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Conference Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

HOUSE BILL 2313

AN ACT

AMENDING SECTIONS 20-1241, 20-1241.01, 20-1241.03 AND 20-1241.05, ARIZONA REVISED STATUTES; RELATING TO LIFE INSURANCE POLICIES AND ANNUITY CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-1241, Arizona Revised Statutes, is amended to
3 read:

4 20-1241. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Contract" means a contract for the purchase of an annuity.

7 2. "Direct response solicitation" means a solicitation to purchase a
8 policy or contract solely through mail, telephone, the internet or other mass
9 communication media.

10 3. "Direct solicitation" means personal contact to solicit someone to
11 purchase a policy or contract, but does not include any group meeting held by
12 an insurance producer solely for the purpose of educating or enrolling
13 individuals or when initiated by an individual member of a group assisting
14 the individual with selection of investment options offered by a single
15 insurer in connection with enrolling that individual.

16 4. "Existing insurer" means the insurer whose policy or contract is or
17 will be replaced.

18 5. "Existing policy or contract" means a policy or contract that is in
19 force and includes a policy under a binding or conditional receipt and a
20 policy or contract that is within an unconditional refund period.

21 6. "Financed purchase" means the purchase of a new policy involving
22 the actual or intended use of monies obtained by the withdrawal or surrender
23 of, or by borrowing from values of, an existing policy to pay all or part of
24 any premium due on the new policy. For **THE PURPOSES OF A REGULATORY REVIEW**
25 **OF** an individual transaction only, if a withdrawal, surrender or borrowing
26 involving the policy values of an existing policy is used to pay premiums on
27 a new policy owned by the same policyholder and issued by the same insurer
28 within four months before or thirteen months after the effective date of the
29 new policy, it is deemed prima facie evidence of ~~a financed purchase~~ **THE**
30 **POLICYHOLDER'S INTENT TO FINANCE THE PURCHASE OF THE NEW POLICY WITH EXISTING**
31 **POLICY VALUES. THIS PRIMA FACIE STANDARD IS NOT INTENDED TO INCREASE OR**
32 **DECREASE THE MONITORING OBLIGATIONS OF SECTION 20-1241.04, SUBSECTION B,**
33 **PARAGRAPH 5.**

34 7. "Illustration" means a presentation or depiction that includes
35 nonguaranteed elements of a policy of life insurance over a period of years.

36 8. "Insurance producer" has the same meaning prescribed in section
37 20-281.

38 9. "Policy summary" means a description of a policy or contract that
39 meets the requirements in section 20-1241.02 and prescribed by the director.

40 10. "Registered contract" means a variable annuity contract or variable
41 life insurance policy subject to the prospectus delivery requirements of the
42 securities act of 1933 (P.L. 107-377; 15 United States Code sections 77a
43 through 77aa).

44 11. "Replaced" or "replacement" means a transaction in which a new
45 policy or contract is to be purchased and it is known or should be known to

1 the proposing insurance producer, or to the proposing insurer if there is no
2 insurance producer, that by reason of the transaction an existing policy or
3 contract has been or is to be:

4 (a) Lapsed, forfeited, surrendered or partially surrendered, assigned
5 to the replacing insurer or otherwise terminated.

6 (b) Converted to reduced paid-up insurance, continued as extended term
7 insurance or otherwise reduced in value by the use of nonforfeiture benefits
8 or other policy values.

9 (c) Amended so as to effect either a reduction in benefits or in the
10 term for which coverage would otherwise remain in force or for which benefits
11 would be paid.

12 (d) Reissued with any reduction in cash value.

13 (e) Used in a financed purchase.

14 12. "Replacing insurer" means the insurer that issues or proposes to
15 issue a new policy or contract that replaces an existing policy or contract
16 or is a financed purchase.

17 13. "Sales material" means a sales illustration and any other written,
18 printed or electronically presented information that is created, completed or
19 provided by an insurer or insurance producer, that is used in the
20 presentation to the policy or contract owner and that is related to the
21 policy or contract purchased.

22 Sec. 2. Section 20-1241.01, Arizona Revised Statutes, is amended to
23 read:

24 20-1241.01. Scope of article

25 A. This article applies to the replacement of policies and contracts
26 except for the following:

27 1. Credit life insurance.

28 2. Except as provided in subsection B of this section, group policies
29 and contracts that do not involve direct solicitation of individuals by an
30 insurance producer.

31 3. Policies and contracts used to fund prearranged funeral agreements
32 as defined in section 32-1301.

33 4. Except as provided in subsection C of this section, a policy or
34 contract that is used to fund **ANY OF THE FOLLOWING**:

35 (a) ~~A~~ **AN EMPLOYEE** pension and welfare plan as defined by and that is
36 subject to the employee retirement income security act of 1974 (29 United
37 States Code section 1001 through 1461).

38 (b) A plan described by sections 401(a), 401(k) or 403(b) of the
39 internal revenue code, where the plan, for purposes of the employee
40 retirement income security act of 1974, is established or maintained by an
41 employer.

42 (c) A governmental or church plan as defined in section 414 of the
43 internal revenue code, a governmental or church welfare benefit plan, or a
44 deferred compensation plan of a state or local government or a tax exempt
45 organization pursuant to section 457 of the internal revenue code.

1 (d) A nonqualified deferred compensation arrangement established or
2 maintained by an employer or plan sponsor.

3 5. An application to the existing insurer that issued the existing
4 policy or contract:

5 (a) To exercise a contractual change or A conversion privilege.

6 (b) If the existing insurer is replacing the existing policy or
7 contract pursuant to a program filed with and approved by the director.

8 6. Existing life insurance that is a nonrenewable and nonconvertible
9 term life insurance policy that will expire in five years or less.

10 7. Proposed life insurance that is to replace life insurance under a
11 binding or conditional receipt issued by the same insurer.

12 8. New coverage that is provided under a policy or contract if the
13 insured's employer or an association of which the insured is a member bears
14 all costs.

15 9. Immediate annuities that are purchased with proceeds from an
16 existing contract. Immediate annuities purchased with proceeds from an
17 existing policy are subject to this article.

18 10. Structured settlements as defined in section 12-2901.

19 B. Group policies and contracts involving direct solicitation are
20 subject to this article.

21 C. **NOTWITHSTANDING SUBSECTION A OF THIS SECTION**, this article applies
22 to a policy or contract that is used to fund any plan or arrangement that
23 meets **ALL OF** the following requirements:

24 1. The plan or arrangement is funded solely by contributions an
25 employee elects to make on a pretax or after tax basis.

26 2. The insurer has been notified that plan participants may choose
27 from among two or more contract providers or policy providers.

28 3. The insurance producer directly solicits individual employees for
29 the purchase of the contract or policy.

30 D. Registered contracts are exempt from the requirements of this
31 article with respect to the provision of illustrations or policy
32 summaries. Premium or contract contribution amounts and identification of
33 the appropriate prospectus or offering circular ~~is~~ **ARE** required.

34 Sec. 3. Section 20-1241.03, Arizona Revised Statutes, is amended to
35 read:

36 **20-1241.03. Duties of insurance producers**

37 A. An insurance producer who initiates an application shall submit to
38 the insurer, with or as part of the application, a statement signed by both
39 the applicant and the insurance producer as to whether the applicant has an
40 existing policy or contract.

41 B. If the answer is "no" to the question under subsection A of this
42 section regarding existing coverage, the insurance producer has no further
43 replacement duties.

44 C. If the answer is "yes" to the question under subsection A of this
45 section regarding existing coverage, the insurance producer shall present and

1 read to the applicant, not later than the time of taking the application, a
2 notice regarding replacements that is in a form that the director has
3 approved or prescribed by rule.

4 D. The applicant and the insurance producer shall sign the notice
5 required under subsection C of this section. The insurance producer shall
6 leave the signed notice with the applicant. If the notice is presented
7 electronically, the insurer shall mail the applicant a copy of the notice
8 within three business days after the application is submitted to the insurer.
9 In the notice the insurance producer and the applicant shall attest that the
10 insurance producer either read the notice aloud or that the applicant did not
11 wish the notice to be read aloud, in which case the producer need not have
12 read the notice aloud.

13 E. The notice prescribed in subsection C of this section shall:

14 1. Identify each policy and contract proposed to be replaced by:

15 (a) Name of the insurer.

16 (b) Name of the insured or annuitant.

17 (c) Policy or contract number if available.

18 (d) Application or receipt number if the policy or contract number is
19 not available.

20 2. Include a statement as to whether each policy or contract will be
21 replaced or whether a policy will be used as a source of financing for the
22 new policy or contract.

23 F. If the application for a new policy or contract is completed in any
24 replacement transaction, the insurance producer shall give the applicant the
25 original or a copy of all sales material **AT THE TIME OF THE APPLICATION FOR**
26 **THE NEW POLICY OR CONTRACT**. The insurance producer or insurer shall provide
27 the applicant with a printed copy of any electronically presented sales
28 material not later than at the time of policy or contract delivery.

29 G. Except as provided in section 20-1241.05, subsection G, in
30 connection with any replacement transaction, an insurance producer shall
31 submit to the insurer to which an application for a policy or contract is
32 presented a copy of:

33 1. Each document required by this section.

34 2. A statement identifying any preprinted or electronically presented
35 company approved sales materials used.

36 3. Any individualized sales materials, including any illustrations
37 related to the specific policy or contract purchased.

38 Sec. 4. Section 20-1241.05, Arizona Revised Statutes, is amended to
39 read:

40 **20-1241.05. Duties of replacing insurers that use insurance**
41 **producers**

42 A. A replacing insurer shall comply with the requirements of this
43 section for each replacement transaction.

44 B. The insurer shall verify that it has received all required forms
45 and that the forms comply with this article.

1 C. The insurer shall notify any existing insurer that may be affected
2 by the proposed replacement within five business days of the receipt of a
3 completed application indicating replacement or, if not indicated on the
4 application, when the replacement is identified, and mail a copy of the
5 available illustration or policy summary for the proposed policy or available
6 disclosure document for the proposed contract within five business days of a
7 request from an existing insurer.

8 D. The insurer shall be able to produce copies of the notification
9 regarding replacement required in section 20-1241.03, subsections C and D,
10 indexed by the insurance producer, for at least five years or until the next
11 regular examination by the insurance regulatory authority of its state of
12 domicile, whichever is later.

13 E. The insurer shall provide the policy or contract owner notice of
14 the right to return the policy or contract within thirty days of delivery and
15 receive an unconditional full refund of all premiums or consideration paid,
16 including any policy fees or charges or, in the case of a variable or market
17 value adjustment policy or contract, a payment of the cash surrender value
18 provided under the policy or contract plus all fees and other charges
19 deducted from the gross premiums or considerations or imposed under the
20 policy or contract. The notice may be included in the notice required under
21 section 20-1241.03, subsections C and D.

22 F. If the replacing insurer and the existing insurer are the same or
23 subsidiaries or affiliates under common ownership or control, the replacing
24 insurer shall allow credit for the period of time that has elapsed under the
25 replacement policy's or contract's incontestability and suicide period up to
26 the face amount of the existing policy or contract. For financed purchases,
27 the insurer may limit the credit to the amount that the face amount of the
28 existing policy is reduced by the use of existing policy values to fund the
29 new policy or contract.

30 G. If an insurer prohibits the use of sales materials the insurer has
31 not approved, the insurer, as an alternative to the requirements of section
32 20-1241.03, subsection G, may comply as follows:

33 1. The insurer shall require an insurance producer to submit a signed
34 statement with each application stating that the insurance producer used only
35 sales material that the insurer approved and **THAT THE INSURANCE PRODUCER** will
36 provide copies to the applicant as required by section 20-1241.03,
37 subsection F.

38 2. Within ten days of the issuance of the policy or contract, the
39 insurer shall:

40 (a) Notify the applicant by letter or by verbal communication from a
41 person whose duties are separate from the marketing area of the insurer that
42 the insurance producer made the representation about leaving sales materials
43 as described in paragraph 1.

1 (b) Provide the applicant with a toll free number to contact insurer
2 personnel responsible for regulatory compliance if the insurance producer did
3 not leave sales materials.

4 (c) Advise the applicant that it is important to retain copies of the
5 sales material for future reference.

6 3. The insurer shall be able to produce a copy of the letter or other
7 verification required by paragraph 2, subdivision (a) for at least five years
8 after the termination or expiration of the policy or contract.