S T A T E  O F  N E W  Y O R K

683

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, McENENY, SWEENEY -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to third party notification 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subsection (f) of section 3111 of the insurance law, as relettered by section 30 of part B of chapter 58 of the laws of 2004, is relettered subsection (g) and a new subsection (f) is added to read as follows:

(F) EVERY INSURER THAT HAS IN FORCE A LONG-TERM CARE INSURANCE POLICY AS DEFINED IN SECTION ONE THOUSAND ONE HUNDRED SEVENTEEN OF THIS CHAPTER THE PREMIUMS FOR WHICH ARE PAID DIRECTLY TO THE INSURER BY THE SENIOR CITIZEN INSURED SHALL PERMIT THE INSURED TO DESIGNATE A PARTY TO WHOM THE INSURER SHALL TRANSMIT NOTICES OF NONPAYMENT OF PREMIUMS DUE OR NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUMS, AS DETERMINED BY THE INSURER. THE SENIOR CITIZEN SHALL NOTIFY THE INSURER THAT A THIRD PARTY HAS BEEN SO DESIGNATED. SUCH NOTIFICATION SHALL BE DELIVERED TO THE INSURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND SHALL BE EFFECTIVE NOT LATER THAN TEN BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE INSURER. THE NOTIFICATION MUST CONTAIN, IN WRITING, AN ACCEPTANCE BY THE THIRD PARTY DESIGNEE TO RECEIVE SUCH NOTICES OF CANCELLATION. SHOULD THE THIRD PARTY DESIGNEE DESIRE TO TERMINATE HIS OR HER STATUS AS A THIRD PARTY DESIGNEE, SUCH DESIGNEE SHALL PROVIDE WRITTEN NOTICE TO BOTH THE 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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INSURED DESIRE TO TERMINATE THE THIRD PARTY DESIGNATION, THE INSURED SHALL PROVIDE WRITTEN NOTICE TO THE INSURER. THE TRANSMISSION TO THE THIRD PARTY DESIGNEE OF ANY SUCH NOTICE OF CANCELLATION SHALL BE IN ADDITION TO A COPY OF SUCH DOCUMENT TRANSMITTED TO THE SENIOR CITIZEN INSURED AND WHEN A THIRD PARTY IS SO DESIGNATED ALL SUCH NOTICES SHALL BE MAILED IN AN ENVELOPE CLEARLY MARKED ON ITS FACE WITH THE FOLLOWING: "IMPORTANT INSURANCE POLICY INFORMATION: OPEN IMMEDIATELY". DESIGNATION AS A THIRD PARTY SHALL NOT CONSTITUTE ACCEPTANCE OF ANY LIABILITY ON THE THIRD PARTY FOR SERVICES PROVIDED TO SUCH SENIOR CITIZEN. THE INSURER SHALL NOTIFY ITS INSURED SENIOR CITIZEN ANNUALLY IN WRITING OF THE AVAILABILITY OF THE THIRD PARTY DESIGNEE NOTICE PROCEDURE AND PROVIDE INFORMATION ON HOW THE INSURED CAN COMMENCE THIS PROCEDURE; HOWEVER, SUCH NOTICE NEED NOT BE PROVIDED ONCE A SENIOR CITIZEN HAS MADE A DESIGNATION.

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

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

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

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

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

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

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

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

(c) (1) Except as permitted by section three thousand two hundred thirty-nine of this chapter, 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.

(2) NO SUCH LIFE INSURANCE COMPANY AND NO SUCH SAVINGS AND INSURANCE BANK 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 INCLUDE WITH THE SALE OF AN INSURANCE POLICY ANY OTHER INSURANCE POLICY OR PRODUCT OR OTHER GOODS AND SERVICES WITHOUT FIRST OBTAINING THE INFORMED CONSENT OF THE PROPOSED INSURED.

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

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

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