

AMENDMENTS TO HOUSE BILL NO. 152

Sponsor: SENATOR WHITE

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1 Amend Bill, page 1, lines 1 through 3, by striking out all of
2 said lines and inserting

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

22 Amend Bill, page 1, lines 6 through 16; pages 2 through 4,
23 lines 1 through 30; page 5, lines 1 through 11; by striking out
24 all of said lines on said pages and inserting

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27 repealed:

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

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

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

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

15 (d) PROVISIONS RELATING TO
16 LOCATING LIFE INSURANCE POLICIES.

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

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

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

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

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

36 Section 401-B. Definitions.

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

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

44 "Commissioner." The Insurance Commissioner of the
45 Commonwealth.

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

49 "Continuing education provider." An individual or entity
50 approved to offer continuing education courses under section
51 608-A of The Insurance Department Act of 1921.

1 "Department." The Insurance Department of the Commonwealth.
2 "FINRA." The Financial Industry Regulatory Authority or a
3 succeeding agency.

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

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

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

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

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

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

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

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

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

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

35 (5) used in a financed purchase.

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

39 (1) Age.

40 (2) Annual income.

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

43 (4) Financial experience.

44 (5) Financial objectives.

45 (6) Intended use of the annuity.

46 (7) Financial time horizon.

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

49 (9) Liquidity needs.

50 (10) Liquid net worth.

51 (11) Risk tolerance.

1 (12) Tax status.

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

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

32 (v) Settlements of or assumptions of liabilities
33 associated with personal injury litigation or any dispute
34 or claim resolution process.

35 (vi) Formal prepaid funeral contracts.

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

37 (a) General duties.--In making a recommendation to a
38 consumer for the purchase or replacement of an annuity [or the
39 exchange of an annuity] that results in another insurance
40 transaction or series of insurance transactions, the insurance
41 producer, or the insurer where no insurance producer is
42 involved, shall have reasonable grounds for believing that
43 [the]:

44 (1) The recommendation is suitable for the consumer on
45 the basis of the facts disclosed by the consumer as to the
46 consumer's investments and other insurance products and as to
47 [the consumer's financial situation and needs.] the
48 consumer's suitability information.

49 (2) The consumer has been reasonably informed of various
50 features of the annuity, including the potential surrender
51 period and surrender charge, potential tax penalty if the

1 consumer sells, replaces, surrenders or annuitizes the
2 annuity, mortality and expense fees, investment advisory
3 fees, potential charges for and features of riders,
4 limitations on interest returns, insurance and investment
5 components and market risk.

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

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

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

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

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

27 (iii) The consumer has had another annuity
28 replacement, including a replacement within the preceding
29 36 months.

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

35 (1) The consumer's financial status.

36 (2) The consumer's tax status.

37 (3) The consumer's investment objectives.

38 (4) Other information used or considered to be
39 reasonable by the insurance producer, or the insurer where no
40 insurance producer is involved, in making recommendations to
41 the consumer.] the consumer's suitability information.

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

47 (c) Obligation limits.--

48 (1) [Neither] Except as provided under paragraph (2),
49 neither an insurance producer nor an insurer where no
50 insurance producer is involved shall have any obligation to a
51 consumer under subsection (a) or (b.1) related to any

1 [recommendation that is reasonable under all the
2 circumstances actually known to the insurer or insurance
3 producer at the time of the recommendation when a consumer:

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

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

9 (iii) Fails to provide complete or accurate
10 information.] annuity transaction if:

11 (i) No recommendation is made.

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

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

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

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

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

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

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

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

38 (d) Supervision of recommendations.--

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

46 (i) Maintaining written procedures.

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

50 (2) A general agent or independent agency shall adopt a
51 system established by an insurer to supervise recommendations

1 of its insurance producers that is reasonably designed to
2 achieve compliance with this article or shall establish and
3 maintain a system that is reasonably designed to achieve
4 compliance with this article. The system must include at
5 least the following:

6 (i) Maintaining written procedures.

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

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

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

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

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

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

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

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

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

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

1 criteria.

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

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

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

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

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

19 (iii) The insurer shall provide product-specific
20 training and training materials that explain all material
21 features of its annuity products to its insurance
22 producers.

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

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

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

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

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

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

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

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

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

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

29 (2) Filing a complaint.

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

31 (e) Compliance with other rules.--Sales made by [an
32 insurance producer subject to and in compliance with the
33 Financial Industry Regulatory Authority Conduct Rules pertaining
34 to suitability shall satisfy the requirements under this section
35 for the recommendation of annuities. Nothing in this subsection
36 shall limit the commissioner's ability to enforce the provisions
37 of this article.] and in compliance with FINRA requirements
38 pertaining to suitability and supervision of annuity
39 transactions shall satisfy the requirements under this section.
40 This subsection applies to FINRA broker-dealer sales of
41 annuities if the suitability and supervision is similar to those
42 applied to variable annuity sales. However, nothing in this
43 subsection shall limit the commissioner's ability to enforce or
44 investigate the provisions of this article. For this subsection
45 to apply, an insurer shall:

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

49 (2) Provide to the FINRA member broker-dealer
50 information and reports which are reasonably appropriate to
51 assist the FINRA member broker-dealer to maintain its

1 supervision system.

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

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

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

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

13 (2) Identification of the parties to an annuity.

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

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

18 (5) The primary uses of annuities.

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

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

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

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

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

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

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

50 (h) Verification.--An insurer shall verify that an insurance
51 producer has completed the annuity training course required

1 under this subsection within the time period specified under
2 subsection (b). An insurer may satisfy its responsibility under
3 this subsection by obtaining certificates of completion of the
4 training course or obtaining reports provided by the
5 commissioner-sponsored database systems or vendors or from a
6 reasonably reliable commercial database vendor that has a
7 reporting arrangement with approved insurance education
8 providers.

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

11 Section 404-B. Mitigation of responsibility.

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

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

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

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

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

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

34 Section 405-B. Recordkeeping.

35 (a) General rule.--An insurer, exclusive general agent[,
36 independent agency] and insurance producer shall maintain or be
37 able to make available to the commissioner records of the
38 information collected from the consumer and other information
39 used in making the recommendations that were the basis for the
40 insurance transactions for five years after the insurance
41 transaction is completed by the insurer. An insurer is permitted
42 but shall not be required to maintain documentation on behalf of
43 an insurance producer.

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

48 Section 6. The act is amended by adding a section to read:

49 Section 408-B. Regulations.

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

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