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Senate Bill 880 (as introduced 11-9-05)
Sponsor: Senator Gerald Van Woerkom
Committee: Banking and Financial Institutions

Date Completed: 2-2-06

CONTENT

The bill would create Chapter 41a ("Annuity Recommendation to Senior Consumer") of the Insurance Code to do all of the following:

- Require an insurance producer or insurer to have reasonable grounds to believe that a recommendation to a senior consumer to purchase or exchange an annuity was suitable to the consumer based on his or her financial situation.**
- Require an insurance producer or insurer to make reasonable efforts to obtain a senior consumer's financial information before executing a purchase or exchange of an annuity.**
- Require an insurer to establish and maintain a system to supervise recommendations, designed to achieve compliance with the bill, or assure that such a system was established and maintained.**
- Allow the Commissioner of the Office of Financial and Insurance Services (OFIS) to order an insurer, insurance producer, general agent, or independent agency to take corrective action for a senior consumer harmed by a violation of the bill.**
- Specify that compliance with National Association of Securities Dealers (NASD) rules would satisfy the bill's requirements regarding the recommendation of variable annuities.**
- Specify situations to which the bill would, and would not, apply.**

"Senior consumer" would mean a person 65 years of age or older. For a joint purchase by more than one party, the purchaser would be considered to be a senior consumer if any of the parties were at least 65.

"Recommendation" would mean advice provided by an insurance producer, or an insurer where no producer was involved, to an individual senior consumer, that resulted in a purchase or exchange of an annuity in accordance with the advice.

"Annuity" would mean a fixed annuity or variable annuity that was individually solicited, whether the product was classified as an individual or group annuity.

Recommendation to Senior Consumer

In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that resulted in another insurance transaction or series of insurance transactions, an insurance producer, or an insurer if no producer were involved, would have to have reasonable grounds to believe that the recommendation was suitable for the senior

consumer on the basis of the facts the consumer disclosed regarding his or her investments and other insurance products and his or her financial situation and needs. Before executing a purchase or exchange of an annuity resulting from a recommendation, the insurance producer or insurer would have to make reasonable efforts to obtain the senior consumer's financial status, tax status, and investment objectives, as well as other information used or considered to be reasonable by the producer or insurer in making recommendations to the senior consumer.

Neither an insurance producer nor an insurer, if no producer were involved, would have any obligation to a senior producer related to any recommendation, if a consumer did any of the following:

- Refused to provide relevant information requested by the insurer or insurance producer.
- Decided to enter into an insurance transaction that was not based on a recommendation of the insurer or insurance producer.
- Failed to provide complete or accurate information.

An insurer's or insurance producer's recommendation would have to be reasonable under all the circumstances actually known to the insurer or producer at the time of the recommendation.

Insurers' Powers & Duties

An insurer either would have to assure that a system to supervise recommendations that was reasonably designed to achieve compliance with Chapter 41a was established and maintained, or would have to establish and maintain such a system, including maintaining written procedures and conducting periodic reviews of its records that were reasonably designed to assist in detecting and preventing violations of the chapter. A general agent and independent agency either would have to adopt a system established by an insurer to supervise recommendations of its insurance producers that was reasonably designed to achieve compliance with Chapter 41a, or would have to establish and maintain such a system, including maintaining written procedures and conducting periodic reviews of records that were reasonably designed to assist in detecting and preventing violations of the chapter.

An insurer could contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision of insurance producers under contract with or employed by the third party. An insurer would have to make reasonable inquiry to assure that the third party was performing the function required and would have to take reasonable action under the circumstances to enforce the contractual obligation to perform the functions. An insurer could comply with its obligation to make reasonable inquiry by doing both of the following:

- Annually obtaining a certification from a third party senior manager that the third party was performing the required functions.
- Periodically selecting, based on reasonable selection criteria, third parties for a review to determine whether they were performing the required functions.

A general agent or independent agency contracting with an insurer promptly would have to give a certification or give a clear statement that it was unable to meet the certification criteria, when requested by the insurer.

An insurer that contracted with a third party and that complied with the supervision requirements would be considered to have met its responsibilities to establish and maintain a system of supervision or ensure that a system was established and maintained.

An insurer, general agent, or independent agency would not be required to do either of the following:

- Review, or provide for review of, all insurance producer-solicited transactions.
- Include in its system of supervision an insurance producer's recommendation to senior consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

An insurer, general agent, independent agency, and insurance producer would have to maintain or be able to make available to the OFIS Commissioner records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions, for six years after the insurance transaction was completed by the insurer. An insurer could, but would not be required to, maintain documentation on behalf of an insurance producer. Records required to be maintained could be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduced the actual document.

OFIS Commissioner's Powers

The Commissioner could do any of the following:

- Order an insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's , or by its insurance producer's, violation of Chapter 41a.
- Order an insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the producer's violation of Chapter 41a.
- Order a general agent or independent agency that employed or contracted with an insurance producer to sell or solicit the sale of annuities to senior consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the producer's violation of Chapter 41a.

If corrective action for the senior consumer were taken promptly after a violation was discovered, the Commissioner could reduce a penalty for a violation of the bill's requirements to assure, adopt, or establish a system to supervise recommendations in compliance with Chapter 41a.

NASD Rules

An insurer that complied with the NASD rules ("NASD Manual, Conduct Rules Section 2310 (CCH, 1966)") pertaining to suitability would satisfy the requirements of Chapter 41a for the recommendation of variable annuities. Any changes by the NASD to its conduct rules pertaining to suitability would not be effective in Michigan unless the Commissioner found the changes furthered the protections afforded in Chapter 41 and adopted the changes by rule, order, or bulletin.

Scope

The bill specifies that Chapter 41a would apply to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer where no producer was involved, that resulted in the purchase or exchange recommended.

Chapter 41a would not apply to any recommendation to purchase or exchange an annuity involving direct response solicitations, where there was no recommendation based on information collected from the senior consumer, or involving contracts used to fund any of the following:

- An employee pension or welfare benefit plan that was covered by the Federal Employee Retirement and Income Security Act.
- An employer-established or -maintained pension, profit-sharing, deferred compensation, or stock bonus plan regulated under section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code (IRC).
- A government or church pension or deferred compensation plan regulated under Section 414 of the IRC, or a deferred compensation plan of a State or local government or tax-exempt organization regulated under Section 457 of the IRC.
- A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
- Settlements of, or assumptions of liabilities associated with, personal injury litigation or any dispute or claim resolution process.
- Formal prepaid funeral contracts.

Proposed MCL 500.4151-500.4165

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.