

STATE OF NEW MEXICO

OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Robert E. Doucette, Jr.

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OFFICE OF
SUPERINTENDENT
OF INSURANCE

BULLETIN 2020-002
(Replacing Bulletin 2019-016)
February 19, 2020

TO: ALL PROPERTY AND CASUALTY INSURERS

RE: AMENDMENT TO SECTION 59A-16-17 NMSA 1978, ALLOWING PROPERTY AND CASUALTY INSURERS TO PROVIDE LIMITED PRIZES AND GIFTS

THE FOLLOWING BULLETIN is issued pursuant to Sections 59A-2-8 and 59A-2-10 NMSA 1978.

Bulletin 2019-016, originally issued on October 9, 2019, is hereby rescinded. This Bulletin is issued to provide guidance regarding Sections 59A-16-17(A) and 59A-16-17(F) NMSA 1978 which became effective July 1, 2019 (the “Amendment”).

Section 59A-16-17(A)¹ NMSA 1978 prohibits any insurer, producer or other representative from paying or giving, as an inducement to insurance or coverage, or after insurance or coverage has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified for in the policy, except to the extent provided for in an applicable filing with the superintendent as provided by law.

This prohibition is common in state insurance codes, and is often referred to as an “anti-rebating” statute. Anti-rebating statutes were enacted beginning in the late nineteenth century to protect consumers from discriminatory pricing and to protect insurers from the risk of insolvency, thus preserving competitive markets through prohibitions on unfair or deceptive acts that distort the price mechanism and threaten the viability of insurance markets.

The Amendment, effective July 1, 2019, allows property and casualty insurers, producers and representatives thereof to provide customers and prospective customers prizes and gifts in an amount not to exceed one-hundred dollars (\$100.00). The specific statutory provision reads:

¹ Section 59A-16-17 NMSA 1978 also contains specific prohibitions related to title insurers and title insurance producers; prohibitions related to insureds; and prohibitions against unfair discrimination.

- F. The provisions of this section shall not prohibit a property or casualty insurer, or any employee or representative thereof, or a property or casualty insurance producer or other representative thereof from providing to customers or prospective customers prizes and gifts, including goods, gift cards, gift certificates, charitable donations, raffle entries, meals, event tickets and other items not exceeding one hundred dollars (\$100.00) in the aggregate in value per customer or prospective customer in any one calendar year.

Questions have arisen as to whether or to what extent Sections 59A-16-17(A) and 59A-16-17(F) NMSA 1978 impose limits on common and ordinary marketing practices or other routine business practices.

MARKETING PRACTICES

Insurers, producers and other persons engaged in the business of insurance are advised that common and ordinary marketing practices are not regarded as "consideration" or "inducement" for the purposes of Section 59A-16-17(A) NMSA 1978 when there is no quid pro quo arrangement², so long as the value of the gift or prize does not exceed one hundred dollars (\$100.00) in the aggregate in value per customer or prospective customer in any one calendar year. Common and ordinary marketing practices include, but are not limited to, the giving of tangible goods (such as t-shirts, caps, pens, calendars, etc.), the giving or purchase of consumables (such as food and beverages, etc.), the provision of continuing education course materials or instruction, and the giving of tickets to sporting, cultural or other events.

OTHER ROUTINE BUSINESS PRACTICES

Sections 59A-16-17(A) and 59A-16-17(F) NMSA 1978, should not be interpreted as prohibiting an insurer, producer or other person engaged in the business of insurance from giving things of value outside of a contractual arrangement or prospective contractual arrangement. Examples of such giving include insurers or producers who donate to non-profit, charitable or educational organizations. Such a broad interpretation would result in prohibiting common and ordinary business activities where such prohibition bears no reasonable relation to the discriminatory or predatory activities sought to be cured by the Unfair Trade Practices Act. Some of the factors that OSI will evaluate in determining whether a donation violates the general prohibition on rebating will be the timing of the alleged inducement, the prior relationship between the parties, the type of benefit, and the recipient of the benefit. Additionally, OSI will consider whether the insurer, producer or other person engaged in the business of insurance has a history of donating to non-profit, charitable or educational organizations.

OSI recognizes that issues will come to our attention that are not addressed in this Bulletin. OSI reserves the right to evaluate any given circumstance independently to determine whether the offer or gift of something of value would constitute an inducement or rebate.

² quid pro quo indicates that an item, service, favor or advantage has been traded in return for something of value.

Any person aggrieved by a bulletin may request a hearing before the Superintendent in accordance with Section 59A-4-15 NMSA 1978

Please direct your questions regarding this Bulletin to Mark Marquez at (505) 827-4439 or at mark.marquez@state.nm.us.

ISSUED this 19th day of February, 2020.



RUSSELL TOAL
Superintendent of Insurance