

WEST VIRGINIA ADMINISTRATIVE REGULATION
INSURANCE COMMISSIONER

No. 8
1979

REPLACEMENT OF LIFE INSURANCE

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Title 114
Legislative

WEST VIRGINIA ADMINISTRATIVE REGULATION
INSURANCE COMMISSIONER

Series No. 8
1979 e

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

Replacement of Life Insurance

THIS DATE 12-10-82
Administrative Law Division

Section 1. General

1:01 Identification of Rule - This regulation is a Legislative Rule, as defined by the provisions of Chapter 29A, Article 1, Section (d) of the Code of West Virginia of 1931, as amended.

1:02 Reference - This regulation relates to Chapter 33, Article 11; Chapter 33, Article 13; and Chapter 33, Article 14 of the Code of West Virginia of 1931, as amended.

1:03 Authority - This regulation is promulgated under the authority vested in the Insurance Commissioner by Chapter 33, Article 2, Section 10 and Chapter 33, Article 11, Section 6 of the Code of West Virginia of 1931, as amended.

1:04 ^{Scope} Purpose - The purpose of this regulation is to protect the interests of the life insurance public by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies; by making available full and clear information on which an applicant for life insurance can make a decision in his own best interest; by reducing the opportunity for misrepresentation and incomplete comparisons in replacement situations; and by precluding unfair methods of competition and unfair practices.

1:05 Scope - This regulation encompasses the general acts and practices of insurers and agents transacting life insurance in West Virginia.

1:06 Effective Date - This regulation was promulgated on September 25, 1970, amended on January 15, 1971, and amended on April 1, 1979, and as amended, shall become effective on March 1, 1980.

1:07 Filing Date - This regulation was filed with the Secretary of State in the State Register on November 13, 1979.

1:08 Certification - This Regulation is certified authentic by the Insurance Commissioner of West Virginia by Certificate Number 8.

Section 2. Definitions - For the purposes of this regulation, the following definitions shall apply:

2:01 Replacement - Means any transaction in which new life insurance is to be purchased, and it is known or should be known to the proposing agent, or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance has been or is to be:

- (A) Lapsed, forfeited, surrendered, or otherwise terminated; or
- (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; or
- (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; or
- (D) Reissued with any reduction in cash value; or
- (E) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowings over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy.

2:02 Cash Dividend - Means the current illustrated dividend which can be applied toward payment of the gross premium.

2:03 Conservation - Means any attempt by the existing insurer or its agent to continue existing life insurance in force when existing insurer has received a Comparative Information Form as required by Section 5:01(C)(4) of this regulation from a replacing insurer. A conservation effort does not include such routine administrative procedures like late payment reminders, late payment offers or reinstatement offers.

2:04 Direct-Response Sales - Means any sale of life insurance where the insurer does not utilize an agent in the sale or delivery of the policy.

2:05 Existing Insurer - Means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "Replacement."

2:06 Existing Life Insurance - Means any life insurance in force including life insurance under a binding or conditional

receipt or a life insurance policy that is within an unconditional refund period, but excluding life insurance obtained through the exercise of a dividend option.

2:07 Generic Name - Means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.

2:08 Replacing Insurer - Means the insurance company that issues a new policy which is a replacement of existing life insurance.

2:09 Sales Proposal - Means individualized, written sales aids of all kinds, excluding Comparative Information Forms and Policy Summaries, which are used by an insurer, agent or broker in comparing existing life insurance to proposed life insurance in order to recommend the replacement or conservation of existing life insurance. Sales aids of a generally descriptive nature, which are maintained in the insurer's advertising compliance file, shall not be considered a Sales Proposal within the meaning of this definition.

Section 3. Exemptions

3:01 Exemptions - Unless otherwise specifically included, this regulation shall not apply to:

- (A) Annuities;
- (B) Individual credit life insurance;
- (C) Group life insurance, group credit life insurance, and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, provided, however, that as to any plan described in this Subdivision, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced;
- (D) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account;
- (E) An application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised;

- (F) Existing life insurance that is non-convertible term life insurance policy which will expire in five years or less and cannot be renewed; or
- (G) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

Section 4. Duties of Agents

4:01 Duties of Agents -

- (A) Each agent shall submit to the replacing insurer with or as part of each application for life insurance:
 - (1) A statement signed by the applicant as to whether or not such insurance will replace existing life insurance; and
 - (2) A signed statement as to whether or not the agent knows replacement is or may be involved in the transaction.
- (B) Where a replacement is involved, the agent shall:
 - (1) Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement of Life Insurance" ~~in the form as described in Exhibits A or B, whichever is applicable,~~ or other substantially similar form approved by the Commissioner. The Notice must be signed by and left with applicant.
 - (2) Present to the applicant, not later than at the time of taking the application, a Comparative Information Form ~~as described in Exhibit D.~~ (Substantially equivalent forms may be used with the prior approval of the Commissioner.) If more than one existing life insurance policy is to be replaced, a separate Comparative Information Form is to be provided for each such policy or separate information is to be provided in the Comparative Information Form for each such policy, and a summary of all the separate policy information to the extent possible must be included. The agent must included in the Comparative Information Form all of the information required to be in that Form, except

that information concerning the existing life insurance policy that cannot be obtained from that policy itself. The Comparative Information Form must be signed by the agent and the applicant and a copy left with the applicant.

- (3) Leave with the applicant the original or a copy of all Sales Proposals used for presentation to the applicant.
 - (4) Submit to the replacing insurer with the application, a copy of the "Notice Regarding Replacement of Life Insurance" signed by the applicant, a copy of the Comparative Information Form signed by the agent and the applicant, and a copy of all Sales Proposals used for presentation to the applicant.
- (C) Each agent who uses a Sales Proposal when conserving existing life insurance shall:
- (1) Leave with the applicant the original or a copy of all Sales Proposals used in the conservation effort; and
 - (2) Submit to the existing insurer a copy of all Sales Proposals used in the conservation effort.

Section 5. Duties of Replacing Insurers

5:01 Duties of Replacing Insurers - Each replacing insurer shall:

- (A) Inform its field representatives of the requirements of this regulation.
- (B) Require with or as part of each completed application for life insurance:
 - (1) A statement signed by the applicant as to whether or not such insurance will replace existing life insurance; and
 - (2) A statement signed by the agent as to whether or not he or she knows replacement is or may be involved in the transaction.
- (C) Where a replacement is involved:

Summary shall be completed in accordance with the provisions of the Life Insurance Solicitation Regulation, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary shall include the amount of any outstanding policy indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Life insurance cost index and equivalent level annual dividend figures need not be included in the Policy Summary. If index figures are included in the Policy Summary, the policyowner must receive written notification at the time the Policy Summary is delivered that such figures should only be used for comparing the relative costs of similar policies.

- (B) Furnish the replacing insurer with a copy of the fully completed Comparative Information Form or the Policy Summary for the existing life insurance within three working days of the date that the fully completed Comparative Information Form or the Policy Summary is sent by the existing insurer to either its agent or directly to the policyowner.
- (C) Maintain a file containing the following:
 - (1) Comparative Information Forms required by Subdivision (C), Paragraph (4), of Subsection 5:01 of this regulation, and Policy Summaries required by Subdivision (C), Paragraph (5), of Subsection 5:01 of this regulation, received from replacing insurers; and
 - (2) Copies of fully completed Comparative Information Forms or Policy Summaries prepared pursuant to Subdivision (A), Subsection 7:01 of this regulation, and all Sales Proposals used to conserve the existing life insurance.

This material shall be indexed by replacing insurer and held for three years or until the conclusion of the next regular examination conducted by the Insurance Department of its domicile, whichever is later.

Section 8. Violations

8:01 Penalties -

- (A) Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the Insurance Laws of West Virginia.
- (B) This regulation does not prohibit the use of additional material other than that which is required that is not in violation of this regulation or any other West Virginia Statute or regulation.
- (C) Policyowners have the right to replace existing life insurance after indicating in or as part of the applications for life insurance that such is not their intention; however, patterns of such action by policyowners who purchase the replacing policies from the same agent shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's intent to violate this regulation.

Section 9. Separability

9:01 Partial Invalidity - If any provision of this regulation shall be held invalid, the remainder of the regulation shall not be affected thereby.