

10-3-1104. Unfair methods of competition - unfair or deceptive acts or practices.

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(a) Misrepresentations and false advertising of insurance policies: Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, circular, statement, sales presentation, omission, or comparison which:

(I) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or

(II) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(III) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(IV) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(V) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(VI) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or

(VII) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(VIII) Misrepresents any insurance policy as being a security; or

(IX) Misrepresentation shall not be construed where a written comparison of policies is made factually disclosing relevant features and benefits for which the policy is issued and by which an informed decision can be made;

(b) False information and advertising generally:

(I) 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 person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading;

(II) Knowingly filing with the commissioner or other public official, or with any employee or agent of the division of insurance in the department of regulatory agencies, a written, false statement of material fact as to the financial condition of an insurer;

(III) Knowingly making any false entry of a material fact in any book, report, or other written statement of any insurer; knowingly omitting or failing to make a true entry of a material fact pertaining to the business of

the insurer in any book, report, or other written statement of the insurer; or knowingly making any written, false material statement to the commissioner or any employee or agent of the division of insurance in the department of regulatory agencies;

(c) 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, or derogatory to the financial condition of any person, and which is calculated to injure such person;

(d) Boycott, coercion, and intimidation: Entering into any agreement to commit, or by any concerted 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;

(e) 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 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;

(f) (I) Unfair discrimination: 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;

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(III) Making or permitting to be made any classification solely on the basis of marital status or sex, unless such classification is for the purpose of insuring family units or is justified by actuarial statistics;

(IV) Making or permitting to be made any classification solely on the basis of blindness, partial blindness, or a specific physical disability unless such classification is based upon an unequal expectation of life or an expected risk of loss different than that of other individuals;

(V) Repealed.

(VI) Inquiring about or making an investigation concerning, directly or indirectly, an applicant's, an insured's, or a beneficiary's sexual orientation in:

(A) An application for coverage; or

(B) Any investigation conducted in connection with an application for coverage;

(VII) Using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation;

(VIII) Using sexual orientation in the underwriting process or in the determination of insurability;

(IX) Making adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to AIDS by seeking counseling from health care professionals;

(X) Making adverse underwriting decisions on the basis of the existence of nonspecific blood code information received from the medical information bureau, but this prohibition shall not bar investigation in response to the existence of such nonspecific blood code as long as the investigation is conducted in accordance with the provisions of section [10-3-1104.5](#);

(XI) Reducing benefits under a health insurance policy by the addition of an exclusionary rider, unless such rider only excludes conditions which have been documented in the original underwriting application, original underwriting medical examination, or medical history of the insured, or which can be shown with clear and convincing evidence to have been caused by the medically documented excluded condition;

(XII) Denying health care coverage subject to article 16 of this title to any individual based solely on that individual's casual or nonprofessional participation in the following activities: Motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding;

(XIII) 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 policy of sickness and accident insurance, in the benefits payable under such policy, in the terms or conditions of the policy, or in any other manner;

(XIV) 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 amount of insurance coverage on a property and casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience;

(XV) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property;

(XVI) Terminating or modifying coverage or refusing to issue or renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; except that this subparagraph (XVI) does not:

(A) Apply to accident and health insurance sold by a casualty insurer; or

(B) Modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;

(XVII) Refusing to insure a person solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy, in which the person was the named insured. Nothing in this subparagraph (XVII) prevents an insurer from terminating an excess insurance policy based on the failure of the insured to maintain any required underlying insurance.

(g) Rebates: Except as otherwise expressly provided by law, 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 insurance contract issued thereon, or paying, or allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, 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 giving, or selling, or purchasing, or offering to give,

sell, or purchase, as inducement to such insurance contract 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 contract;

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(I) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; or

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or

(III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; or

(IV) Refusing to pay claims without conducting a reasonable investigation based upon all available information; or

(V) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; or

(VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or

(VII) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or

(VIII) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; or

(IX) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured; or

(X) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made; or

(XI) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration; or

(XII) Delaying the investigation or payment of claims by requiring an insured or claimant, or the physician of either of them, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; or

(XIII) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(XIV) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(XV) Raising as a defense or partial offset in the adjustment of a third-party claim the defense of comparative negligence as set forth in section [13-21-111](#), C.R.S., without conducting a reasonable investigation and developing substantial evidence in support thereof. At such time as the issue is raised under this subparagraph (XV), the insurer shall furnish to the commissioner a written statement setting forth reasons as to why a defense under the comparative negligence doctrine is valid.

(XVI) Excluding medical benefits under health care coverage subject to article 16 of this title to any covered individual based solely on that individual's casual or nonprofessional participation in the following activities: Motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding; or

(XVII) Failing to adopt and implement reasonable standards for the prompt resolution of medical payment claims.

(i) Failure to maintain complaint handling procedures: Failing of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph (i), "complaint" shall mean any written communication primarily expressing a grievance.

(j) Misrepresentation in insurance applications: Making false or fraudulent statements or representations on or relative to any application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any person;

(k) Requiring, directly or indirectly, any insured or claimant to submit to any polygraph test concerning any application for or any claim under any policy of insurance;

(l) Violation of or noncompliance with any insurance law in part 6 of article 4 of this title;

(m) Failure to make promptly a full refund or credit of all unearned premiums to the person entitled thereto upon termination of insurance coverage;

(n) Requiring or attempting to require or otherwise induce a health care provider, as defined in section [13-64-403](#) (12) (a), C.R.S., to utilize arbitration agreements with patients as a condition of providing medical malpractice insurance to such health care provider;

(o) Failure to comply with all the provisions of section [10-3-1104.5](#) regarding HIV testing;

(p) Violation of or noncompliance with any provision of part 13 of this article;

(q) Increasing the premiums unilaterally or decreasing the coverage benefits on renewal of a policy of insurance, increasing the premium on new policies, or failing to issue an insurance policy to barbers, cosmetologists, cosmeticians, manicurists, barbershops, or beauty salons, as regulated in article [8](#) of title [12](#), C.R.S., regardless of the type of risk insured against, based solely on the decision of the general assembly to stop mandatory inspections of the places of business of such insureds;

(r) Advising an employer to arrange for or arranging for an employee or an employee's dependent to apply to a plan developed pursuant to the "Colorado High Risk Health Insurance Act", under part 5 of article 8 of this title, for the purpose of separating such employee or employee's dependent from any group health coverage provided in connection with such employee's employment;

(s) Certifying pursuant to section [10-16-107.2](#) or issuing, soliciting, or using a policy form, endorsement, or

- rider that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections [10-2-704](#), [10-2-801](#), [10-2-804](#), [10-3-1107](#), [10-3-1108](#), and 10-3-1109.
- (t) Certifying pursuant to section [10-4-419](#) or issuing, soliciting, or using a claims-made policy form, endorsement, or disclosure form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections [10-3-1107](#), [10-3-1108](#), and 10-3-1109.
- (u) Certifying pursuant to section [10-4-633](#) or issuing, soliciting, or using an automobile policy form, endorsement, or notice form that does not comply with statutory mandates. Such solicitation or certification shall be subject to the sanctions described in sections [10-3-1107](#), [10-3-1108](#), and 10-3-1109.
- (v) Failure to comply with all provisions of section [10-16-108.5](#) concerning fair marketing of basic and standard health benefit plans, and section [10-16-105](#) concerning guaranteed issue of basic and standard health benefit plans;
- (w) Failure to comply with the provisions of section [10-16-201.5](#) concerning the renewability of individual health benefit plans;
- (x) Violation of the provisions of part 8 of article [1](#) of title [25](#), C.R.S., concerning patient records;
- (y) Violating any provision of the "Consumer Protection Standards Act for the Operation of Managed Care Plans", part 7 of article 16 of this title by those subject to said part 7;
- (z) Willfully violating any provision of section [10-16-113.5](#);
- (aa) Certifying pursuant to section [10-10-109](#) (3) or 10-10-109 (4), issuing, soliciting, or using a credit insurance policy form, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, or rider that does not comply with Colorado law. Such certification, issuance, solicitation, or use shall be subject to the sanctions described in sections [10-3-1107](#), [10-3-1108](#), and 10-3-1109.
- (bb) Certifying pursuant to section [10-15-105](#) (1), issuing, soliciting, or using a preneed funeral contract form or a form of assignment that does not comply with Colorado law. Such certification, issuance, solicitation, or use shall be subject to the sanctions described in sections [10-3-1107](#), [10-3-1108](#), and 10-3-1109.
- (cc) Violation of the provisions of section [10-16-122](#) (4) concerning an unauthorized transfer of a covered person or subscriber's prescription;
- (dd) Failing to comply with the provisions of section [10-4-628](#) (2) (a) (V) or 10-16-201 (5);
- (ee) Willfully or repeatedly violating section [10-11-108](#) (1) (c) or (1) (d), including a willful or repeated violation through the creation or operation of an improper affiliated business arrangement;
- (ff) Violation of the "Physician Designation Disclosure Act", article [38](#) of title [25](#), C.R.S.;
- (gg) Violation of section [10-16-705](#) (6.5) or (10.5);
- (hh) Unfair compensation practices: Basing the compensation of claims employees or contracted claims personnel, including compensation in the form of performance bonuses or incentives, on any of the following:
- (I) The number of policies canceled;

- (II) The number of times coverage is denied;
 - (III) The use of a quota limiting or restricting the number or volume of claims; or
 - (IV) The use of an arbitrary quota or cap limiting or restricting the amount of claims payments without due consideration of the merits of the claim;
- (ii) Violation of section [8-43-401.5](#), C.R.S.;
 - (jj) Violation of part 6 of article [43](#) of title [8](#), C.R.S.;
 - (kk) Violation of section [10-7-703](#) of the "Insurable Interest Act", part 7 of article 7 of this title;
 - (ll) Engaging in stranger originated life insurance.
- (2) Nothing in paragraph (f) or (g) of subsection (1) 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, if 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 which fairly represents the saving in collection expenses;
 - (c) Readjustment of 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;
 - (d) Requests by a person that an applicant or insured take an HIV related test when such request has been prompted by either the health history or current condition of the applicant or insured or by threshold coverage amounts which are applied to all persons within the risk class, as long as such test is conducted in accordance with the provisions of section [10-3-1104.5](#).
- (3) Repealed.
- (4) The following is defined as an unfair practice in the business of insurance: For an insurer to deny, refuse to issue, refuse to renew, refuse to reissue, cancel, or otherwise terminate a motor vehicle insurance policy, to restrict motor vehicle insurance coverage on any person, or to add any surcharge or rating factor to a premium of a motor vehicle insurance policy solely because of:
- (a) A conviction under section [12-47-901](#) (1) (b), C.R.S., or section [18-13-122](#) (2), C.R.S., or any counterpart municipal charter or ordinance offense or because of any driver's license revocation resulting from such conviction. This paragraph (a) includes, but is not limited to, a driver's license revocation imposed under section [42-2-125](#) (1) (m), C.R.S.
 - (b) The licensee's inability to operate a motor vehicle due to physical incompetence if the licensee obtains an affidavit from a rehabilitation provider or licensed physician acceptable to the department of revenue.
- (5) It shall not be an unfair practice in the business of insurance for an insurer to pay an assignee if the insurer

believes in good faith that the claim is subject to a written assignment from the insured. The insurer shall remain responsible to the insured for such amounts pursuant to the applicable policy terms in the event the person paid did not hold a written assignment and did not provide services or goods to the insured at the insured's request.

Source: **L. 73:** R&RE, p. 858, § 1. **C.R.S. 1963:** § 72-14-4. **L. 75:** (1)(f)(III) added, p. 341, § 1, effective July 1. **L. 78:** (1)(f)(IV) added, p. 295, § 1, effective March 21; (3) added, p. 293, § 2, effective March 24. **L. 79:** IP(1)(h) amended and (1)(l) added, p. 359, § 5, effective June 22; (1)(h)(XV) added, p. 383, § 1, effective July 1. **L. 80:** (1)(f)(V) added, p. 751, § 2, effective April 10. **L. 81:** (3) repealed, p. 577, § 5, effective June 4. **L. 88:** (1)(m) and (1)(n) added, pp. 340, 625, §§ 3, 4, effective July 1. **L. 89:** (1)(f)(VI) to (1)(f)(X), (1)(o), and (2)(d) added, pp. 448, 449, §§ 2-4, effective April 12; (1)(p) added p. 451, § 2, effective July 1. **L. 90:** (1)(q) added, p. 770, § 29, effective July 1. **L. 92:** (1)(r) added, p.1503, § 1, effective April 16; (1)(t) and (1)(u) added, p. 1555, § 52, effective May 20; (1)(f)(XI) added, p. 1750, § 3, effective May 29; (1)(s) added, p. 1744, § 3, effective June 2. **L. 93:** (1)(s) amended, p. 1390, § 6, effective January 1, 1995. **L. 94:** (1)(v) added, p. 1920, § 13, effective July 1. **L. 96:** (1)(w) added, p. 459, § 2, effective July 1. **L. 97:** (1)(x) added, p. 350, § 4, effective April 19; (1)(y) added, p. 1332, § 4, effective July 1; (4) added, p. 1044, § 6, effective August 6; (1)(f)(XII) and (1)(h)(XVI) added, p. 68, §§ 1, 2, effective October 1. **L. 98:** (4)(a) amended, p. 817, § 8, effective August 5. **L. 99:** (5) added, p. 312, § 2, effective August 4; (1)(z) added, p. 1056, § 3, effective June 1, 2000. **L. 2000:** (4)(b) amended, p. 1635, § 7, effective June 1; (1)(aa) and (1)(bb) added, p. 464, § 2, effective August 2. **L. 2001:** (1)(r) amended, p. 1051, § 36, effective July 1; (1)(cc) added, p. 1231, § 3, effective January 1, 2002. **L. 2002:** (1)(f)(XII) and (1)(h)(XVI) amended, p. 65, § 1, effective January 1, 2003. **L. 2003:** (1)(u) amended, p. 1571, § 4, effective July 1. **L. 2004:** (1)(l) amended, p. 902, § 21, effective May 21; (1)(h)(XVII) added, p. 1102, § 2, effective July 1. **L. 2005:** (1)(dd) added, p. 221, § 3, effective April 14. **L. 2006:** (1)(ee) added, p. 269, § 4, effective July 1. **L. 2008:** (1)(ff) added, p. 2017, § 2, effective September 1. **L. 2009:** (1)(gg) added, ([HB 09-1061](#)), ch. 197, p. 886, § 2, effective August 5. **L. 2010:**(1)(hh) added, ([SB 10-076](#)), ch. 228, p. 987, § 1, effective May 17; (1)(ii) added, ([SB 10-011](#)), ch. 302, p. 1433, § 5, effective May 27; (1)(b) amended and (1)(f)(XIII), (1)(f)(XIV), (1)(f)(XV), (1)(f)(XVI), and (1)(f)(XVII) added, ([HB 10-1220](#)), ch. 197, p. 851, §§ 6, 7, effective July 1; (1)(jj) added, ([SB 10-178](#)), ch. 290, p. 1350, § 2, effective July 1. **L. 2011:** (1)(kk) and (1)(ll) added, ([SB 11-182](#)), ch. 227, p. 976, § 2, effective May 27.

Editor's note: (1) Subsection (1)(f)(V) provided for the repeal of subsection (1)(f)(V), effective July 1, 1987. (See L. 1980, p. 751.)

(2) Section 3 of chapter 227, Session Laws of Colorado 2011, provides that the act adding subsections (1)(kk) and (1)(ll) applies to policies written on or after May 27.

Cross references: For the legislative declaration contained in the 2000 act enacting subsections (1)(aa) and (1)(bb), see section 1 of chapter 135, Session Laws of Colorado 2000.

ANNOTATION

Law reviews. For article, "The Professional Liability Insurer's Duty to Defend -- Part I", see 15 Colo. Law. 799 (1986). For comment, "Comprehensive General Liability Insurance Coverage for CERCLA Liabilities: A Recommendation for Judicial Adherence to State Canons of Insurance Contract Construction", see 61 U. Colo. L. Rev. 407 (1990).

For discussion of tort of "bad faith breach of insurance contract" see *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370

... OF ASSIGNMENT OF POLICY OR POLICY PROVISION OR INSURANCE CONTRACT, 691 P.2d 1138 (Colo. App. 1982), aff'd, 691 P.2d 1138 (Colo. 1984).

An insurer has a contractual duty to investigate third-party claims in the ordinary course of business to determine whether the third-party's claims are within an insured's coverage and to resolve them. *Lazar v. Riggs*, 79 P.3d 105 (Colo. 2003).

A third-party administrator owes a duty of good faith to an insured when a special relationship exists between the third-party administrator and the insured. A special relationship is created when the administrator has primary control over benefit determinations; assumes some of the insurance risk of loss; undertakes many of the obligations and risks of an insurer; and has the power, motive, and opportunity to act unscrupulously in the investigation and servicing of the insurance claims. To establish a breach of this duty of good faith, the plaintiff must establish that the third-party administrator's conduct was unreasonable and that the administrator knew its conduct was unreasonable or acted in a reckless disregard of whether its conduct was unreasonable. *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462 (Colo. 2003).

Subsection (1)(h) may not serve as the sole basis for a civil action instituted by private citizens allegedly aggrieved by the conduct of their insurers. *Farmers Group, Inc. v. Trimble*, 658 P.2d 1370 (Colo. App. 1982), aff'd, 691 P.2d 1138 (Colo. 1984); *Appel v. Sentry Life Ins. Co.*, 701 P.2d 634 (Colo. App. 1985), aff'd, 739 P.2d 1380 (Colo. 1987); *Simmons v. Prudential Ins. Co.*, 641 F. Supp. 675 (D. Colo. 1986).

The plain meaning of subsection (1)(h)(I) is that insurers are prohibited from making misrepresentations about facts or coverage. There is no indication in the language of subsection (1)(h)(I) that the general assembly intended to impose upon insurers the affirmative duty of informing their insureds when the statute of limitations on a claim will run. *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849 (Colo. App. 2007).

Subsection (1)(h)(VI) cannot be used as a basis for private cause of action. Sections [10-3-1101](#) through 10-3-1112 provide for state regulation of insurance companies and do not create a private cause of action. *Schnacker v. State Farm Mut. Auto. Ins. Co.*, 843 P.2d 102 (Colo. App. 1992).

Award of attorney fees not authorized by language of subsection (1)(h)(VII). *Cont'l W. Ins. Co. v. Heritage Estates Mut. Hous. Ass'n*, 77 P.3d 911 (Colo. App. 2003).

Duties of agent selling replacement insurance. An agent selling life insurance must determine whether new insurance will replace existing insurance and, if so, the agent must furnish the applicant with a "disclosure statement" detailing the costs, advantages, and disadvantages of the proposed replacement insurance, and a notice warning applicants about problems that may arise from replacement. *Augustin v. Barnes*, 41 Colo. App. 533, 592 P.2d 9 (1978), aff'd in part and rev'd in part, 626 P.2d 625 (Colo. 1981).

Insurance agents have standing to assert alleged violation of insured's constitutional rights when compliance with a regulation would result directly in the violation of the insured's right to privacy in those cases where the insured has requested confidentiality. *Augustin v. Barnes*, 626 P.2d 625 (Colo. 1981).

Preemption of insurance provisions under the federal "Employee Retirement Income Security Act". ERISA does not preempt persons from state laws which regulate insurance, banking, and securities. The test for whether a state law falls under the "business of insurance" is: (1) Whether the state law has the effect of transferring or spreading a policy holder's risk; (2) whether the state law is an integral part of the policy relationship between the insurer and the insured; and (3) whether the state law is limited to entities within the insurance industry. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

Subsection (1)(h) relating to unfair claim settlement practices meets only the third requirement of the test and therefore does not regulate insurance. *Denette v. Life of Indiana Ins. Co.*, 693 F. Supp. 959 (D. Colo. 1988).

This section does not "regulate" insurance because it fails to satisfy the first two criteria of the test. *Kelley v. Sears, Roebuck & Co.*, 882 F.2d 453 (10th Cir. 1989).

"Misrepresentation" as used in this section was demonstrated by company's failure to warn its insureds of impending withdrawal from market at time of change of policy form, failure to implement promised gradual plan of withdrawal, ambiguous price term in offer of "tail coverage", false assurances of stability, and failure to make offered "tail coverage"

available to those who desired it. *Hartford Fire Ins. Co. v. Colo. Div. of Ins.*, 824 P.2d 76 (Colo. App. 1991).

Misstatements by agent of insurance company as to the policy's eligibility terms and the scope and types of coverage involved constitute actionable misrepresentation under subsection (1)(a)(I). *Life Investors Ins. Co. of Am. v. Smith*, 833 P.2d 864 (Colo. App. 1992).

Selling agent who misstates terms of insurance policy makes a misrepresentation of the terms, benefits, and conditions of such policy. *Life Investors Ins. Co. of Am. v. Smith*, 833 P.2d 864 (Colo. App. 1992).

Suggestion by insurance company's attorney that insured submit to a polygraph examination and settlement proposal by insurance company's attorney that would require insured to drop other claims violated section. *People v. McClung*, 953 P.2d 1282 (Colo. 1998).

A violation of this section does not constitute a per se violation of the Colorado Consumer Protection Act, part 1 of article 1 of title 6. This section does not create a private right of action against an insurer for a deceptive trade practice. *Coors v. Sec. Life of Denver Ins. Co.*, 91 P.3d 393 (Colo. App. 2003), *aff'd* by operation of law, 112 P.3d 59 (Colo. 2005).

An insurer engages in an unfair method of competition and an unfair or deceptive trade practice when: It adopts a false or misleading scheme to induce an insured to accept a unilateral change to the insured's express insurance policy; denies the insured a refund for the insured's charges; and charging the insured a termination fee. Such unfair method of competition or unfair or deceptive trade practice is actionable by the insurance commissioner. *Coors v. Sec. Life of Denver Ins. Co.*, 91 P.3d 393 (Colo. App. 2003), *aff'd* by operation of law, 112 P.3d 59 (Colo. 2005).