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2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. CAHILL, GOTTFRIED, CLARK -- Multi-Sponsored by --
M. of A. ENGLEBRIGHT, ESPAILLAT, GREENE, HOOPER, JACOBS, JOHN, McENE-
NY, SWEENEY -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to third party notifica-
tion by insurance carriers in certain instances in regard to long term
care policies; prohibiting the inclusion of certain goods and services
in the sale of certain insurance policies without the insured's
informed consent, and providing a specific penalty for violation of
such prohibition

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (f) of section 3111 of the insurance law, as
2 relettered by section 30 of part B of chapter 58 of the laws of 2004, is
3 relettered subsection (g) and a new subsection (f) is added to read as
4 follows:
5 (F) EVERY INSURER THAT HAS IN FORCE A LONG-TERM CARE INSURANCE POLICY
6 AS DEFINED IN SECTION ONE THOUSAND ONE HUNDRED SEVENTEEN OF THIS CHAPTER
7 THE PREMIUMS FOR WHICH ARE PAID DIRECTLY TO THE INSURER BY THE SENIOR
8 CITIZEN INSURED SHALL PERMIT THE INSURED TO DESIGNATE A PARTY TO WHOM
9 THE INSURER SHALL TRANSMIT NOTICES OF NONPAYMENT OF PREMIUMS DUE OR
10 NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUMS, AS DETERMINED BY THE
11 INSURER. THE SENIOR CITIZEN SHALL NOTIFY THE INSURER THAT A THIRD PARTY
12 HAS BEEN SO DESIGNATED. SUCH NOTIFICATION SHALL BE DELIVERED TO THE
13 INSURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND SHALL BE EFFEC-
14 TIVE NOT LATER THAN TEN BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE
15 INSURER. THE NOTIFICATION MUST CONTAIN, IN WRITING, AN ACCEPTANCE BY THE
16 THIRD PARTY DESIGNEE TO RECEIVE SUCH NOTICES OF CANCELLATION. SHOULD THE
17 THIRD PARTY DESIGNEE DESIRE TO TERMINATE HIS OR HER STATUS AS A THIRD
18 PARTY DESIGNEE, SUCH DESIGNEE SHALL PROVIDE WRITTEN NOTICE TO BOTH THE
19 INSURER AND THE SENIOR CITIZEN INSURED. SHOULD THE SENIOR CITIZEN

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 INSURED DESIRE TO TERMINATE THE THIRD PARTY DESIGNATION, THE INSURED
2 SHALL PROVIDE WRITTEN NOTICE TO THE INSURER. THE TRANSMISSION TO THE
3 THIRD PARTY DESIGNEE OF ANY SUCH NOTICE OF CANCELLATION SHALL BE IN
4 ADDITION TO A COPY OF SUCH DOCUMENT TRANSMITTED TO THE SENIOR CITIZEN
5 INSURED AND WHEN A THIRD PARTY IS SO DESIGNATED ALL SUCH NOTICES SHALL
6 BE MAILED IN AN ENVELOPE CLEARLY MARKED ON ITS FACE WITH THE FOLLOWING:
7 "IMPORTANT INSURANCE POLICY INFORMATION: OPEN IMMEDIATELY". DESIGNATION
8 AS A THIRD PARTY SHALL NOT CONSTITUTE ACCEPTANCE OF ANY LIABILITY ON THE
9 THIRD PARTY FOR SERVICES PROVIDED TO SUCH SENIOR CITIZEN. THE INSURER
10 SHALL NOTIFY ITS INSURED SENIOR CITIZEN ANNUALLY IN WRITING OF THE
11 AVAILABILITY OF THE THIRD PARTY DESIGNEE NOTICE PROCEDURE AND PROVIDE
12 INFORMATION ON HOW THE INSURED CAN COMMENCE THIS PROCEDURE; HOWEVER,
13 SUCH NOTICE NEED NOT BE PROVIDED ONCE A SENIOR CITIZEN HAS MADE A DESIG-
14 NATION.

15 S 2. Subsection (a) of section 2324 of the insurance law, as amended
16 by chapter 482 of the laws of 2000, is amended to read as follows:

17 (a) (1) No authorized insurer, no licensed insurance agent, no
18 licensed insurance broker, and no employee or other representative of
19 any such insurer, agent or broker shall make, procure or negotiate any
20 contract of insurance other than as plainly expressed in the policy or
21 other written contract issued or to be issued as evidence thereof, or
22 shall directly or indirectly, by giving or sharing a commission or in
23 any manner whatsoever, pay or allow or offer to pay or allow to the
24 insured or to any employee of the insured, either as an inducement to
25 the making of insurance or after insurance has been effected, any rebate
26 from the premium which is specified in the policy, or any special favor
27 or advantage in the dividends or other benefit to accrue thereon, or
28 shall give or offer to give any valuable consideration or inducement of
29 any kind, directly or indirectly, which is not specified in such policy
30 or contract, other than any article of merchandise not exceeding fifteen
31 dollars in value which shall have conspicuously stamped or printed ther-
32 eon the advertisement of the insurer, agent or broker, or shall give,
33 sell or purchase, or offer to give, sell or purchase, as an inducement
34 to the making of such insurance or in connection therewith, any stock,
35 bond or other securities or any dividends or profits accrued thereon,
36 nor shall the insured, his OR HER agent or representative knowingly
37 receive directly or indirectly, any such rebate or special favor or
38 advantage, provided, however, a licensed insurance agent or a licensed
39 insurance broker may retain the usual commission or underwriting fee on
40 insurance placed on his OR HER own property or risks, if the aggregate
41 of such commissions or underwriting fees will not exceed five percent of
42 the total net commissions or underwriting fees received by such licensed
43 insurance agent or insurance broker during the calendar year.

44 (2) NO AUTHORIZED INSURER, NO LICENSED INSURANCE AGENT, NO LICENSED
45 INSURANCE BROKER, AND NO EMPLOYEE OR OTHER REPRESENTATIVE OF ANY SUCH
46 INSURER, AGENT OR BROKER SHALL INCLUDE WITH THE SALE OF AN INSURANCE
47 POLICY ANY OTHER INSURANCE POLICY OR PRODUCT OR OTHER GOODS AND SERVICES
48 WITHOUT FIRST OBTAINING THE INFORMED CONSENT OF THE PROPOSED INSURED.

49 S 3. Subsection (f) of section 2324 of the insurance law is amended to
50 read as follows:

51 (f) (1) Any person or corporation violating the provisions of this
52 section shall, in addition to all other penalties provided by law, pay
53 to the people of this state as a penalty the sum of five hundred dollars
54 for each such violation.

55 (2) ANY PERSON OR CORPORATION VIOLATING THE PROVISIONS OF PARAGRAPH
56 TWO OF SUBSECTION (A) OF THIS SECTION SHALL, IN ADDITION TO ALL OTHER

1 PENALTIES PROVIDED BY LAW, PAY A FINE IN THE SUM OF ONE THOUSAND DOLLARS
2 FOR EACH SUCH VIOLATION.

3 S 4. Subsection (c) of section 4224 of the insurance law, as amended
4 by chapter 592 of the laws of 2008, is amended to read as follows:

5 (c) (1) Except as permitted by section three thousand two hundred
6 thirty-nine of this chapter, no such life insurance company and no such
7 savings and insurance bank and no officer, agent, solicitor or represen-
8 tative thereof and no such insurer doing in this state the business of
9 accident and health insurance and no officer, agent, solicitor or repre-
10 sentative thereof, and no licensed insurance broker and no employee or
11 other representative of any such insurer, agent or broker, shall pay,
12 allow or give, or offer to pay, allow or give, directly or indirectly,
13 as an inducement to any person to insure, or shall give, sell or
14 purchase, or offer to give, sell or purchase, as such inducement, or
15 interdependent with any policy of life insurance or annuity contract or
16 policy of accident and health insurance, any stocks, bonds, or other
17 securities, or any dividends or profits accruing or to accrue thereon,
18 or any valuable consideration or inducement whatever not specified in
19 such policy or contract; nor shall any person in this state knowingly
20 receive as such inducement, any rebate of premium or policy fee or any
21 special favor or advantage in the dividends or other benefits to accrue
22 on any such policy or contract, or knowingly receive any paid employment
23 or contract for services of any kind, or any valuable consideration or
24 inducement whatever which is not specified in such policy or contract.

25 (2) NO SUCH LIFE INSURANCE COMPANY AND NO SUCH SAVINGS AND INSURANCE
26 BANK AND NO SUCH INSURER DOING IN THIS STATE THE BUSINESS OF ACCIDENT
27 AND HEALTH INSURANCE AND NO OFFICER, AGENT, SOLICITOR OR REPRESENTATIVE
28 THEREOF AND NO LICENSED INSURANCE BROKER AND NO EMPLOYEE OR OTHER REPRE-
29 SENTATIVE OF ANY SUCH INSURER, AGENT OR BROKER SHALL INCLUDE WITH THE
30 SALE OF AN INSURANCE POLICY ANY OTHER INSURANCE POLICY OR PRODUCT OR
31 OTHER GOODS AND SERVICES WITHOUT FIRST OBTAINING THE INFORMED CONSENT OF
32 THE PROPOSED INSURED.

33 S 5. Section 4224 of the insurance law is amended by adding a new
34 subsection (f) to read as follows:

35 (F) ANY PERSON OR CORPORATION VIOLATING THE PROVISIONS OF PARAGRAPH
36 TWO OF SUBSECTION (C) OF THIS SECTION SHALL IN ADDITION TO ALL OTHER
37 PENALTIES PROVIDED BY LAW PAY A FINE IN THE SUM OF ONE THOUSAND DOLLARS
38 FOR EACH SUCH VIOLATION.

39 S 6. This act shall take effect immediately, except that section one
40 of this act shall take effect on the first of January next succeeding
41 the date on which it shall have become a law and shall apply to policies
42 issued or renewed on or after such date.