1050 17th Street, N.W.
Suite 1150
Washington, DC 20036
202.525.5717

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Chairman Jeremy Peterson
House Business and Labor Committee
Utah House of Representatives

Re: H.B. 141 and anti-rebating laws

Chair Peterson, ladies and gentlemen of the committee, my name is Ian Adams and I am the Western region director of the R Street Institute. Thank you for hearing my testimony today.

R Street is a non-profit, free-market think tank based in Washington, D.C., though I hail from Sacramento. We maintain the largest insurance-focused project of any non-industry think tank and also engage in research concerning disruptive technologies.

Though we are free marketers, we also believe there is a productive role for regulation to play in preventing consumer harm.

The controversy presented by the current interpretation of Utah's anti-rebating statute is at the intersection of insurance and innovation. For this reason, I have examined the Utah situation in a recently released white paper entitled "Anti-rebating laws and the Utah experience."

My research indicates that, from a free-market perspective, the current interpretation of Utah's anti-rebating law requires legislative correction.

As you are aware, insurance is largely regulated by the states. Anti-rebating laws are widespread. 48 of 50 states have anti-rebating laws. Among the states, there is a high level of interpretive uniformity about what constitutes an "inducement."

These laws were first introduced in the 19th century to achieve two overarching objectives:

1. To maintain insurer solvency; and
2. To prevent impermissible discrimination between customers.

To the extent that Utah's anti-rebating law still seeks to further the policy objectives of the original anti-rebating laws, the interpretive judgment of the Department of Insurance concerning "inducements" accomplishes neither of those goals. Solvency concerns have been resolved by the introduction of risk-based capital standards and there is scant evidence in the states that do **not** maintain anti-rebating statutes that discriminatory treatment is an issue.

Even if there were evidence of impermissible discriminatory conduct, other legal proscriptions against discriminatory market conduct are already on the books and are much more effective.

By removing the nexus between the *sale* of an insurance product and an *inducement*, Utah's interpretation of what constitutes an inducement has become an aberration unmoored from original intent. What's worse, it does not remedy a clear consumer harm, which is the principal test of the need for regulatory intervention.

At a higher level of abstraction, for innovation to flourish, predictability and consistency are necessary. Thus, while no anti-rebating laws anticipated the innovation in question here, a permissive interpretation of the law is a preferable public policy outcome in the absence of a clear harm to consumers. For markets to flourish, innovation must be as permissionless as possible.

A near-term solution that affirms Utah's status as a mainstream jurisdiction on this issue will allow consumers in Utah to benefit from a genuine and normatively desirable innovation.

Thank you for your time, I am happy to field any questions that the committee has.