

Rebates, Inducements & Gifts



**McHugh
Consulting
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McHugh Consulting Resources, Inc.
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What is Rebating?

- Rebating is the act of offering anything of value as an inducement to purchase insurance that is not included in the terms of the policy.
- In other words Rebates are **incentives**, in the form of **gifts** or other consideration, given to **induce** customers to purchase insurance coverage.



Rebating



Most states have enacted Anti-Rebating Statutes substantially similar to the NAIC Model Unfair Trade Practices Act (Model 880) (the “Act”).

Section 3 of the Act **prohibits** engaging in any trade practice which is defined as an **unfair method of competition** or an **unfair or deceptive act or practice**.

Section 4 of the Act **defines unfair methods of competition and unfair or deceptive acts or practices**.

Unfair Trade Practices Defined

- A. Misrepresentations & false advertising of insurance policies
- B. False information and advertising generally
- C. Defamation
- D. Boycott, coercion and intimidation
- E. False statements & entries
- F. Stock operations & advisory board contracts
- G. Unfair discrimination

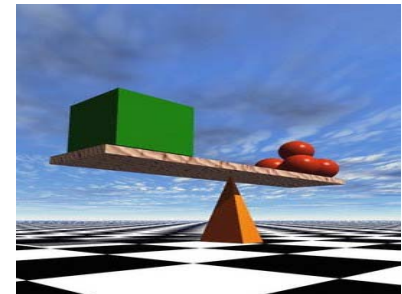


H. Rebates

(1) Except as otherwise expressly provide by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health 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.

Purpose of Rebating & Inducement Provisions

- To require insurers and producers to market insurance in a nondiscriminatory manner to like insureds and potential insureds; and
- To foster competition by leveling the playing field for the small and large insurers and producers that operate in the State.



Some of the most obvious rebates that violate anti-rebating

- Cash return of part of the premium of the policyholder.



- Acceptance of an amount less than the full premium payable, ordinarily through a reduction in the producer's commission.

- Gift cards in amounts over a certain dollar value for attending seminars.



A few less obvious rebates that violate anti-rebating

- Providing goods or services at no cost or at a discount.
- Retaining and compensating the policyholder or a representative of the policyholder for acting in a fictitious “advisor” role.

Investigations & Enforcements



- Example - a state department conducted an investigation of the marketing material that offered a **free \$100 gift card to a restaurant**.
 - This was viewed as an **illegal inducement** in the sale or solicitation of insurance products.
 - In order to avoid formal litigation of the matter, the producer felt it was in their best interest to enter into a settlement with the state and was fined **\$1,500**.

Agent Responsibility



- Most states have law/regulations or Bulletins that provide limits or prohibitions on the use of rebates and gifts as an inducement to purchase insurance.
- Since most states prohibit gifting by agents, you should not use mass advertising promoting the offer of an inducement, rebate or gift.
- All agents are responsible for following the rules of the state(s) where they are conducting business.
- The **ACLI Law Survey on Inducements, Rebates, and Gifts** may be a helpful resource for you in determining state prohibitions and express dollar limits on gifts.

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