

By: Fraser, Jackson

S.B. No. 126

A BILL TO BE ENTITLED

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AN ACT

relating to the definition of unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 4. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and False Advertising of Policy Contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder

1 insured in any company for the purpose of inducing or tending to
2 induce such policyholder to lapse, forfeit, or surrender his
3 insurance;

4 (2) False Information and Advertising Generally.
5 Making, publishing, disseminating, circulating or placing before
6 the public, or causing, directly or indirectly, to be made,
7 published, disseminated, circulated, or placed before the public,
8 in a newspaper, magazine or other publication, or in the form of a
9 notice, circular, pamphlet, letter or poster, or over any radio or
10 television station, or in any other way, an advertisement,
11 announcement or statement containing any assertion, representation
12 or statement with respect to the business of insurance or with
13 respect to any person in the conduct of his insurance business,
14 which is untrue, deceptive or misleading;

15 (3) Defamation. Making, publishing, disseminating,
16 or circulating, directly or indirectly, or aiding, abetting or
17 encouraging the making, publishing, disseminating or circulating
18 of any oral or written statement or any pamphlet, circular, article
19 or literature which is false, or maliciously critical of or
20 derogatory to the financial condition of any insurer, and which is
21 calculated to injure any person engaged in the business of
22 insurance;

23 (4) Boycott, Coercion and Intimidation. Entering into
24 any agreement to commit, or by any concerted action committing, any
25 act of boycott, coercion or intimidation resulting in or tending to
26 result in unreasonable restraint of, or monopoly in, the business
27 of insurance;

1 (5) False Financial Statements. (a) Filing with any
2 supervisory or other public official, or making, publishing,
3 disseminating, circulating or delivering to any person, or placing
4 before the public, or causing directly or indirectly, to be made,
5 published, disseminated, circulated, delivered to any person, or
6 placed before the public, any false statement of financial
7 condition of an insurer with intent to deceive;

8 (b) Making any false entry in any book, report or
9 statement of any insurer with intent to deceive any agent or
10 examiner lawfully appointed to examine into its condition or into
11 any of its affairs, or any public official to whom such insurer is
12 required by law to report, or who has authority by law to examine
13 into its condition or into any of its affairs, or, with like intent,
14 willfully omitting to make a true entry of any material fact
15 pertaining to the business of such insurer in any book, report or
16 statement of such insurer;

17 (6) Stock Operations and Advisory Board Contracts.
18 Issuing or delivering or permitting agents, officers or employees
19 to issue or deliver, company stock or other capital stock, or
20 benefit certificates or shares in any corporation, or securities or
21 any special or advisory board contracts or other contracts of any
22 kind promising returns and profits as an inducement to insurance.
23 Provided, however, that nothing in this subsection shall be
24 construed as prohibiting the issuing or delivery of participating
25 insurance policies otherwise authorized by law.

26 (7) Unfair Discrimination. Making or permitting any
27 unfair discrimination between individuals of the same class and

1 equal expectation of life in the rates charged for any contract of
2 life insurance or of life annuity or in the dividends or other
3 benefits payable thereon, or in any other of the terms and
4 conditions of such contract.

5 (8) Rebates. (a) Except as otherwise expressly
6 provided by law, knowingly permitting or offering to make or making
7 any contract of life insurance, life annuity or accident and health
8 insurance, or agreement as to such contract other than as plainly
9 expressed in the contract issued thereon, or paying or allowing, or
10 giving or offering to pay, allow, or give, directly or indirectly,
11 as inducement to such insurance, or annuity, any rebate of premiums
12 payable on the contract, or any special favor or advantage in the
13 dividends or other benefits thereon, or any valuable consideration
14 or inducement whatever not specified in the contract; or giving, or
15 selling, or purchasing or offering to give, sell, or purchase as
16 inducement to such insurance or annuity or in connection therewith,
17 any stocks, bonds, or other securities of any insurance company or
18 other corporation, association, or partnership, or any dividends or
19 profits accrued thereon, or anything of value whatsoever not
20 specified in the contract;

21 (b) Nothing in clause 7 or paragraph (a) of
22 clause 8 of this subsection shall be construed as including within
23 the definition of discrimination or rebates any of the following
24 practices:

25 (i) in the case of any contract of life
26 insurance or life annuity, paying bonuses to policyholders or
27 otherwise abating their premiums in whole or in part out of surplus

1 accumulated from non-participating insurance, provided that any
2 such bonuses or abatement of premiums shall be fair and equitable to
3 policyholders and for the best interests of the company and its
4 policyholders;

5 (ii) in the case of life insurance policies
6 issued on the industrial debit plan, making allowance to
7 policyholders who have continuously for a specified period made
8 premium payments directly to an office of the insurer in an amount
9 which fairly represents the saving in collection expenses;

10 (iii) readjustment of the rate of premium
11 for a group insurance policy based on the loss or expense experience
12 thereunder, at the end of the first or any subsequent policy year of
13 insurance thereunder, which may be made retroactive only for such
14 policy year; or

15 (iv) in the case of a life annuity, waiving
16 surrender charges under an annuity contract when the contract
17 holder exchanges the annuity contract for another annuity contract
18 issued by the same insurer, if the waiver and the exchange are
19 fully, fairly, and accurately explained to the contract holder in a
20 manner that is not deceptive or misleading.

21 (9) Deceptive Name, Word, Symbol, Device, or Slogan.
22 Using, displaying, publishing, circulating, distributing, or
23 causing to be used, displayed, published, circulated, or
24 distributed in any letter, pamphlet, circular, contract, policy,
25 evidence of coverage, article, poster, or other document,
26 literature, or public media of:

27 (a) a name as the corporate or business name of a

1 person or entity engaged in an insurance or insurance related
2 business in this state that is the same as, or deceptively similar
3 to, the name adopted and used by an insurance entity, health
4 maintenance organization, third party administrator, or group
5 hospital service company authorized to do business under the laws
6 of this state; or

7 (b) a word, symbol, device, slogan, or any
8 combination of these items, whether registered or not registered,
9 that is the same as or deceptively similar to one adopted and used
10 by an insurance entity, health maintenance organization, third
11 party administrator, or group hospital service company to
12 distinguish such entities, products, or service from other
13 entities, and includes the title, designation, character names, and
14 distinctive features of broadcast or other advertising.

15 Where two persons or entities are using a name,
16 word, symbol, device, slogan, or any combination of these items
17 that are the same or deceptively similar and are likely to cause
18 confusion or a mistake, the user who can demonstrate the first
19 continuous actual use of such name, word, symbol, device, slogan,
20 or combination of these items shall not have committed an unfair
21 method of competition or deceptive act or practice.

22 (10) Unfair Settlement Practices. (a) Engaging in
23 any of the following unfair settlement practices with respect to a
24 claim by an insured or beneficiary:

25 (i) misrepresenting to a claimant a
26 material fact or policy provision relating to coverage at issue;

27 (ii) failing to attempt in good faith to

1 effectuate a prompt, fair, and equitable settlement of a claim with
2 respect to which the insurer's liability has become reasonably
3 clear;

4 (iii) failing to attempt, in good faith, to
5 effectuate a prompt, fair, and equitable settlement under one
6 portion of a policy of a claim with respect to which the insurer's
7 liability has become reasonably clear in order to influence the
8 claimant to settle an additional claim under another portion of the
9 coverage, provided that this prohibition does not apply if payment
10 under one portion of the coverage constitutes evidence of liability
11 under another portion of the policy;

12 (iv) failing to provide promptly to a
13 policyholder a reasonable explanation of the basis in the policy,
14 in relation to the facts or applicable law, for the insurer's denial
15 of a claim or for the offer of a compromise settlement of a claim;

16 (v) failing within a reasonable time to:

17 (A) affirm or deny coverage of a claim
18 to a policyholder; or

19 (B) submit a reservation of rights to
20 a policyholder;

21 (vi) refusing, failing, or unreasonably
22 delaying an offer of settlement under applicable first-party
23 coverage on the basis that other coverage may be available or that
24 third parties are responsible for the damages suffered, except as
25 may be specifically provided in the policy;

26 (vii) undertaking to enforce a full and
27 final release of a claim from a policyholder when only a partial

1 payment has been made, provided that this prohibition does not
2 apply to a compromise settlement of a doubtful or disputed claim;

3 (viii) refusing to pay a claim without
4 conducting a reasonable investigation with respect to the claim;

5 (ix) with respect to a Texas personal auto
6 policy, delaying or refusing settlement of a claim solely because
7 there is other insurance of a different type available to satisfy
8 all or any part of the loss forming the basis of that claim; or

9 (x) requiring a claimant, as a condition of
10 settling a claim, to produce the claimant's federal income tax
11 returns for examination or investigation by the person unless:

12 (A) the claimant is ordered to produce
13 those tax returns by a court;

14 (B) the claim involves a fire loss;
15 or

16 (C) the claim involves lost profits or
17 income.

18 (b) Paragraph (a) of this clause does not provide
19 a cause of action to a third party asserting one or more claims
20 against an insured covered under a liability insurance policy.

21 (11) Misrepresentation of Insurance Policy.
22 Misrepresenting an insurance policy by:

23 (a) making an untrue statement of material fact;

24 (b) failing to state a material fact that is
25 necessary to make other statements made not misleading, considering
26 the circumstances under which the statements were made;

27 (c) making a statement in such manner as to

1 mislead a reasonably prudent person to a false conclusion of a
2 material fact;

3 (d) making a material misstatement of law; or

4 (e) failing to disclose any matter required by
5 law to be disclosed, including a failure to make disclosure in
6 accordance with another provision of this code.

7 (12) Unfair Underwriting Guideline. (a) Using an
8 underwriting guideline based solely on a single previous claim for
9 water damage either by the applicant or on the covered property in
10 determining whether to decline to write a residential property
11 insurance policy.

12 (b) An insurer may cancel during the first 90
13 days that the policy is in effect a residential property insurance
14 policy written by the insurer under Paragraph (a) of this clause if
15 during the first 90 days that the policy is in effect a water damage
16 claim is filed that is paid or is payable under the residential
17 property insurance policy.

18 (c) In this clause:

19 (i) "Residential property insurance" means
20 insurance against loss to real or tangible personal property at a
21 fixed location provided in a homeowners policy, a tenant policy, a
22 condominium owners policy, or a residential fire and allied lines
23 policy.

24 (ii) "Underwriting guideline" means a rule,
25 standard, guideline, or practice, whether written, oral, or
26 electronic, that is used by an insurer or an agent of an insurer to
27 decide whether to accept or reject an application for a residential

1 property insurance policy.

2 SECTION 2. This Act applies only to a residential property
3 insurance policy that is delivered or issued for delivery based on
4 an application that is submitted on or after the effective date of
5 this Act. An insurance policy that is delivered or issued for
6 delivery based on an application that is submitted before the
7 effective date of this Act is governed by the law as it existed
8 immediately before the effective date of this Act, and that law is
9 continued in effect for that purpose.

10 SECTION 3. This Act takes effect June 1, 2003, if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section 39, Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for effect on that
14 date, this Act takes effect September 1, 2003.