THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

CHAPTER 41A

ANNUITY RECOMMENDATION TO CONSUMERS

500.4151 Definitions.

Sec. 4151. As used in this chapter:

(a) "Annuity" means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.

(b) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer or intermediary, or directly from the consumer.

(c) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

(*i*) Age.

(*ii*) Annual income.

(*iii*) Financial situation and needs, including debts and other obligations.

(*iv*) Financial experience.

(*v*) Insurance needs.

(*vi*) Financial objectives.

(*vii*) Intended use of the annuity.

(*viii*) Financial time horizon.

(*ix*) Existing assets or financial products, including investment, annuity, and insurance holdings.

(*x*) Liquidity needs.

(*xi*) Liquid net worth.

(*xii*) Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity.

(*xiii*) Financial resources used to fund the annuity.

(*xiv*) Tax status.

(d) "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. Insurance producer or producer includes an insurer if no producer is involved.

(e) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

(f) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. Material conflict of interest does not include cash compensation or noncash compensation.

(g) "Noncash compensation" means a form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits.

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

(i) "Recommendation" means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, exchange, or replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(j) "Replacement" or "replace" means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:

(*i*) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated.

(*ii*) 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.

(*iii*) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid.

(*iv*) Reissued with any reduction in cash value.

(*v*) Used in a financed purchase.

History: Add. 2006, Act 399, Imd. Eff. Sept. 29, 2006;—Am. 2012, Act 544, Eff. June 1, 2013;—Am. 2020, Act 266, Eff. June 29, 2021.

500.4153 Scope of chapter.

Sec. 4153. (1) This chapter applies to any sale or recommendation of an annuity.

(2) Except as otherwise provided in this chapter, this chapter does not apply to any recommendation to purchase, exchange, or replace an annuity involving any of the following:

(a) Direct response solicitations if there is no recommendation based on information collected from the 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 income security act of 1974, 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 governmental 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 with personal injury litigation or any dispute or claim resolution process.

(*vi*) Formal prepaid funeral contracts.

(3) This chapter does not require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including, but not limited to, any securities license, to fulfill the duties and obligations contained under this chapter if the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(4) This chapter does not create or imply a private cause of action for a violation of this chapter or subject a producer to civil liability under the standard of care outlined in section 4155 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

History: Add. 2006, Act 399, Imd. Eff. Sept. 29, 2006;—Am. 2012, Act 544, Eff. June 1, 2013;—Am. 2020, Act 266, Eff. June 29, 2021.

500.4155 Purchase or exchange of annuity; recommendations; effort and obligation to act in best interest of consumer; reasonable basis; duties of producer; exceptions.

Sec. 4155. (1) A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer is held to standards applicable to a producer with similar authority and licensure. A producer has acted in the best interest of the consumer if the producer has satisfied all of the following obligations regarding care, disclosure, conflict of interest, and documentation:

(a) Subject to subdivision (b), the producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to do all of the following:

(*i*) Know the consumer's financial situation, insurance needs, and financial objectives.

(*ii*) Understand the available recommendation options after making a reasonable inquiry into options available to the producer.

(*iii*) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information.

(*iv*) Communicate the basis or bases of the recommendation.

(b) All of the following apply to the obligation of exercising reasonable diligence, care, and skill under subdivision (a):

(*i*) To meet the obligations under subdivision (a), the producer must do all of the following:

(A) Make reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this subdivision may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

(B) Consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives. This sub-subparagraph does not require the producer to analyze or consider any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.

(C) Have a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.

(*ii*) The obligations under subdivision (a) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

(*iii*) The obligations under subdivision (a) do not require the producer to recommend the annuity with the lowest 1-time or multiple occurrence compensation structure.

(*iv*) The obligations under subdivision (a) do not mean the producer has ongoing monitoring obligations under the care obligation under subdivision (a), although the obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

(c) For an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration all of the following:

(*i*) 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.

(*ii*) Whether the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product.

(*iii*) Whether the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(d) Before the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form issued by the director all of the following information:

(*i*) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction.

(*ii*) An affirmative statement on whether the producer is licensed and authorized to sell all of the following products:

(A) Fixed annuities.

(B) Fixed indexed annuities.

(C) Variable annuities.

(D) Life insurance.

(E) Mutual funds.

(F) Stocks and bonds.

(G) Certificates of deposit.

(*iii*) An affirmative statement describing the insurers the producer is authorized, contracted or appointed, or otherwise able to sell insurance products for, using any of the following descriptions:

(A) One insurer.

(B) From 2 or more insurers.

(C) From 2 or more insurers although primarily contracted with 1 insurer.

(*iv*) A description of the sources and types of cash compensation and noncash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other producer or by fee as a result of a contract for advice or consulting services.

(*v*) A notice of the consumer's right to request additional information regarding cash compensation described in subdivision (e).

(e) On request of the consumer or the consumer's designated representative, the producer shall disclose both of the following:

(*i*) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages.

(*ii*) Whether the cash compensation is a 1-time or multiple occurrence amount and, if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

(f) Before or at the time of the recommendation or sale of an annuity, the producer must have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, 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 options of the annuity, limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance and investment components, and market risk.

(g) A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(h) A producer shall at the time of recommendation or sale do all of the following:

(*i*) Make a written record of any recommendation and the basis for the recommendation subject to this chapter.

(*ii*) Obtain a consumer signed statement on a form that documents both of the following:

(A) The consumer's refusal to provide the consumer profile information, if any.

(B) The consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

(*iii*) Obtain a consumer signed statement on a form acknowledging the annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(2) The requirements under subsection (1) do not create a fiduciary obligation or relationship and create only a regulatory obligation as established under this chapter.

(3) Any requirement applicable to a producer under subsection (1) applies to each producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling, or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

(4) Except as provided under subsection (5), a producer does not have any obligation to a consumer under subsection (1) related to any annuity transaction if any of the following apply:

(a) A recommendation is not made.

(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer.

(c) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended.

(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(5) An insurer's issuance of an annuity subject to subsection (4) must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(6) Except as permitted under subsections (4) and (5), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

History: Add. 2006, Act 399, Imd. Eff. Sept. 29, 2006;—Am. 2012, Act 544, Eff. June 1, 2013;—Am. 2020, Act 266, Eff. June 29, 2021.

500.4157 Repealed. 2012, Act 544, Eff. June 1, 2013.

Compiler's note: The repealed section pertained to system to supervise recommendations of insurance providers.

500.4158 Insurer's supervision system.

Sec. 4158. (1) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this chapter, including, but not limited to, all of the following:

(a) Establish and maintain reasonable procedures to inform its producers of the requirements of this chapter and incorporate the requirements of this chapter into relevant producer training manuals.

(b) Establish and maintain standards for producer product training and maintain reasonable procedures to require its producers to comply with section 4160.

(c) Provide product-specific training and training materials that explain all material features of its annuity products to its producers.

(d) Establish and maintain procedures for review of each recommendation before issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. Review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

(e) Establish and maintain reasonable procedures to detect recommendations that are not in compliance with section 4155. These may include, but are not limited to, confirmation of the consumer's profile information, systematic consumer surveys, producer and consumer interviews, confirmation letters, producer statements and attestations, and programs of internal monitoring. This subdivision does not prevent an insurer from complying with this subdivision by applying sampling procedures or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity.

(f) Establish and maintain reasonable procedures to assess, before or on issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under section 4155.

(g) Establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

(h) Establish and maintain 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. The requirements of this subdivision are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees if those benefits are not based on the volume of sales of a specific annuity within a limited period of time.

(i) Annually provide a written report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(2) This section does not restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under subsection (1). An insurer shall take appropriate corrective action and may be subject to sanctions and penalties under this act regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection (3).

(3) An insurer's supervision system under this section must include supervision of contractual performance. This includes, but is not limited to, the following:

(a) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed.

(b) 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.

(4) An insurer is not required to include either of the following in its system of supervision:

(a) A producer's recommendations to consumers of products other than the annuities offered by the insurer.

(b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

History: Add. 2012, Act 544, Eff. June 1, 2013;—Am. 2020, Act 266, Eff. June 29, 2021.

500.4159 Dissuading consumer from certain acts prohibited.

Sec. 4159. A producer shall not dissuade, or attempt to dissuade, a consumer from any of the following:

(a) Truthfully responding to an insurer's request for confirmation of the consumer profile information.

(b) Filing a complaint.

(c) Cooperating with the investigation of a complaint.

History: Add. 2012, Act 544, Eff. June 1, 2013;—Am. 2020, Act 266, Eff. June 29, 2021.

500.4160 Sale of annuities; completion of annuity training course; requirements.

Sec. 4160. (1) A producer shall not solicit 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. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(2) A producer who engages in the sale of annuities shall complete a 1-time 4-credit training course approved by the director and provided by an insurance producer program of study registered under chapter 12.

Insurance producers who hold a life insurance line of authority on June 1, 2013 and who desire to sell annuities shall complete the requirements of this subsection by December 1, 2013. Individuals who obtain a life insurance line of authority after May 31, 2013 shall not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(3) The minimum length of the training required under subsection (2) must be not less than 4 hours, as defined in section 1204c, and may be longer.

(4) The training required under subsection (2) must include information on all of the following:

(a) The types of annuities and various classifications of annuities.

(b) Identification of the parties to an annuity.

(c) How fixed, variable, and indexed annuity contract provisions affect consumers.

(d) The income taxation of qualified and nonqualified annuities.

(e) The primary uses of annuities.

(f) Appropriate standard of conduct, sales practices, and replacement and disclosure requirements.

(5) Registered insurance producer programs of study must cover all topics under subsection (4) and must not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the topics under subsection (4).

(6) A provider of an annuity training course intended to comply with this section shall register with the director as a continuing education provider in this state and comply with any requirements of the director applicable to insurance producer continuing education.

(7) A producer who has completed an annuity training course approved by the director before the effective date of the 2020 amendatory act that amended this section shall, within 6 months after the effective date of the 2020 amendatory act that amended this section, complete either of the following:

(a) A new 4-credit training course approved by the director after the effective date of the 2020 amendatory act that amended this section.

(b) An additional 1-time 1-credit training course approved by the director and provided by the department-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this chapter.

(8) Annuity training courses may be conducted and completed by classroom or self–study methods in accordance with requirements of the director.

(9) Providers of annuity training shall comply with any reporting requirements imposed by the director and shall issue certificates of completion in accordance with any requirements of the director.

(10) The satisfaction of the training requirements of another state that the director determines to be substantially similar to this section satisfies the training requirements of this section.

(11) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to this section satisfies the training requirements of this section.

(12) An insurer shall verify that an insurance producer has completed the annuity training course required under this section before allowing the producer to sell an annuity for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by director-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.

History: Add. 2012, Act 544, Eff. June 1, 2013;—Am. 2020, Act 266, Eff. June 29, 2021.

500.4161 Copy of annuity policy.

Sec. 4161. For a consumer purchasing an individual annuity, the consumer shall be given a copy of the annuity policy within a reasonable time after the annuity is accepted and issued.

History: Add. 2012, Act 544, Eff. June 1, 2013.

500.4163 Records; maintenance, availability.

Sec. 4163. (1) An insurer and an insurance producer shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer.

(2) Records required to be maintained by this chapter may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

History: Add. 2006, Act 399, Imd. Eff. Sept. 29, 2006.

500.4165 Applicability of subsections; definitions.

Sec. 4165. (1) Subject to subsection (2), a recommendation or sale made in compliance with comparable standards satisfies the requirements of this chapter. This subsection applies to a recommendation or sale of an annuity made by a financial professional in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the standard would not otherwise apply to the product or recommendation at issue. However, this subsection does not limit the director's ability to investigate and enforce this chapter.

(2) Subsection (1) applies if the insurer does both of the following:

(a) Monitors the relevant conduct of the financial professional seeking to rely on subsection (1) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws using information collected in the normal course of the insurer's business.

(b) Provides to the entity responsible for supervising the financial professional seeking to rely on subsection (1), such as the financial professional's broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist the entity to maintain its supervision system.

(3) Subsection (1) does not limit an insurer's obligation to comply with section 4155(6). However, an insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(4) As used in this section:

(a) "Comparable standards" means all of the following, as applicable:

(*i*) With respect to broker-dealers and registered representatives of broker-dealers, applicable United States Securities and Exchange Commission and Financial Industry Regulatory Authority rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest.

(*ii*) With respect to investment advisers registered under federal securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on the investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including, but not limited to, the Form ADV.

(*iii*) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the employee retirement income security act of 1974, Public Law 93-406, or the internal revenue code of 1986, 26 USC 1 to 9834.

(b) "Financial professional" means a producer that is regulated and acting as any of the following:

(*i*) A broker-dealer registered under federal securities laws or a registered representative of a broker-dealer.

(*ii*) An investment adviser registered under federal securities laws or an investment adviser representative associated with the federal registered investment adviser.

(*iii*) A plan fiduciary under section 3(21) of the employee retirement income security act of 1974 or fiduciary under section 4975(e)(3) of the internal revenue code of 1986, 26 USC 4975.

History: Add. 2006, Act 399, Imd. Eff. Sept. 29, 2006;—Am. 2012, Act 544, Eff. June 1, 2013;—Am. 2020, Act 266, Eff. June 29, 2021.

500.4166 Compliance with chapter; violation orders.

Sec. 4166. (1) An insurer is responsible for compliance with this chapter. If a violation occurs, either because of the action or inaction of the insurer or its producer, the director may order any of the following:

(a) The insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this chapter by the insurer, an entity contracted to perform the insurer's supervisory duties, or the producer.

(b) The producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this chapter.

(c) Appropriate sanctions.

(2) Any order under subsection (1) for a violation of this chapter may be reduced or eliminated by the director if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

History: Add. 2020, Act 266, Eff. June 29, 2021.