

5024

2011-2012 Regular Sessions

I N   S E N A T E

May 2, 2011

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Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the replacement of individual life insurance policies or individual annuity contracts of any insurer

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

1     Section 1. The section heading and subsections (a), (b) and (c) of  
2     section 2123 of the insurance law, subsections (a), (b) and (c) as  
3     amended by chapter 540 of the laws of 1996, paragraph 3 of subsection  
4     (a) as added by chapter 616 of the laws of 1997, the opening paragraph  
5     of paragraph 3 of subsection (a) as amended by chapter 13 of the laws of  
6     2002, are amended to read as follows:  
7     Misrepresentations[,] AND misleading statements [and incomplete  
8     comparisons].  
9     (a) (1) No agent or representative of any insurer or health mainte-  
10    nance organization authorized to transact life, accident or health  
11    insurance or health maintenance organization business in this state and  
12    no insurance broker, and no other person, firm, association or corpo-  
13    ration, shall issue or circulate or cause or permit to be issued or  
14    circulated, any illustration, circular, statement or memorandum misrep-  
15    resenting the terms, benefits or advantages of any policy or contract of  
16    life, accident or health insurance, any annuity contract or any health  
17    maintenance organization contract, delivered or issued for delivery or  
18    to be delivered or issued for delivery, in this state, or shall make any  
19    misleading estimate as to the dividends or share of surplus or addi-  
20    tional amounts to be received in the future on such policy or contract,  
21    or shall make any false or misleading statement as to the dividends or  
22    share of surplus or additional amounts previously paid by any such  
23    insurer or health maintenance organization on similar policies or  
24    contracts, or shall make any misleading representation, or any misrepre-

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

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1 sentation, as to the financial condition of any such insurer or health  
2 maintenance organization, or as to the legal reserve system upon which  
3 such insurer or health maintenance organization operates.

4 (2) No such person, firm, association or corporation shall make to any  
5 person or persons any incomplete [comparison] OR MISLEADING REPRESENTATION  
6 of any such policies or contracts of any insurer, insurers, or  
7 health maintenance organization, for the purpose of inducing, or tending  
8 to induce, such person or persons to lapse, forfeit or surrender any  
9 insurance policy or health maintenance organization contract.

10 (3) Any replacement of individual life insurance policies or individual  
11 annuity contracts of an insurer by an agent, representative of the  
12 same or different insurer or broker shall conform to standards promul-  
13 gated by regulation by the superintendent. Such regulation shall BE  
14 CONSISTENT, TO THE GREATEST EXTENT PRACTICABLE AND IN THE PUBLIC INTER-  
15 EST, WITH THE REPLACEMENTS REGULATION ADOPTED BY THE NATIONAL ASSOCI-  
16 ATION OF INSURANCE COMMISSIONERS, AS AMENDED FROM TIME TO TIME, AND  
17 SHALL ALSO:

18 (A) specify what constitutes the replacement of a life insurance poli-  
19 cy or annuity contract and the proper disclosure and notification proce-  
20 dures to replace a policy or contract;

21 (B) require notification of the proposed replacement to the insurer  
22 whose policies or contracts are intended to be replaced; AND

23 (C) [require the timely exchange of illustrative and cost information  
24 required by section three thousand two hundred nine of this chapter and  
25 necessary for completion of a comparison of the proposed and replaced  
26 coverage; and

27 (D)] provide for a sixty-day period following issuance of the replace-  
28 ment policies or contracts during which the policy or contract owner may  
29 return the policies or contracts and reinstate the replaced policies or  
30 contracts.

31 (b) [Any comparison of the policies or contracts of any such insurer,  
32 insurers or health maintenance organization shall be deemed to be an  
33 incomplete comparison if it does not conform to all the requirements for  
34 comparisons established by regulation.

35 (c)] In the determination, judicial or otherwise, of the incomplete-  
36 ness or misleading character of any such [comparison] REPRESENTATION, it  
37 shall not be presumed that the insured knew or knows of any of the  
38 provisions, terms or benefits contained in any insurance policy or  
39 health maintenance organization contract.

40 S. 2. The section heading and subsections (a), (b) and (c) of section  
41 4226 of the insurance law, paragraph 6 of subsection (a) as added by  
42 chapter 616 of the laws of 1997, are amended to read as follows:

43 Misrepresentations[,] AND misleading statements [and incomplete  
44 comparisons] by insurers. (a) No insurer authorized to do in this state  
45 the business of life, or accident and health insurance, or to make annu-  
46 ity contracts shall:

47 (1) issue or circulate, or cause or permit to be issued or circulated  
48 on its behalf, any illustration, circular, statement or memorandum  
49 misrepresenting the terms, benefits or advantages of any of its policies  
50 or contracts;

51 (2) make any estimate of the dividends or share of surplus or addi-  
52 tional amounts to be received on such policies or contracts;

53 (3) make any false or misleading statement of the dividends or share  
54 of surplus or additional amounts paid by any such insurer on similar  
55 policies or contracts;

1 (4) make any misleading representation, or any misrepresentation of  
2 the financial condition of any such insurer or of the legal reserve  
3 system upon which it operates; [or]

4 (5) make or deliver to any person or persons any incomplete [compar-  
5 ison of] OR MISLEADING REPRESENTATION REGARDING any such policies or  
6 contracts for the purpose of inducing, or tending to induce, such person  
7 or persons to lapse, forfeit or surrender any insurance policy or  
8 contract[.]; OR

9 (6) replace the individual life insurance policies or individual annu-  
10 ity contracts of an insurer by the same or different insurer without  
11 conforming to the standards promulgated by regulation by the superinten-  
12 dent. Such regulation shall BE CONSISTENT, TO THE GREATEST EXTENT PRAC-  
13 TICABLE AND IN THE PUBLIC INTEREST, WITH THE REPLACEMENTS REGULATION  
14 ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AS  
15 AMENDED FROM TIME TO TIME, AND SHALL ALSO:

16 (A) specify what constitutes the replacement of a life insurance poli-  
17 cy or annuity contract and the proper disclosure and notification proce-  
18 dures to replace a policy or contract;

19 (B) require notification of the proposed replacement to the insurer  
20 whose policies or contracts are intended to be replaced; AND

21 (C) [require the timely exchange of illustrative and cost information  
22 required by section three thousand two hundred nine of this chapter and  
23 necessary for completion of a comparison of the proposed and replaced  
24 coverage; and

25 (D)] provide for a sixty-day period following issuance of the replace-  
26 ment policies or contracts during which the policy or contract owner may  
27 return the policies or contracts and reinstate the replaced policies or  
28 contracts.

29 (b) [Any comparison of the policies or contracts of any such insurer  
30 or insurers shall be deemed to be an incomplete comparison if it does  
31 not conform to all the requirements for comparisons established by the  
32 superintendent by regulation.

33 (c)] In any determination, judicial or otherwise, of the incomplete-  
34 ness or misleading character of any such [comparison or of] represen-  
35 tation, it shall not be presumed that the insured knew or knows of any  
36 of the provisions or benefits contained in any insurance policy or  
37 contract.

38 S 3. This act shall take effect on the one hundred eightieth day after  
39 it shall have become a law.