was decided to add the second sentence to exempt excess and surplus lines. **1992 Proc. IIA 144.**

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 5 (cont.)

The amended model contained a new section that prohibited discrimination by creditors in favor of certain insurers or agents, and it prohibited coercion of debtors with regard to insurance. The new section was an expansion of the law, but since the abuses related directly in insurance they fit the purpose of the law and were a proper concern. **1972 Proc. I 492.**

In the mid 1970's a task force was created to consider amendments to this section. The objective was to strengthen the model legislation to provide the insurance-buying public freedom of choice as to the placement of insurance and to remove opportunities for unfair competitive advantages held by lender affiliated insurance agencies. **1976 Proc. II 373.**

In December 1976 the format of the section was completely revised. **1977 Proc. I 226-227.**

Amendments to the model under consideration in late 2000 made a number of changes to Section 5. One interested party commented that the proposed amendments extended the model to an affiliate of a depository institution merely because of the affiliation. In the absence of a genuine problem warranting such a compliance burden, the regulatory extension itself would be argued to be discriminatory and susceptible to challenge by either depository institutions or their federal regulator. **2000 Proc. 4th Quarter 847**.

Another interested party suggested deleting all reference to depository institutions in Section 5. The commenter agreed that the expansion of the Unfair Trade Practices Act was necessary to ensure that banks were subject to the same treatment as other insurance providers. However, this could be accomplished by expanding the definition of person to include banks and savings associations. This would accomplish the goal of bringing banks within the scope of the model, but would avoid several problems with the various references to depository institutions or affiliates of depository institutions. **2000 Proc. 4th Quarter 847-848**.

The interested party noted that although the restrictions in Section 5 were intended to apply to all entities that engaged in leading activities (including insurance agents), distinguishing between banks and other entities by naming them separately only increased the possibility that these restrictions would be seen as applying to them separately, and thus impermissibly. **2000 Proc. 4th Quarter 848**.

A. In addition to the references to depository institutions, the 2001 amendments added the last sentence of Subsection A to the model. **2001 Proc. 2nd Quarter 848**.

B. This subsection was adopted when the entire section was revised in 1976. **1977 Proc. I 226-227**.

When amendments to the model were considered in 2000-2001, the first draft retained the old language of Paragraph (1), but added additional text about the fact that acceptable insurance was required and that it would be available from the depository institution. **2000 Proc. 4th Quarter 863**.

An interested party commented that no safe harbor in the Gramm-Leach-Bliley Act protected the prohibition that had been in the model since 1976 that said a person that lent money could not solicit insurance for the protection of real property after a person indicated interest in securing a first mortgage credit extension, until the person received a commitment in writing from the lender. The commenter opined that this type of restriction would significantly interfere w

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 5B (cont.)

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 5 (cont.)

D. A new Subsection D was developed as a result of the Gramm-Leach-Bliley Act (GLBA) amendments considered in 2000 and 2001. An interested party commented that the first paragraph of Subsection D required a depository institution or affiliate to make four standard disclosures concerning the limited financial backing of an insurance product. Those disclosures were required to be made prior to the insurance sale and must be in writing. He opined that GLBA generally protected this type of state restriction from federal preemption, but the safe harbor would require the disclosure to be in writing "where practicable." He said that this was an important qualifier; it recognized that there were certain situations, such as a telephone solicitation, where it was extremely impractical to provide disclosures in writing prior to the sale. He suggested that the model

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 5 (cont.)

The drafting note at the end of Section 5 was part of the amendments adopted in 2001 in response to the Gramm-Leach-Bliley Act. **2001 Proc. 2nd Quarter 851**.

Section 6. Power of Commissioner

Section 6 was substantially revised in 2001 by the addition of the last two sentences. To broaden its scope, references to persons were added wherever insurers were noted. **2001 Proc. 2nd Quarter 851**.

© 2011 National Association of Insurance Commissioners

UNFAIR TRADE PRACTICES ACT

Proceeding Citations
Cited to the Proceedings of the NAIC

Section 8A (cont.)

An advisory committee presented a report to the drafting committee suggesting changes to streamline administrative procedures and put more "teeth" in the model. The model as it existed only provided a penalty after a cease and desist order was violated. **1971 Proc. II 343.**

The version adopted in 1971 greatly strengthened the enforcement procedures in the model bill. Every department that had been contacted by the subcommittee expressed dismay and discontent with the originally adopted enforcement powers. The new model made clear that hearings may be held and penalties applied for violations of both defined and undefined trade practices; that the penalties included cease and desist orders, monetary penalties, suspension and revocation of licenses, and other reasonable relief; and that the commissioner could promulgate rules to further clarify the defined unfair trade practices. **1972 Proc. I 492.**

The draft adopted in 1971 set up in Paragraph (1) a two-stage penalty, a lesser amount ($1,000) for so-called "innocent" or "technical" violations, and a higher amount ($5,000) for commission of acts which the person "knew or reasonably should have known" were in violation of the Act. The advisory committee suggested that it would be more appropriate not to include monetary penalties for "innocent" violations. **1972 Proc. I 508.**

The penalties were increased when model amendments were adopted in 1990. The aggregate penalty was raised from $10,000 to $100,000. The penalty for flagrant violations was raised from $5,000 to $25,000 with an aggregate of $250,000 instead of $50,000. **1991 Proc. IA 201.**

The grant of authority included in Paragraph (2) the 1971 revision allowed the commissioner to suspend a license if the person "knew or reasonably should have known" he was in violation of the act. The advisory committee suggested the term "willfully" be used instead because it was a somewhat stricter test and was typically required in other state statutes. Consistency with the general statutory scheme would be desirable and appropriate. **1972 Proc. I 508-509.**

The proposed draft of 1971 contained a third alternative penalty. It allowed the commissioner to order such other relief as is reasonable and appropriate. The advisory committee strenuously opposed the provision. They felt it wasn't needed because the commissioner already had ample authority. They also suggested it conferred on the commissioner the powers of a court of equity without any of the limitations or safeguards prescribed for judicial proceedings. They argued the provision went beyond the authority conferred upon other regulators and was too broad. The laws and legislation committee deleted the provision before final adoption of the model revisions. **1972 Proc. I 509.**

When the model was amended in 2001, Section 8 was rewritten to clarify that persons, depository institutions and affiliates of depository institutions would be afforded the same rights as insurers. **2001 Proc. 1st Quarter 753**.

B. Subsection B was added with the 2001 amendments. **2001 Proc. 2nd Quarter 852**.

Section 9. Judicial Review of Orders

A. While the NAIC was drafting amendments in 2001 in response to the Gramm-Leach-Bliley Act of 1999, reference to depository institutions and insurers was added to Subsection A. **2001 Proc. 2nd Quarter 852**.

Section 10. Judicial Review of Intervenor

© 2011 National Association of Insurance Commissioners