



State of Washington  
Office of the Insurance Commissioner  
Hearings Unit  
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# Demand for Hearing

# FILED

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Please type or print in ink. Attach a copy of the Order or correspondence in dispute and all documents supporting your demand. This Demand for Hearing can be mailed, faxed, hand-delivered or emailed to the Hearings Unit at the address above. For OIC Demands, please provide contact information for all other interested parties and their representatives.

HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

## 1 Requesting Party (required information)

Name/Business Name YourPeople, Inc. dba Zenefits FTW Insurance Services ("Zenefits")		OIC Case/Order No. 1259935
Street Address North Tower, 303 Second Street #401		City, State, Zip San Francisco, CA 94107
Telephone Number (415) 548-0025	Fax Number	
Contact Person Joshua Stein, General Counsel & VP	Telephone Number (415) 548-0025	Email Address jstein@zenefits.com

## 2 Authorized Representative/Attorney for Requesting Party

Last Name Walsh	First Peter	M.I. H.
Business Name		
Street Address 80 South Eighth Street, Suite 1225		City, State, Zip Minneapolis, MN 55402
Telephone Number (612) 402-3017	Fax Number (612) 402-3001	Email Address peter.walsh@hoganlovells.com

## 3 Subject Matter of Demand for Hearing

- Revocation or Denial of License   
  Revocation or Denial Certificate of Authority or Registration   
  Cease and Desist Order  
 Imposition of Fine/Consent Order   
  Other \_\_\_\_\_

## 4 Additional Parties/Representatives (for more parties and/or representatives, please attach additional pages)

Last Name Please see Attachment A.	First	M.I.
Business Name		
Street Address		City, State, Zip
Telephone Number	Fax Number	Email Address

## 5 Issues and Arguments

- a. Issues - Briefly describe each issue or area of dispute that you wish us to consider. Attach additional pages if necessary.

Please see Attachment B.

- b. **Arguments** – Explain why each issue or area of dispute listed above should be decided in your favor. Attach additional pages if necessary. To the extent known, cite applicable rules, statutes, or cases in support of your arguments. Enclose copies of documents concerning your arguments including documents the Department previously requested from you that you have not yet provided.

Please see Attachment B.

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**6 Signature**

Either the Requesting Party or the Attorney/Representative can sign this Demand for Hearing. However, if the Representative is submitting the Demand, contact information for the Requesting Party must be provided under Section 1 above and the Attorney/Representative's contact information must be provided in Section 2.

Requesting Party:

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Signature  
Joshua Stein

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Name (please print or type)

February 16, 2017

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Date  
General Counsel & Vice President

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Title

Authorized Representative:



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Signature  
Peter H. Walsh

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Name (please print or type)

February 16, 2017

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Date  
Partner, Hogan Lovells US LLP

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Title

ATTACHMENT A

(Demand for Hearing in OIC Case # 859923)

Representatives/Counsel and Contact Information

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## ATTACHMENT B

### (Demand for Hearing)

The Washington Office of the Insurance Commissioner (the "OIC") has improperly interpreted and applied consumer protection statutes in a manner that raises prices for consumers while protecting traditional insurance brokers from competition and innovation in the marketplace. The OIC's flawed interpretation of these statutes, if allowed to stand, will harm not only Petitioner, but the very consumers these statutes were designed to protect, and will expose a wide range of Washington businesses that combine the sale of insurance with non-insurance products and services to potential fines and enforcement actions.

On November 21, 2016, YourPeople, Inc. dba Zenefits FTW Insurance Services ("Zenefits") and the OIC signed a Consent Order, appended hereto as Attachment C. The Consent Order sets forth the OIC's interpretation of two Washington statutes, RCW 48.30.140 and RCW 48.30.150, as well as a finding and conclusion that Zenefits was in violation of those statutes prior to entering into the Consent Order. Zenefits demands a hearing before an administrative law judge ("ALJ"), pursuant to RCW 48.04.010 *et seq.*, to challenge the OIC's findings and conclusions. Zenefits also requests the opportunity to submit a full brief on the merits in support of its position that the OIC's findings and conclusions are contrary to the plain language of Washington's anti-rebating and anti-inducement statutes, are inconsistent with their purpose, and are harming Zenefits, Washington consumers, and other companies doing business in the State.

#### **Question 5(a): Briefly describe each issue or area of dispute that you wish us to consider.**

The Consent Order explicitly requires Zenefits to "*begin to charge Washington customers* for the previously free apps and functionality of its software program." Attachment C. Thus, the immediate effect of the Consent Order, putting aside the harm to Zenefits, is a direct cost to Washington consumers. As a result of the Consent Order, Washington is now the only state in the nation to force small business and nonprofits to pay for technology and services that are free everywhere else. In addition, the OIC's extremely broad interpretation of these statutes will have chilling effects on a wide range of industries, including, among others, retail, travel, banking and financial services. Any company with an integrated business model that offers free or discounted products or services and also sells, solicits, or negotiates insurance will run afoul of the OIC's reading of the statutes. This is so regardless of whether the free or discounted products or services have any connection whatsoever to whether a customer purchases – or even considers purchasing – insurance. By this logic, the business models of major Washington companies like Amazon, Costco, and HomeStreet Bank, which offer certain free or discounted products and services and also offer insurance, violate Washington insurance laws. Before this perverse reading of the statute is allowed to take hold, the statutory language should be examined by an impartial adjudicator.

Zenefits is a software company and a licensed insurance broker that offers an online, cloud-based, software-as-a-service platform that integrates the administration of human resources, payroll, and employee benefits for small businesses. Zenefits' platform offers a variety of applications, some of which are free to everyone, some of which involve a charge from a third party vendor, and others for which Zenefits charges a fee to its user directly. The free core apps provide small businesses with tools to manage hiring, onboarding, and terminating employees, manage employee information, and generate, among other things, employee directories, organizational charts, and payroll reports. Access to the platform and its free apps is not conditioned in any way on the purchase of insurance or any other fee-based service from Zenefits. Zenefits also integrates a rapidly expanding roster of non-insurance third-party apps, such as 401(k) and applicant tracking systems, allowing small businesses to conveniently manage these administrative functions. Customers pay the third-party vendors directly for these apps, and Zenefits may receive an integration fee or reseller's commission from the vendors. Apps offered by Zenefits directly to customers for a fee include commuter benefits, time-and-attendance tracking, and payroll services. Zenefits offers such non-insurance applications for the same price, regardless of whether the customer designates Zenefits as its insurance broker of record. Importantly, Zenefits' customers have no obligation to purchase insurance from Zenefits at any point, no matter level of service (i.e., free or paid) they select.

Nevertheless, the OIC has decided that Zenefits' free services package violates RCW 48.30.140 and RCW 48.30.150, and has made explicit findings and reached specific conclusions to that effect in the parties' Consent Order. But these statutes' operative provisions, by their own terms, require there to be a connection between the benefit conferred and an insurance transaction in order for a violation to occur. Under the plain meaning of the statutes, Zenefits' free services package does not violate Washington law because Zenefits does not offer incentives to induce customers to buy insurance.

The Consent Order prevents Zenefits from offering the full range of services to its customers that it offers in other states, to its detriment, and far more importantly, to the great detriment of Washington small businesses. Zenefits entered into the Consent Order and agreed to temporarily modify its offerings in Washington to avoid an impending OIC cease and desist order, which would have prevented Zenefits from doing business entirely in the state of Washington. OIC has acknowledged and the Consent Order preserves Zenefits' right to contest the OIC's findings, conclusions, and legal interpretations of RCW 48.30.140 and RCW 48.30.150 in an adjudicative proceeding pursuant to the Washington Administrative Procedure Act. Zenefits now demands a hearing to resolve this dispute.

**Question 5(b): Explain why each issue or area of dispute listed above should be decided in your favor.**

This dispute is ripe for resolution and Zenefits has standing to request a hearing on this issue now, as Zenefits has been and will continue to be adversely affected by the OIC's findings. The OIC's interpretation of RCW 48.30.140 and RCW 48.30.150 does not require there to be any nexus between the provision of free or discounted items or services to the public and an insurance transaction. Thus, under the OIC's reading, any company that sells insurance and also offers other products or services, either directly or through its affiliates, is in violation of Washington law any time it offers a non-insurance product or service to the public for free or at a discount. By maintaining this interpretation, the OIC warps the meaning and underlying public policy of these consumer protection statutes to raise prices on consumers, effectively protecting brokers from competition and innovation. If the OIC's interpretation is upheld, it will result in serious repercussions not only for Zenefits, but for other businesses across a wide swath of industries, as well as for Washington consumers.

**I. Zenefits Has Standing to Request a Hearing**

Pursuant to RCW 48.04.010, Zenefits may request a hearing before an ALJ regarding the OIC's November 21, 2016 Consent Order prohibiting Zenefits from, among other things, providing free use of its online, cloud-based software-as-a-service platform to Washington consumers. RCW 48.04.010(1)(b) mandates that the OIC hold hearings upon the written demand made by "any person aggrieved by any act, threatened act, or failure of the commissioner to act..."<sup>1</sup> Additionally, RCW 48.04.010(5) permits the party seeking a hearing to request that the hearing "be presided over by an administrative law judge assigned under chapter 34.12 RCW. *Any such request shall not be denied.*" RCW 48.04.010(5) (Emphasis added).

Here, Zenefits may request a hearing before an ALJ because the OIC's Consent Order is causing actual harm to Zenefits and its business by forcing the company to change its offerings in Washington.<sup>2</sup> The OIC's Consent Order requires Zenefits to stop "provid[ing] free use of its online, cloud-based software platform that integrates the administration of human resources, payroll, and employee benefits.... [Zenefits] will begin to charge all Washington customers for the previously free apps and functionality of its software platform by offering it as part of a paid

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<sup>1</sup> RCW 34.05.530 provides that a person has standing to obtain judicial review of an agency action if "that person is aggrieved or adversely affected by the agency action...." The Washington Supreme Court has held that an entity that suffers "probable economic injury resulting from agency actions that alter competitive conditions" is an aggrieved person with standing to challenge the agency's action. *Seattle Bldg. & Const. Trades Council v. Apprenticeship & Training Council*, 129 Wash. 2d 787, 795-96 (1996) (internal citations omitted); *see also Snohomish Cty. Pub. Transp. Ben. Area v. State Pub. Employment Relations Comm'n.*, 173 Wash. App. 504, 514 (employer suffers an injury-in-fact when it loses the benefit of a rule that affects its negotiating leverage with unions).

<sup>2</sup> The OIC's threatened cease and desist order forced Zenefits to enter into the Consent Order to prevent its Washington operations from being shut down.

service sold at fair market value.” Attachment C at 4. This ruling harms both Zenefits, by depriving it of an opportunity to introduce its unique platform and functionality to potential customers, and small businesses, by stripping them of the free services they have received from Zenefits. In addition, implementing this needless price increase has caused and continues to cause significant disruption to Zenefits’ Washington operations, requiring the renegotiation of contracts, outreach to customers, and other costly measures.

This issue is ripe and justiciable, as the OIC has now made explicit findings and drawn legal conclusions memorialized in the Consent Order. Zenefits expressly reserved the right to challenge the OIC’s findings and conclusions in this forum:

[Zenefits] expressly preserves the right it has to challenge the Insurance Commissioner’s findings and interpretation of RCW 48.30.140 and RCW 48.30.150 through the administrative process, state courts, and legislative channels. The parties agree that there is a present and existing dispute with respect to the Insurance Commissioner’s findings and interpretations of RCW 48.30.140 and RCW 48.30.150, that those findings and interpretations constitute an adverse agency action, and are ripe for review and justiciable, and that [Zenefits] has suffered harm and has standing to challenge those findings and interpretations. The Insurance Commissioner acknowledges and agrees that [Zenefits] shall have the right to challenge the Insurance Commissioner’s findings and legal interpretations set forth in this Consent Order in an adjudicative proceeding pursuant to the Washington Administrative Procedure Act within 90 days of [Zenefits’] receipt of this fully executed Consent Order.

OIC Order at 4.

Zenefits has been “aggrieved or adversely affected by the agency action” as described herein, and a judgment in favor of Zenefits “would substantially eliminate or redress the prejudice . . . caused or likely to be caused by the agency action.” RCW 34.05.530. Accordingly, per RCW 48.04.010, Zenefits is entitled to a hearing before an administrative law judge assigned under chapter 34.12 RCW.

**II. Zenefits’ business model does not violate Washington law because Zenefits does not offer incentives to induce customers to buy insurance.**

Washington’s anti-rebating and anti-inducement consumer protection statutes on their face apply only when an offered incentive has a nexus to an insurance transaction. Statutory construction begins by reading the text of the statute involved. *State v. Avery*, 103 Wash. Ct. App. 527, 532 (2000). “If a statute is unambiguous after a review of the plain meaning, the court’s inquiry ends.” *Lake v. Woodcreek Homeowners Ass’n*, 169 Wash. 2d 516, 526 (2010). Washington’s anti-rebating statute provides in relevant part:

Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, *as an inducement to insurance, or after insurance has been effected*, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

RCW 48.30.140(1) (emphasis added). Similarly, RCW 48.30.150 provides in pertinent part:

No insurer, insurance producer, title insurance agent, or other person shall, *as an inducement to insurance, or in connection with any insurance transaction*, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever [. . .] shares of stock [. . .] profits or special returns [. . .] prizes, wares, gift cards, gift certificates, or merchandise of an aggregate value in excess of one hundred dollars per person in the aggregate in any consecutive twelve-month period.

These statutes' operative provisions make abundantly clear the need for a connection between the benefit conferred and an insurance transaction. This stands to reason, because benefits offered in the absence of an insurance transaction, or irrespective of whether insurance is transacted, by definition cannot function as a rebate or inducement to insurance because one need not purchase insurance to obtain them. The requirement that there be a nexus between an "inducement" and the purchase of insurance is further underscored by section 48.30.140's prohibition on "valuable consideration" – effectively prohibiting insurance producers from offering or providing additional benefits for buying insurance. *See, e.g., Restatement (Second) of Contracts* § 71 (consideration "must be bargained for" and provided "in exchange" for the parties' agreement). A benefit provided by an insurance producer that remains the same regardless of whether the consumer buys an insurance policy, and that is provided as part of a package of non-insurance services, has no such nexus to an insurance transaction. Services that are provided free to the general public, with no obligation to purchase – or even consider purchasing – insurance cannot operate as an inducement to insurance and are not connected to an insurance transaction.

Zenefits' offerings and products do not run afoul of Washington's anti-rebating and anti-inducement statutes because nothing is offered as an "inducement to insurance." Zenefits does not discriminate between consumers based on who purchases insurance through Zenefits. Every user has access to the same products and services, on the same terms, regardless of whether they purchase insurance. There is no special benefit for purchasing insurance and no penalty for deciding not to purchase insurance. In fact, most Zenefits customers – more than 72% in

Washington – do not use Zenefits as their insurance broker. These customers have access to the Zenefits platform and its range of non-insurance services on the same terms and at the same prices as the minority of customers who use Zenefits for insurance. Because Zenefits does not give or offer customers any rebate or benefit for purchasing insurance, it does not violate RCW 48.30.140 and 48.40.150.

If, despite the clear language discussed above, the statutes are deemed to be ambiguous, their legislative history also dictates a finding in Zenefits' favor. A statute is deemed ambiguous if the statutory language is amenable to more than one reasonable interpretation. *State v. Keller*, 143 Wash. 2d 267, 276 (2001). Legislative history, principles of statutory construction, and relevant case law may provide guidance in construing the meaning of an ambiguous statute. *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wash. 2d 224, 243 (2002). The legislative history of these statutes is at odds the OIC's decision here. See, e.g., *Wolfe v. Philippine Inv. Co., Inc.*, 175 Wash. 165, 168 (1933) ("The purpose of [the anti-rebating statute] was to establish uniform insurance rates throughout the state and to maintain a standard of such rates."). Zenefits' provision of certain free functionality, available on the same terms to all, has no effect upon, and no connection with, insurance rates in Washington or anywhere else.

Every other state to weigh in on this issue agrees: when something is offered for free to everyone on equal terms, regardless of whether or not they purchase insurance, it is not an inducement. For example, the Louisiana Department of Insurance found that "it cannot be reasonably asserted that the thing of value served as valuable consideration or inducement to the contract because its recipient could obtain the thing of value irrespective of any contractual relationship regarding insurance." Ex. 1, June 3, 2015 Louisiana Dept. of Ins. Advisory Letter No. 2015-01. The Office of Montana's State Auditor concluded that Zenefits' platform "is not a rebate as it does not induce a person to purchase insurance through Zenefits," noting that "[t]his interpretation is *also good public policy*, as Zenefits may potentially provide Montana small businesses with services they would not otherwise be able to afford." Ex. 2, July 16, 2015 Montana State Auditor Letter. North Carolina, Connecticut, Maryland, New York, Kansas, Tennessee, and Illinois have reached similar conclusions in interpreting their anti-inducement statutes which, like Washington's, are based on Section 4 of the National Association of Insurance Commissioners' Model Unfair Trade Practices Act. See guidance at Ex. 3.

### **III. The OIC's overly expansive interpretation of the anti-rebating and anti-inducement statutes would have unintended consequences affecting Washington consumers and a wide range of industries doing business in the State.**

Far from preventing pernicious conduct, the OIC's expansive interpretation of the anti-rebating and anti-inducement statutes imposes significant barriers to entry for innovative companies looking to expand their services and remain competitive by providing convenience to their customers, and serves only to protect traditional brokers from competition. The OIC's interpretation would disrupt many existing business models and likely would have the perverse

effect of jeopardizing the benefits that inure to consumers from increased innovation and competition. The OIC's far-reaching interpretation of the anti-rebating and anti-inducement statutes will have chilling effects on a wide range of industries, including but not limited to, retail, travel, banking and financial services.

The banking industry is a prime example of how the OIC's interpretation will upend well-established, sensible business models designed for consumer benefit. Commercial and retail banks offer many free products and services to their customers, including free checking accounts, investment products and advice, and cash-back bonuses for direct deposits in their accounts.<sup>3</sup> Many banks also offer insurance products tailored to their client base, because they are already familiar with their customers' financial situations and are able to recommend products that suit their needs. As a result, many banks or their affiliates are now licensed as insurance brokers in Washington. Small businesses are increasingly taking advantage of business-related insurance products offered by banks, who also act as their lenders. For instance, many national banks offer multiple peril crop insurance and hail/fire insurance in connection with loans to small family farm customers. The banks who provide farm loans offer free risk management seminars and investment management services to their farm customers. These services are not offered to "induce" farm clients to buy crop insurance from the bank, and the purchase of insurance has no bearing on the banks' willingness to lend money to farmers or on the interest rates on such loans. They simply are services that banks' customers desire and that banks offer to remain competitive.

Costco presents another example of how the OIC's interpretation would have perverse effects on a company that offers a real value for Washingtonians. Costco is a member-only warehouse retailer. Its affiliate is a licensed insurance broker that offers both auto and home insurance to its customers.<sup>4</sup> Costco routinely offers deep discounts on its retail products, designed to induce customers to remain loyal Costco customers, who may (or may not) purchase insurance from Costco's affiliate. There is no connection between discounted retail products and the transaction of insurance. But the OIC's approach would prevent Costco and its affiliates from offering discounts on retail products and also selling insurance, to the potential detriment of Costco as well as Washington consumers. This is not the outcome the anti-rebating and anti-inducement statutes were designed to achieve.

To cite a further example from the host of other industries that would be potentially affected by the OIC's interpretation, Amazon offers its own brand of insurance product known as "Amazon Protect" on a limited basis, which provides extensive coverage and protection against theft for consumers purchasing higher-value products through Amazon, such as a dishwasher or

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<sup>3</sup> For a list of interest-bearing products and other perks offered by banks, please view *19 Best New Bank Account Promotions & Offers – February 2017*, MONEY CRASHERS (Feb. 15, 2017), <http://www.moneycrashers.com/best-new-bank-account-promotions-offers/>.

<sup>4</sup> *Costco Services*, COSTCO WHOLESALE (Feb. 15, 2017), <http://www.costco.com/services.html>.

a TV.<sup>5</sup> There is no special benefit to consumers for purchasing Amazon Protect, and there is no penalty for not doing so. Yet the OIC's interpretation of the anti-rebating and anti-inducement statutes would prohibit Amazon from offering any discounts or other benefits in connection with its on-line retail business, on the far-fetched theory that any such discounts or benefits would constitute an "inducement" to an insurance policy or would be offered "in connection with" an insurance transaction.

Washington consumers also would face unintended negative consequences if the OIC's interpretation is allowed to stand. Traditionally, small businesses managed their human resources matters – an often complex process involving enormous amounts of paperwork – by staffing a human resources department, purchasing an array of expensive, difficult to use software from different vendors, or simply doing it themselves. Zenefits addressed this problem by developing its software specifically for small businesses, streamlining their human resources, payroll, and employee benefits processes. Using Zenefits' platform saves small businesses hundreds of hours of paperwork, the cost of staffing a human resources department and the cost of expensive human resources software. Requiring Zenefits to charge its Washington customers for the previously free apps and functionality of its software program partially negates these cost-savings and makes the software less accessible to small businesses, returning the industry to the outmoded options of yesterday.

The OIC's sweeping interpretation of the anti-rebating and anti-inducement statutes, if allowed to stand, will make it virtually impossible for businesses offering both insurance and non-insurance products to compete effectively in the marketplace and provide value and innovation to consumers, while at the same time complying with Washington's anti-rebating and anti-inducement laws. And notably, it will have a significant negative impact on small businesses, many of whom depend upon Zenefits' platform for the administration of their human resources, benefits, and payroll functions. These customers are facing ever increasing compliance and human resources costs, and the OIC's order will only increase those costs, hurting the consumers the anti-rebating and anti-inducements statutes are meant to protect.

#### IV. Conclusion

Zenefits has more than 700 customers in the State of Washington and is used by nearly 8,000 employees, in industries ranging from non-profits to law firms to medical practices. Zenefits' mission is to help entrepreneurs and small businesses grow by making it easy for them to provide human resources services to their employees from day one. Nothing about that mission or Zenefits' business model is at odds with the goals and language of the Washington consumer protection statutes. To the contrary, the Consent Order requires Zenefits to raise prices *to the direct and immediate detriment* of Washington consumers, and to change its offerings in ways not required by any other state that has examined this issue. OIC should not be permitted

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<sup>5</sup> *About Amazon Protect*, AMAZON.CO.UK, (Feb. 15, 2017), <https://www.amazon.co.uk/gp/help/customer/display.html?ie=UTF8&nodeId=202011490>.

to use a consumer protection statute to require consumers to pay for services they could previously access for free, while effectively protecting traditional brokers from competition.

For all of the foregoing reasons, the ALJ should rule that RCW 48.30.140 and RCW 48.39.150 requires a nexus between the provision of free or discounted items or services to the public and an insurance transaction, and that Zenefits' business model does not violate Washington's anti-rebating and anti-inducement statutes.

# Exhibit 1



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

**ADVISORY LETTER 2015-01**

**TO: ALL INSURERS, INSURANCE ISSUERS, HEALTH MAINTENANCE ORGANIZATIONS AND PRODUCERS**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

**RE: "VALUE ADDED" SERVICES & THE GIVING OF THINGS OF VALUE; COMMON MARKETING PRACTICES; RESCISSION OF BULLETIN NO. 2010-05**

**DATE: JUNE 3, 2015**

The purpose of Advisory Letter No. 2015-01 is to inform all insurers, producers and brokers of the rescission of Bulletin No. 2010-05 and to clarify prior guidance relative to "value added" services or things of value furnished by persons engaged in the business of insurance, as well as to common and ordinary marketing practices. Advisory Letter No. 2015-01 relates directly to the enforcement of the Unfair Trade Practices Act, La. R.S. 22:1961-1973, which defines and prohibits acts, methods, and practices that constitute unfair methods of competition and unfair or deceptive acts in the business of insurance. Advisory Letter No. 2015-01 should not be regarded as containing exhaustive examples or lists of conduct that either comply with or contravene the Unfair Trade Practices Act.

All insurers and brokers are hereby given notice that Bulletin No. 2010-05 is rescinded.

All recipients of Advisory Letter No. 2015-01 are reminded that the term "insurer" under the Louisiana Insurance Code includes all persons engaged in the business of making contracts of insurance, except fraternal benefits societies. For clarity and brevity, health maintenance organizations are also included in the term "insurer." Similarly, the term "producer" is inclusive of agents and brokers, in accordance with La. R.S. 22:46.

Advisory Letter No. 2015-01 describes a number of practices that constitute "value added" services, and distinguishes between "value added" services that violate the rebating provision of the Unfair Trade Practices Act, La. R.S. 22:1964(8), and "value added" services that do not. 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 Louisiana Legislature largely enacted the National

Association of Insurance Commissioners Unfair Trade Practices Model Act and its rebating provision as La. R.S. 22:1964(8):

§1964. Methods, acts, and practices which are defined as unfair or deceptive

The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (8) Rebates. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of insurance including life insurance, life annuity or health and accident insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stock, bonds, or other securities of any insurer or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

#### A. Marketing Practices Do Not Constitute Rebating

Questions have arisen as to whether the Unfair Trade Practices Act imposes prohibitions on common and ordinary marketing practices that are routine business practices outside of the business of insurance. Persons who are 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 La. R.S. 22:1964(8) when there is no *quid pro quo* arrangement, and thus do not violate the rebating provision of the Unfair Trade Practices Act<sup>1</sup>. Common and ordinary marketing practices are distinguishable from services that are clearly designed as ongoing and continuous services, which are addressed in Sections B and C of this Advisory Letter. Common and ordinary marketing practices include, but are not limited to, the giving of tangible goods (such as tee-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 charitable events, or the making or giving of charitable donations (including *pro bono* services) among the many common and ordinary marketing practices employed by business professionals throughout the

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<sup>1</sup> The rationale for this guidance relative to common and ordinary marketing practices is identical to the rationale detailed and explained in Section C of this Advisory Letter.

wider economy. Provided that there is no *quid pro quo* arrangement, common and ordinary marketing practices do not constitute a rebate of premiums.

Licensed title insurance producers are advised to consult Bulletin No. 2015-05, issued on June 3, 2015, regarding the specific prohibitions placed upon title producers and other persons engaged in the business of real estate settlements. Such persons are subject to specific requirements and prohibitions under the Real Estate Settlement Procedures Act of 1974 (RESPA), Public Law 93-533, 12 U.S.C. 2601 et seq., as well as other federal regulations and jurisprudence. In addition, title insurance producers are subject to all applicable provisions of the Louisiana Insurance Code for which title insurance producers are not exempt, including but not limited to the Unfair Trade Practices Act.

#### B. Services Offered Only to Insureds

Any person engaging in the business of insurance may offer certain services to insureds without charge and that do not constitute rebating if the services fall within the scope of services that an insurance producer may lawfully provide in connection with insurance when the services are incidental to the policy of insurance and are offered to all insureds. Although the following list is not exhaustive, the following services are incidental to and closely related to the administration of an insured's policy, and thus, would not constitute rebating:

- Risk assessments, including identifying sources of risk and developing strategies for eliminating or limiting those risks.
- Insurance consulting services such as examining, appraising, reviewing, or evaluating the insurance provided or other insurance-related advice.
- Insurance-related regulatory and legislative updates.
- Claims form preparation, but excluding claims adjustment.
- Tax preparation on behalf of an employer of Schedule A of the Internal Revenue Service Form 5500 Annual Return/Report of Employee Benefit Plan, which requests information regarding insurance contract coverage, fees and commissions, investment and annuity contracts, and welfare benefit contracts.
- Information to group policy or contract holders and members under group insurance policies, as well as forms needed for plan administration, enrollment forms, enrollment, including electronic enrollment services or software when those services or software pertain to insurance products but do not go beyond enrollment services or management of the insurance product, insurer-provided information or website links, and answers to frequently asked questions related to the insurance (including, for example, access through a

website created by the producer to an employee benefit portal that contains such information.)

- Certain services performed pursuant to COBRA such as billing former employees, collecting insurance premiums and forwarding aggregate premiums to the employer or contract holder or to the insurer when offered in connection with the provision of health and accident insurance.
- Certain services provided in accordance with the Health Insurance Portability and Accountability Act of 1996 such as those pertaining to health care access, portability, and renewability of insurance.
- The negotiation on behalf of insureds by health insurance issuers with non-participating providers in an effort to reduce or otherwise ameliorate billed charges by non-participating providers, commonly referred to as "balance billing".

Conversely, services that are not truly incidental to the contract of insurance, when offered *only* to insureds, may constitute rebating under La. R.S. 22:1964 if the costs of those services are not passed on to the insured or are not specified in the contract of insurance. Such services include, but are not limited to:

- COBRA administration that goes beyond billing and collecting the insurance premiums for former employees that are to be forwarded to the group contract holder or insurer.
- Payroll processing and/or services such as providing employers with check creation and distribution services for their employees.
- Development of employee handbooks and training materials that are unrelated to the insurance.
- Human resource software or any services related to employee compensation, discipline, job functionality, employee leave, organizational development, business policies or practices, safety, staffing, and recruiting that is unrelated to the insurance.
- Risk management or loss control services that are not routinely available to all agency clients, or that exceed the insurance related risk evaluation and underwriting of an account, or that are typically provided on a fee for service basis.
- Advice regarding compliance with federal and state laws concerning human resource issues that are not related to the insurance.
- Legal services.

### C. Services Offered to the Public at Large, Rather Than Only to Insureds

The term "value added" services necessarily implies that the services offered to a party do in fact add value to a prior, ongoing, future, or continual purchase or other agreement between a buyer and seller of goods or services. Where there is no purchase or agreement, there can be no addition of value, and therefore, no "value added" services. La. R.S. 22:1964(8), among other things, prohibits any person engaged in the business of insurance from rebating premiums or giving a thing of value ("value added" services or "valuable consideration") to another person as the *inducement* to the purchase or placement of a contract of insurance. The Unfair Trade Practices Act does not specifically define consideration or inducement, but both terms can be easily understood from other sources of law.

The Restatement of the Law of Contracts, Second, states the fundamental and generally accepted definition of "consideration" used by courts today. In the Restatement, Second, "consideration" in a bargain is the exchange or price by a promisor for his promise.<sup>2,3</sup> Consideration in a bargained for exchange is generally necessary for the creation of a contract. Where there is no contract between a promisor and promisee, it is specious to discuss "consideration," valuable or otherwise. In the context of Advisory Letter No. 2015-01, where there is no contractual relationship in which a regulated entity gives a thing of value to another person or entity, there is no "valuable consideration or inducement" furnished by the regulated person or entity.<sup>4</sup> Although the word "inducement" can have a broader meaning, it cannot be easily maintained that the word "inducement" means *any* and therefore *every* motivation that a person may have. Otherwise, the statute would be so broad as to encompass any motive not recounted in the contract of insurance as a rebate. In construing the statute in conformity with its general purpose as far as the words fairly permit, we therefore advise that the word "inducement" is synonymous with the word "consideration" and is the reason why the word "or" is interposed between the two, meaning that the consideration *is* the inducement in a bargained for exchange. It is not out of the ordinary in construing a statute to give a word a more precise meaning based on the neighboring words in the statute.<sup>5</sup> Equating "consideration" with

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<sup>2</sup> 3 Williston on Contracts § 7:2 (4th ed.)

<sup>3</sup> There are two requirements in order to find consideration for a contract: (1) the promisee must confer, or agree to confer, a benefit, or must suffer, or agree to suffer, prejudice, and (2) the benefit or prejudice must actually be bargained for as the exchange for the promise. West's Ann.Cal.Civ.Code 1605. Steiner v. Thexton, 48 Cal. 4th 411, 106 Cal. Rptr. 3d 252, 226 P.3d 359 (2010).

"Consideration" is a bargained for exchange whereby the promisor receives some benefit or the promisee suffers a detriment. Young v. Allstate Ins. Co., 119 Haw. 403, 198 P.3d 666 (2008).

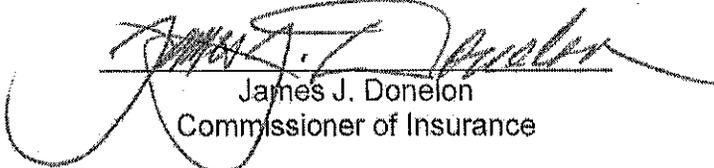
<sup>4</sup> An inducement is the "benefit or advantage which the promisor is to receive from a contract[.]" Black's Law Dictionary (2<sup>nd</sup> ed.).

<sup>5</sup> For a more detailed discussion of the commonsense canon of statutory interpretation known as *noscitur a sociis*, see United States v. Williams, 553 U.S. 285 (2008). The same result would follow if the canon of *eiusdem generis* were employed, which restricts a broader or more general term's meaning to that meaning encompassed by more specific or restricted terms that precede the general term. In this instance,

"inducement" is not undermined by the general reluctance to interpret statutes in a way that leads to surplus terminology. Surplus terminology sometimes results from "a perhaps regrettable but not uncommon sort of lawyerly iteration ("give, grant, bargain, sell, and convey"). But the canon against surplusage merely favors that interpretation which avoids surplusage.<sup>6</sup> It is not intended to require that a statute pursue its purposes at all costs. Therefore, La. R.S. 22:1964(8) should not be interpreted as prohibiting a person engaging in the business of insurance from giving things of value outside of a contractual arrangement when there is no insurance contract or relationship. Such a broad interpretation would result in prohibiting common and ordinary business activities where such prohibition bears no reasonable relation to the evils sought to be cured by the Unfair Trade Practices Act.

The same result necessarily follows in situations where a person engaged in the business of insurance gives a thing of value to a person with whom he has a contractual relationship, provided that the thing of value is offered on equal terms to the general public. In such situations it cannot be reasonably asserted that the thing of value served as valuable consideration or inducement to the contract because its recipient could obtain the thing of value irrespective of any contractual relationship regarding insurance. Where the thing of value is available to the general public, the recipient of the thing of value has received no special favor or advantage through the contract of insurance. On the contrary, to construe the statute literally in this context would similarly result in an application so broad as to prohibit any person engaged in the business of insurance from employing marketing practices that are routine, ordinary, and acceptable throughout the broader economy and that do not inhibit or undermine the statutory goals of protecting consumers from discriminatory pricing or insurers from the risk of insolvency. Statutes should be neither construed nor enforced in a manner that results in absurd consequences. In this instance, an uncritical and broad interpretation could have the substantially likely effect of fostering a less competitive marketplace for insurance that deprives policyholders of choice and value for their dollars, which is incompatible with and antithetical to the broad policy goals of the statute.

Baton Rouge, Louisiana, this 3rd day of June 2015.



James J. Donelon  
Commissioner of Insurance

---

*consideration* is a specific term that precedes the sometimes broader and more general term *inducement*.  
2A N. Singer & J. Singer, *Sutherland Statutes and Statutory Construction* § 47:17 (7th ed.2007)

<sup>6</sup> Microsoft Corp. v. i4i Ltd. Partnership, 131 S.Ct. 2238, 2248-49 (2011).

# Exhibit 2

**OFFICE OF THE MONTANA STATE AUDITOR  
COMMISSIONER OF SECURITIES AND INSURANCE  
MEMORANDUM**

**TO:** Barbara Vander Mars, Policyholder Services Bureau Chief  
Jesse Laslovich, Chief Legal Counsel

**FROM:** Jennifer Hudson, Attorney

**DATE:** July 16, 2015

**RE:** Zenefits Free Software and Rebating

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**ISSUE**

Does the practice of offering free payroll and human resources software constitute rebating pursuant to Mont. Code Ann. § 33-18-208?

**BRIEF ANSWER**

The CSI should not interpret Zenefits' practice of offering free software to be a violation of Montana's anti-rebating statute. Montana law prohibits rebating as a method of inducing a person to purchase insurance from the company offering the rebate. § 33-18-208. The software in question is not a rebate as it does not induce a person to purchase insurance through Zenefits. The software can be used for free with or without the purchase of insurance policies through Zenefits. A business may elect to purchase insurance through another producer while simultaneously using this technology. This interpretation is also good public policy, as Zenefits may potentially provide Montana small businesses with services they would not otherwise be able to afford.

**BACKGROUND**

This issue arose in connection with a recent Policyholder Services Bureau legal referral. On May 20, 2015, Mick Quinlivan submitted a letter inquiring into whether Zenefits' practice of offering free software to consumers would be considered rebating and prohibited under Montana law. Mr. Quinlivan is the CFO of ZaneRay Group, an account holder and customer of Zenefits. He was concerned because Zenefits' software had been considered an unlawful rebate in Utah prior to a change in Utah code that would allow for Zenefits to continue offering its software.

Zenefits is a technology company that has developed a software platform which allows small businesses to administer numerous human resources services and employee benefit programs. Employee insurance benefit administration is one service provided by Zenefits. Consumers are allowed access to the platform regardless of whether they decide to purchase insurance through Zenefits. The basic platform is free to all; however, some additional services are offered for a fee. Additionally, the website contains a disclosure informing consumers that use of the platform does not require that consumers use Zenefits as their insurance broker. In Montana, approximately 85% of Zenefits customers have chosen NOT to use Zenefits as their insurance broker.

### **ANALYSIS**

Rebates are prohibited in life, disability, and annuity contracts pursuant to §33-18-208. More specifically, "[e]xcept as otherwise expressly provided by law, no person shall knowingly: (2) pay or allow or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity any rebate of premiums payable on the contract or any special favor or advantage in the dividends or other benefits thereon or any paid employment or contract for services of any kind or any valuable consideration or inducement whatsoever not specified in the contract." This code provision did not take free software into consideration as it was written in 1947 and there does not appear to be a case on point.

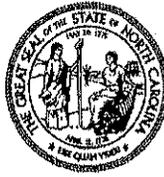
In summary, anything of value given outside of the contract to induce a person to enter into an insurance contract is prohibited. Rebating is prohibited because it often constitutes or accompanies discriminatory practices.

The platform is clearly of some value as small businesses would either have to purchase this service from another software provider or develop their own program to fulfill their human resources needs. However, the free service does not act as an inducement to use Zenefits as an insurance broker, any more than handing out business cards or pens with a producer's name on them are an inducement to an insurance contract. While there may be some ease to using the broker services provided by Zenefits, it is not required, and clear language on the site further assures customers of this. Current data clearly shows that the platform is not functioning as an inducement as the vast majority of users do not also use Zenefits as their insurance broker. Lastly, there does not appear to be any discriminatory effect or purpose behind the software offering.

### **CONCLUSION**

The CSI's position is that Zenefits' free software platform for administering human resource related services does not constitute a rebate under Montana law. While the software is of value, it does not act as an inducement to also use Zenefits as an insurance broker.

# Exhibit 3



ROY COOPER  
ATTORNEY GENERAL

## State of North Carolina

Department of Justice  
114 W. Edenton Street  
P.O. Box 629  
Raleigh, North Carolina  
27602-0629

Tel: (919) 716-6610  
Fax: (919) 716-6757

Reply to: LaShawn S. Piquant  
Assistant Attorney General  
E-mail: lpiquant@ncdoj.gov

### Memorandum

**To:** Gilda Thompson, Agent Services Division  
**From:** LaShawn Strange Piquant, Assistant Attorney General  
**Date:** March 3, 2015  
**Re:** Complaint Regarding Zenefits

I am writing in response to your request for an informal opinion regarding a complaint of rebating by Zenefits, a non-resident broker. In the complaint submitted by Suzy Johnson, a resident broker and owner of Employee Benefits Advisors of the Carolinas, she alleges that Zenefits is "rebating since they provide free payroll benefits administration services as well as Human Resources technology in exchange for the broker commissions in group insurance programs."

#### More Complaint Allegations

The complaint further alleges that Zenefits provides "payroll and benefits administration in return for being named the agent of record on the group health plans." Ms. Johnson's complaint also shared that she recently lost business to Zenefits where the potential client provided the following feedback regarding its selection of Zenefits to handle its employee benefits:

- Zenefits services are completely online
- Zenefits services include benefits and Human Resources Management (HR) services
- The overall pricing of its services
- The overall presentation "Wow'd" them
- Employees could go to the Zenefits website and choose their own benefits
- Zenefits provides payroll services
- Zenefits has a managed software system

The above feedback was not directly related to Zenefits role as a licensed insurance broker.

## **About Zenefits**

Zenefits.com is a licensed business entity located in California. The Designated Licensed Responsible Party (DLRP) is Parker Conrad, who is licensed as a non-resident producer. Based on information from the Zenefits.com website and information provided directly from the company, Zenefits provides free online benefits software to small businesses. All services are provided over the internet. While access to the benefits and HR software is available to everyone, Zenefits also provides insurance brokering services. Its website provides that "to enjoy the benefits of Zenefits.com, platform you are not required to use us as your insurance broker. However, we believe that you'll find that utilization of the full Zenefits platform . . . maximizes your Zenefits experience." The website also advises that "if you make the wise decision to entrust Zenefits with your insurance needs and make us your broker of record. . . we may be required by law to charge separate fees and costs when our clients use certain more complex functions available under Zenefits.com"

## **Issue**

Based on Ms. Johnson's complaint, this issue is whether, under the provisions of Chapter 58 regarding rebating, the services of Zenefits.com violate North Carolina insurance rebating statutes?

## **Statutes**

### *N.C. Gen. Stat. §58-63-15(8)(a)*

Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

### *N.C. Gen. Stat. §58-33-85(a)*

No insurer, agent, broker or limited representative shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner. No insurer, agent, broker or limited representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance, nor any employee of such insured, shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement.

## **Analysis**

The Department has previously addressed the issue of rebating by insurance agents and which actions are prohibited by the rebating statutes. In 1999, the Department issued *Bulletin Number 99-B-2* to provide guidance to its licensees regarding potential rebating violations. In the bulletin, the Department discussed "that insurance carriers are increasingly interested in arranging for non-insurance "benefits" for their insured on an

extra-contractual basis . . . these may actually come from third parties . . . ." (NCDOI *Bulletin Number 99-B-2* (1999)). Therein, the Department provided that it has interpreted its anti-rebating statutes to prohibit agents, producers, and brokers from paying or allowing or giving any rebate, discount abatement, credit, or reduction of insurance premiums, any special advantage in the dividends or benefits to accrue thereon, or any valuable consideration or inducement whatever, **not specified in the policy of insurance**. Moreover, it states in the *Bulletin*, "The language of the statutes is extremely broad. Their purpose is to ensure that promises made in the solicitation of a sale of insurance are enforceable, and to ensure that inappropriate consideration is not offered to obtain a sale."

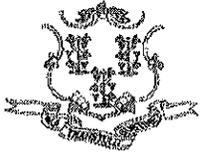
Based on the information provided by Zenefits website and the complaint, consumers are provided access to free human resources software. At some point after accessing the HR resources, the consumer can make a decision to access Zenefits insurance brokerage services and enter into insurance contracts if desired. Consumers still have access to the free resources whether the insurance services is accessed or whether insurance products are purchased.

Contrary to Ms. Johnson's allegations, there is no exchange by Zenefits for access to its free software in return for representing consumers as its insurance broker. In reviewing the Zenefits website and information provided by Zenefits, there is no exchange for free services for purchases of an insurance contract. While consumers receive access to Zenefits' services, this access is not contingent upon completing an insurance application or entering into an insurance contract. On its website, it specifically states that "to enjoy the benefits of the Zenefits.com platform, you are not required to use us as its broker." Consumers do not have to choose Zenefits for its insurance needs. Zenefits has advised the Department that only a small portion of its North Carolina business, less than 10%, includes consumers who have chosen Zenefits as its insurance broker.

### **Conclusion**

Based on the above, it is my opinion that Zenefits is not engaging in rebating in violation of North Carolina insurance laws set out in N.C. Gen. Stat. §§58-63-15 and 58-33-85. Zenefits is not offering its free platform in exchange for brokering insurance business. Consumers are not penalized for not using Zenefits as its insurance broker. Additionally, the anti-rebating statutes bar any services or goods offered as inducement to purchase or provided after insurance has been contracted that is not specified in the policy of insurance. This language would include services offered by Zenefits and Ms. Johnson.

This is an advisory memorandum only. It has not been reviewed and approved in accordance with the procedures for issuing an Attorney General's Opinion.



# STATE OF CONNECTICUT

## INSURANCE DEPARTMENT

P.O. Box 816 · Hartford, CT 06142-0816

An Equal Opportunity Employer  
www.ct.gov/cid

### CONSUMER AFFAIRS DIVISION

PHONE: 860.297.3900, Ext. 3988

FAX: 860.297.3872

EMAIL: Larry.Miner@ct.gov

March 4, 2015

Stephen Glick, President  
GFS, Inc. d/b/a Chamber Insurance Trust  
325 Boston Post Road, Suite #3F  
PO Box 581  
Orange, CT 06477

**Re: Our File # 500702**

Dear Mr. Glick:

Thank you for your recent inquiry to the Connecticut Insurance Department. The Insurance Department reviews complaints received in the agency to be sure that all parties adhere to existing insurance statutes in the State of Connecticut. If we find that there is a violation of these statutes, we take action on these matters to ensure that your rights are protected.

The response from our Legal Department at the State of Connecticut Insurance Department states that they have previously investigated in detail the services provided by Zenefits Insurance Services. Based on this investigation, our Legal Department has determined that Zenefits Insurance Services was not in violation of the Anti-Rebating Laws here in Connecticut.

We have reviewed your complaint for possible violations of Connecticut state law. Unfortunately, the concerns that you have raised are not in violation of any state statute or regulation. Since our regulatory scope is limited to enforcement of existing law, we are unable to take action outside of these parameters.

We know that this was not the resolution that you were hoping for as no one likes to lose a piece of business. Nevertheless, we would like to thank you for bringing this matter to our attention and hope that you will contact our office if we can be of assistance in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Miner".

Larry Miner  
Examiner

Enclosure(s) –

LARRY HOGAN  
Governor

BOYD K. RUTHERFORD  
Lt. Governor



AL REDMER, JR.  
Commissioner

NANCY GRODIN  
Deputy Commissioner

VICTORIA AUGUST  
Associate Commissioner  
Compliance & Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202  
Direct Dial: 410-468-2217 Fax: 410-468-2245  
Email: [victoria.august@maryland.gov](mailto:victoria.august@maryland.gov)  
410-468-2000 1-800-492-6116  
TTY: 1-800-735-2258  
[www.insurance.maryland.gov](http://www.insurance.maryland.gov)

December 9, 2015

Thomas J. Welsh, Esq.  
Orrick, Herrington & Sutcliffe, LLP  
400 Capitol Mall, Suite 3000  
Sacramento, CA 95814-4497

Re: Zenefits

Dear Mr. Welsh:

Thank you for contacting the Maryland Insurance Administration ("Administration") on behalf of your client, Zenefits. In December 2014, your colleague Analea Patterson wrote to the Administration to share some background about the Zenefits business model and to solicit some clarification regarding whether providing free access to Zenefits' integrated online human resources platform violates Maryland's anti-rebating and tie-in statutes.<sup>1</sup> Our understanding of the facts provided to us by you is as follows:

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<sup>1</sup> Section 27-209 "Rebates – Life Insurance, health insurance, and annuities" of the Insurance Article of the Annotated Code of Maryland states in pertinent part:

Except as otherwise expressly provided by law, a person may not knowingly:

(2) pay, allow, give or other to pay, allow, or give directly or indirectly as an inducement to the insurance or annuity:

(iii) paid employment or a contract for services of any kind; or

(iv) any valuable consideration or other inducement not specified in the contract;

(4) offer; promise, or give any valuable consideration not specified in the contract, except for educational materials, promotional materials, or articles of merchandise that cost no more than \$25, regardless of whether a policy is purchased.

Thomas J. Welsh, Esq.

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- Zenefits is a marketplace for small and mid-sized businesses,
- The Zenefits' platform offers consolidation of all aspects of human resources functions in one website, including non-insurance related modules (payroll, time/attendance software, etc.) at no charge,
- Anyone can sign up for a free account and take advantage of the free modules,
- One portion of the Zenefits' site offers insurance ,
- Access to the Zenefits' platform is free to anyone without any obligation to purchase insurance, and
- The free access is provided on equal terms to the general public.

Based on the above facts, the program does not appear to violate Maryland's anti-rebating and tie-in statutes at this time.

The Administration reminds you of some key provisions that will help ensure compliance going forward:

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Section 27-212 "Rebates and unfair discrimination- Insurance other than life insurance, health insurance, and annuities" of the Insurance Article of the Annotated Code of Maryland states in pertinent part:

(b) Except to the extent provided for in an applicable filing with the Commissioner as provided by law, an insurer, employee or representative of an insurer or insurance producer may not pay, allow, give, or offer to pay, allow, or give directly or indirectly as an inducement to insurance or after insurance has become effective:

(3) any valuable consideration or other inducement not specified in the policy.

(c) An insured named in a policy or an employee of the insured may not knowingly receive or accept directly or indirectly a rebate, discount, abatement, credit, reduction of premium, special favor, advantage, . . . valuable consideration, or inducement described in subsection (b) of this section.

(d) Except as otherwise provided by law, a person may not knowingly offer, promise, or give any valuable consideration not specified in the policy, except for educational materials, promotional materials, or articles of merchandise that cost no more than \$25, regardless of whether a policy is purchased.

Section 27-214 "Coerced or Tie-In Sales" of the Insurance Article of the Annotated Code of Maryland states in pertinent part:

(a) *In general* – (1) A person may not require another person to buy insurance through a particular insurance producer or insurer as a condition agreement, or understanding with respect to selling or providing a loan, credit, sale, goods, property, contract, lease, or service to the other person.

(2) An insurance producer or insurer may not participate in a combination plan or transaction prohibited by paragraph (1) of this subsection.

(b) *Solicitation* – (1) A person may not solicit the combination of insurance and other matters prohibited by subsection (a) of this section.

Thomas J. Welsh, Esq.

Page 3

December 9, 2015

- Ensure that the free modules are not tied in any way to the purchase of insurance and are available to everyone,
- Ensure that the free modules are marketed in a non-discriminatory manner,
- Providing general information about insurance services available is permitted, but direct solicitation and generation of unsolicited price quotes based on the information provided by clients who sign up for free modules is not permitted, and
- Disclose the anti-rebating issues on your website, and mention that the modules are not tied to the purchase of insurance, are marketed in a non-discriminatory manner, and that information provided to Zenefits will not be utilized to provide unsolicited insurance quotes.

If I can be of any further assistance, please call or e-mail me at the numbers listed above.

Sincerely,



Victoria August

Associate Commissioner- Compliance and Enforcement  
Maryland Insurance Administration



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

David A. Paterson  
Governor

Eric R. Dinallo  
Superintendent

**OGC Op. No. 08-07-26**

The Office of General Counsel issued the following opinion on July 30, 2008, representing the position of the New York State Insurance Department.

**Re: Wellness Program offer on insurance broker's website**

**Questions Presented:**

1. May a licensed insurance broker's website provide a link to a third-party company's "free" wellness program if the link may be accessed by anyone, not just individuals or entities who have purchased insurance through the broker, without running afoul of N.Y. Ins. Law § 4224(c) (McKinney 2006)?
2. Would a broker be required to include the wellness program offer in all insurance policies sold by the broker, pursuant to Insurance Law § 4224, in order to lawfully maintain a link to a free wellness program offer on the broker's website?

**Conclusions:**

1. Yes. A broker may offer non-insurance related services such as a wellness program, provided that the broker, as well as the wellness program provider, do not limit the offer to purchasers of insurance, require that recipients of the wellness program also purchase insurance or otherwise induce the recipients to purchase insurance, receive an insurance quote, or require the recipients to fulfill any other similar conditions related to insurance.
2. No. If the wellness program is offered as described above, the broker need not include the wellness program offer in insurance policies sold by the broker pursuant to Insurance Law § 4224.

**Facts:**

The inquirer represents a licensed insurance broker who is interested in providing a link on the broker's website to a free wellness program that is maintained by a third-party company with whom the broker has a "relationship." The inquirer asserts that because wellness programs have gained increased popularity in the corporate arena as a means to recognize and treat work-related health hazards, wellness programs have "trickled over into corporate insurance programs and related premiums." As such, brokers have begun offering free wellness programs in connection with the sale of insurance. The inquirer states that the client would like to follow suit, but asks whether the offer of a free wellness program is an "unlawful inducement" under Insurance Law § 4224, or departs from

precedents set in previously issued Office of General Counsel ("OGC") opinions, namely, OGC Opinion Nos. 02-08-02 (Aug. 5, 2002), 03-06-14 (June 6, 2003), 04-06-02 (June 7, 2004) and 05-08-04 (Aug. 3, 2005).

The inquirer also reports that the broker would place a link on his/her/its main website to access the wellness program. Access will not be limited to individuals or employees of the companies who have obtained insurance products through the broker; instead, anyone visiting the broker's website will be able to gain access to the wellness program link. As such, the inquirer asks whether the wellness program as described above comports with Insurance Law § 4224(c), and if so, whether the wellness program offer must be included in insurance policies sold by the broker.

In response to the Department's request for further information on the wellness program, the inquirer reports that the program is "entirely web-based," and that anyone visiting the client's website will be able to take advantage of the benefits offered by the wellness program. The inquirer also states that the wellness program provider requires the completion of a questionnaire to determine the individual's potential health risks. The wellness program provider would in turn offer lessons on how to minimize those risks and also provide information on general health issues.

Further, the inquirer reports that the broker has not yet entered into a contractual relationship with the wellness program provider, because to do so will depend on whether the wellness program offer is permissible under the Insurance Law. If the broker lawfully may offer the wellness program on the broker's website, the broker and the company will enter into an annual contract whereby the broker will pay the wellness program provider a flat fee in twelve monthly installments. Payment will not be contingent upon whether anyone actually visits the wellness program provider's website.

**Analysis:**

Insurance Law § 4224 prohibits rebating and inducements by life, accident and health insurers, agents and brokers. Insurance Law § 4224(c) reads as follows:

No such life insurance company and no such savings and insurance bank and no officer, agent, solicitor or representative thereof and no such insurer doing in this state the business of accident and health insurance and no officer, agent, solicitor or representative thereof, and no licensed insurance broker and no employee or other representative of any such insurer, agent or broker, shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to any person to insure, or shall give, sell or purchase, or offer to give, sell or purchase, as such inducement, or interdependent with any policy of life insurance or annuity contract or policy of accident and health insurance, any stocks, bonds, or other securities, or any dividends or profits accruing or to accrue thereon, or any valuable consideration or inducement whatever not specified in such policy or contract; nor shall any person in this state knowingly receive as such inducement, any rebate of premium or policy fee or any special favor or advantage in the dividends or other benefits to accrue on any such policy or contract, or knowingly receive any paid employment or contract for services of any kind, or any valuable consideration or inducement whatever which is not specified in such policy or contract.

Insurance Law § 2324(a), which prohibits rebating and inducements with respect to property/casualty insurance, contains a similar provision. However, Insurance Law § 2324(a) permits a licensee to give an article of merchandise or "keepsake" not exceeding fifteen dollars in retail value, without including the "keepsake" in the policy. Insurance Law § 4224 contains no such exception.

Under the facts presented, the presence of a link to a free wellness program on the broker's website does not create an unlawful inducement proscribed by Insurance Law § 4224, as long as access to the wellness program's free services is not contingent upon the purchase of insurance policies sold by the broker or the solicitation thereof by either the broker or the wellness program provider, or limited to the broker's clients. See OGC Opinion No. 04-06-02 (June 7, 2004).

For further information you may contact Senior Attorney Camielle A. Campbell at the New York City office.

**KANSAS INSURANCE BULLETINS AND RELEATED MATERIALS  
MISCELLANEOUS BULLETINS**

Bulletin 1983-13  
June 29, 1983

TO: All Insurers Authorized to Write Title Insurance in the State of Kansas (For Distribution to Supervisor(s) of Kansas Operations)

FROM: Fletcher Bell

Commissioner of Insurance

DATE: June 29, 1983

RE: HOUSE BILL 2189, HOUSE BILL 2446 AND HOUSE BILL 2447

This will serve as notice to all concerned parties of the enactment of the referenced bills. The laws deal with different aspects of title insurance companies and title insurance transactions.

House Bill 2189 will require title insurance companies to specify in every policy whether a public improvement or special benefit district has been created pursuant to K.S.A. 12-153. This requirement is contingent on the municipality describing all lots and areas that will be affected by the district. Title insurance companies may not exempt themselves from the law by means of a general exclusion to the policy. Therefore, companies may not accommodate the law by using the following or similar language,

"Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation."

House Bill 2446 amends K.S.A. 40-2404 to add, as a defined unfair trade practice, **rebates** of title insurance rates. This law will prohibit title insurance companies, their agents, any officer, employee, attorney or agent thereof, to pay or offer to pay, either directly or indirectly a **rebate** of any rate or charge made incident to issuance of title insurance. The law further prohibits any special favor or advantage not generally available to others similarly classed or where any money, thing of value, other consideration or material inducement is involved. As a result, the named insured on

the title insurance policy or any other person directly or indirectly involved in the title insurance transaction may not knowingly receive or accept any **rebate** as defined in Section (a) of House Bill 2446. The new legislation lists several practices which will not be considered an unlawful **rebate**. The list of exemptions include: reasonable fees for services; earned agent's commission; payment of reasonable entertainment and advertising expenses; and the division of rates and charges between and among a title insurance company and its agent. **THE KEY IS WHETHER THE COMPANY HAS PROVIDED OR ARRANGED FOR OR AN INSURED HAS RECEIVED ANY SPECIAL FAVOR OR ADVANTAGE THAT IS NOT GENERALLY AVAILABLE TO OTHERS.**

House Bill 2447 prohibits the issuance of a preliminary or final policy of insurance until the insurance company or its agent has caused to be conducted a reasonable title search and examination of the property involved. The law also requires that a determination of the insurability of the title and the risk be made in accordance with sound underwriting practices.

You should note the application of the above laws as it pertains to your company in order to establish the necessary procedures and/or steps that need to be taken in order to comply with this legislation. You need further advise those persons responsible for your operations in the state of Kansas.

Please acknowledge receipt of this bulletin by advising us that the necessary procedures and/or steps have been established and that the appropriate personnel have been notified.

**Insurance Product Line:** Property/Casualty

**A-to-Z Index Terms:**

TITLE INSURANCE

KS Bulletin 1983-13

END OF DOCUMENT



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-6066

BILL HASLAM  
GOVERNOR

JULIE MIX MCPEAK  
COMMISSIONER

BULLETIN

TO: All Licensed Insurance Companies and Producers  
FROM: Julie Mix McPeak, Commissioner *Julie Mix McPeak*  
RE: Rebating  
DATE: February 13<sup>th</sup>, 2015

The Department has been made aware of several insurance companies and producers that are offering gifts to consumers as a marketing promotion to solicit additional business.

Tenn. Code Ann. § 56-8-104(8) of the Unfair Trade Practices and Claims Settlement Act prohibits rebating and provides, in pertinent part, that it is an unfair trade practice to knowingly permit or offer valuable consideration or an inducement to enter into a policy, unless such consideration is specified in the policy. The Department takes the position that gifts and valuable consideration offered to potential consumers irrespective of whether they purchase a policy, such as gift offers for requesting an insurance quote, will not be considered an inducement to a policy in violation of the rebating statute.

Gifts and offers that are provided exclusively to those who purchase a policy will be presumed to be inducements and rebating in violation of Tenn. Code Ann. § 56-8-104(8) unless such gifts and/or offers are specified in the policy forms. Violations will be strictly enforced and violators will be subject to actions against their license and/or civil monetary penalties under the authority of Tenn. Code Ann. §§ 56-2-305, 56-6-112(a)(7), and 56-8-103.

This Bulletin repeals and replaces any other prior inconsistent guidance issued by the Department related to rebating.

Any questions regarding the intent of this Bulletin should be directed to the Insurance Division's Policy Analysis Section, 6<sup>th</sup> Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, and/or (615) 741-2825.



# Illinois Department of Insurance

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**BRUCE RAUNER**  
Governor

**JENNIFER HAMMER**  
Acting Director

Media Advisory  
Contact: Michael Batkins  
[Michael.Batkins@illinois.gov](mailto:Michael.Batkins@illinois.gov)

For Immediate Release  
February 1, 2017

## **Illinois Department of Insurance Levies \$560,000 Civil Forfeiture Against California-Based Zenefits**

*Illinois becomes the 17th state to reach settlement with company for alleged insurance code violations*

SPRINGFIELD – The Illinois Department of Insurance (DOI) announced a Stipulation & Consent Order with YourPeople, Inc., (dba Zenefits FTW Insurance Services) whereby the California-based human resources software and insurance brokerage company will pay a civil forfeiture of up to \$560,000 for the alleged insurance law violations.

The forfeiture, believed to be one of the largest in DOI's history, follows a nearly year-long investigation by DOI's Investigations Division in which Zenefits cooperated with DOI staff. The investigation determined that an estimated 279 transactions concerning the sale, solicitation, or negotiation of insurance in 2015 and prior years involving Illinois-based small and medium sized business clients were conducted by Zenefits employees who were not properly licensed to sell insurance in Illinois. In conjunction with the investigation of these practices by Illinois and other states, Zenefits has largely replaced its prior management team, including its former CEO, and has instituted new controls and procedures to ensure that its employees are properly trained and licensed. DOI will continue to monitor the company's practices to ensure compliance with Illinois law.

"The enforcement of compliance of insurance laws remains a top priority for (DOI)," said Acting Director Jennifer Hammer. "Zenefits failed to comply with Illinois insurance licensing laws. We are glad we were able to protect the citizens of Illinois in this case."

During a parallel review, the Department did not uncover evidence that Zenefits engaged in unlawful rebating, which would have been a further violation of the Illinois Insurance Code. As Zenefits' current business model as presented includes the provision of free human resources software to anyone, and additional website features provided to businesses which purchase insurance through Zenefits are solely limited to the servicing of that insurance, the Department's review concluded that no unlawful rebate or inducement is provided to the customer under Illinois law. This determination remains subject to review in the future should further evidence be received or should the company's business practices change.

### **Background:**

Illinois becomes the 17<sup>th</sup> state to settle with Zenefits for its prior unlicensed activities. Of the \$560,000 civil forfeiture, \$100,000 will be suspended pending the successful completion of a period of probation detailed in the order.

###

**STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER**

*In the Matter of*

**YOURPEOPLE, INC. DBA  
ZENEFITS FTW INSURANCE  
SERVICES,**

Licensee.

Order No. 16-0219

WAOIC No. 859923

FEIN No. 46-0645293

**CONSENT ORDER**

This Consent Order ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting under the authority set forth in RCW 34.05.060, RCW 48.02.060, RCW 48.17.530, and RCW 48.17.560, and Licensee YourPeople, Inc. DBA Zenefits FTW Insurance Services ("the Licensee" or "Zenefits"). This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner's policies and procedures.

**BASIS:**

1. Zenefits is a nonresident insurance producer that has been licensed in Washington since May 2014. Zenefits has a subsidiary named PayYourPeople, LLC.
2. The Insurance Commissioner commenced an investigation into Zenefits' conduct, described herein, on February 23, 2015. At the conclusion of that investigation, the Insurance Commissioner found that Zenefits offered and gave Washington residents free access to valuable software functions.
3. The Insurance Commissioner, through his investigation, specifically found as follows:

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ORDER NO. 16-0219

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State of Washington  
Office of Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

- a. Zenefits offers an online, cloud-based, software-as-a-service platform<sup>1</sup> that integrates the administration of human resources, payroll, and employee benefits. Zenefits refers to the software functions as applications (or "apps").
- b. Zenefits offers the core HR apps of this platform free of charge to the public. Zenefits does not require anyone to become an insurance client to use the core HR apps, which include hiring and terminating employees, managing employee information, tracking employee paid time off, generating Affordable Care Act filings, helping to ensure ACA compliance, and generating various employer reports.
- c. Zenefits also offers certain premium, non-insurance apps for a fee. Zenefits offers the non-insurance apps for the same price regardless of whether the customer designates Zenefits as its insurance broker of record. Examples of these non-insurance premium features that require a fee include commuter benefits, time-and-attendance tracking, and Zenefits payroll.
- d. Zenefits also integrates non-insurance third-party apps into its system, allowing the client to manage certain HR aspects of the third-party app with Zenefits. Examples include apps that manage provisioning upon hire and de-provisioning upon termination, applicant tracking systems, office productivity suites, and payroll accounting software. Zenefits does not charge for the integration of the third-party apps. Zenefits may or may not receive a commission or fee from the provider of the third-party apps for the integration of their apps into Zenefits' system.
- e. For certain insurance-related features centered on insurance enrollment and administration, Zenefits requires a client to designate Zenefits as its broker of record. Once designated as broker of record, Zenefits imports the insurance information into its system and collects the insurance commissions related to those insurance products. At least 25 Washington businesses selected Zenefits to be their insurance producer after Zenefits gave them a demonstration of the free software

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<sup>1</sup> The descriptor "software-as-a-service" denotes a software industry term of art and is not dispositive of whether the software offered by Zenefits constitutes a service or a good under RCW 48.30.150.

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platform. As of August 27, 2015, about 31 percent of Washington accounts on the Zenefits free software platform designated Zenefits as their broker of record.

4. RCW 48.30.140 provides that, except to the extent provided for in an applicable filing with the Commissioner then in effect, no insurance producer shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

5. RCW 48.30.150(1)(c) provides that no insurance producer shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever any prizes, goods, wares, gift cards, gift certificates, or merchandise of an aggregate value in excess of one hundred dollars per person in the aggregate in any consecutive twelve-month period.

6. The Insurance Commissioner hereby finds and concludes that RCW 48.30.140 and RCW 48.30.150 prohibit a licensee like Zenefits, acting directly or through affiliates, from offering valuable software functions or other valuable benefits for free or at less than fair market value to the public. Accordingly Zenefits and its affiliates are prohibited from offering its software for free or at less than market value to the public.

#### CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and the Licensee agree the best interest of the public will be served by entering into this Order. NOW, THEREFORE, the Insurance Commissioner and the Licensee consent to settle this matter upon such terms and conditions as are set forth below:

1. The Licensee acknowledges its duty to comply fully with the applicable laws of the state of Washington.

2. The Licensee consents to the entry of this Order in lieu of entry of a cease and desist order and acknowledges that the factual representations contained in paragraphs 1, 2, and 3 in the

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Basis section of this Order are accurate as of October 1, 2016. This factual acknowledgment does not constrain the ability of Licensee to introduce additional facts or evidence in any subsequent administrative or judicial proceeding.

3. This Consent Order does not constitute an admission of any liability by Zenefits. Zenefits does not admit, and retains and intends to exercise its right to controvert in any subsequent proceeding, the validity of the allegations or legal interpretations contained in this Consent Order.

4. The Licensee expressly preserves the right it has to challenge the Insurance Commissioner's findings and interpretation of RCW 48.30.140 and RCW 48.30.150 through the administrative process, state courts, and legislative channels. The parties agree that there is a present and existing dispute with respect to the Insurance Commissioner's findings and interpretations of RWC 48.30.140 and RCW 48.30.150. that those findings and interpretations constitute an adverse agency action and are ripe for review and justiciable, and that the Licensee has suffered harm and has standing to challenge those findings and interpretations. The Insurance Commissioner acknowledges and agrees that Licensee shall have the right to challenge the Insurance Commissioner's findings and legal interpretations set forth in this Consent Order in an adjudicative proceeding pursuant to the Washington Administrative Procedure Act within 90 days of Licensee's receipt of this fully executed Consent Order. If an administrative hearings officer, administrative law judge or court finds that this dispute is not justiciable, for any reason, this Consent Order shall be null and void.

5. By agreement of the parties, the Licensee will not: (1) provide free use of its online, cloud-based, software platform that integrates the administration of human resources, payroll, and employee benefits; or (2) otherwise engage in conduct that violates RCW 48.30.140 or RCW 48.30.150 or both. From and after January 1, 2017, Licensee will begin to charge all Washington customers for the previously free apps and functionality of its software platform by offering it as part of a paid service sold at fair market value.

6. The Licensee will continue to charge for the previously free apps and functionality of its software platform until the earlier of: (1) the entry of a final, unappealed administrative or judicial order rejecting the Insurance Commissioner's findings, conclusions, or legal interpretations set forth in paragraphs 4-6 of the foregoing factual Basis; or (2) a legislative act clarifying that the Insurance Code allows the Licensee to stop charging for the previously free

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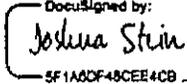
functionality of its software platform. Upon the occurrence of either event, this Consent Order shall be null and void.

7. The Licensee understands and agrees that any further failure to comply with the statutes and/or regulations that are the subject of this Order, as interpreted herein, constitutes grounds for further penalties, which may be imposed in direct response to further violations.

8. The facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this 21st day of November, 2016.

**YOURPEOPLE, INC. DBA ZENEFITS FTW  
INSURANCE SERVICES**

By:  \_\_\_\_\_  
SF1A0DF48CEE4CB

Printed Name: Joshua Stein

Printed Corporate Title: General counsel & secretary

**AGREED ORDER:**

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. The Licensee will not: (1) provide free use of its online, cloud-based, software-as-a-service platform that integrates the administration of human resources, payroll, and employee benefits; or (2) engage in conduct that violates RCW 48.30.140 or RCW 48.30.150 or both. From and after January 1, 2017, Licensee will begin to charge all Washington customers for the previously free apps and functionality of its software platform by offering it as part of a paid service sold at fair market value. The Licensee will continue to charge for the previously free apps

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and functionality of its software platform until the earlier of: (1) the entry of a final, unappealed administrative or judicial order rejecting the Insurance Commissioner's findings, conclusions, or legal interpretations set forth in paragraphs 4-6 of the foregoing factual Basis; or (2) a legislative act clarifying that the Insurance Code allows the Licensee to stop charging for the previously free functionality of its software platform. Upon the occurrence of either event, this Consent Order shall be null and void.

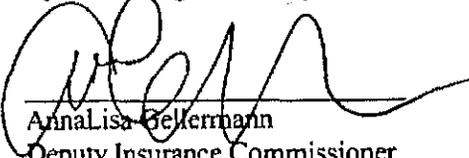
2. The facts of this Order, and any provision, finding, or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

Entered at Tumwater, Washington, this 23<sup>rd</sup> day of November 2016.



MIKE KREIDLER  
Insurance Commissioner

By and through his designee



AnnaLisa Gellermann  
Deputy Insurance Commissioner  
Legal Affairs Division

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