

SENATE BILL NO. 2155

Introduced by

Senators Hacker, Andrist, Heitkamp

Representatives Gruchalla, N. Johnson, Vigesaa

1 A BILL for an Act to create and enact chapter 26.1-34.2 of the North Dakota Century Code,
2 relating to suitability in annuity transactions; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Chapter 26.1-34.2 of the North Dakota Century Code is created and
5 enacted as follows:

6 **26.1-34.2-01. Exemptions.** Unless otherwise specifically included, this chapter does
7 not apply to recommendations involving:

8 1. Direct response solicitations if there is no recommendation based on information
9 collected from the consumer pursuant to this chapter; and

10 2. Contracts used to fund:

11 a. An employee pension or welfare benefit plan that is covered by the Employee
12 Retirement and Income Security Act;

13 b. A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the
14 Internal Revenue Code, as amended, if established or maintained by an
15 employer;

16 c. A government or church plan defined in section 414 of the Internal Revenue
17 Code, a government or church welfare benefit plan, or a deferred
18 compensation plan of a state or local government or tax exempt organization
19 under section 457 of the Internal Revenue Code;

20 d. A nonqualified deferred compensation arrangement established or maintained
21 by an employer or plan sponsor;

22 e. Settlements of or assumptions of liabilities associated with personal injury
23 litigation or a dispute or claim resolution process; or

24 f. Formal prepaid funeral contracts.

26.1-34.2-02. Definitions.

1. "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
2. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.
3. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
4. "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

26.1-34.2-03. Duties of insurers and insurance producers.

1. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer when no producer is involved, must have reasonable grounds for believing that 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 financial situation and needs.
2. Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain information concerning:
 - a. The consumer's financial status;
 - b. The consumer's tax status;
 - c. The consumer's investment objectives; and
 - d. Other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.
3. a. Except as provided under subdivision b, neither an insurance producer nor an insurer when no producer is involved has an obligation to a consumer under subsection 1 related to a recommendation if a consumer:

- 1 (1) Refuses to provide relevant information requested by the insurer or
- 2 insurance producer;
- 3 (2) Decides to enter into an insurance transaction that is not based on a
- 4 recommendation of the insurer or insurance producer; or
- 5 (3) Fails to provide complete or accurate information.
- 6 b. An insurer or insurance producer's recommendation subject to subdivision a
- 7 must be reasonable under all the circumstances actually known to the insurer
- 8 or insurance producer at the time of the recommendation.
- 9 4. a. An insurer shall ensure that a system to supervise recommendations that is
- 10 reasonably designed to achieve compliance with this chapter is established
- 11 and maintained by complying with subdivisions c through e, or shall establish
- 12 and maintain such a system, including:
- 13 (1) Maintaining written procedures; and
- 14 (2) Conducting periodic reviews of its records that are reasonably designed
- 15 to assist in detecting and preventing violations of this chapter.
- 16 b. A general agent and independent agency shall adopt a system established by
- 17 an insurer to supervise recommendations of its insurance producers that is
- 18 reasonably designed to achieve compliance with this chapter, or shall
- 19 establish and maintain such a system, including:
- 20 (1) Maintaining written procedures; and
- 21 (2) Conducting periodic reviews of records that are reasonably designed to
- 22 assist in detecting and preventing violations of this chapter.
- 23 c. An insurer may contract with a third party, including a general agent or
- 24 independent agency, to establish and maintain a system of supervision as
- 25 required by subdivision a with respect to insurance producers under contract
- 26 with or employed by the third party.
- 27 d. An insurer shall make reasonable inquiry to ensure that the third party
- 28 contracting under subdivision c is performing the functions required under
- 29 subdivision a and shall take action as is reasonable under the circumstances
- 30 to enforce the contractual obligation to perform the functions. An insurer may

1 comply with its obligation to make reasonable inquiry by doing all of the
2 following:

3 (1) The insurer annually obtains a certification from a third-party senior
4 manager who has responsibility for the delegated functions that the
5 manager has a reasonable basis to represent, and does represent, that
6 the third party is performing the required functions; and

7 (2) The insurer, based on reasonable selection criteria, periodically selects
8 third parties contracting under subdivision c for a review to determine
9 whether the third parties are performing the required functions. The
10 insurer shall perform those procedures to conduct the review that are
11 reasonable under the circumstances.

12 e. An insurer that contracts with a third party pursuant to subdivision c and that
13 complies with the requirements to supervise in subdivision d has fulfilled its
14 responsibilities under subdivision a.

15 f. An insurer, general agent, or independent agency is not required by
16 subdivision a or b to:

17 (1) Review, or provide for review of, all insurance producer solicited
18 transactions; or

19 (2) Include in its system of supervision an insurance producer's
20 recommendations to consumers of products other than the annuities
21 offered by the insurer, general agent, or independent agency.

22 g. A general agent or independent agency contracting with an insurer pursuant
23 to subdivision c shall promptly, when requested by the insurer pursuant to
24 subdivision d, give a certification as described in subdivision d or give a clear
25 statement that it is unable to meet the certification criteria.

26 h. A person may not provide a certification under paragraph 1 of subdivision d
27 unless:

28 (1) The person is a senior manager with responsibility for the delegated
29 functions; and

30 (2) The person has a reasonable basis for making the certification.

- 1 5. Compliance with the national association of securities dealers conduct rules
2 pertaining to suitability satisfies the requirements under this section for the
3 recommendation of variable annuities. However, nothing in this subsection limits
4 the insurance commissioner's ability to enforce the provisions of this chapter.

5 **26.1-34.2-04. Mitigation of responsibility - Penalty.**

- 6 1. The commissioner may order:
7 a. An insurer to take reasonably appropriate corrective action for a consumer
8 harmed by the insurer's, or by its insurance producer's, violation of this
9 chapter;
10 b. An insurance producer to take reasonably appropriate corrective action for a
11 consumer harmed by the insurance producer's violation of this chapter; and
12 c. A general agency or independent agency that employs or contracts with an
13 insurance producer to sell, or solicit the sale of, annuities to consumers, to
14 take reasonably appropriate corrective action for a consumer harmed by the
15 insurance producer's violation of this chapter.
16 2. The penalty provision of section 26.1-01-03.3 applies to a violation of this chapter.

17 **26.1-34.2-05. Recordkeeping.**

- 18 1. Insurers, general agents, independent agencies, and insurance producers shall
19 maintain or be able to make available to the commissioner a record of the
20 information collected from the consumer and other information used in making the
21 recommendations that were the basis for insurance transactions for ten years after
22 the insurance transaction is completed by the insurer. An insurer is permitted, but
23 is not required, to maintain documentation on behalf of an insurance producer.
24 2. Records required to be maintained by this chapter may be maintained in paper,
25 photographic, microprocess, magnetic, mechanical, or electronic media, or by any
26 process that accurately reproduces the actual document.