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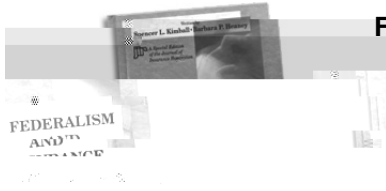
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The *Journal of Insurance Regulation* is sponsored by the National Association of Insurance Commissioners. The objectives of the NAIC in sponsoring the *Journal of Insurance Regulation* are:

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2. To provide wide distribution of rigorous, high-quality research regarding insurance regulatory issues;
3. To make state insurance departments more aware of insurance regulatory research efforts;
4. To increase the rigor, quality and quantity of the research efforts on insurance regulatory issues; and
5. To be an important force for the overall improvement of insurance regulation.

To meet these objectives, the NAIC will provide an open forum for the discussion of a broad spectrum of ideas. However, the ideas expressed in the *Journal* are not endorsed by the NAIC, the *Journal's* editorial staff, or the *Journal's* board.

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Anti-rebate laws were introduced more than 100 years ago, after agents' use of rebates threatened the solvency of life insurance companies and raised questions around unfair discriminatory practices. Supporters of the initial law claimed that they provided market stability, prevented unfair discrimination and kept the focus on the quality of the insurance product versus the size of a rebate. On the other hand, opponents suggest the law infringes upon their rights to competition and stifles innovation. Today, most states have enacted anti-rebate statutes and many have enacted the NAIC model *Unfair Trade Practices Act* (#880). Over time, several of these states have carved exceptions to the anti-rebating law. While many

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“It’s time to dust off the anti-rebate laws...and see if they really serve the purpose they were intended to serve when they were put on the books in a totally different age.”¹

Rebating occurs when an agent or broker discounts or shares their commission with an insured. Historically, rebates were used in the life insurance industry as an agent’s way to induce a customer to purchase a life insurance policy. The first set of laws to regulate this practice were introduced more than 100 years ago, after rebating began to threaten the solvency of life insurance companies and raised questions around unfair discriminatory practices. Rebating is no longer an issue exclusive to life insurance. In fact, agents who sell most insurance products are impacted by anti-rebating laws. Supporters of anti-rebate laws claim it provides market stability by leveling the playing field, preventing unfair discrimination and keeping the focus on the quality of the insurance product versus the size of the rebate. However, opponents argue that current laws are outdated, thereby leaving little room for innovation in marketing and sales. Because of the limitations imposed by the dated laws, they infringe upon a business’ right to competition.

Rebating in the marketing of consumer goods is a well-known and widely utilized competitive strategy, both with manufacturers and retailers.² Based on game theory, product rebating is one solution, albeit an inferior one, to a competitive dilemma.³

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In every scenario, an individual competitor is made better off by lowering price, but if both competitors lower the price, the profit for each is reduced. Cooperation, without either lowering price, is the optimal outcome, maximizing profits for each. Realistically, however, the two competitors who do better when they cooperate have incentives not to cooperate (or are not allowed to cooperate).

Rebating, if inserted into this dilemma, is simply a form of price reduction. In product rebating, however, the price reduction (and thus the dilemma) is more straightforward than it is for insurance rebating.

Why are the behavioral economics of insurance pricing more complicated

and similarities; and 3) a discussion weighing the options in favor of and against repeal, followed by recommendations for legislatures considering a change to their current laws.

Massachusetts was the first state to enact an anti-rebating statute in 1887.⁴ Two years later, New York followed suit with an “anti-discrimination” law, which prohibited discrimination between individuals from the same actuarial class (Conniff, 1986). Within three years, 10 states enacted similar laws and, by the early 1900s, most states enacted some form of an anti-rebate law. These laws were created in response to the then common life insurance practices where agents paid rebates to encourage sales (Sherman and Wen, 2009). This practice often led to agents demanding a higher commission to make up for the rebate they gave the customer, which, in turn, raised a concern for the solvency of the insurer. Additionally, it raised the question of whether this practice resulted in unfair discrimination, as the rebates were not offered consistently to all clients.

While a majority of states embraced th

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(Conniff, 1986). In 1990, Florida recodified the law confirming rebating is illegal but provided specific categories of exceptions (Florida Association of Insurance Agents, 2011).

Michigan courts viewed the law differently and upheld the constitutionality of the state's anti-rebate statute. In *Katt v. Commissioner of Insurance*,⁷ the court held the plaintiff failed to show that the anti-rebate laws were “utterly without rational foundation” (Harnett, 2011).

Although many states have enacted NAIC Model #880, the interpretation of the law varies from state to state. Some states have carved exceptions to the statute through case law, while others have enacted revisions to their statute that list out the exceptions. The remaining states have created exceptions to the anti-rebate statutes through insurance bulletins or advisory opinions. Even though many states

Some states allow an agent or broker to conduct a raffle as long as the entry is not connected to the sale of an insurance product and is within a specific dollar

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In 2014, The Utah Department of Insurance imposed regulation on Zenefits, stating it had to start charging more for its services or face daily fines (Montgomery, 2015). Zenefits saw this as an opportunity to be a trailblazer for technology and its place in the insurance industry. In a 17-page letter to the insurance department, Zenefits' attorney criticized Utah's interpretation of the statute, stating:

Banks routinely offer 'free' checking accounts to customers

Opponents of Senate Bill 5242 argue that the language of the bill precludes a level playing field for agents. Therefore, larger agencies with higher budgets can entice consumers by incentives including innovative technology. If the larger players control the marketplace, it will eliminate competition and as a result have negative consequences on the consumer if the larger entities are able to control pricing. Supporters of the bill contend the anti-rebating laws are supposed to protect consumer, not level the playing field for agents

Opponents also note that while the cost of the value-added services is not directly imposed on the customer, there is a cost associated with offering such a service even in the development and maintenance of the software. Zenefits willingness to absorb the cost and not directly pass on to the insured, can be considered an inducement under NAIC Model #880.

Additionally, services that are not provided by language in the insurance policy are not subject to the regulation of insurance regulators. Therefore, if a consumer does not believe the company is upholding their end of the service contract, their only recourse is through a court system, which can be costly and unrealistic for a small business.

As of October 2017, Senate Bill 5242 has not yet reached the floor in the Senate nor been introduced in the House. In November 2017, an administrative ruling upheld Washington State's order for Zenefits to cease the free distribution of their platform as a violation of the state's rebating laws (Washington OIC Public Affairs, 2017).

Both sides seem to agree a question exists as to whether the lines as drawn currently by anti-rebating statutes appropriately balance consumer protection with consumer innovation. While there would be a loss of opportunity to enhance consumer experience if innovation is stifled, there is reasonable concern that "lifting the lid" on the statutes could lend itself to borderline unethical practices.

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However, there is no indication that this technology will be limited to the commercial setting and needs to be addressed in both the personal and commercial setting.

There is a developing rule among states that support an update to the statute. States like Connecticut, North Carolina, and Louisiana have provided guidance through advisory opinions and legal memorandum that preses1 ge2(at)11.2(at)4i3.7((s5017 Natio t)28o 311.4 1)7i

Legal conflict frequently is at the core of innovation (Wroldsen, pg. 760, 2016). We have seen this conflict in law and insurance play out in shared economy models such as Uber, Airbnb and, now, Zenefits. Brokers are valuable to most insurance transactions and it is hard to commoditize quality customer service.

Legislatures should be open to carving out an exception that ultimately allows services to go beyond the four corners of the policy, as long as they are related to the functioning of the policy. It is difficult to imagine the industry would not be in support(no)-20

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The following tables provide a summary of anti-rebating issues. “NG” refers to provisions not located in the statute, bulletin, or advisory opinion. Life/health specific statutory references are provided where applicable. “SF” refers to provisions that offer flexibility for innovation platform to the servicing of the insurance product.

Additional

State	Statutory Reference for Anti-Rebating	Provision
Alabama	Ala. C	
Alaska	AS, AS, Alaska	
Arizona	Ariz. Stat. Ann. § 20-431	431
Arkansas		
California		
Colorado	Colo. Gen. Stat. Ann. § 36A-823	823
Connecticut		
Delaware	Del. C (L/H) Del. C (P/C)	
District of Columbia	D.C. C	
Florida	Fla. Stat. § 626.401	626.401
Georgia	Ga. Code Ann. § 33-11-1	33-11-1
Hawaii		
Idaho		
Illinois		
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana		
Maine		
Maryland		
Massachusetts		
Michigan		
Minnesota		
Mississippi		
Missouri		
Montana		
Nebraska		
Nevada		
New Hampshire		
New Jersey		
New Mexico		
New York		
North Carolina		
North Dakota		
Ohio		
Oklahoma		
Oregon		
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington		
West Virginia		
Wisconsin		
Wyoming		

Additional Guidance: Flor

State	Statutory Reference for Anti-Rebating	Promotional Items	Client by Client Referral
Florida	Fla. Stat. Ann. § 626.95(1)(h) Fla. Stat. Ann. § 626.572		NG
Georgia			NG
Hawaii	Haw. Rev. Stat. Ann. § 952(3)-103-(a)(8)		NG
Idaho	Idaho Code § 41-1314	Permitted: \$200/year Idaho Code § 41-1314(3)	NG
Illinois	215 ILCS 5/424 215 ILCS 5/151	Permitted: verbal threshold, "minimal value" IL Bulletin 2012-11	
Indiana	Ind. Code Ann. § 27-1-20-3 Ind. Code Ann. § 27-1-22-1.3	Permitted: \$25 limit IN Bulletin 177	Permitted: no dollar limit
Iowa	Iowa Code Ann. § 507B.4(3)	Permitted: No cap IA Bulletin 06/15	
Kansas	Kan. Stat. Ann. § 40-2404(8)	NG	NG
Kentucky	Key. Rev. Stat. Ann. § 304.09 Key. Rev. Stat. Ann. § 304.10 100 KAR notations Key. Rev. Stat. Ann. § 304.12	Permitted: \$25 limit Key. Rev. Stat. Ann. § 304.12-110(4)	NG

Additional Guidance: Louis

State	Statutory Reference for Anti-Rebating	Promotional Items	Client by Client Referral
Louisiana	La. Rev. Stat. Ann. § 22:196(6)		NG
Maine	Me. Rev. Stat. Ann. Tit. 24-§ 22160 (L/H) Me. Rev. Stat. Ann. Tit. 24-		
Maryland	27-	Permitted: \$25 limit Md. Code. Ann. Insurance § 27-209(4); § 27-212(d)	NG
Massachusetts	76D	NG	NG
Michigan	Mich. Comp. Laws Ann. § 500.202A	Permitted; no limit to listen. Limit for application: \$5 (L/H) Mich. Comp. Laws Ann. § 500.2024(a) \$10 (P/C) Mich. Comp. Laws Ann. § 500.2024(b) Michigan, DOI	
Minnesota	Minn. Stat. Ann. § 72A.20 subd. 10(a) Minn. Stat. Ann. 72A-08 Minn. Stat. Ann. § 72A-32-426B(2) (L/H)	Permitted: \$25 limit	NG
Mississippi	Miss. Code Ann. § 88-7-3		
Missouri	Mo. Ann. Stat. § 375.386(9) Mo. Ann. Stat. § 376.500 (L/H)	Permitted: \$25 limit MO Bulletin 10/10	

Additional Guidance: Montana–North Carolina

State	Statute Reference	Promotional Items	Client-to-Client Referral Fee	Raffles	Value-Added Services	Notes
Montana	Mont. (L/H) Mont. (P/C)	Permitted; two-part test: minimum \$50 (old) available to all divisional (tr. 2016)	NG	Permitted; if exceeds \$50, then apply two-part test: 1) Available 2) Not com sale of insu	NG	
Nebraska	Nebr. Stat. Ann. § 48-1101 (L/H) Nebr. Stat. Ann. § 48-1102 (P/C)	Permitted; \$100 in aggregate per calendar year	NG	Permitted; \$100 in aggregate per calendar year NRS § 686A110; NRS § 686A130	NG	
New Hampshire	N.H. Rev. St. § 402:41 (L/H) N.H. Rev. St. § 402:41 (P/C)	Permitted; no cap; two-part test applicable	NG	Permitted; no cap; two-part test applicable N.H. Rev. St. § 402:41, (b)	Limited application at Ann	Formerly, raffles limited to \$1,000/calendar year; Ann § 402:41, (b); HB 171 removed cap, but left additional requirements alone
New Mexico	N.M. Stat. Ann. § 17-298-4(B); 30-13; Admin. Code § 11-17A-2.3 & 2.4	Permitted; \$25 limit	NG	Permitted; \$25 limit N.Y. Ins. § 2324 (a)	NG	
New York	N.Y. Ins. § 2119; § 2324	Permitted; \$25 limit	NG	Permitted; \$25 limit N.Y. Ins. § 2324 (a)	NG	
North Carolina	N.C. Gen. Stat. § 158B-4 (L/H) N.C. Gen. Stat. § 158B-4 (P/C)	Permitted; no dollar limit specified, but subject to "perspective" Reins and Commissioners	NG	Permitted; no dollar limit specified, but subject to "perspective" Reins and Commissioners	SF N.C. Gen Stat § 158B-4 N.C.A.C. 01.0301-01.0303 (Piquant, 2015)	

Additional Guidance: North Dakota–Texas

State	Statute Reference	Promotional Items	Client-to-Client Referral Fee	Raffles	Value-Added Services	Notes
North Dakota	N.D. Cent. Code § 26.1-04-03	Permitted	NG	NG	NG	
Ohio	Rev. Code Ann. 1.21(G) Ohio Rev. Code § 3911.20 (addresses insurers)	Permitted	OH I	NG	NG	
Oregon	Or. R	Permitted; \$100 limit	NG	NG	NG	
Pennsylvania	40 Pa (a)(8) § 310	Permitted; No Cap	NG	NG	NG	
Puerto Rico	PR SI	Permitted	NG	NG	NG	Maximum \$10,000 fine
Rhode Island	R.I. Gen. Laws § 27-29-4 (B); R.I. Gen. Laws § 27-4-6 (L/H)	Permitted; verbal threshold	NG	NG	NG	
South Carolina	S.C. Code Ann. § 38-57-150 (L/H) S.C. Code Ann. § 38-57-150 (P/C)	Permitted; \$25 handie limit & person refreshment	NG	NG	NG	
South Dakota	S.D. Codified Laws § 58-33-1 (L/H) S.D. Codified Laws § 58-33-1 (P/C)	Permitted	NG	NG	NG	
Tennessee	Tenn Code Ann. § 56-8-104 (8)	Permitted; long part	NG	NG	SF, as long as not tied to sale or purchase (Realt, 2015)	
Texas	Tex. Ins. Code Ann. § 541.056; § 543.003; § 1701.061; 28 Tex. Admin. Code § 21.48.03 & § 4807 & § 4705	Permitted	NG	NG	Limited Tex. Ins. Code Ann. § 1701.061	

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Journal of Insurance Regulation

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Submissions should relate to the regulation of insurance. They may include empirical work, theory, and institutional or policy analysis. We seek papers that advance research or analytical techniques, particularly papers that make new research more understandable to regulators.

Submissions must be original work and not being considered for publication elsewhere; papers should be well organized, provided the author clearly documents the sources of information and distinguishes opinions or judgment from empirical or factual information. The paper should recognize contrary views, rebuttals, and opposing positions.

References to published literature should be inserted into the text using the "author, date" format. Examples are: (1) "Manders et al. (1994) have shown. . ." and (2) "Interstate compacts have been researched extensively (Manders et al., 1994)." Cited literature should be shown in a "References" section, containing an alphabetical list of authors as shown below.

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