

AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated
2 Statutes, in regulation of insurers and related persons
3 generally, providing for rebates and inducements; and making
4 repeals.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 40 of the Pennsylvania Consolidated
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 47

10 REBATES AND INDUCEMENTS

11 Sec.

12 4701. Definitions.

13 4702. Rebates and inducements.

14 4703. Advertisements.

15 4704. Pilot or testing program.

16 4705. Penalties.

17 4706. Regulations.

18 § 4701. Definitions.

1 The following words and phrases when used in this chapter
2 shall have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Commissioner." The Insurance Commissioner of the
5 Commonwealth.

6 "Customer." A policyholder, potential policyholder,
7 certificate holder, potential certificate holder, insured,
8 potential insured or applicant.

9 "Insurance policy." A certificate, excluding a certificate
10 of liability insurance, or contract of insurance, indemnity,
11 health care, suretyship, title insurance or annuity issued,
12 proposed for issuance or intended for issuance by an insurance
13 producer or insurer.

14 "Insurance producer." A person licensed or approved by the
15 department to sell, solicit or negotiate insurance policies.

16 "Insurer." Any of the following that is licensed or approved
17 by the department:

18 (1) An insurance company, association or exchange.

19 (2) A reciprocal or interinsurance exchange.

20 (3) A health maintenance organization.

21 (4) A preferred provider organization.

22 (5) A professional health services plan corporation
23 subject to Chapter 63 (relating to professional health
24 services plan corporations).

25 (6) A hospital plan corporation subject to Chapter 61
26 (relating to hospital plan corporations).

27 (7) A fraternal benefits society.

28 (8) A beneficial association.

29 (9) A Lloyd's insurer.

30 (10) An eligible surplus lines insurer.

1 § 4702. Rebates and inducements.

2 (a) Unfair or deceptive acts or practices.--Except as
3 otherwise expressly provided by law, each of the following is
4 deemed to be an unfair or deceptive act or practice in the
5 business of insurance:

6 (1) Knowingly permitting, offering to make or making an
7 insurance policy, or an agreement as to the insurance policy,
8 other than as plainly expressed in the insurance policy that
9 is issued.

10 (2) Paying, allowing or giving, or offering to pay,
11 allow or give, directly or indirectly, as inducement to an
12 insurance policy, any of the following not specified in the
13 insurance policy:

14 (i) A rebate of premiums payable on the insurance
15 policy.

16 (ii) A special favor or advantage in the dividends
17 or other benefits on the insurance policy.

18 (iii) Valuable consideration or inducement.

19 (3) Giving, selling or purchasing, or offering to give,
20 sell or purchase, as inducement to an insurance policy, any
21 of the following not specified in the insurance policy:

22 (i) Stocks, bonds or other securities of a company
23 or other corporation, association or partnership.

24 (ii) Any dividends or profits accrued on the items
25 described in subparagraph (i).

26 (iii) Anything of value whatsoever.

27 (b) Construction.--Nothing in subsection (a) shall be
28 construed as including within the definition of discrimination
29 or rebates any of the following practices:

30 (1) In the case of an insurance policy involving life

1 insurance or an annuity, paying bonuses to policyholders or
2 otherwise abating their premiums in whole or in part out of
3 surplus accumulated from nonparticipating insurance, if the
4 bonuses or abatement of premiums are fair and equitable to
5 policyholders and for the best interests of the company and
6 its policyholders.

7 (2) In the case of a life insurance policy issued on the
8 industrial debit plan, making allowance to policyholders who
9 have continuously for a specified period made premium
10 payments directly to an office of the insurer in an amount
11 that fairly represents the saving in collection expenses.

12 (3) Readjusting the rate of premium for a group
13 insurance policy based on the loss or expense under the group
14 insurance policy, at the end of the first or any subsequent
15 policy year of insurance under the group insurance policy,
16 which may be made retroactive only for that policy year.

17 (4) Engaging in an arrangement that would not violate:

18 (i) 12 U.S.C. § 1972 (relating to certain tying
19 arrangements prohibited; correspondent accounts), as
20 interpreted by the Board of Governors of the Federal
21 Reserve System; or

22 (ii) 12 U.S.C. § 1464(q) (relating to Federal
23 savings associations).

24 (5) Offering or providing, by an insurer or insurance
25 producer, by or through employees, affiliates or third-party
26 representatives, a value-added product or service at no or
27 reduced cost if the product or service is not specified in
28 the insurance policy and if all of the following requirements
29 are met:

30 (i) The product or service relates to the insurance

1 coverage.

2 (ii) The product or service is primarily designed to
3 satisfy one or more of the following:

4 (A) Provide loss mitigation or loss control.

5 (B) Reduce claim costs or claim settlement
6 costs.

7 (C) Provide education about liability risks or
8 risk of loss to persons or property.

9 (D) Monitor or assess risk, identify sources of
10 risk or develop strategies for eliminating or
11 reducing risk.

12 (E) Enhance health.

13 (F) Enhance financial wellness through items
14 such as education or financial planning services.

15 (G) Provide post-loss services.

16 (H) Incentivize behavioral changes to improve
17 the health or reduce the risk of death or disability
18 of a customer.

19 (I) Assist in the administration of the employee
20 or retiree benefit insurance coverage.

21 (iii) The cost to the insurer or insurance producer
22 offering the product or service to a customer is
23 reasonable in comparison to that customer's premiums or
24 insurance coverage for the policy class.

25 (iv) If the insurer or insurance producer is
26 providing the product or service, the insurer or
27 insurance producer has ensured that the customer is
28 provided with contact information to assist the customer
29 with questions regarding the product or service.

30 (v) The availability of the product or service is

1 based on documented objective criteria and offered in a
2 manner that is not unfairly discriminatory. The insurer
3 or insurance producer shall maintain the criteria and
4 produce the criteria upon request by the department.

5 (c) Permissible activities.--An insurer or insurance
6 producer may:

7 (1) Offer or give noncash gifts, items or services,
8 including meals to or charitable donations on behalf of a
9 customer, in connection with the marketing, sale, purchase or
10 retention of insurance policies, in an amount not exceeding
11 \$125 on an annual, aggregate basis. The following apply:

12 (i) The commissioner may increase the amount by
13 transmitting notice of the increase to the Legislative
14 Reference Bureau for publication in the next available
15 issue of the Pennsylvania Bulletin. The increase shall
16 become effective upon publication of the notice in the
17 Pennsylvania Bulletin.

18 (ii) The offer or gift shall be made in a manner
19 that is not unfairly discriminatory and may not be
20 contingent on the purchase or retention of insurance.

21 (2) Offer or give noncash gifts, items or services,
22 including meals to or charitable donations on behalf of a
23 customer, to commercial or institutional customers in
24 connection with the marketing, sale, purchase or retention of
25 insurance policies, if the cost is reasonable in comparison
26 to the premium or proposed premium and the cost of the gift
27 or service is not included in any amounts charged to another
28 person or entity. The offer or gift shall be made in a manner
29 that is not unfairly discriminatory and may not be contingent
30 on the purchase or retention of insurance.

1 (3) As follows:

2 (i) Conduct a raffle or drawing to the extent
3 permitted by State law, if:

4 (A) there is no financial cost for entrants to
5 participate;

6 (B) the raffle or drawing does not obligate
7 participants to purchase insurance;

8 (C) the prizes are not valued in excess of \$125;
9 and

10 (D) the raffle or drawing is open to the public.

11 (ii) The commissioner may increase the amount under
12 subparagraph (i)(C) by transmitting notice of the
13 increase to the Legislative Reference Bureau for
14 publication in the next available issue of the
15 Pennsylvania Bulletin. The increase shall become
16 effective upon publication of the notice in the
17 Pennsylvania Bulletin.

18 (iii) The raffle or drawing shall be offered in a
19 manner that is not unfairly discriminatory and may not be
20 contingent on the purchase or retention of insurance.

21 § 4703. Advertisements.

22 An insurer or insurance producer, or a representative of an
23 insurer or insurance producer, may not offer or provide
24 insurance as an inducement to the purchase of another policy or
25 otherwise use the words "free," "no cost" or words of similar
26 import in an advertisement.

27 § 4704. Pilot or testing program.

28 If an insurer or insurance producer does not have sufficient
29 evidence but has a good faith belief that the product or service
30 meets the criteria specified under section 4702(b)(5)(ii)

1 (relating to rebates and inducements), the insurer or insurance
2 producer may provide the product or service to consumers in a
3 manner that is not unfairly discriminatory as part of a pilot or
4 testing program for no more than one year. The following apply:

5 (1) The insurer or insurance producer shall notify the
6 department of the pilot or testing program prior to launching
7 the pilot or testing program.

8 (2) The insurer or insurance producer may proceed with
9 the pilot or testing program unless the department objects
10 within 21 business days of the submission of a description of
11 the pilot or testing program to the department.

12 § 4705. Penalties.

13 A violation of this chapter shall be deemed and defined by
14 the commissioner to be an unfair method of competition and an
15 unfair or deceptive act or practice in accordance with the act
16 of July 22, 1974 (P.L.589, No.205), known as the Unfair
17 Insurance Practices Act.

18 § 4706. Regulations.

19 The department may promulgate regulations, as necessary, to
20 implement, administer and enforce this chapter.

21 Section 2. Repeals are as follows:

22 (1) The General Assembly declares that the repeals under
23 paragraph (2) are necessary to effectuate the addition of 40
24 Pa.C.S. Ch. 47.

25 (2) The following are repealed:

26 (i) Section 346 of the act of May 17, 1921 (P.L.682,
27 No.284), known as The Insurance Company Law of 1921.

28 (ii) Sections 645-A and 646-A of the act of May 17,
29 1921 (P.L.789, No.285), known as The Insurance Department
30 Act of 1921.

1 (f) Section 5(b) of the act of July 22, 1974
2 (P.L.589, No.205), known as the Unfair Insurance
3 Practices Act.
4 Section 3. This act shall take effect in 180 days.