

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-234
HOUSE BILL 655**

AN ACT TO REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; AND REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT.

The General Assembly of North Carolina enacts:

PART I. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 1.1. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

Regulation of Life Insurance Solicitation, Standards of Disclosure for Annuities and Life Insurance."

SECTION 1.2. Article 60 of Chapter 58 of the General Statutes is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 1.3. G.S. 58-60-1 reads as rewritten:

"§ 58-60-1. Purpose of Article. Short title; purpose.

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which that~~ is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 1.4. G.S. 58-60-5 reads as rewritten:

"§ 58-60-5. Scope of Article; Scope; exemptions.

(a) Except as otherwise provided in this ~~Article, Part,~~ this Article-Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State.

This ~~Article-Part~~ applies to any issuer of a life insurance contract, including fraternal benefit societies.

- (b) Unless otherwise specifically included, this ~~Article-Part~~ does not apply to:
- (1) ~~Annuities, Individual and group annuity contracts.~~
 - (2) Credit life ~~insurance, insurance.~~
 - (3) Group life ~~insurance, insurance~~ (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).
 - (4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA), (ERISA).~~
 - (5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article-Part~~ is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 1.5. G.S. 58-60-10 reads as rewritten:

"§ 58-60-10. Definitions.

Unless the context of use indicates a different meaning, for the purposes of this ~~Article-Part~~, the following definitions shall apply:

...."
SECTION 1.6. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not 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 subparagraph e of this paragraph shall be listed in total, not on a per thousand nor 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. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 1.7. G.S. 58-60-20(a) reads as rewritten:

"(a) Each insurer subject to this ~~Article-Part~~ shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the

insurer for use pursuant to this ~~Article, Part~~. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use."

SECTION 1.8. G.S. 58-60-20(i) reads as rewritten:

"(i) For the purposes of this ~~Article, Part~~, the annual premium for a basic policy or rider, for which the insurer reserves the right to change the premium, shall be the maximum annual premium."

SECTION 1.9. G.S. 58-60-25 reads as rewritten:

"§ 58-60-25. Adoption of Buyer's Guide; requirements.

Any insurer soliciting life insurance in this State on or after December 1, 1979, shall adopt and use a Buyer's Guide, and the adoption and use by an insurer of the Buyer's Guide promulgated by the National Association of Insurance Commissioners in the NAIC Model Life Insurance Solicitation Regulations shall be in compliance with the requirements of this ~~Article, Part~~."

SECTION 1.10. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 2. Regulation of Small Face Amount Life Insurance Solicitation.

"§ 58-60-90. Title and reference.

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"§ 58-60-95. Purpose; intent; and scope.

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars (\$15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"§ 58-60-100. Disclosure requirements.

(a) An insurer issuing a small face amount policy where, over the term of the policy, the cumulative policy premiums paid may exceed the face amount of the policy, shall clearly and prominently disclose, on or before policy delivery, the length of time until the cumulative policy premiums paid may exceed the face amount of the policy.

(b) If an insurer is required to provide a disclosure under subsection (a) of this section, the insurer shall clearly and prominently disclose, on or before policy delivery,

available premium payment plan and product alternatives. If no alternatives exist, the insurer shall clearly and prominently disclose that there are no such alternatives.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"§ 58-60-105. Insurer duties.

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 1.11. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Annuity Solicitation.

"§ 58-60-120. Title and reference.

This Part may be cited as the "Annuity Disclosure Act".

"§ 58-60-125. Purpose; intent; scope.

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

- (1) Registered or nonregistered variable annuities or other registered products.
- (2) Immediate and deferred annuities that contain no nonguaranteed elements.
- (3) Annuities used to fund any of the following:
 - a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA).
 - b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer.
 - c. A governmental or church plan defined in section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code.
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - e. Structured settlement annuities.
 - f. Charitable gift annuities.
 - g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers, and there is a

direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"§ 58-60-130. Definitions.

As used in this Part:

- (1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.
- (2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.
- (3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.
- (4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.
- (5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-140.
- (6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.
- (7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".
- (8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

- (9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.
- (10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) of the Internal Revenue Code but for the fact that it is not owned by an assignee under a qualified assignment.

"§ 58-60-135. Standards for the disclosure document and buyer's guide.

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-140 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

- (1) With respect to an application received as a result of a direct solicitation through the mail:
 - a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.
 - b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.
- (2) With respect to an application received via the Internet:
 - a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.
 - b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.
- (3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement

that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free-look period shall run concurrently with any other free-look period provided under State law or regulation.

"§ 58-60-140. Contents of disclosure document.

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

- (1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.
- (2) The insurer's name and address.
- (3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:
 - a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.
 - b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.
 - c. Periodic income options both on a guaranteed and nonguaranteed basis.
 - d. Any value reductions caused by withdrawals from or surrender of the contract.
 - e. How values in the contract can be accessed.
 - f. The death benefit, if available, and how it will be calculated.
 - g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.
 - h. The impact of any rider, such as a long-term care rider.
- (4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.
- (5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"§ 58-60-145. Report to contract owners.

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

- (1) The beginning and end dates of the current report period.

- (2) The accumulation and cash-surrender value, if any, at the end of the previous report period and at the end of the current report period.
- (3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.
- (4) The amount of outstanding loans, if any, as of the end of the current report period."

PART II. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 2. G.S. 58-58-75 reads as rewritten:

"§ 58-58-75. Insurable interest in life and physical ability of employee or agent.

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage or that coverage will be purchased. The notice shall be provided to the employee in connection with the application for coverage or within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART III. GROUP ANNUITY CONTRACTS

SECTION 3. G.S. 58-58-145 reads as rewritten:

"§ 58-58-145. Group annuity contracts defined; ~~requirements.~~ requirements; issuance of individual certificates.

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which ~~such~~ the contract is issued, ~~as herein provided,~~ is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments

on which shall be paid by the holder of ~~such~~ the contract either wholly from the employer's funds or funds contributed by ~~him, the employer,~~ or partly from ~~such~~ the funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder or to the annuitant directly, within 30 days of the annuitant's enrollment in the group annuity contract, an individual certificate for each annuitant which:

- (1) Identifies the annuity to which the annuitant is entitled.
- (2) States the name of the person to whom the annuity is payable.
- (3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART IV. EXPLANATION OF HEADINGS AND EFFECTIVE DATE

SECTION 4. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 5. This act becomes effective January 1, 2006, and applies to policies or certificates issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:00 p.m. this 29th day of July, 2005