

# STATE OF NEW YORK

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4048

2021-2022 Regular Sessions

## IN SENATE

February 1, 2021

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Introduced by Sens. BRESLIN, ADDABBO -- read twice and ordered printed,  
and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to direct response  
marketing of life insurance

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Section 3209 of the insurance law, as amended by chapter  
2 616 of the laws of 1997, subsection (b) as amended by chapter 170 of the  
3 laws of 2008, subparagraph (H) as amended, subparagraph (I) as added and  
4 subparagraph (J) of paragraph 2 of subsection (b) as relettered by chap-  
5 ter 535 of the laws of 2013, paragraph 1 of subsection (d), paragraph 2  
6 of subsection (e) and subsection (h) as amended by chapter 13 of the  
7 laws of 2002, is amended to read as follows:

8 § 3209. Life insurance, annuities and funding agreements disclosure  
9 requirements. (a) Except as hereafter exempted, this section shall apply  
10 to any solicitation, negotiation or procurement of life insurance, annu-  
11 ities or funding agreements occurring within this state. This section  
12 shall apply to any issuer of life insurance or annuity contracts or  
13 funding agreements, including fraternal benefit societies and the life  
14 insurance department of a savings and insurance bank. Unless otherwise  
15 specifically included, this section shall not apply to: credit life  
16 insurance; group life insurance; life insurance policies, annuity  
17 contracts, and funding agreements issued in connection with pension and  
18 welfare plans as defined by and to the extent covered by the federal  
19 Employee Retirement Income Security Act of 1974 (ERISA); funding agree-  
20 ments issued to other than individuals pursuant to subsection (b) of  
21 section three thousand two hundred twenty-two of this article; and any  
22 group annuity unless at least one certificate is subject to paragraph  
23 two of subsection (b) of section four thousand two hundred twenty-three  
24 of this chapter.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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(b) (1) No policy of life insurance shall be delivered or issued for delivery in this state [~~after the applicable effective date, as set forth in subsection (n) of this section,~~] unless, at or prior to delivery of the policy, the prospective purchaser has been provided with the following:

(A) a copy of the most recent buyer's guide; and [~~the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken. When sales solicitations are made by mail, without the involvement of an agent or broker, each initial solicitation must include a copy of the buyer's guide unless the policy for which application is made provides for a period of at least thirty days within which the applicant may return the policy for an unconditional refund of the premiums paid, in which event the buyer's guide must be delivered with the policy or prior to delivery of the policy; in addition, such solicitation must alert the prospective purchaser of the right to receive, upon request, a buyer's guide and a policy summary prior to delivery of the policy; and~~]

(B) a policy summary [~~upon delivery of the policy~~], provided that the policyholder may return the policy for an unconditional refund of the premiums paid within the period of time provided under paragraph eleven of subsection (a) of section three thousand two hundred three of this article and paragraph thirteen of subsection (a) of section four thousand two hundred forty of this chapter.

(2) No annuity contract or life insurance policy or certificate with an equity index account shall be delivered or issued for delivery in this state unless, [~~no later than at the time of application~~] at or prior to delivery of the contract, the prospective purchaser has been provided with a disclosure statement containing the following:

(A) a statement in bold type to the effect that the equity index account provides benefits linked to an external equity index and does not participate directly in the equity market;

(B) a statement identifying the equity index used in the equity index formula, together with a description of any alternate index should the initial index no longer be publicly available;

(C) a statement indicating whether paid dividends are included in changes in the equity index, together with a description of how such dividends, or lack thereof, would affect the changes in the equity index; the statement must provide the average dividend rate over the lesser of ten years or the calculable life of the index;

(D) a statement fully describing the equity index formula;

(E) a statement explaining and illustrating the equity index formula including any features of the equity index formula subject to change after issuance of the contract, policy or certificate;

(F) a statement identifying the initial minimum guaranteed interest rate for the minimum accumulation value of an equity index account and any withdrawal charge;

(G) a statement identifying the initial current and the minimum specified participation rate, i.e., how much of the increase in the index will be used to calculate the indexed linked interest rate, if any;

(H) a statement identifying the initial current and the minimum upper limit or cap on the indexed linked interest rate, if any;

(I) for a life insurance policy crediting additional amounts in accordance with an equity index less frequently than annually, a statement to the effect that: if the policyholder requests a full surrender of a policy prior to the expiration of the equity index crediting period, no additional interest based on the equity index will be credited

1 and that only the guaranteed interest will be credited to the account;  
2 and the policyholder is advised to consider alternatives to a full  
3 surrender of the policy prior to the expiration of the equity index  
4 crediting period, such as a policy loan or, if available, a partial  
5 withdrawal of the policy; and

6 (J) other disclosure information the superintendent deems appropriate.

7 (c) Every insurer must provide, to any policyholder who so requests, a  
8 policy summary for each in-force premium-paying policy for which no  
9 policy summary has ever been furnished. The insurer may charge the poli-  
10 cyholder a reasonable fee for preparation of this summary, subject to  
11 guidelines specified in rules promulgated by the superintendent.

12 ~~(d) [The preliminary information shall be in writing and include, to~~  
13 ~~the extent applicable, the following:]~~

14 ~~(1) the name and address of the insurance agent or broker or, if no~~  
15 ~~agent or broker is involved, a statement of the procedure to be followed~~  
16 ~~in order to receive responses to inquiries concerning the preliminary~~  
17 ~~information;~~

18 ~~(2) the full name and home office, administrative office or branch or~~  
19 ~~agency office address of the company in whose name the life insurance~~  
20 ~~policy is to be written;~~

21 ~~(3) the date of the preliminary information and the generic name, the~~  
22 ~~initial amount of insurance and the initial annual premium for the basic~~  
23 ~~policy;~~

24 ~~(4) the total guaranteed cash surrender values for the basic policy,~~  
25 ~~at the end of the tenth and twentieth policy years or at the end of the~~  
26 ~~premium-paying period if earlier. These values may be shown on a per~~  
27 ~~thousand or per unit basis;~~

28 ~~(5) the effective policy loan annual percentage interest rate, if the~~  
29 ~~policy would contain this provision, and whether this rate is applied in~~  
30 ~~advance or in arrears, adjustable or fixed;~~

31 ~~(6) for the life insurance policies described in paragraph one of~~  
32 ~~subsection (n) of this section, life insurance cost indexes and the~~  
33 ~~equivalent level annual dividend for the basic policy for ten and twenty~~  
34 ~~years, but in no case beyond the premium-paying period;~~

35 ~~(7) in addition, the applicant shall be advised that, when the policy~~  
36 ~~is issued, a complete policy summary, including cost data, based on the~~  
37 ~~benefits, premiums and dividends of the policy as issued, will be~~  
38 ~~furnished; and that, following the receipt of the policy and policy~~  
39 ~~summary, there will be a period of not less than ten days within which~~  
40 ~~the applicant may return the policy for an unconditional refund of the~~  
41 ~~premiums paid; and~~

42 ~~(8) notwithstanding the foregoing, no applicant for life insurance~~  
43 ~~shall be prevented or delayed in effecting or applying for coverage by~~  
44 ~~the requirements of this section. In such cases where prior to applica-~~  
45 ~~tion it is impractical to provide any items prescribed by this section,~~  
46 ~~such items may be estimated in good faith or furnished as soon thereaft-~~  
47 ~~er as practical prior to delivery of policy.~~

48 ~~(e)]~~ A policy summary shall include the following:

49 (1) a prominently placed title as follows:

50 "STATEMENT OF POLICY COST AND BENEFIT INFORMATION";

51 (2) the name and address of the insurance agent or broker, or, if no  
52 agent or broker is involved, a statement of the procedure to be followed  
53 in order to receive responses to inquiries regarding the policy summary;

54 (3) the full name and home office, administrative office or branch or  
55 agency office address of the company in whose name the life insurance  
56 policy is to be or has been written;

(4) the generic name of the basic policy and each rider;

(5) ~~[for the life insurance policies described in paragraph one of subsection (n) of this section,~~] the following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including the years for which life insurance cost indexes are displayed and at least one age from sixty through sixty-five or maturity, whichever is earlier:

(A) the annual premium for the basic policy;

(B) the annual premium for each optional rider;

(C) guaranteed amount payable upon death at the beginning of the policy year regardless of the cause of death, other than suicide or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;

(D) total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;

(E) cash dividends payable at the end of the year with values shown separately for the basic policy and each rider. Dividends need not be displayed beyond the twentieth policy year; and

(F) guaranteed endowment amounts payable under the policy which are not included in guaranteed cash surrender values above;

(6) the effective policy loan annual percentage interest rate if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy provides for an adjustable loan interest rate, the policy summary shall so state, shall set forth the frequency at which the rate is to be determined for that policy, and shall describe the index upon which the maximum rate is based at the time the policy is issued;

(7) ~~[for the life insurance policies described in paragraph one of subsection (n) of this section,~~] (A) life insurance cost indexes for ten and twenty years but in no case beyond the premium-paying period. Separate indexes are to be displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than twelve months and guaranteed insurability benefits, nor for basic policies or optional riders covering more than one life;

(B) the equivalent level annual dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which life insurance cost indexes are displayed;

(8) a policy summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed; in addition, the summary shall~~[, for the life insurance policies described in paragraph one of subsection (n) of this section,~~] include a statement in close proximity to the equivalent level annual dividend as follows: "An explanation of the intended use of the equivalent level annual dividend is included in the buyer's guide";

(9) a statement in close proximity to the life insurance cost indexes as follows:

"AN EXPLANATION OF THE INTENDED USE OF THESE INDEXES IS PROVIDED IN THE BUYER'S GUIDE"; and

(10) the date on which the policy summary is prepared.

1    ~~(f)~~ (e) The policy summary must be a separate document. All informa-  
2    tion required to be disclosed must be set out in such a manner as not to  
3    minimize or render any portion thereof obscure. Any amounts which remain  
4    level for two or more years of the policy may be represented by a single  
5    number if it is clearly indicated what amounts are applicable for each  
6    policy year. Amounts in paragraph five of subsection ~~(e)~~ (d) of this  
7    section shall be listed in total, not on a per thousand or per unit  
8    basis. If more than one insured is covered under one policy or rider,  
9    guaranteed death benefits shall be displayed separately for each insured  
10   or for each class of insureds if death benefits do not differ within the  
11   class. Zero amounts shall be displayed as zero and shall not be  
12   displayed as a blank space.

13   ~~(g)~~ (f) Every insurer shall maintain, at its home office or princi-  
14   pal office, a complete file containing one copy of each policy summary  
15   form authorized by the insurer for use pursuant to this section.

16   ~~(h)~~ (g) An agent or broker shall inform a prospective purchaser,  
17   prior to commencing a life insurance sales presentation, that he is  
18   acting as a life insurance agent or broker, and inform the prospective  
19   purchaser of the full name of the insurer which he is representing. In  
20   sale situations in which an agent or broker is not involved, the insurer  
21   shall identify its full name.

22   ~~(i)~~ (h) As used in this section, "buyer's guide" means a separate  
23   document published and disseminated by insurers. The language therein  
24   shall be promulgated by the superintendent, and shall, to the extent  
25   practicable and in the public interest as determined by the superinten-  
26   dent, be consistent with the latest version of a buyer's guide as  
27   adopted by the national association of insurance commissioners.

28   ~~(j)~~ (i) For life insurance policies, except term life insurance  
29   policies, which are to be issued to qualify for special tax treatment  
30   under subsection (b) of section four hundred three of the Internal  
31   Revenue Code of 1986, as amended, a written notice shall be delivered to  
32   the proposed insured in a manner satisfactory to the superintendent at  
33   or prior to the time an application is taken and shall read as follows:  
34   "The purchase of a life insurance policy with cash value, which quali-  
35   fies for special tax treatment under section 403(b) of the Internal  
36   Revenue Code of 1986, as amended, may not be appropriate for individuals  
37   seeking to maximize the accumulation of funds for retirement or for  
38   individuals seeking life insurance coverage primarily to provide a  
39   survivorship benefit for the spouse in the event of death prior to  
40   retirement. If an individual needs coverage to continue after retire-  
41   ment, current tax laws require the commencement of taxable distributions  
42   under the tax sheltered annuity plan (TSA) no later than age seventy and  
43   one-half which may necessitate some adjustment in the cash value life  
44   insurance policy or may result in increased insurance costs in future  
45   policy years. You should consult with your tax advisor before purchasing  
46   life insurance with cash value as part of a tax sheltered annuity  
47   (TSA)."

48   ~~(k)~~ (j) The superintendent shall promulgate by regulation the  
49   contents ~~and~~, allowable format ~~[of the preliminary information]~~ and  
50   ~~the~~ information to appear in the policy summary. The superintendent  
51   shall also promulgate by regulation standards governing the content,  
52   format and use of illustrations of individual life insurance policies  
53   and certain group life insurance policies and certificates, life insur-  
54   ance policies subject to section four thousand two hundred thirty-two of  
55   this chapter, variable life insurance policies under which the death  
56   benefits and cash values vary in accordance with the unit values of

investments held in a separate account and individual annuities, individual funding agreements, variable annuities, and group annuity contracts if any certificate is issued to which paragraph two of subsection (b) of section four thousand two hundred twenty-three of this chapter applies. The illustration regulation shall be consistent, to the greatest extent practicable and in the public interest as determined by the superintendent, with the illustration regulations as adopted by the national association of insurance commissioners. The superintendent in developing regulations to govern the content and format of the [~~preliminary information~~] policy summary and illustrations shall ensure that such forms are presented in an easy, concise and meaningful way to enable consumers to understand the operation of the policy or contract.

[~~(l)~~] (~~k~~) An insurer of any life insurance policy or annuity contract subject to this section shall notify the superintendent whether its policies or contract forms have been or will be marketed with or without an illustration. For those policies and contracts marketed with an illustration which complies with the regulations promulgated pursuant to subsection [~~(k)~~] (~~j~~) of this section, no [~~preliminary information or~~] policy summary shall be required. For those policies which are not marketed with an illustration, the [~~preliminary information and~~] policy summary shall be provided pursuant to the provisions of this section.

[~~(m)~~] (~~l~~) The superintendent, by regulation, shall determine the applicability of the illustration regulation promulgated pursuant to subsection [~~(k)~~] (~~j~~) of this section to group life insurance policies and group annuities and funding agreements. Such determination shall be consistent, to the greatest extent practicable and in the public interest, with the illustration regulations as adopted by the national association of insurance commissioners.

~~[(n) The effective dates of this section as applied to policies of life insurance, annuity contracts, and funding agreements shall be as follows:~~

~~(1) for individual life insurance policies, certain group life insurance policies and certificates and life insurance policies subject to section four thousand two hundred thirty-two of this chapter, January first, nineteen hundred ninety-eight;~~

~~(2) for annuities and funding agreements, the date of promulgation of regulations by the superintendent pursuant to subsection (k) of this section but not later than June thirty, nineteen hundred ninety-eight;~~

~~(3) for variable life insurance policies and variable annuities, the date of promulgation of regulations by the superintendent but not later than January first, nineteen hundred ninety-nine.~~

~~No less than three months prior to promulgating the regulations required to implement subsection (k) of this section pursuant to paragraphs two and three of this subsection, the superintendent shall hold public hearings on such regulations.]~~

§ 2. Paragraph 3 of subsection (a) of section 2123 of the insurance law, as amended by section 37-a of part D of chapter 56 of the laws of 2013, is amended and a new paragraph 4 is added to read as follows:

(3) Any replacement of individual life insurance policies or individual annuity contracts of an insurer by an agent, representative of the same or different insurer or broker shall conform to standards promulgated by regulation by the superintendent. Such regulation shall:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;



1 (B) require notification of the proposed replacement to the insurer  
2 whose policies or contracts are intended to be replaced;

3 (C) in the case of an application that is initiated as a result of a  
4 direct response solicitation, include provisions relating to the duties  
5 of insurers with respect to direct response solicitations that are  
6 consistent with the life insurance and annuities replacement regulation  
7 as adopted by the national association of insurance commissioners;

8 (D) require the timely exchange of illustrative and cost information  
9 required by section three thousand two hundred nine of this chapter and  
10 necessary for completion of a comparison of the proposed and replaced  
11 coverage; and

12 [~~(D)~~] (E) provide for a sixty-day period following issuance of the  
13 replacement policies or contracts during which the policy or contract  
14 owner may return the policies or contracts and reinstate the replaced  
15 policies or contracts.

16 (4) For purposes of paragraph three of this subsection, "direct  
17 response solicitation" means a solicitation through a sponsoring or  
18 endorsing entity or individual solely through the mail, telephone, the  
19 internet or other mass communication media.

20 § 3. Paragraph 6 of subsection (a) of section 4226 of the insurance  
21 law, as added by chapter 616 of the laws of 1997 is amended and a new  
22 subsection (e) is added to read as follows:

23 (6) replace the individual life insurance policies or individual annu-  
24 ity contracts of an insurer by the same or different insurer without  
25 conforming to the standards promulgated by regulation by the superinten-  
26 dent. Such regulation shall:

27 (A) specify what constitutes the replacement of a life insurance poli-  
28 cy or annuity contract and the proper disclosure and notification proce-  
29 dures to replace a policy or contract;

30 (B) require notification of the proposed replacement to the insurer  
31 whose policies or contracts are intended to be replaced;

32 (C) in the case of an application that is initiated as a result of a  
33 direct response solicitation, include provisions relating to the duties  
34 of insurers with respect to direct response solicitations that are  
35 consistent with the life insurance and annuities replacement regulation  
36 as adopted by the national association of insurance commissioners;

37 (D) require the timely exchange of illustrative and cost information  
38 required by section three thousand two hundred nine of this chapter and  
39 necessary for completion of a comparison of the proposed and replaced  
40 coverage; and

41 [~~(D)~~] (E) provide for a sixty-day period following issuance of the  
42 replacement policies or contracts during which the policy or contract  
43 owner may return the policies or contracts and reinstate the replaced  
44 policies or contracts.

45 (e) For purposes of paragraph six of subsection (a) of this section,  
46 "direct response solicitation" means a solicitation through a sponsoring  
47 or endorsing entity or individual solely through the mail, telephone,  
48 the internet or other mass communication media.

49 § 4. This act shall take effect immediately.