

HOUSE BILL NO. 145

INTRODUCED BY Z. BROWN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS PERTAINING TO ANNUITY REGULATION; ADOPTING THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION; REVISING LAWS PERTAINING TO CONTINUING EDUCATION FOR INSURANCE PRODUCERS SELLING ANNUITIES; REQUIRING INSURERS TO ADOPT ANNUITY SUPERVISION PROCESSES; REVISING ANNUITY SUITABILITY REQUIREMENTS; REVISING RECORDKEEPING REQUIREMENTS FOR INSURANCE PRODUCERS SELLING ANNUITIES; AMENDING SECTIONS 33-20-802, 33-20-804, AND 33-20-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Annuity continuing education. (1) An insurance producer may not solicit the sale of an annuity product unless:

(a) the insurance producer has adequate knowledge of the product to recommend the annuity;
(b) the insurance producer is in compliance with the insurer's standards for product training; and
(c) the insurance producer has completed the continuing education requirements of this section from a continuing education provider. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this section only if they are approved under 33-17-1204.

(2) (a) An insurance producer shall complete a continuing education training course of at least 4 continuing education credit hours approved under 33-17-1204 prior to engaging in the offering or sale of annuities.

(b) An insurance producer who is otherwise entitled to engage in the sale of annuity products on [the effective date of this act] shall complete the requirements of this section within 6 months after [the effective date of this act].

(3) The training required under this section must include, at a minimum, information on the following topics:

- (a) the types of annuities and various classifications of annuities;
(b) identification of the parties to an annuity;
(c) how product-specific annuity contract features affect consumers;
(d) the application of income taxation of qualified and nonqualified annuities;
(e) the primary uses of annuities; and
(f) appropriate sales practices, replacement, and disclosure requirements.

(4) Training required under this section may not include any information on marketing, sales techniques, or the specific aspects of a particular insurer's products.

(5) Training required under this section must comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in Title 33, chapter 17, part 12.

(6) An insurer shall verify that an insurance producer has completed the training under this section before allowing the producer to sell an annuity product 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 a database system satisfactory to the commissioner.

Section 2. Section 33-20-802, MCA, is amended to read:

"33-20-802. Purpose -- scope. (1) The purpose of this part is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) This part applies to any recommendation to purchase, ~~or exchange,~~ or replace an annuity made to a consumer by an insurance producer or by an insurer when an insurance producer is not involved that results in the recommended purchase, ~~or exchange,~~ or replacement."

Section 3. Section 33-20-804, MCA, is amended to read:

"33-20-804. Definitions. As used in this part, the following definitions apply:

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

(2) "Continuing education credit" means one continuing education credit approved under Title 33, chapter 17, part 12.

1 (3) "Continuing education provider" means an individual or entity that is approved to offer continuing
2 education courses under Title 33, chapter 17, part 12.

3 (2)(4) "Insurance producer", in addition to the definition in 33-17-102, includes an insurance producer
4 licensed to sell, solicit, or negotiate annuities.

5 (3)(5) "Insurer", in addition to the definition in 33-1-201, includes an insurer providing annuity products.

6 (4)(6) "Recommendation" means advice provided by an insurance producer or by an insurer when an
7 insurance producer is not involved to an individual consumer that results in a purchase, ~~or~~ exchange, or
8 replacement of an annuity in accordance with that advice.

9 (7) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is
10 known or should be known to the proposing producer or to the proposing insurer when an insurance producer
11 is not involved that by reason of the transaction, an existing policy or contract has been or is to be:

12 (a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise
13 terminated;

14 (b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced
15 in value by the use of nonforfeiture benefits or other policy values;

16 (c) amended so as to effect either a reduction in benefits or in the term for which coverage would
17 otherwise remain in force or for which benefits would be paid;

18 (d) reissued with any reduction in cash value; or

19 (e) used in a financed purchase.

20 (8) "Suitability information" means information that is reasonably appropriate to determine the suitability
21 of a recommendation, including the following:

22 (a) age;

23 (b) annual income;

24 (c) financial situation and needs, including the financial resources used for the funding of the annuity;

25 (d) financial experience;

26 (e) financial objectives;

27 (f) intended use of the annuity;

28 (g) financial time horizon;

29 (h) existing assets, including investment and life insurance holdings;

30 (i) liquidity needs;

- 1 (j) liquid net worth;
2 (k) risk tolerance;
3 (l) tax status; and
4 (m) whether the consumer has a reverse mortgage."

5
6 **Section 4.** Section 33-20-805, MCA, is amended to read:

7 **"33-20-805. Duties of insurers, insurance producers, and independent agencies.** (1) In
8 recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another
9 insurance transaction or series of insurance transactions, the insurance producer or the insurer when an
10 insurance producer is not involved must have reasonable grounds for believing that the recommendation is
11 suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments,
12 other insurance products, financial situation, and needs; including the consumer's suitability information, and that
13 there is a reasonable basis to believe all of the following:

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

18 (b) the consumer would receive a tangible net benefit from the transaction;

19 (c) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time
20 of the purchase, exchange, or replacement of the annuity, and riders and similar product enhancements, if any,
21 are suitable for the particular consumer based on the consumer's suitability information; and

22 (d) in the case of an exchange or replacement of an annuity, the exchange or replacement is suitable,
23 including taking into consideration whether:

24 (i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender
25 period, lose existing benefits, or be subject to increased fees, investment advisory fees, or charges for riders and
26 similar product enhancements;

27 (ii) the consumer would benefit from product enhancements and improvements;

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

30 (iv) the transaction as a whole is suitable for the consumer based on the consumer's suitability

1 information.

2 (2) Prior to the execution of a purchase, ~~or exchange, or replacement~~ of an annuity resulting from a
3 recommendation, an insurance producer or an insurer when an insurance producer is not involved shall make
4 reasonable efforts to obtain the consumer's suitability information, concerning:

5 ~~—— (a) the consumer's financial status;~~

6 ~~—— (b) the consumer's tax status;~~

7 ~~—— (c) the consumer's investment objectives; and~~

8 ~~—— (d) other information used or considered reasonable in making recommendations to the consumer by~~
9 ~~the insurance producer or by the insurer when an insurance producer is not involved.~~

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

13 ~~(3)(4)~~ (a) Except as provided under subsection ~~(3)(b)~~ (4)(b), an insurance producer or an insurer when
14 an insurance producer is not involved does not have any obligation to a consumer under subsection (1) or (3)
15 related to any recommendation if a consumer: annuity transaction if:

16 (i) no recommendation is made;

17 (ii) a recommendation is made but later found to have been prepared based on materially inaccurate
18 information provided by the consumer;

19 ~~(i)(iii)~~ (iii) the consumer refuses to provide relevant suitability information requested by the insurer or
20 insurance producer; and the annuity transaction is not recommended; or

21 ~~(ii)(iv)~~ (iv) the consumer decides to enter into an ~~insurance~~ annuity transaction that is not based on a
22 recommendation of the insurer or insurance producer; ~~or~~

23 ~~—— (iii) fails to provide complete or accurate information.~~

24 (b) ~~Subject to subsection (1), an~~ An insurer's or insurance producer's ~~recommendation~~ issuance of an
25 annuity under subsection (4)(a) must be reasonable under all the circumstances actually known or which after
26 reasonable inquiry should be known to the insurer or insurance producer at the time ~~of the recommendation~~ the
27 annuity is issued.

28 (5) An insurance producer or an insurer when an insurance producer is not involved shall at the time of
29 sale:

30 (a) make a record of any recommendation subject to subsection (1);

1 (b) obtain a statement signed by the consumer acknowledging the consumer's refusal to provide
2 suitability information, if any; and

3 (c) if a consumer decides to enter into an annuity transaction that is not based on the insurance
4 producer's or insurer's recommendation, obtain a statement signed by the consumer acknowledging that the
5 annuity transaction is not recommended.

6 ~~(4) (a)(6) An insurer may contract with a third party as provided in subsection (6) to~~ shall establish and
7 maintain a supervision system to supervise recommendations that is reasonably designed to achieve the insurer's
8 and its insurance producers' compliance with this section: and, at a minimum, shall:

9 (a) maintain reasonable procedures to inform its insurance producers of the requirements of this section
10 and shall incorporate the requirements of this section into relevant insurance producer training manuals;

11 (b) establish standards for insurance producer product training and maintain reasonable procedures to
12 require its insurance producers to comply with the requirements of [section 1];

13 (c) provide product-specific training and training materials that explain all material features of its annuity
14 products to its insurance producers;

15 (d) maintain procedures that are designed to ensure that there is a reasonable basis for determining that
16 a recommendation is suitable for the consumer prior to issuance of an annuity. The review procedures must
17 establish selection criteria for the purpose of identifying selected transactions for additional review.

18 (e) maintain reasonable procedures, such as confirmation of consumer suitability information, systematic
19 consumer surveys, interviews, confirmation letters, and programs of internal monitoring, to detect
20 recommendations that are not suitable; and

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

24 ~~(b) A system designed and maintained by an insurer must at a minimum provide for:~~

25 ~~—— (i) maintaining written procedures; and~~

26 ~~—— (ii) conducting periodic reviews of the insurer's records that are reasonably designed to assist in detecting~~
27 ~~and preventing violations of this part.~~

28 ~~—— (5) An insurance producer or independent agency shall:~~

29 ~~—— (a) adopt a system established by an insurer to supervise recommendations of the insurance producer~~
30 ~~or agency's insurance producers that is reasonably designed to achieve compliance with this part; or~~

1 ~~_____ (b) establish and maintain a system that at a minimum provides for:~~

2 ~~_____ (i) maintaining written procedures; and~~

3 ~~_____ (ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and~~
4 ~~preventing violations of this part.~~

5 ~~(6)(7) (a) An insurer may contract with a third party, including an insurance producer or independent~~
6 ~~agency, to establish and maintain a system of supervision as provided for in subsection (4) (6) with respect to~~
7 ~~insurance producers under contract with or employed by the third party.~~

8 (b) An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and
9 penalties under 33-1-317 and 33-1-318 regardless of whether the insurer contracts for performance of a function
10 and regardless of the insurer's compliance with subsection (7)(c).

11 ~~(b)(c) An insurer insurer's supervision system under subsection (6) must include supervision of the~~
12 ~~performance of shall make reasonable inquiry to ensure that the third party parties under is performing the~~
13 ~~functions required under this subsection (7) and must include, at a minimum, the following: (4) and shall take~~
14 ~~reasonable action under the circumstances to enforce the third party's contractual obligations to perform the~~
15 ~~functions.~~

16 ~~_____ (c) An insurer may comply with its obligation to make reasonable inquiry by doing each of the following:~~

17 ~~(i) annually obtaining a certification from a director, officer, or principal of the third party that the third~~
18 ~~party is performing the required functions; and~~

19 ~~(ii) based on reasonable selection criteria, periodically selecting third parties for a review to determine~~
20 ~~whether monitoring and, as appropriate, conducting audits to ensure that the third parties are performing the~~
21 ~~required functions.~~

22 ~~(7)(8) An insurer, insurance producer, or independent agency is not required by this section to:~~

23 ~~(a) review or provide for review of insurance producer solicited transactions not related to annuities; or~~

24 ~~(b) include in its system of supervision an insurance producer's recommendations to consumers of~~
25 ~~products other than the annuities offered by the insurer, insurance producer, or independent agency.~~

26 ~~_____ (8) An insurance producer or independent agency contracting as a third party with an insurer pursuant~~
27 ~~to subsection (6) shall promptly, when requested by the insurer, give a certification as described in subsection~~
28 ~~(6) or give a clear statement that it is unable to meet the certification criteria.~~

29 (9) An insurance producer or an insurer when an insurance producer is not involved may not dissuade
30 or attempt to dissuade a consumer from:

1 (a) truthfully responding to an insurer's request for confirmation of suitability information;

2 (b) filing a complaint; or

3 (c) cooperating with the investigation of a complaint.

4 ~~(9)(10)~~ (a) Insurers, insurance producers, and independent agencies shall maintain or must be able to
5 make available to the commissioner records of the information collected from the consumer and other information
6 used in making the recommendations that were the basis for insurance transactions for 5 years after the
7 insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain
8 documentation on behalf of an insurance producer.

9 (b) Records required to be maintained by this ~~regulation~~ section may be maintained in paper,
10 photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately
11 reproduces the actual document."
12

13 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 33, chapter 20, part 8, and the provisions of Title 33, chapter 20, part 8, apply to [section 1].
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16 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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