



Arkansas Insurance Department

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Mike Huckabee
Governor

Mike Pickens
Commissioner

DATE: APRIL 30, 2004

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TO: ALL LICENSED LIFE AND ANNUITY INSURERS, LIFE INSURANCE PRODUCER AND INSURER TRADE ASSOCIATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

RE: APPLICATION OF REPLACEMENT PROCEDURES UNDER ARK. CODE ANN. §23-66-307 TO BOTH LIFE AND ANNUITY CONTRACTS; REPLACEMENT OF LIFE INSURANCE

Please be advised the Arkansas Insurance Department interprets its Replacement of Life Insurance Bulletin 6-89 and the replacement requirements of Ark. Code Ann. §23-66-307 and Ark. Code Ann. §23-66-206(2)(Supp. 2003) to apply to annuities.

Annuities are unquestionably insurance (see Ark. Code Ann. §23-60-102(1)(B)). Given that annuities are included within the definition of insurance, they likewise must be included somewhere within the definition of Kinds of Insurance set forth in Ark. Code Ann. §23-62-101 et seq. The Department believes annuities are encompassed within the definition of life insurance, as life insurance is defined as "insurance on human lives" set forth in Ark. Code Ann. §23-62-102(a). Consistent with this interpretation is the specific inclusion of annuities with life insurance in one of the more recent and widely adopted model laws; namely, The Producer Licensing Model Act (specifically see Ark. Code Ann. §23-64-507(a)(1)).

The Department finds the subject replacement law (and its accompanying bulletin) safeguards accumulated values within a life insurance contract and ensures the consumer is apprised of the proposed replacement product's suitability; and that consistent therewith is the need to safeguard accumulated values within an annuity contract and to ensure that suitable recommendations are made to consumers when an existing annuity product is replaced. (It is the safeguarding of the accumulated values and the need for the insurance producer to demonstrate benefit and betterment for the insurance consumer via a replacement product that lies behind the suitability language and replacement requirements in Ark. Code Ann. §23-66-307. Annuity contracts have accumulated values that are as much in need of safeguarding as the accumulated values in life insurance policies.)

Consistent with the foregoing, the Department considers "churning of business" pursuant to Ark. Code Ann. §23-66-206(2)(Supp. 2003) to occur when the insurance producer replaces an existing annuity and that replacement is not in accordance with Ark. Code Ann. § 23-66-307 or that replacement is without objective demonstration by the insurance producer of the purpose of replacing the annuity for the benefit and betterment of the annuity holder.

You may view these various laws on-line via a State website, via links "Research Resources", "Arkansas Code", and either "HTML" or "JAVA" at www.arkleg.state.ar.us.

This Bulletin is not intended to and does not replace Bulletin 6-89; it is intended to be cumulative to Bulletin 6-89. Contact the Legal Division at 501-371-2820 or insurance.legal@mail.state.ar.us for a copy of Bulletin 6-89.

Direct your questions to Mr. Joe Musgrove, Director, Life and Health Division, at the Department at 501-371-2800 or joe.musgrove@arkansas.gov.

(signed by Mike Pickens)

(April 30, 2004)

MIKE PICKENS
INSURANCE COMMISSIONER
STATE OF ARKANSAS

DATE