

Act No. 266
Public Acts of 2020
Approved by the Governor
December 29, 2020
Filed with the Secretary of State
December 29, 2020
EFFECTIVE DATE: December 29, 2020

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Rep. Webber

ENROLLED HOUSE BILL No. 4508

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 1202, 4151, 4153, 4155, 4158, 4159, 4160, 4165, 5228, 5230, and 5245 (MCL 500.1202, 500.4151, 500.4153, 500.4155, 500.4158, 500.4159, 500.4160, 500.4165, 500.5228, 500.5230, and 500.5245), section 1202 as amended by 2016 PA 114, sections 4151, 4153, 4155, and 4165 as amended and sections 4158, 4159, and 4160 as added by 2012 PA 544, section 5228 as amended by 1994 PA 226, and section 5245 as amended by 2006 PA 290, and by adding chapter 12b and section 4166.

The People of the State of Michigan enact:

Sec. 1202. (1) This chapter does not require an insurer to obtain an insurance producer license. As used in this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.

(2) A license as an insurance producer is not required of any of the following:

(a) An officer, director, or employee of an insurer or of an insurance producer, if the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and meets 1 or more of the following:

(i) The officer’s, director’s, or employee’s activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance.

(ii) The officer’s, director’s, or employee’s function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance.

(iii) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers if the person’s activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

(b) A person who performs and receives no commission for any of the following services:

(i) Securing and furnishing information for the purpose of group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance.

(ii) Securing and furnishing information for the purpose of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans.

(iii) Performing administrative services related to mass marketed property and casualty insurance.

(c) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, if the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts.

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation, or negotiation of insurance.

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media, the distribution of which is not limited to residents of this state, if the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.

(f) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than 1 state insured under that contract, if the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

(g) A salaried full-time employee who counsels or advises his or her employer concerning the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, if the employee does not sell or solicit insurance or receive a commission.

(h) A person whose only sale of insurance is for travel or auto-related insurance sold in connection with and incidental to the rental of a motor vehicle under a rental agreement for a period not to exceed 90 days.

(i) A person whose only sale of insurance is for portable electronics insurance sold in connection with and incidental to the sale of a portable electronic device if written disclosure material is provided to the customer at the time of solicitation and the written material includes all of the following:

(i) A disclosure that portable electronics insurance may duplicate coverage already provided by the customer’s homeowners, renters, or other insurance policies.

(ii) A statement that the enrollment by the customer in a portable electronics insurance program is not required to purchase or lease a portable electronic device or services for the device.

(iii) A summary of the material terms of the portable electronics insurance coverage, including all of the following:

(A) The identity of the insurer.

(B) The amount of any applicable deductible and how it is to be paid.

(C) The benefits of the coverage.

(D) Key terms and conditions of the coverage, such as whether the portable electronics may be repaired or replaced with a similar make and model or reconditioned or nonoriginal manufacturer parts or equipment.

(iv) A summary of the process for filing a claim, including a description of how to return a portable electronic device and the maximum fee applicable if the customer fails to comply with equipment return requirements.

(v) A statement that the customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and that the person paying the premium will receive a refund of or credit for any unearned premium.

(j) A person whose only sale of insurance is for travel insurance sold in conjunction with and incidental to planned travel.

(k) A person whose only sale of insurance is stored property insurance sold in connection with and incidental to the rental of storage space in a self-service storage facility under a rental agreement for a period not to exceed 1 year if written disclosure material is provided to the customer at the time of solicitation and the written material includes all of the following:

(i) A disclosure that the stored property insurance may duplicate coverage already provided by the customer's homeowners, renters, or other insurance policies.

(ii) A summary of the material terms of the stored property insurance coverage, including all of the following:

(A) The identity of the insurer.

(B) The benefits of the coverage.

(C) The key terms and conditions of the coverage.

(iii) A summary of the process for filing a claim.

(3) As used in this section:

(a) "Motor vehicle" means a motorized vehicle designed for transporting passengers or goods.

(b) "Self-service storage facility" means that term as defined in section 2 of the self-service storage facility act, 1985 PA 148, MCL 570.522.

(c) "Stored property insurance" means insurance that provides coverage for the loss of, or damage to, tangible personal property with an insured value not exceeding \$10,000.00 contained in a storage space located on a self-service storage facility or in transit during the term of a self-service storage facility rental agreement and that is provided under a group or master policy issued to a self-service storage facility for the provision of insurance to its customers.

(d) "Travel insurance" means, subject to subdivision (e), a limited lines insurance coverage under section 1201(k) for personal risk incident to planned travel, including 1 or more of the following:

(i) Interruption or cancellation of a trip or event.

(ii) Loss of baggage or personal effects.

(iii) Damages to accommodations or rental vehicles.

(iv) Sickness, accident, disability, or death occurring during travel.

(v) Emergency evacuation.

(vi) Repatriation of remains.

(vii) Any other contractual obligations to indemnify or pay a specified amount to the traveler on determinable contingencies related to travel as approved by the director.

(e) "Travel insurance" does not include either of the following:

(i) Major medical plans, which provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including, for example, those working or residing overseas as an expatriate, or military personnel being deployed.

(ii) A product that requires a specific insurance producer's license.

(iii) A prearranged funeral agreement by a funeral service provider.

CHAPTER 12B TRAVEL INSURANCE

Sec. 1281. This chapter applies to travel insurance that covers a resident of this state and is sold, solicited, negotiated, or offered in this state and for which policies and certificates are delivered or issued for delivery in this state. Except as otherwise provided in this chapter, this chapter does not apply to cancellation fee waivers and travel assistance services.

Sec. 1283. As used in this chapter:

(a) "Aggregator site" means a website that provides access to information regarding insurance products from more than 1 insurer, including product and insurer information, for use in comparison shopping.

(b) "Blanket travel insurance" means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group.

(c) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(d) "Eligible group" means 2 or more persons that are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including, but not limited to, any of the following:

(i) Persons engaged in the business of providing travel or travel services, including, but not limited to, tour operators, lodging providers, vacation property owners, hotels and resorts, travel clubs, travel agencies, property managers, cultural exchange programs, and common carriers or the operators, owners, or lessors of a means of transportation of passengers, including, but not limited to, airlines, cruise lines, railroads, steamship companies, and public bus carriers, in which, with regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to the travel.

(ii) Colleges, schools, or other institutions of learning covering students, teachers or employees, or volunteers.

(iii) Employers covering a group of employees, volunteers, contractors, board of directors, dependents, or guests.

(iv) Sports teams, camps, or sponsors of sports teams or camps covering participants, members, campers, employees, officials, supervisors, or volunteers.

(v) Religious, charitable, recreational, educational, or civic organizations or branches of religious, charitable, recreational, educational, or civic organizations covering any group of members, participants, or volunteers.

(vi) Financial institutions or financial institution vendors, or parent holding company, trustee, or agent of or designated by 1 or more financial institutions or financial institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers.

(vii) Incorporated or unincorporated associations, including labor unions, having a common interest, constitution, and bylaws, and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of the association covering its members.

(viii) A trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers, subject to the director's permitting the use of a trust and the premium tax under section 1285, of 1 or more associations described in subparagraph (vii).

(ix) Entertainment production companies covering a group of participants, volunteers, audience members, contestants, or workers.

(x) Volunteer fire departments, ambulance, rescue, police, or court, or any first aid, civil defense, or other volunteer groups.

(xi) Preschools, daycare institutions for children or adults, and senior citizen clubs.

(xii) Automobile or truck rental or leasing companies covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company is the policyholder under a policy to which this subparagraph applies.

(xiii) Any other group as to which the director has determined that the members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, and that issuance of the policy would not be contrary to the public interest.

(e) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.

(f) "Group travel insurance" means travel insurance issued to any eligible group.

(g) "Primary certificate holder" means an individual who elects and purchases travel insurance under a group policy.

(h) "Primary policyholder" means an individual who elects and purchases individual travel insurance.

(i) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and as to which providing the service does not result in the transfer or shifting of risk that

would constitute the business of insurance. Travel assistance services include, but are not limited to, security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, concierge services, and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and not related to insurance.

- (j) "Travel insurance" means that term as defined in section 1202.
- (k) "Travel protection plans" means plans that provide 1 or more of the following:
 - (i) Travel insurance.
 - (ii) Travel assistance services.
 - (iii) Cancellation fee waivers.

Sec. 1285. (1) A travel insurer shall pay a premium tax, as provided in section 635 of the income tax act of 1967, 1967 PA 281, MCL 206.635, on travel insurance premiums paid by any of the following:

- (a) An individual primary policyholder who is a resident of this state.
 - (b) A primary certificate holder who is a resident of this state who elects coverage under a group travel insurance policy.
 - (c) A blanket travel insurance policyholder that is a resident in, or has its principal place of business or the principal place of business of an affiliate or subsidiary that has purchased blanket travel insurance in, this state for eligible blanket group members, subject to any apportionment rules that apply to the insurer across multiple taxing jurisdictions or that permits the insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.
- (2) A travel insurer shall do both of the following:
- (a) Document the state of residence or principal place of business of the policyholder or certificate holder, as required in subsection (1).
 - (b) Report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Sec. 1287. Travel protection plans may be offered for 1 price for the combined features that the travel protection plan offers in this state if both of the following conditions are met:

- (a) The travel protection plan clearly discloses to the consumer at or before the time of purchase that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity at or before the time of purchase for the consumer to obtain additional information regarding the features and pricing of each.
- (b) The fulfillment materials do both of the following:
 - (i) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan.
 - (ii) Include the travel insurance disclosures and the contact information for persons providing travel assistance services and cancellation fee waivers, as applicable.

Sec. 1289. (1) Except as otherwise provided in this section, a person that offers travel insurance to residents of this state is subject to chapter 20. If there is a conflict between this chapter and other provisions of this act regarding the sale and marketing of travel insurance and travel protection plans, this chapter controls.

- (2) Offering or selling a travel insurance policy that could never result in payment of any claims for an insured under the policy is an unfair trade practice under chapter 20.
- (3) All documents provided to consumers before the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.
- (4) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided any time before the time of purchase, and in the coverage's fulfillment materials.
- (5) The fulfillment materials must be provided to a policyholder or certificate holder as soon as practicable following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a

claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of the travel protection plan until at least either of the following:

(a) Fifteen days following the date of delivery of the travel protection plan's fulfillment materials by postal mail.

(b) Ten days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.

(6) A company shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

(7) If travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it is not an unfair trade practice or other violation of law if both of the following apply:

(a) An accurate summary or short description of coverage is provided on the webpage.

(b) If the consumer has access to the full provisions of the policy through electronic means.

(8) A person that offers, solicits, or negotiates travel insurance or travel protection plans on an individual or group basis shall not use a negative option or opt-out, that would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form when the consumer purchases a trip.

(9) If a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that a consumer choose between any of the following options as a condition of purchasing a trip or travel package:

(a) Purchasing the coverage required by the destination jurisdiction through the travel insurance producer supplying the trip or travel package.

(b) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

(10) As used in this section, "delivery" means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

Sec. 1291. (1) Notwithstanding any other provision of this act, travel insurance is classified and must be filed for purposes of rates and forms under an inland marine line of insurance. However, travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be filed by an authorized insurer under either an accident and health line of insurance or an inland marine line of insurance.

(2) Travel insurance may be in the form of an individual, group, or blanket policy.

(3) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, if those standards also meet this state's underwriting standards for inland marine.

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) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer or intermediary, or directly from the consumer.

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

(i) Age.

(ii) Annual income.

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

(iv) Financial experience.

(v) Insurance needs.

(vi) Financial objectives.

(vii) Intended use of the annuity.

(viii) Financial time horizon.

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

(x) Liquidity needs.

(xi) Liquid net worth.

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

(xiii) Financial resources used to fund the annuity.

(xiv) Tax status.

(d) "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. Insurance producer or producer includes an insurer if no producer is involved.

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

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

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

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

(i) "Recommendation" means advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, exchange, or replacement of an annuity in accordance with that advice. Recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(j) "Replacement" or "replace" means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any 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.

Sec. 4153. (1) This chapter applies to any sale or recommendation of an annuity.

(2) Except as otherwise provided in this chapter, 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.

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

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

Sec. 4155. (1) A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer is held to standards applicable to a producer with similar authority and licensure. A producer has acted in the best interest of the consumer if the producer has satisfied all of the following obligations regarding care, disclosure, conflict of interest, and documentation:

(a) Subject to subdivision (b), the producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to do all of the following:

(i) Know the consumer's financial situation, insurance needs, and financial objectives.

(ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer.

(iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information.

(iv) Communicate the basis or bases of the recommendation.

(b) All of the following apply to the obligation of exercising reasonable diligence, care, and skill under subdivision (a):

(i) To meet the obligations under subdivision (a), the producer must do all of the following:

(A) Make reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this subdivision may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

(B) Consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives. This sub-subparagraph does not require the producer to analyze or consider any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.

(C) Have a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.

(ii) The obligations under subdivision (a) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

(iii) The obligations under subdivision (a) do not require the producer to recommend the annuity with the lowest 1-time or multiple occurrence compensation structure.

(iv) The obligations under subdivision (a) do not mean the producer has ongoing monitoring obligations under the care obligation under subdivision (a), although the obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

(c) For an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes 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 replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product.

(iii) Whether the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(d) Before the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form issued by the director all of the following information:

(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction.

(ii) An affirmative statement on whether the producer is licensed and authorized to sell all of the following products:

(A) Fixed annuities.

(B) Fixed indexed annuities.

(C) Variable annuities.

(D) Life insurance.

(E) Mutual funds.

(F) Stocks and bonds.

(G) Certificates of deposit.

(iii) An affirmative statement describing the insurers the producer is authorized, contracted or appointed, or otherwise able to sell insurance products for, using any of the following descriptions:

(A) One insurer.

(B) From 2 or more insurers.

(C) From 2 or more insurers although primarily contracted with 1 insurer.

(iv) A description of the sources and types of cash compensation and noncash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other producer or by fee as a result of a contract for advice or consulting services.

(v) A notice of the consumer's right to request additional information regarding cash compensation described in subdivision (e).

(e) On request of the consumer or the consumer's designated representative, the producer shall disclose both of the following:

(i) A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages.

(ii) Whether the cash compensation is a 1-time or multiple occurrence amount and, if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

(f) Before or at the time of the recommendation or sale of an annuity, the producer must have a reasonable basis to believe the consumer has been 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, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance and investment components, and market risk.

(g) A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(h) A producer shall at the time of recommendation or sale do all of the following:

(i) Make a written record of any recommendation and the basis for the recommendation subject to this chapter.

(ii) Obtain a consumer signed statement on a form that documents both of the following:

(A) The consumer's refusal to provide the consumer profile information, if any.

(B) The consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

(iii) Obtain a consumer signed statement on a form acknowledging the annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(2) The requirements under subsection (1) do not create a fiduciary obligation or relationship and create only a regulatory obligation as established under this chapter.

(3) Any requirement applicable to a producer under subsection (1) applies to each producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling, or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

(4) Except as provided under subsection (5), a producer does not have any obligation to a consumer under subsection (1) 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 consumer profile 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) An insurer's issuance of an annuity subject to subsection (4) must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(6) Except as permitted under subsections (4) and (5), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

Sec. 4158. (1) An insurer shall establish and maintain 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) Establish and 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 and maintain 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) Establish and maintain procedures for review of each recommendation before issuance of an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. 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) Establish and maintain reasonable procedures to detect recommendations that are not in compliance with section 4155. These may include, but are not limited to, confirmation of the consumer's profile information, systematic consumer surveys, producer and consumer interviews, confirmation letters, producer statements and attestations, and programs of internal monitoring. This subdivision does not prevent an insurer from complying with this subdivision by applying sampling procedures or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity.

(f) Establish and maintain reasonable procedures to assess, before or on issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under section 4155.

(g) Establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

(h) Establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subdivision are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees if those benefits are not based on the volume of sales of a specific annuity within a limited period of time.

(i) Annually provide a written 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 must 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 either of the following in its system of supervision:

(a) A producer's recommendations to consumers of products other than the annuities offered by the insurer.

(b) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products 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 the consumer profile 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 director and provided by an insurance producer program of study registered under chapter 12. Insurance producers who hold a life insurance line of authority on June 1, 2013 and who desire to sell annuities shall complete the requirements of this subsection by December 1, 2013. Individuals who obtain a life insurance line of authority after May 31, 2013 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) must be not less than 4 hours, as defined in section 1204c, and may be longer.

(4) The training required under subsection (2) must 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 standard of conduct, sales practices, and replacement and disclosure requirements.

(5) Registered insurance producer programs of study must cover all topics under subsection (4) and must 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 director as a continuing education provider in this state and comply with any requirements of the director applicable to insurance producer continuing education.

(7) A producer who has completed an annuity training course approved by the director before the effective date of the 2020 amendatory act that amended this section shall, within 6 months after the effective date of the 2020 amendatory act that amended this section, complete either of the following:

(a) A new 4-credit training course approved by the director after the effective date of the 2020 amendatory act that amended this section.

(b) An additional 1-time 1-credit training course approved by the director and provided by the department-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this chapter.

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

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

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

(11) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to this section satisfies the training requirements of this section.

(12) 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 director-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. 4165. (1) Subject to subsection (2), a recommendation or sale made in compliance with comparable standards satisfies the requirements of this chapter. This subsection applies to a recommendation or sale of an annuity made by a financial professional in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the standard would not otherwise apply to the product or recommendation at issue. However, this subsection does not limit the director's ability to investigate and enforce this chapter.

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

(a) Monitors the relevant conduct of the financial professional seeking to rely on subsection (1) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal securities laws using information collected in the normal course of the insurer's business.

(b) Provides to the entity responsible for supervising the financial professional seeking to rely on subsection (1), such as the financial professional's broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist the entity to maintain its supervision system.

(3) Subsection (1) does not limit an insurer's obligation to comply with section 4155(6). However, an insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(4) As used in this section:

(a) "Comparable standards" means all of the following, as applicable:

(i) With respect to broker-dealers and registered representatives of broker-dealers, applicable United States Securities and Exchange Commission and Financial Industry Regulatory Authority rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest.

(ii) With respect to investment advisers registered under federal securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on the investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including, but not limited to, the Form ADV.

(iii) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the employee retirement income security act of 1974, Public Law 93-406, or the internal revenue code of 1986, 26 USC 1 to 9834.

(b) "Financial professional" means a producer that is regulated and acting as any of the following:

(i) A broker-dealer registered under federal securities laws or a registered representative of a broker-dealer.

(ii) An investment adviser registered under federal securities laws or an investment adviser representative associated with the federal registered investment adviser.

(iii) A plan fiduciary under section 3(21) of the employee retirement income security act of 1974 or fiduciary under section 4975(e)(3) of the internal revenue code of 1986, 26 USC 4975.

Sec. 4166. (1) An insurer is responsible for compliance with this chapter. If a violation occurs, either because of the action or inaction of the insurer or its producer, the director may order any of the following:

(a) The insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this chapter by the insurer, an entity contracted to perform the insurer's supervisory duties, or the producer.

(b) The producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this chapter.

(c) Appropriate sanctions.

(2) Any order under subsection (1) for a violation of this chapter may be reduced or eliminated by the director if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Sec. 5228. (1) The stockholders or members of a corporation may adopt bylaws that they consider advisable. Until September 30, 2022, bylaws adopted under this subsection may provide 1 or both of the following:

(a) One or more directors may participate in a regular or special meeting of the board, or a committee of the board, or conduct the meeting, by means of electronic communication devices that enable all participants in the meeting to communicate with each other. A director participating in a meeting allowed under this subdivision is deemed to be present in person at a meeting.

(b) Any meeting of the stockholders or members may be conducted by means of electronic communications devices by which all stockholders or members participating may simultaneously participate in the meeting. A stockholder or member participating in a meeting allowed under this subdivision is deemed to be present in person at a meeting.

(2) The directors of a domestic insurer may make bylaws, not inconsistent with the constitution and laws of this state, or with the insurer's articles of incorporation, as they consider necessary for the government of the officers and members of the insurer, and the conduct of its affairs. All bylaws and any amendments to the bylaws must be filed with the director of the department before becoming operative.

(3) If bylaws adopted under subsection (1) need to be amended to allow meetings through electronic communication devices described in subsection (1), an amendment to the bylaws may be adopted at a meeting conducted through electronic communication devices described in subsection (1). This subsection does not apply after September 30, 2022.

Sec. 5230. (1) A special meeting of the stockholders or members of a domestic stock or mutual insurer may be called for purposes other than amending articles of incorporation under section 5214 and extending its corporate existence under section 5222, by the directors at any time they consider advisable.

(2) Notice of a meeting of the members or stockholders must be given by mailing to each member or stockholder a copy of the notice, postage prepaid, directed to his or her last known post office address at least 21 days before the time fixed for the meeting. The notice must state the time and place, and if the meeting is a special meeting, the purpose of the special meeting. However, notice of the time and place of the annual meeting of a mutual insurer may be printed on the policy or certificate of renewal instead of mailing as required under this subsection, in which case the notice must also be printed with the annual statement of the insurer.

(3) A meeting of the stockholders or members may be conducted by means of electronic communications devices by which all stockholders or members participating may simultaneously participate in the meeting. A stockholder or member participating in a meeting allowed under this subsection is deemed to be present in person at a meeting. This subsection does not apply after September 30, 2022.

Sec. 5245. (1) A majority of the board of directors constitutes a quorum for the transaction of business, and the acts of a majority of the directors present at a meeting at which a quorum is present are the acts of the board of directors.

(2) On written notice of the time and place and purpose or purposes of any special meeting, any of the directors, in-between regular meetings of the board of directors, may consent in writing to any specific action to be taken by the corporation, and if approved by a majority of the directors at the special meeting, including those consenting in writing, the action is as valid a corporation action as though authorized at a regular meeting of the directors. The minutes of approval and action must be fully recorded, each written consent must be made a part of the minutes, and the minutes and written consent must be reviewed at the next regular meeting of the board of directors.

(3) Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. The written consents must be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

(4) The board of directors may permit 1 or more directors to participate in a regular or special meeting of the board, or a committee of the board, or conduct the meeting, by means of electronic communication devices that enable all participants in the meeting to communicate with each other. A director participating in a meeting under this subsection is deemed to be present in person at the meeting. This subsection does not apply after September 30, 2022.

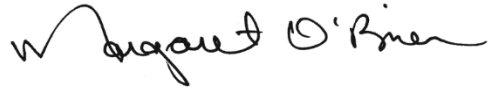
Enacting section 1. Sections 4151, 4153, 4155, 4158, 4159, 4160, and 4165 of the insurance code of 1956, 1956 PA 218, MCL 500.4151, 500.4153, 500.4155, 500.4158, 500.4159, 500.4160, and 500.4165, as amended by this amendatory act, take effect 6 months after the date it is enacted into law.

Enacting section 2. Section 4166 of the insurance code of 1956, 1956 PA 218, as added by this amendatory act, takes effect 6 months after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor