

Advisory Opinion 2005-04; Premium Finance Company Referral Fees to Agents

**COMMONWEALTH OF KENTUCKY
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
FRANKFORT, KENTUCKY**

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 2005-04

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: PREMIUM FINANCE COMPANY REFERRAL FEES TO AGENTS

The Office of Insurance has received several complaints and inquiries regarding the business practice in which a premium finance company pays a referral fee to an agent that directs business to the premium finance company. This Advisory Opinion clarifies the Office's position regarding that business practice.

KRS 304.30-050(1)(e) prohibits a premium finance company from paying any part of the service charge to an agent or the agent's employee:

304.30-050 Revocation and suspension of licenses.

- (1) The commissioner may revoke or suspend the license of any premium finance company when and if, after investigation, it appears to the commissioner that:

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(e) The company has been rebating part of the service charge as allowed and permitted by KRS 304.30-090 to any insurance agent or any employee of an insurance agent or to any other person as an inducement to the financing of any insurance policy with the premium finance company.

KRS 304.12-110 prohibits the insurer or its agents from giving the insured or prospective insured anything of value in connection with an insurance transaction.

304.9-440 Probation, suspension, revocation, and refusal of license -- Grounds -- Penalty.

(1) The commissioner may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twelve (12) months, revoke, or refuse to issue or renew any license issued under this subtitle or any surplus lines broker, viatical settlement broker, or viatical settlement provider license, or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for any one (1) or more of the following causes:

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(b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner;

(h) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;

The insurance business practice of paying an agent for referring an insurance customer to a premium finance company 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 the Financial Standards Division at the Kentucky Office of Insurance.

Martin J. Koettters

Martin J. Koettters, Executive Director
Kentucky Office of Insurance

Date: April 11, 2005