Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 467 (as enacted)

PUBLIC ACT 544 of 2012

Sponsor: Senator Rick Jones
Senate Committee: Families, Seniors and Human Services
House Committee: Families, Children, and Seniors

Date Completed: 2-26-13

CONTENT

The bill amends Chapter 41a (Annuity Recommendation to Consumers) of the Insurance Code to do the following:

-- **Extend the chapter to recommendations to replace an annuity.**
-- **Require an insurance producer's or insurer's belief that a recommendation is suitable to be based on "suitability information", and require there to be a reasonable basis for certain beliefs.**
-- **Expand the circumstances under which a producer or insurer does not have an obligation to a consumer.**
-- **Require a consumer purchasing an individual annuity to be given a copy of the policy within a reasonable time after the annuity is accepted and issued.**
-- **Repeal and replace a section requiring an insurer to establish and maintain a supervision system or to contract for that function.**
-- **Require a producer to complete a training course in order to sell annuities, and prescribe course requirements.**
-- **Provide that a sale made in compliance with financial industry regulatory authority requirements pertaining to suitability and supervision of annuity transactions will satisfy the requirements of Chapter 41a.**

The bill will take effect on June 1, 2013.

Replacement Annuities

Chapter 41a applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or by an insurer if no producer is involved, that results in the purchase or exchange recommended. Under the bill, Chapter 41a also will apply to any recommendation to replace an annuity made to a consumer by an insurance producer or insurer, that results in the replacement recommended.

The bill defines "replacement" or "replace" as a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be one of the following:

-- Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated.
-- Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values.
-- Amended so as to effect a reduction either in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid.
-- Reissued with any reduction in cash value.
-- Used in a financed purchase.

Suitability of Recommendation

Under Chapter 41a, in recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or a series of transactions, the insurance producer or insurer must have reasonable grounds to believe that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products, and as to his or her financial needs.

Under the bill, the insurance producer's or insurer's reasonable grounds to believe that the recommendation is suitable also must be based on the consumer's suitability information. In addition, there must be a reasonable basis to believe that the consumer has been reasonably informed of various features of the annuity and would benefit from certain features of the annuity.

The bill also requires there to be a reasonable basis to believe that the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange, and riders and similar product enhancements, if any, are suitable, and for an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her suitability information.

In addition, for an exchange or replacement of an annuity, the bill requires there to be a reasonable basis to believe that the exchange or replacement is suitable, taking into consideration all of the following:

-- Whether the consumer will incur a surrender change, be subject to the commencement of a new surrender period, lose existing benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements.
-- Whether the consumer would benefit from product enhancements and improvements.
-- Whether the consumer has had another annuity exchange or replacement, particularly within the preceding 36 months.

Currently, before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer or insurer must make reasonable efforts to obtain the consumer's financial status, tax status, and investment objectives, and other information used or considered reasonable by the producer or insurer.

Under the bill, instead, before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer or insurer will have to make reasonable efforts to obtain the consumer's suitability information.

The bill defines "suitability information" as information that is reasonably appropriate to determine the suitability of a recommendation, including all of the following:

-- Age.
-- Annual income.
-- Financial situation and needs, including the resources used for funding the annuity.
-- Financial experience.
-- Financial objectives.
-- Intended use of the annuity.
-- Financial time horizon.
-- Existing assets, including investment and life insurance holdings.
-- Liquidity needs.
-- Liquid net worth.
-- Risk tolerance.
-- Tax status.

Except as permitted under the following provisions, the bill prohibits an insurer from issuing an annuity recommended to a consumer unless there is a reasonable basis to believe that the annuity is suitable based on the consumer's suitability information.

Obligation to Consumer

Currently, neither an insurance producer nor an insurer has any obligation to a consumer related to any recommendation if a consumer does any of the following:

-- Refuses to provide relevant information requested by the producer or insurer.
-- Decides to enter into an insurance transaction that is not based on a recommendation of the producer or insurer.
-- Fails to provide complete or accurate information.

Under the bill, instead, neither a producer nor an insurer will have any obligation to a consumer related to an annuity transaction if any of the following applies:

-- A recommendation is not made.
-- A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer.
-- A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended.
-- A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer or the insurer.

The bill requires a producer, or the responsible insurer representative if no producer is involved, to do all of the following at the time of sale:

-- Make a record of any recommendation subject to the requirement that there be reasonable grounds to believe a recommendation is suitable.
-- Obtain a customer-signed statement documenting a customer's refusal to provide suitability information, if any.
-- Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended, if a customer decides to enter into a transaction not based on the producer's or insurer's recommendation.

Supervision System

The bill repeals Section 4157 of the Code, which requires an insurer either to establish and maintain a system to supervise recommendations that is reasonably designed to achieve compliance with Chapter 41a, or to assure that such a system is established and maintained by contracting with a third party to establish and maintain the system and taking actions to enforce the third party's contractual obligation to perform the required functions.

The bill adds Section 4158 to require an insurer to establish a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with Chapter 41a, including all of the following:

-- Maintaining reasonable procedures to inform its producers of the requirements of the chapter and incorporate them into relevant producer training manuals.
-- Establishing standards for producer product training and maintaining reasonable procedures to require its producers to comply with training requirements.
-- Providing product-specific training and training materials explaining all material features of its annuity products to its producers.
-- Maintaining procedures for review of each recommendation before issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable.
-- Maintaining reasonable procedures to detect recommendations that are not suitable.
-- Annually giving senior management a report detailing a review designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

The bill specifies that Section 4158 does not restrict an insurer from contracting for performance of a function, including maintenance of procedures, described above. An insurer must take appropriate corrective action and may be subject to sanctions and penalties under the Code regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with the following requirement.

Section 4158 requires an insurer's supervision system to include supervision of contractual performance. This includes monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed. It also includes annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

Section 4158 states that an insurer is not required to include in its system of supervision a producer's recommendation to consumers of products other than the annuities offered by the insurer.

Prohibited Activities

The bill prohibits a producer from dissuading, or attempting to dissuade, a consumer from any of the following:

-- Truthfully responding to an insurer's request for confirmation of suitability information.
-- Filing a complaint.
-- Cooperating with the investigation of a complaint.

The bill also prohibits a producer from soliciting the sale of an annuity unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training.

Training Course

The bill requires a producer who engages in the sale of annuities to complete a one-time, four-credit training course approved by the Commissioner of Financial and Insurance Regulation and provided by an insurance producer program of study registered under Chapter 12 of the Code. Insurance producers who hold a life insurance line of authority on the bill's effective date and want to sell annuities will have to comply with these requirements within six months after that date. Individuals obtaining a life insurance line of authority on or after that date may not engage in the sale of annuities until they have complete the annuity training course.

The training course must be at least four hours' long and include information on all of the following:

-- The types and various classifications of annuities.
-- Identification of the parties to an annuity.
-- How fixed, variable, and indexed annuity contract provisions affect consumers.
-- The income taxation of qualified and nonqualified annuities.
-- The primary uses of annuities.
-- Appropriate sales practices and replacement and disclosure requirements.

Registered insurance producer programs of study may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products.

A provider of an annuity training course intended to comply with these requirements must register with the Commissioner as a continuing education provider in Michigan and comply with any applicable requirements.

An annuity training course may be conducted and completed by classroom or self-study methods in accordance with requirements of the Commissioner.

Providers of annuity training must comply with any reporting requirements imposed by the Commissioner and issue certificates of completion according to his or her requirements.

Satisfaction of the training requirements of another state that the Commissioner determines to be substantially similar to the requirements of the bill will satisfy these training requirements.

An insurer must verify that an insurance producer has completed the annuity training course before allowing the producer to sell an annuity for that insurer. An insurer may satisfy its responsibility by obtaining certificates of completion of the training course or obtaining reports provided by Commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with a registered insurance producer program of study.

Industry Regulatory Requirements

Currently, an insurer or producer that complies with the National Association of Securities Dealers rules cited in Chapter 41a, or rules as least as stringent pertaining to suitability, satisfies the chapter's requirements for the recommendation of variable annuities. The bill deletes this provision.

Under the bill, subject to the following provision, a sale made in compliance with financial industry regulatory authority requirements pertaining to suitability and supervision of annuity transactions will satisfy the requirements of Chapter 41a. This will apply to a financial industry regulatory authority broker-dealer sale of a variable annuity or fixed annuity if the suitability and supervision are similar to those applied to variable annuity sales, but will not limit the Commissioner's ability to enforce and investigate Chapter 41a.

The provision above will apply if the insurer does both of the following:

-- Monitors the financial industry regulatory authority member broker-dealer using information collected in the normal course of the insurer's business.
-- Gives the broker-dealer information and reports that are reasonably appropriate to assist the broker-dealer to maintain its supervision system.

MCL 500.4151 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will introduce some new, likely small, administrative costs to the Office of Financial and Insurance Regulation (OFIR). The bill requires the Commissioner of OFIR to approve annuity training courses and potentially review training programs from other states. Additionally, OFIR will have to maintain a registry of training course providers. Since the bill provides no additional funding for OFIR, these requirements will be fulfilled using existing resources of the Department of Licensing and Regulatory Affairs.

Fiscal Analyst: Josh Sefton