



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
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NEW YORK, NEW YORK 10004

Eliot Spitzer  
Governor

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Writer's Direct Dial: (212) 480-5290

February 25, 2008

**Re: Proposed Electronic Premium Payment System**

I write in response to your inquiry regarding the propriety under the New York Insurance Law of a proposed electronic premium payment system.

**Question Presented:**

May an entity that provides a service to insurance policyholders that enables them to pay their insurance premiums electronically by credit card charge those policyholders a fee to cover credit card and other service expenses?

**Conclusion:**

Yes, nothing in the New York Insurance Law or regulations promulgated thereunder prohibits an entity that provides a service to insurance policyholders that enables them to pay their insurance premiums electronically by credit card from charging those policyholders a fee to cover credit card and other service expenses.

**Facts:**

You report that your client has developed an electronic premium payment system (the "Payment System") that would allow your client's customers to make secure electronic premium payments using credit cards, debit cards or electronic fund transfers. The Payment System directs the premium payments to be made directly to the insurance company designated by the customer, on the date designated by the customer. You further report that the Payment System is

secure, and designed to meet data security standards so as to satisfy customer concerns regarding privacy protection and prevention of identity theft.

You further report that the Payment System does not at any time hold the premium payment on behalf of the customer or any insurance company. Rather, it simply acts to facilitate the making of payments by secure electronic means. Finally, you report that your client charges a transaction fee for the service provided, and that this transaction fee is the same regardless of the payment method chosen.

**Analysis:**

No provision of the New York Insurance Law or the regulations promulgated thereunder governs the service provided by your client through the operation of the Payment System. Accordingly, there is no legal impediment in the New York Insurance Law or the regulations promulgated thereunder that prohibits the operation of the Payment System as described.

In addition, although it may involve the use of credit card payments, the Payment System does not appear to fall within the ambit of the prohibition contained in N.Y. General Business Law (GBL) § 518 (McKinney 1996). That statute provides:

No seller in any sales transaction may impose a surcharge on a holder who elects to use a credit card in lieu of payment by cash, check, or similar means.

Any seller who violates the provisions of this section shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars or a term of imprisonment up to one year, or both.

Black's Law Dictionary 712 (8th ed. 1999) defines the term "surcharge" as "an additional tax, charge, or cost." While the Department's Office of General Counsel does not generally construe the General Business Law, it appears that the fee imposed by your client for use of the Payment System does not constitute a surcharge under that statute, because it is a fee for a separate and distinct service that is provided by a third party. It is not an extra charge levied by the insurance provider itself or its agent for the privilege of paying by credit card.

The prohibition set forth in GBL § 518 applies to the "seller" in any sales transaction. N.Y. Gen. Bus. Law § 511(6) defines "seller" as "any person who honors credit cards or debit cards which may be used to purchase or lease property or services." New York's Attorney General, in a formal opinion, has stated that:

[A]s long as the sale of insurance can be considered the sale of property or a service, it appears to fall within the plain meaning of the statute. We believe that the purchase of property or a service, and thus the credit card surcharges imposed in connection with the payment of insurance premiums, fall within its intended scope.

New York Attorney General Opinion No. 2006-F2 (January 25, 2006), available online at <http://www.oag.state.ny.us/lawyers/opinions/2006/formal/2006-F2.pdf>.

Under the Attorney General's Opinion, the N.Y. Gen. Bus. Law § 518 prohibition against the imposition of a surcharge applies to insurers and insurance agents and brokers, in that they

are the “sellers” of insurance. Thus, an insurer (or anyone acting on the insurer’s behalf) may not impose a credit card surcharge on a policyholder. Your client, by contrast, is not selling insurance and is not acting on any insurer’s behalf. Rather, it is providing (and charging for) a distinct service, *i.e.*, the making of secure payments via electronic means. Therefore, your client’s activities are prohibited by neither the New York Insurance Law nor N.Y. Gen. Bus. Law § 518.

Finally, I note that in Office of General Counsel (O.G.C.) Opinion No. 07-06-17 (June 19, 2007), this office concluded that the operation of the Payment System would violate N.Y. Gen. Bus. Law §518. The reason for that conclusion was a misapprehension of the operation of the Payment System and the nature of its relationship to the insurance company vendors based on an earlier submission to the Department. In view of the clarifications that you have provided, O.G.C. Opinion No. 07-06-17 is hereby withdrawn, and no longer should be followed.

Very truly yours,

Michael Campanelli  
Supervising Attorney

bcc: Deputy Superintendent and General Counsel Easton  
Deputy General Counsel Lees  
Asst. Dep. Supt. & Counsel Zuckerman  
Mr. Gennaoui (Chief – Consumer Svces. Bureau)  
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