

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1584 Session of  
2007

INTRODUCED BY DeLUCA, BELFANTI, FABRIZIO, GRUCELA, KORTZ,  
THOMAS, J. WHITE AND YOUNGBLOOD, JUNE 21, 2007

REFERRED TO COMMITTEE ON INSURANCE, JUNE 21, 2007

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," providing for suitability of  
12 annuity transactions.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. The act of May 17, 1921 (P.L.682, No.284), known  
16 as The Insurance Company Law of 1921, is amended by adding an  
17 article to read:

18 ARTICLE IV-B

19 SUITABILITY OF ANNUITY TRANSACTIONS

20 Section 401-B. Definitions.

21 The following words and phrases when used in this article  
22 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Annuity." A fixed annuity or variable annuity that is  
3 individually solicited, whether the product is classified as an  
4 individual or group annuity.

5 "Commissioner." The Insurance Commissioner of the  
6 Commonwealth.

7 "Insurance producer." A person who sells, solicits or  
8 negotiates contracts of insurance as defined in section 601-A of  
9 the act of May 17, 1921 (P.L.789, No.285), known as The  
10 Insurance Department Act of 1921.

11 "Insurer." A life insurance company licensed or required to  
12 be licensed under section 202 or a fraternal benefit society as  
13 defined in section 2403.

14 "Managing general agent." As defined in section 801 of the  
15 act of May 17, 1921 (P.L.789, No.285), known as The Insurance  
16 Department Act of 1921.

17 "Recommendation." Advice provided by an insurance producer,  
18 or an insurer where no producer is involved, to an individual  
19 consumer that results in a purchase or exchange of an annuity in  
20 accordance with that advice.

21 Section 402-B. Applicability and scope.

22 (a) General rule.--This article shall apply to any  
23 recommendation to purchase or exchange an annuity made to a  
24 consumer by an insurance producer, or an insurer where no  
25 producer is involved, that results in the purchase or exchange  
26 recommended.

27 (b) Exclusions.--Unless otherwise specifically included,  
28 this article shall not apply to recommendations involving the  
29 following:

30 (1) Direct response solicitations where there is no

recommendation based on information collected from the  
consumer pursuant to this article.

(2) Annuity contracts used to fund:

(i) An employee pension or welfare benefit plan that  
is covered by the Employee Retirement Income Security Act  
of 1974 (Public Law 93-406, 88 Stat. 829).

(ii) A plan described by sections 401(a) or (k),  
403(b), 408(k) or (p) of the Internal Revenue Code of  
1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k),  
403(b), 408(k) or (p)), when the plan, for purposes of  
the Employee Retirement and Income Security Act of 1974,  
is established or maintained by an employer.

(iii) A governmental or church plan defined in  
section 414 of the Internal Revenue Code of 1986 or a  
deferred compensation plan of a State or local government  
or tax exempt organization under section 457 of the  
Internal Revenue Code of 1986.

(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.

Section 403-B. Duties of insurers and insurance producers.

(a) General duties.--In making a recommendation to a  
consumer for the purchase of an annuity or the exchange of an  
annuity that results in another insurance transaction or series  
of insurance transactions, the insurance producer, or the  
insurer where no insurance producer is involved, shall have

reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

(b) Consumer information.--Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain information concerning all of the following:

(1) The consumer's financial status.

(2) The consumer's tax status.

(3) The consumer's investment objectives.

(4) Other information used or considered to be reasonable by the insurance producer, or the insurer where no insurance producer is involved, in making recommendations to the consumer.

(c) Obligation limits.--

(1) Neither an insurance producer nor an insurer where no insurance producer is involved shall have any obligation to a consumer under subsection (a) related to any recommendation that is reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation when a consumer:

(i) Refuses to provide relevant information requested by the insurer or insurance producer.

(ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer.

(iii) Fails to provide complete or accurate

1           information.

2           (d) Supervision of recommendations.--

3           (1) An insurer shall assure that a system to supervise  
4           recommendations that is reasonably designed to achieve  
5           compliance with this article is established and maintained by  
6           complying with paragraphs (3) and (4), or shall establish and  
7           maintain such a system that includes at least the following:

8                   (i) Maintaining written procedures.

9                   (ii) Conducting periodic reviews of its records that  
10           are reasonably designed to assist in detecting and  
11           preventing violations of this article.

12           (2) A managing general agent shall adopt a system  
13           established by an insurer to supervise recommendations of its  
14           insurance producers that is reasonably designed to achieve  
15           compliance with this article, or shall establish and maintain  
16           a system that is reasonably designed to achieve compliance  
17           with this article. The system must include at least the  
18           following:

19                   (i) Maintaining written procedures.

20                   (ii) Conducting periodic reviews of records that are  
21           reasonably designed to assist in detecting and preventing  
22           violations of this article.

23           (3) An insurer may contract with a third party,  
24           including a managing general agent, to establish and maintain  
25           a system of supervision as required by paragraph (1) with  
26           respect to insurance producers under contract with or  
27           employed by the third party.

28           (4) An insurer shall make reasonable inquiry to assure  
29           that the third party contracting under paragraph (3) is  
30           performing the functions required under paragraph (1) and

1 shall take such action as is reasonable under the  
2 circumstances to enforce the contractual obligation to  
3 perform the functions. An insurer may comply with its  
4 obligation to make reasonable inquiry by doing both of the  
5 following:

6 (i) The insurer annually obtains a certification  
7 from a third party senior manager who has responsibility  
8 for the delegated functions that the manager has a  
9 reasonable basis to represent, and does represent, that  
10 the third party is performing the required functions.

11 (ii) The insurer, based on reasonable selection  
12 criteria, periodically selects third parties contracting  
13 under paragraph (3) for a review to determine whether the  
14 third parties are performing the required functions. The  
15 insurer shall perform procedures to conduct the review  
16 that are reasonable under the circumstances.

17 (5) Where there is no purchase or exchange of an  
18 annuity, an insurer or managing general agent is not required  
19 to do either of the following:

20 (i) Review or provide for review of all insurance  
21 producer-solicited transactions.

22 (ii) Include in its system of supervision an  
23 insurance producer's recommendations to consumers of  
24 products other than the annuities offered by the insurer  
25 or managing general agent.

26 (6) A managing general agent contracting with an insurer  
27 pursuant to paragraph (3) shall promptly, when requested by  
28 the insurer pursuant to paragraph (4), give a certification  
29 as described in paragraph (4) or give a clear statement that  
30 it is unable to meet the certification criteria.

1       (7) No person may provide a certification under  
2       paragraph (4)(i) unless both the following conditions are  
3       met:

4               (i) The person is a senior manager with  
5               responsibility for the delegated functions.

6               (ii) The person has a reasonable basis for making  
7               the certification.

8       (e) Compliance with other rules.--Compliance with the  
9       National Association of Securities Dealers Conduct Rules  
10       pertaining to suitability shall satisfy the requirements under  
11       this section for the recommendation of variable annuities.  
12       Nothing in this subsection shall limit the commissioner's  
13       ability to enforce the provisions of this article.

14       (f) Internal audit and compliance procedures.--Nothing in  
15       this article shall exonerate an insurer from the internal audit  
16       and compliance procedure requirements under section 405-A.  
17       Section 404-B. Mitigation of responsibility.

18       (a) Corrective actions.--The commissioner may order:

19               (1) An insurer to take reasonably appropriate corrective  
20               action for any consumer harmed by the insurer's or by its  
21               insurance producer's violation of this article.

22               (2) An insurance producer to take reasonably appropriate  
23               corrective action for any consumer harmed by the insurance  
24               producer's violation of this article.

25               (3) A managing general agent that employs or contracts  
26               with an insurance producer to sell or solicit the sale of  
27               annuities to consumers, to take reasonably appropriate  
28               corrective action for any consumer harmed by the insurance  
29               producer's violation of this article.

30       (b) Reduction of penalty.--Any applicable penalty permitted

under section 406-B may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

Section 405-B. Recordkeeping.

An insurer, managing general agent and 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 five years after the insurance transaction is completed by the insurer. An insurer is permitted but shall not be required to maintain documentation on behalf of an insurance producer.

Section 406-B. Enforcement.

(a) Penalties and remedies.--Upon a determination by hearing that this article has been violated, the commissioner may pursue one or more of the following courses of action:

(1) Issue an order requiring the person in violation to cease and desist from engaging in the violation.

(2) Suspend or revoke or refuse to issue or renew the certificate or license of the person in violation.

(3) Impose a civil penalty of not more than \$5,000 for each violation.

(4) Impose any other penalty or remedy deemed appropriate by the commissioner, including restitution.

(b) Other remedies.--The enforcement remedies imposed under this section are in addition to any other remedies or penalties that may be imposed by any other applicable statute, including the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act. Violations of this article are deemed and defined by the commissioner to be an unfair method of



1 competition and an unfair or deceptive act or practice pursuant  
2 to the Unfair Insurance Practices Act.

3 Section 407-B. Private cause of action.

4 Nothing in this article shall be construed to create or imply  
5 a private cause of action for a violation of this article.

6 Section 2. This act shall take effect in 180 days.