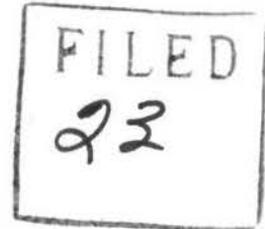


INSURANCE:

Subsection 3 of the Division of Insurance's Regulation 3.11, which defines "replacement of life insurance" is in compliance with Section 374.045(1), (3), RSMo 1969, because such regulation is reasonably related to Section 375.936(5), RSMo 1969.

OPINION NO. 23

May 5, 1971



Honorable Eric F. Fink  
State Representative  
Forty-sixth District  
Room 202B, Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Fink:

This official opinion is issued in response to your request concerning the following:

"[W]hether or not Sec. 3 of this regulation [Regulation 3.11] is in compliance with paragraph 374.045, RSMo, subsection 1, Subdivision 3."

The specific language involved in this regulation is as follows:

"Section 3. Replacement of Life Insurance Defined

"The replacement of life insurance which, as used in this Regulation includes annuity contracts, is defined as any transaction, not exempted in Section 4, below,

"(A) Wherein new life insurance is to be purchased and it is known to the agent that, as part of the transaction, existing life insurance has been or is to be;

"(B) Or it is known to the agent that, as part of the transaction, existing life insurance has been or is to be:

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"1) Lapsed or surrendered;

"2) Converted into paid-up insurance, continued as extended term insurance or under another form of non-forfeiture benefit;

"3) Converted otherwise so as to effect a reduction either in the amount of the existing life insurance or in the period of time the existing life insurance will continue in force;

"4) Reissued with a reduction in amount such that substantial cash values are released. ('Substantial cash values' include all transactions wherein an amount in excess of 50% of the tabular cash value is to be released on one or more of the existing policies.), or

"5) Assigned as collateral for a loan or subjected to substantial borrowing of the loan values whether in a single loan or under a schedule of borrowing over a period of time. 'Substantial borrowings' includes all transactions wherein an amount in excess of 50% of the tabular cash value is to be borrowed on one or more existing policies."

Section 2 of Regulation 3.11 states:

"Section 2. Purpose

"The purpose of this Regulation is:

"1) To implement the Insurance Laws of Missouri by regulating the acts and practices of insurers and agents with respect to life insurance replacing life insurance.

"2) To protect the interests of the life insurance public by establishing minimum standards of conduct to be observed in the replacement of proposed replacement of life insurance policies; by making available full and clear information on which an applicant for life insurance can make a decision in his own

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best interest; by reducing the opportunity for misrepresentation and incomplete comparison in replacement situations; and by precluding unfair methods of competition and unfair practices."

Section 374.045, RSMo 1969, authorizes the Superintendent of Insurance to make rules and regulations. Section 374.045(1) states:

"1. The superintendent shall have the full power and authority to make all reasonable rules and regulations to accomplish the following purposes:

"(3) To effectuate or aid in the interpretation of any law of this state pertaining to the business of insurance.

. . ."

The regulation mentioned in your request defines replacement of life insurance. The authority of the Division of Insurance to promulgate such a regulation comes from Section 374.045, RSMo quoted above. The validity of this regulation must be ascertained relative to both provisions of the general law governing administrative regulations and the statutory provision enacted by the legislature creating and detailing the duties and powers of the Division of Insurance. As the court said in the case of Senter v. Colarelli, 145 F.Supp. 569 (U.S.D.C.E.D. Mo. 1956):

"It is a familiar principle, both of common sense and of statutory construction, that a catch-all phrase of this sort [providing that an administrative office may issue reasonable regulations] must be read in the context of the general purpose of the statute, . . ." Id. at 576.

Section 375.936, RSMo 1969, defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance. Subsection 5 of this section defines "misrepresentations and false advertising of policy contracts." It states as follows:

"'Misrepresentations and false advertising of policy contracts', making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or

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statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in a company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance; . . ."

Clearly, the Division of Insurance enacted Regulation 3.11 subsection 3 to eliminate potentially unfair practices. The Division, itself, states this in subsection 2(2) of this regulation as quoted above.

The questioned regulation meets all the general standards prescribed for valid regulations. These standards are set out, in part, in 73 C.J.S. Public Administrative Bodies and Procedure, §94 as follows:

". . . A public administrative body may make only such rules and regulations as are within the limits of the powers granted to it and within the boundaries established by the standards, limitations, and policies of the statute giving it such power, and it may go no further than to make administrative rules and regulations which fill in the interstices of the dominant enactment. It may make only rules and regulations which effectuate a law already enacted, and it may not make rules and regulations which are inconsistent with the provisions of a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute, and it may not, by its rules

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and regulations, amend, alter, enlarge,  
or limit the terms of a legislative  
enactment."

CONCLUSION

Thus, it is the opinion of this office that Subsection 3  
of the Division of Insurance's Regulation 3.11, which defines  
"replacement of life insurance" is in compliance with Section  
374.045(1), (3), RSMo 1969, because such regulation is reason-  
ably related to Section 375.936(5), RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared  
by my Assistant, Harvey M. Tettlebaum.

Very truly yours,



JOHN C. DANFORTH  
Attorney General