



## Florida Proposes Unlawful Inducement Rules

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Florida's Unfair Insurance Trade Practices Act ("UITPA"), Florida Statutes § 626.951 et seq., prohibits insurers and other persons from engaging in unfair or deceptive practices involving the business of insurance, including the making of "unlawful rebates." Unlawful rebates include "Paying, allowing, or giving . . . as inducement to [an] insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract." Florida Statutes § 626.9541(1)(h)1.b.

On March 5, 2010, Florida's Department of Financial Services (the "DFS") published a Notice of Rule Development proposing two companion rules (one for insurance generally and the other for title insurance only) defining "unlawful inducements" and providing examples of prohibited acts and practices. The text of Proposed Rule Nos. 69B-210.005 & .010 can be accessed through the following links: [Proposed Rule No. 69B-210.005](#) and [Proposed Rule No. 69B-210.010](#).

The lists of examples are broad, and the proposed rules state that the lists are not exhaustive. Some examples of unlawful inducements contained in the proposed rule for insurance generally include:

- Paying or giving (or offering to do so), directly or indirectly, an inducement to the purchase of insurance;
- Facilitating any discount, reduction, credit, or paying any portion of any premium, fee or cost of underwriting, policy fee, claim cost, or the cost of an inspection, inspection report, appraisal, or survey, including wind inspection;
- Bringing about any discount or paying any portion of the premium or any portion of the cost of premium financing;
- Making possible any lowered, credited, or discounted commission, except as provided in Florida Statutes § 626.572;
- Providing membership in any organization, association or club at a discount, reduced rate, or at no cost;
- Making or offering to make a charitable contribution on behalf of the purchaser; and
- Offering or providing any service or incentive in conjunction with the sale of insurance.

The use of the language "facilitating," "bringing about," and "making possible" appears to indicate that DFS intends broad application of the proposed rules. However, broad interpretations could raise constitutional questions under Florida law. See *Dept. of Ins. v. Dade County Consumer Advocate's Office*, 492 So.2d 1032 (Fla. 1986) (holding the UITPA's rebating prohibition unconstitutional to the extent it prohibits insurance agents from rebating any portion of their commissions to their customers); see also *Chicago Title Ins. Co., et al., v. S. Clark Butler, et al.*, 7720 So.2d 1210 (Fla. 2000) (statutory prohibitions against title insurance agents rebating a portion of their risk premium are unconstitutional).

The DFS has tentatively scheduled separate Rule Development Workshops for the two proposed rules on March 22, 2010. However, these Workshops will be held only if requested in writing and the DFS does not deem them unnecessary. We will be tracking these proposed rules and reporting on developments as they occur. In the meantime, if you have any questions regarding these proposed rules, please contact Steven Kass at (305) 347-6899, Ann Black at (305) 347-6859, or Karen Benson at (305) 347-6871.

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