

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1160

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact two new sections to chapter 26.1-34.2 of the North Dakota
2 Century Code, relating to annuity transaction practices; and to amend and reenact sections
3 26.1-34.2-02, 26.1-34.2-03, and 26.1-34.2-04 of the North Dakota Century Code, relating to
4 annuity transaction practices; and to provide a penalty.

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

6 **SECTION 1.** A new section to chapter 26.1-34.2 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Scope.**

9 This chapter applies to any recommendation to purchase, exchange, or replace an annuity
10 made to a consumer by an insurance producer, or an insurer when no producer is involved, that
11 results in the purchase, exchange, or replacement recommended.

12 **SECTION 2. AMENDMENT.** Section 26.1-34.2-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **26.1-34.2-02. Definitions.**

- 15 1. "Annuity" means ~~a fixed annuity or variable~~ an annuity that is an insurance product
16 under state law which is individually solicited, whether the product is classified as an
17 individual or group annuity.
- 18 2. ~~"Continuing education credit" means a continuing education credit as defined under~~
19 ~~chapter 36.1-26.~~
- 20 ~~3. "Continuing education provider" means an individual or entity that is approved to offer~~
21 ~~continuing education courses under chapter 26.1-26.~~
- 22 ~~4.~~ "Insurance producer" means a person required to be licensed under the laws of this
23 state to sell, solicit, or negotiate insurance, including annuities.

1 ~~5.3.~~ "Insurer" means a company required to be licensed under the laws of this state to
2 provide insurance products, including annuities.

3 ~~6.4.~~ "Recommendation" means advice provided by an insurance producer, or an insurer
4 when no producer is involved, to an individual consumer ~~that~~which results in a
5 purchase, replacement, or exchange of an annuity in accordance with that advice.

6 ~~7.5.~~ "Replacement" means a transaction in which a new policy or contract is to be
7 purchased, and it is known or should be known to the proposing producer, or to the
8 proposing insurer if there is no producer, that by reason of the transaction, an existing
9 policy or contract has been or is to be:

10 a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing
11 insurer, or otherwise terminated;

12 b. Converted to reduced paid-up insurance, continued as extended term insurance,
13 or otherwise reduced in value by the use of nonforfeiture benefits or other policy
14 values;

15 c. Amended so as to effect either a reduction in benefits or in the term for which
16 coverage would otherwise remain in force or for which benefits would be paid;

17 d. Reissued with any reduction in cash value; or

18 e. Used in a financed purchase.

19 ~~8.6.~~ "Suitability information" means information that is reasonably appropriate to determine
20 the suitability of a recommendation, including the following:

21 a. Age;

22 b. Annual income;

23 c. Financial situation and needs, including the financial resources used for the
24 funding of the annuity;

25 d. Financial experience;

26 e. Financial objectives;

27 f. Intended use of the annuity;

28 g. Financial time horizon;

29 h. Existing assets, including investment and life insurance holdings;

30 i. Liquidity needs;

31 j. Liquid net worth;

1 k. Risk tolerance; and

2 l. Tax status.

3 **SECTION 3. AMENDMENT.** Section 26.1-34.2-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **26.1-34.2-03. Duties of insurers and insurance producers.**

6 1. In recommending to a consumer the purchase of an annuity or the exchange of an
7 annuity that results in another insurance transaction or series of insurance
8 transactions, the insurance producer, or the insurer when no producer is involved,
9 must have reasonable grounds for believing that the recommendation is suitable for
10 the consumer on the basis of the facts disclosed by the consumer as to the
11 consumer's investments and other insurance products and as to the consumer's
12 financial situation and needs, including the consumer's suitability information, and that
13 there is a reasonable basis to believe all of the following:

14 a. The consumer has been reasonably informed of various features of the annuity,
15 such as the potential surrender period and surrender charge; potential tax
16 penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity;
17 mortality and expense fees; investment advisory fees; potential charges for and
18 features of riders; limitations on interest returns; insurance and investment
19 components; and market risk;

20 b. The consumer would benefit from certain features of the annuity, such as
21 tax-deferred growth, annuitization, or death or living benefit;

22 c. The particular annuity as a whole, the underlying subaccounts to which funds are
23 allocated at the time of purchase or exchange of the annuity, and riders and
24 similar product enhancements, if any, are suitable, and in the case of an
25 exchange or replacement, the transaction as a whole is suitable, for the particular
26 consumer based on the consumer's suitability information; and

27 d. In the case of an exchange or replacement of an annuity, the exchange or
28 replacement is suitable, including taking into consideration whether:

29 (1) The consumer will incur a surrender charge; be subject to the
30 commencement of a new surrender period; lose existing benefits, such as
31 death, living, or other contractual benefits; or be subject to increased fees,

investment advisory fees, or charges for riders and similar product
enhancements;

(2) The consumer would benefit from product enhancements and
improvements; and

(3) The consumer has had another annuity exchange or replacement and, in
particular, an exchange or replacement within the preceding thirty-six
months.

2. Before the execution of a purchase, replacement, 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 the consumer's suitability 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) Refuses to provide relevant information requested by the insurer or
insurance producer;~~

~~(2) Decides to enter into an insurance transaction that is not based on a
recommendation of the insurer or insurance producer; or~~

~~(3) Fails to provide complete or accurate information.~~

b. ~~An insurer or insurance producer's recommendation subject to subdivision a must
be reasonable under all the circumstances actually known to the insurer or
insurance producer at the time of the recommendation.~~

4. a. ~~An insurer shall ensure that a system to supervise recommendations that is
reasonably designed to achieve compliance with this chapter is established and~~

maintained by complying with subdivisions c through e, or shall establish and maintain such a system, including:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this chapter.

b. A general agent and independent agency shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this chapter, or shall establish and maintain such a system, including:

(1) Maintaining written procedures; and

(2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

c. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision a with respect to insurance producers under contract with or employed by the third party.

d. An insurer shall make reasonable inquiry to ensure that the third party contracting under subdivision c is performing the functions required under subdivision a and shall take action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

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

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

- 1 e. ~~An insurer that contracts with a third party pursuant to subdivision c and that~~
2 ~~complies with the requirements to supervise in subdivision d has fulfilled its~~
3 ~~responsibilities under subdivision a.~~
- 4 f. ~~An insurer, general agent, or independent agency is not required by subdivision a~~
5 ~~or b to:~~
- 6 (1) ~~Review, or provide for review of, all insurance producer solicited~~
7 ~~transactions; or~~
- 8 (2) ~~Include in its system of supervision an insurance producer's~~
9 ~~recommendations to consumers of products other than the annuities offered~~
10 ~~by the insurer, general agent, or independent agency.~~
- 11 g. ~~A general agent or independent agency contracting with an insurer pursuant to~~
12 ~~subdivision c shall promptly, when requested by the insurer pursuant to~~
13 ~~subdivision d, give a certification as described in subdivision d or give a clear~~
14 ~~statement that it is unable to meet the certification criteria.~~
- 15 h. ~~A person may not provide a certification under paragraph 1 of subdivision d~~
16 ~~unless:~~
- 17 (1) ~~The person is a senior manager with responsibility for the delegated~~
18 ~~functions; and~~
- 19 (2) ~~The person has a reasonable basis for making the certification.~~
- 20 5. ~~Compliance with the financial industry regulatory authority conduct rules pertaining to~~
21 ~~suitability satisfies the requirements under this section for the recommendation of~~
22 ~~annuities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or rules~~
23 ~~or regulations adopted under that act. However, nothing in this subsection limits the~~
24 ~~insurance commissioner's ability to enforce the provisions of this chapter.~~
- 25 6. ~~This chapter does not preempt, supersede, or limit any provision of any securities law~~
26 ~~of this state or any rule, order, or notice issued thereunder. Except as permitted under~~
27 ~~subsection 4, an insurer may not issue an annuity recommended to a consumer~~
28 ~~unless there is a reasonable basis to believe the annuity is suitable based on the~~
29 ~~consumer's suitability information.~~

- 1 4. a. Except as provided under subdivision b, neither an insurance producer, nor an
2 insurer, has any obligation to a consumer under subsection 1 or 3 related to any
3 annuity transaction if:
- 4 (1) A recommendation was not made;
5 (2) A recommendation was made and was later found to have been prepared
6 based on materially inaccurate information provided by the consumer;
7 (3) A consumer refuses to provide relevant suitability information and the
8 annuity transaction is not recommended; or
9 (4) A consumer decides to enter an annuity transaction that is not based on a
10 recommendation of the insurer or the insurance producer.
- 11 b. An insurer's issuance of an annuity subject to subdivision a must be reasonable
12 under all the circumstances actually known to the insurer at the time the annuity
13 is issued.
- 14 5. An insurance producer or, when no insurance producer is involved, the responsible
15 insurer representative, at the time of sale shall:
- 16 a. Make a record of any recommendation subject to subsection 1;
17 b. Obtain a customer signed statement documenting a customer's refusal to provide
18 suitability information, if any; and
19 c. Obtain a customer signed statement acknowledging that an annuity transaction is
20 not recommended if a customer decides to enter an annuity transaction that is
21 not based on the insurance producer's or insurer's recommendation.
- 22 6. a. An insurer shall establish a supervision system that is reasonably designed to
23 achieve the insurer's and the insurer's insurance producers' compliance with this
24 chapter, including the following:
- 25 (1) The insurer shall maintain reasonable procedures to inform the insurer's
26 insurance producers of the requirements of this chapter and shall
27 incorporate the requirements of this chapter into relevant insurance
28 producer training manuals.
- 29 (2) The insurer shall establish standards for insurance producer product training
30 and shall maintain reasonable procedures to require the insurer's insurance
31 producers to comply with the requirements of section 4 of this Act.

1 (3) The insurer shall provide product-specific training and training materials that
2 explain all material features of the insurer's annuity products to the insurer's
3 insurance producers.

4 (4) The insurer shall maintain procedures for review of each recommendation
5 before issuance of an annuity which are designed to ensure that there is a
6 reasonable basis to determine that a recommendation is suitable. Such
7 review procedures may apply a screening system for the purpose of
8 identifying selected transactions for additional review and may be
9 accomplished electronically or through other means, including physical
10 review. Such an electronic or other system may be designed to require
11 additional review only of those transactions identified for additional review
12 by the selection criteria.

13 (5) The insurer shall maintain reasonable procedures to detect
14 recommendations that are not suitable. This may include confirmation of
15 consumer suitability information, systematic customer surveys, interviews,
16 confirmation letters, and programs of internal monitoring. This paragraph
17 does not prevent an insurer from complying with this paragraph by applying
18 sampling procedures or by confirming suitability information after issuance
19 or delivery of the annuity.

20 (6) Annually, the insurer shall provide a report to senior management, including
21 to the senior manager responsible for audit functions, which details a
22 review, with appropriate testing, reasonably designed to determine the
23 effectiveness of the supervision system, the exceptions found, and
24 corrective action taken or recommended, if any.

25 b. (1) This subsection does not restrict an insurer from contracting for
26 performance of a function, including maintenance of procedures, required
27 under subdivision a. An insurer is responsible for taking appropriate
28 corrective action and may be subject to sanctions and penalties pursuant to
29 section 26.1-34.2-04, regardless of whether the insurer contracts for
30 performance of a function and regardless of the insurer's compliance with
31 paragraph 2.

1 (2) An insurer's supervision system under subdivision a must include
2 supervision of contractual performance under this subsection. This includes
3 the following:

4 (a) Monitoring and, as appropriate, conducting audits to assure that the
5 contracted function is properly performed; and

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

10 c. An insurer is not required to include in the insurer's system of supervision an
11 insurance producer's recommendations to consumers of products other than the
12 annuities offered by the insurer.

13 7. An insurance producer may not dissuade, or attempt to dissuade, a consumer from:

14 a. Responding truthfully to an insurer's request for confirmation of suitability
15 information;

16 b. Filing a complaint; or

17 c. Cooperating with the investigation of a complaint.

18 8. a. Sales made in compliance with the financial industry regulatory authority
19 requirements pertaining to suitability and supervision of annuity transactions must
20 satisfy the requirements under this chapter. This subsection applies to financial
21 industry regulatory authority broker-dealer sales of variable annuities and fixed
22 annuities if the suitability and supervision is similar to those applied to variable
23 annuity sales. However, this subsection does not limit the insurance
24 commissioner's ability to enforce, including investigate, this chapter.

25 b. For subdivision a to apply, an insurer shall:

26 (1) Monitor the financial industry regulatory authority member broker-dealer
27 using information collected in the normal course of an insurer's business;
28 and

29 (2) Provide to the financial industry regulatory authority member broker-dealer
30 information and reports that are reasonably appropriate to assist the

financial industry regulatory authority member broker-dealer to maintain its supervision system.

SECTION 4. A new section to chapter 26.1-34.2 of the North Dakota Century Code is created and enacted as follows:

Insurance producer training.

1. An insurance producer may not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

2. a. (1) An insurance producer who engages in the sale of annuity products shall complete a one-time, ~~four-credit~~four-hour training course ~~approved by the insurance commissioner and provided by a continuing education provider.~~
- (2) An insurance producer who holds a life insurance line of authority on the effective date of this Act and who desires to sell annuities shall complete the requirements of this subsection within ~~six~~twelve months after the effective date of this Act. An individual who obtains a life insurance line of authority on or after the effective date of this Act may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

~~b. The minimum length of the training required under this subsection is sufficient to qualify for at least four continuing education credits, but may be longer.~~

e.b. The training required under this subsection must include information on the following topics:

- (1) The types of annuities and various classifications of annuities;
- (2) Identification of the parties to an annuity;
- (3) How fixed, variable, and indexed annuity contract provisions affect consumers;
- (4) The application of income taxation of qualified and nonqualified annuities;
- (5) The primary uses of annuities; and
- (6) Appropriate sales practices, replacement, and disclosure requirements.

d.c. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and may 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 required outline.

~~e. A provider of an annuity training course intended to comply with this subsection shall register as a continuing education provider in this state and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in chapter 26.1-26.~~

~~f. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with chapter 26.1-26.~~

g.d. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with chapter 26.1-26.

h.e. The satisfaction of the training requirements of another state which are substantially similar to the provisions of this subsection are deemed to satisfy the training requirements of this subsection in this state.

i.f. An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy the insurer's responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

SECTION 5. AMENDMENT. Section 26.1-34.2-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The commissioner may order:

a. An insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's, or by its insurance producer's, violation of this chapter;

- 1 b. ~~An insurance producer to take reasonably appropriate corrective action for a~~
2 ~~consumer harmed by the insurance producer's violation of this chapter; and~~
3 e. ~~A general agency or independent agency that employs or contracts with an~~
4 ~~insurance producer to sell, or solicit the sale of, annuities to consumers, to take~~
5 ~~reasonably appropriate corrective action for a consumer harmed by the insurance~~
6 ~~producer's violation of this chapter.~~An insurer is responsible for compliance with
7 this chapter. If a violation occurs, either because of the action or inaction of the
8 insurer or the insurer's insurance producer, the commissioner may order:
9 a. An insurer to take reasonably appropriate corrective action for any consumer
10 harmed by the insurer's or by the insurer's insurance producer's violation of this
11 chapter;
12 b. A general agency, independent agency, or the insurance producer to take
13 reasonably appropriate corrective action for any consumer harmed by the
14 insurance producer's violation of this chapter; and
15 c. Appropriate penalties and sanctions.
16 2. Any applicable penalty under section 26.1-01-03.3 for a violation of subsection 1 or 2
17 or subdivision b of subsection 3 of section 26.1-34.2-03 may be reduced or eliminated,
18 according to a schedule adopted by the commissioner, if corrective action for the
19 consumer was taken promptly after a violation was discovered.