

SENATE BILL No. 880

November 9, 2005, Introduced by Senators VAN WOERKOM, BISHOP and CROPSEY and referred to the Committee on Banking and Financial Institutions.

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

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

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

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

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

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

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

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

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

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

(v) SETTLEMENTS OF OR ASSUMPTIONS OF LIABILITIES ASSOCIATED

1 WITH PERSONAL INJURY LITIGATION OR ANY DISPUTE OR CLAIM RESOLUTION
2 PROCESS.

3 (vi) FORMAL PREPAID FUNERAL CONTRACTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (3) AN INSURER MAY CONTRACT WITH A THIRD PARTY, INCLUDING A
27 GENERAL AGENT OR INDEPENDENT AGENCY, TO ESTABLISH AND MAINTAIN A

1 SYSTEM OF SUPERVISION AS REQUIRED UNDER SUBSECTION (1) OF INSURANCE
2 PRODUCERS UNDER CONTRACT WITH OR EMPLOYED BY THE THIRD PARTY.

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

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

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

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

25 (6) AN INSURER, GENERAL AGENT, OR INDEPENDENT AGENCY IS NOT
26 REQUIRED UNDER SUBSECTION (1) OR (2) TO DO ANY OF THE FOLLOWING:

27 (A) REVIEW, OR PROVIDE FOR REVIEW OF, ALL INSURANCE PRODUCER

1 SOLICITED TRANSACTIONS.

2 (B) INCLUDE IN ITS SYSTEM OF SUPERVISION AN INSURANCE
3 PRODUCER'S RECOMMENDATIONS TO SENIOR CONSUMERS OF PRODUCTS OTHER
4 THAN THE ANNUITIES OFFERED BY THE INSURER, GENERAL AGENT, OR
5 INDEPENDENT AGENCY.

6 (7) A GENERAL AGENT OR INDEPENDENT AGENCY CONTRACTING WITH AN
7 INSURER PURSUANT TO SUBSECTION (3) SHALL PROMPTLY, WHEN REQUESTED
8 BY THE INSURER PURSUANT TO SUBSECTION (4), GIVE A CERTIFICATION AS
9 DESCRIBED IN SUBSECTION (4) OR GIVE A CLEAR STATEMENT THAT IT IS
10 UNABLE TO MEET THE CERTIFICATION CRITERIA.

11 SEC. 4159. THE COMMISSIONER MAY DO ANY OF THE FOLLOWING:

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

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

18 (C) ORDER A GENERAL AGENT OR INDEPENDENT AGENCY THAT EMPLOYS
19 OR CONTRACTS WITH AN INSURANCE PRODUCER TO SELL OR SOLICIT THE SALE
20 OF ANNUITIES TO SENIOR CONSUMERS, TO TAKE REASONABLY APPROPRIATE
21 CORRECTIVE ACTION FOR ANY SENIOR CONSUMER HARMED BY THE INSURANCE
22 PRODUCER'S VIOLATION OF THIS CHAPTER.

23 SEC. 4161. THE COMMISSIONER MAY REDUCE A PENALTY FOR A
24 VIOLATION OF SECTION 4155(1), (2), OR (4) IF CORRECTIVE ACTION FOR
25 THE SENIOR CONSUMER WAS TAKEN PROMPTLY AFTER A VIOLATION WAS
26 DISCOVERED.

27 SEC. 4163. (1) AN INSURER, GENERAL AGENT, INDEPENDENT AGENCY,

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

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

12 SEC. 4165. AN INSURER THAT COMPLIES WITH THE NATIONAL
13 ASSOCIATION OF SECURITIES DEALERS RULES "NASD MANUAL, CONDUCT RULES
14 SECTION 2310 (CCH, 1966)" PERTAINING TO SUITABILITY SATISFIES THIS
15 CHAPTER'S REQUIREMENTS FOR THE RECOMMENDATION OF VARIABLE
16 ANNUITIES. ANY CHANGES BY THE NATIONAL ASSOCIATION OF SECURITIES
17 DEALERS TO THEIR CONDUCT RULES PERTAINING TO SUITABILITY ARE NOT
18 EFFECTIVE IN THIS STATE UNLESS THE COMMISSIONER FINDS THE CHANGES
19 FURTHER THE PROTECTIONS AFFORDED IN THIS CHAPTER AND ADOPTS THE
20 CHANGES BY RULE, ORDER, OR BULLETIN.