

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 SENIOR CONSUMER

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 THAT TERM 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.

1 (C) "RECOMMENDATION" MEANS ADVICE PROVIDED BY AN INSURANCE  
2 PRODUCER, OR AN INSURER WHERE NO PRODUCER IS INVOLVED, TO AN  
3 INDIVIDUAL SENIOR CONSUMER THAT RESULTS IN A PURCHASE OR EXCHANGE  
4 OF AN ANNUITY IN ACCORDANCE WITH THAT ADVICE.

5 (D) "SENIOR CONSUMER" MEANS A PERSON 65 YEARS OF AGE OR OLDER.  
6 FOR A JOINT PURCHASE BY MORE THAN 1 PARTY, THE PURCHASER WILL BE  
7 CONSIDERED TO BE A SENIOR CONSUMER IF ANY OF THE PARTIES IS AGE 65  
8 OR OLDER.

9 SEC. 4153. (1) THIS CHAPTER APPLIES TO ANY RECOMMENDATION TO  
10 PURCHASE OR EXCHANGE AN ANNUITY MADE TO A SENIOR CONSUMER BY AN  
11 INSURANCE PRODUCER, OR AN INSURER WHERE NO PRODUCER IS INVOLVED,  
12 THAT RESULTS IN THE PURCHASE OR EXCHANGE RECOMMENDED.

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

15 (A) DIRECT RESPONSE SOLICITATIONS WHERE THERE IS NO  
16 RECOMMENDATION BASED ON INFORMATION COLLECTED FROM THE SENIOR  
17 CONSUMER.

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

19 (i) AN EMPLOYEE PENSION OR WELFARE BENEFIT PLAN THAT IS COVERED  
20 BY THE EMPLOYEE RETIREMENT AND INCOME SECURITY ACT, PUBLIC LAW 93-  
21 406.

22 (ii) A PLAN DESCRIBED BY 26 USC 401(A), 26 USC 401(K), 26 USC  
23 403(B), 26 USC 408(K), OR 26 USC 408(P), IF ESTABLISHED OR  
24 MAINTAINED BY AN EMPLOYER.

25 (iii) A GOVERNMENT OR CHURCH PLAN DEFINED IN 26 USC 414, A  
26 GOVERNMENT OR CHURCH WELFARE BENEFIT PLAN, OR A DEFERRED  
27 COMPENSATION PLAN OF A STATE OR LOCAL GOVERNMENT OR TAX EXEMPT

1 ORGANIZATION UNDER 26 USC 457.

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

4 (v) SETTLEMENTS OF OR ASSUMPTIONS OF LIABILITIES ASSOCIATED  
5 WITH PERSONAL INJURY LITIGATION OR ANY DISPUTE OR CLAIM RESOLUTION  
6 PROCESS.

7 (vi) FORMAL PREPAID FUNERAL CONTRACTS.

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

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

21 (i) THE SENIOR CONSUMER'S FINANCIAL STATUS.

22 (ii) THE SENIOR CONSUMER'S TAX STATUS.

23 (iii) THE SENIOR CONSUMER'S INVESTMENT OBJECTIVES.

24 (iv) SUCH OTHER INFORMATION USED OR CONSIDERED TO BE REASONABLE  
25 BY THE INSURANCE PRODUCER, OR THE INSURER WHERE NO PRODUCER IS  
26 INVOLVED, IN MAKING RECOMMENDATIONS TO THE SENIOR CONSUMER.

27 (3) EXCEPT AS PROVIDED UNDER SUBSECTION (4), NEITHER AN

1 INSURANCE PRODUCER, NOR AN INSURER WHERE NO PRODUCER IS INVOLVED,  
2 SHALL HAVE ANY OBLIGATION TO A SENIOR CONSUMER UNDER SUBSECTION (1)  
3 RELATED TO ANY RECOMMENDATION IF A CONSUMER DOES ANY OF THE  
4 FOLLOWING:

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

7 (B) DECIDES TO ENTER INTO AN INSURANCE TRANSACTION THAT IS NOT  
8 BASED ON A RECOMMENDATION OF THE INSURER OR INSURANCE PRODUCER.

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

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

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

22 (2) AN INSURANCE PRODUCER EITHER SHALL ADOPT A SYSTEM  
23 ESTABLISHED BY AN INSURER TO SUPERVISE RECOMMENDATIONS OF ITS  
24 INSURANCE PRODUCERS THAT IS REASONABLY DESIGNED TO ACHIEVE  
25 COMPLIANCE WITH THIS CHAPTER, OR SHALL ESTABLISH AND MAINTAIN SUCH  
26 A SYSTEM, INCLUDING, BUT NOT LIMITED TO, MAINTAINING WRITTEN  
27 PROCEDURES AND CONDUCTING PERIODIC REVIEWS OF RECORDS THAT ARE

1 REASONABLY DESIGNED TO ASSIST IN DETECTING AND PREVENTING  
2 VIOLATIONS OF THIS CHAPTER.

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

7 (4) AN INSURER SHALL MAKE REASONABLE INQUIRY TO ASSURE THAT  
8 THE THIRD PARTY CONTRACTING UNDER SUBSECTION (3) IS PERFORMING THE  
9 FUNCTIONS REQUIRED UNDER SUBSECTION (1) AND SHALL TAKE SUCH ACTION  
10 AS IS REASONABLE UNDER THE CIRCUMSTANCES TO ENFORCE THE CONTRACTUAL  
11 OBLIGATION TO PERFORM THE FUNCTIONS. AN INSURER MAY COMPLY WITH ITS  
12 OBLIGATION TO MAKE REASONABLE INQUIRY BY DOING ALL OF THE  
13 FOLLOWING:

14 (A) BY ANNUALLY OBTAINING A CERTIFICATION FROM A THIRD PARTY  
15 SENIOR MANAGER THAT THE THIRD PARTY CONTRACTING UNDER SUBSECTION  
16 (3) IS PERFORMING THE REQUIRED FUNCTIONS. ONLY A PERSON WHO IS A  
17 SENIOR MANAGER WITH RESPONSIBILITY FOR THE DELEGATED FUNCTIONS AND  
18 WHO HAS A REASONABLE BASIS FOR MAKING THE CERTIFICATION SHALL  
19 PROVIDE A CERTIFICATION UNDER THIS SUBDIVISION.

20 (B) BY PERIODICALLY SELECTING, BASED ON REASONABLE SELECTION  
21 CRITERIA, THIRD PARTIES CONTRACTING UNDER SUBSECTION (3) FOR A  
22 REVIEW TO DETERMINE WHETHER THE THIRD PARTIES ARE PERFORMING THE  
23 REQUIRED FUNCTIONS. THE INSURER SHALL PERFORM THOSE PROCEDURES TO  
24 CONDUCT THE REVIEW THAT ARE REASONABLE UNDER THE CIRCUMSTANCES.

25 (5) AN INSURER THAT CONTRACTS WITH A THIRD PARTY PURSUANT TO  
26 SUBSECTION (3) AND THAT COMPLIES WITH THE REQUIREMENTS TO SUPERVISE  
27 UNDER SUBSECTION (4) WILL BE CONSIDERED TO HAVE MET ITS

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1 RESPONSIBILITIES UNDER SUBSECTION (1).

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

4 (A) REVIEW, OR PROVIDE FOR REVIEW OF, ALL INSURANCE PRODUCER  
5 SOLICITED TRANSACTIONS.

6 (B) INCLUDE IN ITS SYSTEM OF SUPERVISION AN INSURANCE  
7 PRODUCER'S RECOMMENDATIONS TO SENIOR CONSUMERS OF PRODUCTS OTHER  
8 THAN THE ANNUITIES OFFERED BY THE INSURER OR INSURANCE PRODUCER.

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

14 SEC. 4159. <<IN ADDITION TO THE PENALTIES PROVIDED IN SECTION  
150,>> THE COMMISSIONER MAY DO ANY OF THE FOLLOWING:

15 (A) ORDER AN INSURER TO TAKE REASONABLY APPROPRIATE CORRECTIVE  
16 ACTION FOR ANY SENIOR CONSUMER HARMED BY THE INSURER'S, OR BY ITS  
17 INSURANCE PRODUCER'S, VIOLATION OF THIS CHAPTER.

18 (B) ORDER AN INSURANCE PRODUCER TO TAKE REASONABLY APPROPRIATE  
19 CORRECTIVE ACTION FOR ANY SENIOR CONSUMER HARMED BY THE INSURANCE  
20 PRODUCER'S VIOLATION OF THIS CHAPTER.

21 (C) ORDER AN INSURANCE PRODUCER THAT EMPLOYS OR CONTRACTS WITH  
22 ANOTHER INSURANCE PRODUCER TO SELL OR SOLICIT THE SALE OF ANNUITIES  
23 TO SENIOR CONSUMERS, TO TAKE REASONABLY APPROPRIATE CORRECTIVE  
24 ACTION FOR ANY SENIOR CONSUMER HARMED BY THE INSURANCE PRODUCER'S  
25 VIOLATION OF THIS CHAPTER.

26 SEC. 4161. THE COMMISSIONER MAY REDUCE A PENALTY FOR A  
27 VIOLATION OF SECTION 4155(1), (2), OR (4) IF CORRECTIVE ACTION FOR

1 THE SENIOR CONSUMER WAS TAKEN PROMPTLY AFTER A VIOLATION WAS  
2 DISCOVERED.

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

11 (2) RECORDS REQUIRED TO BE MAINTAINED BY THIS CHAPTER MAY BE  
12 MAINTAINED IN PAPER, PHOTOGRAPHIC, MICROPROCESS, MAGNETIC,  
13 MECHANICAL, OR ELECTRONIC MEDIA OR BY ANY PROCESS THAT ACCURATELY  
14 REPRODUCES THE ACTUAL DOCUMENT.

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