

Rebating and Illegal Inducements

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Office of Insurance (the "Office") on the specified issue. The Advisory Opinion is not legally binding on either the Office or the reader.

Kentucky Office of Insurance
Advisory Opinion 2004-05

TO: ALL INSURERS AUTHORIZED TO TRANSACT BUSINESS IN KENTUCKY
THE INDEPENDENT INSURANCE AGENTS OF KENTUCKY, INC.
THE PROFESSIONAL INSURANCE AGENTS OF KENTUCKY
ALL AGENTS LICENSED TO TRANSACT BUSINESS IN KENTUCKY

FROM: MARTIN J. KOETTERS, EXECUTIVE DIRECTOR
KENTUCKY OFFICE OF INSURANCE

RE: REBATING/ILLEGAL INDUCEMENTS

The Office of Insurance has received several complaints and inquiries regarding the business practice by some licensees of offering free administrative services in exchange for the clients insurance business. The free services are offered for both insurance and non-insurance programs, such as Section 125 plans. This Advisory Opinion clarifies the Office’s historic position regarding that business practice.

KRS 304.12-090 prohibits an insurer, employee, or representative from giving, directly or indirectly, anything of value as an inducement to insurance or after insurance has been effected:

Rebates prohibited.

(1) No insurer or employee or representative thereof shall knowingly charge, demand, or receive a premium for any insurance policy except in accordance with the applicable filing on file with the commissioner. No such insurer, employee, or representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducements whatever, or give, sell, or purchase, or offer to give, sell, or purchase anything of value whatsoever not specified in the policy, except to the extent provided for in such applicable filing.

KRS 304.12-100 prohibits illegal inducements in connection with any insurance:

304.12-110 Illegal inducements prohibited.

No insurer, insurance producer as defined in KRS 304.9-020(4), or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, sell, buy, or offer or promise to buy, sell, give, promise, or allow to the insured or prospective insured or to any other person on his behalf in any manner whatsoever:

- (1) Any employment;
- (2) Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto;
- (3) Any advisory board contract, or any similar contract, agreement or understanding, offering, providing for, or promising any profits or special returns or special dividends; or
- (4) Any prizes, goods, wares, merchandise, or property of an aggregate value in excess of twenty-five dollars (\$25).

The insurance business practice of offering administrative services at a free or reduced cost in connection with an insurance transaction violates the statutes quoted above. Any violators will be subject to administrative action, which may include civil penalties or sanctions against the license if, after a hearing in accordance with the law, they are deemed to be guilty of such violation.

This Advisory Opinion has been issued industry-wide and is intended as notice to all insurers and agents that such practices cannot be tolerated. Insurers are charged with notifying their appointed agents of this Office policy. Professional associations are charged with notifying their memberships. Any questions concerning these matters should be directed to Martin J. Koettters, Executive Director of the Kentucky Office of Insurance.

 /s/ Martin J. Koettters
Martin J. Koettters, Executive Director
Kentucky Office of Insurance

Date: November 1, 2004