

Limiting avoidance of life insurance contracts

Recommendation	Existing law	Summary of proposed reform	Comments
<p>Recommendation 4.6</p> <p>Section 29(3) of the Insurance Contracts Act should be amended so that an insurer may only avoid a contract of life insurance on the basis of non-disclosure or misrepresentation if it can show that it would not have entered into a contract on any terms.</p>	<p>Section 29 of the Insurance Contracts Act allows an insurer to avoid a contract of insurance if the insured made a misrepresentation to the insurer or failed to comply with the duty of disclosure before the contract was entered into, except where:</p> <ul style="list-style-type: none">• the insurer would have entered into the contract even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into; or• the failure or misrepresentation was in respect of the date of birth of one or more of the life insureds. <p>In addition, if the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract. If the failure was not fraudulent or the misrepresentation was not made fraudulently, the insurer may, within 3 years after the contract was entered into, avoid the contract.</p>	<p>The proposed reform adds a new condition for an insurer avoiding a life insurance contract in section 29 of the Insurance Contracts Act, as follows:</p> <ul style="list-style-type: none">• if the failure was not fraudulent or the misrepresentation was not made fraudulently; and• the insurer would not have been prepared to enter into a contract of life insurance with the insured <u>on any terms</u>, if the duty of disclosure had been complied with or the misrepresentation had not been made, <p>the insurer may, within 3 years after the contract was entered into, avoid the contract.</p>	<ul style="list-style-type: none">• This limits the scope of the circumstances in which a life insurer can avoid a contract.• It maintains the ability of life insurers to avoid a policy for misrepresentation, unlike for general insurance.