

# 17B:25-34

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2008           **CHAPTER:** 88

**NJSA:** 17B:25-34 (Provides marketing, information disclosure, and suitability requirements for certain annuities directly solicited to consumers)

**BILL NO:** S1165 (substituted for A2252)

**SPONSOR(S)** Adler and others

**DATE INTRODUCED:** February 14, 2008

**COMMITTEE:**           **ASSEMBLY:** ---

**SENATE:** Commerce

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**           **ASSEMBLY:** June 23, 2008

**SENATE:** June 23, 2008

**DATE OF APPROVAL:** September 19, 2008

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**[FINAL TEXT OF BILL](#)** (Senate Committee Substitute enacted)

**S1165**

**[SPONSOR'S STATEMENT:](#)** (Begins on page 7 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                   **ASSEMBLY:** No

**[SENATE:](#)** [Yes](#)

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**A2252**

**[SPONSOR'S STATEMENT:](#)** (Begins on page 7 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                   **[ASSEMBLY:](#)** [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL NOTE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

Yes

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

LAW/RWH 1-6-08

P.L. 2008, CHAPTER 88, *approved September 19, 2008*  
Senate Committee Substitute for  
Senate, No. 1165

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.

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

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

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

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

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

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

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

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

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

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

37

38       3. a. (1) Consistent with the unfair trade practices set forth in  
39 N.J.S.17B:30-1 et seq., an insurance producer, or an agent,  
40 representative or member of a fraternal benefit society not required  
41 to be licensed as an insurance producer in accordance with section  
42 32 of P.L.1997, c.322 (C.17:44B-32), or an insurer, if no producer  
43 or non-licensed society agent, representative or member is involved,  
44 shall not use a certification, professional designation, or form of  
45 advertising expressing or implying in an untrue, deceptive,  
46 misleading, or false manner that the producer, non-licensed society  
47 agent, representative or member, or insurer has special education,

1 training, or experience in advising or servicing senior citizens or  
2 retirees in connection with the solicitation, negotiation, or sale of an  
3 annuity, or its value or suitability, either directly or indirectly,  
4 including through a publication or writing, or by issuing or  
5 promulgating an analysis or report relating to an annuity.

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

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

13 (b) a professional job title presented by an employer or other  
14 organization that is licensed or registered by a state or federal  
15 financial services regulatory agency, including any agency that  
16 regulates financial institutions, insurers, investment companies as  
17 defined under the "Investment Company Act of 1940," title I of  
18 Pub.L.76-769 (15 U.S.C.s.80a-1 et seq.), investment advisers as  
19 defined under the "Investment Advisers Act of 1940," title II of  
20 Pub.L.76-769 (15 U.S.C.s.80b-1 et seq.), and broker-dealers, and  
21 that indicates seniority or standing within the employer or other  
22 organization's operation or specifies an area of specialization  
23 recognized by that employer or other organization, so long as the  
24 professional job title is not used in an untrue, deceptive, misleading,  
25 or false manner in connection with the solicitation, negotiation, or  
26 sale of an annuity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27  
28 4. a. An annuity, for purposes of this section, concerning  
29 disclosure requirements, shall not include any annuity directly  
30 solicited to a consumer, that is:

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

36 (2) a variable annuity subject to the provisions of N.J.S.17B:28-  
37 1 et seq.;

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

40 (4) a structured settlement subject to the provisions of the  
41 "Structured Settlement Protection Act," P.L.2001, c.139 (C.2A:16-  
42 63 et seq.); or

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

45 b. The commissioner shall approve, by regulation, a document,  
46 including all subjects and language contained therein, for  
47 distribution to a consumer by an insurance producer, or an agent,

1 representative or member of a fraternal benefit society not required  
2 to be licensed as an insurance producer in accordance with section  
3 32 of P.L.1997, c.322 (C.17:44B-32), or an insurer, to serve as a  
4 buyer's guide regarding annuities, which may be substantially  
5 similar to any annuities buyer's guide prepared by the National  
6 Association of Insurance Commissioners, or its successor, and shall  
7 include, but not be limited to, a description of various kinds of  
8 annuities, standard features of annuities, including the 10-day  
9 cancellation period for consumers required by section 6 of this act  
10 and any other consumer cancellation period required by law, and  
11 information concerning the negotiation and sale of annuities. The  
12 commissioner shall make the approved buyer's guide available to  
13 consumers on the department's Internet website.

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

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

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

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

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

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

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

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

36 (iii) each income payment option;

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

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

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

- 1 (e) a summary of the federal tax status of the annuity, and any  
2 tax penalty applicable based upon a withdrawal or surrender set  
3 forth in sub-subparagraphs (v) and (vi) of subparagraph (d) of this  
4 paragraph;
- 5 (f) a summary of the 10-day cancellation period for consumers  
6 required by section 6 of this act and any other consumer  
7 cancellation period required by law, or any greater cancellation  
8 period provided under the terms of the annuity, along with the  
9 cancellation procedure; and
- 10 (g) a statement that the annuity and the solicitation, negotiation,  
11 and sale of the annuity are subject to regulatory oversight by the  
12 department, accompanied by appropriate contact information for the  
13 department's consumer assistance services.
- 14 (2) The annuity contract disclosure statement shall comply with  
15 the language simplification standards of the "Life and Health  
16 Insurance Policy Language Simplification Act," P.L.1979, c.167  
17 (C.17B:17-17 et seq.).
- 18 d. (1) An insurance producer, non-licensed society agent,  
19 representative or member, or an insurer, if no producer or non-  
20 licensed society agent, representative or member is involved, shall  
21 provide a consumer who applies for an annuity a copy of the  
22 buyer's guide and an annuity contract disclosure statement as set  
23 forth in subsections b. and c. of this section, to be delivered no later  
24 than five business days after receipt of the application.
- 25 (2) If a direct-response solicitation occurs via the Internet, the  
26 provisions of paragraph (1) for supplying the buyer's guide and the  
27 annuity contract disclosure statement shall be satisfied:
- 28 (a) by making the documents available, in printable form, to  
29 consumers on the issuing insurer's Internet website, and providing  
30 notice to the consumer of their availability; and
- 31 (b) by allowing consumers to request, through the issuing  
32 insurer's Internet website, mailed copies of the documents, so long  
33 as the insurer provides the documents no later than five business  
34 days after receipt of the application.
- 35 (3) If the buyer's guide and the annuity contract disclosure  
36 statement are not provided to the consumer in accordance with this  
37 section, the consumer shall have a period of not less than 15 days  
38 after receipt of any annuity purchased, or longer if provided by the  
39 terms of the annuity, to cancel the annuity, and receive from the  
40 insurer a prompt refund of any account value of the annuity,  
41 including any contract fees or other charges, by mailing or  
42 otherwise surrendering the annuity together with a written request  
43 for cancellation. The cancellation period provided by this  
44 paragraph shall run concurrently with the cancellation period  
45 provided by section 6 of this act, or as provided under any other  
46 provision of law.



- 1       5. a. An annuity, for purposes of this section concerning the  
2 suitability of an annuity for a particular consumer, shall not include  
3 any annuity directly solicited to a consumer, that is:
- 4       (1) an annuity that serves as a funding vehicle for an employee  
5 welfare, pension, profit-sharing, or deferred compensation plan  
6 established or maintained by an employer or other plan sponsor, and  
7 which is funded in whole or in part by that employer or other plan  
8 sponsor;
- 9       (2) a structured settlement subject to the provisions of the  
10 “Structured Settlement Protection Act,” P.L.2001, c.139 (C.2A:16-  
11 63 et seq.); or
- 12       (3) a funeral insurance policy defined by section 24 of P.L.1993,  
13 c.147 (C.17B:17-5.1).
- 14       b. (1) An insurance producer, or an agent, representative or  
15 member of a fraternal benefit society not required to be licensed as  
16 an insurance producer in accordance with section 32 of P.L.1997,  
17 c.322 (C.17:44B-32), or an insurer, if no producer or non-licensed  
18 society agent, representative or member is involved, shall not  
19 negotiate or sell an annuity to a consumer unless the producer, non-  
20 licensed society agent, representative or member, or insurer has  
21 reasonable grounds for believing that the annuity is suitable for the  
22 consumer, on the basis of the facts disclosed by the consumer as to  
23 the consumer’s investments, other insurance products, financial  
24 situation and objectives.
- 25       (2) The insurance producer, non-licensed society agent,  
26 representative or member, or insurer shall, prior to selling an  
27 annuity negotiated with a consumer, make reasonable efforts to  
28 obtain, and record on a form prescribed by the commissioner,  
29 information concerning:
- 30       (a) the consumer's financial status;
- 31       (b) the consumer's tax status;
- 32       (c) the consumer's investment objectives;
- 33       (d) any other information considered to be relevant by the  
34 producer, non-licensed society agent, representative or member, or  
35 insurer to provide the reasonable grounds for believing the annuity  
36 is suitable for the consumer; and
- 37       (e) the consumer’s acknowledgement:
- 38       (i) that the annuity and the solicitation, negotiation, and sale of  
39 the annuity concerning its suitability are subject to regulatory  
40 oversight by the department; and
- 41       (ii) of receipt of appropriate contact information for the  
42 department’s consumer assistance services.
- 43       (3) The reasonable grounds for an insurance producer, non-  
44 licensed society agent, representative or member, or insurer for  
45 believing the annuity is suitable for the consumer shall be based  
46 upon all relevant information and circumstances of the consumer

1 actually obtained or known, and recorded, during the time of any  
2 negotiation or offer of sale on the annuity.

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

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

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

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

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

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

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

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

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

44 (3) Whenever an insurer authorizes a third party insurance  
45 producer or non-licensed society agent, representative or member to  
46 act on its behalf, the insurer shall make reasonable inquiry to assure  
47 that this third party establishes and maintains the system of

1 supervision required by paragraph (1) of this subsection. The  
2 reasonable inquiry by the insurer shall include:

3 (a) Obtaining a certification, at least annually, from the third  
4 party insurance producer or non-licensed society agent,  
5 representative or member, signed by the third party, or an officer,  
6 director, or supervisory or managerial employee of that third party  
7 with responsibility for the system of supervision, which may be  
8 made available as a representation, in printable form to the insurer,  
9 on the third party's Internet website, stating the system complies  
10 with the provisions of paragraph (1) of this subsection, or stating  
11 that it is not presently in compliance and including specific criteria  
12 to be implemented to achieve compliance; and

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

16

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

29

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

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

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

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

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

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

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

4 (2) The insurer shall provide this report:

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

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

10

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

15

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

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

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

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

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

37

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

40

41

42

43

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

**SENATE, No. 1165**

---

**STATE OF NEW JERSEY**

**213th LEGISLATURE**

---

INTRODUCED FEBRUARY 14, 2008

**Sponsored by:**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Senator ROBERT W. SINGER**

**District 30 (Burlington, Mercer, Monmouth and Ocean)**

**Co-Sponsored by:**

**Senators Van Drew, Weinberg, Baroni, Sweeney, Gordon, Lance and Whelan**

**SYNOPSIS**

Regulates certain credentialing and trade practices of insurance producers, and provides private cause of action for insurance producer violations.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/20/2008)**

1 AN ACT concerning insurance producers, and amending and  
2 supplementing P.L.2001, c.210.

3

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

6

7 1. Section 7 of P.L.2001, c.210 (C.17:22A-32) is amended to  
8 read as follows:

9 7. a. An individual applying for a resident insurance producer  
10 license or license renewal shall make application to the  
11 commissioner on the uniform application and declare under penalty  
12 of refusal, suspension or revocation of the license that the  
13 statements made in the application are true, correct and complete to  
14 the best of the individual's knowledge and belief. Before approving  
15 the application, the commissioner shall find that the individual:

16 (1) Is at least 18 years of age;

17 (2) Has not committed any act that is a ground for denial,  
18 suspension or revocation set forth in section 15 of this act;

19 (3) Has completed a department approved prelicensing course of  
20 study for the lines of authority for which the individual has applied,  
21 or in the case of license retention or renewal, a department  
22 approved course of voluntary or mandatory supplemental education  
23 or mandatory continuing education, as prescribed by the  
24 commissioner by regulation;

25 (4) Has paid the fees set forth in section 19 of this act; and

26 (5) Has successfully passed the examinations for the lines of  
27 authority for which the individual has applied.

28 b. A business entity acting as an insurance producer shall  
29 obtain an insurance producer license. Application shall be made  
30 using the uniform business entity application. Before approving the  
31 application, the commissioner shall find that:

32 (1) The business entity has paid the fees set forth in section 19  
33 of this act; and

34 (2) The business entity has designated a licensed insurance  
35 producer or producers responsible for the business entity's  
36 compliance with the insurance laws, rules and regulations of this  
37 State.

38 c. The commissioner may require any documents reasonably  
39 necessary to verify the information contained in an application.

40 d. Each insurer that sells, solicits or negotiates any form of  
41 limited line credit insurance shall provide to each individual whose  
42 duties will include selling, soliciting or negotiating limited line  
43 credit insurance a program of instruction that is approved by the  
44 commissioner.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 e. Any applicant for a license pursuant to this section and any  
2 officer, director, partner or owner of a controlling interest of a  
3 corporation or partnership filing for licensure pursuant to this  
4 section shall submit to the commissioner the applicant's name,  
5 address, fingerprints and written consent for a criminal history  
6 record background check to be performed. The commissioner is  
7 hereby authorized to exchange fingerprint data with and receive  
8 criminal history record information from the State Bureau of  
9 Identification in the Division of State Police and the Federal Bureau  
10 of Investigation consistent with applicable State and federal laws,  
11 rules and regulations, for the purposes of facilitating determinations  
12 concerning licensure eligibility. The applicant shall bear the cost  
13 for the criminal history record background check, including all  
14 costs of administering and processing the check. The Division of  
15 State Police shall promptly notify the commissioner in the event a  
16 current holder of a license or prospective applicant, who was the  
17 subject of a criminal history record background check pursuant to  
18 this section, is arrested for a crime or offense in this State after the  
19 date the background check was performed.

20 (cf: P.L.2003, c.199, s.12)

21

22 2. Section 8 of P.L.2001, c.210 (C.17:22A-33) is amended to  
23 read as follows:

24 8. a. Unless denied licensure pursuant to section 15 of this act,  
25 persons who have met the requirements of sections 6 and 7 of this  
26 act shall be issued a resident insurance producer license. An  
27 insurance producer ~~may~~ shall only receive qualification for a  
28 license, continuing education credits associated with a license  
29 renewal, or other voluntary or mandatory supplemental education  
30 credits in a manner approved by the commissioner, in one or more  
31 of the following lines of authority:

32 (1) Life-insurance coverage on human lives, including benefits  
33 of endowment and annuities, and which may include benefits in the  
34 event of death or dismemberment by accident and benefits for  
35 disability income;

36 (2) Accident and health or sickness-insurance coverage for  
37 sickness, bodily injury or accidental death, and which may include  
38 benefits for disability income;

39 (3) Property-insurance coverage for the direct or consequential  
40 loss or damage to property of every kind;

41 (4) Casualty-insurance coverage against legal liability, including  
42 that for death, injury or disability or damage to real or personal  
43 property;

44 (5) Variable life and variable annuity products-insurance  
45 coverage provided under variable life insurance contracts, variable  
46 annuities or any other life insurance or annuity product that reflects  
47 the investment experience of a separate account;

48 (6) Credit-limited line credit insurance;

1 (7) Personal lines - property and casualty insurance coverage  
2 sold to individuals and families for primarily noncommercial  
3 purposes~~]; or~~

4 (8) Any other line of insurance permitted under any law or  
5 regulation of this State.

6 b. An insurance producer license shall remain in effect unless  
7 revoked or suspended as long as the fee set forth in section 19 of  
8 this act is timely paid and in the case of resident individual  
9 insurance producers, education requirements are timely satisfied.

10 c. An individual insurance producer who allows his license to  
11 lapse may, within 12 months from the due date of the renewal fee,  
12 reinstate the same license without the necessity of passing a written  
13 examination. However, a penalty in an amount not to exceed  
14 double the unpaid renewal fee shall be required for any renewal fee  
15 received after the due date.

16 d. A licensed insurance producer who is unable to comply with  
17 license renewal procedures due to military service or some other  
18 extenuating circumstance, such as long-term medical disability,  
19 may request a waiver of those procedures. The producer may also  
20 request a waiver of any examination requirement or any other fine  
21 or sanction imposed for failure to comply with renewal procedures.

22 e. The license shall contain the licensee's name, address,  
23 personal identification number, and the date of issuance, the lines of  
24 authority, the expiration date and any other information the  
25 commissioner deems necessary.

26 f. Licensees shall inform the commissioner by any means  
27 acceptable to the commissioner of a change of address within 30  
28 days of the change.

29 (cf: P.L.2001, c.210, s.8)

30

31 3. Section 15 of P.L.2001, c.210 (C.17:22A-40) is amended to  
32 read as follows:

33 15. a. The commissioner may place on probation, suspend,  
34 revoke or refuse to issue or renew an insurance producer's license or  
35 may levy a civil penalty in accordance with subsection c. of section  
36 20 of this act or any combination of actions, for any one or more of  
37 the following causes:

38 (1) Providing incorrect, misleading, incomplete or materially  
39 untrue information in the license application;

40 (2) Violating any insurance laws, or violating any regulation,  
41 subpoena or order of the commissioner or of another state's  
42 insurance regulator;

43 (3) Obtaining or attempting to obtain a license through  
44 misrepresentation or fraud;

45 (4) Improperly withholding, misappropriating or converting any  
46 monies or properties received in the course of doing insurance  
47 business;



- 1 (5) Intentionally misrepresenting the terms of an actual or  
2 proposed insurance contract, policy or application for insurance;
- 3 (6) Having been convicted of a felony or crime of the fourth  
4 degree or higher;
- 5 (7) Having admitted or been found to have committed any  
6 insurance unfair trade practice or fraud;
- 7 (8) Using fraudulent, coercive or dishonest practices, or  
8 demonstrating incompetence, untrustworthiness or financial  
9 irresponsibility in the conduct of insurance business in this State or  
10 elsewhere;
- 11 (9) Having an insurance producer license, or its equivalent,  
12 denied, suspended or revoked in any other state, province, district  
13 or territory;
- 14 (10) Forging another's name to an application for insurance or to  
15 any document related to an insurance transaction;
- 16 (11) Improperly using notes or any other reference material to  
17 complete an examination for an insurance producer license;
- 18 (12) Knowingly accepting insurance business from an unlicensed  
19 insurance producer;
- 20 (13) Failing to comply with an administrative or court order  
21 imposing a child support obligation;
- 22 (14) Failing to pay income tax or comply with any administrative  
23 or court order directing payment of income tax pursuant to Title  
24 54A of the New Jersey Statutes;
- 25 (15) Intentionally withholding material information or making a  
26 material misstatement in an application for a license;
- 27 (16) Committing any fraudulent act;
- 28 (17) Knowingly facilitating or assisting another person in  
29 violating any insurance laws; **[or]**
- 30 (18) Failing to notify the commissioner within 30 days of his  
31 conviction of any crime, indictment or the filing of any formal  
32 criminal charges, or the suspension or revocation of any insurance  
33 license or authority by a state, other than this State, or the initiation  
34 of formal disciplinary proceedings in a state, other than this State,  
35 affecting the producer's insurance license; or failing to obtain the  
36 written consent pursuant to **[18 U.S.C.]** sections 1033 and 1034 of  
37 title 18, United States Code (18 U.S.C. ss.1033 and 1034); or failing  
38 to supply any documentation that the commissioner may request in  
39 connection therewith;
- 40 (19) Using a business title or designation in any marketing  
41 advertisement, announcement, or statement, including, but not  
42 limited to, a business card, notice, circular, pamphlet, letter, or  
43 poster, or over any radio or television station, or broadcast in any  
44 other way, that indicates or tends to indicate that the insurance  
45 producer:
  - 46 (a) completed any prelicensing, continuing, or other voluntary or  
47 mandatory supplemental education course of study;

1       **(b) is qualified for a particular line of authority not associated**  
2 **with the insurance producer's license;**

3       **(c) is certified or licensed to practice any other profession, or**  
4 **engage in any other occupation, governed or regulated pursuant to**  
5 **State law, including, but not limited to, the provisions of Title 45 of**  
6 **the Revised Statutes, unless that insurance producer holds a current**  
7 **State issued or recognized certification or license for that other**  
8 **practice or profession; or**

9       **(d) is affiliated with, or endorsed by, any federal, State, or local**  
10 **government entity or subdivision thereof, any business entity, or**  
11 **any person, unless that insurance producer is employed, contracted,**  
12 **or otherwise actually affiliated with or endorsed by, as evidenced**  
13 **through verifiable documentation, the government entity or**  
14 **subdivision, business entity, or person; or**

15       **(20) Failing, whenever selling or recommending the purchase of**  
16 **an annuity subject to the provisions of N.J.S.17B:25-1 et seq.:**

17       **(a) to establish reasonable grounds, as documented by the**  
18 **insurance producer on a form prescribed by the commissioner, to**  
19 **demonstrate that the annuity is suitable for the prospective or actual**  
20 **purchaser on the basis of facts disclosed by the purchaser through**  
21 **reasonable inquiries, which information shall include, but not be**  
22 **limited to:**

23       **(i) the purchaser's financial status;**

24       **(ii) the purchaser's tax status;**

25       **(iii) the purchaser's investment objectives, generally and with**  
26 **respect to the specific annuity contract sold or recommended for**  
27 **purchase; and**

28       **(iv) any other information as required by the commissioner; and**

29       **(b) to provide the actual purchaser with a 10-day right to cancel**  
30 **the annuity contract.**

31       b. If the action by the commissioner is to nonrenew or to deny  
32 an application for an insurance producer license, the commissioner  
33 shall notify the applicant or licensee and advise, in writing, the  
34 applicant or licensee of the reason for the denial or nonrenewal of  
35 the license. The applicant or licensee may make written demand  
36 upon the commissioner for a hearing before the commissioner, or  
37 his designee, to determine the reasonableness of the commissioner's  
38 action. The hearing shall be held pursuant to the "Administrative  
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40       c. The insurance producer license of a business entity may be  
41 suspended, revoked or refused if the commissioner finds, after  
42 hearing, that an individual licensee's violation was known or should  
43 have been known by one or more of the partners, officers or  
44 managers acting on behalf of the business entity and the violation  
45 was neither reported to the commissioner nor corrective action  
46 taken.

47       d. The commissioner shall retain the authority to enforce the  
48 provisions of and impose any penalty or remedy authorized by this

1 act and Title 17 of the Revised Statutes or Title 17B of the New  
2 Jersey Statutes against any person who is under investigation for or  
3 charged with a violation of this act or Title 17 of the Revised  
4 Statutes or Title 17B of the New Jersey Statutes even if the person's  
5 license or registration has been surrendered or has lapsed by  
6 operation of law.  
7 (cf: P.L.2001, c.210, s.15)

8  
9 4. (New section) An insurance producer and the insurer, as  
10 provided by any applicable statutory or common law fiduciary duty,  
11 whose insurance is sold, solicited or negotiated by that insurance  
12 producer, shall be liable to any aggrieved person for damages,  
13 reasonable attorney's fees, and costs of suit in a civil cause of  
14 action brought in the Superior Court or other court of competent  
15 jurisdiction for any violation of the provisions of the "New Jersey  
16 Insurance Producer Licensing Act of 2001," P.L.2001, c.210  
17 (C.17:22A-26 et seq.). The insurance producer and insurer, in any  
18 cause of action provided by this section, may additionally be liable  
19 to the aggrieved person for punitive damages.

20  
21 5. This act shall take effect on the first day of the fourth month  
22 next following enactment.

23  
24  
25 STATEMENT

26  
27 This bill amends and supplements the "New Jersey Insurance  
28 Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et  
29 seq.), to regulate certain credentialing and trade practices of  
30 insurance producers.

31 Specifically, the bill requires all prospective and current resident  
32 licensees to receive initial educational qualifications and any  
33 subsequent, supplemental or continuing education credits from only  
34 courses of study approved by the Commissioner of Banking and  
35 Insurance. In connection with this greater regulation of educational  
36 studies and to prevent deceptive marketing with respect to an  
37 insurance producer's educational achievements, the bill specifies  
38 licensing violations associated with an insurance producer's use of  
39 any business title or designation, in any marketing advertisement,  
40 announcement, or statement, that indicates or tends to indicate that  
41 the producer: completed any prelicensing, supplemental, or  
42 continuing education course of study; is licensed for a particular  
43 line of authority not associated with the producer's license; or is  
44 certified or licensed to practice any other profession, or engage in  
45 any other occupation, governed or regulated pursuant to State law,  
46 unless that insurance producer holds a current State issued or  
47 recognized certification or license for that other practice or  
48 profession.

1 Under the bill, another new licensing violation associated with  
2 insurance producer marketing is based on the use of any  
3 advertisement, announcement, or statement that indicates or tends  
4 to indicate that the producer is affiliated with, or endorsed by, any  
5 federal, State, or local government entity or subdivision thereof, any  
6 business entity, or any person, unless that insurance producer is  
7 employed, contracted, or otherwise actually affiliated with or  
8 endorsed by, as evidenced through verifiable documentation, the  
9 government entity or subdivision, business entity, or person.

10 Additionally, with respect to individual annuity products, the bill  
11 specifically sets forth a duty of good faith and fair dealing for  
12 insurance producers regarding prospective and actual purchasers of  
13 such products. An insurance producer is required to establish  
14 reasonable grounds to demonstrate that an annuity product  
15 recommended for purchase, or actually sold, is suitable for the  
16 prospective or actual purchaser based on facts disclosed by the  
17 purchaser through reasonable inquiries. The information  
18 establishing such reasonable grounds of suitability shall be  
19 documented on a form prescribed by the Commissioner of Banking  
20 and Insurance and shall include, but not be limited to, the  
21 purchaser's financial status, tax status, investment objectives  
22 (generally and with respect to the specific annuity contract sold),  
23 and any other information as required by the commissioner.  
24 Further, the insurance producer shall provide an actual purchaser of  
25 an annuity contract a 10-day right to cancel the contract. This  
26 additional regulation of insurance producer annuity product  
27 transactions is grounded in the growing complexity and variety of  
28 such products, as well as the heightened targeting of such products  
29 to senior citizens who may be more vulnerable to aggressive  
30 marketing and sales efforts.

31 Finally, the bill establishes, with respect to violations of the  
32 bill's provisions, as well as any violation of the "New Jersey  
33 Insurance Producer Licensing Act of 2001," a civil cause of action  
34 for any person aggrieved by the wrongful actions of an insurance  
35 producer and the insurer, as provided by any applicable statutory or  
36 common law fiduciary duty, whose insurance is sold, solicited or  
37 negotiated by that insurance producer in relation to the violation. In  
38 addition to damages, reasonable attorney's fees, and costs of suit,  
39 the insurance producer and insurer may be liable to the aggrieved  
40 person for punitive damages. The bill's express inclusion of insurer  
41 liability for the violations of insurance producers intends to deter  
42 insurance carriers from the improper supervision over the offering  
43 and sales of their insurance products.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

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

# **STATE OF NEW JERSEY**

DATED: JUNE 9, 2008

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 1165.

This substitute bill provides marketing, information disclosure, and product suitability requirements for certain annuities directly solicited to consumers. An annuity is a type of insurance product for which an insurer, in exchange for charges (akin to premiums) or other considerations provided for the insurance, subsequently makes a series of income payments at regular intervals over a set period; consumers most often obtain annuity coverage for use as future retirement income.

The bill specifies that an insurance producer or an agent, representative or member of a fraternal benefit society not required to be licensed as a producer (hereafter insurance agent), or an insurer involved in the solicitation, negotiation, or sale of annuities shall not use a certification, professional designation, or form of advertising expressing or implying, in an untrue, deceptive, misleading, or false manner, that the person or entity has any special education, training, or experience in connection with advising or servicing senior citizens or retirees. The marketing provisions are not applicable to a title or designation conferred through an academic degree from an accredited institution of higher education, or a professional job title presented by an employer or other organization licensed or registered by a state or federal financial services agency, 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.

To assist consumers, the bill requires the Commissioner of Banking and Insurance to approve, by regulation, a document to serve as an annuities buyer's guide. The buyer's guide shall include a description of various kinds of annuities, standard features of annuities, and information concerning the negotiation and sale of annuities. The commissioner shall make the approved buyer's guide available on the department's Internet website.

The commissioner shall also provide regulatory approval to the standard form of an annuity contract disclosure statement, to be used by an insurance agent or insurer involved in the solicitation,

negotiation, or sale of an annuity, to give the consumer highlighted information concerning that particular annuity. The insurance agent or insurer shall provide the annuity contract disclosure statement, as well as a copy of the department's buyer's guide, to any consumer who applies for an annuity, no later than five business days after receipt of the application.

Additionally, an insurance agent or insurer shall not negotiate or sell an annuity to the consumer unless the agent 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. The insurance agent or insurer shall collect this information in writing, on a form prescribed by the commissioner by regulation. The insurance agent or insurer shall not have any obligation to a consumer concerning the suitability of an annuity: 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; or if the consumer: (1) refuses to provide the relevant information requested, or does not provide complete or accurate information; or (2) chooses to obtain an annuity other than the annuity negotiated and offered.

To assure compliance with the product suitability requirements of the bill, an insurer shall establish and maintain a system of supervision regarding those annuities directly negotiated and sold by the insurer. This system of supervision shall include a written set of procedures concerning the negotiation and sale of annuities, and periodic reviews of information collected by the insurer on the annuities negotiated and sold, as set forth in regulation. An insurance agent of the insurer shall either adopt the insurer's system of supervision or establish and maintain a separate system to assure compliance.

For annuities issued to consumers, the bill requires that the annuity include an initial cancellation period for the new owner, which shall be a period of not less than 10 days after the date this owner receives the annuity. During this period, the owner may cancel the annuity and receive from the insurer a prompt refund of any charge paid for the annuity by mailing or otherwise surrendering the annuity together with a written request for cancellation.

Additionally, the bill requires the issuing of a report to the owner by the insurer, at least annually, on information concerning the annuity. This information includes: the total charges and other considerations provided for the annuity, any amount charged against the annuity's contract value, and interest credited; and the amount owed on any outstanding loan borrowed by the owner against the contract's value as of the end of the current reporting period.

A violation of the bill shall be an insurance trade practices violation pursuant to N.J.S.17B:30-1 et seq. Pursuant to the commissioner's authority to regulate such trade practices, the

commissioner may, upon finding a violation has occurred or is occurring, order an insurer or insurance agent of the insurer to take reasonably appropriate corrective action regarding any consumer harmed by a violation. The commissioner may alter, modify, or set aside, in whole or in part, any order concerning a penalty for a violation, if this corrective action occurs promptly to the satisfaction of the commissioner.

# ASSEMBLY, No. 2252

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2008

**Sponsored by:**

**Assemblywoman LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman ANTHONY CHIAPPONE**

**District 31 (Hudson)**

**Assemblywoman LINDA STENDER**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblywoman NILSA CRUZ-PEREZ**

**District 5 (Camden and Gloucester)**

**Co-Sponsored by:**

**Assemblymen Vas, Giblin, Diegnan, Conners, Prieto, Assemblywoman Voss, Assemblymen Schaer, Johnson, Assemblywoman Vainieri Huttle, Assemblymen Thompson, Wolfe, Assemblywomen Wagner, Oliver, Assemblymen Conaway, Green, Caputo, Burzichelli, Cryan, Fisher, Assemblywoman Angelini, Assemblyman Wisniewski, Assemblywoman Spencer, Assemblyman DeAngelo, Assemblywomen Quigley, Lampitt, Assemblyman Moriarty, Assemblywoman Love and Assemblyman Coutinho**

**SYNOPSIS**

Regulates certain credentialing and trade practices of insurance producers, and provides private cause of action for insurance producer violations.

**CURRENT VERSION OF TEXT**

As introduced.

(Sponsorship Updated As Of: 6/17/2008)



1 AN ACT concerning insurance producers, and amending and  
2 supplementing P.L.2001, c.210.

3

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

6

7 1. Section 7 of P.L.2001, c.210 (C.17:22A-32) is amended to  
8 read as follows:

9 7. a. An individual applying for a resident insurance producer  
10 license or license renewal shall make application to the  
11 commissioner on the uniform application and declare under penalty  
12 of refusal, suspension or revocation of the license that the  
13 statements made in the application are true, correct and complete to  
14 the best of the individual's knowledge and belief. Before approving  
15 the application, the commissioner shall find that the individual:

16 (1) Is at least 18 years of age;

17 (2) Has not committed any act that is a ground for denial,  
18 suspension or revocation set forth in section 15 of this act;

19 (3) Has completed a department approved prelicensing course of  
20 study for the lines of authority for which the individual has applied,  
21 or in the case of license retention or renewal, a department  
22 approved course of voluntary or mandatory supplemental education  
23 or mandatory continuing education, as prescribed by the  
24 commissioner by regulation;

25 (4) Has paid the fees set forth in section 19 of this act; and

26 (5) Has successfully passed the examinations for the lines of  
27 authority for which the individual has applied.

28 b. A business entity acting as an insurance producer shall  
29 obtain an insurance producer license. Application shall be made  
30 using the uniform business entity application. Before approving the  
31 application, the commissioner shall find that:

32 (1) The business entity has paid the fees set forth in section 19  
33 of this act; and

34 (2) The business entity has designated a licensed insurance  
35 producer or producers responsible for the business entity's  
36 compliance with the insurance laws, rules and regulations of this  
37 State.

38 c. The commissioner may require any documents reasonably  
39 necessary to verify the information contained in an application.

40 d. Each insurer that sells, solicits or negotiates any form of  
41 limited line credit insurance shall provide to each individual whose  
42 duties will include selling, soliciting or negotiating limited line  
43 credit insurance a program of instruction that is approved by the  
44 commissioner.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 e. Any applicant for a license pursuant to this section and any  
2 officer, director, partner or owner of a controlling interest of a  
3 corporation or partnership filing for licensure pursuant to this  
4 section shall submit to the commissioner the applicant's name,  
5 address, fingerprints and written consent for a criminal history  
6 record background check to be performed. The commissioner is  
7 hereby authorized to exchange fingerprint data with and receive  
8 criminal history record information from the State Bureau of  
9 Identification in the Division of State Police and the Federal Bureau  
10 of Investigation consistent with applicable State and federal laws,  
11 rules and regulations, for the purposes of facilitating determinations  
12 concerning licensure eligibility. The applicant shall bear the cost  
13 for the criminal history record background check, including all  
14 costs of administering and processing the check. The Division of  
15 State Police shall promptly notify the commissioner in the event a  
16 current holder of a license or prospective applicant, who was the  
17 subject of a criminal history record background check pursuant to  
18 this section, is arrested for a crime or offense in this State after the  
19 date the background check was performed.

20 (cf: P.L.2003, c.199, s.12)

21

22 2. Section 8 of P.L.2001, c.210 (C.17:22A-33) is amended to  
23 read as follows:

24 8. a. Unless denied licensure pursuant to section 15 of this act,  
25 persons who have met the requirements of sections 6 and 7 of this  
26 act shall be issued a resident insurance producer license. An  
27 insurance producer **[may]** shall only receive qualification for a  
28 license, continuing education credits associated with a license  
29 renewal, or other voluntary or mandatory supplemental education  
30 credits in a manner approved by the commissioner, in one or more  
31 of the following lines of authority:

32 (1) Life-insurance coverage on human lives, including benefits  
33 of endowment and annuities, and which may include benefits in the  
34 event of death or dismemberment by accident and benefits for  
35 disability income;

36 (2) Accident and health or sickness-insurance coverage for  
37 sickness, bodily injury or accidental death, and which may include  
38 benefits for disability income;

39 (3) Property-insurance coverage for the direct or consequential  
40 loss or damage to property of every kind;

41 (4) Casualty-insurance coverage against legal liability, including  
42 that for death, injury or disability or damage to real or personal  
43 property;

44 (5) Variable life and variable annuity products-insurance  
45 coverage provided under variable life insurance contracts, variable  
46 annuities or any other life insurance or annuity product that reflects  
47 the investment experience of a separate account;

48 (6) Credit-limited line credit insurance;

1 (7) Personal lines - property and casualty insurance coverage  
2 sold to individuals and families for primarily noncommercial  
3 purposes~~]; or~~

4 (8) Any other line of insurance permitted under any law or  
5 regulation of this State.

6 b. An insurance producer license shall remain in effect unless  
7 revoked or suspended as long as the fee set forth in section 19 of  
8 this act is timely paid and in the case of resident individual  
9 insurance producers, education requirements are timely satisfied.

10 c. An individual insurance producer who allows his license to  
11 lapse may, within 12 months from the due date of the renewal fee,  
12 reinstate the same license without the necessity of passing a written  
13 examination. However, a penalty in an amount not to exceed  
14 double the unpaid renewal fee shall be required for any renewal fee  
15 received after the due date.

16 d. A licensed insurance producer who is unable to comply with  
17 license renewal procedures due to military service or some other  
18 extenuating circumstance, such as long-term medical disability,  
19 may request a waiver of those procedures. The producer may also  
20 request a waiver of any examination requirement or any other fine  
21 or sanction imposed for failure to comply with renewal procedures.

22 e. The license shall contain the licensee's name, address,  
23 personal identification number, and the date of issuance, the lines of  
24 authority, the expiration date and any other information the  
25 commissioner deems necessary.

26 f. Licensees shall inform the commissioner by any means  
27 acceptable to the commissioner of a change of address within 30  
28 days of the change.

29 (cf: P.L.2001, c.210, s.8)

30

31 3. Section 15 of P.L.2001, c.210 (C.17:22A-40) is amended to  
32 read as follows:

33 15. a. The commissioner may place on probation, suspend,  
34 revoke or refuse to issue or renew an insurance producer's license or  
35 may levy a civil penalty in accordance with subsection c. of section  
36 20 of this act or any combination of actions, for any one or more of  
37 the following causes:

38 (1) Providing incorrect, misleading, incomplete or materially  
39 untrue information in the license application;

40 (2) Violating any insurance laws, or violating any regulation,  
41 subpoena or order of the commissioner or of another state's  
42 insurance regulator;

43 (3) Obtaining or attempting to obtain a license through  
44 misrepresentation or fraud;

45 (4) Improperly withholding, misappropriating or converting any  
46 monies or properties received in the course of doing insurance  
47 business;

48 (5) Intentionally misrepresenting the terms of an actual or  
49 proposed insurance contract, policy or application for insurance;

- 1 (6) Having been convicted of a felony or crime of the fourth  
2 degree or higher;
- 3 (7) Having admitted or been found to have committed any  
4 insurance unfair trade practice or fraud;
- 5 (8) Using fraudulent, coercive or dishonest practices, or  
6 demonstrating incompetence, untrustworthiness or financial  
7 irresponsibility in the conduct of insurance business in this State or  
8 elsewhere;
- 9 (9) Having an insurance producer license, or its equivalent,  
10 denied, suspended or revoked in any other state, province, district  
11 or territory;
- 12 (10) Forging another's name to an application for insurance or to  
13 any document related to an insurance transaction;
- 14 (11) Improperly using notes or any other reference material to  
15 complete an examination for an insurance producer license;
- 16 (12) Knowingly accepting insurance business from an  
17 unlicensed insurance producer;
- 18 (13) Failing to comply with an administrative or court order  
19 imposing a child support obligation;
- 20 (14) Failing to pay income tax or comply with any  
21 administrative or court order directing payment of income tax  
22 pursuant to Title 54A of the New Jersey Statutes;
- 23 (15) Intentionally withholding material information or making a  
24 material misstatement in an application for a license;
- 25 (16) Committing any fraudulent act;
- 26 (17) Knowingly facilitating or assisting another person in  
27 violating any insurance laws; **[or]**
- 28 (18) Failing to notify the commissioner within 30 days of his  
29 conviction of any crime, indictment or the filing of any formal  
30 criminal charges, or the suspension or revocation of any insurance  
31 license or authority by a state, other than this State, or the initiation  
32 of formal disciplinary proceedings in a state, other than this State,  
33 affecting the producer's insurance license; or failing to obtain the  
34 written consent pursuant to **[18 U.S.C.]** sections 1033 and 1034 of  
35 title 18, United States Code (18 U.S.C. ss.1033 and 1034); or failing  
36 to supply any documentation that the commissioner may request in  
37 connection therewith;
- 38 (19) Using a business title or designation in any marketing  
39 advertisement, announcement, or statement, including, but not  
40 limited to, a business card, notice, circular, pamphlet, letter, or  
41 poster, or over any radio or television station, or broadcast in any  
42 other way, that indicates or tends to indicate that the insurance  
43 producer:
  - 44 (a) completed any prelicensing, continuing, or other voluntary or  
45 mandatory supplemental education course of study;
  - 46 (b) is qualified for a particular line of authority not associated  
47 with the insurance producer's license;
  - 48 (c) is certified or licensed to practice any other profession, or  
49 engage in any other occupation, governed or regulated pursuant to

1 State law, including, but not limited to, the provisions of Title 45 of  
2 the Revised Statutes, unless that insurance producer holds a current  
3 State issued or recognized certification or license for that other  
4 practice or profession; or

5 (d) is affiliated with, or endorsed by, any federal, State, or local  
6 government entity or subdivision thereof, any business entity, or  
7 any person, unless that insurance producer is employed, contracted,  
8 or otherwise actually affiliated with or endorsed by, as evidenced  
9 through verifiable documentation, the government entity or  
10 subdivision, business entity, or person; or

11 (20) Failing, whenever selling or recommending the purchase of  
12 an annuity subject to the provisions of N.J.S.17B:25-1 et seq.:

13 (a) to establish reasonable grounds, as documented by the  
14 insurance producer on a form prescribed by the commissioner, to  
15 demonstrate that the annuity is suitable for the prospective or actual  
16 purchaser on the basis of facts disclosed by the purchaser through  
17 reasonable inquiries, which information shall include, but not be  
18 limited to:

19 (i) the purchaser's financial status;

20 (ii) the purchaser's tax status;

21 (iii) the purchaser's investment objectives, generally and with  
22 respect to the specific annuity contract sold or recommended for  
23 purchase; and

24 (iv) any other information as required by the commissioner; and

25 (b) to provide the actual purchaser with a 10-day right to cancel  
26 the annuity contract.

27 b. If the action by the commissioner is to nonrenew or to deny  
28 an application for an insurance producer license, the commissioner  
29 shall notify the applicant or licensee and advise, in writing, the  
30 applicant or licensee of the reason for the denial or nonrenewal of  
31 the license. The applicant or licensee may make written demand  
32 upon the commissioner for a hearing before the commissioner, or  
33 his designee, to determine the reasonableness of the commissioner's  
34 action. The hearing shall be held pursuant to the "Administrative  
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

36 c. The insurance producer license of a business entity may be  
37 suspended, revoked or refused if the commissioner finds, after  
38 hearing, that an individual licensee's violation was known or should  
39 have been known by one or more of the partners, officers or  
40 managers acting on behalf of the business entity and the violation  
41 was neither reported to the commissioner nor corrective action  
42 taken.

43 d. The commissioner shall retain the authority to enforce the  
44 provisions of and impose any penalty or remedy authorized by this  
45 act and Title 17 of the Revised Statutes or Title 17B of the New  
46 Jersey Statutes against any person who is under investigation for or  
47 charged with a violation of this act or Title 17 of the Revised  
48 Statutes or Title 17B of the New Jersey Statutes even if the person's

1 license or registration has been surrendered or has lapsed by  
2 operation of law.

3 (cf: P.L.2001, c.210, s.15)

4

5 4. (New section) An insurance producer and the insurer, as  
6 provided by any applicable statutory or common law fiduciary duty,  
7 whose insurance is sold, solicited or negotiated by that insurance  
8 producer, shall be liable to any aggrieved person for damages,  
9 reasonable attorney's fees, and costs of suit in a civil cause of  
10 action brought in the Superior Court or other court of competent  
11 jurisdiction for any violation of the provisions of the "New Jersey  
12 Insurance Producer Licensing Act of 2001," P.L.2001, c.210  
13 (C.17:22A-26 et seq.). The insurance producer and insurer, in any  
14 cause of action provided by this section, may additionally be liable  
15 to the aggrieved person for punitive damages.

16

17 5. This act shall take effect on the first day of the fourth month  
18 next following enactment.

19

20

21

#### STATEMENT

22

23 This bill amends and supplements the "New Jersey Insurance  
24 Producer Licensing Act of 2001," P.L.2001, c.210 (C.17:22A-26 et  
25 seq.), to regulate certain credentialing and trade practices of  
26 insurance producers.

27 Specifically, the bill requires all prospective and current resident  
28 licensees to receive initial educational qualifications and any  
29 subsequent, supplemental or continuing education credits from only  
30 courses of study approved by the Commissioner of Banking and  
31 Insurance. In connection with this greater regulation of educational  
32 studies and to prevent deceptive marketing with respect to an  
33 insurance producer's educational achievements, the bill specifies  
34 licensing violations associated with an insurance producer's use of  
35 any business title or designation, in any marketing advertisement,  
36 announcement, or statement, that indicates or tends to indicate that  
37 the producer: completed any prelicensing, supplemental, or  
38 continuing education course of study; is licensed for a particular  
39 line of authority not associated with the producer's license; or is  
40 certified or licensed to practice any other profession, or engage in  
41 any other occupation, governed or regulated pursuant to State law,  
42 unless that insurance producer holds a current State issued or  
43 recognized certification or license for that other practice or  
44 profession.

45 Under the bill, another new licensing violation associated with  
46 insurance producer marketing is based on the use of any  
47 advertisement, announcement, or statement that indicates or tends  
48 to indicate that the producer is affiliated with, or endorsed by, any  
49 federal, State, or local government entity or subdivision thereof, any

1 business entity, or any person, unless that insurance producer is  
2 employed, contracted, or otherwise actually affiliated with or  
3 endorsed by, as evidenced through verifiable documentation, the  
4 government entity or subdivision, business entity, or person.

5 Additionally, with respect to individual annuity products, the bill  
6 specifically sets forth a duty of good faith and fair dealing for  
7 insurance producers regarding prospective and actual purchasers of  
8 such products. An insurance producer is required to establish  
9 reasonable grounds to demonstrate that an annuity product  
10 recommended for purchase, or actually sold, is suitable for the  
11 prospective or actual purchaser based on facts disclosed by the  
12 purchaser through reasonable inquiries. The information  
13 establishing such reasonable grounds of suitability shall be  
14 documented on a form prescribed by the Commissioner of Banking  
15 and Insurance and shall include, but not be limited to, the  
16 purchaser's financial status, tax status, investment objectives  
17 (generally and with respect to the specific annuity contract sold),  
18 and any other information as required by the commissioner.  
19 Further, the insurance producer shall provide an actual purchaser of  
20 an annuity contract a 10-day right to cancel the contract. This  
21 additional regulation of insurance producer annuity product  
22 transactions is grounded in the growing complexity and variety of  
23 such products, as well as the heightened targeting of such products  
24 to senior citizens who may be more vulnerable to aggressive  
25 marketing and sales efforts.

26 Finally, the bill establishes, with respect to violations of the  
27 bill's provisions, as well as any violation of the "New Jersey  
28 Insurance Producer Licensing Act of 2001," a civil cause of action  
29 for any person aggrieved by the wrongful actions of an insurance  
30 producer and the insurer, as provided by any applicable statutory or  
31 common law fiduciary duty, whose insurance is sold, solicited or  
32 negotiated by that insurance producer in relation to the violation. In  
33 addition to damages, reasonable attorney's fees, and costs of suit,  
34 the insurance producer and insurer may be liable to the aggrieved  
35 person for punitive damages. The bill's express inclusion of insurer  
36 liability for the violations of insurance producers intends to deter  
37 insurance carriers from the improper supervision over the offering  
38 and sales of their insurance products.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2252

# STATE OF NEW JERSEY

DATED: JUNE 19, 2008

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2252.

This substitute provides marketing, information disclosure, and product suitability requirements for certain annuities directly solicited to consumers.

An annuity is a type of insurance product for which an insurer, in exchange for charges (akin to premiums) or other considerations provided for the insurance, subsequently makes a series of income payments at regular intervals over a set period; consumers most often obtain annuity coverage for use as future retirement income.

The substitute prohibits an insurance producer or an agent, representative or member of a fraternal benefit society not required to be licensed as a producer (hereafter "insurance agent"), or an insurer involved in the solicitation, negotiation, or sale of annuities from using a certification, professional designation, or form of advertising expressing or implying, in an untrue, deceptive, misleading, or false manner, that the person or entity has any special education, training, or experience in connection with advising or servicing senior citizens or retirees. The substitute's marketing provisions are not applicable to a title or designation conferred through an academic degree from an accredited institution of higher education, or a professional job title presented by an employer or other organization licensed or registered by a state or federal financial services agency, 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.

To assist consumers, the substitute requires the Commissioner of Banking and Insurance to approve, by regulation, a document to serve as an annuities buyer's guide. The buyer's guide shall include a description of various kinds of annuities, standard features of annuities, and information concerning the negotiation and sale of annuities. The substitute requires the commissioner to make the approved buyer's guide available on the department's Internet website.

The substitute directs the commissioner to provide regulatory approval to the standard form of an annuity contract disclosure



statement, to be used by an insurance agent or insurer involved in the solicitation, negotiation, or sale of an annuity, to give the consumer highlighted information concerning that particular annuity. The substitute requires an insurance agent or insurer to provide the annuity contract disclosure statement, as well as a copy of the department's buyer's guide, to any consumer who applies for an annuity, no later than five business days after receipt of the application.

The substitute prohibits an insurance agent or insurer from negotiating or selling an annuity to a consumer unless the agent 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. The substitute requires the insurance agent or insurer to collect this information in writing, on a form prescribed by the commissioner by regulation. Under the substitute, an insurance agent or insurer shall not have any obligation to a consumer concerning the suitability of an annuity: 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; or if the consumer: (1) refuses to provide the relevant information requested, or does not provide complete or accurate information; or (2) chooses to obtain an annuity other than the annuity negotiated and offered.

To assure compliance with the product suitability requirements of the substitute, the substitute requires an insurer to establish and maintain a system of supervision regarding those annuities directly negotiated and sold by the insurer. This system of supervision shall include a written set of procedures concerning the negotiation and sale of annuities, and periodic reviews of information collected by the insurer on the annuities negotiated and sold, as set forth in regulation. The substitute allows an insurance agent of the insurer to either adopt the insurer's system of supervision or establish and maintain a separate system to assure compliance.

For annuities issued to consumers, the substitute requires that the annuity include an initial cancellation period for the new owner, which shall be a period of not less than 10 days after the date this owner receives the annuity. During this period, the owner may cancel the annuity and receive from the insurer a prompt refund of any charge paid for the annuity by mailing or otherwise surrendering the annuity together with a written request for cancellation.

The substitute requires the issuing of a report to the owner by the insurer, at least annually, on information concerning the annuity. This information shall include: the total charges and other considerations provided for the annuity, any amount charged against the annuity's contract value, and interest credited; and the amount owed on any outstanding loan borrowed by the owner against the contract's value as of the end of the current reporting period.

A violation of the requirements of the substitute will be an insurance trade practices violation pursuant to N.J.S.17B:30-1 et seq. Pursuant to the commissioner's authority to regulate such trade practices, the commissioner may, upon finding a violation has occurred or is occurring, order an insurer or insurance agent of the insurer to take reasonably appropriate corrective action regarding any consumer harmed by a violation. The commissioner may alter, modify, or set aside, in whole or in part, any order concerning a penalty for a violation, if this corrective action occurs promptly to the satisfaction of the commissioner.

As substituted and reported by the committee, this bill is identical to Senate Bill No. 1165 SCS.

FISCAL IMPACT:

This substitute was not certified as requiring a fiscal note. It is expected that the relatively minor departmental action required, very similar to current departmental responsibilities, can be accomplished with current resources.



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JON S. CORZINE  
Governor

[En Español](#)

**For Immediate Release:**

**Date:** September 19 2008

**For More Information:**

Robert Corrales

**Phone:** 609-777-2600

### Governor Signs Predatory Annuities Prevention Act

**PRINCETON** - Governor Jon S. Corzine today signed legislation to protect vulnerable consumers from predatory annuity sales. The bill, A2252/S1165, is based on three national model regulations that comprehensively address issues regarding the marketing of annuities, particularly to senior citizens.

"We're here today to put a stop to the deceptive practices that lead a vulnerable population to lose much of their hard-earned savings," said Governor Corzine. "With nearly \$15 trillion dollars invested by people over the age of 50 in this nation, the senior population is very dependent on their investments yet susceptible to disingenuous investment practices. This important bill, spearheaded by our friends at the AARP and embraced by committed legislators, seeks to protect unsuspecting New Jersey seniors from dangerously risky annuities."

The bill provides certain requirements for marketing, information disclosure and product suitability. It prohibits those who sell annuities from falsely representing their expertise on marketing materials. Under the new law, unsubstantiated claims of expertise could result in loss of license. In addition, annuities salespersons are required to fill out disclosure forms that clearly outline the important facts of the purchase to the buyer, the investment objectives as well as contract terms. The buyer then has a 10-day right to cancel with no financial penalty.

It is estimated that Americans lose about \$10 billion dollars each year in fraudulent investments.

"This bill will prevent unscrupulous insurance brokers from using inaccurate puffed up titles such as 'elder financial expert' to describe themselves when selling annuities to seniors. It will also require a higher level of real disclosure to seniors so that they can be better informed when planning for their futures" said DOBI Commissioner Steven M. Goldman. "The Department of Banking and Insurance worked very closely with the sponsors, AARP, and the responsible participants in the industry to come up with a system that can serve as a national model on this issue."

"This new law will help local residents - namely our seniors - protect their hard-earned finances from the deceptive practices of dishonest financial advisors and brokers," said Senator John H. Adler, (D-Camden). "'Get-rich-quick' schemes have been around since the beginning of time, but this law will send a clear message that we will not allow the much-needed finances of our seniors to be compromised."

"Residents looking to invest for their retirements deserve every assurance that their hard-earned money is being handled by trained and certified financial experts," said Assemblywoman Linda R. Greenstein (D-Middlesex/Mercer). "Protecting residents from receiving bad advice from bogus advisors is essential, especially in these times of financial uncertainty."

Primary sponsors of the legislation include Senators John H. Adler (D-Camden) and Robert W. Singer (R-Burlington/Mercer/Monmouth/Ocean), Assemblywomen Linda R. Greenstein (D-Middlesex/Mercer) and Nilsa Cruz-Perez (D-Camden/Gloucester) and Assemblymen Anthony Chiappone (D-Hudson) and John F. McKeon (D-Essex).

###

Photos from Governor Corzine's public events are available  
in the [Governor's Newsroom section](#) on the State of New Jersey web page.

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