

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 772 Session of 2021

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

REFERRED TO BANKING AND INSURANCE, JUNE 16, 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 of the act of May 17, 1921 (P.L.682, No.284), known as
 24 The Insurance Company Law of 1921, are amended to read:

25 Section 410C. Standard Nonforfeiture Law for Individual
 26 Deferred Annuities.--* * *

1 (d.1) In the case of contracts issued on or after January 1,
2 2006, and in the case of any class of annuity contracts issued
3 before January 1, 2006, as to which the issuing company has
4 filed with the Insurance Department a notice of election of the
5 applicability of this section, the minimum values as specified
6 in subsections (e), (f), (g), (h) and (j) of any paid-up
7 annuity, cash surrender or death benefits available under an
8 annuity contract shall be based upon minimum nonforfeiture
9 amounts set forth in this section.

10 * * *

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

16 * * *

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

19 * * *

20 Section 401-B. Definitions.

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

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

27 "Cash compensation." A discount, concession, fee, service
28 fee, commission, sales charge, loan, override or cash benefit
29 received by a producer in connection with the recommendation or
30 sale of an annuity from an insurer, intermediary or directly

1 from the consumer.

2 "Commissioner." The Insurance Commissioner of the
3 Commonwealth.

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

9 (1) Age.

10 (2) Annual income.

11 (3) Financial situation and needs, including debts and
12 other obligations.

13 (4) Financial experience.

14 (5) Insurance needs.

15 (6) Financial objectives.

16 (7) Intended use of the annuity.

17 (8) Financial time horizon.

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

20 (10) Liquidity needs.

21 (11) Liquid net worth.

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

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

25 (14) Tax status.

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

29 "Continuing education provider." An individual or entity
30 approved to offer continuing education courses under section

1 608-A of The Insurance Department Act of 1921.

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

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

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

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" (Deleted by amendment).

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

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

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

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

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

28 "Non-cash compensation." A form of compensation that is not
29 cash compensation, including health insurance, office rent,
30 office support and retirement benefits.

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

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

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

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

30 (1) lapsed, forfeited, surrendered or partially

1 surrendered or assigned to the replacing insurer or otherwise
2 terminated;

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

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

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

10 (5) used in a financed purchase.

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

14 (1) Age.

15 (2) Annual income.

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

18 (4) Financial experience.

19 (5) Financial objectives.

20 (6) Intended use of the annuity.

21 (7) Financial time horizon.

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

24 (9) Liquidity needs.

25 (10) Liquid net worth.

26 (11) Risk tolerance.

27 (12) Tax status.]

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

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

30 (a) General rule.--This article shall apply to any sale or

1 recommendation [to purchase or replace an annuity made to a
2 consumer by an insurance producer, or an insurer where no
3 producer is involved, that results in the purchase or
4 replacement recommended] of an annuity.

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

8 * * *

9 (2) Contracts used to fund:

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

13 (ii) A plan described by sections 401(a) or (k),
14 403(b), 408(k) or (p) of the Internal Revenue Code [of
15 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k),
16 403(b), 408(k) or (p)), when the plan, for purposes of
17 the Employee Retirement Income Security Act of 1974, is]
18 if established or maintained by an employer.

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

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

28 [(v)] (3) Settlements of or assumptions of liabilities
29 associated with personal injury litigation or any dispute or
30 claim resolution process.

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

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

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

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

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

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

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

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

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

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

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

15 (b) Consumer information.--Prior to the execution of a
16 purchase or replacement of an annuity resulting from a
17 recommendation, an insurance producer, or an insurer where no
18 insurance producer is involved, shall make reasonable efforts to
19 obtain the consumer's suitability information.

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

25 (c) Obligation limits.--

26 (1) Except as provided under paragraph (2), neither an
27 insurance producer nor an insurer where no insurance producer
28 is involved shall have any obligation to a consumer under
29 subsection (a) or (b.1) related to any annuity transaction
30 if:

1 (i) No recommendation is made.
2 (ii) A recommendation was made and was later found
3 to have been prepared based on materially inaccurate
4 information provided by the consumer.

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

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

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

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

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

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

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

28 (d) Supervision of recommendations.--

29 (1) An insurer shall establish a supervision system that
30 is reasonably designed to achieve the insurer's and its

1 insurance producer's compliance with this article, including,
2 but not limited to, the following:

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

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

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

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

28 (v) The insurer shall maintain reasonable procedures
29 to detect recommendations that are not suitable,
30 including, but not limited to, confirmation of consumer

1 suitability information, systematic customer surveys,
2 interviews, confirmation letters and programs of internal
3 monitoring. Nothing in this subparagraph shall prevent an
4 insurer from complying with this subparagraph by applying
5 sampling procedures or by confirming suitability
6 information after issuance or delivery of the annuity.

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

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

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

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

28 (ii) Annually obtaining a certification from a
29 senior manager who has responsibility for the contracted
30 function that the senior manager has a reasonable basis

1 to represent, and does represent, that the function is
2 properly performed.

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

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

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

11 (2) Filing a complaint.

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

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

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

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

29 (f) Internal audit and compliance procedures.--Nothing in
30 this article shall exempt an insurer from the internal audit and

1 compliance procedure requirements under section 405-A.]

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

10 (1) The following care obligations:

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

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

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

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

24 (D) Communicate the basis or bases of the
25 recommendation.

26 (ii) The requirements under subparagraph (i) include
27 making reasonable efforts to obtain consumer profile
28 information from the consumer prior to the recommendation
29 of an annuity.

30 (iii) The requirements under subparagraph (i)

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

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

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

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

30 (vii) The requirements under subparagraph (i) apply

1 to the particular annuity as a whole and the underlying
2 subaccounts to which funds are allocated at the time of
3 purchase or exchange of an annuity, and riders and
4 similar producer enhancements, if any.

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

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

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

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

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

28 (C) The consumer has had another annuity
29 exchange or replacement and, in particular, an
30 exchange or replacement within the preceding 60

1 months.

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

12 (2) The following disclosure obligations:

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

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

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

24 (I) Fixed annuities.

25 (II) Fixed indexed annuities.

26 (III) Variable annuities.

27 (IV) Life insurance.

28 (V) Mutual funds.

29 (VI) Stocks and bonds.

30 (VII) Certificates of deposit.

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

5 (I) One insurer.

6 (II) From two or more insurers.

7 (III) From two or more insurers although
8 primarily contracted with one insurer.

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

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

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

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

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

30 (iii) Prior to or at the time of the recommendation

1 or sale of an annuity, the producer shall have a
2 reasonable basis to believe the consumer has been
3 informed of various features of the annuity, including
4 the potential surrender period and surrender charger,
5 potential tax penalty if the consumer sells, replaces,
6 surrenders or annuitizes the annuity, mortality and
7 expense fees, investment and advisory fees, any annual
8 fees, potential charges for and features of riders or
9 other options of the annuity, limitation on interest
10 returns, insurance and investment components and market
11 risk.

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

16 (4) A producer shall at the time of recommendation or
17 sale:

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

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

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

26 (B) A customer's understanding of the
27 ramifications of not providing his or her consumer
28 profile information or providing insufficient
29 consumer profile information.

30 (iii) Obtain a consumer signed statement on a form

1 substantially similar to a model form established by the
2 department and following the NAIC Model #275's Appendix
3 C, acknowledging the annuity transaction is not
4 recommended if a customer decides to enter into an
5 annuity transaction that is not based on the producer's
6 recommendation.

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

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

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

23 (i) No recommendation is made.

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

27 (iii) A consumer refuses to provide relevant
28 consumer profile information and the annuity transaction
29 is not recommended.

30 (iv) A consumer decides to enter into an annuity

1 transaction that is not based on a recommendation of the
2 producer.

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

7 (c) Supervision of recommendations.--The following shall
8 apply:

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

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

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

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

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

1 features of its annuity products to its producers.

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

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

29 (vi) The insurer shall establish and maintain
30 reasonable procedures to assess, prior to or upon

1 issuance or delivery of an annuity, whether a producer
2 has provided to the consumer the information required to
3 be provided under this section.

4 (vii) The insurer shall establish and maintain
5 reasonable procedures to identify and address suspicious
6 consumer refusals to provide consumer profile
7 information.

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

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

25 (3) Nothing in this subsection shall restrict an insurer
26 from contracting for performance of a function, including
27 maintenance of procedures, required under this subsection. An
28 insurer is responsible for taking appropriate corrective
29 action and may be subject to sanctions and penalties under
30 section 406-B regardless of whether the insurer contracts for

1 performance of a function and regardless of the insurer's
2 compliance with paragraph (4).

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

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

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

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

17 (i) a producer's recommendations to consumers for
18 products other than the annuities offered by the insurer;
19 or

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

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

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

28 (2) Filing a complaint.

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

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

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

11 (2) The insurer may base its analysis on information
12 received from either the financial professional or the entity
13 supervising the financial professional.

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

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

22 (ii) Provide to the entity responsible for
23 supervising the financial professional seeking to rely on
24 paragraph (1), including the financial professional's
25 broker-dealer or investment adviser registered under
26 Federal securities laws, information and reports which
27 are reasonably appropriate to assist the entity to
28 maintain its supervision system.

29 (4) Nothing in this article shall exempt an insurer from
30 the internal audit and compliance procedure requirements

1 under section 405-A.

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

5 (i) A broker-dealer registered under Federal
6 securities laws or a registered representative of a
7 broker-dealer.

8 (ii) An investment adviser registered under Federal
9 securities laws or an investment adviser representative
10 associated with the Federal registered investment
11 adviser.

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

16 (6) For purposes of this subsection, "comparable
17 standards" means:

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

24 (ii) With respect to investment advisers registered
25 under Federal securities laws or investment adviser
26 representatives, the fiduciary duties and all other
27 requirements imposed on the investment advisers or
28 investment adviser representatives by contract or under
29 the Investment Advisers Act of 1940, including the Form
30 ADV and interpretations.

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

7 Section 403.1-B. Insurance producer training.

8 * * *

9 (b) Compliance.--[The continuing education credit
10 requirement under subsection (a) shall be met on or before the
11 end of the insurance producer's next complete license period
12 occurring after the effective date of this section. For
13 individuals licensed on or after the effective date of this
14 section, the requirement shall be met on or before the end of
15 the insurance producer's first license period.] The following
16 shall apply:

17 (1) The continuing education requirement under
18 subsection (a) shall be met on or before the end of the
19 insurance producer's next complete license period occurring
20 after the effective date of this section. For individuals
21 licensed on or after the effective date of this section, the
22 requirement shall be met on or before the end of the
23 insurance producer's first license period.

24 (2) An insurance producer who has met the continuing
25 education credit requirement under subsection (a) prior to
26 the effective date of this subsection shall, within six
27 months after the effective date of this subsection, complete
28 either:

29 (i) At least four continuing education credits in an
30 annuity training course or courses in compliance with

1 this section.

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

4 * * *

5 Section 404-B. [Mitigation of responsibility] Compliance
6 mitigation.

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

11 (1) An insurer to take reasonably appropriate corrective
12 action for any consumer harmed by [the insurer's or by its
13 insurance producer's violation of this article.] a failure to
14 comply with this article by the insurer, an entity contracted
15 to perform the insurer's supervisory duties or by the
16 producer.

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

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

22 * * *

23 Section 405-B. Recordkeeping.

24 (a) General rule.--An insurer, exclusive general agent and
25 [insurance] producer shall maintain or be able to make available
26 to the commissioner records of the information collected from
27 the consumer, disclosures made to the consumer, including
28 summaries of oral disclosures, and other information used in
29 making the recommendations that were the basis for the insurance
30 transactions for five years after the insurance transaction is

1 completed by the insurer. An insurer is permitted but shall not
2 be required to maintain documentation on behalf of a[n
3 insurance] producer.

4 * * *

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

6 * * *

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