

SENIOR CONSUMER ANNUITY RECOMMENDATIONS

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Senate Bill 880

Sponsor: Sen. Gerald Van Woerkom

Senate Committee: Banking and Financial Institutions

House Committee: Insurance

Complete to 6-13-06

A SUMMARY OF SENATE BILL 880 AS PASSED BY THE SENATE 2-9-06

The bill would add a new Chapter 41A to the Insurance Code (MCL 500.4151, et al.) to regulate the sale of annuities to senior consumers, defined as 65 years of age or older.

Under the bill, an insurance producer (agent)—or an insurance company if no agent is involved—would need to **have reasonable grounds for believing that an annuity recommendation to a senior consumer is suitable** on the basis of facts disclosed by the consumer regarding his or her investments, other insurance products, and financial situation and needs. This would apply to the recommendation that a consumer purchase or exchange an annuity.

Before the execution of a purchase or exchange, an agent or company would have to make reasonable efforts to obtain information about the consumer's financial status, tax status, and investment objectives, along with other information for making recommendations.

However, an agent or company would have no obligation to a consumer when the consumer refused to provide relevant information; decided to enter into a transaction not based on a recommendation; or failed to provide complete or accurate information. A recommendation would be required to be reasonable "under all the circumstances actually known . . . at the time of the recommendation."

An insurance company would be required to establish and maintain a system to comply with the new chapter and could contract with a third party, including an insurance producer, to establish and maintain a system of supervision. A company using a third party would have to make reasonable inquiries to assure that the functions were being performed.

An insurance producer would have to either adopt a system of supervision recommendations established by an insurance company or establish and maintain its own system. If an insurance producer developed its own system, that system would have to maintain written procedures and conduct periodic reviews of records reasonably designed to assist in detecting and preventing violations of the new chapter.

An insurance company or insurance producer would not be required either (1) to review all insurance producer-solicited transactions, or (2) to include in its system of supervision an agent's recommendations to senior consumers of products other than the annuities offered by the company or producer.

The commissioner of the Office of Financial and Insurance Services (OFIS) could require companies and producers to take reasonably appropriate corrective action for any senior harmed by a violation. If corrective action was taken promptly, the commissioner could reduce a penalty for a violation.

Information collected from a senior consumer and other information used in making recommendations that were the basis for insurance transactions would have to be maintained for five years and would have to be available to the commissioner of OFIS.

An insurance company that complied with the National Association of Securities Dealers rules on suitability would satisfy the requirements of the new chapter for the recommendation of variable annuities.

The bill would not apply to certain specified transactions, including direct response solicitations where no recommendation is based on information from a senior consumer; employee pension or welfare benefit plans covered by the Employee Retirement and Income Security Act (ERISA); employer profit sharing and pension plans and government and private employer deferred compensation plans covered under the Internal Revenue Code; settlements of personal injury litigation or any dispute or claim resolution process; and formal prepaid funeral contracts.

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan or its local units of government.

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