

3065

2013-2014 Regular Sessions

I N S E N A T E

January 29, 2013

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 of any such policies or contracts of any insurer, insurers, or
6 health maintenance organization, for the purpose of inducing, or tending
7 to induce, such person or persons to lapse, forfeit or surrender any
8 insurance policy or health maintenance organization contract.

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

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

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

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

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

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

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

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

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

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

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

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