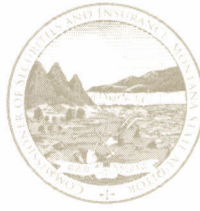


COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

ADVISORY MEMORANDUM

To: All Licensed Insurers and Agents Doing Business in Montana

From: MONICA J. LINDEEN – Commissioner of Securities and Insurance,
Montana State Auditor

Date: May 14, 2013

DEFINING VALUABLE CONSIDERATION REGARDING REBATING

The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), has received several questions concerning what constitutes “valuable consideration” as it applies to rebating. The questions center around the amounts allowed for promotional giveaways, free dinners, raffles, referral rewards, and other similar practices. This memorandum seeks to clarify the CSI’s interpretation.

Montana Code Annotated § 33-18-208(2) defines rebating as it relates to life, disability, and annuities. The statute reads, in pertinent part, that “no person shall knowingly: ...pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity any rebate of premiums...or any valuable consideration or inducement whatever not specified in the contract.” Section 33-18-208(4) goes on to clarify this by stating that a person may not “offer, promise, or give anything of value whatsoever not specified in the contract.” Regarding property, casualty, or surety, § 33-18-210(1)(c) prevents a person from giving “valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.”

The CSI has interpreted the phrase “valuable consideration” to mean a sum greater than \$5.00 since a 2002 letter ruling. However, it has come to the CSI’s attention this amount is not on par with other states’ opinion interpretations of similar language in their respective insurance codes.¹ Furthermore, the low amount creates an impractical barrier to marketing not present in other industries. Therefore, in order to bring clarity and consistency, the CSI now interprets “valuable consideration” to be an amount greater than \$25.00 received per person, per year. This solely affects the amount of consideration an insurer or agency may provide and in no way affects letter opinions made by the CSI interpreting permitted or

¹ Baseline rates for surrounding states: South Dakota and Washington - \$25.00; North Dakota - \$50.00; Idaho - \$100.00. These states identify rebating limits by statute, rule, letter opinions, and advisory memoranda. Montana has defined rebating limits only through the CSI letter opinions.

prohibited activities. Those letter opinions rely on a two-part test to determine whether or not something is rebating under the statute: the consideration must be nominal (i.e. under \$25.00), and it must be available to all. If either of the two parts is not met, the consideration is considered a rebate. The only time the nominal value rule may be bypassed is for a raffle. The raffle test allows for raffling items valued at greater than \$25.00 so long as the raffle is available to all and the sale of insurance is completely independent of the raffle.

Below are several scenarios where the rebating statutes are implicated and the CSI's treatment thereof:

Scenario A: A life insurance firm wants to offer free meals to persons attending a seminar hosted by the firm.

So long as the aggregate value of the dinner and any promotional items given out at the dinner is under \$25.00 per attendee, this is acceptable.

Scenario B: At a trade show, an agency seeks to hold a raffle with three separate prizes. Those prizes are a color television (valued at \$500.00), a microwave (\$150.00), and a piece of pizza (\$3.00).

Clearly the pizza falls under the \$25.00 threshold and can be offered regardless of circumstance. The microwave and the television, however, can only be offered if the agency satisfies the raffle test. Therefore, the drawing (and the chance of winning the drawing) must first be available to all persons at the show, whether or not they are potential customers. Second, the drawing must be wholly independent of the actual purchase of insurance. Given the limited fact scenario presented, it appears this test is met as well, so long as there are no insurance applications being filled out at the trade show.

Scenario C: An insurance agency wants to make a donation of \$30.00 to an unnamed charity for each insurance policy purchased through one of its agents. It wishes to advertise this fact.

Charity donations in certain situations are generally considered prohibited inducements when their values exceed \$25.00. However, this is not such a situation for at least two reasons. First, the referrer will not select the charity. Second, the insurer or agency will not identify the referrers in the course of making the donation. Thus, the donation has limited value to each referrer individually, and is more akin to a general charitable contribution.

Scenario D: An insurance agency credits a policyholder account \$50.00 for each referral it receives from an active policyholder.

This type of activity puts the insured in the position of actively soliciting persons on behalf of the insurance agency. In addition to constituting rebating (because the value exceeds \$25.00), the scenario also implicates the producer licensing statutes. Those statutes prohibit an unlicensed individual from soliciting insurance. See Generally §§ 33-17-102(22) and 33-17-201(1).

For any questions regarding this advisory memorandum, call the CSI Legal Bureau at (406) 444-2040.