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

(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 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.

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

(J) other disclosure information the superintendent deems appropriate.

(3) No participating dividend-paying paid-up deferred annuity contract shall be delivered or issued for delivery in this state unless a prospective purchaser is provided with a disclosure statement, no later than at the time of application, containing the following:

(A) a statement indicating that dividends are not guaranteed under the participating dividend-paying paid-up deferred annuity contract and the income is therefore not guaranteed to increase from the dollar amount set at the time of issue; and

(B) a statement indicating that the initial income under a participating dividend-paying paid-up deferred annuity contract may be lower than the initial income under a fully guaranteed paid-up deferred annuity contract.

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

(d) The preliminary information shall be in writing and include, to the extent applicable, the following:

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

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

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

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

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

(6) for the life insurance policies described in paragraph one of

subsection (n) of this section, life insurance cost indexes and the equivalent level annual dividend for the basic policy for ten and twenty years, but in no case beyond the premium-paying period;

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

(8) notwithstanding the foregoing, no applicant for life insurance shall be prevented or delayed in effecting or applying for coverage by the requirements of this section. In such cases where prior to application it is impractical to provide any items prescribed by this section, such items may be estimated in good faith or furnished as soon thereafter as practical prior to delivery of policy.

(e) A policy summary shall include the following:

(1) a prominently placed title as follows:

"STATEMENT OF POLICY COST AND BENEFIT INFORMATION";

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

(3) the full name and home office, administrative office or branch or agency office address of the company in whose name the life insurance 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.

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

(g) Every insurer shall maintain, at its home office or principal office, a complete file containing one copy of each policy summary form authorized by the insurer for use pursuant to this section.

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

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

(j) For life insurance policies, except term life insurance policies, which are to be issued to qualify for special tax treatment under subsection (b) of section four hundred three of the Internal Revenue Code of 1986, as amended, a written notice shall be delivered to the

proposed insured in a manner satisfactory to the superintendent at or prior to the time an application is taken and shall read as follows: "The purchase of a life insurance policy with cash value, which qualifies for special tax treatment under section 403(b) of the Internal Revenue Code of 1986, as amended, may not be appropriate for individuals seeking to maximize the accumulation of funds for retirement or for individuals seeking life insurance coverage primarily to provide a survivorship benefit for the spouse in the event of death prior to retirement. If an individual needs coverage to continue after retirement, current tax laws require the commencement of taxable distributions under the tax sheltered annuity plan (TSA) no later than age seventy and one-half which may necessitate some adjustment in the cash value life insurance policy or may result in increased insurance costs in future policy years. You should consult with your tax advisor before purchasing life insurance with cash value as part of a tax sheltered annuity (TSA)."

(k) The superintendent shall promulgate by regulation the contents and allowable format of the preliminary information and the information to appear in the policy summary. The superintendent shall also promulgate by regulation standards governing the content, format and use of illustrations of individual life insurance policies and certain group life insurance policies and certificates, life insurance policies subject to section four thousand two hundred thirty-two of this chapter, variable life insurance policies under which the death 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) 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) 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) The superintendent, by regulation, shall determine the applicability of the illustration regulation promulgated pursuant to subsection (k) 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.