304.12-030 Replacement life insurance -- "Twisting" prohibited.

(1) As used in this section:

(a) "Replacement" means any transaction in which a new life insurance policy or annuity contract is to be purchased and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing life insurance policy or annuity contract has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, 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; or
5. Used in a financed purchase;

(b) "Existing insurer" means the insurance company whose existing life insurance policy or annuity contract is or will be changed or affected in a manner described within the definition of replacement transaction;

(c) "Replacing insurer" means the insurance company that issues or proposes to issue a new life insurance policy or annuity contract that replaces an existing policy or contract or is a financed purchase;

(d) "Existing life insurance policy or annuity contract" means any individual life insurance policy or annuity in force, including a life insurance policy under a binding or conditional receipt or a life insurance policy or annuity contract that is within an unconditional refund period;

(e) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of, an existing policy to pay all or part of any premium due on the new policy. If a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four (4) months before or thirteen (13) months after the effective date of the new policy, it is prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard does not affect the monitoring obligations of the existing insurer; and

(f) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individual solely through mails, telephone, the Internet. or mass communication media.

(2) No replacing insurer shall issue any life insurance policy or annuity contract in a replacement transaction to replace an existing life insurance policy or annuity contract unless the replacing insurer shall agree in writing with the insured that:

(a) The new life insurance policy or annuity contract issued by the replacing insurer will not be contestable by it in the event of such insured's death to any greater extent than the existing life insurance policy or annuity contract would have been contestable by the existing insurer had such replacement not taken place provided, however, that this paragraph shall not apply to that amount of insurance written and issued which exceeds the amount of the existing life insurance; and

(b) The policy or contract owner shall have the right to return the policy or contract within thirty (30) days of the delivery of the policy or contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges, or in the case of a variable or market adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.

(3) Unless otherwise specifically included, subsection (2) of this section shall not apply to:

(a) Credit life insurance;

(b) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single annuity provider in connection with enrolling that individual. The commissioner shall promulgate administrative regulations for group life insurance or group annuity certificates marketed through direct response solicitation;

(c) Group life insurance and annuities used to fund prearranged funeral contracts;

(d) An application to the existing insurer that issued the existing policy or contract when a contractual policy change or conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner;

(e) Existing life insurance that is a nonconvertible term life insurance policy which will expire in five (5) years or less and cannot be renewed; or

(f) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(g) Policies or contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

2. A plan described by Sections 402(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

Notwithstanding the provisions of this paragraph, subsection (2) of this section shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this paragraph, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(h) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(i) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this section; or

(j) Structured settlements.

(4) No person shall make or issue, or cause to be made or issued, any written or oral statement of a material fact which is untrue or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading with respect to comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise affect or dispose of any insurance policy.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1106, effective July 15, 2010. -- Amended 2005 Ky. Acts ch. 47, sec. 1, effective June 20, 2005. -- Amended 1986 Ky. Acts ch. 437, sec. 17, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 322, sec. 19, effective July 13, 1984. -- Amended 1980 Ky. Acts ch. 386, sec. 1, effective July 15, 1980. -- Created 1970 Ky. Acts ch. 301, subtit. 12, sec. 3, effective June 18, 1970.

Legislative Research Commission Note (6/20/2005). Subsection (3)(g)2. of this statute contains a reference to Section 402(a) of the Internal Revenue Code. According to an executive agency that assisted in the drafting of this statute (2005 Ky. Acts ch. 47, sec. 1), the reference should be to Section 401(a) of the Internal Revenue Code.