

**COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
OFFICE OF INSURANCE**

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 2007-01**

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

FROM: JULIE MIX MCPEAK, EXECUTIVE DIRECTOR
KENTUCKY OFFICE OF INSURANCE

RE: KRS 304.12-110: ILLEGAL INDUCEMENTS PROHIBITED

DATE: JULY 16, 2007

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The Kentucky Office of Insurance (the "Office" or "KOI") has received complaints that relate to the interpretation of KRS 304.12-110(4). During the handling of these complaints, the Office has found that Bulletin 86-5 does not, to the extent the bulletin provides guidance as to the interpretation of KRS 304.12-110(4), reflect the Office's current opinion or the opinion of the Office in the most recent past. Further, the interpretation of KRS 304.12-110(4) fails to give consideration to the plain language of the statute and legislative intent. Consequently, this Advisory Opinion is being issued in order to clarify how the Office applies the statutory prohibitions against illegal inducements as stated in KRS 304.12-110(4) specifically.

KRS 304.12-110 provides, in pertinent part, as follows:

No insurer, insurance producer as defined in KRS 304.9-020(7), 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:...

(4) Any prizes, goods, wares, merchandise, or property of an aggregate value in excess of twenty-five dollars (\$25).

Over twenty years ago, the interpretation of KRS 304.12-110(4) was based on Bulletin 86-5, which states in relevant part: "This Department interprets that \$1 [Now \$25] value limitation to mean the cost of the gift to the insurer rather than its actual cash value." The Office no longer agrees with the previous interpretation of this statutory provision and, this Advisory Opinion shall supersede any portion of Bulletin 86-5 that is in conflict with the opinion expressed herein.

Per KRS 304.12-110(4), if an insurance company chooses to offer gratuities to its consumers the item must be of "an aggregate value" of twenty-five dollars (\$25) or less. It has been argued by insurers that this aggregate value is determined by the cost of the prize, goods, wares merchandise or property to the insurer. However, such an interpretation does not consider the plain language of the statute. Rather than the cost, the statute requires that the Office consider the "value" of the prizes, goods, and wares. Further, were insurers or other persons allowed to offer higher valued items obtained at a price lower than the twenty-five dollar (\$25) statutory cap, the legislative intent of the statute, to ensure that there is no undue influence on consumers in the insurance marketplace, would be circumvented by the party's ability to strike an undisclosed bargain.

In summary, when determining whether a violation of KRS 304.12-110(4) exists, the Office will consider the aggregate value of the prizes, goods, and wares rather than the cost of such items. Any person who willfully violates KRS 304.12-110(4), or any rule, regulation or provision of the Insurance Code is subject to suspension or revocation of their certificate of authority or license, or an administrative fine, or any combination of these actions, pursuant to KRS 304.2-140.

Any questions concerning these matters should be directed to Leigh Powers, the Office of Legal Services, at (502) 564-6032.

s/ Julie Mix McPeak

Julie Mix McPeak, Executive Director
Kentucky Office of Insurance

On this 23rd day of July, 2007.