

INSURANCE COMPANY LAW OF 1921 - OMNIBUS AMENDMENTS

Act of Dec. 22, 2021, P.L. 472, No. 99

CL. 40

Session of 2021  
No. 2021-99

SB 772

AN ACT

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," in life insurance, further providing for standard nonforfeiture law for individual deferred annuities; and, in suitability of annuity transactions, further providing for definitions, for applicability and scope of article, for duties of insurers and insurance producers, for insurance producer training, for mitigation of responsibility, for recordkeeping and for enforcement.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 410C(d.1)(3)(C), 401-B, 402-B(a) and (b) introductory paragraph and (2) and 403-B of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, are amended to read:

Section 410C. Standard Nonforfeiture Law for Individual Deferred Annuities.--\* \* \*

(d.1) In the case of contracts issued on or after January 1, 2006, and in the case of any class of annuity contracts issued before January 1, 2006, as to which the issuing company has filed with the Insurance Department a notice of election of the applicability of this section, the minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts set forth in this section.

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(3) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three per centum (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

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(C) Where the resulting interest rate is not less than **fifteen hundredths of** one per centum [(1%)] **(.15%)**; and

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Section 401-B. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Annuity." An annuity that is an insurance product and is individually solicited, whether the insurance product is

classified as an individual or group annuity.

**"Cash compensation."** A 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, intermediary or directly from the consumer.

**"Commissioner."** The Insurance Commissioner of the Commonwealth.

**"Consumer profile information."** 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:

- (1) Age.
- (2) Annual income.
- (3) Financial situation and needs, including debts and other obligations.
- (4) Financial experience.
- (5) Insurance needs.
- (6) Financial objectives.
- (7) Intended use of the annuity.
- (8) Financial time horizon.
- (9) Existing assets or financial products, including investment, annuity and insurance holdings.
- (10) Liquidity needs.
- (11) Liquid net worth.
- (12) Risk tolerance, including willingness to accept non-guaranteed elements in the annuity.
- (13) Financial resources used to fund the annuity.
- (14) Tax status.

**"Continuing education credit."** One continuing education credit under section 608-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

**"Continuing education provider."** An individual or entity approved to offer continuing education courses under section 608-A of The Insurance Department Act of 1921.

**"Department."** The Insurance Department of the Commonwealth.

**"Employee Retirement Income Security Act."** The Employee Retirement Income Security Act of 1974 (Public Law 93-406, 88 Stat. 829).

**"FINRA."** The Financial Industry Regulatory Authority or a succeeding agency.

**"General agent."** An insurance producer that provides supervision on behalf of an insurer to an insurer's sales force in a particular geographic region or territory.

**"Insurance producer."** A person who sells, solicits or negotiates contracts of insurance as defined in section 601-A of The Insurance Department Act of 1921.]

**"Insurer."** A life insurance company licensed or required to be licensed under section 202 or a fraternal benefit society as defined in section 2403.

**"Intermediary."** 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.

**"Internal Revenue Code."** The Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

**"Material conflict of interest."** 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. The term does not include cash compensation or non-cash compensation.

**"Non-cash compensation."** A form of compensation that is not cash compensation, including health insurance, office rent, office support and retirement benefits.

"Non-guaranteed elements." The premiums, credited interest rates, including any bonus, benefits, values, dividends, non-interest 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 non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

"Producer." A person or entity required to be licensed under the laws of this Commonwealth to sell, solicit or negotiate insurance, including annuities. For purposes of this article, "producer" includes an insurer where no producer is involved.

"Recommendation." [Advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.] Advice provided by a producer to an individual that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. The term does not include general communication to the public, generalized customer service assistance or administrative support, general educational information and tools, prospectuses or other product and sales material.

"Replace" or "replacement." The purchase of a new [policy or contract] annuity where it is known or should be known to the proposing producer, or to the proposing insurer [if there is no insurance producer] whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy [or contract] has been or will be any of the following:

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

(2) 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;

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

(4) reissued with a reduction in cash value; or

(5) used in a financed purchase.

"SEC." The United States Securities and Exchange Commission.

["Suitability information." Information relating to an annuity that is appropriate to determine the suitability of a recommendation, including:

(1) Age.

(2) Annual income.

(3) Financial situation and needs, including the financial resources used for the funding of the annuity.

(4) Financial experience.

(5) Financial objectives.

(6) Intended use of the annuity.

(7) Financial time horizon.

(8) Existing assets, including investment and life insurance holdings.

(9) Liquidity needs.

(10) Liquid net worth.

(11) Risk tolerance.

(12) Tax status.]

Section 402-B. Applicability and scope of article.

(a) General rule.--This article shall apply to any sale or recommendation [to purchase or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or replacement recommended] of an annuity.

(b) Exclusions.--Unless otherwise specifically included, this article shall not apply to [recommendations] **transactions** involving the following:

\* \* \*

(2) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act [of 1974 (Public Law 93-406, 88 Stat. 829)].

(ii) A plan described by sections 401(a) or (k), 403(b), 408(k) or (p) of the Internal Revenue Code [of 1986 (Public Law 99-514, 26 U.S.C. §§ 401(a) or (k), 403(b), 408(k) or (p))], when the plan, for purposes of the Employee Retirement Income Security Act of 1974, is] **if** established or maintained by an employer.

(iii) A governmental or church plan defined in section 414 of the Internal Revenue Code [of 1986], **a government or church welfare benefit plan** or a deferred compensation plan of a State or local government or tax exempt organization under section 457 of the Internal Revenue Code [of 1986].

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

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

[(vi)] **(4)** Formal prepaid funeral contracts.

Section 403-B. Duties of insurers and insurance producers.

[(a) General duties.--In making a recommendation to a consumer for the purchase or replacement of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that:

(1) The recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's suitability information.

(2) The consumer has been reasonably informed of various features of the annuity, including the potential surrender period and surrender charge, potential tax penalty if the consumer sells, replaces, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk.

(3) The consumer would benefit from certain features of the annuity, including tax-deferred growth, annuitization or death or living benefit.

(4) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or replacement of the annuity, and riders and similar product enhancements, if any, are suitable and, in the case of a replacement, the transaction as a whole is suitable for the consumer based on the consumer's suitability information.

(5) In the case of a replacement of an annuity, the replacement is suitable and shall take into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements.

(ii) The consumer would benefit from product enhancements and improvements.

(iii) The consumer has had another annuity replacement, including a replacement within the preceding 36 months.

(b) Consumer information.--Prior to the execution of a purchase or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(b.1) Reasonable basis.--Except as permitted under subsection (c), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(c) Obligation limits.--

(1) Except as provided under paragraph (2), neither an insurance producer nor an insurer where no insurance producer is involved shall have any obligation to a consumer under subsection (a) or (b.1) related to any annuity transaction if:

(i) No recommendation is made.

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

(iii) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended.

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

(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(c.1) Documentation.--An insurance producer, or the responsible insurer representative if no insurance producer is involved, shall at the time of sale of an annuity:

(1) Make a record of each recommendation subject to subsection (a).

(2) Obtain a customer-signed statement documenting a customer's refusal to provide suitability information, if any.

(3) Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

(d) Supervision of recommendations.--

(1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producer's compliance with this article, including, but not limited to, the following:

(i) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this article and shall incorporate the requirements of this article into relevant insurance producer training manuals.

(ii) The insurer shall establish standards for insurance producer product training and maintain reasonable procedures to require its insurance producers to comply with the requirements of section 403.1-B.

(iii) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its insurance producers.

(iv) The insurer shall maintain procedures for review of each recommendation before issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. The 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. The electronic or other system may be designed to require additional review only for those transactions identified for additional review by the selection criteria.

(v) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable, including, but not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph shall prevent an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.

(vi) The insurer shall annually provide a report detailing its supervision system to senior management, including to the senior manager responsible for audit functions. The report shall include a description of the testing designed to determine the effectiveness of the supervision system, the exceptions found and the corrective action taken or recommended, if any.

(2) Nothing in this subsection shall restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under section 406-B regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph (3).

(3) An insurer's supervision system under paragraph (1) shall include supervision of contractual performance under paragraph (2), including, but not limited to, the following:

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

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

(4) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers for products other than the annuities offered by the insurer.

(d.1) Dissuasion.--An insurance producer may not dissuade, or attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer's request for confirmation of suitability information.

(2) Filing a complaint.

(3) Cooperating with the investigation of a complaint.

(e) Compliance with other rules.--Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this section. This subsection applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the commissioner's ability to enforce or investigate the provisions of this article. For this subsection to apply, an insurer shall:

(1) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's

business.

(2) Provide to the FINRA member broker-dealer information and reports which are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

(f) Internal audit and compliance procedures.--Nothing in this article shall exempt an insurer from the internal audit and compliance procedure requirements under section 405-A.]

(a) **Best interest obligations.**--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 has acted in the best interest of the consumer if the producer has satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

(1) The following care obligations:

(i) The producer, in making a recommendation, shall exercise reasonable diligence, care and skill to:

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

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

(C) 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.

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

(ii) The requirements under subparagraph (i) include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(iii) The requirements under subparagraph (i) require a producer to 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 does not require analysis or consideration of 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. Producers shall be held to standards applicable to producers with similar authority and licensure.

(iv) The requirements under this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this article.

(v) 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 paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

(vi) The requirements under subparagraph (i) include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, including

annuitization, death or living benefit or other insurance-related features.

(vii) The requirements under subparagraph (i) 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.

(viii) The requirements under subparagraph (i) do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

(ix) The requirements under subparagraph (i) do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, 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.

(x) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(A) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, including death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements.

(B) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product.

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

(xi) Nothing in this section should be construed to 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 any securities license, in order to fulfill the duties and obligations contained in this article; provided 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.

(2) The following disclosure obligations:

(i) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to a model form established by the department and following the NAIC Model #275's Appendix A and including all the following:

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

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

(I) Fixed annuities.

(II) Fixed indexed annuities.

(III) Variable annuities.

(IV) Life insurance.

(V) Mutual funds.

(VI) Stocks and bonds.

(VII) Certificates of deposit.

(C) An affirmative statement describing the insurers the producer is authorized, contracted or



appointed, or otherwise able to sell insurance products for, using the following descriptions:

(I) One insurer.

(II) From two or more insurers.

(III) From two or more insurers although primarily contracted with one insurer.

(D) A description of the sources and types of cash compensation and non-cash 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.

(E) A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph (ii).

(ii) Upon request of the consumer or the consumer's designated representative, the producer shall disclose:

(A) 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.

(B) Whether the cash compensation is a one-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.

(iii) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, including the potential surrender period and surrender charge, potential tax penalty if the consumer sells, replaces, surrenders or annuitizes the annuity, mortality and expense fees, investment and advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitation on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.

(3) 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.

(4) A producer shall at the time of recommendation or sale:

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

(ii) Obtain a consumer signed statement on a form substantially similar to a model form established by the department and following the NAIC Model #275's Appendix B, documenting:

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

(B) A customer'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 substantially similar to a model form established by the department and following the NAIC Model #275's Appendix C, acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.

(5) Any requirement applicable to a producer under this subsection shall apply to every 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, including 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.

(b) Transactions not based on a recommendation.--The following shall apply:

(1) Except as provided under paragraph (2), a producer shall have no obligation to a consumer under subsection (a) related to any annuity transaction if:

(i) No recommendation is made.

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

(iii) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended.

(iv) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

(2) An insurer's issuance of an annuity subject to paragraph (1) shall be reasonable under all circumstances actually known to the insurer at the time the annuity is issued.

(c) Supervision of recommendations.--The following shall apply:

(1) Except as permitted under subsection (b), an insurer may 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.

(2) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producer's compliance with this article, including the following:

(i) The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this article and shall incorporate the requirements of this article into relevant producer training manuals.

(ii) The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of section 403.1-B.

(iii) The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its producers.

(iv) The insurer shall establish and maintain procedures for the 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. The 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 physical review. The electronic or other system may be designed to require additional review only for those transactions identified for additional review by the selection criteria.

(v) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections (a), (b), (d) and (e). This may include confirmation of consumers' consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph shall prevent an insurer from complying with this subparagraph by applying sampling procedures or by confirming the consumer profile suitability information or other required information under this section after issuance or delivery of the annuity.

(vi) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section.

(vii) The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

(viii) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

(ix) The insurer shall annually provide a written report detailing its supervision system to senior management, including to the senior manager responsible for audit functions. The report shall include a description of the testing designed to determine the effectiveness of the supervision system, the exceptions found and corrective action taken or recommended, if any.

(3) Nothing in this subsection shall restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under section 406-B regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph (4).

(4) An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes the following:

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

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

(5) An insurer is not required to include in its system of supervision:

(i) a producer's recommendations to consumers for products other than the annuities offered by the insurer; or

(ii) include 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.

(d) Prohibited practices.--A producer or an insurer shall not dissuade, or attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer's request for confirmation of the consumer profile information.

(2) Filing a complaint.

(3) Cooperating with the investigation of a complaint.

(e) Safe Harbor.--The following shall apply:

(1) All recommendations and sales made in compliance with comparable standards shall satisfy the requirements under this article. This subsection applies to recommendations and sales of annuities made by financial professionals 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, nothing in this subsection shall limit the commissioner's ability to investigate and enforce the provisions of this article.

(2) The insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(3) For paragraph (1) to apply, an insurer shall:

(i) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (1) or the entity responsible for supervising the financial professional, including the financial professional's broker-dealer or investment adviser registered under Federal securities laws using information collected in the normal course of an insurer's business.

(ii) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (1), including the financial professional's broker-dealer or investment adviser registered under Federal securities laws, information and reports which are reasonably appropriate to assist the entity to maintain its supervision system.

(4) Nothing in this article shall exempt an insurer from the internal audit and compliance procedure requirements under section 405-A.

(5) For purposes of this subsection, "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 or fiduciary under section 4975(e)(3) of the Internal Revenue Code, or any amendments or successor statutes thereto.

(6) For purposes of this subsection, "comparable standards" means:

(i) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and

supervision of annuity recommendations and sales, including regulation best interest and any amendments or successor regulations thereto.

(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 (54 Stat. 847, 15 U.S.C. § 80b-1 et. seq.), including the Form ADV and interpretations.

(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 or the Internal Revenue Code and any amendments or successor statutes thereto.

Section 2. Section 403.1-B(a)(6) and (b) of the act are amended and the section is amended by adding a subsection to read: Section 403.1-B. Insurance producer training.

(a) Continuing education credits.--An insurance producer who has the authority to sell annuities shall complete at least four continuing education credits in an annuity training course or courses covering the following topics:

\* \* \*

(6) Appropriate **standards of conduct**, sales practices, replacement and disclosure requirements.

(b) Compliance.--[The continuing education credit requirement under subsection (a) shall be met on or before the end of the insurance producer's next complete license period occurring after the effective date of this section. For individuals licensed on or after the effective date of this section, the requirement shall be met on or before the end of the insurance producer's first license period.] **The following shall apply:**

(1) **The continuing education requirement under subsection (a) shall be met on or before the end of the insurance producer's next complete license period occurring after the effective date of this section. For individuals licensed on or after the effective date of this section, the requirement shall be met on or before the end of the insurance producer's first license period.**

(2) An insurance producer who has met the continuing education credit requirement under subsection (a) prior to the effective date of this subsection shall, within six months after the effective date of this subsection, complete either:

(i) At least four continuing education credits in an annuity training course or courses in compliance with this section.

(ii) An additional one-time one credit training course approved by the department.

\* \* \*

(g.1) **Satisfaction of training requirements.--The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this section shall be deemed to satisfy the training requirements of this subsection in this Commonwealth.**

\* \* \*

Section 3. Sections 404-B heading and (a), 405-B(a) and 406-B heading of the act are amended to read:

Section 404-B. [Mitigation of responsibility] **Compliance mitigation.**

(a) **Corrective actions.--An insurer is responsible for compliance with this article. If a violation occurs, either**

because of the action or inaction of an insurer or its [insurance] producer, the commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by [the insurer's or by its insurance producer's violation of this article.] **a failure to comply with this article by the insurer, an entity contracted to perform the insurer's supervisory duties or by the producer.**

(3) An exclusive general agent or the [insurance] producer to take reasonably appropriate corrective action for any consumer harmed by the licensee's violation of this article.

(4) Penalties and remedies under section 406-B.

\* \* \*

Section 405-B. Recordkeeping.

(a) General rule.--An insurer, exclusive general agent and [insurance] producer shall maintain or be able to make available to the commissioner records of the information collected from the consumer, **disclosures made to the consumer, including summaries of oral disclosures**, and other information used in making the recommendations that were the basis for the insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted but shall not be required to maintain documentation on behalf of [an insurance] **a** producer.

\* \* \*

Section 406-B. [Enforcement] **Penalties and enforcement.**

\* \* \*

Section 4. The amendment of section 410C(d.1)(3)(C) of the act shall apply only to annuity contracts issued on or after the effective date of this section.

Section 5. This act shall take effect in 180 days.

APPROVED--The 22nd day of December, A.D. 2021.

TOM WOLF