

HOUSE BILL NO. 6113

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

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 4155 and 4158 (MCL 500.4155 and 500.4158),
section 4155 as amended by 2012 PA 544 and section 4158 as added by
2012 PA 544.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4155. (1) ~~In recommending to a consumer the purchase of~~
2 ~~an annuity or the exchange of an annuity that results in another~~
3 ~~insurance transaction or series of insurance transactions, the~~
4 ~~insurance producer, or the insurer if no producer is involved,~~



1 ~~shall have reasonable grounds for believing that the recommendation~~
2 ~~is suitable for the consumer on the basis of the facts disclosed by~~
3 ~~the consumer as to his or her investments and other insurance~~
4 ~~products and as to his or her financial situation and needs,~~
5 ~~including the consumer's suitability information, and that there is~~
6 ~~a reasonable basis to believe all of the following:~~

7 ~~(a) The consumer has been reasonably informed of various~~
8 ~~features of the annuity, such as the potential surrender period and~~
9 ~~surrender charge, potential tax penalty if the consumer sells,~~
10 ~~exchanges, surrenders, or annuitizes the annuity, mortality and~~
11 ~~expense fees, investment advisory fees, potential charges for and~~
12 ~~features of riders, limitations on interest returns, insurance and~~
13 ~~investment components, and market risk.~~

14 ~~(b) The consumer would benefit from certain features of the~~
15 ~~annuity, such as tax deferred growth, annuitization, or death or~~
16 ~~living benefit.~~

17 ~~(c) The particular annuity as a whole, the underlying~~
18 ~~subaccounts to which funds are allocated at the time of purchase or~~
19 ~~exchange of the annuity, and riders and similar product~~
20 ~~enhancements, if any, are suitable and, for an exchange or~~
21 ~~replacement, the transaction as a whole is suitable, for the~~
22 ~~particular consumer based on his or her suitability information.~~

23 ~~(d) For an exchange or replacement of an annuity, the exchange~~
24 ~~or replacement is suitable including taking into consideration all~~
25 ~~of the following:~~

26 ~~(i) Whether the consumer will incur a surrender charge, be~~
27 ~~subject to the commencement of a new surrender period, lose~~
28 ~~existing benefits such as death, living, or other contractual~~
29 ~~benefits, or be subject to increased fees, investment advisory~~



1 ~~fees, or charges for riders and similar product enhancements.~~

2 ~~(ii) Whether the consumer would benefit from product~~
3 ~~enhancements and improvements.~~

4 ~~(iii) Whether the consumer has had another annuity exchange or~~
5 ~~replacement and, in particular, an exchange or replacement within~~
6 ~~the preceding 36 months.~~

7 ~~(2) Before the execution of a purchase, exchange, or~~
8 ~~replacement of an annuity resulting from a recommendation, an~~
9 ~~insurance producer, or an insurer if no producer is involved, shall~~
10 ~~make reasonable efforts to obtain the consumer's suitability~~
11 ~~information.~~

12 ~~(3) Except as permitted under subsection (4), an insurer shall~~
13 ~~not issue an annuity recommended to a consumer unless there is a~~
14 ~~reasonable basis to believe that the annuity is suitable based on~~
15 ~~the consumer's suitability information.~~ **A producer, when making a**
16 **recommendation of an annuity, shall act in the best interest of the**
17 **consumer under the circumstances known at the time the**
18 **recommendation is made, without placing the producer's or the**
19 **insurer's financial interest ahead of the consumer's interest. A**
20 **producer is held to standards applicable to a producer with similar**
21 **authority and licensure. A producer has acted in the best interest**
22 **of the consumer if the producer has satisfied all of the following**
23 **obligations regarding care, disclosure, conflict of interest, and**
24 **documentation:**

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

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



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

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

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

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

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

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

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



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

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

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

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

18 (c) For an exchange or replacement of an annuity, the producer
19 shall consider the whole transaction, which includes taking into
20 consideration all of the following:

21 (i) Whether the consumer will incur a surrender charge, be
22 subject to the commencement of a new surrender period, lose
23 existing benefits, such as death, living, or other contractual
24 benefits, or be subject to increased fees, investment advisory
25 fees, or charges for riders and similar product enhancements.

26 (ii) Whether the replacing product would substantially benefit
27 the consumer in comparison to the replaced product over the life of
28 the product.

29 (iii) Whether consumer has had another annuity exchange or



1 replacement and, in particular, an exchange or replacement within
2 the preceding 60 months.

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

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

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

10 (A) Fixed annuities.

11 (B) Fixed indexed annuities.

12 (C) Variable annuities.

13 (D) Life insurance.

14 (E) Mutual funds.

15 (F) Stocks and bonds.

16 (G) Certificates of deposit.

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

21 (A) One insurer.

22 (B) From 2 or more insurers.

23 (C) From 2 or more insurers although primarily contracted with
24 1 insurer.

25 (iv) A description of the sources and types of cash
26 compensation and noncash compensation to be received by the
27 producer, including whether the producer is to be compensated for
28 the sale of a recommended annuity by commission as part of premium
29 or other remuneration received from the insurer, intermediary, or



1 other producer or by fee as a result of a contract for advice or
2 consulting services.

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

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

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

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

15 (f) Before or at the time of the recommendation or sale of an
16 annuity, the producer must have a reasonable basis to believe the
17 consumer has been informed of various features of the annuity, such
18 as the potential surrender period and surrender charge, potential
19 tax penalty if the consumer sells, exchanges, surrenders, or
20 annuitizes the annuity, mortality and expense fees, investment
21 advisory fees, any annual fees, potential charges for and features
22 of riders or other options of the annuity, limitations on interest
23 returns, potential changes in nonguaranteed elements of the
24 annuity, insurance and investment components, and market risk.

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

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



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

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

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

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

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

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

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

26 ~~(4) An insurer's issuance of an annuity shall be reasonable~~
27 ~~under all of the circumstances actually known to the insurer at the~~
28 ~~time the annuity is issued. However, neither a **Except as provided**~~
29 ~~under subsection (5), a producer nor an insurer has does not have~~



1 any obligation to a consumer under subsection (1) ~~or (3)~~ related to
2 any annuity transaction if any of the following apply:

3 (a) A recommendation is not made.

4 (b) A recommendation was made and was later found to have been
5 prepared based on materially inaccurate information provided by the
6 consumer.

7 (c) A consumer refuses to provide relevant ~~suitability~~
8 **consumer profile** information and the annuity transaction is not
9 recommended.

10 (d) A consumer decides to enter into an annuity transaction
11 that is not based on a recommendation of the insurer or the
12 insurance producer.

13 ~~(5) A producer or, if no producer is involved, the responsible~~
14 ~~insurer representative, shall at the time of sale do all of the~~
15 ~~following:~~

16 ~~(a) Make a record of any recommendation subject to subsection~~
17 ~~(1).~~

18 ~~(b) Obtain a customer signed statement documenting a~~
19 ~~customer's refusal to provide suitability information, if any.~~

20 ~~(c) Obtain a customer signed statement acknowledging that an~~
21 ~~annuity transaction is not recommended if a customer decides to~~
22 ~~enter into an annuity transaction that is not based on the~~
23 ~~producer's or insurer's recommendation.~~

24 (5) **An insurer's issuance of an annuity subject to subsection**
25 **(4) must be reasonable under all the circumstances actually known**
26 **to the insurer at the time the annuity is issued.**

27 (6) **Except as permitted under subsections (4) and (5), an**
28 **insurer shall not issue an annuity recommended to a consumer unless**
29 **there is a reasonable basis to believe the annuity would**



1 **effectively address the particular consumer's financial situation,**
 2 **insurance needs, and financial objectives based on the consumer's**
 3 **consumer profile information.**

4 Sec. 4158. (1) An insurer shall establish **and maintain** a
 5 supervision system that is reasonably designed to achieve the
 6 insurer's and its producers' compliance with this chapter,
 7 including, but not limited to, all of the following:

8 (a) ~~Maintain~~**Establish and maintain** reasonable procedures to
 9 inform its producers of the requirements of this chapter and
 10 incorporate the requirements of this chapter into relevant producer
 11 training manuals.

12 (b) Establish **and maintain** standards for producer product
 13 training and maintain reasonable procedures to require its
 14 producers to comply with section 4160.

15 (c) Provide product-specific training and training materials
 16 that explain all material features of its annuity products to its
 17 producers.

18 (d) ~~Maintain~~**Establish and maintain** procedures for review of
 19 each recommendation before issuance of an annuity that are designed
 20 to ensure ~~that~~ there is a reasonable basis to determine that a
 21 ~~recommendation is suitable.~~ **the recommended annuity would**
 22 **effectively address the particular consumer's financial situation,**
 23 **insurance needs, and financial objectives.** Review procedures may
 24 apply a screening system for the purpose of identifying selected
 25 transactions for additional review and may be accomplished
 26 electronically or through other means, including, but not limited
 27 to, physical review. An electronic or other system may be designed
 28 to require additional review only of those transactions identified
 29 for additional review by the selection criteria.



1 (e) ~~Maintain~~ **Establish and maintain** reasonable procedures to
2 detect recommendations that are not ~~suitable. This in compliance~~
3 **with section 4155. These** may include, but ~~is~~ **are** not limited to,
4 confirmation of ~~consumer suitability~~ **the consumer's profile**
5 information, systematic customer surveys, **producer and consumer**
6 interviews, confirmation letters, **producer statements and**
7 **attestations**, and programs of internal monitoring. This subdivision
8 does not prevent an insurer from complying with this subdivision by
9 applying sampling procedures or by confirming ~~suitability~~ **the**
10 **consumer profile** information **or other required information under**
11 **this section** after issuance or delivery of the annuity.

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

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

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

28 (i) ~~(f)~~ **Annually provide a written** report to senior
29 management, including to the senior manager responsible for audit



1 functions, that details a review, with appropriate testing,
2 reasonably designed to determine the effectiveness of the
3 supervision system, the exceptions found, and corrective action
4 taken or recommended, if any.

5 (2) This section does not restrict an insurer from contracting
6 for performance of a function, including maintenance of procedures,
7 required under subsection (1). An insurer shall take appropriate
8 corrective action and may be subject to sanctions and penalties
9 under this act regardless of whether the insurer contracts for
10 performance of a function and regardless of the insurer's
11 compliance with subsection (3).

12 (3) An insurer's supervision system under this section ~~shall~~
13 **must** include supervision of contractual performance. This includes,
14 but is not limited to, the following:

15 (a) Monitoring and, as appropriate, conducting audits to
16 assure that the contracted function is properly performed.

17 (b) Annually obtaining a certification from a senior manager
18 who has responsibility for the contracted function that the manager
19 has a reasonable basis to represent, and does represent, that the
20 function is properly performed.

21 (4) An insurer is not required to include **either of the**
22 **following** in its system of supervision: a

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

25 (b) **Consideration of or comparison to options available to the**
26 **producer or compensation relating to those options other than**
27 **annuities or other products offered by the insurer.**

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



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

4 (a) Senate Bill No. _____ or House Bill No. 6112 (request no.
5 05748'20).

6 (b) Senate Bill No. _____ or House Bill No. 6114 (request no.
7 07416'20).

8 (c) Senate Bill No. _____ or House Bill No. 6115 (request no.
9 07417'20).

