

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **ENROLLED**

## **House Bill 4739**

BY DELEGATES SHOTT, IRELAND, KESSINGER, SOBONYA,

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AND FRICH

[Passed March 12, 2016; in effect ninety days from  
passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new article,  
2 designated §33-13D-1 and §33-13D-2, relating to the creation of the Unclaimed Life  
3 Insurance Benefits Act; defining terms; regulating insurer conduct generally; requiring  
4 insurers to perform an annual comparison of its insureds' Policies, Retained Asset  
5 Accounts and Account Owners against a Death Master File; requiring insurers to conduct  
6 a comparison against a Death Master File on policies issued as of 1986 and all policies  
7 issued thereafter; establishing a two year deadline from the effective date of this article to  
8 conduct the full Death Master File comparison; requiring the Insurance Commissioner  
9 promulgate rules related to Death Master File comparisons for policies issued prior to 1986  
10 if the commissioner determines that reliable technology and data exist to make such  
11 comparison accurate and cost-effective; providing that insurers shall first conduct  
12 comparisons to the extent records are available electronically then using the most easily  
13 accessible insurer data for records not available electronically; providing that the annual  
14 comparison of insureds' Policies, Retained Asset Accounts and Account Owners against  
15 a Death Master File shall not apply to those accounts for which the insurer is receiving  
16 premiums from outside the policy value, by check, bank draft, payroll deduction or any  
17 other similar method of payment within eighteen months immediately preceding the Death  
18 Master File comparison; clarifying that insurers are permitted to request a valid death  
19 certificate as party of any claims validation process; providing that, for potential matches  
20 identified as a result of a Death Master File match, insurer must within ninety days  
21 complete a good faith effort which shall be documented by the insurer to confirm the death  
22 against other available records, review insurer records to determine if the deceased  
23 person has any other products with the insured and determine if benefits may be due;  
24 requiring insurers to implement procedures to account for incomplete identifying  
25 information such as nicknames, maiden names or other identifying information; requiring  
26 reasonable steps to be taken to locate and contact beneficiaries or other authorized

27 representatives regarding the insurer's claims process if no communication with  
28 beneficiaries or other authorized representatives occurs within ninety days after a Death  
29 Master File match; requiring the insurer to document its efforts to locate and contact the  
30 beneficiary as well as sending information regarding the claims process and any need to  
31 provide an official death certificate; clarifying that benefits shall first be paid to beneficiaries  
32 and, if beneficiaries cannot be found, paid to the state as unclaimed property; permitting  
33 insurers to release such identifying information as may be necessary to help identify or  
34 locate beneficiaries; prohibiting insurers or service providers from charging beneficiaries  
35 or other authorized representatives for any fees or costs associated with a Death Master  
36 File search or verification of a Death Master File match; clarifying that the Insurance  
37 Commissioner has exclusive authority to promulgate rules as may be required or  
38 reasonably necessary to implement this section; authorizing the Insurance Commissioner  
39 to issue orders related to requirements imposed on insurers and imposing a hardship  
40 burden on insurers seeking orders adjusting their obligations; and authorizing the  
41 Insurance Commissioner to promulgate rules that may be reasonably necessary to  
42 implement the Unclaimed Life Insurance Benefits Act.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto two  
2 new sections, designated §33-13D-1 and §33-13D-2, all to read as follows:

**ARTICLE 13D. UNCLAIMED LIFE INSURANCE BENEFITS ACT.**

**§33-13D-1. Definitions.**

1 (a) Definitions. --- For purposes of this section:

2 (1) "Account owner" means the owner of a retained asset account who is a resident of this  
3 state.

4 (2) "Annuity contract" means an annuity contract issued in this state. The term "annuity  
5 contract" shall not include an annuity used to fund an employment-based retirement plan or

6 program where: (1) The insurer does not perform the record-keeping services; or (2) the insurer  
7 is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of  
8 specific plan participants.

9 (3) "Death Master File" means the United States Social Security Administration's Death  
10 Master File or any other database or service that is at least as comprehensive as the United  
11 States Social Security Administration's Death Master File for determining whether a person has  
12 died.

13 (4) "Death Master File match" means a search of the Death Master File that results in a  
14 match of the person's first and last name and Social Security number or the first and last name  
15 and date of birth of an insured, annuity owner or retained asset account holder.

16 (5) "Knowledge of death" shall, for the purposes of this section, mean: (a) Receipt of an  
17 original or valid copy of a certified death certificate; or (b) a Death Master File match validated by  
18 the insurer in accordance with section two of this article.

19 (6) "Person" means the policy insured, annuity contract owner, annuitant or account  
20 owner, as applicable under the policy, annuity contract or retained asset account at issue in this  
21 act.

22 (7) "Policy" means any policy or certificate of life insurance issued in this state that  
23 provides a death benefit. The term "policy" shall not include: (i) Any policy or certificate of life  
24 insurance that provides a death benefit under an employee benefit plan: (a) subject to the  
25 Employee Retirement Income Security Act of 1974, as periodically amended; or (b) under any  
26 federal employee benefit program: or (ii) any policy or certificate of life insurance that is used to  
27 fund a preneed funeral contract or prearrangement; or (iii) any policy or certificate of credit life or  
28 accidental death insurance; or (iv) any policy issued to a group master policyholder for which the  
29 insurer does not provide record-keeping services.

30 (8) "Record-keeping services" means those circumstances under which the insurer has  
31 agreed with a group policy or contract customer to be responsible for obtaining, maintaining and

32 administering in its own or its agents' systems information about each individual insured under an  
33 Insured's group insurance contract (or a line of coverage thereunder), at least the following  
34 information: (1) Social Security number or name and date of birth; and (2) beneficiary designation  
35 information; (3) coverage eligibility; (4) benefit amount; and (5) premium payment status.

36 (9) "Retained asset account" means any mechanism whereby the settlement of proceeds  
37 payable under a policy or annuity contract is accomplished by the insurer or an entity acting on  
38 behalf of the insurer depositing the proceeds into an account with check- or draft-writing  
39 privileges, where those proceeds are retained by the insurer or its agent, pursuant to a  
40 supplementary contract not involving annuity contract benefits other than death benefits.

**§33-13D-2. Insurer conduct.**

1 (a) An insurer shall perform a comparison of its insureds' in-force policies, annuity  
2 contracts and account owners against a Death Master File to identify potential death master file  
3 matches of its insureds, annuitants and account owners, on at least an annual basis, by using the  
4 full Death Master File once and thereafter using the Death Master File update files for future  
5 comparisons to identify potential Death Master File matches. The comparison using the full Death  
6 Master File should be completed within two years of the effective date of this article and must be  
7 completed on policies in force as of 1986, and all policies issued thereafter: *Provided*, That the  
8 Insurance Commissioner shall promulgate legislative rules requiring that the comparison against  
9 a Death Master File be completed on policies issued at earlier times if the commissioner  
10 determines that reliable technology and data exist to make such comparison accurate and cost-  
11 effective to match to the established Master Death Database.

12 (b) The insurer comparison of policies, annuity contracts and account owners shall be  
13 conducted first to the extent that such records are available electronically and then using the most  
14 easily accessible insurer data for records that are not available electronically.

15 (c) This section shall not apply to policies or annuity contracts for which the insurer is  
16 receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any

17 other similar method of active premium payment within the eighteen months immediately  
18 preceding the Death Master File comparison.

19 (d) Nothing in this section shall limit the insurer from requesting a valid death certificate  
20 as part of any claims validation process.

21 (e) For those potential matches identified as a result of a Death Master File match, or if an  
22 insurer learns of the possible death of a person otherwise, then the insurer shall, within ninety  
23 days of a Death Master File match:

24 (1) Complete a good faith effort, which shall be documented by the insurer, to confirm the  
25 death of the person against other available records and information;

26 (2) Review its records to determine whether the deceased person has any other products  
27 with the insurer;

28 (3) Determine whether benefits may be due in accordance with any applicable policy,  
29 annuity contract or retained asset account.

30 (f) Every insurer shall implement procedures to account for:

31 (1) Common nicknames, initials used in lieu of a first or middle name, use of a middle  
32 name, compound first and middle names, and interchanged first and middle names;

33 (2) Compound last names, maiden or married names, and hyphens, blank spaces or  
34 apostrophes in last names;

35 (3) Transposition of the "month" and "date" portions of the date of birth; and

36 (4) Incomplete Social Security number.

37 (g) If the beneficiary or other authorized representative has not communicated with the  
38 insurer within the ninety-day period, the insurer shall take reasonable steps and use good faith  
39 efforts, which shall be documented by the insurer, to locate and contact the beneficiary or  
40 beneficiaries or other authorized representative on any such policy, annuity contract or retained  
41 asset account, including, but not limited to, sending the beneficiary information regarding the

42 insurer's claims process, including the need to provide an official death certificate if applicable  
43 under the policy, annuity contract or retained asset account.

44 (h) To the extent permitted by law, the insurer may disclose minimum necessary personal  
45 information about a person or beneficiary to a person who the insurer reasonably believes may  
46 be able to assist the insurer in locating the beneficiary or a person otherwise entitled to payment  
47 of the claims proceeds.

48 (i) An insurer or its service provider shall not charge any beneficiary or other authorized  
49 representative for any fees or costs associated with a Death Master File search or verification of  
50 Death Master File match conducted pursuant to this section.

51 (j) The benefits from a policy, annuity contract or a retained asset account, plus any  
52 applicable accrued contractual interest shall first be payable to the designated beneficiaries or  
53 owners, and in the event said beneficiaries or owners cannot be found, shall be paid to the state  
54 as unclaimed property pursuant to article eight, chapter thirty-six of this code.

55 (k) The West Virginia Office of the Insurance Commissioner has exclusive authority to  
56 promulgate such rules and regulations as may be required or reasonably necessary to implement  
57 the provisions of this section.

58 (l) The commissioner may, in his or her reasonable discretion, make an order to:

59 (1) Limit an insurer's Death Master File comparisons required under subsection (a) of this  
60 section to the insurer's electronic searchable files or approve a plan and timeline for conversion  
61 of the insurer's files to searchable electronic files upon a demonstration of hardship by the insurer;

62 (2) Exempt an insurer from the Death Master File comparisons required under subsection  
63 (a) of this section or permitting an insurer to perform such comparisons less frequently than  
64 annually upon a demonstration of hardship by the insurer; or

65 (3) Phase-in compliance with this section according to a plan and timeline approved by  
66 the commissioner.

