

Legislative Analysis



ANNUITY RECOMENDATIONS TO SENIORS

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House Bill 5463

Sponsor: Rep. David Law

Committee: Insurance

Complete to 2-21-06

A SUMMARY OF HOUSE BILL 5463 AS INTRODUCED 12-1-05

The bill would add a new Chapter 41A to the Insurance Code (MCL 500.4151, et al.) to regulate the sale of annuities to senior consumers, defined as 65 years of age or older.

Under the bill, an insurance producer (agent)—or an insurance company if no agent is involved—would need to **have reasonable grounds for believing that an annuity recommendation to a senior consumer is suitable** on the basis of facts disclosed by the consumer regarding his or her investments, other insurance products, and financial situation and needs. This would apply to the recommendation that a consumer purchase or exchange an annuity.

Before the execution of a purchase or exchange, an agent or company would have to make reasonable efforts to obtain information about the consumer's financial status, tax status, and investment objectives, along with other information for making recommendations.

However, an agent or company would have no obligation to a consumer when the consumer refused to provide relevant information; decided to enter into a transaction not based on a recommendation; or failed to provide complete or accurate information. A recommendation would be required to be reasonable "under all the circumstances actually known . . . at the time of the recommendation."

An insurance company would be required to establish and maintain a system to comply with the new chapter and could contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision. A company using a third party would have to make reasonable inquiries to assure that the functions were being performed.

A general agent and independent agency would have to either adopt a system of supervision recommendations established by an insurance company or establish and maintain its own system. If an agent or agency developed its own system, that system would have to maintain written procedures and conduct periodic reviews of records reasonably designed to assist in detecting and preventing violations of the new chapter.

An insurance company, general agent, or independent agency would not be required either (1) to review all insurance producer-solicited transactions, or (2) to include in its

system of supervision an agent's recommendations to senior consumers of products other than the products offered by the company, general agent, or agency.

The commissioner of the Office of Financial and Insurance Services (OFIS) could require companies, insurance agents, general agents, and independent agencies to take reasonably appropriate corrective action for any senior harmed by a violation. If corrective action was taken promptly, the commissioner could reduce a penalty for a violation.

Information collected from a senior consumer and other information used in making recommendations that were the basis for insurance transactions would have to be maintained for six years and would have to be available to the commissioner of OFIS.

An insurance company that complied with the National Association of Securities Dealers rules on suitability would satisfy the requirements of the new chapter for the recommendation of variable annuities.

The bill would not apply to certain specified transactions, including direct response solicitations where no recommendation is based on information from a senior consumer; employee pension or welfare benefit plans covered by the Employee Retirement and Income Security Act (ERISA); employer profit sharing and pension plans and government and private employer deferred compensation plans covered under the Internal Revenue Code; settlements of personal injury litigation or any dispute or claim resolution process; and formal prepaid funeral contracts.

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan or its local units of government.

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