

# SENATE BILL No. 777

October 25, 2011, Introduced by Senators WARREN and SCHUITMAKER and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
(MCL 500.100 to 500.8302) by adding chapter 41C.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 41C

LIFE INSURANCE AND ANNUITY REPLACEMENT

SEC. 4191. AS USED IN THIS CHAPTER:

(A) "DIRECT-RESPONSE SOLICITATION" MEANS A SOLICITATION THROUGH A SPONSORING OR ENDORSING ENTITY OR INDIVIDUALLY SOLELY THROUGH MAILS, TELEPHONE, THE INTERNET, OR OTHER MASS COMMUNICATION MEDIA.

(B) "EXISTING INSURER" MEANS THE INSURER WHOSE EXISTING POLICY OR CONTRACT IS OR WILL BE CHANGED OR AFFECTED IN A MANNER DESCRIBED IN SUBDIVISION (I).

(C) "EXISTING POLICY OR CONTRACT" MEANS AN INDIVIDUAL LIFE

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1 INSURANCE POLICY OR ANNUITY CONTRACT IN FORCE, INCLUDING A POLICY  
2 UNDER A BINDING OR CONDITIONAL RECEIPT OR A POLICY OR CONTRACT THAT  
3 IS WITHIN AN UNCONDITIONAL REFUND PERIOD.

4 (D) "FINANCED PURCHASE" MEANS THE PURCHASE OF A NEW POLICY OR  
5 CONTRACT INVOLVING THE ACTUAL OR INTENDED USE OF MONEY OBTAINED BY  
6 THE WITHDRAWAL OR SURRENDER OF, OR BY BORROWING FROM VALUES OF, AN  
7 EXISTING POLICY OR CONTRACT TO PAY ALL OR PART OF A PREMIUM DUE ON  
8 THE NEW POLICY OR CONTRACT. FOR PURPOSES OF A REGULATORY REVIEW OF  
9 AN INDIVIDUAL TRANSACTION ONLY, A WITHDRAWAL, SURRENDER, OR  
10 BORROWING INVOLVING THE POLICY VALUES OF AN EXISTING POLICY OR  
11 CONTRACT THAT IS USED TO PAY PREMIUMS ON A NEW POLICY OR CONTRACT  
12 OWNED BY THE SAME POLICYHOLDER AND ISSUED BY THE SAME INSURER  
13 WITHIN 4 MONTHS BEFORE OR 13 MONTHS AFTER THE EFFECTIVE DATE OF THE  
14 NEW POLICY OR CONTRACT IS PRIMA FACIE EVIDENCE OF THE  
15 POLICYHOLDER'S INTENT TO FINANCE THE PURCHASE OF THE NEW POLICY OR  
16 CONTRACT WITH EXISTING POLICY VALUES. THIS PRIMA FACIE STANDARD IS  
17 NOT INTENDED TO INCREASE OR DECREASE THE MONITORING OBLIGATIONS  
18 CONTAINED IN SECTION 4194 (A) (v) .

19 (E) "ILLUSTRATION" MEANS A PRESENTATION OR DEPICTION THAT  
20 INCLUDES NONGUARANTEED ELEMENTS OF A POLICY OF LIFE INSURANCE OVER  
21 A PERIOD OF YEARS AND THAT IS 1 OF THE FOLLOWING TYPES OF  
22 ILLUSTRATION:

23 (i) A BASIC ILLUSTRATION, BEING A LEDGER OR PROPOSAL USED IN  
24 THE SALE OF THE POLICY THAT SHOWS BOTH GUARANTEED AND NONGUARANTEED  
25 ELEMENTS.

26 (ii) A SUPPLEMENTAL ILLUSTRATION, BEING AN ILLUSTRATION  
27 FURNISHED IN ADDITION TO A BASIC ILLUSTRATION AND THAT MAY BE

1 PRESENTED IN A FORMAT DIFFERING FROM THE BASIC ILLUSTRATION, BUT  
2 MAY ONLY DEPICT A SCALE OF NONGUARANTEED ELEMENTS THAT IS PERMITTED  
3 IN A BASIC ILLUSTRATION.

4 (iii) AN IN-FORCE ILLUSTRATION, BEING AN ILLUSTRATION FURNISHED  
5 AT ANY TIME AFTER THE POLICY THAT IT DEPICTS HAS BEEN IN FORCE FOR  
6 1 YEAR OR MORE.

7 (F) "POLICY SUMMARY" MEANS EITHER OF THE FOLLOWING:

8 (i) FOR A POLICY OR CONTRACT OTHER THAN A UNIVERSAL LIFE  
9 POLICY, A WRITTEN STATEMENT REGARDING A POLICY OR CONTRACT THAT  
10 CONTAINS AT LEAST, TO THE EXTENT APPLICABLE, THE CURRENT DEATH  
11 BENEFIT, ANNUAL CONTRACT PREMIUM, CURRENT CASH SURRENDER VALUE,  
12 CURRENT DIVIDEND, APPLICATION OF THE CURRENT DIVIDEND, AND AMOUNT  
13 OF ANY OUTSTANDING LOAN.

14 (ii) FOR A UNIVERSAL LIFE POLICY, A WRITTEN STATEMENT THAT  
15 CONTAINS AT LEAST THE BEGINNING AND END DATE OF THE CURRENT REPORT  
16 PERIOD, THE POLICY VALUE AT THE END OF THE PREVIOUS REPORT PERIOD  
17 AND AT THE END OF THE CURRENT REPORT PERIOD, THE TOTAL AMOUNTS THAT  
18 HAVE BEEN CREDITED OR DEBITED TO THE POLICY VALUE DURING THE  
19 CURRENT REPORT PERIOD, IDENTIFYING EACH BY TYPE, FOR EXAMPLE,  
20 INTEREST, MORTALITY, EXPENSE AND RIDERS, THE CURRENT DEATH BENEFIT  
21 AT THE END OF THE CURRENT REPORT PERIOD ON EACH LIFE COVERED BY THE  
22 POLICY, THE NET CASH SURRENDER VALUE OF THE POLICY AS OF THE END OF  
23 THE CURRENT REPORT PERIOD, AND THE AMOUNT OF ANY OUTSTANDING LOANS  
24 AS OF THE END OF THE CURRENT REPORT PERIOD.

25 (G) "PRODUCER" MEANS AN INSURANCE PRODUCER AS THAT TERM IS  
26 DEFINED IN SECTION 1201.

27 (H) "REGISTERED CONTRACT" MEANS A VARIABLE ANNUITY CONTRACT OR

1 VARIABLE LIFE INSURANCE POLICY SUBJECT TO THE PROSPECTUS DELIVERY  
2 REQUIREMENTS OF THE SECURITIES ACT OF 1933, 15 USC 77A TO 77AA.

3 (I) "REPLACEMENT" MEANS A TRANSACTION IN WHICH A NEW POLICY OR  
4 CONTRACT IS TO BE PURCHASED, AND IT IS KNOWN OR SHOULD BE KNOWN TO  
5 THE PROPOSING PRODUCER, OR TO THE PROPOSING INSURER IF THERE IS NO  
6 PRODUCER, THAT BY REASON OF THE TRANSACTION, AN EXISTING POLICY OR  
7 CONTRACT HAS BEEN OR IS TO BE 1 OF THE FOLLOWING:

8 (i) LAPSED, FORFEITED, SURRENDERED OR PARTIALLY SURRENDERED,  
9 ASSIGNED TO THE REPLACING INSURER, OR OTHERWISE TERMINATED.

10 (ii) CONVERTED TO REDUCED PAID-UP INSURANCE, CONTINUED AS  
11 EXTENDED TERM INSURANCE, OR OTHERWISE REDUCED IN VALUE BY THE USE  
12 OF NONFORFEITURE BENEFITS OR OTHER POLICY VALUES.

13 (iii) AMENDED SO AS TO EFFECT EITHER A REDUCTION IN BENEFITS OR  
14 IN THE TERM FOR WHICH COVERAGE WOULD OTHERWISE REMAIN IN FORCE OR  
15 FOR WHICH BENEFITS WOULD BE PAID.

16 (iv) REISSUED WITH ANY REDUCTION IN CASH VALUE.

17 (v) USED IN A FINANCED PURCHASE.

18 (J) "REPLACING INSURER" MEANS THE INSURER THAT ISSUES OR  
19 PROPOSES TO ISSUE A NEW POLICY OR CONTRACT THAT REPLACES AN  
20 EXISTING POLICY OR CONTRACT OR IS A FINANCED PURCHASE.

21 (K) "SALES MATERIAL" MEANS A SALES ILLUSTRATION OR ANY OTHER  
22 WRITTEN, PRINTED, OR ELECTRONICALLY PRESENTED INFORMATION CREATED,  
23 COMPLETED, OR PROVIDED BY AN INSURER OR PRODUCER AND USED IN A  
24 PRESENTATION TO AN OWNER OF AN EXISTING POLICY OR CONTRACT RELATED  
25 TO A NEW POLICY OR CONTRACT.

26 SEC. 4192. (1) UNLESS OTHERWISE SPECIFICALLY INCLUDED, THIS  
27 CHAPTER DOES NOT APPLY TO A TRANSACTION THAT INVOLVES ANY OF THE

1 FOLLOWING:

2 (A) CREDIT LIFE INSURANCE.

3 (B) GROUP LIFE INSURANCE OR GROUP ANNUITIES IF THERE IS NO  
4 DIRECT SOLICITATION OF INDIVIDUALS BY A PRODUCER. DIRECT  
5 SOLICITATION DOES NOT INCLUDE A GROUP MEETING HELD BY A PRODUCER  
6 SOLELY FOR THE PURPOSE OF EDUCATING OR ENROLLING INDIVIDUALS OR, IF  
7 INITIATED BY AN INDIVIDUAL MEMBER OF THE GROUP, ASSISTING WITH THE  
8 SELECTION OF INVESTMENT OPTIONS OFFERED BY A SINGLE INSURER IN  
9 CONNECTION WITH ENROLLING THE INDIVIDUAL. GROUP LIFE INSURANCE OR A  
10 GROUP ANNUITY CERTIFICATE MARKETED THROUGH DIRECT RESPONSE  
11 SOLICITATION IS SUBJECT TO SECTION 4197.

12 (C) GROUP LIFE INSURANCE AND ANNUITY CONTRACTS USED TO FUND  
13 PREARRANGED FUNERAL CONTRACTS.

14 (D) AN APPLICATION TO THE EXISTING INSURER IF A CONTRACTUAL  
15 CHANGE OR A CONVERSION PRIVILEGE IS BEING EXERCISED, IF THE  
16 EXISTING POLICY OR CONTRACT IS BEING REPLACED BY THE SAME INSURER  
17 UNDER A PROGRAM FILED WITH AND APPROVED BY THE COMMISSIONER, OR IF  
18 A TERM CONVERSION PRIVILEGE IS EXERCISED AMONG CORPORATE  
19 AFFILIATES.

20 (E) PROPOSED LIFE INSURANCE THAT IS TO REPLACE LIFE INSURANCE  
21 UNDER A BINDING OR CONDITIONAL RECEIPT ISSUED BY THE SAME INSURER.

22 (F) SUBJECT TO SUBSECTION (2), POLICIES OR CONTRACTS USED TO  
23 FUND ANY OF THE FOLLOWING:

24 (i) AN EMPLOYEE PENSION OR WELFARE BENEFIT PLAN THAT IS COVERED  
25 BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, PUBLIC LAW  
26 93-406.

27 (ii) A PLAN DESCRIBED IN SECTION 401(A), 401(K), OR 403(B) OF

1 THE INTERNAL REVENUE CODE OF 1986, 26 USC 401 AND 26 USC 403, IF  
2 THE PLAN IS ESTABLISHED OR MAINTAINED BY AN EMPLOYER FOR PURPOSES  
3 OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, PUBLIC LAW  
4 93-406.

5 (iii) A GOVERNMENTAL OR CHURCH PLAN DEFINED IN SECTION 414 OF  
6 THE INTERNAL REVENUE CODE OF 1986, 26 USC 414, OR A DEFERRED  
7 COMPENSATION PLAN OF A STATE OR LOCAL GOVERNMENT OR TAX-EXEMPT  
8 ORGANIZATION UNDER SECTION 457 OF THE INTERNAL REVENUE CODE OF  
9 1986, 26 USC 457.

10 (iv) A NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENT  
11 ESTABLISHED OR MAINTAINED BY AN EMPLOYER OR PLAN SPONSOR.

12 (G) NEW COVERAGE PROVIDED UNDER A LIFE INSURANCE POLICY OR  
13 CONTRACT THE COST OF WHICH IS BORNE WHOLLY BY THE INSURED'S  
14 EMPLOYER OR BY AN ASSOCIATION OF WHICH THE INSURED IS A MEMBER.

15 (H) EXISTING LIFE INSURANCE THAT IS A NONCONVERTIBLE TERM LIFE  
16 INSURANCE POLICY THAT WILL EXPIRE IN 5 YEARS OR LESS AND CANNOT BE  
17 RENEWED.

18 (I) IMMEDIATE ANNUITIES THAT ARE PURCHASED WITH PROCEEDS FROM  
19 AN EXISTING POLICY OR CONTRACT. IMMEDIATE ANNUITIES PURCHASED WITH  
20 PROCEEDS FROM AN EXISTING POLICY OR CONTRACT ARE NOT EXEMPT FROM  
21 THIS CHAPTER.

22 (J) STRUCTURED SETTLEMENTS.

23 (2) NOTWITHSTANDING SUBSECTION (1) (F), THIS CHAPTER APPLIES TO  
24 AN EXISTING POLICY OR CONTRACT USED TO FUND A PLAN OR ARRANGEMENT  
25 THAT IS FUNDED SOLELY BY CONTRIBUTIONS AN EMPLOYEE ELECTS TO MAKE,  
26 WHETHER ON A PRETAX OR AFTER-TAX BASIS, IF THE INSURER HAS BEEN  
27 NOTIFIED THAT PLAN PARTICIPANTS MAY CHOOSE FROM AMONG 2 OR MORE

1 INSURERS AND THERE IS A DIRECT SOLICITATION OF AN INDIVIDUAL  
2 EMPLOYEE BY A PRODUCER FOR THE PURCHASE OF A NEW POLICY OR  
3 CONTRACT. FOR PURPOSES OF THIS SUBSECTION, DIRECT SOLICITATION DOES  
4 NOT INCLUDE A GROUP MEETING HELD BY AN INSURANCE PRODUCER SOLELY  
5 FOR THE PURPOSE OF EDUCATING INDIVIDUALS ABOUT THE PLAN OR  
6 ARRANGEMENT OR ENROLLING INDIVIDUALS IN THE PLAN OR ARRANGEMENT OR,  
7 IF INITIATED BY AN INDIVIDUAL EMPLOYEE, ASSISTING WITH THE  
8 SELECTION OF INVESTMENT OPTIONS OFFERED BY A SINGLE INSURER IN  
9 CONNECTION WITH ENROLLING THE EMPLOYEE.

10 (3) A REGISTERED CONTRACT IS EXEMPT FROM THE REQUIREMENTS OF  
11 SECTIONS 4195(1)(B) AND 4196(B) WITH RESPECT TO THE PROVISION OF  
12 ILLUSTRATIONS OR POLICY SUMMARIES. HOWEVER, A REPLACING INSURER OR  
13 EXISTING INSURER, AS APPLICABLE, SHALL PROVIDE PREMIUM OR CONTRACT  
14 CONTRIBUTION AMOUNTS AND IDENTIFY THE APPROPRIATE PROSPECTUS OR  
15 OFFERING CIRCULAR INSTEAD.

16 SEC. 4193. (1) A PRODUCER WHO INITIATES AN APPLICATION SHALL  
17 SUBMIT TO THE INSURER, WITH OR AS PART OF THE APPLICATION, A  
18 STATEMENT SIGNED BY BOTH THE APPLICANT AND THE PRODUCER AS TO  
19 WHETHER THE APPLICANT HAS AN EXISTING POLICY OR CONTRACT. IF THE  
20 STATEMENT IS THAT THE APPLICANT DOES NOT HAVE AN EXISTING POLICY OR  
21 CONTRACT, THE PRODUCER'S DUTIES WITH RESPECT TO REPLACEMENT ARE  
22 COMPLETE.

23 (2) IF THE STATEMENT UNDER SUBSECTION (1) IS THAT THE  
24 APPLICANT DOES HAVE AN EXISTING POLICY OR CONTRACT, THE PRODUCER  
25 SHALL PRESENT AND READ TO THE APPLICANT, NOT LATER THAN AT THE TIME  
26 OF TAKING THE APPLICATION, A NOTICE REGARDING REPLACEMENTS IN THE  
27 FORM ADOPTED BY THE COMMISSIONER UNDER SECTION 4199(1)(A) OR IN

1 ANOTHER SUBSTANTIALLY SIMILAR FORM APPROVED BY THE COMMISSIONER.  
2 HOWEVER, APPROVAL BY THE COMMISSIONER OF A SUBSTANTIALLY SIMILAR  
3 FORM IS NOT REQUIRED IF DIFFERENCES FROM THE NOTICE ADOPTED BY THE  
4 COMMISSIONER ARE LIMITED TO THE OMISSION OF REFERENCES NOT  
5 APPLICABLE TO THE POLICY OR CONTRACT BEING SOLD OR REPLACED.

6 (3) A NOTICE UNDER SUBSECTION (2) SHALL BE SIGNED BY BOTH THE  
7 APPLICANT AND THE PRODUCER, ATTESTING THAT THE NOTICE HAS BEEN READ  
8 ALOUD BY THE PRODUCER OR THAT THE APPLICANT DID NOT WISH THE NOTICE  
9 TO BE READ ALOUD, IN WHICH CASE THE PRODUCER NEED NOT HAVE READ THE  
10 NOTICE ALOUD, AND THAT THE NOTICE HAS BEEN LEFT WITH THE APPLICANT.

11 (4) THE NOTICE UNDER SUBSECTION (2) SHALL LIST ALL EXISTING  
12 POLICIES OR CONTRACTS PROPOSED TO BE REPLACED, PROPERLY IDENTIFIED  
13 BY NAME OF INSURER, THE INSURED OR ANNUITANT, AND POLICY OR  
14 CONTRACT NUMBER IF AVAILABLE, AND SHALL INCLUDE A STATEMENT AS TO  
15 WHETHER EACH POLICY OR CONTRACT WILL BE REPLACED OR WHETHER A  
16 POLICY OR CONTRACT WILL BE USED AS A SOURCE OF FINANCING FOR THE  
17 NEW POLICY OR CONTRACT. IF A POLICY OR CONTRACT NUMBER HAS NOT BEEN  
18 ISSUED BY THE EXISTING INSURER, ALTERNATIVE IDENTIFICATION, SUCH AS  
19 AN APPLICATION OR RECEIPT NUMBER, SHALL BE LISTED.

20 (5) IN CONNECTION WITH A REPLACEMENT, THE PRODUCER SHALL LEAVE  
21 WITH THE APPLICANT AT THE TIME AN APPLICATION FOR A NEW POLICY OR  
22 CONTRACT IS COMPLETED THE ORIGINAL OR A COPY OF ALL SALES MATERIAL.  
23 WITH RESPECT TO ELECTRONICALLY PRESENTED SALES MATERIAL, IT SHALL  
24 BE PROVIDED TO THE POLICY OR CONTRACT OWNER IN PRINTED FORM NOT  
25 LATER THAN AT THE TIME THE POLICY OR CONTRACT IS DELIVERED.

26 (6) EXCEPT AS PROVIDED IN SECTION 4195(3), IN CONNECTION WITH  
27 A REPLACEMENT, THE PRODUCER SHALL SUBMIT TO THE INSURER TO WHICH AN

1 APPLICATION FOR A POLICY OR CONTRACT IS PRESENTED A COPY OF EACH  
2 DOCUMENT REQUIRED BY THIS SECTION, A STATEMENT IDENTIFYING ANY  
3 PREPRINTED OR ELECTRONICALLY PRESENTED COMPANY APPROVED SALES  
4 MATERIAL USED, AND COPIES OF ANY INDIVIDUALIZED SALES MATERIAL,  
5 INCLUDING ANY ILLUSTRATION RELATED TO THE SPECIFIC POLICY OR  
6 CONTRACT PURCHASED.

7 SEC. 4194. AN INSURER SHALL DO ALL OF THE FOLLOWING:

8 (A) MAINTAIN A SYSTEM OF SUPERVISION AND CONTROL TO INSURE  
9 COMPLIANCE WITH THIS CHAPTER THAT DOES AT LEAST ALL OF THE  
10 FOLLOWING:

11 (i) INFORMS ITS PRODUCERS OF THE REQUIREMENTS OF THIS CHAPTER  
12 AND INCORPORATES THE REQUIREMENTS OF THIS CHAPTER INTO ALL RELEVANT  
13 PRODUCER TRAINING MANUALS PREPARED BY THE INSURER.

14 (ii) PROVIDES TO EACH PRODUCER A WRITTEN STATEMENT OF THE  
15 INSURER'S POSITION WITH RESPECT TO THE ACCEPTABILITY OF  
16 REPLACEMENTS PROVIDING GUIDANCE TO THE PRODUCER AS TO THE  
17 APPROPRIATENESS OF THESE TRANSACTIONS.

18 (iii) INCLUDES A SYSTEM TO REVIEW THE APPROPRIATENESS OF EACH  
19 REPLACEMENT THAT A PRODUCER DOES NOT INDICATE IS IN ACCORD WITH THE  
20 INSURER'S STATED POSITION UNDER SUBPARAGRAPH (ii).

21 (iv) INCLUDES PROCEDURES TO CONFIRM THAT THE REQUIREMENTS OF  
22 THIS CHAPTER HAVE BEEN MET. COMPLIANCE WITH THIS SUBPARAGRAPH MAY  
23 INCLUDE, BUT IS NOT LIMITED TO, SYSTEMATIC CUSTOMER SURVEYS,  
24 INTERVIEWS, CONFIRMATION LETTERS, OR PROGRAMS OF INTERNAL  
25 MONITORING.

26 (v) INCLUDES PROCEDURES TO DETECT TRANSACTIONS THAT ARE A  
27 REPLACEMENT OF AN EXISTING POLICY OR CONTRACT BY THE EXISTING

1 INSURER, BUT THAT HAVE NOT BEEN REPORTED AS A REPLACEMENT BY THE  
2 APPLICANT OR PRODUCER.

3 (B) HAVE THE CAPACITY TO MONITOR EACH PRODUCER'S EXISTING  
4 POLICY AND CONTRACT REPLACEMENTS FOR THE INSURER AND, ON REQUEST OF  
5 THE OFFICE OF FINANCIAL AND INSURANCE REGULATION, PRODUCE AND MAKE  
6 AVAILABLE RECORDS OF THE EXISTING POLICY AND CONTRACT REPLACEMENTS.  
7 THE CAPACITY TO MONITOR SHALL INCLUDE THE ABILITY TO PRODUCE  
8 RECORDS OF ALL OF THE FOLLOWING FOR EACH PRODUCER:

9 (i) LIFE INSURANCE POLICY REPLACEMENTS, INCLUDING FINANCED  
10 PURCHASES, AS A PERCENTAGE OF THE PRODUCER'S TOTAL ANNUAL SALES FOR  
11 LIFE INSURANCE.

12 (ii) THE NUMBER OF LAPSES OF LIFE INSURANCE POLICIES BY THE  
13 PRODUCER AS A PERCENTAGE OF THE PRODUCER'S TOTAL ANNUAL SALES FOR  
14 LIFE INSURANCE.

15 (iii) ANNUITY CONTRACT REPLACEMENTS AS A PERCENTAGE OF THE  
16 PRODUCER'S TOTAL ANNUAL ANNUITY CONTRACT SALES.

17 (iv) THE NUMBER OF TRANSACTIONS THAT ARE UNREPORTED  
18 REPLACEMENTS OF EXISTING POLICIES OR CONTRACTS BY THE EXISTING  
19 INSURER DETECTED BY THE COMPANY'S MONITORING SYSTEM AS REQUIRED BY  
20 SUBDIVISION (A) (v) .

21 (v) REPLACEMENTS, INDEXED BY REPLACING PRODUCER AND EXISTING  
22 INSURER.

23 (C) REQUIRE WITH OR AS A PART OF EACH APPLICATION FOR LIFE  
24 INSURANCE OR AN ANNUITY A SIGNED STATEMENT BY BOTH THE APPLICANT  
25 AND THE PRODUCER AS TO WHETHER THE APPLICANT HAS AN EXISTING POLICY  
26 OR CONTRACT.

27 (D) REQUIRE WITH EACH APPLICATION FOR LIFE INSURANCE OR AN

1 ANNUITY THAT INDICATES THE APPLICANT HAS AN EXISTING POLICY OR  
2 CONTRACT A COMPLETED NOTICE REGARDING REPLACEMENTS IN THE FORM  
3 ADOPTED BY THE COMMISSIONER UNDER SECTION 4199(1)(A).

4 (E) IF THE APPLICANT HAS AN EXISTING POLICY OR CONTRACT, BE  
5 ABLE TO PRODUCE COPIES OF ANY SALES MATERIAL REQUIRED BY SECTION  
6 4193(6), THE BASIC ILLUSTRATION AND ANY SUPPLEMENTAL ILLUSTRATIONS  
7 RELATED TO THE SPECIFIC POLICY OR CONTRACT THAT IS PURCHASED, AND  
8 THE PRODUCER'S AND APPLICANT'S SIGNED STATEMENTS WITH RESPECT TO  
9 FINANCING AND REPLACEMENT FOR AT LEAST 5 YEARS AFTER THE  
10 TERMINATION OR EXPIRATION OF THE NEW POLICY OR CONTRACT.

11 (F) ASCERTAIN THAT THE SALES MATERIAL AND ILLUSTRATIONS  
12 REQUIRED BY SECTION 4193(6) MEET THE REQUIREMENTS OF THIS CHAPTER  
13 AND ARE COMPLETE AND ACCURATE FOR THE NEW POLICY OR CONTRACT.

14 (G) IF AN APPLICATION DOES NOT MEET THE REQUIREMENTS OF THIS  
15 CHAPTER, NOTIFY THE PRODUCER AND APPLICANT AND FULFILL THE  
16 OUTSTANDING REQUIREMENTS.

17 (H) MAINTAIN RECORDS IN PAPER, PHOTOGRAPH, MICROPROCESS,  
18 MAGNETIC, MECHANICAL, OR ELECTRONIC MEDIA OR BY ANY PROCESS THAT  
19 ACCURATELY REPRODUCES THE ACTUAL DOCUMENT.

20 SEC. 4195. (1) IF A TRANSACTION INVOLVES A REPLACEMENT, THE  
21 REPLACING INSURER SHALL DO ALL OF THE FOLLOWING:

22 (A) VERIFY THAT THE REQUIRED FORMS ARE RECEIVED AND COMPLY  
23 WITH THIS CHAPTER.

24 (B) NOTIFY ANY OTHER EXISTING INSURER THAT MAY BE AFFECTED BY  
25 THE PROPOSED REPLACEMENT WITHIN 5 BUSINESS DAYS AFTER RECEIPT OF A  
26 COMPLETED APPLICATION INDICATING REPLACEMENT OR AFTER A REPLACEMENT  
27 IS IDENTIFIED THAT WAS NOT INDICATED ON THE APPLICATION, AND MAIL A

1 COPY OF THE AVAILABLE ILLUSTRATION OR POLICY SUMMARY FOR THE  
2 PROPOSED POLICY OR AVAILABLE DISCLOSURE DOCUMENT FOR THE PROPOSED  
3 CONTRACT WITHIN 5 BUSINESS DAYS AFTER A REQUEST FROM AN EXISTING  
4 INSURER.

5 (C) BE ABLE TO PRODUCE COPIES OF THE NOTICES REGARDING  
6 REPLACEMENT REQUIRED IN SECTION 4193(2), INDEXED BY PRODUCER, FOR  
7 AT LEAST 5 YEARS OR UNTIL THE NEXT REGULAR EXAMINATION BY THE  
8 INSURANCE DEPARTMENT OF THE INSURER'S STATE OF DOMICILE, WHICHEVER  
9 IS LATER.

10 (D) PROVIDE TO THE NEW POLICY OR CONTRACT OWNER NOTICE OF THE  
11 RIGHT TO RETURN THE POLICY OR CONTRACT WITHIN 30 DAYS AFTER THE  
12 DELIVERY OF THE POLICY OR CONTRACT AND RECEIVE AN UNCONDITIONAL  
13 FULL REFUND OF ALL PREMIUMS OR CONSIDERATION PAID ON THE POLICY OR  
14 CONTRACT, INCLUDING ANY POLICY FEES OR CHARGES OR, IF THE POLICY OR  
15 CONTRACT IS A VARIABLE OR MARKET VALUE ADJUSTMENT POLICY OR  
16 CONTRACT, A PAYMENT OF THE CASH SURRENDER VALUE PROVIDED UNDER THE  
17 POLICY OR CONTRACT PLUS THE FEES AND OTHER CHARGES DEDUCTED FROM  
18 THE GROSS PREMIUMS OR CONSIDERATION OR IMPOSED UNDER THE POLICY OR  
19 CONTRACT. A NOTICE UNDER THIS SUBDIVISION MAY BE INCLUDED IN A FORM  
20 ADOPTED BY THE COMMISSIONER UNDER SECTION 4199(1)(A) OR (C).

21 (2) IN A REPLACEMENT IN WHICH THE REPLACING INSURER AND THE  
22 EXISTING INSURER ARE THE SAME OR IN WHICH 1 IS AN AFFILIATE OR  
23 SUBSIDIARY OF THE OTHER, THE REPLACING INSURER SHALL ALLOW CREDIT  
24 FOR THE PERIOD OF TIME THAT HAS ELAPSED UNDER THE EXISTING POLICY'S  
25 OR CONTRACT'S INCONTESTABILITY AND SUICIDE PERIOD UP TO THE FACE  
26 AMOUNT OF THE EXISTING POLICY OR CONTRACT. WITH REGARD TO FINANCED  
27 PURCHASES, THE CREDIT UNDER THIS SUBSECTION MAY BE LIMITED TO THE

1 AMOUNT THE FACE AMOUNT OF THE EXISTING POLICY OR CONTRACT IS  
2 REDUCED BY THE USE OF EXISTING POLICY VALUES TO FUND THE NEW POLICY  
3 OR CONTRACT.

4 (3) IF AN INSURER PROHIBITS THE USE OF SALES MATERIAL OTHER  
5 THAN THAT APPROVED BY THE INSURER, AS AN ALTERNATIVE TO THE  
6 REQUIREMENTS OF SECTION 4193(6), THE INSURER MAY DO ALL OF THE  
7 FOLLOWING:

8 (A) REQUIRE WITH EACH APPLICATION A STATEMENT SIGNED BY THE  
9 PRODUCER THAT DOES BOTH OF THE FOLLOWING:

10 (i) REPRESENTS THAT THE PRODUCER USED ONLY COMPANY-APPROVED  
11 SALES MATERIAL.

12 (ii) STATES THAT COPIES OF ALL SALES MATERIAL WERE LEFT WITH  
13 THE APPLICANT IN ACCORDANCE WITH SECTION 4193(5).

14 (B) WITHIN 10 DAYS AFTER THE ISSUANCE OF THE POLICY OR  
15 CONTRACT, DO ALL OF THE FOLLOWING:

16 (i) NOTIFY THE APPLICANT, BY SENDING A LETTER OR BY VERBAL  
17 COMMUNICATION WITH THE APPLICANT BY A PERSON WHOSE DUTIES ARE  
18 SEPARATE FROM THE MARKETING AREA OF THE INSURER, THAT THE PRODUCER  
19 HAS REPRESENTED THAT COPIES OF ALL SALES MATERIAL HAVE BEEN LEFT  
20 WITH THE APPLICANT IN ACCORDANCE WITH SECTION 4193(5).

21 (ii) PROVIDE THE APPLICANT WITH A TOLL-FREE TELEPHONE NUMBER TO  
22 CONTACT PERSONNEL OF THE INSURER WHO ARE INVOLVED IN THE COMPLIANCE  
23 FUNCTION IF COPIES OF ALL SALES MATERIAL HAVE NOT BEEN LEFT WITH  
24 THE APPLICANT IN ACCORDANCE WITH SECTION 4193(5).

25 (iii) STRESS THE IMPORTANCE OF RETAINING COPIES OF THE SALES  
26 MATERIAL FOR FUTURE REFERENCE.

27 (C) BE ABLE TO PRODUCE A COPY OF THE LETTER UNDER SUBDIVISION

1 (B) (i) OR OTHER VERIFICATION IN THE POLICY FILE FOR AT LEAST 5 YEARS  
2 AFTER THE TERMINATION OR EXPIRATION OF THE POLICY OR CONTRACT.

3 SEC. 4196. IF A TRANSACTION INVOLVES A REPLACEMENT, THE  
4 EXISTING INSURER SHALL DO ALL OF THE FOLLOWING:

5 (A) RETAIN AND BE ABLE TO PRODUCE ALL REPLACEMENT  
6 NOTIFICATIONS RECEIVED, INDEXED BY REPLACING INSURER, FOR AT LEAST  
7 5 YEARS OR UNTIL THE CONCLUSION OF THE NEXT REGULAR EXAMINATION  
8 CONDUCTED BY THE INSURANCE DEPARTMENT OF THE INSURER'S STATE OF  
9 DOMICILE, WHICHEVER IS LATER.

10 (B) SEND A LETTER TO THE POLICY OR CONTRACT OWNER OF THE RIGHT  
11 TO RECEIVE INFORMATION REGARDING THE EXISTING POLICY OR CONTRACT  
12 VALUES INCLUDING, IF AVAILABLE, AN IN-FORCE ILLUSTRATION OR POLICY  
13 SUMMARY IF AN IN-FORCE ILLUSTRATION CANNOT BE PRODUCED WITHIN 5  
14 BUSINESS DAYS AFTER RECEIPT OF A NOTICE THAT AN EXISTING POLICY OR  
15 CONTRACT IS BEING REPLACED. THE INSURER SHALL PROVIDE THE  
16 INFORMATION WITHIN 5 BUSINESS DAYS AFTER RECEIPT OF THE REQUEST  
17 FROM THE POLICY OR CONTRACT OWNER.

18 (C) ON RECEIPT OF A REQUEST TO BORROW, SURRENDER, OR WITHDRAW  
19 ANY POLICY VALUES, SEND A NOTICE ADVISING THE POLICY OR CONTRACT  
20 OWNER THAT THE RELEASE OF POLICY VALUES MAY AFFECT THE GUARANTEED  
21 ELEMENTS, NONGUARANTEED ELEMENTS, FACE AMOUNT, OR SURRENDER VALUE  
22 OF THE POLICY OR CONTRACT FROM WHICH THE VALUES ARE RELEASED. THE  
23 NOTICE SHALL BE SENT SEPARATELY FROM THE CHECK IF THE CHECK IS SENT  
24 TO ANYONE OTHER THAN THE POLICY OR CONTRACT OWNER. IN THE CASE OF  
25 CONSECUTIVE AUTOMATIC PREMIUM LOANS, THE INSURER IS ONLY REQUIRED  
26 TO SEND THE NOTICE AT THE TIME OF THE FIRST LOAN.

27 SEC. 4197. (1) IF AN APPLICATION IS INITIATED AS A RESULT OF A

1 DIRECT RESPONSE SOLICITATION, THE INSURER SHALL REQUIRE, WITH OR AS  
2 PART OF EACH COMPLETED APPLICATION FOR A POLICY OR CONTRACT, A  
3 STATEMENT ASKING WHETHER THE APPLICANT, BY APPLYING FOR THE  
4 PROPOSED POLICY OR CONTRACT, INTENDS TO REPLACE, DISCONTINUE, OR  
5 CHANGE AN EXISTING POLICY OR CONTRACT. IF THE APPLICANT INDICATES A  
6 REPLACEMENT OR CHANGE IS NOT INTENDED OR IF THE APPLICANT FAILS TO  
7 RESPOND TO THE STATEMENT, THE INSURER SHALL SEND THE APPLICANT,  
8 WITH THE POLICY OR CONTRACT, A NOTICE REGARDING REPLACEMENT ADOPTED  
9 BY THE COMMISSIONER UNDER SECTION 4199(1)(B) OR OTHER SUBSTANTIALLY  
10 SIMILAR FORM APPROVED BY THE COMMISSIONER.

11 (2) IF AN INSURER HAS PROPOSED A REPLACEMENT FOR WHICH AN  
12 APPLICATION IS INITIATED AS DESCRIBED IN SUBSECTION (1) OR IF THE  
13 APPLICANT INDICATES UNDER SUBSECTION (1) THAT A REPLACEMENT IS  
14 INTENDED AND THE INSURER CONTINUES WITH THE REPLACEMENT, THE  
15 INSURER SHALL DO BOTH OF THE FOLLOWING:

16 (A) PROVIDE TO THE APPLICANT OR PROSPECTIVE APPLICANT WITH THE  
17 POLICY OR CONTRACT A NOTICE, AS ADOPTED BY THE COMMISSIONER UNDER  
18 SECTION 4199(1)(C), OR ANOTHER SUBSTANTIALLY SIMILAR FORM APPROVED  
19 BY THE COMMISSIONER. IN PROVIDING A NOTICE UNDER THIS SUBDIVISION,  
20 THE INSURER MAY DELETE THE REFERENCES TO THE PRODUCER, INCLUDING  
21 THE PRODUCER'S SIGNATURE, AND REFERENCES NOT APPLICABLE TO THE  
22 PRODUCT BEING SOLD OR REPLACED, WITHOUT HAVING TO OBTAIN APPROVAL  
23 OF THE FORM FROM THE COMMISSIONER. THE INSURER'S OBLIGATION TO  
24 OBTAIN THE APPLICANT'S SIGNATURE IS SATISFIED IF IT CAN DEMONSTRATE  
25 THAT IT HAS MADE A DILIGENT EFFORT TO SECURE A SIGNED COPY OF THE  
26 NOTICE. THE REQUIREMENT TO MAKE A DILIGENT EFFORT IS SATISFIED IF  
27 THE INSURER INCLUDES IN THE MAILING A SELF-ADDRESSED POSTAGE

1 PREPAID ENVELOPE WITH INSTRUCTIONS FOR THE RETURN OF THE SIGNED  
2 NOTICE REFERRED TO IN THIS SUBDIVISION.

3 (B) COMPLY WITH THE REQUIREMENTS OF SECTION 4195(1)(B), IF THE  
4 APPLICANT FURNISHES THE NAMES OF THE EXISTING INSURERS, AND THE  
5 REQUIREMENTS OF SECTION 4195(1)(C) AND (D) AND (2).

6 SEC. 4198. (1) A FAILURE TO COMPLY WITH THIS CHAPTER IS AN  
7 UNFAIR TRADE PRACTICE FOR PURPOSES OF CHAPTER 20. EXAMPLES OF  
8 VIOLATIONS INCLUDE:

9 (A) DECEPTIVE OR MISLEADING INFORMATION CONTAINED IN SALES  
10 MATERIAL.

11 (B) FAILING TO ASK THE APPLICANT IN COMPLETING AN APPLICATION  
12 THE PERTINENT QUESTIONS REGARDING THE POSSIBILITY OF FINANCING OR  
13 REPLACEMENT.

14 (C) THE INTENTIONAL INCORRECT RECORDING OF AN ANSWER.

15 (D) ADVISING AN APPLICANT TO RESPOND NEGATIVELY TO ANY  
16 QUESTION REGARDING REPLACEMENT TO PREVENT NOTICE TO THE EXISTING  
17 INSURER.

18 (E) ADVISING A POLICY OR CONTRACT OWNER TO WRITE DIRECTLY TO  
19 THE COMPANY IN SUCH A WAY AS TO ATTEMPT TO OBSCURE THE IDENTITY OF  
20 THE REPLACING PRODUCER OR COMPANY.

21 (2) A POLICY OR CONTRACT OWNER HAS THE RIGHT TO REPLACE AN  
22 EXISTING LIFE INSURANCE POLICY OR ANNUITY CONTRACT AFTER INDICATING  
23 IN OR AS A PART OF AN APPLICATION FOR A NEW POLICY OR CONTRACT THAT  
24 REPLACEMENT IS NOT THE OWNER'S INTENTION. HOWEVER, PATTERNS OF SUCH  
25 ACTION BY POLICY OR CONTRACT OWNERS OF THE SAME PRODUCER ARE PRIMA  
26 FACIE EVIDENCE OF THE PRODUCER'S KNOWLEDGE THAT REPLACEMENT WAS  
27 INTENDED IN CONNECTION WITH THE IDENTIFIED TRANSACTIONS, AND THESE

1 PATTERNS OF ACTION ARE PRIMA FACIE EVIDENCE OF THE PRODUCER'S  
2 INTENT TO VIOLATE THIS CHAPTER.

3 (3) IF IT IS DETERMINED THAT THE REQUIREMENTS OF THIS CHAPTER  
4 HAVE NOT BEEN MET, THE REPLACING INSURER SHALL PROVIDE TO THE  
5 POLICY OR CONTRACT OWNER AN IN-FORCE ILLUSTRATION IF AVAILABLE OR A  
6 POLICY SUMMARY FOR THE REPLACEMENT POLICY OR CONTRACT OR AN  
7 AVAILABLE DISCLOSURE DOCUMENT FOR THE REPLACEMENT POLICY OR  
8 CONTRACT AND THE APPROPRIATE NOTICE REGARDING REPLACEMENTS ADOPTED  
9 BY THE COMMISSIONER UNDER SECTION 4199(1) (A) OR (C).

10 (4) A VIOLATION OF THIS CHAPTER SUBJECTS THE VIOLATOR TO  
11 PENALTIES THAT MAY INCLUDE THE REVOCATION OR SUSPENSION OF A  
12 PRODUCER'S OR INSURER'S LICENSE, A MONETARY FINE, AND THE  
13 FORFEITURE OF ANY COMMISSIONS OR COMPENSATION PAID TO A PRODUCER AS  
14 A RESULT OF THE TRANSACTION IN CONNECTION WITH WHICH THE VIOLATION  
15 OCCURRED. IN ADDITION, IF THE COMMISSIONER DETERMINES THAT THE  
16 VIOLATION WAS MATERIAL TO THE SALE, THE INSURER MAY BE REQUIRED TO  
17 MAKE RESTITUTION, RESTORE POLICY OR CONTRACT VALUES, AND PAY SIMPLE  
18 INTEREST AT THE RATE OF 12% PER ANNUM ON THE AMOUNT REFUNDED IN  
19 CASH.

20 SEC. 4199. (1) THE COMMISSIONER SHALL ADOPT FORMS AS FOLLOWS  
21 TO BE USED TO SATISFY THE NOTICE REQUIREMENTS OF THIS CHAPTER:

22 (A) A NOTICE REGARDING THE REPLACEMENT OF LIFE INSURANCE OR  
23 ANNUITIES TO BE SIGNED BY THE APPLICANT AND THE PRODUCER, IF THERE  
24 IS A PRODUCER, AND A COPY LEFT WITH THE APPLICANT.

25 (B) A SHORTER NOTICE REGARDING REPLACING A LIFE INSURANCE  
26 POLICY OR ANNUITY TO BE PROVIDED TO AN APPLICANT WHO DOES NOT  
27 INDICATE THAT THE INTENDED PURCHASE OF A NEW POLICY OR CONTRACT IS

1 A REPLACEMENT OF AN EXISTING POLICY OR CONTRACT.

2 (C) A NOTICE REGARDING THE REPLACEMENT OF LIFE INSURANCE OR  
3 ANNUITIES TO BE USED IF THE APPLICATION FOR A NEW POLICY OR  
4 CONTRACT IS INITIATED AS A RESULT OF A DIRECT RESPONSE  
5 SOLICITATION.

6 (2) IN ADOPTING THE FORMS UNDER SUBSECTION (1), THE  
7 COMMISSIONER SHALL SUBSTANTIALLY FOLLOW THE FORMS PUBLISHED BY THE  
8 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AS APPENDICES TO  
9 THE LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION.

10 SEC. 4199A. THIS CHAPTER TAKES EFFECT 9 MONTHS AFTER THE  
11 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS CHAPTER.