

§7110. Unfair methods of competition; unfair and deceptive acts and practices

1. Prohibited acts and practices. A person may not engage in this State in any act or practice determined by the superintendent to be unfair or deceptive or in any of the following acts or practices in connection with the marketing, sale, offering for sale, issuance, making, proposing to make or administration or solicitation of a service contract.

A. A person may not make, issue, circulate, or cause to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any service contract issued or to be issued or the benefits or advantages promised thereby or make any misleading representation or any misrepresentation as to the financial condition of any provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

B. A person may not make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication or on a business card, 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 service contracts or with respect to any person in the conduct of that person's service contract business in a manner that is untrue, deceptive or misleading. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

C. A person may not file with any supervisory or other public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause 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 a provider with intent to deceive. A person may not make any false entry in any book, report or statement of any provider 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 such person 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 omit to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such provider. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

D. A person may not engage in any of the following service contract claims practices in conscious disregard of this section and any rules adopted under this section or with such frequency as to indicate a general business practice of the person to engage in such conduct:

- (1) Knowingly misrepresenting to service contract holders relevant facts or service contract provisions related to coverages at issue;
- (2) Failing to acknowledge with reasonable promptness pertinent written communications with respect to claims arising under its service contracts;
- (3) Failing to develop and maintain documented claim files supporting decisions made regarding liability;
- (4) Refusing to pay claims without conducting a reasonable investigation;
- (5) Failing, in the case of claims denials, to provide an accurate explanation of the basis for those actions; or
- (6) Failing to adopt and implement reasonable standards to ensure that the repairs of a repairer owned by or required to be used by the provider are performed in a competent and professional manner. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

E. A provider may not use in its name the words "insurance," "casualty," "surety," "mutual" or any other words descriptive of the insurance, casualty or surety business or use a name deceptively similar to the name or description of any insurance or surety corporation or to the name of any other

provider. The word "guaranty" or a similar word may be used by a provider. This section does not apply to a provider that was using any of the prohibited language in its name prior to January 1, 2012; however, such provider must include in its service contracts a statement in substantially the following form: "This agreement is not subject to regulation as an insurance contract." [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

F. A person, including but not limited to a bank, savings and loan association, lending institution, manufacturer or seller of any product may not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

G. A provider of a service contract on a motor vehicle or its representative may not, directly or indirectly, represent in any manner, whether by written solicitation or telemarketing, a false, deceptive or misleading statement with respect to:

- (1) The provider's affiliation with a motor vehicle manufacturer;
- (2) The provider's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;
- (3) The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or
- (4) A requirement that a motor vehicle owner register for a new motor vehicle service contract with the provider in order to maintain coverage under the motor vehicle owner's current motor vehicle service contract or manufacturer's original equipment warranty. [PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

2. Cease and desist order. The superintendent may issue a cease and desist order pursuant to section 12-A, subsection 2 if, after a hearing, the superintendent finds that any person in the State has engaged or is engaging, or that a resident of the State has engaged or is engaging in another state, in an unfair or deceptive practice not described in this chapter or in rules adopted pursuant to this chapter. For any practice not described in this chapter or in rules adopted pursuant to this chapter, the civil penalties set forth in section 12-A, subsection 1 may not be imposed for practice engaged in prior to the issuance and service of a valid cease and desist order.

[PL 2011, c. 345, §4 (NEW); PL 2011, c. 345, §7 (AFF).]

SECTION HISTORY

PL 2011, c. 345, §4 (NEW). PL 2011, c. 345, §7 (AFF).

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