

Legislative Analysis



TRAVEL INSURANCE, ANNUITY STANDARD OF CONDUCT, AND ELECTRONIC MEETINGS

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House Bill 4508 as enacted
Public Act 266 of 2020
Sponsor: Rep. Michael Webber
House Committee: Insurance
Senate Committee: Insurance and Banking
Complete to 4-10-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4508 amends the Insurance Code to do the following:

- Specifically regulate the sale of travel insurance. The regulations are based on a model law of the National Association of Insurance Commissioners (NAIC). They address trade practices, plan and feature bundling, disclosures, premium tax liability, and form filing and underwriting standards. Among other things, the bill provides a “look-back” period during which a consumer can cancel without penalty and prohibits offering travel insurance on an opt-out basis (where a consumer must specifically decline the option rather than specifically selecting it).
- Change the standard of conduct for the recommendation and sale of annuities by insurance agents.¹ These provisions are also based on an NAIC model law and require an insurance agent to meet specified conditions in determining that an annuity is in the “best interest” of a particular consumer. The law previously required an agent to determine that an annuity was “suitable” for the consumer. The bill also establishes related disclosure, recordkeeping, and training requirements.
- Until September 30, 2022, allow participation at corporate meetings by electronic means. These provisions address concerns arising from the COVID-19 pandemic.

The bill took effect December 29, 2020, but the changes regarding the sale of annuities do not take effect until June 29, 2021 (six months after the effective date of the bill).

TRAVEL INSURANCE

House Bill 4508 changes the definition of *travel insurance* and adds Chapter 12B (Travel Insurance) to the Insurance Code to specifically regulate the sale of travel insurance.

Travel insurance

According to the U.S. Travel Insurance Association, Americans spent \$3.8 billion on travel protection in 2018—an increase of 40.9% since 2016.² As described by the NAIC, “Travel insurance gives consumers peace of mind when booking a trip that they will be reimbursed for part of or all their expenses should an undesirable event occur which prompts cancellation or

¹ These provisions are identical to those of House Bills 6112 through 6115, which were reported from the House Committee on Ways and Means on December 1, 2020. <http://legislature.mi.gov/doc.aspx?2020-HB-6112>

² http://www.ustia.org/uploads/2/4/8/8/24887869/ustia_press_release_2019_new_study.pdf

interruption of the trip.” The insurance typically covers trip cancellations or delays, lost baggage, or health or medical transportation expenses and costs roughly 4% to 8% of the cost of the trip.³

Travel insurance differs from typical insurance products in several ways, including that it is typically not bought from an insurance agent, it is often sold alongside or together with noninsurance products (such as airline tickets), and it is sold to anyone who wants it rather than being individually underwritten.⁴

Old definition of “travel insurance”

The code previously defined “travel insurance” as a limited lines insurance coverage for personal risk connected to planned travel, including one or more of the following:

- Interruption or cancellation of a trip or event.
- Loss of baggage or personal effects.
- Damages to accommodations or rental vehicles.
- Sickness, accident, disability, or death that occurs while traveling.

Travel insurance did not include major medical plans that provided comprehensive medical protection for travelers on trips lasting six months or longer, such as expatriates working overseas or military personnel on deployment.

New definition of “travel insurance”

The bill adds three types of coverage to the above definition. Under the bill, ***travel insurance*** means a limited lines insurance coverage for personal risk connected to planned travel, including one or more of the following:

- Interruption or cancellation of a trip or event.
- Loss of baggage or personal effects.
- Damages to accommodations or rental vehicles.
- Sickness, accident, disability, or death that occurs while traveling.
- Emergency evacuation (*added by the bill*).
- Repatriation of remains (*added by the bill*).
- Indemnification of other travel-related contingencies, as approved by the director of the Department of Insurance and Financial Services (DIFS) (*added by the bill*).

Under the bill, travel insurance does not include major medical plans that provide comprehensive medical protection for travelers on trips lasting longer than six months,⁵ such as expatriates working overseas or military personnel on deployment.

The bill also specifically excludes both of the following from being travel insurance:

- Any product that requires a specific insurance producer’s license.
- A prearranged funeral agreement by a funeral service provider.

³ https://content.naic.org/cipr_topics/topic_travel_insurance.htm

Also see https://www.michigan.gov/difs/0,5269,7-303-12902_70492_70522-343121--,00.html

⁴ https://www.actuary.org/sites/default/files/files/publications/TravelInsuranceMonograph_09052018.pdf

⁵ The bill’s change of this time frame to “longer than six months” means that a plan described above for a trip lasting *exactly* six months can now be considered travel insurance. Previously, such coverage for a trip of that length was specifically excluded.

Applicability of the new chapter

Chapter 12B applies to travel insurance covering a Michigan resident that is sold, solicited, negotiated, or offered in Michigan and for which policies or certificates are delivered or issued in Michigan.

The new chapter generally does not apply to *cancellation fee waivers* or *travel assistance services*.

Cancellation fee waiver means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the underlying travel contract.

Travel assistance services means noninsurance services for which a consumer is not indemnified based on a contingent event and where providing the service does not result in a transfer of risk the way that insurance does. Examples include destination information, security advisories, lost luggage assistance, concierge services, translation assistance, travel reservation services, coordination of transportation arrangements, and activity and event planning.

Premium tax

A travel insurance company must pay a premium tax, as provided in section 635 of the Income Tax Act,⁶ on travel insurance premiums paid by any of the following:

- An individual primary policyholder who is a resident of this state.
- A primary certificate holder who is a resident of this state who elects coverage under a group travel insurance policy.
- A blanket travel insurance policyholder that is a resident or has a relevant principal place of business in this state, subject to any equitable multijurisdictional apportionment.

A travel insurance company must do both of the following:

- Document the state of residence or principal place of business of the policyholder or certificate holder.
- Report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Fulfillment materials, look-back period, and other disclosures

Fulfillment materials must be provided to a policyholder as soon as practicable after the purchase of a travel protection plan.

Fulfillment materials means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.

Unless the insured has either started a covered trip or filed a claim under the travel insurance coverage, a policyholder may cancel a policy for a full refund of the travel protection plan price

⁶ <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-206-635.pdf>

from the date of purchase until at least 15 days after delivery of the plan's fulfillment materials by mail or at least 10 days after their delivery by other means.

A company must disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

For travel insurance policies or certificates with preexisting condition exclusions, information and an opportunity to learn more about those exclusions must be provided both before the time of purchase and in the coverage's fulfillment materials.

All documents provided to consumers before the purchase of travel insurance (including sales, advertising, and marketing materials) must be consistent with the travel insurance policy (including forms, endorsements, policies, rate filings, and certificates of insurance).

Travel protection plans

Travel protection plans may be offered for one price for the combined features that the plan offers if both of the following are met:

- The plan clearly discloses to the consumer at or before the time of purchase whether it includes travel insurance, travel assistance services, and cancellation fee waivers and provides an opportunity at or before the time of purchase for the consumer to obtain additional information regarding the features and pricing of each.
- The fulfillment materials describe the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan and include the travel insurance disclosures and contact information for persons providing travel assistance services or cancellation fee waivers.

Travel protection plans means plans that provide one or more of the following:

- Travel insurance.
- Travel assistance services.
- Cancellation fee waivers.

Trade practices

A person offering travel insurance to Michigan residents is subject to Chapter 20 of the Insurance Code, concerning unfair and prohibited trade practices. However, Chapter 12B controls if there is a conflict between it and other provisions of the Insurance Code regarding the sale and marketing of travel insurance and travel protection plans.

It is an unfair trade practice to offer or sell a travel insurance policy that could never result in payment of any claims for an insured under the policy.

If a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

- Purchasing the coverage required by the destination jurisdiction through the travel insurance producer supplying the trip or travel package.
- Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

Travel insurance marketed directly to a consumer through an insurance company's website or by others through an *aggregator site* is not an unfair trade practice or other violation of law if the webpage provides an accurate summary or short description of coverage and the consumer has access, through electronic means, to the full provisions of the policy.

Aggregator site means a website that provides access to information regarding insurance products from more than one insurance company for use in comparison shopping.

However, a person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not use an opt-out or negative option that requires a consumer to take an affirmative action to deselect coverage (such as unchecking a box on an electronic form when the consumer purchases a trip).

Forms of travel insurance

Travel insurance can be in the form of an individual, group, or blanket policy.

Group travel insurance means travel insurance issued to an *eligible group*.

Blanket travel insurance means a policy of travel insurance issued to an *eligible group* providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members.

Eligible group means two or more persons that are engaged in a common enterprise or have an economic, educational, or social affinity or relationship. The bill lists several types of eligible groups, including such things as hotels, travel clubs, cultural exchange programs, airlines, cruise lines, colleges, sports teams, religious organizations, labor unions, volunteer fire departments, and senior citizen clubs.

Filings and underwriting standards

Travel insurance is classified and must be filed for purposes of rates and forms under an inland marine line of insurance, except that travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or with related coverages or incidental limited property and casualty benefits, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, if those standards also meet this state's underwriting standards for inland marine.

MCL 500.1202 and 500.1281 to 500.1291

ANNUITY STANDARD OF CONDUCT

House Bill 4508 also changes the standard of conduct for the recommendation and sale of annuities by insurance agents.⁷ As noted above, these changes take effect June 29, 2021 (six months after the effective date of the bill).

Chapter 41A (Annuity Recommendation to Consumers) previously required an agent to reasonably ensure that an annuity was “suitable” for a consumer based on certain information. The bill instead requires the agent to ensure that the annuity is in the consumer’s “best interest.”

Chapter 41A is based on a model law from the NAIC. The bill reflects recent changes to that model law.⁸

Annuities

As described by the NAIC, “An annuity is an insurance contract typically used in retirement planning and designed to protect an individual from outliving his or her assets. An individual, or annuitant, pays premiums into the annuity and the insurer promises to pay out money from the annuity to the annuitant or a beneficiary in a series of payments.”⁹ Often the premium paid by an annuitant is a lump sum—for example, in investing one’s savings to provide an income stream after retirement. Under a deferred annuity, premiums are paid and accumulated for some time before any money is paid out. Because of how they are structured, annuities typically provide for low liquidity: they must tie money up to make it perform as contracted, and there are usually cancellation and withdrawal penalties. Taxes are generally deferred on money paid into an annuity and assessed on money paid out.

There are different kinds of annuities.¹⁰ Fixed annuities provide periodic payments of a specific amount over either a set time period or an indefinite period such as the lifetime of the annuitant. This basic framework can be modified to provide, among other things, for inflation-adjusted payments or for payments that will continue to be paid to a beneficiary after the annuitant’s death. Indexed annuities pay out a return that is based on a stock market index, such as the Standard & Poor’s 500 Index. Variable annuities allow premiums to be invested in the stock and bond markets, usually through mutual funds, with payouts that then vary based on the performance of those investments. Because of their underlying risk, the U.S. Securities and Exchange Commission (SEC) classifies variable annuities as securities rather than life insurance products; insurance agents must meet additional requirements to sell them.¹¹

Applicability of the chapter

Chapter 41A applies to a group or individual annuity that is individually solicited. It does not apply to certain specified transactions, including direct response solicitations that do not make a recommendation based on information from a consumer; employee pension and welfare benefit plans covered by the Employee Retirement and Income Security Act (ERISA);

⁷ Although this summary mostly refers to insurance agents, note that the standards of conduct described apply to the insurance company if no agent is involved in the transaction. Note, too, that the Insurance Code generally calls insurance companies “insurers” and insurance agents “producers.”

⁸ https://www.naic.org/documents/cmtc_legislative_liaison_brief_annuity_suitability.pdf

⁹ See https://www.naic.org/documents/government_relations_annuities_issue_brief.pdf

¹⁰ For an overview, see <https://www.investor.gov/introduction-investing/investing-basics/glossary/annuities> or https://www.michigan.gov/documents/difs/FIS-PUB_5800_573249_7.pdf

¹¹ See https://www.michigan.gov/difs/0,5269,7-303-22535_23032-239476--,00.html

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.

“Suitability” (the old standard)

Chapter 41A previously applied only to recommendations (advice given by an insurance agent to a particular consumer) that actually *resulted in* the recommended purchase, exchange, or replacement of an annuity. An agent had to have reasonable grounds to believe that such a recommendation was suitable for the consumer based on facts disclosed by the consumer about his or her investments, insurance, and financial situation and needs—including his or her *suitability information*—before the agent could issue the annuity. The agent had to make reasonable efforts to obtain suitability information before finalizing the transaction.

Suitability information was defined as information about a consumer that is reasonably appropriate to determine whether a recommendation is suitable for him or her. It included all of the following:

- Age.
- Annual income.
- Financial situation and needs, including the resources used to fund 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.

The agent also had to have reasonable grounds to believe all of the following:

- That the consumer had been reasonably informed of certain features of the annuity, such as market risk, potential surrender period, potential tax penalty, and certain specified fees, charges, and limitations. (During a “surrender period” an annuitant cannot withdraw money from the annuity without payment of a charge or fee.)
- That the consumer would benefit from certain features of the annuity.
- That the particular annuity and the transaction as a whole were suitable for the consumer based on his or her suitability information.

“Best interest” (the new standard)

Under House Bill 4508, Chapter 41A applies to recommendations that are *intended* to result in a purchase, exchange, or replacement of an annuity, in addition to those that actually have that result. The following are not “recommendations” under the chapter:

- General communication to the public.
- Generalized customer services assistance or administrative support.
- General educational information and tools.
- Prospectuses.
- Other product and sales material.

The bill removes the “suitability” requirements described above and instead requires an insurance agent recommending an annuity to act in the best interest of the consumer, under the circumstances known at the time, without placing the agent’s or insurance company’s financial interest ahead of the consumer’s interest.

An agent meets this standard if, in making a recommendation, the agent exercises reasonable diligence, care, and skill to do all of the following:

- Know the consumer’s financial situation, insurance needs, and financial objectives.
- Understand the available options. (This does not require an agent to consider products or strategies beyond what the agent is authorized to recommend or sell.)
- Have a reasonable basis for believing that the recommended option effectively addresses the consumer’s financial situation, insurance needs, and financial objectives, as evaluated in light of the consumer’s *consumer profile information*. All of the following apply in meeting this requirement:
 - The agent must make reasonable efforts to obtain consumer profile information from the consumer before making an annuity recommendation.
 - The generally relevant factors to consider are consumer profile information, characteristics of the insurance company, and annuity costs, rates, benefits, and features. The weight given to each factor may vary, but these factors must always be considered together and not in isolation.
 - The agent also must have a reasonable basis for believing that the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.
- Communicate the basis for the recommendation.

Consumer profile information means information about a consumer that is reasonably appropriate to determine whether a recommendation addresses his or her financial situation, insurance needs, and financial objectives. This information is nearly the same as “suitability information.” It includes at least all of the following:

- Age.
- Annual income.
- Financial situation and needs, including debts and other obligations.
- Financial resources used to fund the annuity.
- Insurance needs.
- Financial experience.
- Financial objectives.
- Intended use of the annuity.
- Financial time horizon.
- Existing assets or financial products, including investment, annuity, and insurance holdings.
- Liquidity needs.
- Liquid net worth.
- Risk tolerance, including willingness to accept *nonguaranteed elements* in the annuity.
- Tax status.

Nonguaranteed elements means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest-based credits, or charges, or elements of formulas used to determine any of these, that are subject to company discretion and not guaranteed at issue. An element is also considered nonguaranteed if any underlying nonguaranteed elements are used to calculate it.

An insurance company cannot issue an annuity recommended to a consumer without a reasonable basis for believing, based on the consumer's consumer profile information, that the annuity would effectively address the consumer's particular financial situation, insurance needs, and financial objectives.

The above standards apply to the annuity as a whole, the underlying subaccounts where funds would be allocated when the annuity is purchased or exchanged, and any riders or similar product enhancements. They do not require the agent to recommend the annuity with the lowest one-time or multiple occurrence compensation structure.

Exchanging or replacing an annuity

Previously, for the exchange or replacement of an annuity, the insurance agent additionally had to have a reasonable basis to believe that the exchange or replacement was suitable considering all of the following:

- Whether the consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits such as death, living, or other contractual 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 had another annuity exchange or replacement, particularly within the past three years.

Instead, the bill requires that the agent additionally consider the whole transaction for an exchange or replacement, including the following:

- Whether the consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements. *(This provision is not changed by the bill.)*
- Whether the replacing product would substantially benefit the consumer compared to the replaced product over the life of the product.
- Whether the consumer has had another annuity exchange or replacement, particularly within the past five years.

Disclosures

The bill requires an insurance agent to prominently disclose to a consumer the following information, on a form issued by the director of DIFS, before recommending or selling an annuity:

- A description of the scope and terms of the agent's relationship with the consumer and the role of the agent in the transaction.
- An affirmative statement of whether the agent can sell the following:
 - Fixed annuities.

- Fixed indexed annuities.
- Variable annuities.
- Life insurance.
- Mutual funds.
- Stocks and bonds.
- Certificates of deposit.
- An affirmative statement describing the insurance companies whose products the agent can sell, using these descriptions:
 - One insurance company.
 - Two or more insurance companies.
 - Two or more insurance companies, although primarily contracted with one insurance company.
- A description of the sources and types of *cash compensation* and *noncash compensation* the agent will receive, including whether the agent will be compensated by commission or by fee.
- A notice of the consumer's right to request additional information regarding cash compensation, as described below.

Cash compensation means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent in connection with the recommendation or sale of an annuity from an insurance company or *intermediary* or directly from the consumer.

Noncash compensation includes such things as health insurance, office rent, office support, and retirement benefits.

Intermediary means an entity contracted to facilitate the sale of an insurance company's annuities by insurance agents.

If requested by the consumer or his or her representative, an agent must disclose both of the following:

- A reasonable estimate of the amount of cash compensation the agent will receive, which may be stated as a range of amounts or percentages.
- Whether the cash compensation is a one-time or multiple occurrence amount and, if multiple, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

An agent also must identify and avoid or reasonably manage and disclose *material conflicts of interest*, including those related to an ownership interest.

Material conflict of interest means an agent's financial interest in the sale of an annuity that a reasonable person would expect to influence a recommendation's impartiality. It does not include cash or noncash compensation.

When making a recommendation or sale, the agent must have a reasonable basis for believing that the consumer has been informed of various features of the annuity, such as the following:

- The potential surrender period and surrender charge.

- The potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity.
- Mortality and expense fees.
- Investment advisory fees.
- Any annual fees.
- Potential charges for and features of riders or other annuity options.
- Limitations on interest returns.
- Potential changes in nonguaranteed elements of the annuity.
- Insurance and investment components.
- Market risk.

Scope

The bill specifies that the “best interest” requirements described above create only a regulatory obligation as established under Chapter 41A and do not create a fiduciary obligation or relationship.

The requirements apply only at the time of the recommendation or sale. They do not impose an ongoing monitoring obligation on an insurance agent—but they also do not prevent that obligation from being separately imposed under a fiduciary, consulting, investment advising, or financial planning agreement.

The requirements apply to each agent who exercises material control or influence over a recommendation and who receives direct compensation from a recommendation or sale, regardless of whether that agent has direct contact with the consumer. (General supervision or activities such as providing or delivering marketing or educational materials, product wholesaling, or other back office product support do not by themselves constitute “material control or influence.”)

The bill also specifies that Chapter 41A does not require an agent to be licensed other than with the appropriate line of authority to sell, solicit, or negotiate insurance in Michigan as long as the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any activity requiring other professional licenses.

Exceptions

The standard of conduct provisions described above do not apply to an annuity transaction under any of the following circumstances:

- A recommendation is not made.
- A recommendation is found to have been based on materially inaccurate information provided by the consumer.
- The consumer refuses to provide relevant suitability or profile information and the annuity transaction is not recommended.
- The consumer decides to enter into an annuity transaction that is not based on the agent’s recommendation.

However, an insurance company’s issuance of an annuity under the above exceptions must be reasonable under all the circumstances actually known to the insurance company at the time.

Records

Under House Bill 4508, at the time of an annuity sale, the insurance agent must make a written record of any recommendation and the basis for the recommendation. If a consumer refuses to provide any profile information, the agent must obtain a statement signed by the consumer that documents that refusal and documents the consumer's understanding of the ramifications of not providing that information. If a consumer decides to enter into an annuity transaction that is not based on the agent's recommendation, the agent must obtain a statement signed by the consumer that acknowledges that the transaction is not recommended.

(Chapter 41A previously required an insurance agent to make similar records at the time of an annuity sale, but the records did not have to be in writing, did not have to include the basis for the recommendation, and did not have to document the consumer's understanding of the ramifications of not providing his or her suitability information.)

Insurer supervision system

The code requires an insurance company to establish a supervision system that is reasonably designed to ensure compliance with Chapter 41A, including all of the following:

- Reasonable procedures to inform its agents of the chapter's requirements.
- Inclusion of those requirements in relevant training materials.
- Reasonable procedures to ensure that agents comply with required training courses.
- Standards for product training.
- Training and materials that explain all material features of its specific annuity products.
- Procedures for review of each recommendation before issuance of an annuity.
- Reasonable procedures to detect recommendations that do not comply with the chapter.
- An annual review and report on the supervision system's effectiveness.

The bill adds that a supervision system must also include the following:

- Reasonable procedures to assess whether an agent has provided information to the consumer as required.
- Reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.
- Reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time.

Chapter 41A further provides that an insurance company's supervision system does not have to include an agent's recommendations of products other than annuities the insurance company offers.

The bill adds that the system also does not have to include consideration of or comparison to options available to the agent, or compensation relating to those options, other than products the insurance company offers.

Training requirements

The code requires an insurance agent who sells annuities to complete a one-time four-credit course approved by the director of DIFS.¹² The training includes information on such things as

¹² See https://www.michigan.gov/difs/0,5269,7-303-13648_60666_77177---,00.html

the types and various classifications of annuities; the primary uses of annuities; how fixed, variable, and indexed annuity contract provisions affect consumers; the income taxation of qualified and nonqualified annuities; and appropriate sales practices and replacement and disclosure requirements.

The bill additionally requires the training to include information on the “appropriate standard of conduct.” An agent who completed a training course before the bill takes effect must complete either a new four-credit course or an additional one-time, one-credit course on the appropriate sales practices, replacement, and disclosure requirements under the bill. The training requirements may also be satisfied by completing a course with substantially similar components.

Comparable standards

Chapter 41A contains “safe harbor” provisions to ensure that financial professionals who sell annuities under the standards of professional conduct that apply to them are not found to be acting in violation of the chapter in doing so.

The code previously provided that an annuity sale meeting financial industry regulatory authority requirements for the suitability and supervision of annuity transactions also met the requirements of Chapter 41A. This provision applied to a financial industry regulatory authority broker-dealer sale of a variable or fixed annuity if the suitability and supervision were similar to those applied to variable annuity sales. The provision applied as long as the insurance company monitors the financial industry regulatory authority member broker-dealer using information collected in the normal course of business and provided the broker-dealer with appropriate information to help it maintain its supervision system.

Under the bill, a recommendation or sale that complies with *comparable standards* satisfies the requirements of Chapter 41A. This provision applies to a recommendation or sale of an annuity made by a *financial professional* under business rules, controls, and procedures that satisfy a comparable standard even if the standard does not otherwise apply to that product or recommendation. The provision applies as long as the insurance company monitors the relevant conduct of the financial professional or an entity supervising the financial professional using information collected in the normal course of business and provides the supervisory entity with appropriate information to help it maintain its supervision system.

Financial professional means an insurance agent that is regulated and acting as any of the following:

- A broker-dealer registered under federal securities laws or a registered representative of a broker-dealer.
- An investment adviser registered under federal securities laws or an associated investment adviser representative.
- A fiduciary under the Internal Revenue Code (26 USC 4975) or a plan fiduciary under ERISA (29 USC 1002).

Comparable standards means the following, as applicable:

- For broker-dealers and registered representatives, applicable SEC and Financial Industry Regulatory Authority (FINRA) rules concerning best interest obligations and supervision of annuity recommendations and sales.

- For investment advisers or investment adviser representatives, the fiduciary duties and all other requirements imposed by contract or under the Investment Advisers Act of 1940.
- For fiduciaries or plan fiduciaries, the relevant duties, obligations, prohibitions, and other requirements under the Internal Revenue Code or ERISA.

The above provisions do not limit an insurance company's obligation to issue an annuity recommended to a consumer only if the insurance company has a reasonable basis to believe that the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer profile information. An insurance company may base its analysis on information received from the financial professional or supervisory entity.

The above provisions do not limit the ability of the director of DIFS to investigate and enforce Chapter 41A.

Violations

The bill states that Chapter 41A does not create or imply a private cause of action for violations of it or subject an insurance agent to civil liability under either fiduciary standards or the "best interest" standard of care.

The bill provides that insurance companies are responsible for compliance with Chapter 41A. If a violation of the chapter occurs because of the action or inaction of an insurance company or its agent, the director of DIFS may do any of the following:

- Order the insurance company to take reasonably appropriate corrective action for a consumer harmed by a violation of the chapter by the insurance company, by an entity contracted to perform the insurance company's supervisory duties, or by the insurance agent.
- Order the insurance agent to take reasonably appropriate corrective action for a consumer harmed by the agent's violation of the chapter.
- Order appropriate sanctions.

The director of DIFS can reduce or eliminate an order described above if appropriate corrective action is taken promptly after the violation was discovered or if the violation is not part of a pattern or practice.

MCL 500.4151, 500.4153, 500.4155, 500.4158, 500.4159, 500.4160, 500.4165, and 500.4166

ELECTRONIC PARTICIPATION IN MEETINGS

Finally, House Bill 4508 amends Chapter 52 (Corporate Powers, Procedures of Stock and Mutual Insurers) of the Insurance Code to allow for electronic participation in corporate meetings. Chapter 52 applies to domestic stock, mutual, and cooperative plan insurers, including limited liability pools.

Under the bill, until September 20, 2022, both of the following apply:

- One or more directors may conduct or participate in a meeting of the board of directors or any of its committees using electronic communication devices that enable all participants in the meeting to communicate with each other.
- A meeting of the stockholders or members of the corporation may be conducted using electronic communications devices that enable all participants to simultaneously participate in the meeting.

The bill also allows corporation bylaws to provide for either or both of the above.

If bylaws have to be amended to allow electronic meeting participation, that amendment can be adopted at a meeting held electronically.

A person who participates electronically in a meeting as allowed above is considered to be present in person.

MCL 500.5228, 500.5230, and 500.5245

BACKGROUND:

National Association of Insurance Commissioners (NAIC)

Insurance regulation in the United States is primarily state-based. The NAIC is a nonprofit organization governed by the chief insurance regulators of every state, the District of Columbia, and the territories of Puerto Rico, Guam, the U.S. Virgin Islands, the Northern Mariana Islands, and American Samoa. The NAIC establishes standards and best practices for the insurance industry, including developing and maintaining model laws, and coordinates regulatory oversight among the states. It promotes certain levels of interstate uniformity in insurance regulation as beneficial to insurers, consumers, and regulators. The NAIC also offers consumer education programs, provides support and training for state insurance officials, and represents state insurance regulators collectively at the national and international levels.¹³

Travel insurance

Due to concerns about a lack of consistency and specificity in the nationwide regulation of travel insurance, the NAIC appointed a workgroup in 2016 to develop appropriate standards. The workgroup drafted a model law, adopted by the NAIC membership in 2018, that “defines regulatory structure related to travel insurance and covers market regulation, premium tax, rate regulation, and enforcement.”¹⁴

House Bill 4508 was based upon this NAIC model law. The bill as introduced included several provisions of the NAIC model law (for example, those specifically defining and regulating travel administrators and travel retailers) that were omitted from later versions of the bill and are not included in the bill as it was enacted. According to House Insurance committee testimony, these changes to the model law were developed in consultation with DIFS and interested industry parties and are intended to better adapt the substance of the NAIC travel insurance model law to Michigan’s existing regulatory scheme.

¹³ https://www.naic.org/documents/about_faq.pdf

¹⁴ See https://content.naic.org/cipr_topics/topic_travel_insurance.htm

The NAIC model law is here: <https://content.naic.org/sites/default/files/inline-files/MDL-632.pdf>

Annuity standard of conduct

Chapter 41A was added to the Insurance Code by 2006 PA 399¹⁵ and was substantially revised by 2012 PA 544.¹⁶ Both the initial enactment and the 2012 overhaul were based on a model law developed by the NAIC in 2003 (the “Suitability in Annuity Transactions Model Regulation (#275)”) and its subsequent revisions and updates.

In February 2020, the NAIC adopted a newly revised version of this model law, which provides the basis for the relevant parts of House Bill 4508. According to the NAIC, the goal in developing the new model was “to seek clear, enhanced standards for annuity sales so consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those selling the products do not place their financial interests above consumers’ interests.”¹⁷

The NAIC also reportedly tried to align its new model with the SEC’s standard of conduct for federally registered broker-dealers and associated persons who are making securities recommendations to consumers.¹⁸ Those rules, known as Regulation Best Interest or Reg BI, were approved on June 5, 2019, and took effect June 30, 2020.¹⁹ Among other things, the standards of conduct for making investment recommendations under both the NAIC model and the SEC regulation are considered to share four “best interest” components: a care obligation, a disclosure obligation, a conflict of interest obligation, and a documentation obligation.

Other legislation

The provisions of HB 4508 concerning the annuity standard of conduct are substantively the same as HBs 6112 to 6114 of the 2019-20 legislative session as those bills were reported from the House Ways and Means committee.

The provisions of HB 4508 concerning electronic participation in meetings are identical to those included in the H-3 substitute for SB 1015 of the 2019-20 legislative session as reported from the House Ways and Means committee. The H-3 substitute was not adopted on the floor. SB 1015 (which amended the Insurance Code to revise provisions governing reinsurance) was passed without amendment and enacted as 2020 PA 328.

FISCAL IMPACT:

House Bill 4508 would be unlikely to have an appreciable fiscal impact on the Department of Insurance and Financial Services or any other unit of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹⁵ <http://legislature.mi.gov/doc.aspx?2005-SB-0880>

¹⁶ <http://legislature.mi.gov/doc.aspx?2011-SB-0467>

¹⁷ https://content.naic.org/cipr_topics/topic_annuity_suitability_best_interest_standard.htm

¹⁸ See https://www.naic.org/documents/government_relations_180806_comments_sec_annuity_suitability.pdf

¹⁹ See <https://www.sec.gov/regulation-best-interest>