

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.4155 Purchase or exchange of annuity; recommendations; effort and obligation to act in best interest of consumer; reasonable basis; duties of producer; exceptions.

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.

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