
 THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. **772** Session of
2021

 INTRODUCED BY DiSANTO, STREET, MENSCH, PITTMAN, KANE, YUDICHAK,
STEFANO AND BREWSTER, JUNE 16, 2021

 AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 4, 2021

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," in life insurance, further
12 providing for standard nonforfeiture law for individual
13 deferred annuities; and, in suitability of annuity
14 transactions, further providing for definitions, for
15 applicability and scope of article, for duties of insurers
16 and insurance producers, for insurance producer training, for
17 mitigation of responsibility, for recordkeeping and for
18 enforcement.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Sections 410C(d.1)(3)(C), 401-B, 402-B(a) and (b)
22 (2), ~~403-B, 403.1 B(b), 404 B heading and (a), 405-B(a) and 406- <--~~
23 ~~B-heading~~ AND 403-B of the act of May 17, 1921 (P.L.682, <--
24 No.284), known as The Insurance Company Law of 1921, are amended
25 to read:

1 Section 410C. Standard Nonforfeiture Law for Individual
2 Deferred Annuities.--* * *

3 (d.1) In the case of contracts issued on or after January 1,
4 2006, and in the case of any class of annuity contracts issued
5 before January 1, 2006, as to which the issuing company has
6 filed with the Insurance Department a notice of election of the
7 applicability of this section, the minimum values as specified
8 in subsections (e), (f), (g), (h) and (j) of any paid-up
9 annuity, cash surrender or death benefits available under an
10 annuity contract shall be based upon minimum nonforfeiture
11 amounts set forth in this section.

12 * * *

13 (3) The interest rate used in determining minimum
14 nonforfeiture amounts shall be an annual rate of interest
15 determined as the lesser of three per centum (3%) per annum and
16 the following, which shall be specified in the contract if the
17 interest rate will be reset:

18 * * *

19 (C) Where the resulting interest rate is not less than
20 fifteen hundredths of one per centum [(1%)] (.15%); and

21 * * *

22 Section 401-B. Definitions.

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

26 "Annuity." An annuity that is an insurance product and is
27 individually solicited, whether the insurance product is
28 classified as an individual or group annuity.

29 "Cash compensation." A discount, concession, fee, service
30 fee, commission, sales charge, loan, override or cash benefit

1 received by a producer in connection with the recommendation or
2 sale of an annuity from an insurer, intermediary or directly
3 from the consumer.

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

6 "Consumer profile information." Information that is
7 reasonably appropriate to determine whether a recommendation
8 addresses the consumer's financial situation, insurance needs
9 and financial objectives, including, at a minimum, the
10 following:

11 (1) Age.

12 (2) Annual income.

13 (3) Financial situation and needs, including debts and
14 other obligations.

15 (4) Financial experience.

16 (5) Insurance needs.

17 (6) Financial objectives.

18 (7) Intended use of the annuity.

19 (8) Financial time horizon.

20 (9) Existing assets or financial products, including
21 investment, annuity and insurance holdings.

22 (10) Liquidity needs.

23 (11) Liquid net worth.

24 (12) Risk tolerance, including willingness to accept
25 non-guaranteed elements in the annuity.

26 (13) Financial resources used to fund the annuity.

27 (14) Tax status.

28 "Continuing education credit." One continuing education
29 credit under section 608-A of the act of May 17, 1921 (P.L.789,
30 No.285), known as The Insurance Department Act of 1921.

1 "Continuing education provider." An individual or entity
2 approved to offer continuing education courses under section
3 608-A of The Insurance Department Act of 1921.

4 "Department." The Insurance Department of the Commonwealth.

5 "Employee Retirement Income Security Act." The Employee
6 Retirement Income Security Act of 1974 (Public Law 93-406, 88
7 Stat. 829).

8 "FINRA." The Financial Industry Regulatory Authority or a
9 succeeding agency.

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

13 ~~"Independent agency" (Deleted by amendment).~~ <--

14 ["Insurance producer." A person who sells, solicits or
15 negotiates contracts of insurance as defined in section 601-A of
16 The Insurance Department Act of 1921.]

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

20 "Intermediary." An entity contracted directly with an
21 insurer or with another entity contracted with an insurer to
22 facilitate the sale of the insurer's annuities by producers.

23 "Internal Revenue Code." The Internal Revenue Code of 1986
24 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

25 "Material conflict of interest." A financial interest of the
26 producer in the sale of an annuity that a reasonable person
27 would expect to influence the impartiality of a recommendation.
28 The term does not include cash compensation or non-cash
29 compensation.

30 "Non-cash compensation." A form of compensation that is not

1 cash compensation, including health insurance, office rent,
2 office support and retirement benefits.

3 "Non-guaranteed elements." The premiums, credited interest
4 rates, including any bonus, benefits, values, dividends, non-
5 interest based credits, charges or elements of formulas used to
6 determine any of these, that are subject to company discretion
7 and are not guaranteed at issue. An element is considered non-
8 guaranteed if any of the underlying non-guaranteed elements are
9 used in its calculation.

10 "Producer." A person or entity required to be licensed under
11 the laws of this Commonwealth to sell, solicit or negotiate
12 insurance, including annuities. For purposes of this article,
13 "producer" includes an insurer where no producer is involved.

14 "Recommendation." [Advice provided by an insurance producer,
15 or an insurer where no producer is involved, to an individual
16 consumer that results in a purchase or exchange of an annuity in
17 accordance with that advice.] Advice provided by a producer to
18 an individual that was intended to result or does result in a
19 purchase, an exchange or a replacement of an annuity in
20 accordance with that advice. The term does not include general
21 communication to the public, generalized customer service
22 assistance or administrative support, general educational
23 information and tools, prospectuses or other product and sales
24 material.

25 "Replace" or "replacement." The purchase of a new [policy or
26 contract] annuity where it is known or should be known to the
27 proposing producer, or to the proposing insurer [if there is no
28 insurance producer] whether or not a producer is involved, that
29 by reason of the transaction, an existing annuity or other
30 insurance policy [or contract] has been or will be any of the

1 following:

2 (1) lapsed, forfeited, surrendered or partially
3 surrendered or assigned to the replacing insurer or otherwise
4 terminated;

5 (2) converted to reduced paid-up insurance, continued as
6 extended term insurance or otherwise reduced in value by the
7 use of nonforfeiture benefits or other policy values;

8 (3) amended so as to effect a reduction in benefits or
9 in the term for which coverage would otherwise remain in
10 force or for which benefits would be paid;

11 (4) reissued with a reduction in cash value; or

12 (5) used in a financed purchase.

13 ["Suitability information." Information relating to an
14 annuity that is appropriate to determine the suitability of a
15 recommendation, including:

16 (1) Age.

17 (2) Annual income.

18 (3) Financial situation and needs, including the
19 financial resources used for the funding of the annuity.

20 (4) Financial experience.

21 (5) Financial objectives.

22 (6) Intended use of the annuity.

23 (7) Financial time horizon.

24 (8) Existing assets, including investment and life
25 insurance holdings.

26 (9) Liquidity needs.

27 (10) Liquid net worth.

28 (11) Risk tolerance.

29 (12) Tax status.]

30 "SEC." The United States Securities and Exchange Commission.

1 Section 402-B. Applicability and scope of article.

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

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

10 * * *

11 (2) Contracts used to fund:

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

15 (ii) A plan described by sections 401(a) or (k),
16 403(b), 408(k) or (p) of the Internal Revenue Code [of
17 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k),
18 403(b), 408(k) or (p)), when the plan, for purposes of
19 the Employee Retirement Income Security Act of 1974, is]
20 if established or maintained by an employer.

21 (iii) A governmental or church plan defined in
22 section 414 of the Internal Revenue Code [of 1986], a
23 government or church welfare benefit plan, or a deferred
24 compensation plan of a State or local government or tax
25 exempt organization under section 457 of the Internal
26 Revenue Code [of 1986].

27 (iv) A nonqualified deferred compensation
28 arrangement established or maintained by an employer or
29 plan sponsor.

30 [(v)] (3) Settlements of or assumptions of liabilities

1 associated with personal injury litigation or any dispute or
2 claim resolution process.

3 [(vi)] (4) Formal prepaid funeral contracts.

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

5 [(a) General duties.--In making a recommendation to a
6 consumer for the purchase or replacement of an annuity that
7 results in another insurance transaction or series of insurance
8 transactions, the insurance producer, or the insurer where no
9 insurance producer is involved, shall have reasonable grounds
10 for believing that:

11 (1) The recommendation is suitable for the consumer on
12 the basis of the facts disclosed by the consumer as to the
13 consumer's investments and other insurance products and as to
14 the consumer's suitability information.

15 (2) The consumer has been reasonably informed of various
16 features of the annuity, including the potential surrender
17 period and surrender charge, potential tax penalty if the
18 consumer sells, replaces, surrenders or annuitizes the
19 annuity, mortality and expense fees, investment advisory
20 fees, potential charges for and features of riders,
21 limitations on interest returns, insurance and investment
22 components and market risk.

23 (3) The consumer would benefit from certain features of
24 the annuity, including tax-deferred growth, annuitization or
25 death or living benefit.

26 (4) The particular annuity as a whole, the underlying
27 subaccounts to which funds are allocated at the time of
28 purchase or replacement of the annuity, and riders and
29 similar product enhancements, if any, are suitable and, in
30 the case of a replacement, the transaction as a whole is

1 suitable for the consumer based on the consumer's suitability
2 information.

3 (5) In the case of a replacement of an annuity, the
4 replacement is suitable and shall take into consideration
5 whether:

6 (i) The consumer will incur a surrender charge, be
7 subject to the commencement of a new surrender period,
8 lose existing benefits, including death, living or other
9 contractual benefits, or be subject to increased fees,
10 investment advisory fees or charges for riders and
11 similar product enhancements.

12 (ii) The consumer would benefit from product
13 enhancements and improvements.

14 (iii) The consumer has had another annuity
15 replacement, including a replacement within the preceding
16 36 months.

17 (b) Consumer information.--Prior to the execution of a
18 purchase or replacement 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 the consumer's suitability information.

22 (b.1) Reasonable basis.--Except as permitted under
23 subsection (c), an insurer may not issue an annuity recommended
24 to a consumer unless there is a reasonable basis to believe the
25 annuity is suitable based on the consumer's suitability
26 information.

27 (c) Obligation limits.--

28 (1) Except as provided under paragraph (2), neither an
29 insurance producer nor an insurer where no insurance producer
30 is involved shall have any obligation to a consumer under

1 subsection (a) or (b.1) related to any annuity transaction
2 if:

3 (i) No recommendation is made.

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

7 (iii) A consumer refuses to provide relevant
8 suitability information and the annuity transaction is
9 not recommended.

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

13 (2) An insurer's issuance of an annuity subject to
14 paragraph (1) shall be reasonable under all the circumstances
15 actually known to the insurer at the time the annuity is
16 issued.

17 (c.1) Documentation.--An insurance producer, or the
18 responsible insurer representative if no insurance producer is
19 involved, shall at the time of sale of an annuity:

20 (1) Make a record of each recommendation subject to
21 subsection (a).

22 (2) Obtain a customer-signed statement documenting a
23 customer's refusal to provide suitability information, if
24 any.

25 (3) Obtain a customer-signed statement acknowledging
26 that an annuity transaction is not recommended if the
27 customer decides to enter into an annuity transaction that is
28 not based on the insurance producer's or insurer's
29 recommendation.

30 (d) Supervision of recommendations.--

1 (1) An insurer shall establish a supervision system that
2 is reasonably designed to achieve the insurer's and its
3 insurance producer's compliance with this article, including,
4 but not limited to, the following:

5 (i) The insurer shall maintain reasonable procedures
6 to inform its insurance producers of the requirements of
7 this article and shall incorporate the requirements of
8 this article into relevant insurance producer training
9 manuals.

10 (ii) The insurer shall establish standards for
11 insurance producer product training and maintain
12 reasonable procedures to require its insurance producers
13 to comply with the requirements of section 403.1-B.

14 (iii) The insurer shall provide product-specific
15 training and training materials that explain all material
16 features of its annuity products to its insurance
17 producers.

18 (iv) The insurer shall maintain procedures for
19 review of each recommendation before issuance of an
20 annuity that are designed to ensure that there is a
21 reasonable basis to determine that a recommendation is
22 suitable. The review procedures may apply a screening
23 system for the purpose of identifying selected
24 transactions for additional review and may be
25 accomplished electronically or through other means,
26 including, but not limited to, physical review. The
27 electronic or other system may be designed to require
28 additional review only for those transactions identified
29 for additional review by the selection criteria.

30 (v) The insurer shall maintain reasonable procedures

1 to detect recommendations that are not suitable,
2 including, but not limited to, confirmation of consumer
3 suitability information, systematic customer surveys,
4 interviews, confirmation letters and programs of internal
5 monitoring. Nothing in this subparagraph shall prevent an
6 insurer from complying with this subparagraph by applying
7 sampling procedures or by confirming suitability
8 information after issuance or delivery of the annuity.

9 (vi) The insurer shall annually provide a report
10 detailing its supervision system to senior management,
11 including to the senior manager responsible for audit
12 functions. The report shall include a description of the
13 testing designed to determine the effectiveness of the
14 supervision system, the exceptions found and the
15 corrective action taken or recommended, if any.

16 (2) Nothing in this subsection shall restrict an insurer
17 from contracting for performance of a function, including
18 maintenance of procedures, required under paragraph (1). An
19 insurer is responsible for taking appropriate corrective
20 action and may be subject to sanctions and penalties under
21 section 406-B regardless of whether the insurer contracts for
22 performance of a function and regardless of the insurer's
23 compliance with paragraph (3).

24 (3) An insurer's supervision system under paragraph (1)
25 shall include supervision of contractual performance under
26 paragraph (2), including, but not limited to, the following:

27 (i) Monitoring and, as appropriate, conducting
28 audits to assure that the contracted function is properly
29 performed.

30 (ii) Annually obtaining a certification from a

1 senior manager who has responsibility for the contracted
2 function that the senior manager has a reasonable basis
3 to represent, and does represent, that the function is
4 properly performed.

5 (4) An insurer is not required to include in its system
6 of supervision an insurance producer's recommendations to
7 consumers for products other than the annuities offered by
8 the insurer.

9 (d.1) Dissuasion.--An insurance producer may not dissuade,
10 or attempt to dissuade, a consumer from:

11 (1) Truthfully responding to an insurer's request for
12 confirmation of suitability information.

13 (2) Filing a complaint.

14 (3) Cooperating with the investigation of a complaint.

15 (e) Compliance with other rules.--Sales made in compliance
16 with FINRA requirements pertaining to suitability and
17 supervision of annuity transactions shall satisfy the
18 requirements under this section. This subsection applies to
19 FINRA broker-dealer sales of annuities if the suitability and
20 supervision is similar to those applied to variable annuity
21 sales. However, nothing in this subsection shall limit the
22 commissioner's ability to enforce or investigate the provisions
23 of this article. For this subsection to apply, an insurer shall:

24 (1) Monitor the FINRA member broker-dealer using
25 information collected in the normal course of an insurer's
26 business.

27 (2) Provide to the FINRA member broker-dealer
28 information and reports which are reasonably appropriate to
29 assist the FINRA member broker-dealer to maintain its
30 supervision system.

1 (f) Internal audit and compliance procedures.--Nothing in
2 this article shall exempt an insurer from the internal audit and
3 compliance procedure requirements under section 405-A.]

4 (a) Best interest obligations.--A producer, when making a
5 recommendation of an annuity, shall act in the best interest of
6 the consumer under the circumstances known at the time the
7 recommendation is made, without placing the producer's or the
8 insurer's financial interest ahead of the consumer's interest. A
9 producer has acted in the best interest of the consumer if the
10 producer has satisfied the following obligations regarding care,
11 disclosure, conflict of interest and documentation:

12 (1) The following care obligations:

13 (i) The producer, in making a recommendation shall
14 exercise reasonable diligence, care and skill to:

15 (A) Know the consumer's financial situation,
16 insurance needs and financial objectives.

17 (B) Understand the available recommendation
18 options after making a reasonable inquiry into
19 options available to the producer.

20 (C) Have a reasonable basis to believe the
21 recommended option effectively addresses the
22 consumer's financial situation, insurance needs and
23 financial objectives over the life of the product, as
24 evaluated in light of the consumer profile
25 information.

26 (D) Communicate the basis or bases of the
27 recommendation.

28 (ii) The requirements under subparagraph (i) include
29 making reasonable efforts to obtain consumer profile
30 information from the consumer prior to the recommendation

1 of an annuity.

2 (iii) The requirements under subparagraph (i)
3 require a producer to consider the types of products the
4 producer is authorized and licensed to recommend or sell
5 that address the consumer's financial situation,
6 insurance needs and financial objectives. This does not
7 require analysis or consideration of any products outside
8 the authority and license of the producer or other
9 possible alternative products or strategies available in
10 the market at the time of the recommendation. Producers
11 shall be held to standards applicable to producers with
12 similar authority and licensure.

13 (iv) The requirements under this subsection do not
14 create a fiduciary obligation or relationship and only
15 create a regulatory obligation as established in this
16 article.

17 (v) The consumer profile information,
18 characteristics of the insurer, and product costs, rates,
19 benefits and features are those factors generally
20 relevant in making a determination whether an annuity
21 effectively addresses the consumer's financial situation,
22 insurance needs and financial objectives, but the level
23 of importance of each factor under the care obligation of
24 this paragraph may vary depending on the facts and
25 circumstances of a particular case. However, each factor
26 may not be considered in isolation.

27 (vi) The requirements under subparagraph (i) include
28 having a reasonable basis to believe the consumer would
29 benefit from certain features of the annuity, including
30 annuitization, death or living benefit or other

1 insurance-related features.

2 (vii) The requirements under subparagraph (i) apply
3 to the particular annuity as a whole and the underlying
4 subaccounts to which funds are allocated at the time of
5 purchase or exchange of an annuity, and riders and
6 similar ~~producer~~ PRODUCT enhancements, if any. <--

7 (viii) The requirements under subparagraph (i) do
8 not mean the annuity with the lowest one-time or multiple
9 occurrence compensation structure shall necessarily be
10 recommended.

11 (ix) The requirements under subparagraph (i) do not
12 mean the producer has ongoing monitoring obligations
13 under the care obligation under this paragraph, although
14 the obligation may be separately owed under the terms of
15 a fiduciary, consulting, investment advising or financial
16 planning agreement between the consumer and the producer.

17 (x) In the case of an exchange or replacement of an
18 annuity, the producer shall consider the whole
19 transaction, which includes taking into consideration
20 whether:

21 (A) The consumer will incur a surrender charge,
22 be subject to the commencement of a new surrender
23 period, lose existing benefits, including death,
24 living or other contractual benefits, or be subject
25 to increased fees, investment advisory fees or
26 charges for riders and similar product enhancements.

27 (B) The replacing product would substantially
28 benefit the consumer in comparison to the replaced
29 product over the life of the product.

30 (C) The consumer has had another annuity

1 exchange or replacement and, in particular, an
2 exchange or replacement within the preceding 60
3 months.

4 (xi) Nothing in this section should be construed to
5 require a producer to obtain any license other than a
6 producer license with the appropriate line of authority
7 to sell, solicit or negotiate insurance in this State,
8 including any securities license, in order to fulfill the
9 duties and obligations contained in this article;
10 provided the producer does not give advice or provide
11 services that are otherwise subject to securities laws or
12 engage in any other activity requiring other professional
13 licenses.

14 (2) The following disclosure obligations:

15 (i) Prior to the recommendation or sale of an
16 annuity, the producer shall prominently disclose to the
17 consumer on a form substantially similar to a model form
18 established by the department and following the NAIC
19 Model #275's Appendix A and including all the following:

20 (A) A description of the scope and terms of the
21 relationship with the consumer and the role of the
22 producer in the transaction.

23 (B) An affirmative statement on whether the
24 producer is licensed and authorized to sell the
25 following products:

26 (I) Fixed annuities.

27 (II) Fixed indexed annuities.

28 (III) Variable annuities.

29 (IV) Life insurance.

30 (V) Mutual funds.

1 (VI) Stocks and bonds.

2 (VII) Certificates of deposit.

3 (C) An affirmative statement describing the
4 insurers the producer is authorized, contracted or
5 appointed, or otherwise able to sell insurance
6 products for, using the following descriptions:

7 (I) One insurer.

8 (II) From two or more insurers.

9 (III) From two or more insurers although
10 primarily contracted with one insurer.

11 (D) A description of the sources and types of
12 cash compensation and non-cash compensation to be
13 received by the producer, including whether the
14 producer is to be compensated for the sale of a
15 recommended annuity by commission as part of premium
16 or other remuneration received from the insurer,
17 intermediary or other producer or by fee as a result
18 of a contract for advice or consulting services.

19 (E) A notice of the consumer's right to request
20 additional information regarding cash compensation
21 described in subparagraph (ii).

22 (ii) Upon request of the consumer or the consumer's
23 designated representative, the producer shall disclose:

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

27 (B) Whether the cash compensation is a one-time
28 or multiple occurrence amount and, if a multiple
29 occurrence amount, the frequency and amount of the
30 occurrence, which may be stated as a range of amounts

1 or percentages.

2 (iii) Prior to or at the time of the recommendation
3 or sale of an annuity, the producer shall have a
4 reasonable basis to believe the consumer has been
5 informed of various features of the annuity, including
6 the potential surrender period and surrender charger,
7 potential tax penalty if the consumer sells, replaces,
8 surrenders or annuitizes the annuity, mortality and
9 expense fees, investment and advisory fees, any annual
10 fees, potential charges for and features of riders or
11 other options of the annuity, limitation on interest
12 returns, POTENTIAL CHANGES IN NON-GUARANTEED ELEMENTS OF <--
13 THE ANNUITY, insurance and investment components and
14 market risk.

15 (3) A producer shall identify and avoid or reasonably
16 manage and disclose material conflicts of interest, including
17 material conflicts of interest related to an ownership
18 interest.

19 (4) A producer shall at the time of recommendation or
20 sale:

21 (i) Make a written record of any recommendation and
22 the basis for the recommendation subject to this article.

23 (ii) Obtain a consumer signed statement on a form
24 substantially similar to a model form established by the
25 department and following the NAIC Model #275's Appendix
26 B, documenting:

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

29 (B) A customer's understanding of the
30 ramifications of not providing his or her consumer

1 profile information or providing insufficient
2 consumer profile information.

3 (iii) Obtain a consumer signed statement on a form
4 substantially similar to a model form established by the
5 department and following the NAIC Model #275's Appendix
6 C, acknowledging the annuity transaction is not
7 recommended if a customer decides to enter into an
8 annuity transaction that is not based on the producer's
9 recommendation.

10 (5) Any requirement applicable to a producer under this
11 subsection shall apply to every producer who has exercised
12 material control or influence in the making of a
13 recommendation and has received direct compensation as a
14 result of the recommendation or sale, regardless of whether
15 the producer has had any direct contact with the consumer.
16 Activities, including providing or delivering marketing or
17 educational materials, product wholesaling or other back
18 office product support and general supervision of a producer
19 do not, in and of themselves, constitute material control or
20 influence.

21 (b) Transactions not based on a recommendation.--The
22 following shall apply:

23 (1) Except as provided under paragraph (2), a producer
24 shall have no obligation to a consumer under subsection (a)
25 related to any annuity transaction if:

26 (i) No recommendation is made.

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

30 (iii) A consumer refuses to provide relevant

1 consumer profile information and the annuity transaction
2 is not recommended.

3 (iv) A consumer decides to enter into an annuity
4 transaction that is not based on a recommendation of the
5 producer.

6 (2) An insurer's issuance of an annuity subject to
7 paragraph (1) shall be reasonable under all circumstances
8 actually known to the insurer at the time the annuity is
9 issued.

10 (c) Supervision of recommendations.--The following shall
11 apply:

12 (1) Except as permitted under subsection (b), an insurer
13 may not issue an annuity recommended to a consumer unless
14 there is a reasonable basis to believe the annuity would
15 effectively address the particular consumer's financial
16 situation, insurance needs and financial objectives based on
17 the consumer's consumer profile information.

18 (2) An insurer shall establish and maintain a
19 supervision system that is reasonably designed to achieve the
20 insurer's and its producer's compliance with this article,
21 including the following:

22 (i) The insurer shall establish and maintain
23 reasonable procedures to inform its producers of the
24 requirements of this article and shall incorporate the
25 requirements of this article into relevant producer
26 training manuals.

27 (ii) The insurer shall establish and maintain
28 standards for producer product training and shall
29 establish and maintain reasonable procedures to require
30 its insurance producers to comply with the requirements

1 of section 403.1-B.

2 (iii) The insurer shall provide product-specific
3 training and training materials that explain all material
4 features of its annuity products to its producers.

5 (iv) The insurer shall establish and maintain
6 procedures for the review of each recommendation before
7 issuance of an annuity that are designed to ensure there
8 is a reasonable basis to determine that the recommended
9 annuity would effectively address the particular
10 consumer's financial situation, insurance needs and
11 financial objectives. The review procedures may apply a
12 screening system for the purpose of identifying selected
13 transactions for additional review and may be
14 accomplished electronically or through other means,
15 including physical review. The electronic or other system
16 may be designed to require additional review only for
17 those transactions identified for additional review by
18 the selection criteria.

19 (v) The insurer shall establish and maintain
20 reasonable procedures to detect recommendations that are
21 not in compliance with subsections (a), (b), (d) and (e).
22 This may include confirmation of consumer's consumer
23 profile information, systematic customer surveys,
24 producer and consumer interviews, confirmation letters,
25 producer statements or attestations and programs of
26 internal monitoring. Nothing in this subparagraph shall
27 prevent an insurer from complying with this subparagraph
28 by applying sampling procedures or by confirming the
29 consumer profile suitability information or other
30 required information under this section after issuance or

1 delivery of the annuity.

2 (vi) The insurer shall establish and maintain
3 reasonable procedures to assess, prior to or upon
4 issuance or delivery of an annuity, whether a producer
5 has provided to the consumer the information required to
6 be provided under this section.

7 (vii) The insurer shall establish and maintain
8 reasonable procedures to identify and address suspicious
9 consumer refusals to provide consumer profile
10 information.

11 (viii) The insurer shall establish and maintain
12 reasonable procedures to identify and eliminate any sales
13 contests, sales quotas, bonuses and non-cash compensation
14 that are based on the sales of specific annuities within
15 a limited period of time. The requirements of this
16 subparagraph are not intended to prohibit the receipt of
17 health insurance, office rent, office support, retirement
18 benefits or other employee benefits by employees as long
19 as those benefits are not based upon the volume of sales
20 of a specific annuity within a limited period of time.

21 (ix) The insurer shall annually provide a written
22 report detailing its supervision system to senior
23 management, including to the senior manager responsible
24 for audit functions. The report shall include a
25 description of the testing designed to determine the
26 effectiveness of the supervision system, the exceptions
27 found and corrective action taken or recommended, if any.

28 (3) Nothing in this subsection shall restrict an insurer
29 from contracting for performance of a function, including
30 maintenance of procedures, required under this subsection. An

1 insurer is responsible for taking appropriate corrective
2 action and may be subject to sanctions and penalties under
3 section 406-B regardless of whether the insurer contracts for
4 performance of a function and regardless of the insurer's
5 compliance with paragraph (4).

6 (4) An insurer's supervision system under this
7 subsection shall include supervision of contractual
8 performance under this subsection. This includes the
9 following:

10 (i) Monitoring and, as appropriate, conducting
11 audits to assure that the contracted function is properly
12 performed.

13 (ii) Annually obtaining a certification from a
14 senior manager who has responsibility for the contracted
15 function that the senior manager has a reasonable basis
16 to represent, and does represent, that the function is
17 properly performed.

18 (5) An insurer is not required to include in its system
19 of supervision:

20 (i) a producer's recommendations to consumers for
21 products other than the annuities offered by the insurer;
22 or

23 (ii) include consideration of or comparison to
24 options available to the producer or compensation
25 relating to those options other than annuities or other
26 products offered by the insurer.

27 (d) Prohibited practices.--A producer or an insurer shall
28 not dissuade, or attempt to dissuade, a consumer from:

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

1 (2) Filing a complaint.

2 (3) Cooperating with the investigation of a complaint.

3 (e) Safe Harbor.--The following shall apply:

4 (1) All recommendations and sales made in compliance
5 with comparable standards shall satisfy the requirements
6 under this article. This subsection applies to
7 recommendations and sales of annuities made by financial
8 professionals in compliance with business rules, controls and
9 procedures that satisfy a comparable standard even if the
10 standard would not otherwise apply to the product or
11 recommendation at issue. However, nothing in this subsection
12 shall limit the commissioner's ability to investigate and
13 enforce the provisions of this article.

14 (2) The insurer may base its analysis on information
15 received from either the financial professional or the entity
16 supervising the financial professional.

17 (3) For paragraph (1) to apply, an insurer shall:

18 (i) Monitor the relevant conduct of the financial
19 professional seeking to rely on paragraph (1) or the
20 entity responsible for supervising the financial
21 professional, including the financial professional's
22 broker-dealer or investment adviser registered under
23 Federal securities laws using information collected in
24 the normal course of an insurer's business.

25 (ii) Provide to the entity responsible for
26 supervising the financial professional seeking to rely on
27 paragraph (1), including the financial professional's
28 broker-dealer or investment advisor registered under
29 Federal securities laws, information and reports which
30 are reasonably appropriate to assist the entity to

1 maintain its supervision system.

2 (4) Nothing in this article shall exempt an insurer from
3 the internal audit and compliance procedure requirements
4 under section 405-A.

5 (5) For purposes of this subsection, "financial
6 professional" means a producer that is regulated and acting
7 as any of the following:

8 (i) A broker-dealer registered under Federal
9 securities laws or a registered representative of a
10 broker-dealer.

11 (ii) An investment adviser registered under Federal
12 securities laws or an investment adviser representative
13 associated with the Federal registered investment
14 adviser.

15 (iii) A plan fiduciary under section 3(21) of the
16 Employee Retirement Income Security Act or fiduciary
17 under section 4975(e)(3) of the Internal Revenue Code, or
18 any amendments or successor statutes thereto.

19 (6) For purposes of this subsection, "comparable
20 standards" means:

21 (i) With respect to broker-dealers and registered
22 representatives of broker-dealers, applicable SEC and
23 FINRA rules pertaining to best interest obligations and
24 supervision of annuity recommendations and sales,
25 including regulation best interest and any amendments or
26 successor regulations thereto.

27 (ii) With respect to investment advisers registered
28 under Federal securities laws or investment adviser
29 representatives, the fiduciary duties and all other
30 requirements imposed on the investment advisers or

1 investment adviser representatives by contract or under
2 the Investment Advisers Act of 1940, including the Form
3 ADV and interpretations.

4 (iii) With respect to plan fiduciaries or
5 fiduciaries, the duties, obligations, prohibitions and
6 all other requirements attendant to such status under the
7 Employee Retirement Income Security Act or the Internal
8 Revenue Code and any amendments or successor statutes
9 thereto.

10 SECTION 2. SECTION 403.1-B(A) (6) AND (B) OF THE ACT ARE <--
11 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
12 READ:

13 Section 403.1-B. Insurance producer training.

14 * * * (A) CONTINUING EDUCATION CREDITS.--AN INSURANCE <--
15 PRODUCER WHO HAS THE AUTHORITY TO SELL ANNUITIES SHALL COMPLETE
16 AT LEAST FOUR CONTINUING EDUCATION CREDITS IN AN ANNUITY
17 TRAINING COURSE OR COURSES COVERING THE FOLLOWING TOPICS:

18 * * *

19 (6) APPROPRIATE STANDARDS OF CONDUCT, SALES PRACTICES,
20 REPLACEMENT AND DISCLOSURE REQUIREMENTS.

21 (b) Compliance.--[The continuing education credit
22 requirement under subsection (a) shall be met on or before the
23 end of the insurance producer's next complete license period
24 occurring after the effective date of this section. For
25 individuals licensed on or after the effective date of this
26 section, the requirement shall be met on or before the end of
27 the insurance producer's first license period.] The following
28 shall apply:

29 (1) The continuing education requirement under
30 subsection (a) shall be met on or before the end of the

1 insurance producer's next complete license period occurring
2 after the effective date of this section. For individuals
3 licensed on or after the effective date of this section, the
4 requirement shall be met on or before the end of the
5 insurance producer's first license period.

6 (2) An insurance producer who has met the continuing
7 education credit requirement under subsection (a) prior to
8 the effective date of this subsection shall, within six
9 months after the effective date of this subsection, complete
10 either:

11 (i) At least four continuing education credits in an
12 annuity training course or courses in compliance with
13 this section.

14 (ii) An additional one-time one credit training
15 course approved by the department.

16 * * *

17 (G.1) SATISFACTION OF TRAINING REQUIREMENTS.--THE
18 SATISFACTION OF THE COMPONENTS OF THE TRAINING REQUIREMENTS OF
19 ANY COURSE OR COURSES WITH COMPONENTS SUBSTANTIALLY SIMILAR TO
20 THE PROVISIONS OF THIS SECTION SHALL BE DEEMED TO SATISFY THE
21 TRAINING REQUIREMENTS OF THIS SUBSECTION IN THIS COMMONWEALTH.

<--

22 * * *

23 SECTION 3. SECTIONS 404-B HEADING AND (A), 405-B(A) AND 406-
24 B HEADING OF THE ACT ARE AMENDED TO READ:

25 Section 404-B. [Mitigation of responsibility] Compliance
26 mitigation.

27 (a) Corrective actions.--An insurer is responsible for
28 compliance with this article. If a violation occurs, either
29 because of the action or inaction of an insurer or its
30 [insurance] producer, the commissioner may order:

1 (1) An insurer to take reasonably appropriate corrective
2 action for any consumer harmed by [the insurer's or by its
3 insurance producer's violation of this article.] a failure to
4 comply with this article by the insurer, an entity contracted
5 to perform the insurer's supervisory duties or by the
6 producer.

7 (3) An exclusive general agent or the [insurance]
8 producer to take reasonably appropriate corrective action for
9 any consumer harmed by the licensee's violation of this
10 article.

11 (4) Penalties and remedies under section 406-B.

12 * * *

13 Section 405-B. Recordkeeping.

14 (a) General rule.--An insurer, exclusive general agent and
15 [insurance] producer shall maintain or be able to make available
16 to the commissioner records of the information collected from
17 the consumer, disclosures made to the consumer, including
18 summaries of oral disclosures, and other information used in
19 making the recommendations that were the basis for the insurance
20 transactions for five years after the insurance transaction is
21 completed by the insurer. An insurer is permitted but shall not
22 be required to maintain documentation on behalf of a ~~an~~ <--
23 ~~insurance~~ [AN INSURANCE] A producer. <--

24 * * *

25 Section 406-B. [Enforcement] Penalties and enforcement.

26 * * *

27 SECTION 4. THE AMENDMENT OF SECTION 410C(D.1)(3)(C) OF THE <--
28 ACT SHALL APPLY ONLY TO ANNUITY CONTRACTS ISSUED ON OR AFTER THE
29 EFFECTIVE DATE OF THIS SECTION.

30 Section 2 5. This act shall take effect in 180 days. <--