

CHAPTER 88

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

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

C.17B:25-34 Findings, declarations relative to certain annuity products.

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

C.17B:25-35 Definitions relative to certain annuity products.

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

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

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

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

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

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

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

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

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

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

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person licensed to engage in the business of insurance in this State.

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

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

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

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

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

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

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

C.17B:25-36 Use of certain terms regulated; exceptions.

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

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

(a) a title or designation conferred through an academic degree, certifying the completion of a course of study from an accredited institution of higher education, so long as the title or designation is not used in an untrue, deceptive, misleading, or false manner in connection with the solicitation, negotiation, or sale of an annuity; or

(b) a professional job title presented by an employer or other organization that is licensed or registered by a state or federal financial services regulatory agency, including any agency that regulates financial institutions, insurers, investment companies as defined under the “Investment Company Act of 1940,” title I of Pub.L.76-768 (15 U.S.C.s.80a-1 et seq.), investment advisers as defined under the “Investment Advisers Act of 1940,” title II of Pub.L.76-768 (15 U.S.C.s.80b-1 et seq.), and broker-dealers, and that indicates seniority or standing within the employer or other organization’s operation or specifies an area of specialization recognized by that employer or other organization, so long as the professional job title is not used in an untrue, deceptive, misleading, or false manner in connection with the solicitation, negotiation, or sale of an annuity.

b. An untrue, deceptive, misleading, or false use of a certification, designation, or form of advertising shall include, but is not limited to:

(1) the use of a certification or professional designation not actually earned or otherwise available for use;

(2) the use of a nonexistent or self-conferred certification or professional designation;

(3) the use of a certification or professional designation that expresses or implies a level of occupational qualification obtained through education, training, or experience, but which is not actually obtained; and

(4) (a) the use of a certification or professional designation obtained from a certifying or designating organization that:

(i) is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for assuring the competency of a holder of its certificate or professional designation;

(iii) does not have reasonable standards or procedures for monitoring and disciplining a holder of its certificate or professional designation for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for a holder of its certificate or professional designation in order to maintain the certification or designation; however

(b) there shall be a rebuttable presumption that the use of a certification or professional designation obtained from a certifying or designating organization is not in violation of this section if the certificate or professional designation issued to the holder does not apply primarily to sales or marketing and is accredited by:

(i) the American National Standards Institute, or its successor;

(ii) the National Commission for Certifying Agencies, or its successor;

(iii) any organization recognized as an accrediting agency by the United States Department of Education pursuant to section 496 of the "Higher Education Act of 1965," Pub.L.89-329 (20 U.S.C.s.1099b); or

(iv) any other organization approved by the commissioner by regulation.

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

C.17B:25-37 Certain annuities excluded; annuities buyer's guide; annuity contract disclosure statement.

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

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

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

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

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

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

b. The commissioner shall approve, by regulation, a document, including all subjects and language contained therein, for distribution to a consumer by an insurance producer, or an agent, representative or member of a fraternal benefit society not required to be licensed as an insurance producer in accordance with section 32 of P.L.1997, c.322 (C.17:44B-32), or an insurer, to serve as a buyer's guide regarding annuities, which may be substantially

similar to any annuities buyer's guide prepared by the National Association of Insurance Commissioners, or its successor, and shall include, but not be limited to, a description of various kinds of annuities, standard features of annuities, including the 10-day cancellation period for consumers required by section 6 of this act and any other consumer cancellation period required by law, and information concerning the negotiation and sale of annuities. The commissioner shall make the approved buyer's guide available to consumers on the department's Internet website.

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

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

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

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

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

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

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

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

(iii) each income payment option;

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

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

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

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

(f) a summary of the 10-day cancellation period for consumers required by section 6 of this act and any other consumer cancellation period required by law, or any greater cancellation period provided under the terms of the annuity, along with the cancellation procedure; and

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

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

d. (1) An insurance producer, non-licensed society agent, representative or member, or an insurer, if no producer or non-licensed society agent, representative or member is involved, shall provide a consumer who applies for an annuity a copy of the buyer's guide and an

annuity contract disclosure statement as set forth in subsections b. and c. of this section, to be delivered no later than five business days after receipt of the application.

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

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

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

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

C.17B:25-38 Certain annuities excluded, information recorded; determination as to suitability of annuity for consumer; system of supervision.

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

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

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

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

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

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

(a) the consumer's financial status;

(b) the consumer's tax status;

(c) the consumer's investment objectives;

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

(e) the consumer's acknowledgement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.17B:25-39 Cancellation provision for certain annuities.

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

C.17B:25-40 Certain annuities excluded; report to owner.

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

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

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

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

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

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

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

(2) The insurer shall provide this report:

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

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

C.17B:25-41 Collection, maintenance of information.

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

C.17B:25-42 Violations, penalties.

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

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

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

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

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

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

Approved September 19, 2008.