



Summary

Time to Dust Off the Anti-Rebate Laws

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By Jamie Parson,
David Marlett and Stuart Powell

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Summary

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In this CIPR Research Brief, we provide a summary of key points made in the 2017 article, with a focus on highlighting potential insurance regulatory solutions discussed by the authors in order to support the work of the Innovation and Technology (EX) Task Force in this area. For more details, see the full paper available at https://www.naic.org/prod_serv/JIR-ZA-36-07-EL.pdf. The views expressed in this publication are the those of the authors and do not represent the views of the NAIC, its officers or its members. All information contained in this document is obtained from sources believed by the NAIC to be accurate and reliable.

Key Points

- Anti-rebating laws were originally enacted to combat unfair and discriminatory sales practices and to protect insurer solvency.
- The NAIC's *Unfair Trade Practices Act* (#880) created a measure of uniformity in the handling of anti-rebating issues across states.
- Many states allow exceptions to anti-rebating rules. The most common types of exceptions are for promotion items, referrals, raffles, charity donations and value-added services.
- New technologies and innovations have created conflicts with anti-rebating laws. State insurance regulators and industry alike are looking to strike the right balance between consumer protection and innovation.



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What Makes Rebating in Insurance So Unique?

Although rebating is common practice in many industries, the dynamics are far more complicated for insurance products than most other kinds of sales for a number of reasons:

1. Rebates are generally offered by the manufacturer itself. However, rebates on insurance products are offered by an intermediary (the agent). Insurance rates are filed with state insurance regulators to have agent commissions built-in. If agents are sharing a portion of those commissions with consumers via rebates, it may suggest to state insurance regulators the filed rates are higher than necessary.
2. Unlike other industries, rebating in insurance is mostly opaque to competitors and other consumers. In theory, this increases competition amongst the intermediaries (agents) but may or may not affect competition between insurers themselves as price changes are not easily observed or responded to.
3. If the rebating process lacks transparency as it traditionally has, rebating could lead to unfair price discrimination. Price discrimination based on risk is foundational to insurance pricing, but price discrimination outside of risk factors conflicts with the fundamental purposes of price regulation—consumer protection and solvency.

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Exceptions

While there is a fair amount of similarity across state laws in terms of anti-rebating language, interpretation has varied over the years via case law or insurance department bulletins or advisory opinions. Some states have also revised the statute to carve out specific exceptions.

Broadly, exceptions fall into one of five categories: 1) promotional items; 2) raffles; 3) referrals; 4) charity donations; and 5) value-added services. The most variation is in the promotional item category, with statutory thresholds for these items ranging from \$10 to \$200. The promotional item limit is an area many states have addressed recently, with Montana, Washington, Maine and others adjusting the amount in the past five or six years. Value-added services encompass many of the emerging technologies used for risk management and identification, such as water sensors given to homeowners for early detection of water damage. Several states have provided a litmus test to help in determining whether value-add services constitute a rebate. Most commonly, these tests require the add-on to be spelled out in the insurance policy or contract, directly related to the policy either for sales/service purposes or risk reduction, and/or be offered equitably to consumers in a nondiscriminatory manner. While referrals, raffles and charity donations have not received the recent attention promotional items and value-adds have in the InsurTech era, they remain a piece of the anti-rebating discussion.

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A Call for Change

There is an important line to be drawn between consumer protection and innovation, and state insurance regulators are the ones tasked with monitoring and evaluating where that line should be. There is also evidence that insurers themselves support some regulation in this area. After California repealed anti-rebating statutes via Proposition 3, many insurers began adding anti-rebating clauses to their agent contracts, effectively continuing the ban on the practice. Therefore, a blanket repeal of anti-rebating laws is not likely to be effective.

A potential starting place for developing a uniform standard may be a carve-out for value-added products or services that directly relate to the policy itself (as a contrast to tickets to a football game for example). Such exceptions could help identify and mitigate risks, lower costs for both insurer and insured, and allow innovation to progress. Another potential option is an approach taken by Connecticut, Louisiana, North Carolina and other states. These states have issued guidance that if all goods or services are offered equally to the public and offered without a requirement to buy insurance, they are permissible.

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A Timeline of Anti-Rebating

- **1887** – Massachusetts enacts the first anti-rebating statute.
- **1889** – New York enacts an anti-discrimination law mandating equal treatment of individuals in the same actuarial class.
- **1895** – Thirty insurers enter into an anti-rebating agreement disallowing the practice by agents.
- **1945** – The federal McCarran-Ferguson Act is passed, and the NAIC develops Model #880.
- **1988** – California repeals anti-rebating with the passage of Proposition 103.
- **1990** – Florida amends the anti-rebating law, keeping rebating illegal but allowing specific exceptions.
- **2009** – present – A wave of states begin raising monetary limits for promotional items, clarifying and revising rules for value-added services, and carving out additional exceptions to anti-rebating laws.
- **2019** – The Innovation and Technology (EX) Task Force begins discussion of anti-rebating amendments to Model #880.

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Survey of Recent State Activity and Guidance on Anti-Rebating:

- [West Virginia Informational Letter 205](#) – clarifies value-added risk mitigation products (September 2019)
- [Alabama Regulation 482-1-163](#) – clarifies rules for value-added products and services (August 2019)
- [Ohio Insurance Bulletin 2019-04](#) – clarifies that value-added products and services are permitted in most circumstances (July 2019)
- [New York Senate Bill \(S.B.\) S3524](#) – allows services to be offered in a non-discriminatory manner (2019–2020)
- [New Hampshire House Bill \(H.B.\) 338](#) – allows value-added giveaways as long as they are offered to everyone equally and are directly related to the insurance policy/contract (signed June 2019)
- [Massachusetts H.B. 1031](#) – permits products or services related to risk assessment and/or risk management (2019)
- [Arizona S.B. 1008](#) – permits products or services designed to minimize or prevent claims (2019)
- [Nevada Bulletin 18-007](#) – provides guidance to the title insurance industry on marketing practices that may be considered illegal inducements/rebates (December 2018)
- [Maryland Bulletin 17-16](#) – clarifies free home warranties qualify as an illegal inducement by title insurance producers (December 2017)
- [Maine Bulletin 426](#) – clarifies statutory language on gifts, prizes and value-added services (October 2017)
- [North Dakota Guidance on Rebating](#) provided to the Innovation and Technology (EX) Task Force (August 2019)
- See also [Appendix A](#) (pg 15)

Prepared by:

Eryn Campbell, MLS | Senior Research Librarian
eecampbell@naic.org

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