

**INSURANCE COMPANY LAW OF 1921 - OMNIBUS AMENDMENTS**

**Act of Jun. 28, 2018, P.L. 351, No. 48**

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No. 2018-48

HB 152

AN ACT

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," in life insurance, further providing for surplus or safety fund and providing for contact information and for life policy locator service; and, in suitability of annuity transactions, further providing for definitions, for applicability and scope of article and for duties of insurers and insurance producers, providing for insurance producer training, further providing for mitigation of responsibility and for recordkeeping and providing for regulations.

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

Section 1. Section 429 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is repealed:

[Section 429. Surplus or Safety Fund.--Any mutual life insurance company, incorporated under the laws of this Commonwealth and transacting business therein, may establish and maintain, or, if already established, may continue to maintain, a surplus or safety fund to an amount not in excess of ten per centum of its reserve, or one hundred thousand dollars, whichever is greater, and the excess of the market value of its securities over their book value.

In cases where the surplus or safety fund at present existing, exclusive of all accumulations held on account of the outstanding deferred dividend policies, exceeds the limit above designated, the company shall be entitled to retain said surplus or safety fund, but shall not be entitled to add thereto so long as it exceeds said limit.

For cause shown, the Insurance Commissioner may, at any time, permit any corporation to accumulate and maintain a surplus or safety fund in excess of the limit above mentioned for a prescribed period, not exceeding one year in any one permission, by filing in his office a decision stating his reasons therefor and causing the same to be published in his next annual report.]

Section 2. Article IV of the act is amended by adding a subarticle to read:

**(d) PROVISIONS RELATING TO  
LOCATING LIFE INSURANCE POLICIES.**

**Section 441. Contact information.--The following shall apply regarding contact information:**

(a) The Insurance Department shall maintain an electronic database of contact information for each life insurer that has life insurance policies or annuity contracts in force in this Commonwealth.

(b) All life insurers, including those insurers under Article XXIV, having a life insurance policy or annuity contract in force in this Commonwealth shall provide and maintain with the Insurance Department a valid e-mail address.

Section 442. Life policy locator service.--The Insurance Department and all life insurers, through the contact information identified in section 441(a), shall participate in the life policy locator service adopted by the National Association of Insurance Commissioners in providing for and responding to search requests for life insurance policies or annuities in force in this Commonwealth covering a decedent.

Section 3. Sections 401-B, 402-B and 403-B of the act are amended to read:

Section 401-B. Definitions.

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

"Annuity." [A fixed annuity or variable annuity that is] **An annuity that is an insurance product and is** individually solicited, whether the **insurance** product is classified as an individual or group annuity.

"Commissioner." The Insurance Commissioner of the Commonwealth.

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

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

"Department." The Insurance Department of the Commonwealth.

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

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

["Independent agency." A producer entity that does not exclusively represent one insurance company.]

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

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

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

"Replace" or "replacement." The purchase of a new policy or contract where it is known or should be known to the proposing producer, or to the proposing insurer if there is no insurance producer, that by reason of the transaction, an existing policy or contract has been or will be:

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

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

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

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

(5) used in a financed purchase.

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

(1) Age.

(2) Annual income.

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

(4) Financial experience.

(5) Financial objectives.

(6) Intended use of the annuity.

(7) Financial time horizon.

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

(9) Liquidity needs.

(10) Liquid net worth.

(11) Risk tolerance.

(12) Tax status.

Section 402-B. Applicability and scope of article.

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

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

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

(2) [Annuity contracts] **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 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 **or replacement** 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]:

(1) **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.] the consumer's suitability information.**

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

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

(4) **The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or replacement of the annuity, and riders and similar product enhancements, if any, are suitable and, in the case of a replacement, the transaction as a whole is suitable for the consumer based on the consumer's suitability information.**

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

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

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

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

(b) **Consumer information.--Prior to the execution of a purchase or [exchange] replacement 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.] the consumer's suitability information.**

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

(c) **Obligation limits.--**

(1) **[Neither] Except as provided under paragraph (2), neither an insurance producer nor an insurer where no**

insurance producer is involved shall have any obligation to a consumer under subsection (a) **or (b.1)** 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 information.] **annuity transaction if:**

(i) **No recommendation is made.**

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

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

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

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

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

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

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

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

(d) **Supervision of recommendations.--**

(1) **An insurer shall [assure that a system to supervise recommendations] establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producer's compliance with this article [is established and maintained by complying with paragraphs (3) and (4) or shall establish and maintain such a system that includes at least the following:**

(i) **Maintaining written procedures.**

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

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

(i) **Maintaining written procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The person has a reasonable basis for making the certification.], **including, but not limited to, the following:**

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

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

**(iii) The insurer shall provide product-specific training and training materials that explain all material**

features of its annuity products to its insurance producers.

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

(v) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable, including, but not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph shall prevent an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.

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

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

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

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

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

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

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

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

(2) Filing a complaint.

(3) Cooperating with the investigation of a complaint.

(e) Compliance with other rules.--Sales made [by an insurance producer subject to and in compliance with the Financial Industry Regulatory Authority Conduct Rules pertaining

to suitability shall satisfy the requirements under this section for the recommendation of annuities. Nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this article.] **in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this section. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commissioner's ability to enforce or investigate the provisions of this article. For this subsection to apply, an insurer shall:**

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

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

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

Section 4. The act is amended by adding a section to read:  
**Section 403.1-B. Insurance producer training.**

(a) Continuing education credits.--An insurance producer who has the authority to sell annuities shall complete at least four continuing education credits in an annuity training course or courses covering the following topics:

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

(2) Identification of the parties to an annuity.

(3) How product-specific annuity contract features affect consumers.

(4) The application of income taxation of qualified and nonqualified annuities.

(5) The primary uses of annuities.

(6) Appropriate sales practices, replacement and disclosure requirements.

(b) Compliance.--The continuing education credit requirement under subsection (a) shall be met on or before the end of the insurance producer's next complete license period occurring after the effective date of this section. For individuals licensed on or after the effective date of this section, the requirement shall be met on or before the end of the insurance producer's first license period.

(c) Course requirements.--For a course to comply with the requirements of this subsection, it shall cover all topics listed under subsection (a) and may not contain any marketing information, provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to those required.

(d) Provider registration.--A provider of an annuity training course intended to comply with this subsection shall register as a continuing education provider in this Commonwealth and comply with the rules and guidelines applicable to insurance producer continuing education courses.

(e) Course method.--Annuity training courses may be conducted and completed by classroom or self-study methods.

(f) Reporting requirements.--A continuing education provider of annuity training shall comply with reporting requirements and shall issue certificates of completion.



(g) Satisfaction in other states.--The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection for resident and nonresident producers.

(h) Verification.--An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection within the time period specified under subsection (b). An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by the commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 5. Sections 404-B and 405-B of the act are amended to read:

Section 404-B. Mitigation of responsibility.

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

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

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

(3) [A] **An exclusive** general agent [or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers] **or the insurance producer** to take reasonably appropriate corrective action for any consumer harmed by the [insurance producer's] **licensee's** violation of this article.

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

(b) Reduction of penalty.--Any applicable penalty permitted under section 406-B **for a violation of this article** may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered **or the violation was not part of a pattern or practice.**

Section 405-B. Recordkeeping.

(a) **General rule.**--An insurer, **exclusive** general agent[, independent agency] 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 **the** 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.

(b) **Form of records.**--Records required to be maintained under this article may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Section 6. The act is amended by adding a section to read:  
**Section 408-B. Regulations.**

**The department may promulgate rules and regulations necessary for the administration of this article.**

Section 7. This act shall take effect in 180 days.

APPROVED--The 28th day of June, A.D. 2018.

TOM WOLF