STATE OF NEW YORK

4041

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

Introduced by Sen. BRESLIN -- 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:

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

Misrepresentations[~~,~~] **and** misleading statements [~~and incomplete comparisons~~]. (a) (1) No agent or representative of any insurer or health maintenance organization authorized to transact life, accident or health insurance or health maintenance organization business in this state, insurance broker, person who has received a grant from and has been certified by the health benefit exchange established pursuant to section 1311 of the Affordable Care Act, 42 U.S.C. § 18031, to act as a navigator, including any person employed by a certified navigator, or other person, firm, association or corporation, shall issue or circulate or cause or permit to be issued or circulated, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any policy or contract of life, accident or health insurance, any annuity contract or any health maintenance organization contract, delivered or issued for delivery or to be delivered or issued for delivery, in this state, or shall make any misleading estimate as to the dividends or share of surplus or additional amounts to be received in the future on such policy or contract, or shall make any false or misleading statement as to the dividends or share of surplus or additional 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.

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organization on similar policies or contracts, or shall make any misleading representation, or any misrepresentation, as to the financial condition of any such insurer or health maintenance organization, or as to the legal reserve system upon which such insurer or health maintenance organization operates.

(2) No such person, firm, association or corporation shall make to any person or persons any incomplete [~~comparison~~] **or misleading representation** of any such policies or contracts of any insurer, insurers, or health maintenance organization, for the purpose of inducing, or tending to induce, such person or persons to lapse, forfeit or surrender any insurance policy or health maintenance organization contract.

(3) Any replacement of individual life insurance policies or individual annuity contracts of an insurer by an agent, representative of the same or different insurer or broker shall conform to standards promulgated by regulation by the superintendent. Such regulation shall **be consistent, to the greatest extent practicable and in the public interest, with the replacements regulation adopted by the national association of insurance commissioners, as amended from time to time, and shall also**:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;

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

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

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

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

~~(c)~~] In the determination, judicial or otherwise, of the incompleteness or misleading character of any such [~~comparison~~] **representation**, it shall not be presumed that the insured knew or knows of any of the provisions, terms or benefits contained in any insurance policy or health maintenance organization contract.

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

Misrepresentations[~~,~~] **and** misleading statements [~~and incomplete comparisons~~] by insurers. (a) No insurer authorized to do in this state the business of life, or accident and health insurance, or to make annuity contracts shall:

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

(2) make any estimate of the dividends or share of surplus or additional amounts to be received on such policies or contracts;

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

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

(5) make or deliver to any person or persons any incomplete [~~comparison of~~] **or misleading representation regarding** any such policies or contracts for the purpose of inducing, or tending to induce, such person or persons to lapse, forfeit or surrender any insurance policy or contract[~~.~~]**; or**

(6) replace the individual life insurance policies or individual annuity contracts of an insurer by the same or different insurer without conforming to the standards promulgated by regulation by the superintendent. Such regulation shall **be consistent, to the greatest extent practicable and in the public interest, with the replacements regulation adopted by the national association of insurance commissioners, as amended from time to time, and shall also**:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;

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

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

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

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

~~(c)~~] In any determination, judicial or otherwise, of the incompleteness or misleading character of any such [~~comparison or of~~] representation, it shall not be presumed that the insured knew or knows of any of the provisions or benefits contained in any insurance policy or contract.

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