

2012 -- H 7775 SUBSTITUTE A

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LC01698/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO INSURANCE - LIFE INSURANCE AND ANNUITIES

Introduced By: Representative Raymond H. Johnston

Date Introduced: February 16, 2012

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 27-4 of the General Laws entitled "Life Insurance Policies and
2 Reserves" is hereby amended by adding thereto the following section:

3 **27-4-29. Life insurance database. -- (a) The department of business regulation shall**
4 **maintain a central database of electronic contact information for each life insurer having policies**
5 **in force in this state.**

6 **(b) On and after January 1, 2013, any member of the immediate family of a decedent**
7 **searching for life insurance policies covering the decedent may file a request with the department**
8 **for a search pursuant to this section, provided the decedent was a resident or former resident of**
9 **this state. Any such request shall include a copy of the subject decedent's death certificate. The**
10 **right to file a request for a search pursuant to this section may not be assigned.**

11 **(c) The department shall transmit any such request to all life insurers having policies in**
12 **force in this state, along with information necessary for responding directly to the person filing**
13 **the request. Each such insurer shall examine its books and records to make a determination as to**
14 **the existence of coverage of the subject decedent, and upon a finding that such coverage does**
15 **exist, shall directly notify the person filing the request.**

16 **(d) The department may adopt such rules and regulations as may be necessary to**
17 **implement the provisions of this section.**

18 **(e) Insurers of credit life insurance are exempt from inclusion in the central database and**
19 **shall not be subject to the requirements of section 27-4-28.**

1 SECTION 2. Chapter 27-29 of the General Laws entitled "Unfair Competition and
2 Practices" is hereby amended by adding thereto the following section:

3 **27-29-4.7. Additional unfair methods of competition.** – (a) In addition to those listed in
4 section 27-29-4 the following are also defined as unfair methods of competition and unfair and
5 deceptive acts or practices in the business of insurance:

6 (1) Twisting. Knowingly making any misleading representations or incomplete or
7 fraudulent comparisons or fraudulent material omissions of or with respect to any insurance
8 policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit,
9 surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take
10 out a policy of insurance in another insurer.

11 (2) Churning. The practice whereby policy values in an existing life insurance policy or
12 annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any
13 riders to that policy or contract, are directly or indirectly used to purchase another insurance
14 policy or annuity contract with that same insurer for the purpose of earning additional premiums,
15 fees, commissions, or other compensation:

16 (i) Without an objectively reasonable basis for believing that the replacement or
17 extrapolation will result in an actual and demonstrable benefit to the policyholder; or

18 (ii) In a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a
19 deceptive omission; or

20 (iii) When the applicant is not informed that the policy values, including cash values,
21 dividends, and other assets of the existing policy or contract will be reduced, forfeited, or used in
22 the purchase of the replacing or additional policy or contract, if this is the case; or

23 (iv) Without informing the applicant that the replacing or additional policy or contract
24 will not be a paid-up policy or that additional premiums will be due or that a new contestable
25 period will apply and explaining the impact of these differences, if this is the case.

26 (b) Each insurer shall comply with paragraphs (iii) and (iv) herein by disclosing to the
27 applicant at the time of the offer if, how, and the extent to which the policy or contract values
28 (including cash value, dividends, and other assets) of a previously issued policy or contract will
29 be used to purchase a replacing or additional policy or contract with the same insurer. The
30 disclosure must include the premium, the death benefit of the proposed replacing or additional
31 policy, and the date on which the policy values of the existing policy or contract will be
32 insufficient to pay the premiums of the replacing or additional policy or contract.

33 (c) Each insurer shall adopt written procedures sufficient to reasonably avoid twisting and
34 churning of policies or contracts that it has issued, and failure to adopt written procedures

1 [sufficient to reasonably avoid twisting and churning shall be an unfair method of competition and](#)
2 [an unfair or deceptive act or practice.](#)

3 SECTION 3. Sections 27-34.3-2, 27-34.3-6, 27-34.3-7 and 27-34.3-11 of the General
4 Laws in Chapter 27-34.3 entitled "Rhode Island Life and Health Insurance Guaranty Association
5 Act" are hereby amended to read as follows:

6 **27-34.3-2. Purpose.** -- (a) The purpose of this chapter is to protect, subject to certain
7 limitations, the persons specified in section 27-34.3-3(a) against failure in the performance of
8 contractual obligations, under life and health insurance policies and annuity contracts specified in
9 section 27-34.3-3(b), because of the impairment or insolvency of the member insurer that issued
10 the policies or contracts.

11 (b) To provide this protection, an association of insurers is created to pay benefits and to
12 continue coverages as limited in this chapter, and members of the association are subject to
13 assessment to provide funds to carry out the purpose of this chapter.

14 [\(c\) In accordance with this purpose, in determining the coverage limits to be applied in](#)
15 [section 27-34.3-3 in cases in which there were different statutory limits at the time the insurer](#)
16 [was declared impaired and the time the insurer was declared insolvent, the statute with the higher](#)
17 [limits shall be applied to the claim.](#)

18 **27-34.3-6. Creation of the association.** -- (a) There is created a nonprofit legal entity to
19 be known as the Rhode Island life and health insurance guaranty association. All member insurers
20 shall be and remain members of the association as a condition of their authority to transact
21 insurance in this state. The association shall perform its functions under the plan of operation
22 established and approved under section 27-34.3-10, or as previously established and approved
23 under section 27-34.1-11 [Repealed] and shall exercise its powers through a board of directors
24 established under section 27-34.3-7 or as previously established under section 27-34.1-8
25 [Repealed] For purposes of administration and assessment, the association shall maintain two (2)
26 accounts:

27 (1) The life insurance and annuity account which includes the following subaccounts:

28 (i) Life insurance account;

29 (ii) Annuity account; which shall include annuity contracts owned by a governmental
30 retirement plan (or its trustee) established under section 401, 403(b) or 457 of the United States
31 Internal Revenue Code, 26 U.S.C. section 401, 403(b) or 457, but shall otherwise exclude
32 unallocated annuities; and

33 (iii) Unallocated annuity account which shall exclude contracts owned by a
34 governmental retirement benefit plan (or its trustee) established under section 401, 403(b) or 457

1 of the United States Internal Revenue Code, 26 U.S.C. section 401, 403(b) or 457.

2 (2) The health insurance account.

3 (b) The association shall come under the immediate supervision of the commissioner and
4 shall be subject to the applicable provisions of the insurance laws of this state. Meetings or
5 records of the association may be open to the public upon majority vote of the board of directors.
6 The commissioner or his or her designee shall have full and complete access to all documents
7 received by, created by or otherwise obtained by the association and shall be invited to be present
8 at all association meetings. The disclosure of confidential or privileged association information,
9 documents, or records to the commissioner shall not change the confidential or privileged status
10 of the information, documents or records.

11 **27-34.3-7. Board of directors.** -- (a) The board of directors of the association shall
12 consist of:

13 (1) Not ~~not~~ less than five (5) nor more than nine (9) member insurers serving terms as
14 established in the plan of operation; and

15 (2) The commissioner or the commissioner's designee. Only member insurers shall be
16 eligible to vote. The ~~insurer~~ members of the board shall be selected by member insurers subject to
17 the approval of the commissioner. The board of directors, previously established under section
18 27-34.1-8 [Repealed] shall continue to operate in accordance with the provision of this section.
19 Vacancies on the board shall be filled for the remaining period of the term by a majority vote of
20 the remaining board members, subject to the approval of the commissioner.

21 (b) In approving selections to the board, the commissioner shall consider, among other
22 things, whether all member insurers are fairly represented.

23 (c) Members of the board may be reimbursed from the assets of the association for
24 expenses incurred by them as members of the board of directors but members of the board shall
25 not be compensated by the association for their services.

26 **27-34.3-11. Duties and powers of the commissioner.** -- In addition to the duties and
27 powers enumerated in this chapter,

28 (a) The commissioner shall:

29 (1) Upon request of the board of directors, provide the association with a statement of
30 the premiums in this and any other appropriate states for each member insurer;

31 (2) When an impairment is declared and the amount of the impairment is determined,
32 serve a demand upon the impaired insurer to make good the impairment within a reasonable time;
33 notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the
34 insurer to promptly comply with a demand shall not excuse the association from the performance

1 of its powers and duties under this chapter.

2 (3) Deleted by P.L.[2009, ch. 158, section 1 and by P.L. 2009, ch. 169, section 1].

3 [\(4\) Maintain the confidentiality and privileged status of confidential association](#)
4 [information provided to the commissioner or department of business regulation.](#)

5 (b) The commissioner may suspend or revoke, after notice and hearing, the certificate of
6 authority to transact insurance in this state of any member insurer which fails to pay an
7 assessment when due or fails to comply with the plan of operation. As an alternative the
8 commissioner may levy a forfeiture on any member insurer which fails to pay an assessment
9 when due. The forfeiture shall not exceed five percent (5%) of the unpaid assessment per month,
10 but no forfeiture shall be less than one hundred dollars (\$100) per month.

11 (c) A final action of the board of directors or the association may be appealed to the
12 commissioner by any member insurer if the appeal is taken within sixty (60) days of its receipt of
13 notice of the final action being appealed. A final action or order of the commissioner shall be
14 subject to judicial review.

15 (d) The liquidator, rehabilitator, or conservator of any impaired or insolvent insurer may
16 notify all interested persons of the effect of this chapter.

17 [\(e\) The commissioner shall not participate in the association's adjudication of a protest](#)
18 [by an insurer pursuant to paragraph 27-34.3-9\(i\).](#)

19 SECTION 4. Sections 1 and 2 of this act shall take effect on January 1, 2013. Section 3
20 shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE - LIFE INSURANCE AND ANNUITIES

1 This act would add the requirement of suitability to the sale of annuities and ban twisting
2 and churning in the sale of life insurance and annuities and set up a procedure wherein potential
3 beneficiaries can contact the department of business regulation and have all licensed insurers
4 conduct a search for life insurance policies covering a decedent. This act would also clarify
5 sections of the Rhode Island life and health insurance guaranty association act.

6 Sections 1 and 2 of this act would take effect on January 1, 2013. Section 3 would take
7 effect on passage.

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