

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

HOUSE BILL No. 4388

(By Delegates Gallagher, Azinger,
Hunt, Kominar, Hall, Nesbitt and Clements)



Passed February 14, 1996

In Effect ninety days from Passage

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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H. B. 4388

(BY DELEGATES GALLAGHER, AZINGER, HUNT, KOMINAR,
HALL, NESBITT AND CLEMENTS)

[Passed February 14, 1996; in effect ninety days from passage.]

AN ACT to amend article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to replacement of life insurance.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter thirty-three of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a, to read as follows:

§33-11-5a. Replacement of life insurance.

1 (a) As used in this section:

2 (1) "Replacement" means any transaction in which new
3 life insurance is to be purchased and by reason of such
4 transaction existing life insurance has been or is to be:

5 (A) Lapsed, forfeited, surrendered or otherwise termi-
6 nated;

7 (B) Converted to reduced paid-up insurance, contin-
8 ued as extended term insurance or otherwise reduced in
9 value by the use of nonforfeiture benefits or other policy

10 values;

11 (C) Amended so as to effect either a reduction in ben-
12 efits or in the term for which coverage would otherwise
13 remain in force or for which benefits would be paid;

14 (D) Reissued with any reduction in cash value; or

15 (E) Pledged as collateral or subjected to borrowing,
16 whether in a single loan or under a schedule of borrowing
17 over a period of time for amounts in the aggregate ex-
18 ceeding twenty-five percent (25%) of the loan value set
19 forth in the policy;

20 (2) "Existing insurer" means the insurance company
21 whose existing life insurance policy is or will be terminat-
22 ed or otherwise affected in a replacement transaction;

23 (3) "Replacing insurer" means the insurance company,
24 including the same insurer or an insurer in the same group
25 of affiliated insurers, that issues new life insurance in a
26 replacement transaction; and

27 (4) "Existing life insurance" means any life insurance
28 in force including life insurance under a binding or con-
29 ditional receipt or a life insurance policy that is within an
30 unconditional refund period, but excluding life insurance
31 obtained through the exercise of a dividend option.

32 (b) No replacing insurer shall issue any life insurance
33 in a replacement transaction to replace existing life insur-
34 ance unless the replacing insurer shall agree in writing
35 with the insured that:

36 (1) The new life insurance issued by the replacing
37 insurer will not be contestable by it in the event of such
38 insured's death to any greater extent than the existing life
39 insurance would have been contestable by the existing
40 insurer had such replacement not taken place provided,
41 however, that this paragraph shall not apply to that amount
42 of insurance written and issued which exceeds the amount
43 of the existing life insurance; and

44 (2) The new life insurance issued by the replacing
45 insurer may be voluntarily surrendered by the insured at
46 any time within thirty (30) days after its delivery to the
47 insured in exchange for a full refund of premiums paid
48 by the replacing insurer to the insured.

49 (c) Unless otherwise specifically included, subsection
50 (b) of this section shall not apply to:

51 (1) Annuities;

52 (2) Individual credit life insurance;

53 (3) Group life insurance, group credit life insurance
54 and life insurance policies issued in connection with a
55 pension, profit-sharing or other benefit plan qualifying
56 for tax deductibility of premiums, provided, however, that
57 as to any plan described in this subsection, full and com-
58 plete disclosure of all material facts shall be given to the
59 administrator of any plan to be replaced;

60 (4) Variable life insurance under which the death
61 benefits and cash values vary in accordance with unit val-
62 ues of investments held in a separate account;

63 (5) An application to the existing insurer that issued
64 the existing life insurance and a contractual policy change
65 or conversion privilege or a privilege of policy change
66 granted by the insurer is being exercised;

67 (6) Existing life insurance that is a nonconvertible
68 term life insurance policy which will expire in five (5)
69 years or less and cannot be renewed; or

70 (7) Proposed life insurance that is to replace life insur-
71 ance under a binding or conditional receipt issued by the
72 same company.

73 (d) For purposes of inducing or attempting to induce
74 a policyholder to lapse, forfeit, borrow against, surrender,
75 retain, exchange, modify, convert, or otherwise alter or
76 dispose of any insurance policy or coverage, no person
77 shall:

78 (1) Prepare, make, or issue, or cause to be prepared,
79 made or issued, any written or oral misrepresentation of a
80 material fact regarding the terms, conditions or benefits of
81 either existing insurance coverage or proposed replace-
82 ment insurance coverage; or

83 (2) Omit information concerning a material fact re-
84 garding the terms, conditions or benefits of either existing
85 insurance coverage or proposed replacement insurance
86 coverage.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schooner
Chairman Senate Committee

Audy Seaman
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harold E. Holmes
Clerk of the Senate

Gregory M. Barry
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Robert C. Byrd
Speaker of the House of Delegates

The within *is approved* this the *28th*
day of *February*, 1996.

Garston Capenbor
Governor

PRESENTED TO THE

GOVERNOR

Date 2/22/06

Time 2:04 pm