

SHORT TITLE: Life Insurance; requiring insurer to notify Insurance Commissioner of policies to be illustrated or not illustrated; requiring basic illustration conform with standards set forth in NAIC Model Regulation; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 643

By: Snyder

AS INTRODUCED

An Act relating to life insurance; providing short title; stating application of act; defining terms; requiring insurer to notify Insurance Commissioner of policies to be illustrated or not illustrated; prohibiting certain act; requiring basic illustration and certain quotation be provided to certain persons; stating general requirements and prohibitions for illustrations; requiring basic illustration conform with standards set forth in NAIC Model Regulation; stating standards for supplemental illustration; specifying certain requirements for delivery of illustration and retention of records; requiring annual report and stating information to be included for different policies; requiring certain notice; requiring certain information be furnished upon request; requiring certain information be noted and displayed; providing for appointment of illustration actuaries and requiring actuaries meet certain requirements; requiring actuaries to certify and disclose certain information; providing for filing of certification and certain notification; requiring additional certification by officer of insurer; requiring notification of certain changes; providing for penalties; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4041 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Life Insurance Illustrations Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4042 of Title 36, unless there is created a duplication in numbering, reads as follows:

The provisions of this act apply to all group and individual life insurance policies and certificates issued or renewed on and after the effective date of this act except:

1. Variable life insurance;
2. Individual and group annuity contracts;
3. Credit life insurance; or
4. Life insurance policies with no illustrated death benefits on any individual exceeding Ten Thousand Dollars (\$10,000.00).

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4043 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice;
2. "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration;
3. "Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of

the illustration or declared to become effective within the next ninety-five (95) days;

4. "Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

- a. are consistent with all provisions of this act,
- b. limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred,
- c. do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date, and
- d. do not permit assumed expenses to be less than minimum assumed expenses;

5. "Generic name" means a short title descriptive of the policy being illustrated such as "whole life", "term life" or "flexible premium adjustable life";

6. "Guaranteed elements" and "nonguaranteed elements" mean the following:

- a. "guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue, and
- b. "nonguaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life

insurance that are not guaranteed or not determined at issue;

7. "Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

- a. the disciplined current scale, or
- b. the currently payable scale;

8. "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the following three types:

- a. "basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements,
- b. "supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this act, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration, and
- c. "in-force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one (1) year or more;

9. "Illustration actuary" means an actuary meeting the requirements of Section 10 of this act who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board;

10. "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this act, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five

(5) years and one hundred percent (100%) policy persistency thereafter;

11. a. "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

- (1) fully allocated expenses,
- (2) marginal expenses, and
- (3) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the Insurance Commissioner.

b. Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used;

12. "NAIC Model Regulation" means the National Association of Insurance Commissioners Life Insurance Illustrations Model Regulation;

13. "Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

- a. every plan of coverage was selected by the employer or other group representative,
- b. some portion of the premium is paid by the group or through payroll deduction, and
- c. group underwriting or simplified underwriting is used;

14. "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy;

15. "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket; and

16. "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4044 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each insurer marketing policies to which this act is applicable shall notify the Insurance Commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this act, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this act, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the Commissioner.

B. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

C. If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this act is required, except that a basic illustration need not be provided to individual members of a

group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

D. Potential enrollees of nonterm group life subject to this act shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this act, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for nonterm group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4045 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this act, be clearly labeled "life insurance illustration", and contain the basic information required by the NAIC Model Regulation.

B. When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

1. Represent the policy as anything other than a life insurance policy;

2. Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

3. State or imply that the payment or amount of nonguaranteed elements is guaranteed;

4. Use an illustration that does not comply with the requirements of this act;

5. Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

6. Provide an applicant with an incomplete illustration;

7. Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

8. Use the term "vanish" or "vanishing premium", or similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;

9. Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or

10. Use an illustration that is not "self-supporting".

C. If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4046 of Title 36, unless there is created a duplication in numbering, reads as follows:

A basic illustration shall conform with the NAIC Model Regulation requirements for format, narrative summary, numeric summary, statements, and tabular detail, as adopted by rule of the Insurance Commissioner.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4047 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A supplemental illustration may be provided so long as:

1. It is appended to, accompanied by or preceded by a basic illustration that complies with this act;

2. The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

3. It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

4. For a policy that has a contract premium, the contract premium underlying the supplement illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

B. The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4048 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. If a basic illustration is used by an insurance agent or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this act, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

2. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the

requirements of this act, shall be labeled "Revised Illustration", and shall be signed and dated by the applicant or policy owner and agent or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

B. 1. If no illustration is used by an insurance agent or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the agent or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

2. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

C. If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

D. A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force. A copy need not be retained if no policy is issued.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4049 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

1. For universal life policies, the report shall include the following:

- a. the beginning and end date of the current report period,
- b. the policy value at the end of the previous report period and at the end of the current report period,
- c. the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type,
- d. the current death benefit at the end of the current report period on each life covered by the policy,
- e. the net cash surrender value of the policy as of the end of the current report period,
- f. the amount of outstanding loans, if any, as of the end of the current report period, and
- g. (1) for fixed premium policies, if, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it

would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report, or

(2) for flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report;

2. For all other policies, where applicable:

- a. current death benefit,
- b. annual contract premium,
- c. current cash surrender value,
- d. current dividend,
- e. application of current dividend, and
- f. amount of outstanding loan; and

3. For life insurance policies that do not build nonforfeiture values, insurers shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

B. If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your agent. If you do not receive a current illustration of your policy within thirty (30) days from your request, you should

contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

C. Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of the NAIC Model Regulation as specified by the Insurance Commissioner. No signature or other acknowledgment of receipt of this illustration shall be required.

D. If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4050 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The board of directors of each insurer shall appoint one or more illustration actuaries.

B. The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this regulation.

C. 1. The illustration actuary shall meet the requirements of the NAIC Model Regulation as adopted by rule of the Insurance Commissioner.

2. The illustration actuary shall disclose in the annual certification:

- a. whether, since the last certification, a currently payable scale applicable for business issued within the previous five (5) years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification, and
- b. the method used to allocate overhead expenses for all illustrations for:
 - (1) fully allocated expenses,
 - (2) marginal expenses, or
 - (3) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the Insurance Commissioner.

D. 1. The illustration actuary shall file a certification with the board and with the Commissioner:

- a. annually for all policy forms for which illustrations are used, and
- b. before a new policy form is illustrated.

2. If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the Commissioner promptly.

E. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the

actuary shall notify the board of directors of the insurer and the Commissioner promptly of his or her inability to certify.

F. A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

1. That the illustration formats meet the requirements of this act and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

2. That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subparagraph b of paragraph 2 of subsection C of this section.

G. The annual certifications shall be provided to the Commissioner each year by a date determined by the insurer.

H. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the Commissioner of that fact promptly and disclose the reason for the change.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051 of Title 36, unless there is created a duplication in numbering, reads as follows:

In addition to any other penalties provided by the laws of this state, an insurer or agent that violates a requirement of this act shall be deemed to be practicing a deceptive act and shall be subject to notice, hearing and penalties set forth in Section 1201 et seq. of Title 36 of the Oklahoma Statutes.

SECTION 12. This act shall become effective November 1, 1997.

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