

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

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
MARCH 23, 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," further providing for annual and
12 other reports; and providing for suitability of annuity
13 transactions.

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

16 Section 1. Section 320 of the act of May 17, 1921 (P.L.682,
17 No.284), known as The Insurance Company Law of 1921, amended
18 December 18, 1992 (P.L.1519, No.178) and February 17, 1994
19 (P.L.92, No.9), is amended to read:

20 Section 320. Annual and Other Reports; Penalties.--(a) (1)
21 Every stock and mutual insurance company, association, and
22 exchange, doing business in this Commonwealth, shall annually,

1 on or before the first day of March, file in the office of the
2 Insurance Commissioner and with the National Association of
3 Insurance Commissioners a statement which shall exhibit its
4 financial condition on the thirty-first day of December of the
5 previous year, and its business of that year and shall, within
6 thirty days after requested by the Insurance Commissioner, file
7 with the Insurance Commissioner and with the National
8 Association of Insurance Commissioners such additional statement
9 or statements concerning its affairs and financial condition as
10 the Insurance Commissioner may, in his discretion, require. The
11 Insurance Commissioner shall require each insurance company
12 association and exchange to report its financial condition on
13 the statement convention blanks, in such form as adopted by the
14 National Association of Insurance Commissioners and shall, upon
15 written request, furnish such blanks for their convenience; and
16 may make such changes, from time to time, in the form of the
17 same as shall seem best adapted to elicit from them a true
18 exhibit of their financial condition.

19 (2) Unless otherwise provided by law, regulation or order of
20 the Insurance Commissioner, each insurance company, association
21 and exchange shall adhere to the annual or quarterly statement
22 instructions and the accounting practices and procedures manuals
23 prescribed by the National Association of Insurance
24 Commissioners. The Insurance Commissioner may require each
25 insurance company, association and exchange to file in the
26 office of the Insurance Commissioner and with the National
27 Association of Insurance Commissioners financial statements on
28 diskettes or other electronic information storage devices
29 acceptable to the Insurance Commissioner.

30 (b) Insurance companies of foreign governments, doing

1 business in this Commonwealth, shall be required to return only
2 the business done in the United States, and the assets held by
3 and for them within the United States for the protection of
4 policyholders therein.

5 (c) In the absence of actual malice, members of the National
6 Association of Insurance Commissioners, their duly authorized
7 committees, subcommittees and task forces, their delegates and
8 employes and all others charged with the responsibility of
9 collecting, reviewing, analyzing and disseminating the
10 information developed from the filing of the annual statement
11 convention blanks shall be acting as agents of the Insurance
12 Commissioner under the authority of this act and shall not be
13 subject to civil liability for libel, slander or any other cause
14 of action by virtue of their collection, review and analysis or
15 dissemination of the data and information collected from the
16 filings required hereunder.

17 (d) [All financial analysis ratios and examination synopses
18 concerning insurance companies that are submitted to the
19 Insurance Department by the National Association of Insurance
20 Commissioners' Insurance Regulatory Information System are
21 confidential and may not be disclosed by the Insurance
22 Department. Work products developed by Insurance Department
23 staff in conducting financial analyses of financial statements
24 filed pursuant to this section are confidential and shall not be
25 disclosed by the Insurance Department.](1) The following
26 documents, materials or information shall be confidential by law
27 and privileged and shall not be subject to subpoena, discovery,
28 the act of February 14, 2008 (P.L.6, No. 3), known as the
29 "Right-to-Know Law," or admissible in evidence in any private
30 civil action:

1 (i) All documents, materials or other information prepared
2 or provided by an insurance company, association or exchange
3 solely in support of the statement of actuarial opinion filed
4 under this section, including actuarial reports, work papers or
5 actuarial opinion summaries and any other material solely
6 prepared by the insurance company, association or exchange for
7 the purpose of providing it to the Insurance Department in
8 connection with actuarial reports, work papers or actuarial
9 opinion summaries.

10 (ii) All financial analysis ratios, analyst team reports and
11 other financial analytical results concerning insurance
12 companies, associations and exchanges that are provided to the
13 Insurance Department by the National Association of Insurance
14 Commissioners.

15 (iii) All additional work products, documents, materials or
16 information produced by, obtained by or provided to the
17 Insurance Department in the course of conducting financial
18 analyses of financial statements filed under this section.

19 (2) The protections established under paragraph (1)(i) and
20 (iii) shall also apply to the materials, drafts or copies
21 thereof when in possession of the insurance company, association
22 or exchange if the materials or drafts were prepared solely for
23 the purpose of submitting the materials to the Insurance
24 Department. Any documents, materials or information that are
25 provided to the Insurance Department under paragraph (1)(i) or
26 (iii) and that would otherwise be available from original
27 sources shall not be construed as immune from discovery from the
28 original source and use in any private civil action merely
29 because they were provided to the Insurance Department.

30 (3) Neither the Insurance Commissioner nor any individual or

1 person who receives documents, materials or information while
2 acting under the authority of the Insurance Commissioner shall
3 be permitted or required to testify in any private civil action
4 concerning any confidential documents, materials or information
5 covered under this section.

6 (4) No waiver of any applicable privilege or claim of
7 confidentiality in the documents, materials or information shall
8 occur as a result of disclosure to the Insurance Commissioner or
9 as a result of the Insurance Commissioner sharing information in
10 conformance with sections 201-A and 202-A of the act of May 17,
11 1921 (P.L. 789, No. 285), known as "The Insurance Department Act
12 of 1921."

13 (5) The Insurance Commissioner may use the documents,
14 materials or other information obtained or created under this
15 section in furtherance of any regulatory or legal action brought
16 as part of the Insurance Commissioner's official duties.

17 (e) (1) Any company, association, or exchange, which
18 neglects to make and file its annual statement, or other
19 statements that may be required, in the form or within the time
20 herein provided shall forfeit a sum not to exceed two hundred
21 dollars (\$200) for each day during which such neglect continues,
22 and, upon notice by the commissioner, its authority to do new
23 business shall cease while such default continues.

24 (2) For wilfully making a false annual or other statement
25 required by law, an insurance company, association or exchange,
26 and the persons making oath to or subscribing the same, shall
27 severally be punished by a fine of not less than one thousand
28 dollars (\$1,000) nor more than ten thousand dollars (\$10,000). A
29 person who wilfully makes oath to such false statement shall be
30 guilty of perjury.

1 (3) The Insurance Commissioner may suspend, revoke or refuse
2 to renew the certificate of authority of any insurer failing to
3 file its annual statement when due.

4 Section 2. The act is amended by adding an article to read:

5 ARTICLE IV-B

6 SUITABILITY OF ANNUITY TRANSACTIONS

7 Section 401-B. Definitions.

8 The following words and phrases when used in this article
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Annuity." A fixed annuity or variable annuity that is
12 individually solicited, whether the product is classified as an
13 individual or group annuity.

14 "Commissioner." The Insurance Commissioner of the
15 Commonwealth.

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

19 "Independent agency." A producer entity that does not
20 exclusively represent one insurance company.

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

25 "Insurer." A life insurance company licensed or required to
26 be licensed under section 202 or a fraternal benefit society as
27 defined in section 2403.

28 "Recommendation." Advice provided by an insurance producer,
29 or an insurer where no producer is involved, to an individual
30 consumer that results in a purchase or exchange of an annuity in

1 accordance with that advice.

2 Section 402-B. Applicability and scope.

3 (a) General rule.--This article shall apply to any
4 recommendation to purchase or exchange an annuity made to a
5 consumer by an insurance producer, or an insurer where no
6 producer is involved, that results in the purchase or exchange
7 recommended.

8 (b) Exclusions.--Unless otherwise specifically included,
9 this article shall not apply to recommendations involving the
10 following:

11 (1) Direct response solicitations where there is no
12 recommendation based on information collected from the
13 consumer pursuant to this article.

14 (2) Annuity contracts used to fund:

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

18 (ii) A plan described by sections 401(a) or (k),
19 403(b), 408(k) or (p) of the Internal Revenue Code of
20 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k),
21 403(b), 408(k) or (p)), when the plan, for purposes of
22 the Employee Retirement Income Security Act of 1974, is
23 established or maintained by an employer.

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

29 (iv) A nonqualified deferred compensation
30 arrangement established or maintained by an employer or

1 plan sponsor.

2 (v) Settlements of or assumptions of liabilities
3 associated with personal injury litigation or any dispute
4 or claim resolution process.

5 (vi) Formal prepaid funeral contracts.

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

7 (a) General duties.--In making a recommendation to a
8 consumer for the purchase of an annuity or the exchange of an
9 annuity that results in another insurance transaction or series
10 of insurance transactions, the insurance producer, or the
11 insurer where no insurance producer is involved, shall have
12 reasonable grounds for believing that the recommendation is
13 suitable for the consumer on the basis of the facts disclosed by
14 the consumer as to the consumer's investments and other
15 insurance products and as to the consumer's financial situation
16 and needs.

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

22 (1) The consumer's financial status.

23 (2) The consumer's tax status.

24 (3) The consumer's investment objectives.

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

29 (c) Obligation limits.--

30 (1) Neither an insurance producer nor an insurer where

1 no insurance producer is involved shall have any obligation
2 to a consumer under subsection (a) related to any
3 recommendation that is reasonable under all the circumstances
4 actually known to the insurer or insurance producer at the
5 time of the recommendation when a consumer:

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

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

11 (iii) Fails to provide complete or accurate
12 information.

13 (d) Supervision of recommendations.--

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

19 (i) Maintaining written procedures.

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

23 (2) A general agent or independent agency shall adopt a
24 system established by an insurer to supervise recommendations
25 of its insurance producers that is reasonably designed to
26 achieve compliance with this article, or shall establish and
27 maintain a system that is reasonably designed to achieve
28 compliance with this article. The system must include at
29 least the following:

30 (i) Maintaining written procedures.

1 (ii) Conducting periodic reviews of records that are
2 reasonably designed to assist in detecting and preventing
3 violations of this article.

4 (3) An insurer may contract with a third party,
5 including a general agent or independent agency, to establish
6 and maintain a system of supervision as required by paragraph
7 (1) with respect to insurance producers under contract with
8 or employed by the third party.

9 (4) An insurer shall make reasonable inquiry to assure
10 that the third party contracting under paragraph (3) is
11 performing the functions required under paragraph (1) and
12 shall take such action as is reasonable under the
13 circumstances to enforce the contractual obligation to
14 perform the functions. An insurer may comply with its
15 obligation to make reasonable inquiry by doing both of the
16 following:

17 (i) The insurer annually obtains, electronically or
18 otherwise, a certification from a third party senior
19 manager who has responsibility for the delegated
20 functions that the manager has a reasonable basis to
21 represent, and does represent, that the third party is
22 performing the required functions.

23 (ii) The insurer, based on reasonable selection
24 criteria, periodically selects third parties contracting
25 under paragraph (3) for a review to determine whether the
26 third parties are performing the required functions. The
27 insurer shall perform procedures to conduct the review
28 that are reasonable under the circumstances.

29 (5) An insurer that contracts with a third party under
30 paragraph (3) and that complies with the requirements to

1 supervise under paragraph (4) shall have fulfilled its
2 responsibilities under paragraph (1).

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

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

7 (ii) Include in its system of supervision an
8 insurance producer's recommendations to consumers of
9 products other than the annuities offered by the insurer,
10 general agent or independent agency.

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

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

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

22 (ii) The person has a reasonable basis for making
23 the certification.

24 (e) Compliance with other rules.--Compliance with the
25 Financial Industry Regulatory Authority Conduct Rules pertaining
26 to suitability shall satisfy the requirements under this section
27 for the recommendation of annuities registered under the
28 Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77a et seq.) or
29 rules and regulations adopted under the Securities Act of 1933.
30 Nothing in this subsection shall limit the commissioner's

1 ability to enforce the provisions of this article.

2 (f) Internal audit and compliance procedures.--Nothing in
3 this article shall exonerateEXEMPT an insurer from the internal ←
4 audit and compliance procedure requirements under section 405-A.
5 Section 404-B. Mitigation of responsibility.

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

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

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

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

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

22 Section 405-B. Recordkeeping.

23 An insurer, general agent, independent agency and insurance
24 producer shall maintain or be able to make available to the
25 commissioner records of the information collected from the
26 consumer and other information used in making the
27 recommendations that were the basis for insurance transactions
28 for five years after the insurance transaction is completed by
29 the insurer. An insurer is permitted but shall not be required
30 to maintain documentation on behalf of an insurance producer.

1 Section 406-B. Enforcement.

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

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

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

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

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

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

21 Section 407-B. Private cause of action.

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

24 Section 3. This act shall take effect as follows:

25 (1) The amendment of section 320 of the act shall take
26 effect immediately.

27 (2) This section shall take effect immediately.

28 (3) The remainder of this act shall take effect in 180
29 days.