

Act No. 544
Public Acts of 2012
Approved by the Governor
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

**Introduced by Senators Jones, Bieda, Emmons, Colbeck, Young, Schuitmaker, Hansen, Hildenbrand,
Proos, Kahn and Marleau**

ENROLLED SENATE BILL No. 467

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," by amending sections 4151, 4153, 4155, and 4165 (MCL 500.4151, 500.4153, 500.4155, and 500.4165), as added by 2006 PA 399, and by adding sections 4158, 4159, 4160, and 4161; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 4151. As used in this chapter:

(a) "Annuity" means an annuity that is an insurance product under state law 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 if no producer is involved, to an individual consumer that results in a purchase, exchange, or replacement of an annuity in accordance with that advice.

(d) “Replacement” or “replace” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be 1 of the following:

(i) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated.

(ii) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values.

(iii) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid.

(iv) Reissued with any reduction in cash value.

(v) Used in a financed purchase.

(e) “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including all of the following:

(i) Age.

(ii) Annual income.

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

(iv) Financial experience.

(v) Financial objectives.

(vi) Intended use of the annuity.

(vii) Financial time horizon.

(viii) Existing assets, including investment and life insurance holdings.

(ix) Liquidity needs.

(x) Liquid net worth.

(xi) Risk tolerance.

(xii) Tax status.

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

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

(a) Direct response solicitations if 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 income security act of 1974, 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 governmental 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 if 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, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(a) The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk.

(b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit.

(c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable and, for an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her suitability information.

(d) For an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration all of the following:

(i) Whether the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements.

(ii) Whether the consumer would benefit from product enhancements and improvements.

(iii) Whether the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(2) Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer if no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(3) Except as permitted under subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe that the annuity is suitable based on the consumer's suitability information.

(4) An insurer's issuance of an annuity shall be reasonable under all of the circumstances actually known to the insurer at the time the annuity is issued. However, neither a producer nor an insurer has any obligation to a consumer under subsection (1) or (3) related to any annuity transaction if any of the following apply:

(a) A recommendation is not made.

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

(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended.

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

(5) A producer or, if no producer is involved, the responsible insurer representative, shall at the time of sale do all of the following:

(a) Make a record of any recommendation subject to subsection (1).

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

(c) Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's or insurer's recommendation.

Sec. 4158. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its producers' compliance with this chapter, including, but not limited to, all of the following:

(a) Maintain reasonable procedures to inform its producers of the requirements of this chapter and incorporate the requirements of this chapter into relevant producer training manuals.

(b) Establish standards for producer product training and maintain reasonable procedures to require its producers to comply with section 4160.

(c) Provide product-specific training and training materials that explain all material features of its annuity products to its producers.

(d) Maintain procedures for review of each recommendation before issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

(e) Maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. This subdivision does not prevent an insurer from complying with this subdivision by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.

(f) Annually provide a report to senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(2) This section does not restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under subsection (1). An insurer shall take appropriate corrective action and may be subject to sanctions and penalties under this act regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection (3).

(3) An insurer's supervision system under this section shall include supervision of contractual performance. This includes, but is not limited to, the following:

(a) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed.

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

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

Sec. 4159. A producer shall not dissuade, or attempt to dissuade, a consumer from any of the following:

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

(b) Filing a complaint.

(c) Cooperating with the investigation of a complaint.

Sec. 4160. (1) A producer shall not solicit the sale of an annuity unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(2) A producer who engages in the sale of annuities shall complete a 1-time 4-credit training course approved by the commissioner and provided by an insurance producer program of study registered under chapter 12. Insurance producers who hold a life insurance line of authority on the effective date of the amendatory act that added this section and who desire to sell annuities shall complete the requirements of this subsection within 6 months after the effective date of the amendatory act that added this section. Individuals who obtain a life insurance line of authority on or after the effective date of the amendatory act that added this section shall not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(3) The minimum length of the training required under subsection (2) shall be not less than 4 hours, as defined in section 1204c, and may be longer.

(4) The training required under subsection (2) shall include information on all of the following:

(a) The types of annuities and various classifications of annuities.

(b) Identification of the parties to an annuity.

(c) How fixed, variable, and indexed annuity contract provisions affect consumers.

(d) The income taxation of qualified and nonqualified annuities.

(e) The primary uses of annuities.

(f) Appropriate sales practices and replacement and disclosure requirements.

(5) Registered insurance producer programs of study shall cover all topics under subsection (4) and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the topics under subsection (4).

(6) A provider of an annuity training course intended to comply with this section shall register with the commissioner as a continuing education provider in this state and comply with any requirements of the commissioner applicable to insurance producer continuing education.

(7) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with requirements of the commissioner.

(8) Providers of annuity training shall comply with any reporting requirements imposed by the commissioner and shall issue certificates of completion in accordance with any requirements of the commissioner.

(9) The satisfaction of the training requirements of another state that the commissioner determines to be substantially similar to this section satisfies the training requirements of this section.

(10) An insurer shall verify that an insurance producer has completed the annuity training course required under this section before allowing the producer to sell an annuity for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with a registered insurance producer program of study.

Sec. 4161. For a consumer purchasing an individual annuity, the consumer shall be given a copy of the annuity policy within a reasonable time after the annuity is accepted and issued.

Sec. 4165. (1) Subject to subsection (2), a sale made in compliance with financial industry regulatory authority requirements pertaining to suitability and supervision of annuity transactions satisfies the requirements of this chapter. This subsection applies to a financial industry regulatory authority broker-dealer sale of a variable annuity or fixed annuity if the suitability and supervision are similar to those applied to variable annuity sales. However, this subsection does not limit the commissioner's ability to enforce and investigate this chapter.

(2) Subsection (1) applies if the insurer does both of the following:

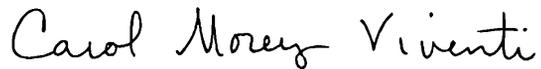
(a) Monitors the financial industry regulatory authority member broker-dealer using information collected in the normal course of the insurer's business.

(b) Provides to the financial industry regulatory authority member broker-dealer information and reports that are reasonably appropriate to assist the financial industry regulatory authority member broker-dealer to maintain its supervision system.

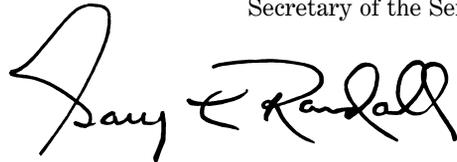
Enacting section 1. Section 4157 of the insurance code of 1956, 1956 PA 218, MCL 500.4157, is repealed.

Enacting section 2. This amendatory act takes effect June 1, 2013.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor