



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

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**“FLORIDA (OR CALIFORNIA) VACATION” REBATES;
ARKANSAS CODE ANNOTATED §§23-66-309**

A 1986 decision of the Supreme Court of Florida held that that State’s “anti-rebating” statute was unconstitutional as, supposedly, “unnecessarily limiting the bargaining power of the consuming public...” *Department of Insurance vs. Dade County Consumer Advocates Office, Fla.*, 492 So.2d. 1032 (1986). That decision, rendered by a mere 4 to 3 majority of the Florida Court, invalidated Florida Statutes Ann. Section 626.9541(1), which, in pertinent part, is identical to the above-referenced sections of the Arkansas Insurance Code. Those statutes prohibit any insurer or agent in any line of life, disability, annuity, property, casualty or surety insurance from giving or offering to give any inducement to the making of the contract other than as expressly set forth therein, i.e., there may be no “side agreements,” or inducements or “rebates” which affect the net-to-the-insured pricing structure contemplated by the insurer’s published rating manuals.

Following the decision of the Florida Supreme Court, both the Florida and California Legislatures substantially revised their states’ laws relative to rebating, and with some restriction, each of these states does allow writing agents and companies to “rebate.” By reason of these new laws in California and Florida, this Department has been met, from time to time, with the urgings of particular agents, insurers and attorneys to the effect that :

- i. Arkansas Code Annotated §§23-66-206(8) and 309 were unconstitutional and should not be enforced; and/or
- ii. Arkansas-licensed insurance agents, and their Arkansas insureds so willing, could avoid or circumvent the Arkansas law by simply making the deal in Arkansas and traveling to Florida or California to sign the actual application for insurance.

The Department believes it important to point out that neither of these assertions is correct. First of all, Arkansas Code Annotated §§23-66-206(8) and 309 are very much alive and well in Arkansas as originally passed by the General Assembly. These laws were enacted originally passed by the General Assembly. These laws were enacted for the purpose of prohibiting predatory pricing tactics, rate discrimination between the rich and the poor and to protect insurer solvency. The Florida decision noted above, and which was decided upon principles inconsistent with Arkansas law and multiple decisions of the Supreme Court of the United States, is not considered to be authority in this State, and the dangers addressed by the General Assembly are still perceived to be very real dangers to the consuming public and to the insurance industry.

The Department is of the opinion that the second assertion to the effect that an Arkansas-domiciled agent (presumably with a Florida or California non-resident license) and an Arkansas-domiciled insured may simply travel to Florida (or California) to sign the application is a clear subterfuge. By all applicable conflicts of law principles, the controlling “contracts” in the situation of an Arkansas-domiciled agent and an Arkansas-domiciled

insured are, inescapably, centered in Arkansas, and Arkansas law applies. The “full faith and credit” clause of the *United States Constitution* (Art. IV, §1) is not pertinent to the argument inasmuch as that clause can never be used to subordinate the domestic laws and policy of one state concerning *its domestic affairs* to the laws of another state.

It is equally clear that an Arkansas-domiciled agent (with a Florida or California non-resident license) may travel to Florida or California and place insurance on “Florida or California risk” (e.g. Florida or California-domiciled individuals or property there situated); and, further, it is clear that an Arkansas citizen may travel to any other state and, essentially, obtain any personal life or health insurance he may wish to obtain. One qualification of the latter point is that the “deal” with an Arkansas-domiciled and licensed agent cannot be struck in Arkansas and then somehow be “purified” or “cleansed” by traveling to either of the states where rebating is allowed.

With the exception of the *Dade County Consumer Advocates Office* case, *supra*, and the new statutes referenced above, it is believed that the law with respect to rebating is uniform throughout the United States. This Department intends to enforce these anti-rebating provisions and issues this Bulletin for the purpose of correcting some misinformation which has been circulating in the insurance market place.

All Arkansas-licensed insurers are directed to transmit a copy of this Bulletin to each of their appointed agents.

Lee Douglass
INSURANCE COMMISSIONER