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Bulletin 09-01

DATE: February 11, 2009
TO: All Licensees
FROM: Merle Scheiber, Director
RE: Rebating Laws

This Bulletin is intended to clarify issues relating to South Dakota rebating laws. Whether a particular situation constitutes rebating is dependent upon the facts specific to that situation. In general, rebates are not permissible under South Dakota law. SDCL 58-33-14 (life and health) and 58-33-24 (property/casualty) generally prohibit any person or company from offering any inducement, discount, or incentive that is not specified in the policy. There is an exception under SDCL 58-33-74 whereby an agent may offer gifts to insured, prospective insureds, or others for advertising purposes or promotional programs with an invoice value no greater than \$25. The following hypothetical questions and answers are designed to provide guidance as to what is permissible and impermissible under the law:

1) "FREE GIFT FOR A QUOTE"

Question: An agent offers advertises in the local media that he will give a free coffee mug (under \$25 value) to anyone just for coming in for a quote on auto insurance. Is this an illegal rebate?

Answer: No, this action is permissible under South Dakota law. The gift of a free coffee mug that is not tied to the purchase of insurance and is under the \$25 limit stated in SDCL 58-33-74 is allowed. However, if the agent required that the prospective customer apply for the coverage as a condition of receiving the gift, then it would not be permissible.

2) "MONEY ON RENEWAL"

Question: An agent offers to give \$10 cash to an existing client because the policy offered through the agent costs \$10 more upon renewal than another policy available to the customer. Is this an illegal rebate?

Answer: This would be considered an illegal rebate under SDCL 58-33-24. The \$10 cash payment is not a promotional item. It is also tied to the purchase of the policy, so it is not exempt under SDCL 58-33-74.



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3) "QUARTERLY DRAWING"

Question: An agent is seeking to increase referrals to his agency. The agency would like to request referrals from its client and/or realtors, mortgage brokers and friends. Those submitting referrals would be eligible for a quarterly drawing for a \$300 Gift Card. The person submitting the referral would be eligible regardless, even if none of the referrals resulted in a sale. Does this comply with the law?

Answer: Yes it would be permissible, provided all of those submitting referrals are eligible for the drawing. There must be no obligation to purchase insurance and open to clients and non-clients alike. Referrals are different than gifts to clients. The referral statute (SDCL 58-30-174) has no dollar limit as to the amount of the referral. However, all referrals must be flat amounts that do not vary based upon how many sales are made and do not vary based upon premiums or commissions.

4) "FREE LUNCHES"

Question: An agent likes to provide free lunches at local restaurants to his clients in exchange for his clients purchasing insurance from his agency. Would this be considered a rebate?

Answer: This would be considered a rebate and is not permissible. No insurer or any employee or representative thereof may 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 valuable consideration or inducement whatever. Providing free lunches to clients in exchange for the clients purchasing insurance would violate this statute.

5) "GAS GIVEAWAY"

Question: An insurance company wants to show its appreciation to a city for being a "safe driving" community. From 6:00 a.m. to 10:00 a.m. it wants to give away up to 15 gallons of gas per vehicle at a local gas station. The giveaway is open to the general public, regardless where insured. The price for gas at the time is \$1.79/gallon. The company will have representatives on hand pumping gas and a company banner is present. The representatives will not be handing out any promotional material. Does this comply with South Dakota law?

Answer: The gasoline give-away would be considered as advertising or promotional and therefore subject to the \$25 limitation. The fair market value of the gasoline give-away (15 gallons at \$1.79/gallon) exceeded the \$25 limit stated in SDCL 58-33-74 and therefore would not be permissible. A similarly structured gasoline give-away that limited the per customer amount to \$25 or less would be allowed.