SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 877

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DATE	D-PG	OFFICIAL STATUS
03/17/2011	542	Introduction and first reading
		Referred to Commerce and Consumer Protection
04/14/2011	1323a	Comm report: To pass as amended
	1338	Second reading

A bill for an act

relating to insurance; regulating annuity products; enacting a model regulation adopted by the National Association of Insurance Commissioners relating to suitability in annuity transactions; amending Minnesota Statutes 2010, sections 60K.46, subdivision 4; 72A.20, subdivision 34; proposing coding for new law in Minnesota Statutes, chapter 72A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 60K.46, subdivision 4, is amended to read:

Subd. 4. **Suitability of insurance.** In recommending the purchase of any life, endowment, individual accident and sickness, long-term care, ~~annuity,~~ life-endowment, or Medicare supplement insurance to a customer, a producer must have reasonable grounds for believing that the recommendation is suitable for the customer and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to, the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies. This subdivision does not apply to limited lines insurance under section 60K.38, subdivision 1, paragraph (c). Recommendations for the purchase of an annuity are subject to sections 72A.203 to 72A.2036 and not this subdivision.

Sec. 2. Minnesota Statutes 2010, section 72A.20, subdivision 34, is amended to read:

Subd. 34. **Suitability of insurance for customer.** In recommending or issuing life, endowment, individual accident and sickness, long-term care, ~~annuity,~~ life-endowment, or Medicare supplement insurance to a customer, an insurer, either directly or through its agent, must have reasonable grounds for believing that the recommendation is suitable for the customer.

In the case of group insurance marketed on a direct response basis without the use of direct agent contact, this subdivision is satisfied if the insurer has reasonable grounds to believe that the insurance offered is generally suitable for the group to whom the offer is made. Sections 72A.203 to 72A.2036, and not this subdivision, apply to recommending and issuing an annuity.

Sec. 3. **[72A.203] EXEMPTIONS.**

Unless otherwise specifically included, sections 72A.203 to 72A.2036 do not apply to transactions involving:

(1) direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to sections 72A.203 to 72A.2036; and

(2) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act of 1974 (ERISA) title 29, United States Code, sections 1001 to 1461;

(ii) a plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code of 1986 (IRC); as amended, if established or maintained by an employer;

(iii) a government or church plan defined in section 414 of the Internal Revenue Code of 1986 as amended, 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, as amended;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or a dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

Sec. 4. **[72A.2031] DEFINITIONS.**

Subdivision 1. **Definitions.** For purposes of sections 72A.203 to 72A.2036, the terms defined in this section have the meanings given them.

Subd. 2. **Annuity.** "Annuity" means an annuity that is an insurance product under state law that is individually solicited, whether the product is classified as an individual or group annuity.

Subd. 3. **Continuing education credit or CE credit.** "Continuing education credit" or "CE credit" means one continuing education credit earned pursuant to section 45.30, subdivision 4.

Subd. 4. **Continuing education provider or CE provider.** "Continuing education provider" or "CE provider" means an approved education provider under chapter 45.

Subd. 5. **FINRA.** "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

Subd. 6. **Insurer.** "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

Subd. 7. **Insurance producer.** "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.

Subd. 8. **Recommendation.** "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange, or replacement of an annuity in accordance with that advice.

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

(1) lapsed, forfeited, surrendered or partially surrendered, 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 either 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 any reduction in cash value; or

(5) used in a financed purchase.

Subd. 10. **Suitability information.** "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(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; and

(12) tax status.

Sec. 5. **[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 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, 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, 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 benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;

(3) 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 in the case of an exchange or replacement, the transaction as a whole is suitable; for the particular consumer based on the consumer's suitability information; and

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

(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 benefit from product enhancements and improvements; and

(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 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.

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. 4. **Exception.** (a) Except as provided under paragraph (b), an insurance producer, or an insurer, does not have any obligation to a consumer under subdivision 1 or 3 related to an annuity transaction if:

(1) no recommendation is made;

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

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

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

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

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 customer signed statement documenting a customer's refusal to provide suitability information, if any; and

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

Subd. 6. **Supervision system.** (a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with sections 72A.203 to 72A.2036, including, but not limited to, the following:

(1) the insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of sections 72A.203 to 72A.2036 and shall incorporate the

requirements of sections 72A.203 to 72A.2036 into relevant insurance producer training manuals;

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

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

(4) 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. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(5) the insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, 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 information after issuance or delivery of the annuity; and

(6) the insurer shall annually provide a 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) Nothing in this subdivision restricts an insurer from contracting for performance of a function, including maintenance of procedures, required under paragraph (a). 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; and

(2) an insurer's supervision system under paragraph (a) 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.

(c) 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.

Subd. 7. **Undue influence.** An insurance producer shall 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; or

(3) cooperating with the investigation of a complaint.

Subd. 8. **Alternative compliance.** (a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions satisfy the requirements under sections 72A.203 to 72A.2036. This subdivision applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subdivision limits the commissioner of commerce's ability to enforce the provisions of sections 72A.203 to 72A.2036.

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

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

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

Sec. 6. **[72A.2033] INSURANCE PRODUCER TRAINING.**

Subdivision 1. **Requirement.** An insurance producer shall 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 subdivision.

Subd. 2. **Initial training.** (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four-credit training course approved by the Department of Commerce and provided by a Department of Commerce-approved education provider.

Insurance producers who hold a life insurance line of authority on the effective date of sections 72A.203 to 72A.2036 and who desire to sell annuities shall complete the requirements of this subdivision within six months after the effective date of sections 72A.203 to 72A.2036. Individuals who obtain a life insurance line of authority on or after the effective date of sections 72A.203 to 72A.2036 may not engage in the sale of annuities until the annuity training course required under this subdivision has been completed.

(b) The minimum length of the training required under this subdivision must be sufficient to qualify for at least four CE credits, but may be longer.

(c) The training required under this subdivision 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) Providers of courses intended to comply with this subdivision shall cover all topics listed in the prescribed outline and shall 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 subdivision shall register as a CE provider in this state and comply with the requirements applicable to insurance producer continuing education courses.

(f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with chapter 45.

(g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 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.

(i) An insurer shall verify that an insurance producer has completed the annuity training course required under this subdivision before allowing the 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 or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Sec. 7. **[72A.2034] PENALTIES.**

Subdivision 1. **Imposition.** 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 of commerce 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 sections 72A.203 to 72A.2036;

(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.

Subd. 2. **Reduction or elimination.** Any applicable penalty for a violation of sections 72A.203 to 72A.2036 may be reduced or eliminated 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.

Sec. 8. **[72A.2035] RECORD KEEPING.**

Subdivision 1. **Duration.** Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for three 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.

Subd. 2. **Medium.** Records required to be maintained by sections 72A.203 to 72A.2036 may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Sec. 9. **[72A.2036] RELATIONSHIP TO OTHER LAW; ENFORCEMENT.**

Enforcement of, and remedies under, sections 72A.203 to 72A.2036 are governed by the same powers, procedures, and limitations that apply to section 72A.20; as if sections 72A.203 to 72A.2036 were codified within section 72A.20.

Sec. 10. **EFFECTIVE DATE.**

This act is effective January 1, 2012.