

FILED

2005 MAY -2 P 3: 10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 2937

(By Delegates H. White, R.M. Thompson,
Hrutkay, Perry, Azinger and L. White)



Passed April 9, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 2937

(BY DELEGATES H. WHITE, R.M. THOMPSON, HRUTKAY,
PERRY, AZINGER AND L. WHITE)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §33-11-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-13-48, all relating to replacement of life insurance and annuities; unfair trade practices; and promulgation of emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-11-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-13-48, all to read as follows:

ARTICLE 11. UNFAIR TRADE PRACTICES.

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

1 (a) As used in this section:

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

5 (A) Lapsed, forfeited, surrendered or otherwise terminated;

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

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

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

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

17 (2) “Existing insurer” means the insurance company whose
18 existing life insurance policy is or will be terminated or
19 otherwise affected in a replacement transaction;

20 (3) “Replacing insurer” means the insurance company,
21 including the same insurer or an insurer in the same group of
22 affiliated insurers, that issues new life insurance in a replace-
23 ment transaction; and

24 (4) “Existing life insurance” means any life insurance in
25 force including life insurance under a binding or conditional
26 receipt or a life insurance policy that is within an unconditional
27 refund period, but excluding life insurance obtained through the
28 exercise of a dividend option.

29 (b) No replacing insurer shall issue any life insurance in a
30 replacement transaction to replace existing life insurance unless
31 the replacing insurer shall agree in writing with the insured that:

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

39 (2) The new life insurance issued by the replacing insurer
40 may be voluntarily surrendered by the insured at any time
41 within thirty (30) days after its delivery to the insured in
42 exchange for a full refund of premiums paid by the replacing
43 insurer to the insured.

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

46 (1) Annuities;

47 (2) Individual credit life insurance;

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

55 (4) Variable life insurance under which the death benefits
56 and cash values vary in accordance with unit values of invest-
57 ments held in a separate account;

58 (5) An application to the existing insurer that issued the
59 existing life insurance and a contractual policy change or
60 conversion privilege or a privilege of policy change granted by
61 the insurer is being exercised;

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

65 (7) Proposed life insurance that is to replace life insurance
66 under a binding or conditional receipt issued by the same
67 company.

68 (d) For purposes of inducing or attempting to induce a
69 policyholder to lapse, forfeit, borrow against, surrender, retain,
70 exchange, modify, convert, or otherwise alter or dispose of any
71 insurance policy or coverage, no person shall:

72 (1) Prepare, make or issue, or cause to be prepared, made
73 or issued, any written or oral misrepresentation of a material
74 fact regarding the terms, conditions or benefits of either
75 existing insurance coverage or proposed replacement insurance
76 coverage; or

77 (2) Omit information concerning a material fact regarding
78 the terms, conditions or benefits of either existing insurance
79 coverage or proposed replacement insurance coverage.

80 (e) The provisions of this section shall have no further force
81 and effect as of the effective date of the emergency rule
82 authorized by the provisions of section forty-eight, article
83 thirteen of this chapter.

ARTICLE 13. LIFE INSURANCE.

§33-13-48. Replacement of existing rule with model rule.

1 The Commissioner shall propose and file with the Secretary
2 of State an emergency rule pursuant to the provisions of section
3 fifteen, article three, chapter twenty-nine-a of this code that is
4 based on the model regulation regarding the replacement of life
5 insurance and annuities approved by the National Association
6 of Insurance Commissioners in nineteen ninety-eight and
7 amended in two thousand. This emergency rule will be effective
8 upon approval by the Secretary of State and will replace the
9 legislative rule previously filed by the Commissioner on the
10 sixteenth day of May, nineteen ninety-seven as Title 114, Series
11 8 of the Code of State Rules: *Provided*, That the rule filed as an
12 emergency rule pursuant to this section shall be refiled at the
13 earliest opportunity as a legislative rule for review and promul-
14 gation in accordance with the provisions of article three, chapter
15 twenty-nine-a of this code.

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

Chandy White
Chairman Senate Committee

D. Luke Bury
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Parrell Holmes
Clerk of the Senate

Bruce M. Lee
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Robert P. Taylor
Speaker of the House of Delegates

The within *is approved* this the *2nd*
day of *May*, 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:05