Rebating and inducement under the Insurance Code

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Written by Atty. Dennis B. Funa

SECTION 370 of the Amended Insurance Code prohibits rebating and inducement by insurers or agents. Some writers, though, would classify inducement as a topic already covered by rebating. Rebating includes the sharing of agent's commissions to the insured. While rebating is accepted and welcome in most industries, in insurance it is not. Insurance companies should, therefore, keep their marketing activities in line with the antirebating law.

Rebating "is a practice whereby something of value is given to sell the policy that is not provided form in the policy itself." It is "returning a portion of the premium or the agent's / broker's commission on the premium to the insured or other inducements to place business with a specific insurer." Rebates "are incentives, in the form of gifts or other consideration, given to induce customers to purchase insurance coverage from a particular insurer." They have been described as "side deals" that are not included in the insurance policy. They have also been described as "extra-contractual benefits".

Rebates can be "in the form of cash, gifts, services, payment of premiums, employment, or almost any other thing of value." Rebating is prohibited and is considered an unfair practice in the insurance industry. It is, moreover, an ethical issue. According to Richard M. Weber, president of Ethical Edge Inc., "When you complicate the solicitation and underwriting process with what appears to be a meaningful incentive, you alter normal conditions, causing the actuarial science to be thrown off kilter." In other words, it undermines the entire actuarial and underwriting practice. He adds, "The fear is if you introduce a financial incentive to buy insurance, you introduce a different sort of population into the mix—one that is buying insurance for the wrong reasons." The most common form of rebating is a cash return of part of the premium or the acceptance of an amount less than the full premium payable. There are other forms of rebating, such as giving goods or services at no cost or at a discount. In one case, it was ruled that rebating is committed by giving the insured a favorable interest rate on a loan used to pay the premium. Several state regulators in the US have issued advisory bulletins that insurers are prohibited from providing free or discounted value-added services unrelated to the sale of the insurance, unless it is set forth in the insurance policy.

The National Association of Insurance Commissioners (NAIC) of the US adopted a model provision on unfair methods of competition prohibiting rebates. This provision was adopted in the Philippine Insurance Code. Massachusetts was the first state to prohibit rebating in 1887 over issues of insurer solvency. In 1889 New York passed the first statute to adopt the antidiscrimination statute. It required that everyone in the class had to pay the same price for the same policy. Massachusetts, Maine and Vermont soon followed between 1889 and 1890. By 1895, 21 states had passed antirebate laws. By 1895, some 30 insurance companies signed an antirebate agreement. Nonetheless, by 1899 the agreement collapsed and rebating continued. In 1906 the Armstrong Committee was created by the New York legislature to investigate the insurance industry. It moved to strengthen the antirebate statute and sanctioned the receipt of rebates, as well. Soon reforms were on the way across the US. Subsequently, the NAIC adopted the Model Unfair Trade Practices Act, which defined and prohibited rebating.

Dennis B. Funa is currently the deputy insurance commissioner for Legal Services of the Insurance Commission. E-mail: dennisfuna@yahoo.com.