

ACT 120

H. B. NO. 76

A Bill for an Act Relating to Trade Practices in the Business of Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431-643, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 431-643 Unfair methods of competition and unfair or deceptive acts or practices defined. The following are 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:
 - (A) 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
 - (B) Making any false or misleading statement as to the dividends or share of the surplus previously paid on similar policies; or
 - (C) 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
 - (D) Using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

- (E) Making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance; or
 - (F) Publishing or advertising the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of such insurer, both as shown by its last annual statement; or
 - (G) Publishing or advertising the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio 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 his insurance business, which is untrue, deceptive, or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Boycott, coercion, and intimidation:
- (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.
 - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.
- (5) False financial statements:
- (A) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivery to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive; or
 - (B) Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by

law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination:
 - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any 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; or
 - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder.
- (8) Rebates, except as otherwise expressly provided by law:
 - (A) 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 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 whatever not specified in the contract; or
 - (B) Giving, or selling, or purchasing, or offering to give, sell, or purchase as inducement to such insurance 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.
- (9) Nothing in item (7) or item (8) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:
 - (A) 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 policy-

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holders and for the best interests of the insurer and its policyholders;

- (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policy holders 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 expense;
- (C) Readjustment of the rate or 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;
- (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this chapter.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 3. This Act shall take effect upon its approval.

(Approved May 25, 1971.)

* Edited accordingly.