

Act No. 399  
Public Acts of 2006  
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**STATE OF MICHIGAN**  
**93RD LEGISLATURE**  
**REGULAR SESSION OF 2006**

Introduced by Senators Van Woerkom, Bishop and Cropsey

**ENROLLED SENATE BILL No. 880**

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," (MCL 500.100 to 500.8302) by adding chapter 41A.

*The People of the State of Michigan enact:*

CHAPTER 41A  
ANNUITY RECOMMENDATION TO CONSUMERS

Sec. 4151. As used in this chapter:

(a) "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(b) “Insurance producer” or “producer” means insurance producer as defined in section 1201 and includes a business entity described in section 1205(2) that is licensed as an insurance producer under this act.

(c) “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Sec. 4153. (1) This chapter applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

(2) This chapter does not apply to any recommendation to purchase or exchange an annuity involving any of the following:

(a) Direct response solicitations where there is no recommendation based on information collected from the consumer.

(b) Contracts used to fund any of the following:

(i) An employee pension or welfare benefit plan that is covered by the employee retirement and income security act, Public Law 93-406.

(ii) A plan described by 26 USC 401(a), 26 USC 401(k), 26 USC 403(b), 26 USC 408(k), or 26 USC 408(p), if established or maintained by an employer.

(iii) A government or church plan defined in 26 USC 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 USC 457.

(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.

Sec. 4155. (1) In recommending to a consumer 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 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 his or her investments and other insurance products and as to his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain all of the following information:

(a) The consumer’s financial status.

(b) The consumer’s tax status.

(c) The consumer’s investment objectives.

(d) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(3) Except as provided under subsection (4), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection (1) related to any recommendation if a consumer does any of the following:

(a) Refuses to provide relevant information requested by the insurer or insurance producer.

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

(c) Fails to provide complete or accurate information.

(4) An insurer or insurance producer’s recommendation subject to subsection (1) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

Sec. 4157. (1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by complying with subsections (3) to (5), or shall establish and maintain such a system, including, but not limited to, maintaining written procedures and conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this chapter.

(2) An insurance producer either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this chapter, or shall establish and maintain such a system, including, but not limited to, maintaining written procedures and conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

(3) An insurer may contract with a third party, including an insurance producer, to establish and maintain a system of supervision as required under subsection (1) of insurance producers under contract with or employed by the third party.

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

(a) By annually obtaining a certification from a third party senior manager that the third party contracting under subsection (3) is performing the required functions. Only a person who is a senior manager with responsibility for the delegated functions and who has a reasonable basis for making the certification shall provide a certification under this subdivision.

(b) By periodically selecting, based on reasonable selection criteria, third parties contracting under subsection (3) for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(5) An insurer that contracts with a third party pursuant to subsection (3) and that complies with the requirements to supervise under subsection (4) will be considered to have met its responsibilities under subsection (1).

(6) An insurer or insurance producer is not required under subsection (1) or (2) to do any of the following:

(a) Review, or provide for review of, all insurance producer solicited transactions.

(b) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer or insurance producer.

(7) An insurance producer contracting with an insurer pursuant to subsection (3) shall promptly, when requested by the insurer pursuant to subsection (4), give a certification as described in subsection (4) or give a clear statement that it is unable to meet the certification criteria.

Sec. 4163. (1) An insurer and an insurance producer shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer.

(2) Records required to be maintained by this chapter may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Sec. 4165. An insurer or insurance producer that complies with the national association of securities dealers rules "NASD Manual, Conduct Rules section 2310 (CCH, 1966)" or rules at least as stringent as section 2310 pertaining to suitability satisfies this chapter's requirements for the recommendation of variable annuities.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved .....

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Governor