

Opinion No. 38-1900

March 3, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. George M. Biel Superintendent of Insurance Santa Fe, New Mexico

{*216} Your letter of March 2nd, together with certain exhibits attached thereto, requests an opinion upon the legality in New Mexico of the so-called "Safe Drivers Reward Plan," which is proposed to be used in writing insurance upon passenger automobiles.

I find that the Legislature of 1937, by Section 5 of Chapter 138, materially altered the law prohibiting rebates and special favors or advantages of any kind.

Under the new law, it is provided in effect that no company, officer, or agent hereof shall allow, give, or offer to allow or give, directly or indirectly, as an inducement for the purchase of insurance policy, any rebate, special favor or advantage of any kind or nature whatsoever not plainly designated in the policy.

Under this provision, if the insurance companies offering the so-called rebate for safe-driving includes a clause to that effect and designates the same in the policy which is issued, then it would not be in contravention of the statute.

However, there is another matter, which is, in my opinion, fatal to the plan, and that is the question of discrimination as between policy holders of the same class and covering risks of essentially the same hazard.

The said Section 5 of Chapter 138, Laws of 1937, also includes the following provision:

"No insurance company licensed to transact business in the State of New Mexico shall make or permit any variation in favor of any insured in the amount of premiums or rates charged by it for any contract of insurance from the premiums or rates charged other persons against a like hazard or hazards; nor shall any insurance company make or permit any variation in favor of any insured in the amount of premiums or rates charged for any contract of insurance from the forms and rates filed with the Superintendent of Insurance pursuant to Section 62 of this Act . . . Provided, however, that nothing in this section shall prohibit either the filing or use of rating plans which do not result in unfair discrimination as between risks of essentially the same hazard."

The Insurance Department of the State of New Mexico, under the law, of course, has no control over the establishment of Insurance rates, but {*217} I believe it is the duty of the Superintendent of Insurance to determine whether or not there is discrimination in rates as between insurance risks of essentially the same hazard.

If I understand the proposed plan, it simply means that the insurance contract is issued for a term of one year and within thirty days after the expiration of the term of the insurance contract if the driver of the automobile has suffered no accidents he will be entitled to a rebate of a certain percentage of the premium originally paid.

This, of course, means that the driver who has suffered an accident must pay the original premium cost making his rate higher than that of the rate of the driver who had no accidents. In each instance, the owners of the automobiles are in the same class when first insured, but they have an ultimate cost which is materially different.

It seems to me that the legislature, in drafting and passing the above-quoted law, had in mind and intended that the classification of risks was to be one and relate to the time when the risk was written rather than at some future time after the coverage had expired. This is in accordance with a ruling of the Insurance Department of the State of Iowa, and it occurs to me that it is logical and sound law.

Naturally, this office desires to do everything legally possible to promote safe driving in this state and eliminate automobile accidents. However, I regret to inform you that we do not feel that the plan outlined can be approved as being valid under the law. It is my belief that this proposed plan violates all theories of insurance as contemplated by the insurance laws of this state.