Conference Engrossed

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

CHAPTER 244

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)

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

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

20-1241. Definitions

In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reissued with any reduction in cash value.

(e) Used in a financed purchase.

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

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

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

20-1241.01. Scope of article

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

1. Credit life insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20-1241.03. <u>Duties of insurance producers</u>

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

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

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

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

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

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

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

(a) Name of the insurer.

(b) Name of the insured or annuitant.

(c) Policy or contract number if available.

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

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

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

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

1. Each document required by this section.

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

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

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

20-1241.05. <u>Duties of replacing insurers that use insurance producers</u>

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

B. The insurer shall verify that it has received all required forms 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
7 a 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.

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

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

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

APPROVED BY THE GOVERNOR MAY 18, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2004.

Passed the House February 23, 2004,

by the following vote: 52 Ayes,

0 Nays, 8 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 30, 2004,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Chapman Rigby
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

H.B. 2313

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House _____, 20____,

by the following vote: _____ Ayes,

_____ Nays, _____ Not Voting

_____
Speaker of the House

_____
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 11, 2004,

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Ken Bennett
President of the Senate

Charmin Bilbrey
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor

this 12th day of May, 2004

at 12:36 o'clock P. M.

Jennifer Pharra
Secretary to the Governor

Approved this 18 day of

May, 2004,

at 2:40 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE
This Bill was received by the Secretary of State

this 18 day of May, 2004,

at 3:36 o'clock P. M.

Jeanne K. Brewer
Secretary of State

H.B. 2313