

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 237 Session of 2009

INTRODUCED BY CORMAN, BROWNE, STACK, EARLL, RAFFERTY, BAKER,  
 FERLO, GORDNER, O'PAKE, WILLIAMS, WAUGH AND M. WHITE,  
 FEBRUARY 19, 2009

REFERRED TO BANKING AND INSURANCE, FEBRUARY 19, 2009

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 "General agent." An insurance producer that provides  
8 supervision on behalf of an insurer to an insurer's sales force  
9 in a particular geographic region or territory.

10 "Independent agency." A producer entity that does not  
11 exclusively represent one insurance company.

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

16 "Insurer." A life insurance company licensed or required to  
17 be licensed under section 202 or a fraternal benefit society as  
18 defined in section 2403.

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

23 Section 402-B. Applicability and scope.

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

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

1 following:

2 (1) Direct response solicitations where there is no  
3 recommendation based on information collected from the  
4 consumer pursuant to this article.

5 (2) Annuity contracts used to fund:

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

9 (ii) A plan described by sections 401(a) or (k),  
10 403(b), 408(k) or (p) of the Internal Revenue Code of  
11 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k),  
12 403(b), 408(k) or (p)), when the plan, for purposes of  
13 the Employee Retirement Income Security Act of 1974, is  
14 established or maintained by an employer.

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

20 (iv) A nonqualified deferred compensation  
21 arrangement established or maintained by an employer or  
22 plan sponsor.

23 (v) Settlements of or assumptions of liabilities  
24 associated with personal injury litigation or any dispute  
25 or claim resolution process.

26 (vi) Formal prepaid funeral contracts.

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

28 (a) General duties.--In making a recommendation to a  
29 consumer for the purchase of an annuity or the exchange of an  
30 annuity that results in another insurance transaction or series

1 of insurance transactions, the insurance producer, or the  
2 insurer where no insurance producer is involved, shall have  
3 reasonable grounds for believing that the recommendation is  
4 suitable for the consumer on the basis of the facts disclosed by  
5 the consumer as to the consumer's investments and other  
6 insurance products and as to the consumer's financial situation  
7 and needs.

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

13 (1) The consumer's financial status.

14 (2) The consumer's tax status.

15 (3) The consumer's investment objectives.

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

20 (c) Obligation limits.--

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

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

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

1 insurance producer.

2 (iii) Fails to provide complete or accurate  
3 information.

4 (d) Supervision of recommendations.--

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

10 (i) Maintaining written procedures.

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

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

21 (i) Maintaining written procedures.

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

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

30 (4) An insurer shall make reasonable inquiry to assure

1 that the third party contracting under paragraph (3) is  
2 performing the functions required under paragraph (1) and  
3 shall take such action as is reasonable under the  
4 circumstances to enforce the contractual obligation to  
5 perform the functions. An insurer may comply with its  
6 obligation to make reasonable inquiry by doing both of the  
7 following:

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

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

20 (5) An insurer that contracts with a third party under  
21 paragraph (3) and that complies with the requirements to  
22 supervise under paragraph (4) shall have fulfilled its  
23 responsibilities under paragraph (1).

24 (6) An insurer, general agent or independent agency is  
25 not required to do either of the following:

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

28 (ii) Include in its system of supervision an  
29 insurance producer's recommendations to consumers of  
30 products other than the annuities offered by the insurer,

1 general agent or independent agency.

2 (7) A general agent or independent agency contracting  
3 with an insurer pursuant to paragraph (3) shall promptly,  
4 when requested by the insurer pursuant to paragraph (4), give  
5 a certification as described in paragraph (4) or give a clear  
6 statement that it is unable to meet the certification  
7 criteria.

8 (8) No person may provide a certification under  
9 paragraph (4) (i) unless both the following conditions are  
10 met:

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

13 (ii) The person has a reasonable basis for making  
14 the certification.

15 (e) Compliance with other rules.--Compliance with the  
16 Financial Industry Regulatory Authority Conduct Rules pertaining  
17 to suitability shall satisfy the requirements under this section  
18 for the recommendation of variable annuities. Nothing in this  
19 subsection shall limit the commissioner's ability to enforce the  
20 provisions of this article.

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

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

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

29 (2) An insurance producer to take reasonably appropriate  
30 corrective action for any consumer harmed by the insurance

1 producer's violation of this article.

2 (3) A general agent or independent agency that employs  
3 or contracts with an insurance producer to sell or solicit  
4 the sale of annuities to consumers, to take reasonably  
5 appropriate corrective action for any consumer harmed by the  
6 insurance producer's violation of this article.

7 (b) Reduction of penalty.--Any applicable penalty permitted  
8 under section 406-B may be reduced or eliminated if corrective  
9 action for the consumer was taken promptly after a violation was  
10 discovered.

11 Section 405-B. Recordkeeping.

12 An insurer, general agent, independent agency and insurance  
13 producer shall maintain or be able to make available to the  
14 commissioner records of the information collected from the  
15 consumer and other information used in making the  
16 recommendations that were the basis for insurance transactions  
17 for five years after the insurance transaction is completed by  
18 the insurer. An insurer is permitted but shall not be required  
19 to maintain documentation on behalf of an insurance producer.

20 Section 406-B. Enforcement.

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

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

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

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

30 (4) Impose any other penalty or remedy deemed

1 appropriate by the commissioner, including restitution.

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

10 Section 407-B. Private cause of action.

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

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