

HOUSE BILL NO. 6112

August 17, 2020, Introduced by Reps. Brenda Carter, Rendon, Berman, Markkanen, Wozniak and Paquette and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 4151 and 4153 (MCL 500.4151 and 500.4153), as
amended by 2012 PA 544.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 4151. As used in this chapter:
- 2 (a) "Annuity" means an annuity that is an insurance product
- 3 under state law that is individually solicited, whether the product
- 4 is classified as an individual or group annuity.
- 5 **(b) "Cash compensation" means any discount, concession, fee,**



1 service fee, commission, sales charge, loan, override, or cash
2 benefit received by a producer in connection with the
3 recommendation or sale of an annuity from an insurer or
4 intermediary, or directly from the consumer.

5 (c) "Consumer profile information" means information that is
6 reasonably appropriate to determine whether a recommendation
7 addresses the consumer's financial situation, insurance needs, and
8 financial objectives, including, at a minimum, the following:

9 (i) Age.

10 (ii) Annual income.

11 (iii) Financial situation and needs, including debts and other
12 obligations.

13 (iv) Financial experience.

14 (v) Insurance needs.

15 (vi) Financial objectives.

16 (vii) Intended use of the annuity.

17 (viii) Financial time horizon.

18 (ix) Existing assets or financial products, including
19 investment, annuity, and insurance holdings.

20 (x) Liquidity needs.

21 (xi) Liquid net worth.

22 (xii) Risk tolerance, including, but not limited to,
23 willingness to accept nonguaranteed elements in the annuity.

24 (xiii) Financial resources used to fund the annuity.

25 (xiv) Tax status.

26 (d) ~~(b)~~—"Insurance producer" or "producer" means insurance
27 producer as defined in section 1201 and includes a business entity
28 described in section 1205(2) that is licensed as an insurance



1 producer under this act. Insurance producer or producer includes an
2 insurer if no producer is involved.

3 (e) "Intermediary" means an entity contracted directly with an
4 insurer or with another entity contracted with an insurer to
5 facilitate the sale of the insurer's annuities by producers.

6 (f) "Material conflict of interest" means a financial interest
7 of the producer in the sale of an annuity that a reasonable person
8 would expect to influence the impartiality of a recommendation.
9 Material conflict of interest does not include cash compensation or
10 noncash compensation.

11 (g) "Noncash compensation" means a form of compensation that
12 is not cash compensation, including, but not limited to, health
13 insurance, office rent, office support, and retirement benefits.

14 (h) "Nonguaranteed elements" means the premiums, credited
15 interest rates, including any bonus, benefits, values, dividends,
16 noninterest based credits, charges, or elements of formulas used to
17 determine any of these, that are subject to company discretion and
18 are not guaranteed at issue. An element is considered nonguaranteed
19 if any of the underlying nonguaranteed elements are used in its
20 calculation.

21 (i) ~~(e)~~ "Recommendation" means advice provided by an ~~insurance~~
22 ~~producer, or an insurer if no producer is involved,~~ a **producer** to
23 an individual consumer that ~~results~~ **was intended to result or does**
24 **result** in a purchase, exchange, or replacement of an annuity in
25 accordance with that advice. **Recommendation does not include**
26 **general communication to the public, generalized customer services**
27 **assistance or administrative support, general educational**
28 **information and tools, prospectuses, or other product and sales**
29 **material.**



1 (j) ~~(d)~~ "Replacement" or "replace" means a transaction in
 2 which a new ~~policy or contract~~ **annuity** is to be purchased, and it
 3 is known or should be known to the proposing producer, or to the
 4 proposing insurer ~~if there is no~~ **whether or not a producer is**
 5 **involved**, that by reason of the transaction, an existing **annuity or**
 6 **other insurance** policy ~~or contract~~ has been or is to be ~~1~~ **any** of
 7 the following:

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

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

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

16 (iv) Reissued with any reduction in cash value.

17 (v) Used in a financed purchase.

18 ~~(c) "Suitability information" means information that is~~
 19 ~~reasonably appropriate to determine the suitability of a~~
 20 ~~recommendation, including all of the following:~~

21 ~~(i) Age.~~

22 ~~(ii) Annual income.~~

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

25 ~~(iv) Financial experience.~~

26 ~~(v) Financial objectives.~~

27 ~~(vi) Intended use of the annuity.~~

28 ~~(vii) Financial time horizon.~~



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

3 ~~(ix) Liquidity needs.~~

4 ~~(x) Liquid net worth.~~

5 ~~(xi) Risk tolerance.~~

6 ~~(xii) Tax status.~~

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

12 (2) ~~This~~ **Except as otherwise provided in this chapter, this**
13 chapter does not apply to any recommendation to purchase, exchange,
14 or replace an annuity involving any of the following:

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

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

18 (i) An employee pension or welfare benefit plan that is covered
19 by the employee retirement income security act of 1974, Public Law
20 93-406.

21 (ii) A plan described by 26 USC 401(a), 26 USC 401(k), 26 USC
22 403(b), 26 USC 408(k), or 26 USC 408(p), if established or
23 maintained by an employer.

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

28 (iv) A nonqualified deferred compensation arrangement



1 established or maintained by an employer or plan sponsor.

2 (v) Settlements of or assumptions of liabilities associated
3 with personal injury litigation or any dispute or claim resolution
4 process.

5 (vi) Formal prepaid funeral contracts.

6 **(3) This chapter does not require a producer to obtain any**
7 **license other than a producer license with the appropriate line of**
8 **authority to sell, solicit, or negotiate insurance in this state,**
9 **including, but not limited to, any securities license, to fulfill**
10 **the duties and obligations contained under this chapter if the**
11 **producer does not give advice or provide services that are**
12 **otherwise subject to securities laws or engage in any other**
13 **activity requiring other professional licenses.**

14 **(4) This chapter does not create or imply a private cause of**
15 **action for a violation of this chapter or subject a producer to**
16 **civil liability under the standard of care outlined in section 4155**
17 **or under standards governing the conduct of a fiduciary or a**
18 **fiduciary relationship.**

19 Enacting section 1. This amendatory act takes effect 6 months
20 after the date it is enacted into law.

21 Enacting section 2. This amendatory act does not take effect
22 unless all of the following bills of the 100th legislature are
23 enacted into law:

24 (a) Senate Bill No. ____ or House Bill No. 6113 (request no.
25 07415'20).

26 (b) Senate Bill No. ____ or House Bill No. 6114 (request no.
27 07416'20).

28 (c) Senate Bill No. ____ or House Bill No. 6115 (request no.
29 07417'20).

