



Legislative & Regulatory Report

NATIONAL ALLIANCE OF LIFE COMPANIES *An Association of Life and Health Insurance Companies*

August 2011

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The news in this publication, including links to background and supplemental information on state websites, is available on the NALC members website at <http://members.nalc.net>.

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Alaska

Insurance Laws Passed in 2011

The Alaska Insurance Department has prepared a series of bulletins dealing with insurance laws passed during the 2011 legislative session. It is available at http://commerce.alaska.gov/ins/InsBill_SCSCSHB164L&C.html.

Arkansas

Rulemaking Hearing

Proposed Amended Rule 30: "Funeral Expense Insurance"

The Arkansas Insurance Department will hold a hearing on Tuesday, September 13 at 9:00 a.m. to consider changed to Rule 30, Funeral Expense Insurance. The purpose of this Rule is to define funeral expense insurance as required by Ark. Code Ann. §23-64-202(c)(7)(B), and to set out the general requirements that must be met in selling this form of life insurance.

The hearing will be held at the Arkansas Insurance Department, 1200 West Third Street, Little Rock, AR 72201. Direct comments on the proposed rule to Amanda Andrews at amanda.andrews@arkansas.gov. The proposed rule is available at <http://www.insurance.arkansas.gov/Legal%20Datatools/Proposedrulepage.htm>.

Idaho

Deferred Payment of Cash Surrendered Benefits (Bulletin 11-06)

Effective July 1, 2011, insurers must pay a minimum of 5.250% on deferred payment of cash surrender values pursuant to Idaho Code Sections 41-1927(3) and 41-1927A(3)(b). The 5.250% interest rate is computed in accordance with Idaho Code § 28-22-104 and is effective from July 1, 2011 through June 30, 2012. The Idaho State Treasurer will announce a new rate by July 1st of each succeeding year. The rate calculation can be reviewed at the State Treasurer's website: <http://sto.idaho.gov/Reports/LegalRateOfInterest.aspx>

An insurer that has not tendered payments in satisfaction of a cash surrender request within thirty days of receipt of the request will be deemed to have elected to defer payment of the cash surrender benefit. The thirty day period for processing cash surrender requests will begin upon the date the request was received by the insurer or its authorized agent or representative. An insurer that elects to defer payment of a cash surrender benefit pursuant to Idaho Code Sections 41-1927 or 41-1927A, is required to pay interest from the date on which the cash surrender request is received.

The bulletin is available at <http://www.doi.idaho.gov/laws/2011bulletins.aspx>.

Iowa

Protect Against Stranger-Oriented Annuity Transactions (Bulletin 11-05)

The purpose of this bulletin is to encourage insurance companies to put safeguards in place to prevent or limit their exposure to stranger-originated annuity transactions.

As in a stranger-originated life insurance transaction (STOLI), in a stranger-originated annuity transaction (STOA), some producers or investors, to profit from the annuitant's death, offer an individual -- who is usually a "stranger" to the producer or investor -- a nominal fee for the use of the individual's identity as the annuitant

(or the measuring life) in an investment-oriented annuity. Typically, individuals targeted to serve as annuitants are in extremely poor health and are not expected to live beyond the first year of the policy. In order to find individuals who meet the aforementioned criteria, these producers or investors have been known to take out advertisements in papers as well as solicit individuals residing in nursing homes or hospice.

Once a targeted individual has agreed to provide the use of his or her identity under the terms agreed upon (compensation, ownership, etc.), the producer will complete the annuity application, ensuring that particular riders (such as a bonus rider or a guaranteed minimum death benefit) are in place to maximize the rate of return for those financing the transaction. Depending on the number of companies the producer represents and the commission policies in effect, the producer may seek to use multiple policies from various companies.

To avoid detection of the scheme or added scrutiny of the policy, producers involved in STOAs will often take precautions to ensure the dollar amount of the annuity falls below specific underwriting guidelines. In addition, a trust or an organization may be named as a beneficiary of the annuity in order to hide the true identity of those who will benefit from the annuitant's death.

Because the financial implications of STOA transactions could be detrimental to both companies and consumers, it is suggested that companies, if they have annuity products that could be possible STOA targets:

- Review chargeback policies and consider reserving the right to adjust commissions if a policy is annuitized or a death benefit is paid within its first policy year and the facts indicate the policy was used to facilitate STOA transactions.
- Create detection methods to identify STOA transactions and those producers who may be involved in facilitating such transactions, including controls to flag questionable applications.
- Revisit annuity applications processes to ensure specific questions are posed with regard to the relationship between the annuitant and contract owner, and the manner in which the contract is being funded.
- Report actual and potential STOA transactions to the Iowa Insurance Division.

For questions regarding this matter, please contact the Iowa Insurance Division, 330 Maple, Des Moines, Iowa 50319, telephone 515-281-5705.

The bulletin is available at http://www.iid.state.ia.us/commissioner_bulletin_list.

Virginia

Gramm-Leach-Bliley Act Privacy Notices (Administrative Letter 2011-06)

The purpose of this administrative letter is to clarify that insurance institutions may use the new federal Model Privacy Form in accordance with this administrative letter and still meet the requirements for compliance with the Gramm-Leach-Bliley Act (GLBA) set forth in Virginia's financial information collection and disclosure practices notice requirements.

As required by the Financial Services Regulatory Relief Act of 2006, eight federal agencies adopted a simplified federal Model Privacy Form. Insurance institutions that do business in the Commonwealth may use the new federal Model Privacy Form or continue to use other types of privacy notices that differ from the federal Model Privacy Form to meet the notice content requirements of the Virginia Privacy Notice. The accurate use of the federal Model Privacy Form in accordance with the instructions set forth below constitutes compliance with the notice content requirements of the Virginia Privacy Notice.

Use of Model Privacy Form

Insurance institutions may use the attached Model Privacy Form, consistent with the federal instructions and the instructions set forth below, as a safe harbor of compliance with the requirements of the Virginia Privacy Notice. The Model Privacy Form may be used at the option of an insurance institution, including a group of insurance institutions or financial institutions that use a common privacy notice to meet the content requirements of the Virginia Privacy Notice. GLBA and the Virginia Privacy Notice requirements apply to life insurance, accident and sickness insurance, and property and casualty insurance primarily for personal, family, or household purposes.

The Model Privacy Form is a standardized form, including page layout, content, format, style, pagination, and shading. Insurance institutions seeking to obtain the safe harbor through use of the model form may modify it only as described in the instructions set forth in the federal Model Privacy Form, as amended in this administrative letter. Furthermore, the safe harbor only applies to the use of the Model Privacy Form if the insurance institution accurately completes the form and otherwise meets the requirements of the federal instructions and the instructions set forth in this administrative letter.

Under § 38.2-604.1 C of the Code of Virginia, if an insurance institution only discloses nonpublic personal information to affiliated and non-affiliated third parties as authorized under § 38.2-613 of the Code of Virginia, the insurance institution is not required to list those exceptions in the initial or annual Virginia Privacy Notice. When describing the categories of parties to whom these disclosures are made, it is sufficient for the insurance institution to state that it makes disclosures to other affiliated and non-affiliated third parties: (1) for our everyday business purposes (include all that apply) such as to: process insurance transactions, maintain a policy(ies), respond to court orders and legal investigations, or report to credit bureaus; or (2) as permitted by law.

In the “What?” box of the Model Privacy Form, the bulleted list identifies the types of personal information that the insurance institution collects and shares. All insurance institutions must use the term “Social Security number” in the first bullet (as set forth in the instructions to the federal form). For the remainder of the bulleted items, an insurance institution should list examples of other personal information that it collects and shares.

Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the Fair Credit Reporting Act [15 U.S.C.1681–1681x] (FCRA), such as (i) a requirement to permit a consumer to opt out of disclosures to affiliates or (ii) designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

Use of Other Types of Privacy Notices

Use of the attached Model Privacy Form is not required. Insurance institutions may continue to use their existing privacy notices that meet the requirements of the Virginia Privacy Notice.

Virginia-Specific Information to be Included in Privacy Notices

As required by the federal instruction to the Model Privacy Form, insurance institutions using this form must include state specific information on the form. *This information should be added to the Other Important Information box on page 2 of the federal Model Privacy Form.*

As required by Section 38.2-604.1 of the Code of Virginia, in addition to describing the types of information that may be collected and disclosed, the insurance institution must describe the categories of persons to whom financial information may be disclosed.

When describing the categories of parties to whom the licensee discloses nonpublic personal information, the licensee is not required to list the exceptions in Section 38.2-613 of the Code of Virginia in the initial or annual privacy notice required by Section 38.2-604.1 of the Code of Virginia.

- When describing the categories of parties to whom these disclosures are made, it is sufficient for the licensee to state that it makes disclosures to other nonaffiliated companies “as permitted by law.”
- Additionally, the insurance institution must describe its policies and practices for protecting the confidentiality and security of financial information.

Safe Harbor Not Applicable to the Notice Required by § 38.2-604

Insurance institutions should be aware that while the accurate use of the Model Privacy Form will provide the insurance institution with a safe harbor of compliance with the Virginia Privacy Notice, the Model Privacy Form will not provide a safe harbor for the notice required by § 38.2-604 of the Code of Virginia, the Notice of Information Collection and Disclosure Practices. The triggers for the two notices are different. Consequently, the insurers are reminded that they are still required to provide the notice set forth in § 38.2-604 of the Code of Virginia.

The document and attachment are available at <http://www.scc.virginia.gov/boi/adminlets/2011.aspx>. Questions regarding this letter may be directed to:

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