

# STATE OF NEW YORK

3502

2019-2020 Regular Sessions

## IN SENATE

February 8, 2019

Introduced by Sens. BRESLIN, 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 Assem-  
bly, do enact as follows:

1 Section 1. The section heading and subsections (a), (b) and (c) of  
2 section 2123 of the insurance law, subsection (a) as amended by section  
3 37-a of part D of chapter 56 of the laws of 2013, subsections (b) and  
4 (c) as amended by chapter 540 of the laws of 1996, are amended to read  
5 as follows:

6 Misrepresentations~~[-]~~ and misleading statements [~~and—incomplete~~  
7 ~~comparisons~~]. (a) (1) No agent or representative of any insurer or  
8 health maintenance organization authorized to transact life, accident or  
9 health insurance or health maintenance organization business in this  
10 state, insurance broker, person who has received a grant from and has  
11 been certified by the health benefit exchange established pursuant to  
12 section 1311 of the Affordable Care Act, 42 U.S.C. § 18031, to act as a  
13 navigator, including any person employed by a certified navigator, or  
14 other person, firm, association or corporation, shall issue or circulate  
15 or cause or permit to be issued or circulated, any illustration, circu-  
16 lar, statement or memorandum misrepresenting the terms, benefits or  
17 advantages of any policy or contract of life, accident or health insur-  
18 ance, any annuity contract or any health maintenance organization  
19 contract, delivered or issued for delivery or to be delivered or issued  
20 for delivery, in this state, or shall make any misleading estimate as to  
21 the dividends or share of surplus or additional amounts to be received  
22 in the future on such policy or contract, or shall make any false or  
23 misleading statement as to the dividends or share of surplus or addi-  
24 tional amounts previously paid by any such insurer or health maintenance

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

LBD09651-01-9

1 organization on similar policies or contracts, or shall make any  
2 misleading representation, or any misrepresentation, as to the financial  
3 condition of any such insurer or health maintenance organization, or as  
4 to the legal reserve system upon which such insurer or health mainte-  
5 nance organization operates.

6 (2) No such person, firm, association or corporation shall make to any  
7 person or persons any incomplete [~~comparison~~] or misleading represen-  
8 tation of any such policies or contracts of any insurer, insurers, or  
9 health maintenance organization, for the purpose of inducing, or tending  
10 to induce, such person or persons to lapse, forfeit or surrender any  
11 insurance policy or health maintenance organization contract.

12 (3) Any replacement of individual life insurance policies or individ-  
13 ual annuity contracts of an insurer by an agent, representative of the  
14 same or different insurer or broker shall conform to standards promul-  
15 gated by regulation by the superintendent. Such regulation shall be  
16 consistent, to the greatest extent practicable and in the public inter-  
17 est, with the replacements regulation adopted by the national associ-  
18 ation of insurance commissioners, as amended from time to time, and  
19 shall also:

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

23 (B) require notification of the proposed replacement to the insurer  
24 whose policies or contracts are intended to be replaced; and

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

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

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

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

42 § 2. The section heading and subsections (a), (b) and (c) of section  
43 4226 of the insurance law, paragraph 6 of subsection (a) as added by  
44 chapter 616 of the laws of 1997, are amended to read as follows:

45 Misrepresentations[~~7~~] and misleading statements [~~and—incomplete~~  
46 ~~comparisons~~] by insurers. (a) No insurer authorized to do in this state  
47 the business of life, or accident and health insurance, or to make annu-  
48 ity contracts shall:

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

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

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

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

7 (5) make or deliver to any person or persons any incomplete [~~compar-~~  
8 ~~ison-of~~] or misleading representation regarding any such policies or  
9 contracts for the purpose of inducing, or tending to induce, such person  
10 or persons to lapse, forfeit or surrender any insurance policy or  
11 contract~~[+]~~; or

12 (6) replace the individual life insurance policies or individual annu-  
13 ity contracts of an insurer by the same or different insurer without  
14 conforming to the standards promulgated by regulation by the superinten-  
15 dent. Such regulation shall be consistent, to the greatest extent prac-  
16 ticable and in the public interest, with the replacements regulation  
17 adopted by the national association of insurance commissioners, as  
18 amended from time to time, and shall also:

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

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

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

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

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

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

41 § 3. This act shall take effect on the one hundred eightieth day after  
42 it shall have become a law.