

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 4394

03/17/2022 Authored by Kotyza-Witthuhn and O'Driscoll
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
04/07/2022 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
05/16/2022 Referred to the Chief Clerk for Comparison with S. F. No. 4108
05/17/2022 Postponed Indefinitely

- 1.1 A bill for an act
- 1.2 relating to commerce; modifying regulation of annuity suitability; amending
- 1.3 Minnesota Statutes 2020, sections 72A.2031, subdivisions 8, 10, by adding
- 1.4 subdivisions; 72A.2032, subdivisions 4, 6, 7, 8, by adding subdivisions; 72A.2033;
- 1.5 72A.2034; 72A.2035, subdivision 1; 72A.2036; repealing Minnesota Statutes
- 1.6 2020, sections 72A.2031, subdivisions 3, 9, 11; 72A.2032, subdivisions 1, 2, 3, 5.
- 1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.8 Section 1. Minnesota Statutes 2020, section 72A.2031, is amended by adding a subdivision
- 1.9 to read:
- 1.10 Subd. 3a. **Cash compensation.** "Cash compensation" means any discount, concession
- 1.11 fee, service fee, commission, sales charge, loan, override, or cash benefit received by an
- 1.12 insurance producer from an insurer, intermediary, or consumer in connection with
- 1.13 recommending or selling an annuity.
- 1.14 Sec. 2. Minnesota Statutes 2020, section 72A.2031, is amended by adding a subdivision
- 1.15 to read:
- 1.16 Subd. 3b. **Consumer profile information.** "Consumer profile information" means
- 1.17 information that is reasonably appropriate to determine whether a recommendation addresses
- 1.18 the consumer's financial situation, insurance needs, and financial objectives, including at a
- 1.19 minimum the following:
- 1.20 (1) age;
- 1.21 (2) annual income and anticipated material changes in annual income;

- 2.1 (3) financial situation and needs, including debts and other obligations, and anticipated
2.2 material changes in financial situation and needs;
- 2.3 (4) financial experience;
- 2.4 (5) insurance needs;
- 2.5 (6) financial objectives;
- 2.6 (7) intended use of the annuity;
- 2.7 (8) financial time horizon;
- 2.8 (9) existing assets or financial products, including investment, annuity, and insurance
2.9 holdings, and anticipated material changes in existing assets;
- 2.10 (10) liquidity needs and anticipated material changes in liquidity needs;
- 2.11 (11) liquid net worth and anticipated material changes in liquid net worth;
- 2.12 (12) risk tolerance, including but not limited to willingness to accept nonguaranteed
2.13 elements in the annuity;
- 2.14 (13) financial resources used to fund the annuity;
- 2.15 (14) tax status; and
- 2.16 (15) whether or not the consumer has a reverse mortgage.

2.17 Sec. 3. Minnesota Statutes 2020, section 72A.2031, subdivision 8, is amended to read:

2.18 Subd. 8. **Insurance producer.** "Insurance producer" means a person required to be
2.19 licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.
2.20 For purposes of sections 72A.203 to 72A.2036, insurance producer includes an insurer
2.21 where no insurance producer is involved.

2.22 Sec. 4. Minnesota Statutes 2020, section 72A.2031, is amended by adding a subdivision
2.23 to read:

2.24 Subd. 8a. **Intermediary.** "Intermediary" means an entity contracted directly with an
2.25 insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's
2.26 annuities by insurance producers.

3.1 Sec. 5. Minnesota Statutes 2020, section 72A.2031, is amended by adding a subdivision
3.2 to read:

3.3 Subd. 8b. **Material conflict of interest.** "Material conflict of interest" means a financial
3.4 interest of the insurance producer in the sale of an annuity that a reasonable person would
3.5 expect to influence the impartiality of a recommendation. The payment of compensation,
3.6 including both cash and noncash compensation, does not in and of itself constitute a material
3.7 conflict of interest.

3.8 Sec. 6. Minnesota Statutes 2020, section 72A.2031, is amended by adding a subdivision
3.9 to read:

3.10 Subd. 8c. **Noncash compensation.** "Noncash compensation" means any form of
3.11 compensation that is not cash compensation, including but not limited to health insurance,
3.12 office rent, office support, and retirement benefits.

3.13 Sec. 7. Minnesota Statutes 2020, section 72A.2031, is amended by adding a subdivision
3.14 to read:

3.15 Subd. 8d. **Nonguaranteed elements.** "Nonguaranteed elements" means the premiums
3.16 and credited interest rates, including any bonus, benefits, values, dividends, noninterest-based
3.17 credits, charges, or elements of formulas used to determine any of the elements in this
3.18 subdivision, that are subject to company discretion and are not guaranteed at issue. An
3.19 element is considered nonguaranteed if any of the underlying nonguaranteed elements are
3.20 used in the element's calculation.

3.21 Sec. 8. Minnesota Statutes 2020, section 72A.2031, is amended by adding a subdivision
3.22 to read:

3.23 Subd. 8e. **Recommendation.** "Recommendation" means advice provided by an insurance
3.24 producer to an individual consumer that was intended to result or does result in a purchase,
3.25 exchange, or replacement of an annuity in accordance with the advice rendered.
3.26 Recommendation does not include a general communication to the public, generalized
3.27 customer services, assistance or administrative support, general educational information
3.28 and tools, prospectuses, or other product and sales material.

3.29 Sec. 9. Minnesota Statutes 2020, section 72A.2031, subdivision 10, is amended to read:

3.30 Subd. 10. **Replacement.** "Replacement" means a transaction in which a new policy or
3.31 ~~contract~~ annuity is to be purchased; and it is known or should be known to the proposing

4.1 insurance producer; or the proposing insurer, whether or not ~~there is~~ an insurance producer
4.2 is involved, that by reason of the transaction, an existing annuity or other insurance policy
4.3 ~~or contract~~ has been or is to be any of the following:

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

4.6 (2) converted to reduced paid-up insurance, continued as extended term insurance, or
4.7 otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

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

4.10 (4) reissued with any reduction in cash value; or

4.11 (5) used in a financed purchase.

4.12 Sec. 10. Minnesota Statutes 2020, section 72A.2032, is amended by adding a subdivision
4.13 to read:

4.14 Subd. 1a. **Best interest obligations.** An insurance producer, when recommending an
4.15 annuity, shall act in the best interest of the consumer under the circumstances known at the
4.16 time the recommendation is made. An insurance producer shall not place the insurance
4.17 producer's or the insurer's financial interest ahead of the consumer's interest. An insurance
4.18 producer has acted in the best interest of the consumer if the insurance producer has satisfied
4.19 obligations regarding care, disclosure, conflict of interest, and documentation specified in
4.20 subdivisions 1b, 1c, 1d, and 1e.

4.21 Sec. 11. Minnesota Statutes 2020, section 72A.2032, is amended by adding a subdivision
4.22 to read:

4.23 Subd. 1b. **Care obligation.** (a) The insurance producer, in making a recommendation,
4.24 shall exercise reasonable diligence, care, and skill to:

4.25 (1) know the consumer's financial situation, insurance needs, and financial objectives;

4.26 (2) understand the available recommendation options after making a reasonable inquiry
4.27 into the options available to the insurance producer;

4.28 (3) have a reasonable basis to believe the recommended option effectively addresses the
4.29 consumer's financial situation, insurance needs, and financial objectives over the life of the
4.30 product, as evaluated in light of the consumer profile information; and

4.31 (4) communicate the basis or rationale supporting the recommendation.

5.1 (b) The requirements under paragraph (a) include making reasonable efforts to obtain
5.2 consumer profile information from the consumer prior to recommending an annuity.

5.3 (c) The requirements under paragraph (a) require an insurance producer to consider the
5.4 types of products the insurance producer is authorized and licensed to recommend or sell
5.5 that address the consumer's financial situation, insurance needs, and financial objectives.
5.6 This paragraph does not require analysis or consideration of any products outside the
5.7 insurance producer's authority and license, or other possible alternative products or strategies
5.8 available in the market at the time of the recommendation. Insurance producers shall be
5.9 held to standards applicable to insurance producers with similar authority and licensure.

5.10 (d) The requirements under this subdivision do not create a fiduciary obligation or
5.11 relationship and only create a statutory obligation under sections 72A.203 to 72A.2036.

5.12 (e) The consumer profile information; characteristics of the insurer; and product costs,
5.13 rates, benefits, and features are the factors generally relevant in determining whether an
5.14 annuity effectively addresses the consumer's financial situation, insurance needs, and financial
5.15 objectives. The level of importance of each factor under paragraph (a) may vary depending
5.16 on the facts and circumstances of a particular case. Each factor must not be considered in
5.17 isolation.

5.18 (f) The requirements under paragraph (a) include having a reasonable basis to believe
5.19 the consumer benefits from certain features of the annuity, including but not limited to
5.20 annuitization, death or living benefit, or other insurance-related features.

5.21 (g) The requirements under paragraph (a) apply to the particular annuity as a whole and
5.22 the underlying subaccounts to which funds are allocated at the time of the purchase or
5.23 exchange of an annuity, riders, and similar product enhancements, if any.

5.24 (h) The requirements under paragraph (a) do not require that the annuity with the lowest
5.25 onetime or multiple-occurrence compensation structure must be recommended.

5.26 (i) The requirements under paragraph (a) do not require the insurance producer to assume
5.27 ongoing monitoring obligations. An ongoing monitoring obligation may be separately owed
5.28 under the terms of a fiduciary, consulting, investment advising, or financial planning
5.29 agreement between the consumer and the insurance producer.

5.30 (j) In the case of an exchange or replacement of an annuity, the insurance producer shall
5.31 consider the whole transaction, which includes considering whether:

5.32 (1) the consumer incurs a surrender charge; is subject to the commencement of a new
5.33 surrender period; loses existing benefits such as death, living, or other contractual benefits;

6.1 or is subject to increased fees, investment advisory fees, or charges for riders and similar
6.2 product enhancements;

6.3 (2) the replacing product substantially benefits the consumer in comparison to the replaced
6.4 product over the life of the product; and

6.5 (3) the consumer had another annuity exchange or replacement and, in particular, an
6.6 exchange or replacement within the preceding 60 months.

6.7 (k) In the case of a person 65 years of age or older, neither an insurance producer nor
6.8 an insurer shall recommend replacing or exchanging an annuity that requires the insured to
6.9 pay a surrender charge for the annuity being replaced or exchanged if the replacement or
6.10 exchange does not confer a substantial financial benefit over the life of the annuity to the
6.11 consumer, so that a reasonable person would believe the purchase is unnecessary.

6.12 (l) Nothing in sections 72A.203 to 72A.2036 requires an insurance producer to obtain
6.13 any license other than an insurance producer license with the appropriate line of authority
6.14 to sell, solicit, or negotiate insurance in Minnesota, including but not limited to any securities
6.15 license in order to fulfill the duties and obligations contained in sections 72A.203 to
6.16 72A.2036, provided that the insurance producer does not give advice or provide services
6.17 that are subject to other securities law or engage in any other activity requiring other
6.18 professional licenses.

6.19 Sec. 12. Minnesota Statutes 2020, section 72A.2032, is amended by adding a subdivision
6.20 to read:

6.21 Subd. 1c. **Disclosure obligation.** (a) Prior to recommending and selling an annuity, the
6.22 insurance producer shall prominently disclose to the consumer the information required
6.23 under this paragraph on a form prescribed by the commissioner. The form prescribed by
6.24 the commissioner must contain:

6.25 (1) a description of (i) the scope and terms of the relationship with the consumer, and
6.26 (ii) the role of the insurance producer in the transaction;

6.27 (2) an affirmative statement on whether the insurance producer is licensed and authorized
6.28 to sell the following products:

6.29 (i) fixed annuities;

6.30 (ii) fixed indexed annuities;

6.31 (iii) variable annuities;

6.32 (iv) life insurance;

- 7.1 (v) mutual funds;
- 7.2 (vi) stocks and bonds; and
- 7.3 (vii) certificates of deposit;
- 7.4 (3) an affirmative statement describing the insurers that the insurance producer is
7.5 authorized, contracted, appointed, or otherwise able to sell insurance products for, using
7.6 the following descriptions:
- 7.7 (i) from one insurer;
- 7.8 (ii) from two or more insurers; or
- 7.9 (iii) from two or more insurers, although primarily contracted with one insurer;
- 7.10 (4) a description of the sources and types of cash and noncash compensation received
7.11 by the insurance producer, including whether the insurance producer is (i) compensated for
7.12 the sale of a recommended annuity by commission as part of a premium, or (ii) receives
7.13 other remuneration from the insurer, intermediary, or other insurance producer or by fee as
7.14 a result of a contract for advice or consulting service; and
- 7.15 (5) a notice of the consumer's right to request additional information regarding cash
7.16 compensation.
- 7.17 (b) Upon request of the consumer or the consumer's designated representative, the
7.18 insurance producer shall disclose:
- 7.19 (1) a reasonable estimate of the amount of cash compensation to be received by the
7.20 insurance producer, which may be stated as a range of amounts or percentages; and
- 7.21 (2) whether the cash compensation is a onetime or multiple-occurrence amount and, if
7.22 a multiple-occurrence amount, the frequency and amount of the occurrence, which may be
7.23 stated as a range of amounts or percentages.
- 7.24 (c) Prior to or at the time an annuity is recommended or sold, the insurance producer
7.25 shall have a reasonable basis to believe the consumer has been reasonably informed of
7.26 various features of the annuity, including the potential surrender period and surrender charge;
7.27 potential tax penalty if the consumer sells, exchanges, surrenders, redeems, or annuitizes
7.28 the annuity; mortality and expense fees; investment advisory fees; annual fees; potential
7.29 charges for and features of riders or other options of the annuity; limitations on interest
7.30 returns; potential changes in nonguaranteed elements of the annuity; insurance and investment
7.31 components; and market risk.

8.1 Sec. 13. Minnesota Statutes 2020, section 72A.2032, is amended by adding a subdivision
8.2 to read:

8.3 Subd. 1d. **Conflict of interest obligation.** An insurance producer shall identify and
8.4 avoid or reasonably manage and disclose material conflicts of interest, including a material
8.5 conflict of interest related to an ownership interest.

8.6 Sec. 14. Minnesota Statutes 2020, section 72A.2032, is amended by adding a subdivision
8.7 to read:

8.8 Subd. 1e. **Documentation obligation.** An insurance producer shall, at the time of
8.9 recommendation or sale:

8.10 (1) make a written record of any recommendation and the basis for the recommendation,
8.11 subject to sections 72A.203 to 72A.2036;

8.12 (2) obtain a signed statement, on a form prescribed by the commissioner, that includes:

8.13 (i) a customer's refusal to provide the consumer profile information, if any; and

8.14 (ii) a customer's understanding of the ramifications of not providing the customer's
8.15 consumer profile information or providing insufficient consumer profile information; and

8.16 (3) a consumer-signed statement, on a form prescribed by the commissioner, that
8.17 acknowledges the annuity transaction is not recommended if the customer decides to enter
8.18 into an annuity transaction that is not based on the insurance producer's recommendation.

8.19 Sec. 15. Minnesota Statutes 2020, section 72A.2032, is amended by adding a subdivision
8.20 to read:

8.21 Subd. 1f. **Application of best interest obligation.** Any requirement applicable to an
8.22 insurance producer under this section applies to every insurance producer who exercises
8.23 control or influence in making a recommendation and has received direct compensation as
8.24 a result of the recommendation or sale, regardless of whether the insurance producer had
8.25 any direct contact with the consumer. Providing or delivering marketing or educational
8.26 materials, product wholesaling or other back office product support, and general supervision
8.27 of an insurance producer do not, in and of themselves, constitute material control or influence.

8.28 Sec. 16. Minnesota Statutes 2020, section 72A.2032, subdivision 4, is amended to read:

8.29 Subd. 4. ~~Exception~~ **Transactions not based on recommendation.** (a) Except as provided
8.30 under paragraph (b), an insurance producer; or an insurer; does not have any obligation to
8.31 a consumer under subdivision 1 or 3 1a related to an annuity transaction if:

9.1 (1) no recommendation is made;

9.2 ~~(1)~~ (2) a recommendation was made and was later found to have been prepared based
9.3 on materially inaccurate information provided by the consumer; ~~or~~

9.4 ~~(2)~~ (3) a consumer refuses to provide relevant ~~suitability~~ consumer profile information
9.5 and the annuity transaction is not recommended; or

9.6 (4) a consumer decides to enter into an annuity transaction that is not based on a
9.7 recommendation of the insurance producer.

9.8 (b) An insurer's issuance of an annuity subject to paragraph (a) shall be reasonable under
9.9 all the circumstances actually known, ~~or which after reasonable inquiry should be known~~
9.10 to the insurer or the insurance producer, at the time the annuity is issued.

9.11 Sec. 17. Minnesota Statutes 2020, section 72A.2032, subdivision 6, is amended to read:

9.12 Subd. 6. ~~Supervision system~~ **Insurer duties.** (a) Except as permitted under subdivision
9.13 4, an insurer shall not issue an annuity recommended to a consumer unless there is a
9.14 reasonable basis to believe the annuity effectively addresses the particular consumer's
9.15 financial situation, insurance needs, and financial objectives based on the consumer's
9.16 consumer profile information.

9.17 ~~(a)~~ (b) An insurer shall establish and maintain a supervision system that is reasonably
9.18 designed to achieve the insurer's and its insurance producers' compliance with sections
9.19 72A.203 to 72A.2036, including, but not limited to, all of the following:

9.20 (1) the insurer shall establish and maintain reasonable procedures to inform its insurance
9.21 producers of the requirements of sections 72A.203 to 72A.2036 and shall incorporate the
9.22 requirements of sections 72A.203 to 72A.2036 into relevant insurance producer training
9.23 programs and manuals;

9.24 (2) the insurer shall establish and maintain standards for insurance producer product
9.25 training and shall establish and maintain reasonable procedures to require its insurance
9.26 producers to comply with the requirements of section 72A.2033;

9.27 (3) the insurer shall provide product-specific training and training materials which explain
9.28 all material features of its annuity products to its insurance producers;

9.29 (4) the insurer shall establish and maintain procedures for the review of each
9.30 recommendation before issuance of an annuity that are designed to ensure ~~that~~ there is a
9.31 reasonable basis to determine ~~that a recommendation is suitable~~ the recommended annuity
9.32 effectively addresses the particular consumer's financial situation, insurance needs, and

financial objectives. The review procedures shall apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other reasonable means including, but not limited to, physical review. The electronic or other system shall be designed to require an elevated individual review for those transactions involving consumers 65 years of age or older on the basis of the review procedure's thresholds for liquidity, liquid net worth, income, and anticipated material changes in their financial situation and needs and the elevated review shall be conducted by a natural person or persons;

(5) the insurer shall establish and maintain reasonable procedures to detect recommendations that are not ~~suitable~~ in compliance with subdivisions 1a to 1f, 4, 7, and 8. This may include, but is not limited to, confirmation of ~~consumer suitability~~ the consumer's profile information, systematic customer surveys, insurance producer and consumer interviews, confirmation letters, insurance producer attestations, and programs of internal monitoring. Nothing in this clause prevents an insurer from complying with this clause by applying sampling procedures, or by confirming ~~suitability~~ consumer profile information or other required information under this subdivision after issuance or delivery of the annuity; ~~and~~

(6) the insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether an insurance producer has provided to the consumer the information required under this subdivision;

(7) the insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(8) the insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this clause do not prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits, as long as the benefits are not based on the volume of sales of a specific annuity within a limited period of time; and

~~(6)~~ (9) the insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

~~(b)(1)~~ (c)(1) Nothing in this subdivision restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under paragraph

(a) (b). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 72A.2034 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with ~~subdivision 2~~ clause (2), and an insurer is responsible for the compliance of an insurance producer with the provisions of sections 72A.203 to 72A.2036 regardless of whether the insurer contracts for performance of a function required under this paragraph; and

(2) an insurer's supervision system under paragraph ~~(a)~~ (b) must include supervision of contractual performance under this clause. This includes, but is not limited to, the following:

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

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

~~(e)~~ (d) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, or consideration of or comparison to options available to the insurance producer or compensation relating to the options other than annuities or other products offered by the insurer.

Sec. 18. Minnesota Statutes 2020, section 72A.2032, subdivision 7, is amended to read:

Subd. 7. ~~Undue influence~~ **Prohibited practices**. An insurance producer or insurer shall not dissuade, or attempt to dissuade, a consumer from:

(1) providing ~~suitability~~ consumer profile information to the insurance producer or insurer and truthfully responding to an insurer's request for confirmation of ~~suitability~~ consumer profile information;

(2) filing a complaint; or

(3) cooperating with the investigation of a complaint.

Sec. 19. Minnesota Statutes 2020, section 72A.2032, subdivision 8, is amended to read:

Subd. 8. ~~FINRA~~ **Comparable standards; compliance**. (a) Recommendations and sales of annuities made by broker-dealers in compliance with comparable standards satisfy the requirements under sections 72A.203 to 72A.2036, so long as. This subdivision applies to recommendations and sales of annuities made by financial professionals in compliance with

12.1 business rules, controls, and procedures that satisfy a comparable standard even if the
12.2 standard would not otherwise apply to the product or recommendation at issue. Nothing in
12.3 this subdivision limits the commissioner's ability to investigate and enforce sections 72A.203
12.4 to 72A.2036.

12.5 ~~(1) those sales comply with FINRA requirements pertaining to suitability and supervision~~
12.6 ~~of annuity transactions; and~~

12.7 ~~(2) a registered principal reviews and approves the transaction based on review criteria~~
12.8 ~~that include consideration of the customer's age, income, liquidity needs, and financial~~
12.9 ~~situation.~~

12.10 ~~(b) The insurer remains responsible for the suitability of every transaction and must take~~
12.11 ~~reasonably appropriate corrective action for any consumer harmed by violation of law and~~
12.12 ~~is subject to the penalty provisions described in section 72A.2034, subdivision 1.~~

12.13 ~~(e)~~ (b) For paragraph (a) to apply, an insurer shall:

12.14 (1) monitor the ~~FINRA member broker-dealer~~ relevant conduct of the financial
12.15 professional seeking to rely on paragraph (a) or the entity responsible for supervising the
12.16 financial professional, including the financial professional's broker-dealer or an investment
12.17 adviser registered under federal or state securities law using information collected in the
12.18 normal course of the insurer's business; and

12.19 (2) provide to the ~~FINRA member broker-dealer~~ entity responsible for supervising the
12.20 financial professional seeking to rely on paragraph (a), including the financial professional's
12.21 broker-dealer or investment adviser registered under federal or state securities law,
12.22 information and reports that are reasonably appropriate to assist the ~~FINRA member~~
12.23 ~~broker-dealer~~ the entity to maintain its supervision system.

12.24 ~~(d) Nothing in this subdivision limits:~~ (c) For purposes of this subdivision, "financial
12.25 professional" means an insurance producer that is regulated and acting as:

12.26 (1) ~~the responsibilities of the insurer to monitor the broker-dealer as provided in this~~
12.27 ~~subdivision; and~~ a broker-dealer registered under federal or state securities law or a registered
12.28 representative of a broker-dealer;

12.29 (2) ~~the commissioner of commerce's ability to enforce the provisions of sections 72A.203~~
12.30 ~~to 72A.2036 with respect to sales made in compliance with FINRA requirements and federal~~
12.31 ~~law; an investment adviser registered under federal or state securities law, or an investment~~
12.32 ~~adviser representative associated with the federal or state registered investment adviser; or~~

13.1 (3) a plan fiduciary under the Employee Retirement Income Security Act of 1974
13.2 (ERISA), United States Code, title 29, section 1001; Code of Federal Regulations, title 29,
13.3 part 2510.3-21; fiduciary under the Internal Revenue Code, section 4975(e)(3); or any
13.4 amendments or successor statutes.

13.5 (d) For purposes of this subdivision, "comparable standards" means:

13.6 (1) with respect to broker-dealers and registered representatives of broker-dealers,
13.7 applicable United States Securities and Exchange Commission and FINRA rules pertaining
13.8 to best interest obligations and supervision of annuity recommendations and sales, including
13.9 but not limited to regulation best interest and any amendments or successor regulations;

13.10 (2) with respect to investment advisers registered under federal or state securities law
13.11 or investment adviser representatives, the fiduciary duties and all other requirements imposed
13.12 on the investment advisers or investment adviser representatives by contract or under the
13.13 Investment Advisers Act of 1940 or applicable state securities law, including but not limited
13.14 to Form ADV and interpretations; and

13.15 (3) with respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions,
13.16 and all other requirements attendant to status under ERISA or the Internal Revenue Code
13.17 and any amendments or successor statutes.

13.18 Sec. 20. Minnesota Statutes 2020, section 72A.2033, is amended to read:

13.19 **72A.2033 INSURANCE PRODUCER TRAINING.**

13.20 Subdivision 1. **Requirement.** An insurance producer shall not solicit the sale of an
13.21 annuity product unless the insurance producer has adequate knowledge of the product to
13.22 recommend the annuity and the insurance producer is in compliance with the insurer's
13.23 standards for product training. An insurance producer may rely on insurer-provided
13.24 product-specific training standards and materials to comply with this ~~subdivision~~ section.

13.25 Subd. 2. **Initial training.** (a) An insurance producer who is otherwise entitled to engage
13.26 in the sale of annuity products shall complete a onetime four-credit training course approved
13.27 by the commissioner and provided by a continuing education provider approved by the
13.28 commissioner prior to commencing the transaction of annuities.

13.29 Insurance producers who hold a life insurance line of authority on ~~June 1, 2013~~ December
13.30 31, 2022, and who desire to sell annuities shall complete the requirements of this subdivision
13.31 no later than six months after January 1, ~~2014~~ 2023. Individuals who obtain a life insurance
13.32 line of authority on or after January 1, ~~2014~~ 2023, may not engage in the sale of annuities
13.33 until the annuity training course required under this subdivision has been completed.

14.1 (b) The length of the training required under this subdivision must be four continuing
14.2 education hours.

14.3 (c) The training required under this subdivision must include information on the following
14.4 topics:

14.5 (1) the types of annuities and various classifications of annuities;

14.6 (2) identification of the parties to an annuity;

14.7 (3) how fixed, variable, and indexed annuity contract provisions affect consumers;

14.8 (4) the application of income taxation of qualified and nonqualified annuities;

14.9 (5) the primary uses of annuities;

14.10 (6) appropriate ~~and lawful~~ standard of conduct, sales practices, replacement, and
14.11 disclosure requirements, ~~and suitability information and whether an annuity is suitable for~~
14.12 ~~a consumer~~; and

14.13 (7) the recognition of indicators that a prospective insured may lack the short-term
14.14 memory or judgment to knowingly purchase an insurance product.

14.15 (d) Providers of courses intended to comply with this subdivision shall cover all topics
14.16 listed in the prescribed outline and shall not present any marketing information or provide
14.17 training on sales techniques or provide specific information about a particular insurer's
14.18 products.

14.19 (e) A provider of an annuity training course intended to comply with this subdivision
14.20 must be an approved continuing education provider in this state and comply with the
14.21 requirements applicable to insurance producer continuing education courses.

14.22 (f) An insurance producer licensed by December 31, 2022, who holds a life insurance
14.23 line of authority and has previously completed the training in subdivision 2, paragraph (a),
14.24 shall, by July 1, 2023, complete either:

14.25 (1) a new four-credit training course approved by the Department of Commerce after
14.26 July 1, 2022; or

14.27 (2) an additional onetime one-credit training course approved by the Department of
14.28 Commerce by July 1, 2022, and provided by a Department of Commerce-approved education
14.29 provider on appropriate sales practices and replacement and disclosure requirements under
14.30 sections 72A.203 to 72A.2036.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with chapter 45. In order to assist compliance with this section, all courses approved by the commissioner for the purposes of this section shall be given the course title "~~Annuity Suitability and Disclosure~~ Best Interest Standards of Conduct for Annuity Sales." Only courses satisfying the requirements of this section shall use this course title after ~~June~~ July 1, 2013 2023.

(g) Providers of annuity training shall comply with the course completion reporting requirements of chapter 45.

(h) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subdivision satisfies the training requirements of this subdivision in this state, ~~but does not satisfy any of the continuing education requirements of chapter 60K unless the training requirements of the other state are satisfied through one or more continuing education courses approved by the commissioner.~~

(i) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subdivision satisfy the training requirements of this subdivision.

~~(j)~~ (j) An insurer shall verify that an insurance producer has completed the annuity training course required under this subdivision before allowing the insurance producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subdivision by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems, vendors, or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers. If such data collection and reporting arrangements are not in place, an insurer must maintain records verifying that the producer has completed the annuity training course required under this subdivision and make the records available to the commissioner upon request.

Sec. 21. Minnesota Statutes 2020, section 72A.2034, is amended to read:

72A.2034 PENALTIES.

Subdivision 1. **Imposition; mitigation; enforcement.** (a) An insurer is responsible for compliance with sections 72A.203 to 72A.2036. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order, in addition to any available penalties, remedies, or administrative actions:

(1) an insurer to take reasonably appropriate corrective action, including but not limited to canceling a transaction ~~action~~, for any consumer harmed by a failure to comply with sections 72A.203 to 72A.2036 by the insurer's insurer, an entity contracted to perform the insurer supervisory duties, or by its the insurer's insurance producer's, violation of sections 72A.203 to 72A.2036 producer;

(2) a general agency, independent agency, or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of sections 72A.203 to 72A.2036; and

(3) appropriate penalties and sanctions.

(b) Nothing in sections 72A.203 to 72A.2036 shall affect any obligation of an insurer for the acts of its insurance producers, or any consumer remedy or any cause of action that is otherwise provided for under applicable federal or state law, including without limitation chapter 60K.

Subd. 2. **Aggravation or mitigation.** Any applicable penalty for a violation of sections 72A.203 to 72A.2036 may be increased or decreased upon consideration of any aggravating or mitigating circumstances, including if corrective action for the consumer was taken promptly after a violation was discovered, or the violation was not part of a pattern or practice. The authority to enforce compliance with sections 72A.203 to 72A.2036 is vested exclusively with the commissioner.

Sec. 22. Minnesota Statutes 2020, section 72A.2035, subdivision 1, is amended to read:

Subdivision 1. **Duration.** Insurers and insurance producers 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 insurance transactions for ten 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 producer.

Sec. 23. Minnesota Statutes 2020, section 72A.2036, is amended to read:

72A.2036 RELATIONSHIP TO OTHER LAWS; ENFORCEMENT.

(a) Nothing in sections 72A.203 to 72A.2036 ~~shall be interpreted to:~~ limits the commissioner's authority to make any investigation or take any action under chapter 45 or other applicable law with respect to any insurer, insurance producer, broker-dealer, third-party

17.1 contractor, or other entity engaged in any activity involving the sale of an annuity that is
17.2 subject to sections 72A.203 to 72A.2036.

17.3 ~~(1) change, alter, or modify any of the obligations, duties, or responsibilities of insurers~~
17.4 ~~or insurance producers, pursuant to any orders of the commissioner or consent decrees in~~
17.5 ~~effect as of June 1, 2013; or~~

17.6 ~~(2) limit the commissioner's authority to make any investigation or take any action under~~
17.7 ~~chapter 45 or other applicable state law with respect to any insurer, insurance producer,~~
17.8 ~~broker-dealer, third-party contractor, or other entity engaged in any activity involving the~~
17.9 ~~sale of an annuity that is subject to sections 72A.203 to 72A.2036.~~

17.10 (b) In addition to any other penalties provided by the laws of this state, a violation of
17.11 sections 72A.203 to 72A.2036 shall be considered a violation of section 72A.20.

17.12 Sec. 24. **REPEALER.**

17.13 Minnesota Statutes 2020, sections 72A.2031, subdivisions 3, 9, and 11; and 72A.2032,
17.14 subdivisions 1, 2, 3, and 5, are repealed.

72A.2031 DEFINITIONS.

Subd. 3. **Broker-dealer.** "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

- (1) an agent;
- (2) an issuer;
- (3) a depository institution, provided such activities are conducted in accordance with rules as may be adopted by the administrator;
- (4) an international banking institution; or
- (5) a person excluded by rule adopted or order issued under this chapter.

Subd. 9. **Registered principal.** "Registered principal" means a person associated with a FINRA member broker-dealer, who is actively engaged in the management of the FINRA member broker-dealer investment banking or securities business, including supervision, solicitation, conduct of business, or the training of persons associated with a FINRA member broker-dealer for any of these functions.

Subd. 11. **Suitability information.** "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including but not limited to the following:

- (1) age;
- (2) annual income and anticipated material changes in annual income;
- (3) financial situation and needs, including the financial resources used for the funding of the annuity, and including anticipated material changes in financial situation and needs;
- (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 and anticipated material changes in existing assets;
- (9) liquidity needs and anticipated material changes in liquidity needs;
- (10) liquid net worth and anticipated material changes in liquid net worth;
- (11) risk tolerance;
- (12) tax status; and
- (13) whether or not the consumer has a reverse mortgage.

72A.2032 DUTIES OF INSURERS AND INSURANCE PRODUCERS.

Subdivision 1. **Suitability standard.** 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 where no producer is involved, shall have reasonable grounds for believing, after a reasonable inquiry, that the recommendation is suitable for the consumer, under the totality of the circumstances based on 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, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

- (1) the consumer has been reasonably 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, redeems, 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;
- (2) the consumer would receive a tangible net benefit from the transaction;

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(3) for the particular consumer based on the consumer's suitability information:

(i) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and

(ii) in the case of an exchange or replacement, the transaction as a whole is suitable taking into account, among other things, the age of the consumer; and

(4) in the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration all of the following:

(i) 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) the consumer would receive a tangible net benefit from the transaction, and in the case of a person 65 years of age or older, neither a producer nor an insurer shall recommend a replacement or exchange of an annuity that requires the insured to pay a surrender charge for the annuity being replaced or exchanged if the replacement or exchange does not confer a substantial financial benefit over the life of the annuity to the consumer so that a reasonable person would believe the purchase is unnecessary; and

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

Subd. 2. Obtaining suitability information. Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information, and record this information on a form, inventory, or similar record. The producer, upon request, shall provide to the consumer or the consumer's legal representative a copy of the information used in the making of the suitability determination.

Subd. 3. Restriction on issuance of annuity. Except as permitted under subdivision 4, an insurer shall 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.

Subd. 5. Documentation. An insurance producer or, where no insurance producer is involved, the responsible insurer representative shall at the time of sale:

(1) make a record of any recommendation subject to subdivision 1;

(2) obtain a consumer-signed statement documenting a consumer's refusal to provide suitability information, if any; and

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