

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 1165**

**STATE OF NEW JERSEY  
213th LEGISLATURE**

ADOPTED JUNE 9, 2008

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**SYNOPSIS**

Provides marketing, information disclosure, and suitability requirements for certain annuities directly solicited to consumers.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Senate Commerce Committee.

(Sponsorship Updated As Of: 6/24/2008)

1   **AN ACT** concerning certain annuity products, and supplementing  
2       chapter 25 of Title 17B of the New Jersey Statutes.

3

4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6

7       1. The Legislature finds and declares that it is a valid public  
8       purpose to set forth standards and procedures regarding annuity  
9       products directly solicited to consumers to: prevent the fraudulent  
10      and misleading marketing of annuity products by insurers, brokers,  
11      and agents; provide standards for the disclosure of information  
12      about annuity products so that consumers understand the basic  
13      features of these products; ensure that annuity products ultimately  
14      issued to consumers are suitable to appropriately address their  
15      insurance needs and financial objectives; and enhance oversight  
16      over annuity products, including enforcement against violations,  
17      through the Department of Banking and Insurance.

18

19      2. As used in this act, except as otherwise specified:

20       “Annuity” means an annuity as defined by N.J.S.17B:17-5  
21      directly solicited to a consumer.

22       “Consumer” means a natural person who resides in this State.

23       “Deferred annuity” means an annuity with the first income  
24      payment due no earlier than one year from the date of issue and the  
25      annuity is not an immediate annuity.

26       “Determinable element” means a benefit, value, credit, or charge  
27      under an annuity that is guaranteed at issue, but its amount is not  
28      determined until after issue.

29       “Direct-response solicitation” means a solicitation solely through  
30      mail, telephone, the Internet, or other mass communication media.

31       “Fixed annuity” means an annuity under which the charges and  
32      other considerations provided for the annuity, less any amount  
33      charged against these considerations, earns interest at a rate: (1) set  
34      by the insurer; or (2) in a manner specified in the annuity, which  
35      manner may include, but is not limited to, the use of a stock market  
36      or other outside index.

37       “Generic name” means a short title which is descriptive of the  
38      charges and benefit patterns of an annuity, or endorsement or rider  
39      to the annuity.

40       “Guaranteed element” means a benefit, value, credit, or charge  
41      under an annuity that is guaranteed and the amount determined at  
42      issue.

43       “Immediate annuity” means an annuity with the first income  
44      payment due not more than 13 months from the date of issue.

45       “Insurer” means any corporation, association, partnership,  
46      reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit

1 society or other person licensed to engage in the business of  
2 insurance in this State.

3 “Insurance producer” means a person licensed to sell, solicit, or  
4 negotiate insurance pursuant to the "New Jersey Insurance Producer  
5 Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.).

6 “Negotiate” means the act of conferring directly with or offering  
7 advice directly to a consumer as the purchaser or prospective  
8 purchaser of a particular annuity concerning any of the substantive  
9 benefits, terms or conditions of the annuity, provided that the  
10 person engaged in that act either: sells annuities or obtains annuities  
11 from insurers for purchasers.

12 “Non-guaranteed element” means a benefit, value, credit, or  
13 charge under an annuity that is not guaranteed and the amount not  
14 determined at issue.

15 “Owner” means the person to whom an annuity is presently or  
16 prospectively payable by the terms of the annuity, except when the  
17 annuity declares some other person to be the owner thereof, or the  
18 individual certificate holder in the case of a group annuity.

19 “Sell” means to exchange an annuity by any means, for money or  
20 its equivalent, on behalf of an insurer.

21 “Solicit” means attempting to sell an annuity or asking or urging  
22 a consumer to apply for a particular annuity from a particular  
23 insurer.

24 “Variable annuity” means an annuity under which the insurer  
25 invests, for the annuity owner, the charges and other considerations  
26 provided for the annuity, less any amount charged against these  
27 considerations, into a separate account, based upon the annuity  
28 owner’s stated level of investment risk, and which annuity may lose  
29 some or all of the owner’s investment.

30

31 3. a. (1) Consistent with the unfair trade practices set forth in  
32 N.J.S.17B:30-1 et seq., an insurance producer, or an agent,  
33 representative or member of a fraternal benefit society not required  
34 to be licensed as an insurance producer in accordance with section  
35 32 of P.L.1997, c.322 (C.17:44B-32), or an insurer, if no producer  
36 or non-licensed society agent, representative or member is involved,  
37 shall not use a certification, professional designation, or form of  
38 advertising expressing or implying in an untrue, deceptive,  
39 misleading, or false manner that the producer, non-licensed society  
40 agent, representative or member, or insurer has special education,  
41 training, or experience in advising or servicing senior citizens or  
42 retirees in connection with the solicitation, negotiation, or sale of an  
43 annuity, or its value or suitability, either directly or indirectly,  
44 including through a publication or writing, or by issuing or  
45 promulgating an analysis or report relating to an annuity.

46 (2) The provisions of this section do not apply to:

- 1 (a) a title or designation conferred through an academic degree,  
2 certifying the completion of a course of study from an accredited  
3 institution of higher education, so long as the title or designation is  
4 not used in an untrue, deceptive, misleading, or false manner in  
5 connection with the solicitation, negotiation, or sale of an annuity;  
6 or
- 7 (b) a professional job title presented by an employer or other  
8 organization that is licensed or registered by a state or federal  
9 financial services regulatory agency, including any agency that  
10 regulates financial institutions, insurers, investment companies as  
11 defined under the “Investment Company Act of 1940,” title I of  
12 Pub.L.76-769 (15 U.S.C.s.80a-1 et seq.), investment advisers as  
13 defined under the “Investment Advisers Act of 1940,” title II of  
14 Pub.L.76-769 (15 U.S.C.s.80b-1 et seq.), and broker-dealers, and  
15 that indicates seniority or standing within the employer or other  
16 organization’s operation or specifies an area of specialization  
17 recognized by that employer or other organization, so long as the  
18 professional job title is not used in an untrue, deceptive, misleading,  
19 or false manner in connection with the solicitation, negotiation, or  
20 sale of an annuity.
- 21 b. An untrue, deceptive, misleading, or false use of a  
22 certification, designation, or form of advertising shall include, but is  
23 not limited to:
- 24 (1) the use of a certification or professional designation not  
25 actually earned or otherwise available for use;
- 26 (2) the use of a nonexistent or self-conferred certification or  
27 professional designation;
- 28 (3) the use of a certification or professional designation that  
29 expresses or implies a level of occupational qualification obtained  
30 through education, training, or experience, but which is not actually  
31 obtained; and
- 32 (4) (a) the use of a certification or professional designation  
33 obtained from a certifying or designating organization that:
- 34 (i) is primarily engaged in the business of instruction in sales or  
35 marketing;
- 36 (ii) does not have reasonable standards or procedures for  
37 assuring the competency of a holder of its certificate or  
38 professional designation;
- 39 (iii) does not have reasonable standards or procedures for  
40 monitoring and disciplining a holder of its certificate or  
41 professional designation for improper or unethical conduct; or
- 42 (iv) does not have reasonable continuing education requirements  
43 for a holder of its certificate or professional designation in order to  
44 maintain the certification or designation; however
- 45 (b) there shall be a rebuttable presumption that the use of a  
46 certification or professional designation obtained from a certifying  
47 or designating organization is not in violation of this section if the

1 certificate or professional designation issued to the holder does not  
2 apply primarily to sales or marketing and is accredited by:

- 3 (i) the American National Standards Institute, or its successor;
- 4 (ii) the National Commission for Certifying Agencies, or its  
5 successor;
- 6 (iii) any organization recognized as an accrediting agency by the  
7 United States Department of Education pursuant to section 496 of  
8 the "Higher Education Act of 1965," Pub.L.89-329 (20  
9 U.S.C.s.1099b); or
- 10 (iv) any other organization approved by the commissioner by  
11 regulation.

12 c. In order to determine a violation of this section, the  
13 commissioner may consider the use of one or more words,  
14 combination of words, or acronyms representing these words, and  
15 the manner or context of their use with respect to a certification,  
16 professional designation, or form of advertising, including, but not  
17 limited to, "senior," "retirement," "elder," or words of similar  
18 import, "certified," "registered," "chartered," or words of similar  
19 import, and "adviser," "specialist," "consultant," "planner," or  
20 words of similar import.

21

22 4. a. An annuity, for purposes of this section, concerning  
23 disclosure requirements, shall not include any annuity directly  
24 solicited to a consumer, that is:

25 (1) an annuity that serves as a funding vehicle for an employee  
26 welfare, pension, profit-sharing, or deferred compensation plan  
27 established or maintained by an employer or other plan sponsor, and  
28 which is funded in whole or in part by that employer or other plan  
29 sponsor;

30 (2) a variable annuity subject to the provisions of N.J.S.17B:28-  
31 1 et seq.;

32 (3) a charitable annuity established in accordance with  
33 N.J.S.17B:17-13.1;

34 (4) a structured settlement subject to the provisions of the  
35 "Structured Settlement Protection Act," P.L.2001, c.139 (C.2A:16-  
36 63 et seq.); or

37 (5) a funeral insurance policy defined by section 24 of P.L.1993,  
38 c.147 (C.17B:17-5.1).

39 b. The commissioner shall approve, by regulation, a document,  
40 including all subjects and language contained therein, for  
41 distribution to a consumer by an insurance producer, or an agent,  
42 representative or member of a fraternal benefit society not required  
43 to be licensed as an insurance producer in accordance with section  
44 32 of P.L.1997, c.322 (C.17:44B-32), or an insurer, to serve as a  
45 buyer's guide regarding annuities, which may be substantially  
46 similar to any annuities buyer's guide prepared by the National  
47 Association of Insurance Commissioners, or its successor, and shall

1 include, but not be limited to, a description of various kinds of  
2 annuities, standard features of annuities, including the 10-day  
3 cancellation period for consumers required by section 6 of this act  
4 and any other consumer cancellation period required by law, and  
5 information concerning the negotiation and sale of annuities. The  
6 commissioner shall make the approved buyer's guide available to  
7 consumers on the department's Internet website.

8 c. The commissioner shall approve, by regulation, the form of an  
9 annuity contract disclosure statement, which shall be a separate  
10 document from the annuity, for distribution to a consumer by an  
11 insurance producer, non-licensed society agent, representative or  
12 member, or an insurer.

13 (1) The annuity contract disclosure statement shall include, but  
14 not be limited to:

15 (a) the issuing insurer's name and address;

16 (b) the generic name of the annuity, the insurer's product name,  
17 if different, and annuity form number, and the same information for  
18 any rider or endorsement to the annuity;

19 (c) a statement that the product is an annuity, accompanied by a  
20 definition of annuity;

21 (d) a summary describing each guaranteed, non-guaranteed, and  
22 determinable element of the annuity and any rider or endorsement,  
23 including:

24 (i) any charge, by dollar amount or percentage, and other  
25 considerations provided for the annuity, with an explanation of their  
26 application under the contract;

27 (ii) any fixed or variable crediting interest rate, and information  
28 concerning the method of its calculation and the duration of any  
29 rate period;

30 (iii) each income payment option;

31 (iv) any death benefit, and the method of its calculation;

32 (v) the availability of withdrawing from the insurer any portion  
33 of the annuity's contract value;

34 (vi) any value reduction on the annuity or benefits provided by  
35 the annuity resulting from a withdrawal set forth in sub-  
36 subparagraph (v) of this subparagraph (d), or resulting from a  
37 surrender of the annuity, including any surrender subject to the  
38 provisions of section 5 of P.L.1981, c.285 (C.17B:25-20) or the  
39 "Indexed Standard Nonforfeiture Law for Individual Deferred  
40 Annuities," P.L.2005, c.194 (C.17B:25-21 et seq.);

41 (e) a summary of the federal tax status of the annuity, and any  
42 tax penalty applicable based upon a withdrawal or surrender set  
43 forth in sub-subparagraphs (v) and (vi) of subparagraph (d) of this  
44 paragraph;

45 (f) a summary of the 10-day cancellation period for consumers  
46 required by section 6 of this act and any other consumer  
47 cancellation period required by law, or any greater cancellation

1 period provided under the terms of the annuity, along with the  
2 cancellation procedure; and

3 (g) a statement that the annuity and the solicitation, negotiation,  
4 and sale of the annuity are subject to regulatory oversight by the  
5 department, accompanied by appropriate contact information for the  
6 department's consumer assistance services.

7 (2) The annuity contract disclosure statement shall comply with  
8 the language simplification standards of the "Life and Health  
9 Insurance Policy Language Simplification Act," P.L.1979, c.167  
10 (C.17B:17-17 et seq.).

11 d. (1) An insurance producer, non-licensed society agent,  
12 representative or member, or an insurer, if no producer or non-  
13 licensed society agent, representative or member is involved, shall  
14 provide a consumer who applies for an annuity a copy of the  
15 buyer's guide and an annuity contract disclosure statement as set  
16 forth in subsections b. and c. of this section, to be delivered no later  
17 than five business days after receipt of the application.

18 (2) If a direct-response solicitation occurs via the Internet, the  
19 provisions of paragraph (1) for supplying the buyer's guide and the  
20 annuity contract disclosure statement shall be satisfied:

21 (a) by making the documents available, in printable form, to  
22 consumers on the issuing insurer's Internet website, and providing  
23 notice to the consumer of their availability; and

24 (b) by allowing consumers to request, through the issuing  
25 insurer's Internet website, mailed copies of the documents, so long  
26 as the insurer provides the documents no later than five business  
27 days after receipt of the application.

28 (3) If the buyer's guide and the annuity contract disclosure  
29 statement are not provided to the consumer in accordance with this  
30 section, the consumer shall have a period of not less than 15 days  
31 after receipt of any annuity purchased, or longer if provided by the  
32 terms of the annuity, to cancel the annuity, and receive from the  
33 insurer a prompt refund of any account value of the annuity,  
34 including any contract fees or other charges, by mailing or  
35 otherwise surrendering the annuity together with a written request  
36 for cancellation. The cancellation period provided by this  
37 paragraph shall run concurrently with the cancellation period  
38 provided by section 6 of this act, or as provided under any other  
39 provision of law.

40

41 5. a. An annuity, for purposes of this section concerning the  
42 suitability of an annuity for a particular consumer, shall not include  
43 any annuity directly solicited to a consumer, that is:

44 (1) an annuity that serves as a funding vehicle for an employee  
45 welfare, pension, profit-sharing, or deferred compensation plan  
46 established or maintained by an employer or other plan sponsor, and

1 which is funded in whole or in part by that employer or other plan  
2 sponsor;

3 (2) a structured settlement subject to the provisions of the  
4 “Structured Settlement Protection Act,” P.L.2001, c.139 (C.2A:16-  
5 63 et seq.); or

6 (3) a funeral insurance policy defined by section 24 of P.L.1993,  
7 c.147 (C.17B:17-5.1).

8 b. (1) An insurance producer, or an agent, representative or  
9 member of a fraternal benefit society not required to be licensed as  
10 an insurance producer in accordance with section 32 of P.L.1997,  
11 c.322 (C.17:44B-32), or an insurer, if no producer or non-licensed  
12 society agent, representative or member is involved, shall not  
13 negotiate or sell an annuity to a consumer unless the producer, non-  
14 licensed society agent, representative or member, or insurer has  
15 reasonable grounds for believing that the annuity is suitable for the  
16 consumer, on the basis of the facts disclosed by the consumer as to  
17 the consumer’s investments, other insurance products, financial  
18 situation and objectives.

19 (2) The insurance producer, non-licensed society agent,  
20 representative or member, or insurer shall, prior to selling an  
21 annuity negotiated with a consumer, make reasonable efforts to  
22 obtain, and record on a form prescribed by the commissioner,  
23 information concerning:

24 (a) the consumer's financial status;

25 (b) the consumer's tax status;

26 (c) the consumer's investment objectives;

27 (d) any other information considered to be relevant by the  
28 producer, non-licensed society agent, representative or member, or  
29 insurer to provide the reasonable grounds for believing the annuity  
30 is suitable for the consumer; and

31 (e) the consumer’s acknowledgement:

32 (i) that the annuity and the solicitation, negotiation, and sale of  
33 the annuity concerning its suitability are subject to regulatory  
34 oversight by the department; and

35 (ii) of receipt of appropriate contact information for the  
36 department’s consumer assistance services.

37 (3) The reasonable grounds for an insurance producer, non-  
38 licensed society agent, representative or member, or insurer for  
39 believing the annuity is suitable for the consumer shall be based  
40 upon all relevant information and circumstances of the consumer  
41 actually obtained or known, and recorded, during the time of any  
42 negotiation or offer of sale on the annuity.

43 (4) (a) The insurance producer, non-licensed society agent,  
44 representative or member, or insurer shall not have any obligation  
45 to a consumer concerning the suitability of an annuity under this  
46 subsection:



1 (i) for merely soliciting a consumer to apply for a particular type  
2 of annuity through a direct-response solicitation, occurring prior to  
3 any negotiation or attempt to sell the annuity;

4 (ii) if the consumer, upon negotiating or attempting to sell the  
5 annuity, refuses to provide the relevant information requested  
6 pursuant to paragraph (2) of this subsection, or fails to provide  
7 complete or accurate information; or

8 (iii) if the consumer chooses to obtain an annuity other than the  
9 annuity negotiated and offered for sale.

10 (b) With respect to any variable annuity, the insurance producer,  
11 non-licensed society agent, representative or member, or insurer  
12 shall be deemed to have complied with the provisions of this  
13 subsection if the producer, non-licensed society agent,  
14 representative or member, or insurer complies with any rules of  
15 conduct pertaining to consumer suitability promulgated by the  
16 Financial Industry Regulatory Authority, or its successor, and  
17 approved by the United States Securities and Exchange  
18 Commission in accordance with section 19(b)(1) of the “Securities  
19 Exchange Act of 1934,” Pub.L.73-291 (15 U.S.C. s.78s(b)(1)).

20 c. (1) An insurer shall establish and maintain a system of  
21 supervision, or contract with a third party to establish and maintain  
22 a system, concerning the negotiation and sale of annuities directly  
23 negotiated and sold by the insurer, to assure compliance with the  
24 consumer suitability requirements set forth in subsection b. of this  
25 section. Any third party insurance producer or non-licensed society  
26 agent, representative or member authorized to act on behalf of the  
27 insurer shall adopt the insurer’s system of supervision for its own  
28 employees and contracted persons who negotiate and sell annuities,  
29 or establish and maintain a system to assure compliance with the  
30 consumer suitability requirements set forth in subsection b. of this  
31 section.

32 (2) A system of supervision shall include, but not be limited to:

33 (a) A written set of procedures concerning the negotiation and  
34 sale of annuities; and

35 (b) Periodic reviews of information as set forth by the  
36 commissioner in regulation, to assist in detecting and preventing  
37 violations of subsection b. of this section.

38 (3) Whenever an insurer authorizes a third party insurance  
39 producer or non-licensed society agent, representative or member to  
40 act on its behalf, the insurer shall make reasonable inquiry to assure  
41 that this third party establishes and maintains the system of  
42 supervision required by paragraph (1) of this subsection. The  
43 reasonable inquiry by the insurer shall include:

44 (a) Obtaining a certification, at least annually, from the third  
45 party insurance producer or non-licensed society agent,  
46 representative or member, signed by the third party, or an officer,  
47 director, or supervisory or managerial employee of that third party

1 with responsibility for the system of supervision, which may be  
2 made available as a representation, in printable form to the insurer,  
3 on the third party's Internet website, stating the system complies  
4 with the provisions of paragraph (1) of this subsection, or stating  
5 that it is not presently in compliance and including specific criteria  
6 to be implemented to achieve compliance; and

7 (b) Periodic reviews of information as set forth by the  
8 commissioner in regulation, to assist in detecting and preventing  
9 violations of subsection b. of this section.

10  
11 6. An annuity directly solicited to a consumer, except for any  
12 annuity that is excluded pursuant to the provisions of section 5 of  
13 this act, shall not be delivered, issued, executed or renewed in this  
14 State or approved for issuance or renewal in this State by the  
15 commissioner after the effective date of this act, unless the annuity  
16 includes provisions or has attached to it a notice stating that during  
17 a period of not less than 10 days after the date the initial owner  
18 receives the annuity, the owner may cancel the annuity and receive  
19 from the insurer a prompt refund of any account value of the  
20 annuity, including any contract fees or other charges, by mailing or  
21 otherwise surrendering the annuity together with a written request  
22 for cancellation.

23  
24 7. a. An annuity, for purposes of this section, shall not include  
25 any annuity directly solicited to a consumer that is excluded  
26 pursuant to the provisions of section 4 of this act.

27 b. (1) An insurer shall provide the owner of an annuity with a  
28 report, at least annually, on information concerning the annuity  
29 which includes, but is not limited to:

30 (a) the beginning and end date of the current report period;

31 (b) the total amount of charges and other considerations  
32 provided for the annuity, any amount charged against the annuity's  
33 contract value, and interest credited;

34 (c) the accumulation value, based upon the charges and other  
35 considerations provided for the annuity, less any charge against the  
36 annuity's contract value, plus interest credited;

37 (d) the cash surrender value, calculated as the greater of the  
38 accumulation value as set forth in subparagraph (c) of this  
39 paragraph less any applicable surrender charge, or the annuity's  
40 minimum guaranteed contract value; and

41 (e) the amount owed on any outstanding loan borrowed by the  
42 owner against the annuity's contract value as of the end of the  
43 current report period.

44 (2) The insurer shall provide this report:

45 (a) at the beginning and during the accumulation period prior to  
46 maturity on a deferred annuity; and

1 (b) at the beginning and during the payout period, for which  
2 income payments occur at or after maturity, on any annuity with  
3 changes to any non-guaranteed element.  
4

5 8. Any information required to be collected and maintained in  
6 order to fulfill the requirements of this act shall be done in  
7 accordance with the insurance information practice provisions of  
8 P.L.1985, c.179 (C.17:23A-1 et seq.).  
9

10 9. a. A violation of this act shall be a violation of N.J.S.17B:30-  
11 1 et seq.

12 b. Pursuant to the authority provided to the commissioner under  
13 N.J.S.17B:30-1 et seq., the commissioner may, upon finding a  
14 violation occurred or is occurring, order:

15 (1) an insurer to take reasonably appropriate corrective action  
16 regarding any consumer harmed by a violation relating to an  
17 annuity issued by the insurer; or

18 (2) a third party insurance producer, or an agent, representative  
19 or member of a fraternal benefit society not required to be licensed  
20 as an insurance producer in accordance with section 32 of P.L.1997,  
21 c.322 (C.17:44B-32), who is authorized to act on behalf of the  
22 insurer, to take reasonably appropriate corrective action regarding  
23 any consumer harmed by a violation relating to an annuity  
24 negotiated and sold by the insurance producer or non-licensed  
25 society agent, representative or member.

26 c. The commissioner may, as permitted under N.J.S.17B:30B-1  
27 et seq., alter, modify, or set aside, in whole or in part, any order  
28 concerning a penalty for a violation, if the corrective action ordered  
29 pursuant to subsection b. of this section occurs promptly to the  
30 satisfaction of the commissioner.  
31

32 10. This act shall take effect on the first day of the seventh  
33 month next following enactment.