



activity.

~~D.~~

~~E.F.~~ “Insured” means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy.

~~F.G.~~ “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 administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans as defined in Sections [insert applicable section]. For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance.

**Drafting Note:** Each state may wish to consider the advisability of defining “insurance” for purposes of this Act if its present insurance code is not satisfactory in this regard. In some cases, a cross reference will be sufficient.

~~G.H.~~ “Person” means a natural or artificial entity, including but not limited to, individuals, partnerships, associations, trusts, or corporations.

~~H.I.~~ “Policy” or “certificate” means a contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.

~~I.J.~~ “Producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

### **Section 3. Unfair Trade Practices Prohibited**

It is an unfair trade practice for any insurer or health insurance lead generator, or any entity engaged in the business of insurance to commit any practice defined in Section 4 of this Act if:

- A. It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

### **Section 4. Unfair Trade Practices Defined**

Any of the following practices, if committed in violation of Section 3, are hereby defined as unfair trade practices in the business of insurance:

- A. Misrepresentations and False Advertising of Insurance Policies. Making, issuin980.72 30.24 .66 refm10.02 98h3.8(t)u18

- (7) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or
- (8) Misrepresents any policy as being shares of stock.

B. 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, electronic mail, internet advertisement or posting, or other publication, or in the form of a notice, circular, pamphlet, letter, electronic posting of any kind, or poster, or over any radio or television station, or via the internet or other electronic means, 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, which is untrue, deceptive or misleading.

~~B.C.~~ Failure to Maintain Marketing and Performance Records. Failure of an health insurance lead generator to maintain its books, records, documents and other business records in such an order that data regarding complaints 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. Failure to do so shall constitute a violation of (INSERT STATE STATUTE).

C.D.



- (c) Readjusting the rate of premium for a group insurance policy based on the loss or expense

**Drafting Note:** States may wish to consider alternative language based on their filing requirements.

- (vii) If an insurer or producer does not have sufficient evidence but has a good-faith belief that the product or service meets the criteria in H(2)(e)(ii), the insurer or producer may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for no more than one year.

An insurer or producer must notify the Department of such a pilot or testing program offered to consumers in this state prior to launching and may proceed with the program unless the Department objects within twenty-one days of notice.

**Drafting Note:**

- J. 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 complaints, 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.
  
- K. 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 Section [insert applicable section]. 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 subsection, “complaint” shall mean any written communication primarily expressing a grievance.
  
- L. 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.
  
- M. Unfair Financial Planning Practices. An insurance producer:
  - (1) 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 when such person is in fact engaged only in the sale of policies.

Unfair Trade Practices Act

N. Failure to file or to certify information regarding the endorsement or sale of long-term care insurance. Failure of any insurer to:

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

- (a) The policy and certificate;
- (b) A corresponding outline of coverage; and
- (c) All advertisements requested by the insurance department; or

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 (2) 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 regulation.

O. Failure to Provide Claims History

(1) Loss Information—Property and Casualty. 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:

- (a) On all claims, date and description of occurrence, and total amount of payments; and
- (b) For any occurrence not included in Subparagraph (a) of this paragraph, the date and description of occurrence.

(2) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under Paragraph (1), 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 subparagraph 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.

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 (3) The commissioner may promulgate regulations to exclude the providing of the loss information as provided in paragraph (1) for a) 2P(o)6(otla1s711..3( )lass )](otla1s71f..3( ).8(; 2P(s)-5.4( )ra)6uTD-e )6(dw) ps rt (o)6uTD(ese)-5.2(e)d or the-5.2(apt 1.8; 22(o)6(otla1s211..35 )lass )f ti6.2( )-5.2(su)ra)c,



**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) As a condition for extending credit or offering any product or service that is equivalent to an extension of credit, require that a customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer or producer. However, this provision does not prohibit a person or depository institution, or affiliate of a depository institution, from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, or that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the person or depository institution, or affiliate of a depository institution;
  - (2) Unreasonably reject a policy furnished by the customer orcy j3(u)-1o.4( t)w4(h)-1r f(u)-1o.(c)t.6(y)-1.4( t)499 Tw

- (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

- (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 annuities at an office of a depository institution or on behalf of a depository institution. These requirements apply only when an individual purchases, applies to purchase, or is solicited to purchase insurance products or annuities primarily for personal, family or household purposes and only to the extent that the disclosure would be accurate.

**Drafting Note:** The requirements of this provision are meant to apply only when the consumer may have a reasonable belief that the product is a deposit; that it is insured by the Federal Deposit Insurance Corporation; that it is guaranteed by the person or depository institution; and that, where appropriate, it involves investment risk, including the possible loss of value. This provision is not intended to require every entity or person in a financial holding company to provide the disclosure as a result of having both solicitation of insurance and extending of credit or lending of money occurring within an entity in the financial holding company group.

**Section 6. Power of Commissioner**

The commissioner shall have power to examine and investigate the affairs of every person or insurer in this state in order to determine whether such person or insurer has been or is engaged in any unfair trade practice prohibited by this Act. However, in the case of depository institutions, the commissioner shall have the power to examine and investigate the insurance activities of depository institutions, in order to determine whether the depository institution has been or is engaged in any unfair trade practice prohibited by this Act. The commissioner shall notify the appropriate federal banking agency of the commissioner's intent to examine or investigate a depository institution and advise the appropriate federal banking agency of the suspected violations of state law prior to commencing the examination or investigation.

**Section 7. Hearings, Witnesses, Appearances, Production of Books, and Service of Process**

- A. Whenever the commissioner shall have reason to believe that any insurer, person, depository institution or affiliate of a depository institution has been engaged or is engaging in this state in any unfair trade practice whether or not defined in this Act, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such insurer, person, depository institution or affiliate of a depository institution, a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than [insert number] days after the date of the service thereof. With respect to a depository institution, the commissioner's authority to call a hearing is limited to the depository institution's insurance underwriting, sales, solicitation and cross marketing activities. The commissioner shall provide a copy of the notice of hearing to the appropriate federal banking agency when a depository institution is involved.
- B. At the time and place fixed for the hearing, the insurer, person, depository institution or affiliate of a depository institution shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring the insurer, person, depository institution or affiliate of a depository institution to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at the hearing by counsel or in person.
- C. Nothing contained in this Act shall require the observance at the hearing of formal rules of pleading or evidence.
- D. The commissioner, at the hearing, may administer oaths, examine and cross examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence or other documents the commissioner deems relevant to the inquiry, provided, however, that in the case of depository institutions, the commissioner shall have the power to require the production of books, papers, records, correspondence or other documents that the commissioner deems relevant to the inquiry only on the insurance activities of the depository institution. The commissioner, may, and upon the request of any party, shall cause to be made a stenographic record of all the evidence and all the proceeding













- F. “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 administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans as defined in Sections [insert applicable section]. For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance.

**Drafting Note:** Each state may wish to consider the advisability of defining “insurance” for purposes of this Act if its present insurance code is not satisfactory in this regard. In some cases a cross reference will be sufficient.

- G. “Person” means a natural or artificial entity, including but not limited to, individuals, partnerships, associations, trusts or corporations.
- H. “Policy” or “certificate” means a contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.
- I. “Producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

### **Section 3. Unfair Trade Practices Prohibited**

It is an unfair trade practice for any insurer to commit any practice defined in Section 4 of this Act if:

- A. It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

### **Section 4. Unfair Trade Practices Defined**

Any of the following practices, if committed in violation of Secti(3) 10.02 99.48 466.32 5m35

B. 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, which is untrue, deceptive or misleading.

C.

- (I) The Director of the Centers for Disease Control and Prevention of the Department of Health and Human Services has issued a highest level alert or warning, including a recommendation against non-essential travel, due to a serious health-related condition; or
  - (II) There is an ongoing armed conflict involving the military of a sovereign nation foreign to the country of conflict.
- (c)
- (i) The commissioner may adopt regulations necessary to implement the provisions of this paragraph and may 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.
  - (ii) An insurer shall make any pertinent underwriting guidelines and supporting analyses available to the commissioner on request.
- (3) 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 thereunder, or in any of the terms or conditions of such policy, or in any other manner.
- Drafting Note:** In the event that unfair discrimination in connection with accident and health coverage is treated in other statutes, this paragraph should be omitted.
- (4) 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

H. Rebates.

- (1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to such 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 such 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 such policy 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 policy.
- (2) Nothing in Subsection G, or Paragraph (1) of Subsection H shall be construed as including within the definition of discrimination or rebates any of the following practices:
  - (a) 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;
  - (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 that fairly represents the saving in collection expenses;
  - (c) Readjusting the rate of premium for a group insurance policy based on the loss or expense 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; or
  - (d) Engaging in an arrangement that would not violate Section 106 of the Bank Holding Company Act Amendments of 1972 (12 U.S.C.103.9(n)lJoT#:0024 Tc.0-20.6)-6.17.6su1(m)-e4( 1)-

Unfair Trade Practices Act

- L. 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.
- M. Unfair Financial Planning Practices. An insurance producer:
  - (1) 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 when such person

- (2) Certify annually that the association has complied with the responsibilities for disclosure,







- (3) A depository institution that solicits, sells, advertises or offers insurance, and any person who solicits, sells, advertises or offers insurance on behalf of a depository institution or on the premises of a depository institution shall obtain written acknowledgement of the receipt of the disclosure from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance policy. If the solicitation is conducted by telephone, the person or depository institution shall obtain an oral acknowledgement of receipt of the disclosure, maintain sufficient documentation to show that the acknowledgment was given by the customer, and make reasonable efforts to obtain a written acknowledgment from the customer. If a customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the customer may retain or obtain later, the person or depository institution, may provide the disclosure and obtain acknowledgement of the receipt of the disclosure from the customer using electronic media.
- (4) For the purposes of Paragraph (1), a person is selling, soliciting, advertising or offering insurance on behalf of a depository institution, whether at an office of the depository institution or another location, if at least one of the following applies:
  - (a) The person represents to the customer that the sale, solicitation, advertisement or offer of the insurance is by or on behalf of the depository institution;
  - (b) The depository institution refers a customer to the person who sells insurance and the depository institution has a contractual arrangement to receive commissions or fees derived from the sale of insurance resulting from the referral; or
  - (c) Documents evidencing the sale, solicitation, advertisement or offer of insurance identify or refer to the depository institution.
- E. The commissioner shall have the power to examine and investigate those insurance activities of any person, depository institution, affiliate of a depository institution or insurer that the commissioner believes may be in violation of this section. The person, depository institution, affiliate of a depository institution or insurer shall make its insurance books and records available to the commissioner and the commissioner's staff for inspection upon reasonable notice. An affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.
- F. Nothing herein shall prevent a person or depository institution, or affiliate of a depository institution, who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.
- G. Nothing contained in this section shall apply to credit related insurance.

**Drafting Note:** The consumer protection rules promulgated by the banking regulatory agencies pursuant to Section 305 of the Gramm-Leach-Bliley Act apply to retail sales practices, solicitations, advertising or offers of any insurance product or annuity. If a state has adopted the NAIC's Consumer Credit Insurance Model Act and Consumer Credit Insurance Model Regulation, no further action is needed. If not, the state should consider eliminating Subsection G.

## **Section 6. Power of Commissioner**

The commissioner shall have power to examine and investigate the affairs of every person or insurer in this state in order to determine whether such person or insurer has been or is engaged in any unfair trade practice prohibited by this Act. However, in the case of depository institutions, the commissioner shall have the power to examine and investigate the insurance activities of depository institutions, in order to determine whether the depository institution has been or is engaged in any unfair trade practice prohibited by this Act. The commissioner shall notify the appropriate federal banking agency of the commissioner's intent to examine or investigate a depository institution and advise the appropriate federal banking agency of the suspected violations of state law prior to commencing the examination or investigation.

**Section 7. Hearings, Witnesses, Appearances, Production of Books, and Service of Process**

- A. Whenever the commissioner shall have reason to believe that any insurer, person, depository institution or

(2) Suspension or revocation of the insurer's license if the insurer knew or reasonably should have known that it was in violation of this Act.

B. In the case of a depository institution, the commissioner shall, if practicable, notify the appropriate federal regulator before imposing a monetary penalty on a depository institution or suspending or revoking the depository institution's insurer's license, and provide to the federal regulator a copy of the findings.

**Section 9. Judicial Review of Orders**

A. An insurer, person, depository institution or affiliate of a depository institution subject to an order of the

**Drafting Note:** The type of procedure should conform to state procedure. See also note to Section 9 concerning review by appellate courts.

**Section 11.      Penalty for Violation of Cease and Desist Orders**

Any insurer, person, depository institution or affiliate of a depository institution th

Unfair Trade Practices Act

*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1947 Proc. 383, 392-400, 413 (adopted).*

## 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](mailto: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.*

**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

**UNFAIR TRADE PRACTICES ACT**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>PREVIOUS VERSION</b>	<b>RELATED ACTIVITY</b>
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	



**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 (2015/2010)

## 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





**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

## 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.**

The first draft of an amendment to prevent redlining was simply to define as an unfair trade practice “refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to a risk because of the geographic location of the risk.” An accompanying drafting note stated the language was intended to have broad application to all lines of insurance where unfair discrimination is practiced with regard to the geographic location of the risk. However, the drafters recognized that some states might want to limit the application of the proposed language to certain lines or classes of insurance. **1978 Proc. I 629.**

A nonprofit public interest organization presented a report on redlining to the committee considering amendments to the Unfair Trade Practices Act. **1978 Proc. I 642-644.** Their definition of redlining included arbitrary and capricious denial of insurance based on the geographic location of the property to be insured, and arbitrary and unfair price discrimination based on the geographic location of the property. **1978 Proc. I 643.**

The report suggested that insurance has become a necessity for everyday life for most citizens, and as such, must be available to anyone who wants it at a fair price. Risk must be taken into account on a fair, equitable and open basis. Classes of risk with similar characteristics should be treated consistently, in an objective fashion. The report suggested that rating territories should be entire states or large sections of states. Cities should not be rating territories, nor should there be special rate factors for cities. **1978 Proc. I 644.**

Another type of rate differential the drafters were asked to define as discriminatory was differing rates based on the age of the property being insured. One comment received suggested that this was a way of discriminating against those in low income groups. **1978 Proc. I 659.**

The committee was interested in the extent of the redlining problem and suggested hearings in the states and the possibility of a study to determine the full extent of the problem. **1978 Proc. II 467-471.**

In attempting to illustrate the meaning of the proposed redlining amendment to the model, the task force also prepared a draft model regulation. Its purpose was to state specific examples of the types of practices that should be deemed unfair. **1978 Proc. II 475-476.**

A study of redlining in New York was included in the *Proceedings*. **1978 Proc. II 478-509.**

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**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.**

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#### 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. 4<sup>th</sup> 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. 4<sup>th</sup> 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. 4<sup>th</sup> 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. 2<sup>nd</sup> 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. 4<sup>th</sup> 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 with a depository institution's ability to sell insurance, because the depository institution would be unable to market certain types of insurance products during a time when the customer may need those products the most. **2000 Proc. 4<sup>th</sup> Quarter 848.**

Another interested party responded that a provirc[(tion of0j4(. )Tj83.3114 -1.1ed p) Tw[(sc(a)]TJ11ff0j99e )6(p) Tw[(sc(a)a3j99e )6 of0j

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#### Section 5B (cont.)

The commenter pointed out that the new proposed language to be added specifically provided that the restriction did not prohibit a lender from informing a customer that insurance was required and noting it was available from that lender. This limitation would enable lenders to inform consumers of their insurance needs and of the availability of the insurance products from the lender. **2000 Proc. 4<sup>th</sup> Quarter 849.**

An early draft of the 2001 model revisions contained a provision requiring a depository institution to obtain a customer's express consent to disclose credit-related insurance information. Some interested parties raised concerns related to privacy and to the Fair Credit Reporting Act. The chair reported in early 2001 that the paragraph had been deleted and replaced by a drafting note that referred to the NAIC's model privacy regulations and the Fair Credit Reporting Act. **2001 Proc. 1<sup>st</sup> Quarter 753.**

An interested party suggested that the new Paragraph (7) on licensing was unnecessary as it was covered in other NAIC models and was not a safe harbor. The chair responded that the drafters had not limited themselves to the safe harbors, but noted that two of the safe harbors were closely related to licensing. Another interested party noted that there might be difficulty prosecuting an unlicensed individual under the current Unfair Trade Practices Act; the language might limit a regulator's options. **2001 Proc. 1<sup>st</sup> Quarter 754-755.**

A representative from an insurance trade association urged deletion of Paragraph (7). She said that language might allow individuals to pursue a private right of action with respect to licensing matters in those states that allow a private right of action under their Unfair Trade Practices Act. Regulators disagreed that there was potential harm from including the provision. **2001 Proc. 2<sup>nd</sup> Quarter 839.**

The trade association representative also urged deletion of Paragraph (8). She said it was unnecessary because it was covered



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#### 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

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#### 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. 2<sup>nd</sup> 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. 2<sup>nd</sup> Quarter 851.**

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#### 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. 1<sup>st</sup> Quarter 753.**

B. Subsection B was added with the 2001 amendments. **2001 Proc. 2<sup>nd</sup> 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. 2<sup>nd</sup> Quarter 852.**

#### Section 10. Judicial Review of Intervenor

