

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1307 Session of  
2008

INTRODUCED BY CORMAN, STACK, C. WILLIAMS, RAFFERTY, O'PAKE,  
COSTA, BAKER, GORDNER, BROWNE, EARLL, A. WILLIAMS AND  
RHOADES, MARCH 13, 2008

SENATOR D. WHITE, BANKING AND INSURANCE, AS AMENDED,  
SEPTEMBER 17, 2008

## AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," providing for suitability of  
12 annuity transactions.

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

15 Section 1. The act of May 17, 1921 (P.L.682, No.284), known  
16 as The Insurance Company Law of 1921, is amended by adding an  
17 article to read:

ARTICLE IV-BSUITABILITY OF ANNUITY TRANSACTIONS

20 Section 401-B. Definitions.

21 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Annuity." A fixed annuity or variable annuity that is  
4 individually solicited, whether the product is classified as an  
5 individual or group annuity.

6 "Commissioner." The Insurance Commissioner of the  
7 Commonwealth.

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

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

13 "Insurance producer." A person who sells, solicits or  
14 negotiates contracts of insurance as defined in section 601-A of  
15 the act of May 17, 1921 (P.L.789, No.285), known as The  
16 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 "Recommendation." Advice provided by an insurance producer,  
21 or an insurer where no producer is involved, to an individual  
22 consumer that results in a purchase or exchange of an annuity in  
23 accordance with that advice.

24 Section 402-B. Applicability and scope.

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

30 (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 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 and 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 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 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.

(b) Consumer information.--Prior to the execution of a purchase or exchange 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.

(c) Obligation limits.--

(1) Neither an insurance producer nor an insurer where no insurance producer is involved shall have any obligation to a consumer under subsection (a) 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

1       that is not based on a recommendation of the insurer or  
2       insurance producer.

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

5       (d) Supervision of recommendations.--

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

11           (i) Maintaining written procedures.

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

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

22           (i) Maintaining written procedures.

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

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

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

9           (i) The insurer annually obtains, ELECTRONICALLY OR      <—  
10 OTHERWISE, a certification from a third party senior  
11 manager who has responsibility for the delegated  
12 functions that the manager has a reasonable basis to  
13 represent, and does represent, that the third party is  
14 performing the required functions.

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

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

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

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

29           (ii) Include in its system of supervision an  
30 insurance producer's recommendations to consumers of

1       products other than the annuities offered by the insurer,  
2       general agent or independent agency.

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

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

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

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

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

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

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

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

30               (2) An insurance producer to take reasonably appropriate

1 corrective action for any consumer harmed by the insurance  
2 producer's violation of this article.

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

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

12 Section 405-B. Recordkeeping.

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

21 Section 406-B. Enforcement.

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

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

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

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



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

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

11      Section 407-B. Private cause of action.

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

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