
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2434 Session of
2018

INTRODUCED BY DeLUCA, PICKETT, JAMES, J. McNEILL, MILLARD,
CALTAGIRONE, DAVIS, FRANKEL, DERMODY, HANNA, MATZIE, THOMAS,
D. COSTA, BIZZARRO, PETRARCA, MULLERY, KAVULICH, FLYNN,
SCHWEYER, NEILSON, GOODMAN, BURNS, DALEY, COMITTA, CARROLL,
BARBIN, DRISCOLL AND WARREN, MAY 23, 2018

REFERRED TO COMMITTEE ON INSURANCE, MAY 23, 2018

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 suitability of annuity
12 transactions, further providing for definitions, for
13 applicability and scope of article and for duties of insurers
14 and insurance producers, providing for insurance producer
15 training, further providing for mitigation of responsibility
16 and for recordkeeping and providing for regulations.

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

19 Section 1. Sections 401-B, 402-B and 403-B of the act of May
20 17, 1921 (P.L.682, No.284), known as The Insurance Company Law
21 of 1921, are amended to read:

22 Section 401-B. Definitions.

23 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] An
4 annuity that is an insurance product and is individually
5 solicited, whether the insurance product is classified as an
6 individual or group annuity.

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

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

12 "Continuing education provider." An individual or entity
13 approved to offer continuing education courses under section
14 608-A of The Insurance Department Act of 1921.

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

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

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

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

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

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

30 "Recommendation." Advice provided by an insurance producer,

1 or an insurer where no producer is involved, to an individual
2 consumer that results in a purchase or [exchange] replacement of
3 an annuity in accordance with that advice.

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

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

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

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

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

19 (5) used in a financed purchase.

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

23 (1) Age.

24 (2) Annual income.

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

27 (4) Financial experience.

28 (5) Financial objectives.

29 (6) Intended use of the annuity.

30 (7) Financial time horizon.

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

3 (9) Liquidity needs.

4 (10) Liquid net worth.

5 (11) Risk tolerance.

6 (12) Tax status.

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

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

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

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

19 (2) [Annuity contracts] Contracts used to fund:

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

23 (ii) A plan described by sections 401(a) or (k),
24 403(b), 408(k) or (p) of the Internal Revenue Code of
25 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k),
26 403(b), 408(k) or (p)), when the plan, for purposes of
27 the Employee Retirement Income Security Act of 1974, is
28 established or maintained by an employer.

29 (iii) A governmental or church plan defined in
30 section 414 of the Internal Revenue Code of 1986 or a

1 deferred compensation plan of a State or local government
2 or tax exempt organization under section 457 of the
3 Internal Revenue Code of 1986.

4 (iv) A nonqualified deferred compensation
5 arrangement established or maintained by an employer or
6 plan sponsor.

7 (v) Settlements of or assumptions of liabilities
8 associated with personal injury litigation or any dispute
9 or claim resolution process.

10 (vi) Formal prepaid funeral contracts.

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

12 (a) General duties.--[In] Prior to making a recommendation
13 to a consumer for the purchase or replacement of an annuity [or
14 the exchange of an annuity] that results in another insurance
15 transaction or series of insurance transactions, the insurance
16 producer, or the insurer where no insurance producer is
17 involved, shall have reasonable grounds for believing that
18 [the]:

19 (1) The recommendation is suitable for the consumer on
20 the basis of the facts disclosed by the consumer as to the
21 consumer's investments and other insurance products and as to
22 [the consumer's financial situation and needs.] the
23 consumer's suitability information.

24 (2) The consumer has been reasonably informed of various
25 features of the annuity, including the potential surrender
26 period and surrender charge, potential tax penalty if the
27 consumer sells, replaces, surrenders or annuitizes the
28 annuity, mortality and expense fees, investment advisory
29 fees, potential charges for and features of riders,
30 limitations on interest returns, insurance and investment

1 components and market risk.

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

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

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

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

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

23 (iii) The consumer has had another annuity
24 replacement, including a replacement within the preceding
25 36 months.

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

- 1 (1) The consumer's financial status.
- 2 (2) The consumer's tax status.
- 3 (3) The consumer's investment objectives.
- 4 (4) Other information used or considered to be
- 5 reasonable by the insurance producer, or the insurer where no
- 6 insurance producer is involved, in making recommendations to
- 7 the consumer.] the consumer's suitability information.

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

13 (c) Obligation limits.--

14 (1) [Neither] Except as provided under paragraph (2),
15 neither an insurance producer nor an insurer where no
16 insurance producer is involved shall have any obligation to a
17 consumer under subsection (a) or (b.1) related to any
18 [recommendation that is reasonable under all the
19 circumstances actually known to the insurer or insurance
20 producer at the time of the recommendation when a consumer:

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

23 (ii) Decides to enter into an insurance transaction
24 that is not based on a recommendation of the insurer or
25 insurance producer.

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

28 (i) No recommendation is made.

29 (ii) A recommendation was made and was later found
30 to have been prepared based on materially inaccurate

1 information provided by the consumer.

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

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

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

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

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

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

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

25 (d) Supervision of recommendations.--

26 (1) An insurer shall [assure that a system to supervise
27 recommendations] establish a supervision system that is
28 reasonably designed to achieve the insurer's and its
29 insurance producer's compliance with this article [is
30 established and maintained by complying with paragraphs (3)

1 and (4) or shall establish and maintain such a system that
2 includes at least the following:

3 (i) Maintaining written procedures.

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

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

14 (i) Maintaining written procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 electronic or other system may be designed to require
2 additional review only for those transactions identified
3 for additional review by the selection criteria.

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

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

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

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

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

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

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

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

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

17 (2) Filing a complaint.

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

19 (e) Compliance with other rules.--Sales made by [an
20 insurance producer subject to and in compliance with the
21 Financial Industry Regulatory Authority Conduct Rules pertaining
22 to suitability shall satisfy the requirements under this section
23 for the recommendation of annuities. Nothing in this subsection
24 shall limit the commissioner's ability to enforce the provisions
25 of this article.] and in compliance with FINRA requirements
26 pertaining to suitability and supervision of annuity
27 transactions shall satisfy the requirements under this section.
28 This subsection applies to FINRA broker-dealer sales of
29 annuities if the suitability and supervision is similar to those
30 applied to variable annuity sales. However, nothing in this

1 subsection shall limit the commissioner's ability to enforce or
2 investigate the provisions of this article. For this subsection
3 to apply, an insurer shall:

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

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

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

14 Section 2. The act is amended by adding a section to read:
15 Section 403.1-B. Insurance producer training.

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

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

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

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

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

27 (5) The primary uses of annuities.

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

30 (b) Compliance.--The continuing education credit requirement

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

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

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

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

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

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

29 (h) Verification.--An insurer shall verify that an insurance
30 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 3. 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 general agent or independent agency that employs
23 or contracts with an insurance producer to sell or solicit
24 the sale of annuities to consumers] An exclusive general
25 agent or the insurance producer to take reasonably
26 appropriate corrective action for any consumer harmed by the
27 [insurance producer's] 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

1 reduced or eliminated if corrective action for the consumer was
2 taken promptly after a violation was discovered or the violation
3 was not part of a pattern or practice.

4 Section 405-B. Recordkeeping.

5 (a) General rule.--An insurer, exclusive general agent[,
6 independent agency] and insurance producer shall maintain or be
7 able to make available to the commissioner records of the
8 information collected from the consumer and other information
9 used in making the recommendations that were the basis for the
10 insurance transactions for five years after the insurance
11 transaction is completed by the insurer. An insurer is permitted
12 but shall not be required to maintain documentation on behalf of
13 an insurance producer.

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

18 Section 4. The act is amended by adding a section to read:

19 Section 408-B. Regulations.

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

22 Section 5. This act shall take effect in 180 days.