

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 880

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
(MCL 500.100 to 500.8302) by adding chapter 41A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 41A

ANNUITY RECOMMENDATION TO CONSUMERS

SEC. 4151. AS USED IN THIS CHAPTER:

(A) "ANNUITY" MEANS A FIXED ANNUITY OR VARIABLE ANNUITY THAT  
IS INDIVIDUALLY SOLICITED, WHETHER THE PRODUCT IS CLASSIFIED AS AN  
INDIVIDUAL OR GROUP ANNUITY.

(B) "INSURANCE PRODUCER" OR "PRODUCER" MEANS INSURANCE  
PRODUCER AS DEFINED IN SECTION 1201 AND INCLUDES A BUSINESS ENTITY  
DESCRIBED IN SECTION 1205(2) THAT IS LICENSED AS AN INSURANCE  
PRODUCER UNDER THIS ACT.

(C) "RECOMMENDATION" MEANS ADVICE PROVIDED BY AN INSURANCE

1 PRODUCER, OR AN INSURER WHERE NO PRODUCER IS INVOLVED, TO AN  
2 INDIVIDUAL CONSUMER THAT RESULTS IN A PURCHASE OR EXCHANGE OF AN  
3 ANNUITY IN ACCORDANCE WITH THAT ADVICE.

4 SEC. 4153. (1) THIS CHAPTER APPLIES TO ANY RECOMMENDATION TO  
5 PURCHASE OR EXCHANGE AN ANNUITY MADE TO A CONSUMER BY AN INSURANCE  
6 PRODUCER, OR AN INSURER WHERE NO PRODUCER IS INVOLVED, THAT RESULTS  
7 IN THE PURCHASE OR EXCHANGE RECOMMENDED.

8 (2) THIS CHAPTER DOES NOT APPLY TO ANY RECOMMENDATION TO  
9 PURCHASE OR EXCHANGE AN ANNUITY INVOLVING ANY OF THE FOLLOWING:

10 (A) DIRECT RESPONSE SOLICITATIONS WHERE THERE IS NO  
11 RECOMMENDATION BASED ON INFORMATION COLLECTED FROM THE CONSUMER.

12 (B) CONTRACTS USED TO FUND ANY OF THE FOLLOWING:

13 (i) AN EMPLOYEE PENSION OR WELFARE BENEFIT PLAN THAT IS COVERED  
14 BY THE EMPLOYEE RETIREMENT AND INCOME SECURITY ACT, PUBLIC LAW 93-  
15 406.

16 (ii) A PLAN DESCRIBED BY 26 USC 401(A), 26 USC 401(K), 26 USC  
17 403(B), 26 USC 408(K), OR 26 USC 408(P), IF ESTABLISHED OR  
18 MAINTAINED BY AN EMPLOYER.

19 (iii) A GOVERNMENT OR CHURCH PLAN DEFINED IN 26 USC 414, A  
20 GOVERNMENT OR CHURCH WELFARE BENEFIT PLAN, OR A DEFERRED  
21 COMPENSATION PLAN OF A STATE OR LOCAL GOVERNMENT OR TAX EXEMPT  
22 ORGANIZATION UNDER 26 USC 457.

23 (iv) A NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENT  
24 ESTABLISHED OR MAINTAINED BY AN EMPLOYER OR PLAN SPONSOR.

25 (v) SETTLEMENTS OF OR ASSUMPTIONS OF LIABILITIES ASSOCIATED  
26 WITH PERSONAL INJURY LITIGATION OR ANY DISPUTE OR CLAIM RESOLUTION  
27 PROCESS.

1 (vi) FORMAL PREPAID FUNERAL CONTRACTS.

2 SEC. 4155. (1) IN RECOMMENDING TO A CONSUMER THE PURCHASE OF  
3 AN ANNUITY OR THE EXCHANGE OF AN ANNUITY THAT RESULTS IN ANOTHER  
4 INSURANCE TRANSACTION OR SERIES OF INSURANCE TRANSACTIONS, THE  
5 INSURANCE PRODUCER, OR THE INSURER WHERE NO PRODUCER IS INVOLVED,  
6 SHALL HAVE REASONABLE GROUNDS FOR BELIEVING THAT THE RECOMMENDATION  
7 IS SUITABLE FOR THE CONSUMER ON THE BASIS OF THE FACTS DISCLOSED BY  
8 THE CONSUMER AS TO HIS OR HER INVESTMENTS AND OTHER INSURANCE  
9 PRODUCTS AND AS TO HIS OR HER FINANCIAL SITUATION AND NEEDS.

10 (2) PRIOR TO THE EXECUTION OF A PURCHASE OR EXCHANGE OF AN  
11 ANNUITY RESULTING FROM A RECOMMENDATION, AN INSURANCE PRODUCER, OR  
12 AN INSURER WHERE NO PRODUCER IS INVOLVED, SHALL MAKE REASONABLE  
13 EFFORTS TO OBTAIN ALL OF THE FOLLOWING INFORMATION:

14 (A) THE CONSUMER'S FINANCIAL STATUS.

15 (B) THE CONSUMER'S TAX STATUS.

16 (C) THE CONSUMER'S INVESTMENT OBJECTIVES.

17 (D) SUCH OTHER INFORMATION USED OR CONSIDERED TO BE REASONABLE  
18 BY THE INSURANCE PRODUCER, OR THE INSURER WHERE NO PRODUCER IS  
19 INVOLVED, IN MAKING RECOMMENDATIONS TO THE CONSUMER.

20 (3) EXCEPT AS PROVIDED UNDER SUBSECTION (4), NEITHER AN  
21 INSURANCE PRODUCER, NOR AN INSURER WHERE NO PRODUCER IS INVOLVED,  
22 SHALL HAVE ANY OBLIGATION TO A CONSUMER UNDER SUBSECTION (1)  
23 RELATED TO ANY RECOMMENDATION IF A CONSUMER DOES ANY OF THE  
24 FOLLOWING:

25 (A) REFUSES TO PROVIDE RELEVANT INFORMATION REQUESTED BY THE  
26 INSURER OR INSURANCE PRODUCER.

27 (B) DECIDES TO ENTER INTO AN INSURANCE TRANSACTION THAT IS NOT

1 BASED ON A RECOMMENDATION OF THE INSURER OR INSURANCE PRODUCER.

2 (C) FAILS TO PROVIDE COMPLETE OR ACCURATE INFORMATION.

3 (4) AN INSURER OR INSURANCE PRODUCER'S RECOMMENDATION SUBJECT  
4 TO SUBSECTION (1) SHALL BE REASONABLE UNDER ALL THE CIRCUMSTANCES  
5 ACTUALLY KNOWN TO THE INSURER OR INSURANCE PRODUCER AT THE TIME OF  
6 THE RECOMMENDATION.

7 SEC. 4157. (1) AN INSURER EITHER SHALL ASSURE THAT A SYSTEM TO  
8 SUPERVISE RECOMMENDATIONS THAT IS REASONABLY DESIGNED TO ACHIEVE  
9 COMPLIANCE WITH THIS CHAPTER IS ESTABLISHED AND MAINTAINED BY  
10 COMPLYING WITH SUBSECTIONS (3) TO (5), OR SHALL ESTABLISH AND  
11 MAINTAIN SUCH A SYSTEM, INCLUDING, BUT NOT LIMITED TO, MAINTAINING  
12 WRITTEN PROCEDURES AND CONDUCTING PERIODIC REVIEWS OF ITS RECORDS  
13 THAT ARE REASONABLY DESIGNED TO ASSIST IN DETECTING AND PREVENTING  
14 VIOLATIONS OF THIS CHAPTER.

15 (2) AN INSURANCE PRODUCER EITHER SHALL ADOPT A SYSTEM  
16 ESTABLISHED BY AN INSURER TO SUPERVISE RECOMMENDATIONS OF ITS  
17 INSURANCE PRODUCERS THAT IS REASONABLY DESIGNED TO ACHIEVE  
18 COMPLIANCE WITH THIS CHAPTER, OR SHALL ESTABLISH AND MAINTAIN SUCH  
19 A SYSTEM, INCLUDING, BUT NOT LIMITED TO, MAINTAINING WRITTEN  
20 PROCEDURES AND CONDUCTING PERIODIC REVIEWS OF RECORDS THAT ARE  
21 REASONABLY DESIGNED TO ASSIST IN DETECTING AND PREVENTING  
22 VIOLATIONS OF THIS CHAPTER.

23 (3) AN INSURER MAY CONTRACT WITH A THIRD PARTY, INCLUDING AN  
24 INSURANCE PRODUCER, TO ESTABLISH AND MAINTAIN A SYSTEM OF  
25 SUPERVISION AS REQUIRED UNDER SUBSECTION (1) OF INSURANCE PRODUCERS  
26 UNDER CONTRACT WITH OR EMPLOYED BY THE THIRD PARTY.

27 (4) AN INSURER SHALL MAKE REASONABLE INQUIRY TO ASSURE THAT

1 THE THIRD PARTY CONTRACTING UNDER SUBSECTION (3) IS PERFORMING THE  
2 FUNCTIONS REQUIRED UNDER SUBSECTION (1) AND SHALL TAKE SUCH ACTION  
3 AS IS REASONABLE UNDER THE CIRCUMSTANCES TO ENFORCE THE CONTRACTUAL  
4 OBLIGATION TO PERFORM THE FUNCTIONS. AN INSURER MAY COMPLY WITH ITS  
5 OBLIGATION TO MAKE REASONABLE INQUIRY BY DOING ALL OF THE  
6 FOLLOWING:

7 (A) BY ANNUALLY OBTAINING A CERTIFICATION FROM A THIRD PARTY  
8 SENIOR MANAGER THAT THE THIRD PARTY CONTRACTING UNDER SUBSECTION  
9 (3) IS PERFORMING THE REQUIRED FUNCTIONS. ONLY A PERSON WHO IS A  
10 SENIOR MANAGER WITH RESPONSIBILITY FOR THE DELEGATED FUNCTIONS AND  
11 WHO HAS A REASONABLE BASIS FOR MAKING THE CERTIFICATION SHALL  
12 PROVIDE A CERTIFICATION UNDER THIS SUBDIVISION.

13 (B) BY PERIODICALLY SELECTING, BASED ON REASONABLE SELECTION  
14 CRITERIA, THIRD PARTIES CONTRACTING UNDER SUBSECTION (3) FOR A  
15 REVIEW TO DETERMINE WHETHER THE THIRD PARTIES ARE PERFORMING THE  
16 REQUIRED FUNCTIONS. THE INSURER SHALL PERFORM THOSE PROCEDURES TO  
17 CONDUCT THE REVIEW THAT ARE REASONABLE UNDER THE CIRCUMSTANCES.

18 (5) AN INSURER THAT CONTRACTS WITH A THIRD PARTY PURSUANT TO  
19 SUBSECTION (3) AND THAT COMPLIES WITH THE REQUIREMENTS TO SUPERVISE  
20 UNDER SUBSECTION (4) WILL BE CONSIDERED TO HAVE MET ITS  
21 RESPONSIBILITIES UNDER SUBSECTION (1).

22 (6) AN INSURER OR INSURANCE PRODUCER IS NOT REQUIRED UNDER  
23 SUBSECTION (1) OR (2) TO DO ANY OF THE FOLLOWING:

24 (A) REVIEW, OR PROVIDE FOR REVIEW OF, ALL INSURANCE PRODUCER  
25 SOLICITED TRANSACTIONS.

26 (B) INCLUDE IN ITS SYSTEM OF SUPERVISION AN INSURANCE  
27 PRODUCER'S RECOMMENDATIONS TO CONSUMERS OF PRODUCTS OTHER THAN THE

1 ANNUITIES OFFERED BY THE INSURER OR INSURANCE PRODUCER.

2 (7) AN INSURANCE PRODUCER CONTRACTING WITH AN INSURER PURSUANT  
3 TO SUBSECTION (3) SHALL PROMPTLY, WHEN REQUESTED BY THE INSURER  
4 PURSUANT TO SUBSECTION (4), GIVE A CERTIFICATION AS DESCRIBED IN  
5 SUBSECTION (4) OR GIVE A CLEAR STATEMENT THAT IT IS UNABLE TO MEET  
6 THE CERTIFICATION CRITERIA.

7 SEC. 4163. (1) AN INSURER AND AN INSURANCE PRODUCER SHALL  
8 MAINTAIN OR BE ABLE TO MAKE AVAILABLE TO THE COMMISSIONER RECORDS  
9 OF THE INFORMATION COLLECTED FROM THE CONSUMER AND OTHER  
10 INFORMATION USED IN MAKING THE RECOMMENDATIONS THAT WERE THE BASIS  
11 FOR INSURANCE TRANSACTIONS FOR 5 YEARS AFTER THE INSURANCE  
12 TRANSACTION IS COMPLETED BY THE INSURER. AN INSURER IS PERMITTED,  
13 BUT IS NOT REQUIRED, TO MAINTAIN DOCUMENTATION ON BEHALF OF AN  
14 INSURANCE PRODUCER.

15 (2) RECORDS REQUIRED TO BE MAINTAINED BY THIS CHAPTER MAY BE  
16 MAINTAINED IN PAPER, PHOTOGRAPHIC, MICROPROCESS, MAGNETIC,  
17 MECHANICAL, OR ELECTRONIC MEDIA OR BY ANY PROCESS THAT ACCURATELY  
18 REPRODUCES THE ACTUAL DOCUMENT.

19 SEC. 4165. AN INSURER OR INSURANCE PRODUCER THAT COMPLIES WITH  
20 THE NATIONAL ASSOCIATION OF SECURITIES DEALERS RULES "NASD MANUAL,  
21 CONDUCT RULES SECTION 2310 (CCH, 1966)" OR RULES AT LEAST AS  
22 STRINGENT AS SECTION 2310 PERTAINING TO SUITABILITY SATISFIES THIS  
23 CHAPTER'S REQUIREMENTS FOR THE RECOMMENDATION OF VARIABLE  
24 ANNUITIES.