

HOUSE BILL No. 4328

February 24, 2011, Introduced by Reps. Constan, Smiley, Santana, Darany, Bauer, Geiss, Slavens, Liss, Barnett, Tlaib, Irwin, Hovey-Wright, Oakes, Rutledge, Cavanagh, Haugh, Switalski, Dillon, Segal, Durhal, McCann, Brunner, Meadows and Lipton and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," 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, 4161, and 4162 and chapter 41B; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4151. As used in this chapter:

2 (a) "Annuity" means ~~a fixed annuity or variable~~ **AN** annuity
3 **THAT IS AN INSURANCE PRODUCT UNDER STATE LAW** that is individually
4 solicited, whether the product is classified as an individual or
5 group annuity.

6 (b) "Insurance producer" or "producer" means insurance
7 producer as defined in section 1201 and includes a business entity

1 described in section 1205(2) that is licensed as an insurance
2 producer under this act.

3 (c) "Recommendation" means advice provided by an insurance
4 producer, or an insurer ~~where~~ **IF** no producer is involved, to an
5 individual consumer that results in a purchase, ~~or~~ exchange, **OR**
6 **REPLACEMENT** of an annuity in accordance with that advice.

7 (D) **"REPLACEMENT" OR "REPLACE" MEANS A TRANSACTION IN WHICH A**
8 **NEW POLICY OR CONTRACT IS TO BE PURCHASED, AND IT IS KNOWN OR**
9 **SHOULD BE KNOWN TO THE PROPOSING PRODUCER, OR TO THE PROPOSING**
10 **INSURER IF THERE IS NO PRODUCER, THAT BY REASON OF THE TRANSACTION,**
11 **AN EXISTING POLICY OR CONTRACT HAS BEEN OR IS TO BE 1 OF THE**
12 **FOLLOWING:**

13 (i) **LAPSED, FORFEITED, SURRENDERED OR PARTIALLY SURRENDERED,**
14 **ASSIGNED TO THE REPLACING INSURER, OR OTHERWISE TERMINATED.**

15 (ii) **CONVERTED TO REDUCED PAID-UP INSURANCE, CONTINUED AS**
16 **EXTENDED TERM INSURANCE, OR OTHERWISE REDUCED IN VALUE BY THE USE**
17 **OF NONFORFEITURE BENEFITS OR OTHER POLICY VALUES.**

18 (iii) **AMENDED SO AS TO EFFECT EITHER A REDUCTION IN BENEFITS OR**
19 **IN THE TERM FOR WHICH COVERAGE WOULD OTHERWISE REMAIN IN FORCE OR**
20 **FOR WHICH BENEFITS WOULD BE PAID.**

21 (iv) **REISSUED WITH ANY REDUCTION IN CASH VALUE.**

22 (v) **USED IN A FINANCED PURCHASE.**

23 (E) **"SUITABILITY INFORMATION" MEANS INFORMATION THAT IS**
24 **REASONABLY APPROPRIATE TO DETERMINE THE SUITABILITY OF A**
25 **RECOMMENDATION, INCLUDING ALL OF THE FOLLOWING:**

26 (i) **AGE.**

27 (ii) **ANNUAL INCOME.**

1 (iii) FINANCIAL SITUATION AND NEEDS, INCLUDING THE FINANCIAL
2 RESOURCES USED FOR THE FUNDING OF THE ANNUITY.

3 (iv) FINANCIAL EXPERIENCE.

4 (v) FINANCIAL OBJECTIVES.

5 (vi) INTENDED USE OF THE ANNUITY.

6 (vii) FINANCIAL TIME HORIZON.

7 (viii) EXISTING ASSETS, INCLUDING INVESTMENT AND LIFE INSURANCE
8 HOLDINGS.

9 (ix) LIQUIDITY NEEDS.

10 (x) LIQUID NET WORTH.

11 (xi) RISK TOLERANCE.

12 (xii) TAX STATUS.

13 Sec. 4153. (1) This chapter applies to any recommendation to
14 purchase, ~~or~~ exchange, **OR REPLACE** an annuity made to a consumer by
15 an insurance producer, or **BY** an insurer ~~where~~ **IF** no producer is
16 involved, that results in the purchase, ~~or~~ exchange, **OR REPLACEMENT**
17 recommended.

18 (2) This chapter does not apply to any recommendation to
19 purchase, ~~or~~ exchange, **OR REPLACE** an annuity involving any of the
20 following:

21 (a) Direct response solicitations ~~where~~ **IF** there is no
22 recommendation based on information collected from the consumer.

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

24 (i) An employee pension or welfare benefit plan that is covered
25 by the employee retirement ~~and~~ income security act **OF 1974**, Public
26 Law 93-406.

27 (ii) A plan described by 26 USC 401(a), 26 USC 401(k), 26 USC

1 403(b), 26 USC 408(k), or 26 USC 408(p), if established or
2 maintained by an employer.

3 (iii) A ~~government~~**GOVERNMENTAL** or church plan defined in 26 USC
4 414, a government or church welfare benefit plan, or a deferred
5 compensation plan of a state or local government or tax exempt
6 organization under 26 USC 457.

7 (iv) A nonqualified deferred compensation arrangement
8 established or maintained by an employer or plan sponsor.

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

12 (vi) Formal prepaid funeral contracts.

13 Sec. 4155. (1) In recommending to a consumer the purchase of
14 an annuity or the exchange of an annuity that results in another
15 insurance transaction or series of insurance transactions, the
16 insurance producer, or the insurer ~~where~~**IF** no producer is
17 involved, shall have reasonable grounds for believing that the
18 recommendation is suitable for the consumer on the basis of the
19 facts disclosed by the consumer as to his or her investments and
20 other insurance products and as to his or her financial situation
21 and needs, ~~—~~**INCLUDING THE CONSUMER'S SUITABILITY INFORMATION, AND**
22 **THAT THERE IS A REASONABLE BASIS TO BELIEVE ALL OF THE FOLLOWING:**

23 (A) **IN ADDITION TO THE REQUIREMENTS UNDER CHAPTER 41B, THE**
24 **CONSUMER HAS BEEN REASONABLY INFORMED OF VARIOUS FEATURES OF THE**
25 **ANNUITY, SUCH AS THE POTENTIAL SURRENDER PERIOD AND SURRENDER**
26 **CHARGE, POTENTIAL TAX PENALTY IF THE CONSUMER SELLS, EXCHANGES,**
27 **SURRENDERS, OR ANNUITIZES THE ANNUITY, MORTALITY AND EXPENSE FEES,**

1 INVESTMENT ADVISORY FEES, POTENTIAL CHARGES FOR AND FEATURES OF
2 RIDERS, LIMITATIONS ON INTEREST RETURNS, INSURANCE AND INVESTMENT
3 COMPONENTS, AND MARKET RISK.

4 (B) THE CONSUMER WOULD BENEFIT FROM CERTAIN FEATURES OF THE
5 ANNUITY, SUCH AS TAX-DEFERRED GROWTH, ANNUITIZATION, OR DEATH OR
6 LIVING BENEFIT.

7 (C) THE PARTICULAR ANNUITY AS A WHOLE, THE UNDERLYING
8 SUBACCOUNTS TO WHICH FUNDS ARE ALLOCATED AT THE TIME OF PURCHASE OR
9 EXCHANGE OF THE ANNUITY, AND RIDERS AND SIMILAR PRODUCT
10 ENHANCEMENTS, IF ANY, ARE SUITABLE AND, FOR AN EXCHANGE OR
11 REPLACEMENT, THE TRANSACTION AS A WHOLE IS SUITABLE, FOR THE
12 PARTICULAR CONSUMER BASED ON HIS OR HER SUITABILITY INFORMATION.

13 (D) FOR AN EXCHANGE OR REPLACEMENT OF AN ANNUITY, THE EXCHANGE
14 OR REPLACEMENT IS SUITABLE INCLUDING TAKING INTO CONSIDERATION ALL
15 OF THE FOLLOWING:

16 (i) WHETHER THE CONSUMER WILL INCUR A SURRENDER CHARGE, BE
17 SUBJECT TO THE COMMENCEMENT OF A NEW SURRENDER PERIOD, LOSE
18 EXISTING BENEFITS SUCH AS DEATH, LIVING, OR OTHER CONTRACTUAL
19 BENEFITS, OR BE SUBJECT TO INCREASED FEES, INVESTMENT ADVISORY
20 FEES, OR CHARGES FOR RIDERS AND SIMILAR PRODUCT ENHANCEMENTS.

21 (ii) WHETHER THE CONSUMER WOULD BENEFIT FROM PRODUCT
22 ENHANCEMENTS AND IMPROVEMENTS.

23 (iii) WHETHER THE CONSUMER HAS HAD ANOTHER ANNUITY EXCHANGE OR
24 REPLACEMENT AND, IN PARTICULAR, AN EXCHANGE OR REPLACEMENT WITHIN
25 THE PRECEDING 36 MONTHS.

26 (2) Prior to the execution of a purchase, ~~ex~~-exchange, OR
27 REPLACEMENT of an annuity resulting from a recommendation, an

1 insurance producer, or an insurer where ~~IF~~ no producer is involved,
2 shall make reasonable efforts to obtain all ~~of the following~~
3 ~~information:~~ **THE CONSUMER'S SUITABILITY INFORMATION.**

4 ~~—— (a) The consumer's financial status.~~

5 ~~—— (b) The consumer's tax status.~~

6 ~~—— (c) The consumer's investment objectives.~~

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

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

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

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

19 ~~—— (c) Fails to provide complete or accurate information.~~

20 ~~—— (4) An insurer or insurance producer's recommendation subject~~
21 ~~to subsection (1) shall be reasonable under all the circumstances~~
22 ~~actually known to the insurer or insurance producer at the time of~~
23 ~~the recommendation.~~

24 **(3) EXCEPT AS PERMITTED UNDER SUBSECTION (4), AN INSURER SHALL**
25 **NOT ISSUE AN ANNUITY RECOMMENDED TO A CONSUMER UNLESS THERE IS A**
26 **REASONABLE BASIS TO BELIEVE THAT THE ANNUITY IS SUITABLE BASED ON**
27 **THE CONSUMER'S SUITABILITY INFORMATION.**

1 (4) AN INSURER'S ISSUANCE OF AN ANNUITY SHALL BE REASONABLE
2 UNDER ALL OF THE CIRCUMSTANCES ACTUALLY KNOWN TO THE INSURER AT THE
3 TIME THE ANNUITY IS ISSUED. HOWEVER, NEITHER A PRODUCER NOR AN
4 INSURER HAS ANY OBLIGATION TO A CONSUMER UNDER SUBSECTION (1) OR
5 (3) RELATED TO ANY ANNUITY TRANSACTION IF ANY OF THE FOLLOWING
6 APPLY:

7 (A) A RECOMMENDATION IS NOT MADE.

8 (B) A RECOMMENDATION WAS MADE AND WAS LATER FOUND TO HAVE BEEN
9 PREPARED BASED ON MATERIALLY INACCURATE INFORMATION PROVIDED BY THE
10 CONSUMER.

11 (C) A CONSUMER REFUSES TO PROVIDE RELEVANT SUITABILITY
12 INFORMATION AND THE ANNUITY TRANSACTION IS NOT RECOMMENDED.

13 (D) A CONSUMER DECIDES TO ENTER INTO AN ANNUITY TRANSACTION
14 THAT IS NOT BASED ON A RECOMMENDATION OF THE INSURER OR THE
15 INSURANCE PRODUCER.

16 (5) A PRODUCER OR, IF NO PRODUCER IS INVOLVED, THE RESPONSIBLE
17 INSURER REPRESENTATIVE, SHALL AT THE TIME OF SALE DO ALL OF THE
18 FOLLOWING:

19 (A) MAKE A RECORD OF ANY RECOMMENDATION SUBJECT TO SUBSECTION
20 (1).

21 (B) OBTAIN A CUSTOMER-SIGNED STATEMENT DOCUMENTING A
22 CUSTOMER'S REFUSAL TO PROVIDE SUITABILITY INFORMATION, IF ANY.

23 (C) OBTAIN A CUSTOMER-SIGNED STATEMENT ACKNOWLEDGING THAT AN
24 ANNUITY TRANSACTION IS NOT RECOMMENDED IF A CUSTOMER DECIDES TO
25 ENTER INTO AN ANNUITY TRANSACTION THAT IS NOT BASED ON THE
26 PRODUCER'S OR INSURER'S RECOMMENDATION.

27 SEC. 4158. (1) AN INSURER SHALL ESTABLISH A SUPERVISION SYSTEM

1 THAT IS REASONABLY DESIGNED TO ACHIEVE THE INSURER'S AND ITS
2 PRODUCERS' COMPLIANCE WITH THIS CHAPTER, INCLUDING, BUT NOT LIMITED
3 TO, ALL OF THE FOLLOWING:

4 (A) MAINTAIN REASONABLE PROCEDURES TO INFORM ITS PRODUCERS OF
5 THE REQUIREMENTS OF THIS CHAPTER AND INCORPORATE THE REQUIREMENTS
6 OF THIS CHAPTER INTO RELEVANT PRODUCER TRAINING MANUALS.

7 (B) ESTABLISH STANDARDS FOR PRODUCER PRODUCT TRAINING AND
8 MAINTAIN REASONABLE PROCEDURES TO REQUIRE ITS PRODUCERS TO COMPLY
9 WITH SECTION 4160.

10 (C) PROVIDE PRODUCT-SPECIFIC TRAINING AND TRAINING MATERIALS
11 THAT EXPLAIN ALL MATERIAL FEATURES OF ITS ANNUITY PRODUCTS TO ITS
12 PRODUCERS.

13 (D) MAINTAIN PROCEDURES FOR REVIEW OF EACH RECOMMENDATION
14 BEFORE ISSUANCE OF AN ANNUITY THAT ARE DESIGNED TO ENSURE THAT
15 THERE IS A REASONABLE BASIS TO DETERMINE THAT A RECOMMENDATION IS
16 SUITABLE. REVIEW PROCEDURES MAY APPLY A SCREENING SYSTEM FOR THE
17 PURPOSE OF IDENTIFYING SELECTED TRANSACTIONS FOR ADDITIONAL REVIEW
18 AND MAY BE ACCOMPLISHED ELECTRONICALLY OR THROUGH OTHER MEANS,
19 INCLUDING, BUT NOT LIMITED TO, PHYSICAL REVIEW. AN ELECTRONIC OR
20 OTHER SYSTEM MAY BE DESIGNED TO REQUIRE ADDITIONAL REVIEW ONLY OF
21 THOSE TRANSACTIONS IDENTIFIED FOR ADDITIONAL REVIEW BY THE
22 SELECTION CRITERIA.

23 (E) MAINTAIN REASONABLE PROCEDURES TO DETECT RECOMMENDATIONS
24 THAT ARE NOT SUITABLE. THIS MAY INCLUDE, BUT IS NOT LIMITED TO,
25 CONFIRMATION OF CONSUMER SUITABILITY INFORMATION, SYSTEMATIC
26 CUSTOMER SURVEYS, INTERVIEWS, CONFIRMATION LETTERS, AND PROGRAMS OF
27 INTERNAL MONITORING. THIS SUBDIVISION DOES NOT PREVENT AN INSURER

1 FROM COMPLYING WITH THIS SUBDIVISION BY APPLYING SAMPLING
2 PROCEDURES OR BY CONFIRMING SUITABILITY INFORMATION AFTER ISSUANCE
3 OR DELIVERY OF THE ANNUITY.

4 (F) ANNUALLY PROVIDE A REPORT TO SENIOR MANAGEMENT, INCLUDING
5 TO THE SENIOR MANAGER RESPONSIBLE FOR AUDIT FUNCTIONS, THAT DETAILS
6 A REVIEW, WITH APPROPRIATE TESTING, REASONABLY DESIGNED TO
7 DETERMINE THE EFFECTIVENESS OF THE SUPERVISION SYSTEM, THE
8 EXCEPTIONS FOUND, AND CORRECTIVE ACTION TAKEN OR RECOMMENDED, IF
9 ANY.

10 (2) THIS SECTION DOES NOT RESTRICT AN INSURER FROM CONTRACTING
11 FOR PERFORMANCE OF A FUNCTION, INCLUDING MAINTENANCE OF PROCEDURES,
12 REQUIRED UNDER SUBSECTION (1). AN INSURER SHALL TAKE APPROPRIATE
13 CORRECTIVE ACTION AND MAY BE SUBJECT TO SANCTIONS AND PENALTIES
14 UNDER THIS ACT REGARDLESS OF WHETHER THE INSURER CONTRACTS FOR
15 PERFORMANCE OF A FUNCTION AND REGARDLESS OF THE INSURER'S
16 COMPLIANCE WITH SUBSECTION (3).

17 (3) AN INSURER'S SUPERVISION SYSTEM UNDER THIS SECTION SHALL
18 INCLUDE SUPERVISION OF CONTRACTUAL PERFORMANCE. THIS INCLUDES, BUT
19 IS NOT LIMITED TO, THE FOLLOWING:

20 (A) MONITORING AND, AS APPROPRIATE, CONDUCTING AUDITS TO
21 ASSURE THAT THE CONTRACTED FUNCTION IS PROPERLY PERFORMED.

22 (B) ANNUALLY OBTAINING A CERTIFICATION FROM A SENIOR MANAGER
23 WHO HAS RESPONSIBILITY FOR THE CONTRACTED FUNCTION THAT THE MANAGER
24 HAS A REASONABLE BASIS TO REPRESENT, AND DOES REPRESENT, THAT THE
25 FUNCTION IS PROPERLY PERFORMED.

26 (4) AN INSURER IS NOT REQUIRED TO INCLUDE IN ITS SYSTEM OF
27 SUPERVISION A PRODUCER'S RECOMMENDATIONS TO CONSUMERS OF PRODUCTS

1 OTHER THAN THE ANNUITIES OFFERED BY THE INSURER.

2 SEC. 4159. A PRODUCER SHALL NOT DISSUADE, OR ATTEMPT TO
3 DISSUADE, A CONSUMER FROM ANY OF THE FOLLOWING:

4 (A) TRUTHFULLY RESPONDING TO AN INSURER'S REQUEST FOR
5 CONFIRMATION OF SUITABILITY INFORMATION.

6 (B) FILING A COMPLAINT.

7 (C) COOPERATING WITH THE INVESTIGATION OF A COMPLAINT.

8 SEC. 4160. (1) A PRODUCER SHALL NOT SOLICIT THE SALE OF AN
9 ANNUITY PRODUCT UNLESS THE PRODUCER HAS ADEQUATE KNOWLEDGE OF THE
10 PRODUCT TO RECOMMEND THE ANNUITY AND THE PRODUCER IS IN COMPLIANCE
11 WITH THE INSURER'S STANDARDS FOR PRODUCT TRAINING. A PRODUCER MAY
12 RELY ON INSURER-PROVIDED PRODUCT-SPECIFIC TRAINING STANDARDS AND
13 MATERIALS TO COMPLY WITH THIS SUBSECTION.

14 (2) A PRODUCER WHO ENGAGES IN THE SALE OF ANNUITY PRODUCTS
15 SHALL COMPLETE A 1-TIME 4-CREDIT TRAINING COURSE APPROVED BY THE
16 COMMISSIONER AND PROVIDED BY AN INSURANCE AGENT PROGRAM OF STUDY
17 REGISTERED UNDER CHAPTER 12. INSURANCE PRODUCERS WHO HOLD A LIFE
18 INSURANCE LINE OF AUTHORITY ON THE EFFECTIVE DATE OF THE AMENDATORY
19 ACT THAT ADDED THIS SECTION AND WHO DESIRE TO SELL ANNUITIES SHALL
20 COMPLETE THE REQUIREMENTS OF THIS SUBSECTION WITHIN 6 MONTHS AFTER
21 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.
22 INDIVIDUALS WHO OBTAIN A LIFE INSURANCE LINE OF AUTHORITY ON OR
23 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
24 SECTION SHALL NOT ENGAGE IN THE SALE OF ANNUITIES UNTIL THE ANNUITY
25 TRAINING COURSE REQUIRED UNDER THIS SUBSECTION HAS BEEN COMPLETED.

26 (3) THE MINIMUM LENGTH OF THE TRAINING REQUIRED UNDER
27 SUBSECTION (2) SHALL BE NOT LESS THAN 4 HOURS, AS DEFINED IN

1 SECTION 1204C, AND MAY BE LONGER.

2 (4) THE TRAINING REQUIRED UNDER SUBSECTION (2) SHALL INCLUDE
3 INFORMATION ON ALL OF THE FOLLOWING:

4 (A) THE TYPES OF ANNUITIES AND VARIOUS CLASSIFICATIONS OF
5 ANNUITIES.

6 (B) IDENTIFICATION OF THE PARTIES TO AN ANNUITY.

7 (C) HOW FIXED, VARIABLE, AND INDEXED ANNUITY CONTRACT
8 PROVISIONS AFFECT CONSUMERS.

9 (D) THE APPLICATION OF INCOME TAXATION OF QUALIFIED AND
10 NONQUALIFIED ANNUITIES.

11 (E) THE PRIMARY USES OF ANNUITIES.

12 (F) APPROPRIATE SALES PRACTICES AND REPLACEMENT AND DISCLOSURE
13 REQUIREMENTS.

14 (5) REGISTERED INSURANCE AGENT PROGRAMS OF STUDY SHALL COVER
15 ALL TOPICS UNDER SUBSECTION (4) AND SHALL NOT PRESENT ANY MARKETING
16 INFORMATION OR PROVIDE TRAINING ON SALES TECHNIQUES OR PROVIDE
17 SPECIFIC INFORMATION ABOUT A PARTICULAR INSURER'S PRODUCTS.
18 ADDITIONAL TOPICS MAY BE OFFERED IN CONJUNCTION WITH AND IN
19 ADDITION TO THE TOPICS UNDER SUBSECTION (4).

20 (6) THE SATISFACTION OF THE TRAINING REQUIREMENTS OF ANOTHER
21 STATE THAT ARE SUBSTANTIALLY SIMILAR TO THIS SECTION SATISFIES THE
22 TRAINING REQUIREMENTS OF THIS SECTION.

23 (7) AN INSURER SHALL VERIFY THAT AN INSURANCE PRODUCER HAS
24 COMPLETED THE ANNUITY TRAINING COURSE REQUIRED UNDER THIS SECTION
25 BEFORE ALLOWING THE PRODUCER TO SELL AN ANNUITY PRODUCT FOR THAT
26 INSURER. AN INSURER MAY SATISFY ITS RESPONSIBILITY UNDER THIS
27 SECTION BY OBTAINING CERTIFICATES OF COMPLETION OF THE TRAINING

1 COURSE OR OBTAINING REPORTS PROVIDED BY COMMISSIONER-SPONSORED
2 DATABASE SYSTEMS OR VENDORS OR FROM A REASONABLY RELIABLE
3 COMMERCIAL DATABASE VENDOR THAT HAS A REPORTING ARRANGEMENT WITH A
4 REGISTERED INSURANCE AGENT PROGRAM OF STUDY.

5 SEC. 4161. FOR A CONSUMER PURCHASING AN INDIVIDUAL ANNUITY,
6 THE CONSUMER SHALL BE GIVEN A COPY OF THE ANNUITY POLICY AT THE
7 TIME THE ANNUITY IS ACCEPTED AND ISSUED.

8 SEC. 4162. NOTWITHSTANDING SECTION 4073 AND IN ADDITION TO ANY
9 RIGHT TO REVOKE AN ANNUITY, A CONSUMER HAS THE RIGHT TO CANCEL AN
10 ANNUITY WITHIN 15 DAYS AFTER ITS DELIVERY AND TO HAVE THE ENTIRE
11 PREMIUM REFUNDED IF, AFTER EXAMINATION OF THE ANNUITY, THE CONSUMER
12 IS NOT SATISFIED FOR ANY REASON. AN ANNUITY SHALL HAVE A NOTICE
13 PROMINENTLY PRINTED ON THE FIRST PAGE OF THE POLICY AND ON THE
14 SUMMARY OF COVERAGE AND THE CONSUMER SHALL ALSO BE PROVIDED A
15 SEPARATE NOTICE ENTITLED "RIGHT TO CANCEL". THE NOTICES SHALL STATE
16 IN PLAIN ENGLISH THAT THE CONSUMER HAS THE RIGHT TO RETURN THE
17 ANNUITY WITHIN 15 DAYS AFTER ITS DELIVERY AND TO HAVE THE ENTIRE
18 PREMIUM REFUNDED IF, AFTER EXAMINATION OF THE POLICY, THE APPLICANT
19 IS NOT SATISFIED FOR ANY REASON AND SHALL CONTAIN AN ADDRESS WHERE
20 A NOTICE OF CANCELLATION CAN BE SENT. THE CONSUMER SHALL
21 ACKNOWLEDGE IN WRITING THE RECEIPT OF THE SEPARATE RIGHT TO CANCEL
22 NOTICE. CANCELLATION OCCURS WHEN THE CONSUMER MAILES A WRITTEN
23 NOTICE OF CANCELLATION TO THE ADDRESS STATED IN THE NOTICE OF
24 CANCELLATION.

25 Sec. 4165. (1) ~~An insurer or insurance producer that complies~~
26 ~~with the national association of securities dealers rules "NASD~~
27 ~~Manual, Conduct Rules section 2310 (CCH, 1966)" or rules at least~~

1 ~~as stringent as section 2310 pertaining to suitability satisfies~~
2 ~~this chapter's requirements for the recommendation of variable~~
3 ~~annuities.~~ SUBJECT TO SUBSECTION (2), A SALE MADE IN COMPLIANCE
4 WITH FINANCIAL INDUSTRY REGULATORY AUTHORITY REQUIREMENTS
5 PERTAINING TO SUITABILITY AND SUPERVISION OF ANNUITY TRANSACTIONS
6 THAT ARE NOT LESS STRINGENT THAN THIS CHAPTER SATISFIES THIS
7 CHAPTER. THIS SUBSECTION APPLIES TO A FINANCIAL INDUSTRY REGULATORY
8 AUTHORITY BROKER-DEALER SALE OF A VARIABLE ANNUITY OR FIXED ANNUITY
9 IF THE SUITABILITY AND SUPERVISION ARE SIMILAR TO THOSE APPLIED TO
10 VARIABLE ANNUITY SALES. HOWEVER, THIS SUBSECTION DOES NOT LIMIT THE
11 COMMISSIONER'S ABILITY TO ENFORCE AND INVESTIGATE THIS CHAPTER.

12 (2) SUBSECTION (1) APPLIES IF THE INSURER DOES BOTH OF THE
13 FOLLOWING:

14 (A) MONITORS THE FINANCIAL INDUSTRY REGULATORY AUTHORITY
15 MEMBER BROKER-DEALER USING INFORMATION COLLECTED IN THE NORMAL
16 COURSE OF THE INSURER'S BUSINESS.

17 (B) PROVIDES TO THE FINANCIAL INDUSTRY REGULATORY AUTHORITY
18 MEMBER BROKER-DEALER INFORMATION AND REPORTS THAT ARE REASONABLY
19 APPROPRIATE TO ASSIST THE FINANCIAL INDUSTRY REGULATORY AUTHORITY
20 MEMBER BROKER-DEALER TO MAINTAIN ITS SUPERVISION SYSTEM.

21 CHAPTER 41B

22 ANNUITY DISCLOSURES

23 SEC. 4175. AS USED IN THIS CHAPTER:

24 (A) "ANNUITY" MEANS A GROUP OR INDIVIDUAL ANNUITY CONTRACT OR
25 CERTIFICATE.

26 (B) "DETERMINABLE ELEMENTS" MEANS ELEMENTS THAT ARE DERIVED
27 FROM PROCESSES OR METHODS THAT ARE GUARANTEED AT ISSUE AND NOT

1 SUBJECT TO INSURANCE COMPANY DISCRETION, BUT WHERE THE VALUES OR
2 AMOUNTS CANNOT BE DETERMINED UNTIL SOME POINT AFTER ISSUE. THESE
3 ELEMENTS INCLUDE THE PREMIUMS, CREDITED INTEREST RATES INCLUDING
4 ANY BONUS, BENEFITS, VALUES, NON-INTEREST-BASED CREDITS, CHARGES,
5 OR ELEMENTS OF FORMULAS USED TO DETERMINE ANY OF THESE. THESE
6 ELEMENTS MAY BE DESCRIBED AS GUARANTEED BUT NOT DETERMINED AT
7 ISSUE. AN ELEMENT IS CONSIDERED DETERMINABLE IF IT WAS CALCULATED
8 FROM UNDERLYING DETERMINABLE ELEMENTS ONLY, OR FROM BOTH
9 DETERMINABLE AND GUARANTEED ELEMENTS.

10 (C) "GENERIC NAME" MEANS A SHORT TITLE DESCRIPTIVE OF THE
11 ANNUITY CONTRACT BEING APPLIED FOR OR ILLUSTRATED.

12 (D) "GUARANTEED ELEMENTS" MEANS THE PREMIUMS, CREDITED
13 INTEREST RATES INCLUDING ANY BONUS, BENEFITS, VALUES, NON-INTEREST-
14 BASED CREDITS, CHARGES, OR ELEMENTS OF FORMULAS USED TO DETERMINE
15 ANY OF THESE, THAT ARE GUARANTEED AND DETERMINED AT ISSUE. AN
16 ELEMENT IS CONSIDERED GUARANTEED IF ALL OF THE UNDERLYING ELEMENTS
17 THAT GO INTO ITS CALCULATION ARE GUARANTEED.

18 (E) "INSURANCE PRODUCER" OR "PRODUCER" MEANS INSURANCE
19 PRODUCER AS DEFINED IN SECTION 1201 AND INCLUDES A BUSINESS ENTITY
20 DESCRIBED IN SECTION 1205(2) THAT IS LICENSED AS AN INSURANCE
21 PRODUCER UNDER THIS ACT.

22 (F) "NONGUARANTEED ELEMENTS" MEANS THE PREMIUMS, CREDITED
23 INTEREST RATES INCLUDING ANY BONUS, BENEFITS, VALUES, NON-INTEREST-
24 BASED CREDITS, CHARGES, OR ELEMENTS OF FORMULAS USED TO DETERMINE
25 ANY OF THESE, THAT ARE SUBJECT TO COMPANY DISCRETION OR ARE NOT
26 GUARANTEED AT ISSUE. AN ELEMENT IS CONSIDERED NONGUARANTEED IF ANY
27 OF THE UNDERLYING NONGUARANTEED ELEMENTS ARE USED IN ITS

1 CALCULATION.

2 (G) "STRUCTURED SETTLEMENT ANNUITY" MEANS A QUALIFIED FUNDING
3 ASSET AS DEFINED IN SECTION 130(D) OF THE INTERNAL REVENUE CODE OF
4 1986, 26 USC 130, OR AN ANNUITY THAT WOULD BE A QUALIFIED FUNDING
5 ASSET UNDER SECTION 130(D) OF THE INTERNAL REVENUE CODE OF 1986, 26
6 USC 130, BUT FOR THE FACT THAT IT IS NOT OWNED BY AN ASSIGNEE UNDER
7 A QUALIFIED ASSIGNMENT.

8 SEC. 4177. (1) THIS CHAPTER APPLIES TO ALL ANNUITIES EXCEPT
9 THE FOLLOWING:

10 (A) REGISTERED OR NONREGISTERED VARIABLE ANNUITIES OR OTHER
11 REGISTERED PRODUCTS.

12 (B) IMMEDIATE AND DEFERRED ANNUITIES THAT CONTAIN NO
13 NONGUARANTEED ELEMENTS.

14 (C) ANNUITIES USED TO FUND ANY OF THE FOLLOWING:

15 (i) AN EMPLOYEE PENSION OR WELFARE BENEFIT PLAN THAT IS COVERED
16 BY THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, PUBLIC LAW
17 93-406.

18 (ii) A PLAN DESCRIBED BY 26 USC 401(A), 26 USC 401(K), OR 26
19 USC 403(B) IF ESTABLISHED OR MAINTAINED BY AN EMPLOYER.

20 (iii) A GOVERNMENTAL OR CHURCH PLAN DEFINED IN 26 USC 414 OR A
21 DEFERRED COMPENSATION PLAN OF A STATE OR LOCAL GOVERNMENT OR TAX-
22 EXEMPT ORGANIZATION UNDER 26 USC 457.

23 (iv) A NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENT
24 ESTABLISHED OR MAINTAINED BY AN EMPLOYER OR PLAN SPONSOR.

25 (v) STRUCTURED SETTLEMENT ANNUITIES.

26 (2) NOTWITHSTANDING SUBSECTION (1), THIS CHAPTER DOES APPLY TO
27 ANNUITIES USED TO FUND A PLAN OR ARRANGEMENT THAT IS FUNDED SOLELY

1 BY CONTRIBUTIONS AN EMPLOYEE ELECTS TO MAKE WHETHER ON A PRETAX OR
2 AFTER-TAX BASIS, AND WHERE THE INSURER HAS BEEN NOTIFIED THAT PLAN
3 PARTICIPANTS MAY CHOOSE FROM AMONG 2 OR MORE FIXED ANNUITY
4 PROVIDERS AND THERE IS A DIRECT SOLICITATION OF AN INDIVIDUAL
5 EMPLOYEE BY AN INSURANCE PRODUCER FOR THE PURCHASE OF AN ANNUITY
6 CONTRACT. AS USED IN THIS SUBSECTION, DIRECT SOLICITATION DOES NOT
7 INCLUDE ANY MEETING HELD BY AN INSURANCE PRODUCER SOLELY FOR THE
8 PURPOSE OF EDUCATING OR ENROLLING EMPLOYEES IN THE PLAN OR
9 ARRANGEMENT.

10 SEC. 4178. (1) IF THE APPLICATION FOR AN ANNUITY CONTRACT IS
11 TAKEN IN A FACE-TO-FACE MEETING, THE APPLICANT SHALL AT OR BEFORE
12 THE TIME OF APPLICATION BE GIVEN BOTH THE DISCLOSURE DOCUMENT
13 DESCRIBED IN SECTION 4179 AND THE BUYER'S GUIDE DESCRIBED IN
14 SECTION 4181.

15 (2) IF THE APPLICATION FOR AN ANNUITY CONTRACT IS TAKEN BY
16 MEANS OTHER THAN IN A FACE-TO-FACE MEETING, THE APPLICANT SHALL BE
17 SENT BOTH THE DISCLOSURE DOCUMENT DESCRIBED IN SECTION 4179 AND THE
18 BUYER'S GUIDE DESCRIBED IN SECTION 4181 BY NO LATER THAN 5 BUSINESS
19 DAYS AFTER THE COMPLETED APPLICATION IS RECEIVED BY THE INSURER,
20 SUBJECT TO THE FOLLOWING:

21 (A) FOR AN APPLICATION RECEIVED AS A RESULT OF A DIRECT
22 SOLICITATION THROUGH THE MAIL, BOTH OF THE FOLLOWING APPLY:

23 (i) PROVIDING A BUYER'S GUIDE IN A MAILING INVITING PROSPECTIVE
24 APPLICANTS TO APPLY FOR AN ANNUITY CONTRACT SATISFIES THE
25 REQUIREMENT THAT THE BUYER'S GUIDE BE PROVIDED NO LATER THAN 5
26 BUSINESS DAYS AFTER RECEIPT OF THE APPLICATION.

27 (ii) PROVIDING A DISCLOSURE DOCUMENT IN A MAILING INVITING A

1 PROSPECTIVE APPLICANT TO APPLY FOR AN ANNUITY CONTRACT SATISFIES
2 THE REQUIREMENT THAT THE DISCLOSURE DOCUMENT BE PROVIDED NO LATER
3 THAN 5 BUSINESS DAYS AFTER RECEIPT OF THE APPLICATION.

4 (B) FOR AN APPLICATION RECEIVED VIA THE INTERNET, BOTH OF THE
5 FOLLOWING APPLY:

6 (i) TAKING REASONABLE STEPS TO MAKE THE BUYER'S GUIDE AVAILABLE
7 FOR VIEWING AND PRINTING ON THE INSURER'S WEBSITE SATISFIES THE
8 REQUIREMENT THAT THE BUYER'S GUIDE BE PROVIDED NO LATER THAN 5
9 BUSINESS DAYS OF RECEIPT OF THE APPLICATION.

10 (ii) TAKING REASONABLE STEPS TO MAKE THE DISCLOSURE DOCUMENT
11 AVAILABLE FOR VIEWING AND PRINTING ON THE INSURER'S WEBSITE
12 SATISFIES THE REQUIREMENT THAT THE DISCLOSURE DOCUMENT BE PROVIDED
13 NO LATER THAN 5 BUSINESS DAYS AFTER RECEIPT OF THE APPLICATION.

14 (C) A SOLICITATION FOR AN ANNUITY CONTRACT PROVIDED IN OTHER
15 THAN A FACE-TO-FACE MEETING SHALL INCLUDE A STATEMENT THAT THE
16 PROPOSED APPLICANT MAY CONTACT THE OFFICE OF FINANCIAL AND
17 INSURANCE REGULATION FOR A FREE ANNUITY BUYER'S GUIDE OR MAY
18 INCLUDE A STATEMENT THAT THE PROSPECTIVE APPLICANT MAY CONTACT THE
19 INSURER FOR A FREE ANNUITY BUYER'S GUIDE.

20 (3) IF THE BUYER'S GUIDE AND DISCLOSURE DOCUMENT ARE NOT
21 PROVIDED AT OR BEFORE THE TIME OF APPLICATION, A FREE LOOK PERIOD
22 OF NO LESS THAN 15 DAYS SHALL BE PROVIDED FOR THE APPLICANT TO
23 RETURN THE ANNUITY CONTRACT WITHOUT PENALTY. THIS FREE LOOK SHALL
24 RUN CONCURRENTLY WITH ANY OTHER FREE LOOK PROVIDED UNDER STATE LAW
25 OR REGULATION.

26 SEC. 4179. A DISCLOSURE DOCUMENT REQUIRED TO BE PROVIDED UNDER
27 SECTION 4178 SHALL USE TERMS DEFINED IN LANGUAGE THAT FACILITATES

1 THE UNDERSTANDING BY A TYPICAL PERSON WITHIN THE SEGMENT OF THE
2 PUBLIC TO WHICH THE DISCLOSURE DOCUMENT IS DIRECTED AND SHALL
3 CONTAIN ALL OF THE FOLLOWING INFORMATION AT A MINIMUM:

4 (A) THE GENERIC NAME OF THE CONTRACT, THE COMPANY PRODUCT
5 NAME, IF DIFFERENT, AND FORM NUMBER, AND THE FACT THAT IT IS AN
6 ANNUITY.

7 (B) THE INSURER'S NAME AND ADDRESS.

8 (C) A DESCRIPTION OF THE CONTRACT AND ITS BENEFITS,
9 EMPHASIZING ITS LONG-TERM NATURE, INCLUDING EXAMPLES IF APPROPRIATE
10 OF ALL OF THE FOLLOWING:

11 (i) THE GUARANTEED, NONGUARANTEED, AND DETERMINABLE ELEMENTS OF
12 THE CONTRACT, AND THEIR LIMITATIONS, IF ANY, AND AN EXPLANATION OF
13 HOW THEY OPERATE.

14 (ii) AN EXPLANATION OF THE INITIAL CREDITING RATE, SPECIFYING
15 ANY BONUS OR INTRODUCTORY PORTION, THE DURATION OF THE RATE, AND
16 THE FACT THAT RATES MAY CHANGE FROM TIME TO TIME AND ARE NOT
17 GUARANTEED.

18 (iii) PERIODIC INCOME OPTIONS BOTH ON A GUARANTEED AND
19 NONGUARANTEED BASIS.

20 (iv) ANY VALUE REDUCTIONS CAUSED BY WITHDRAWALS FROM OR
21 SURRENDER OF THE CONTRACT.

22 (v) HOW VALUES IN THE CONTRACT CAN BE ACCESSED.

23 (vi) THE DEATH BENEFIT, IF AVAILABLE, AND HOW IT WILL BE
24 CALCULATED.

25 (vii) A SUMMARY OF THE FEDERAL TAX STATUS OF THE CONTRACT AND
26 ANY PENALTIES APPLICABLE ON WITHDRAWAL OF VALUES FROM THE CONTRACT.

27 (viii) THE IMPACT OF ANY RIDER, SUCH AS A LONG-TERM CARE RIDER.

1 (D) SPECIFIC DOLLAR AMOUNT OR PERCENTAGE CHARGES AND FEES WITH
2 AN EXPLANATION OF HOW THEY APPLY.

3 (E) INFORMATION ABOUT THE CURRENT GUARANTEED RATE FOR NEW
4 CONTRACTS THAT CONTAINS A CLEAR NOTICE THAT THE RATE IS SUBJECT TO
5 CHANGE.

6 SEC. 4181. THE COMMISSIONER SHALL PREPARE AND, BEGINNING
7 JANUARY 1, 2012 AND ANNUALLY THEREAFTER, SHALL PUBLISH A BUYER'S
8 GUIDE TO ANNUITIES AS PROVIDED IN THIS SECTION. THE BUYER'S GUIDE
9 TO ANNUITIES SHALL BE WRITTEN IN PLAIN ENGLISH AND SHALL CONTAIN AN
10 EXPLANATION OF ALL OF THE FOLLOWING:

11 (A) WHAT AN ANNUITY IS.

12 (B) THE DIFFERENT KINDS OF ANNUITIES.

13 (C) HOW INTEREST RATES ARE SET.

14 (D) CHARGES THAT MAY BE SUBTRACTED FROM AN ANNUITY.

15 (E) TAX TREATMENT OF ANNUITIES.

16 (F) HOW TO DETERMINE WHETHER AN ANNUITY IS A RIGHT CHOICE.

17 SEC. 4182. FOR ANNUITIES IN THE PAYOUT PERIOD WITH CHANGES IN
18 NONGUARANTEED ELEMENTS AND FOR THE ACCUMULATION PERIOD OF A
19 DEFERRED ANNUITY, THE INSURER SHALL PROVIDE EACH CONTRACT OWNER
20 WITH A REPORT, AT LEAST ANNUALLY, ON THE STATUS OF THE CONTRACT
21 THAT CONTAINS AT LEAST ALL OF THE FOLLOWING INFORMATION:

22 (A) THE BEGINNING AND END DATE OF THE CURRENT REPORT PERIOD.

23 (B) THE ACCUMULATION AND CASH SURRENDER VALUE, IF ANY, AT THE
24 END OF THE PREVIOUS REPORT PERIOD AND AT THE END OF THE CURRENT
25 REPORT PERIOD.

26 (C) THE TOTAL AMOUNTS, IF ANY, THAT HAVE BEEN CREDITED,
27 CHARGED TO THE CONTRACT VALUE, OR PAID DURING THE CURRENT REPORT

1 PERIOD.

2 (D) THE AMOUNT OF OUTSTANDING LOANS, IF ANY, AS OF THE END OF
3 THE CURRENT REPORT PERIOD.

4 Enacting section 1. Section 4157 of the insurance code of
5 1956, 1956 PA 218, MCL 500.4157, is repealed.

6 Enacting section 2. This amendatory act takes effect 9 months
7 after the date it is enacted into law.