

HOUSE BILL No. 4627

March 18, 2009, Introduced by Reps. Constan, Polidori, Clemente and Kandrevas and referred to the Committee on Senior Health, Security, and Retirement.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 4151, 4153, and 4155 (MCL 500.4151, 500.4153, and 500.4155), as added by 2006 PA 399, and by adding sections 4156, 4158, and 4159; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4151. As used in this chapter:

2 (a) "Annuity" means a fixed annuity or variable annuity that
3 is individually solicited, whether the product is classified as an
4 individual or group annuity.

5 (b) "Insurance producer" or "producer" means insurance
6 producer as defined in section 1201 and includes a business entity
7 described in section 1205(2) that is licensed as an insurance
8 producer under this act.

1 (c) "Recommendation" means advice provided by an insurance
2 producer ~~or~~ **BY** an insurer where no producer is involved ~~to~~ an
3 individual consumer. ~~that results in a purchase or exchange of an~~
4 ~~annuity in accordance with that advice.~~

5 Sec. 4153. (1) This chapter applies to any recommendation to
6 purchase or exchange an annuity made to a consumer by an insurance
7 producer ~~or~~ **BY** an insurer where no producer is involved. ~~that~~
8 ~~results in the purchase or exchange recommended.~~

9 (2) This chapter does not apply to any recommendation to
10 purchase or exchange an annuity involving any of the following:

11 (a) Direct response solicitations where there is no
12 recommendation based on information collected from the consumer.

13 (b) Contracts used to fund any of the following:

14 (i) An employee pension or welfare benefit plan that is covered
15 by the employee retirement ~~and~~ income security act **OF 1974**, Public
16 Law 93-406.

17 (ii) A plan described by 26 USC 401(a), 26 USC 401(k), 26 USC
18 403(b), 26 USC 408(k), or 26 USC 408(p), if established or
19 maintained by an employer.

20 (iii) A government or church plan defined in 26 USC 414, a
21 government or church welfare benefit plan, or a deferred
22 compensation plan of a state or local government or tax exempt
23 organization under 26 USC 457.

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

26 (v) Settlements of or assumptions of liabilities associated
27 with personal injury litigation or any dispute or claim resolution

1 process.

2 (vi) Formal prepaid funeral contracts.

3 Sec. 4155. (1) In recommending to a consumer the purchase of
4 an annuity or the exchange of an annuity that results in another
5 insurance transaction or series of insurance transactions, the
6 insurance producer, or the insurer where no producer is involved,
7 shall have reasonable grounds for believing that the recommendation
8 is suitable for the consumer on the basis of the facts disclosed by
9 the consumer as to his or her investments and other insurance
10 products and as to his or her financial situation and needs.

11 (2) Prior to **A RECOMMENDATION UNDER SUBSECTION (1) AND PRIOR**
12 **TO** the execution of a purchase or exchange of an annuity resulting
13 from a recommendation, an insurance producer, or an insurer where
14 no producer is involved, shall make reasonable efforts to obtain
15 all of the following information:

16 (a) The consumer's financial status.

17 (b) The consumer's tax status.

18 (c) The consumer's investment objectives, **GOALS, AND NEEDS.**

19 **(D) THE ABILITY OF THE CONSUMER TO PAY FOR AN ANNUITY WITHOUT**
20 **LIQUIDATING ASSETS.**

21 **(E) ~~(d)~~**—Such other information used or considered to be
22 reasonable by the insurance producer, or the insurer where no
23 producer is involved, in making recommendations to the consumer.

24 (3) Except as provided under subsection (4), neither an
25 insurance producer, nor an insurer where no producer is involved,
26 shall have any obligation to a consumer under subsection (1)
27 related to any recommendation if a consumer does any of the

1 following:

2 (a) Refuses to provide relevant information requested by the
3 insurer or insurance producer.

4 (b) Decides to enter into an insurance transaction that is not
5 based on a recommendation of the insurer or insurance producer.

6 (c) Fails to provide complete or accurate information.

7 (4) An insurer or insurance producer's recommendation subject
8 to subsection (1) shall be reasonable under all the circumstances
9 actually known to the insurer or insurance producer at the time of
10 the recommendation.

11 SEC. 4156. IN RECOMMENDING TO A CONSUMER THE PURCHASE OF AN
12 ANNUITY OR THE EXCHANGE OF AN ANNUITY THAT RESULTS IN ANOTHER
13 INSURANCE TRANSACTION OR SERIES OF INSURANCE TRANSACTIONS, THE
14 INSURANCE PRODUCER, OR THE INSURER WHERE NO PRODUCER IS INVOLVED,
15 SHALL PROVIDE TO THE CONSUMER A COPY OF THE CONSUMER'S GUIDE
16 PREPARED UNDER SECTION 4158 AND A DISCLOSURE DOCUMENT. THE
17 DISCLOSURE DOCUMENT SHALL BE IN PLAIN ENGLISH AND SHALL CONTAIN ALL
18 OF THE FOLLOWING:

19 (A) THE GENERIC NAME OF THE CONTRACT, THE COMPANY PRODUCT
20 NAME, IF DIFFERENT, AND FORM NUMBER, AND THE FACT THAT IT IS AN
21 ANNUITY.

22 (B) THE INSURER'S NAME AND ADDRESS.

23 (C) A DESCRIPTION OF THE CONTRACT AND ITS BENEFITS,
24 EMPHASIZING ITS LONG-TERM NATURE, INCLUDING EXAMPLES WHERE
25 APPROPRIATE OF ALL OF THE FOLLOWING:

26 (i) THE GUARANTEED, NONGUARANTEED, AND DETERMINABLE ELEMENTS OF
27 THE CONTRACT, AND THEIR LIMITATIONS, IF ANY, AND AN EXPLANATION OF

1 HOW THEY OPERATE.

2 (ii) AN EXPLANATION OF THE INITIAL CREDITING RATE, SPECIFYING
3 ANY BONUS OR INTRODUCTORY PORTION, THE DURATION OF THE RATE, AND
4 THE FACT THAT RATES MAY CHANGE FROM TIME TO TIME AND ARE NOT
5 GUARANTEED.

6 (iii) PERIODIC INCOME OPTIONS BOTH ON A GUARANTEED AND
7 NONGUARANTEED BASIS.

8 (iv) ANY VALUE REDUCTIONS CAUSED BY WITHDRAWALS FROM OR
9 SURRENDER OF THE CONTRACT.

10 (v) HOW VALUES IN THE CONTRACT CAN BE ACCESSED.

11 (vi) THE DEATH BENEFIT, IF AVAILABLE, AND HOW IT WILL BE
12 CALCULATED.

13 (vii) A SUMMARY OF THE FEDERAL TAX STATUS OF THE CONTRACT AND
14 ANY PENALTIES APPLICABLE ON WITHDRAWAL OF VALUES FROM THE CONTRACT.

15 (viii) IMPACT OF ANY RIDER, SUCH AS A LONG-TERM CARE RIDER.

16 (D) SPECIFIC DOLLAR AMOUNT OR PERCENTAGE CHARGES AND FEES WITH
17 AN EXPLANATION OF HOW THEY APPLY.

18 (E) INFORMATION ABOUT THE CURRENT GUARANTEED RATE FOR NEW
19 CONTRACTS THAT CONTAINS A CLEAR NOTICE THAT THE RATE IS SUBJECT TO
20 CHANGE.

21 SEC. 4158. THE COMMISSIONER SHALL PREPARE AND, BEGINNING
22 JANUARY 1, 2010 AND ANNUALLY THEREAFTER, SHALL PUBLISH A CONSUMER
23 GUIDE TO ANNUITIES AS PROVIDED IN THIS SECTION. THE CONSUMER GUIDE
24 TO ANNUITIES SHALL BE WRITTEN IN PLAIN ENGLISH AND SHALL CONTAIN AN
25 EXPLANATION OF ALL OF THE FOLLOWING:

26 (A) WHAT AN ANNUITY IS.

27 (B) THE DIFFERENT KINDS OF ANNUITIES.

1 (C) HOW INTEREST RATES ARE SET.

2 (D) CHARGES THAT MAY BE SUBTRACTED FROM AN ANNUITY.

3 (E) TAX TREATMENT OF ANNUITIES.

4 (F) HOW TO DETERMINE WHETHER AN ANNUITY IS A RIGHT CHOICE.

5 SEC. 4159. IN ADDITION TO ANY RIGHT TO REVOKE AN ANNUITY, A
6 CONSUMER HAS THE RIGHT TO CANCEL AN ANNUITY WITHIN 30 DAYS AFTER
7 ITS DELIVERY AND TO HAVE THE ENTIRE PREMIUM REFUNDED IF, AFTER
8 EXAMINATION OF THE ANNUITY, THE CONSUMER IS NOT SATISFIED FOR ANY
9 REASON. AN ANNUITY SHALL HAVE A NOTICE PROMINENTLY PRINTED IN NOT
10 LESS THAN 14-POINT TYPE ON THE FIRST PAGE OF THE POLICY AND ON THE
11 SUMMARY OF COVERAGE AND THE CONSUMER SHALL ALSO BE PROVIDED A
12 SEPARATE NOTICE IN NOT LESS THAN 14-POINT TYPE ENTITLED "RIGHT TO
13 CANCEL". THE NOTICES SHALL STATE IN PLAIN ENGLISH THAT THE CONSUMER
14 HAS THE RIGHT TO RETURN THE ANNUITY WITHIN 30 DAYS AFTER ITS
15 DELIVERY AND TO HAVE THE ENTIRE PREMIUM REFUNDED IF, AFTER
16 EXAMINATION OF THE POLICY, THE APPLICANT IS NOT SATISFIED FOR ANY
17 REASON AND SHALL CONTAIN AN ADDRESS WHERE A NOTICE OF CANCELLATION
18 CAN BE SENT. THE CONSUMER SHALL ACKNOWLEDGE IN WRITING THE RECEIPT
19 OF THE SEPARATE RIGHT TO CANCEL NOTICE. CANCELLATION OCCURS WHEN
20 THE CONSUMER MAILES A WRITTEN NOTICE OF CANCELLATION OR SENDS A
21 TELEGRAM TO THE ADDRESS STATED IN THE NOTICE OF CANCELLATION.

22 Enacting section 1. Section 4165 of the insurance code of
23 1956, 1956 PA 218, MCL 500.4165, is repealed.