

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Insurance Administration
(DLS Control No. 15-395)**

Overview and Legal and Fiscal Impact

The regulations amend COMAR 31.15.04 – Unfair Trade Practices, Solicitation of Annuity and Deposit Fund Contracts, to delete language relating to annuities and update the penalties under Regulation .07 and add a new Chapter .15 – Annuity Disclosure that incorporates the National Association of Insurance Commissioners’ (NAIC) “Annuity Disclosure Model Regulation.”

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Insurance Administration:

Unfair Trade Practices: Solicitation of Annuity and Deposit Fund Contracts:
COMAR 31.15.04.01-.06
Annuity Disclosure: COMAR 31.15.16.01-.10

Legal Analysis

Summary of Regulations

Currently, COMAR 31.15.04 governs unfair trade practices in the solicitation of both annuity contracts and deposit fund contracts, which are arrangements under which amounts to accumulate interest are paid in addition to life insurance premiums or annuity considerations. The regulations separate the regulation of these products by removing language relating to annuity contracts from Regulations .01 through .06 under Chapter .04 and adopting, as a new Chapter .15, the NAIC “Annuity Disclosure Model Regulation,” to govern unfair trade practices as they relate to the solicitation of annuity contracts. According to the Maryland Insurance Administration, the Model Regulation addresses many of the same issues found in Chapter .04, but provides more detailed requirements for annuity contract illustrations and conforms regulations governing annuity contracts to the modern annuity marketplace. Specifically, regulations under Chapter .15 establish:

- the purpose of the chapter as providing standards for the disclosure of the minimum information about annuity contracts necessary to protect consumers, and the goal of the

chapter as ensuring that purchasers of annuity contracts understand basic features of the contracts (Regulation .01);

- the applicability of the chapter to all group and individual annuity contracts and certificates, with specified exceptions (Regulation .02);
- definitions for terms used in the chapter (Regulation .03);
- standards for the disclosure document and Buyer’s Guide that must be provided to an applicant for an annuity contract, including (1) when the documents need to be provided based on the method of application and (2) the specific information that, at a minimum, must be included in the disclosure document (Regulation .04);
- standards for annuity illustrations that must be complied with if an insurer or an insurance producer elects to provide a consumer with an illustration regarding any feature of the annuity contract, including requirements for the labeling, format, and contents of, and the narrative summaries and explanations about, the illustrations (Regulation .05);
- a requirement that an insurer provide to each annuity contract owner, at least annually, a report containing specified information about the status of the contract (Regulation .06);
- the penalties that may be imposed on an insurer or an insurance producer for a violation of any requirement of the chapter (Regulation .07);
- a severability provision stating that the invalidity of any provision of the chapter or its application to any person or circumstance does not affect the validity of any other provision or application to any other person or circumstance (Regulation .08); and
- recordkeeping requirements for insurers or insurance producers (Regulation .09).

The regulations also amend the penalty provisions under COMAR 31.15.04.07 by repealing the specific monetary fines that the Maryland Insurance Commissioner may impose for failure to comply with Chapter .04 and providing instead for the imposition of fines “as set forth in the Insurance Article.” According to the administration, this change is being made because the stated fines are outdated.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 2-109 and 27-202 of the Insurance Article as statutory authority for the regulations. More specifically, §§ 2-109(a)(1) and 27-202 provide authority for the

regulations. Section 2-109(a)(1) establishes the general authority of the Commissioner to adopt regulations to carry out the Insurance Article. Section 27-202 prohibits a person from (1) making misrepresentations about the terms of or benefits promised under a policy; (2) making a false or misleading statement about the dividends or share of the surplus previously paid on similar policies; (3) making a misrepresentation about the financial condition of an insurer; and (4) using a name or title of a policy or class of policies that misrepresents the true nature of the policy or class of policies.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the administration agrees to make the following changes:

- correcting the Notice of Proposed Action to indicate that the regulations being amended under COMAR 31.15.04 are Regulations .01 through .07, instead of .06, and that new regulations being added under a new Chapter .15 are Regulations .01 through .09, instead of .10;
- reorganizing Regulation .02A to renumber subsection (3) as a new § B for clarity and renumbering the remaining subsections in § A and current §§ B and C as appropriate;
- renumbering Regulations .05 through .10 under Chapter .15 to be Regulations .04 through .09, and making appropriate cross-reference changes in Regulation .02A(4) (as renumbered) and .05C;
- substituting the word “should” trigger for “shall” trigger in Regulation .05F(11)(k) to conform to the NAIC “Annuity Disclosure Model Regulation”; and
- reorganizing Regulation .05I(6) so that the lead-in language tracks with paragraphs (a) through (c).

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The administration advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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