THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF CONSUMER AFFAIRS
DIVISION OF INSURANCE
280 FRIEND STREET, BOSTON, 02114
(617) 727-7189

GLORIA C. LARSON
SECRETARY

KAY DOUGHTY
COMMISSIONER

BULLETIN NO. 92-07

TO: All Property and Casualty Agents

FROM: Kay Doughty, Commissioner of Insurance

RE: Marketing Practices

DATE: November 20, 1992

In December and January of each year, the Division receives complaints from agents and brokers about their colleagues' advertising and marketing practices. In large measure, the complaints relate to the sale of motor vehicle insurance, particularly the practice of advising consumers to cancel coverage with one company just prior to the end of the policy year and to rewrite it with another company. Other complaints relate to the use of words such as "discount" in advertising, offers of gifts and other inducements to deal with a particular agency, and disparagement of competing companies.

The purpose of this bulletin is to remind agents and brokers of the statutes relating to the sale and marketing of insurance and of their obligations to compete in compliance those statutes. It addresses some common problems and questions about marketing practices.

1. Cancel-and-rewrite. If a rate increase is announced, agents sometimes advise consumers to cancel their current policies prior to the renewal date and rewrite the policy for a term beginning before new rates take effect, claiming that the consumer will thus avoid the increase. Such advice is misleading and deceptive, and therefore violates Massachusetts General Laws c. 176D, for the following reasons: 1) the practice does not in fact avoid rate increases. Assuming that no other factors change, at best it postpones the effective date of a rate increase; 2) depending on the renewal date of the policy, consumers may be subject to cancellation penalties; 3) the cost of an insured's coverage depends on a number of factors, including territory, symbol and age of vehicle, as well as driving records. It is misleading to suggest to consumers that by cancelling coverage they will

achieve specific savings; 4) the statewide average increase for a given year may or may not apply to an insured in a particular territory; 5) cancelling and rewriting may affect an insured's SDIP surcharges or credits.

2. Disparagement of competing companies. Brokers whose assignment to a company through Commonwealth Automobile Reinsurers and agents who change from one company to another have an obvious interest in placing renewals with the new company. However, c. 176 D, §3(1)(d) prohibits making or circulating statements which mislead about or misrepresent the financial condition of any insurer; §3(2) prohibits the making or dissemination of any untrue, misleading or deceptive statement about the business of insurance; §3(3) prohibits the making or circulation of any statement which is false, maliciously critical of or derogatory to the financial condition of any person, and is calculated to injure such person; and §3(5) prohibits the knowing making of any false statement as to the financial condition of a person. Thus, agents may not advise consumers to change companies based on representations about the financial condition of the new company unless such representations are in fact true. The dissemination of incorrect information could obviously cause injury to a company.

3. Free gifts. M.G.L. c. 175, §§182 and 183 prohibit agents and brokers from offering special inducements to consumers in connection with the business of insurance, and from offering any valuable consideration or benefit not contained in the policy. The offer of books, other gifts or services for which you customarily charge at no cost as an incentive to do business with an agency violates the statute. It also prohibits activities such as promising to make a donation to a charitable organization as an inducement to do business with your agency.

4. Competition and choice. The Division expects agents and brokers to represent companies fairly and to provide high quality services to the consuming public. In a competitive marketplace, agents and brokers are encouraged to develop and market products and services which will help their customers to obtain appropriate coverage at reasonable cost. However, licensees are responsible for reviewing their marketing practices to ensure that they comply with Massachusetts law.

Consumers are free to select an agent or broker to handle their insurance needs and to seek coverage from any insurance company which writes that coverage. They may change agents or companies without specifying a reason for the switch. The Division's goal is to ensure that consumers are provided with full and accurate information about the

consequences of any change and that agency marketing practices comply with the laws prohibiting unfair competition and unfair and deceptive acts and practices in the marketplace.

5. Penalties. The penalties for violating c. 176D include fines and suspension or loss of license. An agency whose marketing practices violate the law is subject to administrative enforcement action by the Division.