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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 2. LIFE AND DISABILITY INSURANCE [10110 - 11549] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 5. General Regulation of Life Insurers [10430 - 10509.946] (*Chapter 5 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 8. Requirements for Replacement of Life Insurance and Annuity Policies [10509 - 10509.9] (*Article 8 added by Stats. 1990, Ch. 963, Sec. 1.*)

10509. The purpose of this article is the following:

- (a) To regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities.
- (b) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by the following:
 - (1) Assuring that the purchaser receives information with which a decision can be made in his or her own best interest.
 - (2) Reducing the opportunity for misrepresentation and incomplete disclosures.
 - (3) Establishing penalties for failure to comply with the requirements of this article.

(Amended by Stats. 1991, Ch. 380, Sec. 1.5.)

10509.1. This article is applicable to all individual life insurance and annuity policies.

(Added by Stats. 1990, Ch. 963, Sec. 1.)

10509.2. (a) "Replacement" means any transaction in which new life insurance or a new annuity 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 that transaction, the existing life insurance or annuity has been or is to be any of the following:

- (1) Lapsed, forfeited, surrendered, or otherwise terminated.
- (2) 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.
- (3) 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.
- (4) Reissued with any reduction in cash value.
- (5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25 percent of the loan value set forth in the policy.

(b) "Conservation" means any attempt by the existing insurer or its agent to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers, or reinstatement offers.

(c) "Direct-response sales" means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

(d) "Existing insurer" means the insurer whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

(e) "Existing life insurance or annuity" means any life insurance or annuity in force including life insurance under a binding or conditional receipt or a life insurance policy that is within an unconditional refund period.

(f) "Replacing insurer" means the insurer that issues a new policy which is a replacement of existing life insurance or annuity.

(g) "Registered contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurers which are registered with the Federal Securities and Exchange Commission.

(Amended by Stats. 1991, Ch. 380, Sec. 2.)

10509.3. (a) Unless otherwise specifically included, this article does not apply to the following:

(1) Credit life insurance.

(2) Group life insurance or group annuities.

(3) An application to the existing insurer that issued the existing life insurance when a contractual change or a conversion privilege is being exercised, or when a term conversion privilege is exercised among corporate affiliates.

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

(5) Transactions where the replacing insurer and the existing insurer are the same; provided, however, that agents proposing replacement shall:

(A) Comply with the requirements of subdivisions (a) and (d) of Section 10509.4.

(B) Provide and leave with the applicant a written statement containing information relating to premiums, cash values, death benefits, and outstanding indebtedness, and dividends and dividend accumulations, if any, for the existing policy, both immediately before and after replacement, and for the proposed life insurance or annuity.

(b) Registered contracts shall be exempt from the requirements of paragraphs (2) and (3) of subdivision (b) of Section 10509.6 requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

(c) "Term conversion privilege" means an option afforded by contract to certain holders of term life insurance policies that permits the policy to be converted into permanent insurance, including whole life insurance, universal life insurance, or variable life insurance, regardless of the insured's physical condition and without a medical examination. The holder of a term life insurance policy with a term conversion privilege shall not be denied coverage or charged an additional premium for any health problems and premiums for the permanent policy shall be based on the same underwriting class as the term policy, regardless of any changes of health since the term policy was issued.

(d) "Corporate affiliate" means the same as "affiliate" as defined in Section 1215.

(Amended by Stats. 2008, Ch. 463, Sec. 1. Effective January 1, 2009.)

10509.4. (a) Each agent who accepts an application shall submit to the insurer with which an application for life insurance or annuity is presented, or as part of each application, both of the following:

(1) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction.

(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 do all of the following:

(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 subdivision (d). The notice shall be signed by both the applicant and the agent and left with the applicant. Obtain with or as part of each application a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(2) Leave with the applicant the original or a copy of all printed communications used for presentation to the applicant.

(3) Submit to the replacing insurer with the application a copy of the replacement notice.

(c) Every agent who uses written or printed communications in conservation shall leave with the applicant the originals of any materials used.

(d) Each agent or broker shall present to an applicant the following notice:

NOTICE REGARDING REPLACEMENT

REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

We are required by law to notify your existing company that you may be replacing their policy.

(applicant)	(agent)	(date)

(Amended by Stats. 1991, Ch. 380, Sec. 4.)

10509.5. Every life insurer shall do the following:

(a) Inform its field representatives or other personnel responsible for compliance with this article of the requirements of this article.

(b) Require with, or as part of, each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

(Added by Stats. 1990, Ch. 963, Sec. 1.)

10509.6. Every life insurer that uses an agent in a life insurance or annuity sale shall do the following:

(a) Require with or as part of each completed application for life insurance or annuity, a statement signed by the agent as to whether he or she knows a replacement is or may be involved in the transaction.

(b) Where a replacement is involved:

(1) Require from the agent with the application for life insurance or annuity: (i) a list of all of the applicant's existing life insurance or annuity to be replaced, and (ii) a copy of the replacement notice provided the applicant pursuant to Section 10509.4. The existing life insurance or annuity shall be identified by name of insurer, insured, and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(2) Send to each existing life insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to this section and a policy summary, contract summary, or ledger statement containing policy data on the proposed life insurance or annuity. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within three working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(3) Every existing life insurer or the insurer's agent that undertakes a conservation shall, within 20 days from the date the written communication plus the materials required in subdivisions (1) and (2) are received by the existing insurer, furnish the policyowner with a policy summary for the existing life insurance or ledger statement containing policy data on the existing policy or annuity. 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 or ledger statement shall include the amount of any outstanding 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. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that in the contract summary.

The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be within five working days of the receipt of the request.

(c) The replacing insurer shall maintain evidence of the "notice regarding replacement," the policy summary, the contract summary, and any ledger statements used, and a replacement register, cross-indexed by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries, contract summaries, or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years.

(d) The replacing insurer shall provide on the front of the policy jacket or on the cover page of its life insurance policy or annuity contract or, alternatively, as a separate written document which is delivered with the life insurance policy or annuity contract, a notice stating that the owner has a right to an unconditional refund of all premiums paid which right may be exercised within a period of 30 days commencing from the date of delivery of the contract. In the case of variable annuities, and variable life insurance, return of the contract during the cancellation period shall entitle the owner to a refund of the account value and any policy fee paid. The account value and policy fee shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the contract.

(e) This section shall become operative on July 1, 2015.

(Repealed (in Sec. 9) and added by Stats. 2014, Ch. 166, Sec. 10. (AB 2347) Effective January 1, 2015. Section operative July 1, 2015, by its own provisions.)

10509.7. (a) If in the solicitation of a direct response sale, an insurer does not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a replacement notice as described in subdivision (d) of Section 10509.4 or other substantially similar form approved by the commissioner. In those instances the insurer may delete the last sentence and the reference to signatures from the form without having to obtain approval of the form from the commissioner.

(b) If the insurer proposed the replacement it shall do the following:

(1) Provide to applicants or prospective applicants with or as part of the application a replacement notice as described in subdivision (d) of Section 10509.4.

(2) Request from the applicant with or as part of the application, a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer and insured.

(3) Comply with the requirements of paragraph (2) of subdivision (b) of Section 10509.6, if the applicant furnishes the names of the existing insurers, and the requirements of subdivision (c) of Section 10509.6, except that it need not maintain a replacement register.

(Amended by Stats. 2017, Ch. 417, Sec. 29. (AB 1696) Effective January 1, 2018.)

10509.8. (a) A violation of this article shall occur if an agent or insurer recommends the replacement or conservation of an existing policy by use of a materially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any, or recommends that an insured 65 years of age or older purchase an unnecessary replacement annuity.

(b) For purposes of this section, "unnecessary replacement" means the sale of an annuity to replace an existing annuity that requires that the insured will pay a surrender charge for the annuity that is being replaced and that does not confer a substantial financial benefit over the life of the policy to the purchaser so that a reasonable person would believe that the purchase is unnecessary.

(c) Patterns of action by policyowners who purchase replacement policies from the same agent after indicating on applications that replacement is not involved, shall constitute a rebuttable presumption of the agent's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall constitute a rebuttable presumption of the agent's intent to violate this article.

(d) This article does not prohibit the use of additional material other than that which is required that is not in violation of this article or any other statute or regulation.

(Amended by Stats. 2003, Ch. 547, Sec. 8. Effective January 1, 2004.)

10509.9. (a) Any agent or other person or entity engaged in the business of insurance, other than an insurer, who violates this article is liable for an administrative penalty of no less than one thousand dollars (\$1,000) for the first violation.

(b) Any agent or other person or entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for an administrative penalty of no less than five thousand dollars (\$5,000) and no more than fifty thousand dollars (\$50,000) for each violation.

(c) Any insurer who violates this article is liable for an administrative penalty of ten thousand dollars (\$10,000) for the first violation.

(d) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for an administrative penalty of no less than thirty thousand dollars (\$30,000) and no more than three hundred

thousand dollars (\$300,000) for each violation.

(e) After a hearing conducted in accordance with Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner may suspend or revoke the license of any person or entity that violates this article.

(f) Nothing in this section shall be deemed to affect any other authority provided by law to the commissioner.

(Amended by Stats. 2003, Ch. 546, Sec. 6. Effective January 1, 2004.)