

**31A-28-119 Prohibited advertisement of the association -- Notice to owners of policies and contracts.**

- (1)
  - (a) Except as provided in Subsection (1)(b), a person, including an insurer, agent, or affiliate of an insurer may not make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio station or television station, or in any other way, any advertisement, announcement, or statement written or oral, that uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance.
  - (b) Notwithstanding Subsection (1)(a), this section does not apply to:
    - (i) the association; or
    - (ii) another entity that does not sell or solicit insurance.
- (2)
  - (a) The association shall:
    - (i) have a summary document describing the general purposes and current limitations of this part that complies with Subsection (3); and
    - (ii) submit the summary document described in Subsection (2)(a)(i) to the commissioner for approval.
  - (b) An insurer may not deliver a policy or contract to a policy or contract owner unless the summary document is also delivered to the policy or contract owner before, or at the time of, delivery of the policy or contract.
  - (c) The summary document shall be available upon request by a policy owner.
  - (d) The distribution, delivery, or contents or interpretation of the summary document does not guarantee that:
    - (i) the policy or the contract is covered in the event of the impairment or insolvency of a member insurer; or
    - (ii) the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer.
  - (e) The summary document shall be revised by the association as amendments to this part may require.
  - (f) Failure to receive the summary document as required in Subsection (2)(b) does not give the owner of a policy or contract, certificate holder, or insured any greater rights than those stated in this part.
- (3)
  - (a) The summary document described in Subsection (2) shall contain a clear and conspicuous disclaimer on its face.
  - (b) The commissioner shall, by rule, establish the form and content of the disclaimer described in Subsection (3)(a), except that the disclaimer shall:
    - (i) state the name and address of:
      - (A) the association; and
      - (B) the department;
    - (ii) prominently warn a policy or contract owner that:
      - (A) the association may not cover the policy or contract; or
      - (B) if coverage is available, it is:
        - (I) subject to substantial limitations and exclusions; and
        - (II) conditioned on continued residence in the state;

- (iii) state the types of policies or contracts for which the association will provide coverage;
  - (iv) state that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;
  - (v) state that the policy or contract owner should not rely on coverage under the association when selecting an insurer;
  - (vi) explain the rights available and procedures for filing a complaint to allege a violation of this part; and
  - (vii) provide other information as directed by the commissioner including sources for information about the financial condition of insurers provided that the information:
    - (A) is not proprietary; and
    - (B) is subject to disclosure under public records laws.
- (4)
- (a) An insurer or agent may not deliver a policy or contract described in Subsection 31A-28-103(2)(a) and wholly excluded under Subsection 31A-28-103(2)(b)(i) from coverage under this part unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the association.
  - (b) The commissioner shall by rule specify the form and content of the notice required by Subsection (4)(a).
- (5) A member insurer shall retain evidence of compliance with Subsection (2) for the later of:
- (a) three years; or
  - (b) until the conclusion of the next market conduct examination by the department of insurance where the member insurer is domiciled.

Amended by Chapter 292, 2010 General Session