Notice of Rulemaking Hearing
Department of Commerce and Insurance
Insurance Division

There will be a hearing before the Insurance Division of the Department of Commerce and Insurance ("Division") to consider the promulgation of amendments of rules in Chapter 0780-1-24, pursuant to Tenn. Code Ann. § 56-1-701. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204, and will take place in Conference Room A, Fifth Floor, of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at 10:00 a.m. CST on the 19th day of November, 2002.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Division's ADA Coordinator at Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243 at (615) 741-2176.

For a copy of this notice of rulemaking hearing, please contact Kevin C. Bartels, Staff Attorney, at (615) 741-2199.

Substance of Proposed Rules

Chapter 0780-1-24

Rules and Regulations Governing the Replacement of
Life Insurance Policies

Amendments

Chapter 0780-1-24 Rules and Regulations Governing the Replacement of Life Insurance Policies is amended by deleting the title and language contained therein and substituting instead the following language so that, as amended, the new Chapter shall read:

Rules Governing the Replacement of Life Insurance Policies

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Rule 0780-1-24-.01 Purpose. The purpose of this Chapter is:

(1) To regulate the activities of insurers and insurance producers with respect to the replacement of existing life insurance.

(2) To protect the interests of the public and policyholders by establishing minimum standards of conduct to be observed in replacement transactions by:

(a) Assuring that purchasers of life insurance policies receive information with which a decision can be made in his or her own best interest;

(b) Reducing misrepresentation and incomplete disclosures that are made by any person in connection with the sale and/or replacement of life insurance policies; and

(c) Establishing penalties for failure to comply with requirements of this Chapter.

Authority: Tenn. Code Ann. §§ 56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§ 13 and 25.

Rule 0780-1-24-.02 Definition of Replacement Transaction. ''Replacement transaction'' means any transaction in which new life insurance is to be or is proposed to be purchased and it is known or should be known to the insurance producer and/or to the insurer or to the proposing insurer, if there is no insurance producer, through the exercise of reasonable due diligence that, due to such transaction, an insured's existing life insurance has been or is to be:

(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; or

(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 twenty-five percent (25%) of the loan value set forth in the policy.

Authority: Tenn. Code Ann. §§ 56-3-301 and 56-3-508.

Rule 0780-1-24-.03 Other Definitions.

(1) "Applicant" shall mean any person who applies for coverage under a life insurance policy.

(2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or his/her designee.

(3) "Conservation'' means any attempt by the existing insurer or by an insurance producer to dissuade a policyholder from the replacement of existing life insurance. Conservation does not include routine administrative procedures such as late payments, reminders, late payment offers or reinstatement offers.

(3) "Department" means the Tennessee Department of Commerce and Insurance.

(4) ''Direct-response sales'' means any sale of life insurance where the insurer does not utilize an insurance producer in the sale or delivery of the policy.

(5) ''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."

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

(7) "Group life insurance" means that form of life insurance:

(a) covering not less than ten (10) employees with or without medical examination;

(b) written under a policy issued to the employer, or to a trustee of a trust created by such employer;

(c) the premium on which is to be paid by the employer, by the employer and employees jointly, or by such trustee out of funds contributed by the employer or by the employer and employees jointly;

(d) insuring only all of the employer's employees or all of any classes thereof, determined by sex, age, or conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection;

(e) for the benefit of persons other than the employer; provided that

(f) such group policy may provide that "employees" includes retired employees of the employer and the officers, managers, employees, and retired employees of subsidiary or affiliated corporations and the individual proprietors, partners, employees, and retired employees of affiliated individuals and firms, when the business of such subsidiary or affiliated corporations, firms, or individuals is controlled by the common employer through stock ownership, contract, or otherwise.

(8) "Insurer" shall have the same meaning as defined in Tenn. Code Ann., Title 56, Chapter 6, Part 1.

(9) "Insurance producer" shall have the same meaning as defined in Tenn. Code Ann., Title 56, Chapter 6, Part 1.

(10) "Person" shall mean any individual or business entity.

(11) ''Replacing insurer'' means the insurer that issues or proposes to issue a new policy or contract which is a replacement or existing life insurance.

(12) ''Registered contract'' means 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 insurance companies which are appropriately registered with the U.S. Securities and Exchange Commission.

Authority: Tenn. Code Ann. §§ 56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§ 13 and 25.

Rule 0780-1-24-.04 Exemptions. Unless exempted by (1) through (6) below, this rule shall apply in any replacement transaction involving annuities, except for those provisions which require the completion of a policy summary or ledger statement as set forth in Chapter 0780-1-40.

(1) Credit life insurance, as this term is defined in Tenn. Code Ann. § 56-2-201(3)(B);

(2) Group life insurance, as defined in this chapter;

(3) An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised;

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

(5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, insurance producers proposing replacement shall comply with the requirements of rule 0780-1-24-.05(1); and

(6) Registered Contracts shall be exempt from the requirements of rule 0780-1-24-.07(2)(b) and rule 0780-1-24-.07(2)(c) 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.

Authority: Tenn. Code Ann. §§ 56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§ 13 and 25.

Rule 0780-1-24-.05 Duties of Insurance Producers.

(1) Each insurance producer who initiates an application for a replacement transaction shall submit to the insurer to which an application for life insurance is presented, with or as part of each application:

(a) A statement signed by the applicant as to whether or not replacement of existing life insurance is involved in the transaction; and

(b) A signed statement as to whether or not the insurance producer knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved, the insurance producer shall:

(a) Present to the applicant, no later than at the time of taking the application, a ''Notice Regarding Replacement'' ("Notice") in the form as described in Exhibit A, or other substantially similar form that has been approved by the Commissioner prior to the submission of such application to any insurer. The Notice shall be signed by both applicant and the insurance producer and left with the applicant.

(b) Obtain with or as part of each application a list of all existing life insurance 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.

(c) Furnish the applicant with the original(s) or copies of any and all written or printed communications used for the presentation.

(d) Submit to the replacing insurer with the application a copy of the Notice provided pursuant to rule 0780-1-24-.05(2)(a).

Authority: Tenn. Code Ann. §§ 56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798, §§ 13 and 25.

Rule 0780-1-24-.06 Duties of All Insurers. Every insurer shall:

(1) Inform its insurance producers and other personnel responsible for sales of life insurance policies of the requirements of this rule by means of a printed or electronically disseminated communication, a copy of which shall be furnished to the Commissioner prior to its dissemination and which shall be updated by the insurer on an annual basis.

(2) Require with or as a part of each completed application for life insurance a statement signed by the applicant as to whether or not such proposed insurance will replace existing life insurance.

Authority: Tenn. Code Ann. §§ 56-2-301 and 56-3-508.

Rule 0780-1-24-.07 Duties of Insurers Who Employ, Utilize or Contract with Insurance Producers.

(1) Each insurer that employs, utilizes or contracts with an insurance producer to sell a life insurance policy shall require with or as part of each completed application for life insurance, a statement signed by the insurance producer as to whether s/he knows replacement will or may be involved in the transaction.

(2) Where a replacement transaction is involved, an insurer shall require, in addition to the application for life insurance, the insurance producer to provide to it:

(a) a list of all of the applicant's existing life insurance to be replaced, including name of insurer, insured and contract number or, if a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed;

(b) a copy of the Replacement Notice provided the applicant pursuant to rule 0780-1-24-.05(2)(a);

(c) proof of having sent, by certified or registered mail, a written communication to each existing insurer advising of the replacement or proposed replacement and the identification information obtained pursuant to rule 0780-1-24-.07(2)(a); and

(d) a policy summary or ledger statement containing policy data on the proposed life insurance as required by Chapter 0780-1-40. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement required by Chapter 0780-1-40. This communication shall be made, in writing, within five (5) working days of the date the application is received in the replacing insurer's home or regional office or, alternatively, the date the proposed policy or contract is issued, whichever is sooner.

(3) Each existing insurer or such insurer's insurance producer that undertakes a conservation shall, in addition to the materials required in rule 0780-1-24-.07(2)(a) and rule 0780-1-24-.07(2)(b), within twenty (20) days of the date on which the written communication was received, furnish the policyholder with a policy summary for the existing life insurance or ledger statement containing policy data on the existing policy.

(4) Such policy summary or ledger statement shall be completed in accordance with the provisions of Chapter 0780-1-40, except that 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 the rule or statute. Cost indices and equivalent level annual dividend figures need not be included. 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 (5) working days of the receipt of the request.

(5) The replacing insurer shall maintain evidence of the Notice, pursuant to rule 0780-1-24-.05(2)(a), the policy summary and any ledger statements used, and a replacement register, cross indexed, by replacing insurance producer and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least five (5) years or until the conclusion of the next succeeding regular examination by the Department or other appropriate state regulatory agency of its state of domicile, whichever is earlier.

(6) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty (20) days commencing from the date of delivery of the policy.

Authority: Tenn. Code Ann. §§ 56-2-301 and 56-3-508.

Rule 0780-1-24-.08 Duties of Insurers With Respect to Direct Response Sales.

(1) If, in the solicitation of a direct response sale, the insurer did not propose the replacement and a replacement is involved, the insurer shall send to the applicant, in addition to the policy, a Replacement Notice as described in Exhibit A or other substantially similar form which has been previously approved by the Commissioner.

(2) If, in the solicitation of a direct response sale, the insurer proposed the replacement, the insurer shall:

(a) Provide to applicants or prospective applicants with or as a part of the application the Notice, pursuant to rule 0780-1-24-.05(2)(a), as described in Exhibit A or other substantially similar form which has been previously approved by the Commissioner.

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

(c) Comply with the requirements of rule 0780-1-24-.07, if the applicant furnishes the names of the existing insurers.

Authority: Tenn. Code Ann. §§ 56-2-301 and 56-3-508.

Rule 0780-1-24-.09 Penalties.

(1) A violation of this Chapter shall deemed by the Commissioner to include the following:

(a) any and all instances in which an insurance producer or insurer, or person acting on behalf of an insurance producer or insurer, during the presentation or comparison of premiums and benefits or dividends and values of an insurance contract or contracts, makes an untrue, incomplete or inaccurate statement of fact or omits to state a material fact that, in light of the circumstances, would make the statement not misleading;

(b) any and all instances in which an insurance producer or insurer or person acting on behalf of an insurance producer or insurer, engages in a replacement transaction or transactions involving the same policyholder or policyholders and the insurance producer(s), insurer(s), person(s) or entities acting on behalf of the insurance producer(s) and/or insurer(s) indicate falsely on such applications that a replacement transaction is not involved or omit to state that a replacement transaction is involved when such is the case;

(c) any and all instances in which an insurance producer or insurer, or person acting on behalf of an insurance producer or insurer fails to comply with or, by reason of omission, fails to implement any provision of this rule.

(2) A violation of this Chapter shall be deemed by the Commissioner to constitute grounds for the denial, refusal to renew, suspension or revocation of an insurance producer's license or of an insurer's certificate of authority.

Authority: Tenn. Code Ann. §§ 56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798.

Rule 0780-1-24-.10 Severability. If any section or portion of a section of this Chapter, or the applicability thereof to any person or circumstance, is held invalid or unlawful by a court of competent jurisdiction, the remainder of this Chapter or the applicability of such provision to other persons shall not be affected thereby.

Authority: Tenn. Code Ann. §§ 56-2-301, 56-3-508 and Tenn. Pub. Acts 2002, ch. 798.

EXHIBIT A.

(NAME, ADDRESS AND TELEPHONE NUMBER OF THE INSURER)

NOTICE REGARDING REPLACEMENT

REPLACING YOUR LIFE INSURANCE POLICY

Are you thinking about buying a new life insurance policy and discontinuing or changing an existing one? ***If you are, your decision could be 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 insurance producer that sold you your existing policy to give you information about it. You are urged not to take action to terminate, assign or alter your existing life insurance coverage until you have been issued the new policy, examined it and have found it acceptable.

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

IF YOU SHOULD FAIL TO QUALIFY FOR THE LIFE INSURANCE FOR WHICH YOU HAVE APPLIED, YOU MAY FIND YOURSELF UNABLE TO PURCHASE OTHER LIFE INSURANCE OR ABLE TO PURCHASE IT ONLY AT SUBSTANTIALLY HIGHER RATES.

WE ARE REQUIRED BY LAW TO NOTIFY YOUR EXISTING INSURANCE COMPANY THAT YOU MAY BE REPLACING THEIR POLICY.

_____ _____
Applicant's Signature Date

_____ _____
Insurance Producer's Signature Date

Legal Contact and/ or party who will approve final copy for publication:
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615-741-2199

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Division.

_____
Kevin C. Bartels
Staff Attorney

Subscribed and sworn to before me this the 30 day of September, 2002.

_____
Notary Public

My commission expires: 1/22/04

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of September, 2002.

Riley C. Darnell
Secretary of State

BY: _____