

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **1134**

03/14/2011 Authored by Hoppe, Atkins, Davids, Sanders and Dittrich
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform
04/14/2011 Adoption of Report: Pass as Amended and Read Second Time
05/23/2011 Pursuant to Rule 4.20, re-referred to the Committee on Commerce and Regulatory Reform
02/16/2012 Adoption of Report: Pass and Read Second Time
04/02/2012 Calendar for the Day, Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act
1.2 relating to insurance; regulating annuity products; enacting and modifying
1.3 a model regulation adopted by the National Association of Insurance
1.4 Commissioners relating to suitability in annuity transactions; amending
1.5 Minnesota Statutes 2010, sections 60K.46, subdivision 4; 72A.20, subdivision
1.6 34; proposing coding for new law in Minnesota Statutes, chapter 72A.

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

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

1.9 Subd. 4. **Suitability of insurance.** In recommending the purchase of any life,
1.10 endowment, individual accident and sickness, long-term care, ~~annuity~~, life-endowment, or
1.11 Medicare supplement insurance to a customer, a producer must have reasonable grounds
1.12 for believing that the recommendation is suitable for the customer and must make
1.13 reasonable inquiries to determine suitability. The suitability of a recommended purchase
1.14 of insurance will be determined by reference to the totality of the particular customer's
1.15 circumstances, including, but not limited to, the customer's income, the customer's need
1.16 for insurance, and the values, benefits, and costs of the customer's existing insurance
1.17 program, if any, when compared to the values, benefits, and costs of the recommended
1.18 policy or policies. This subdivision does not apply to limited lines insurance under section
1.19 60K.38, subdivision 1, paragraph (c). Recommendations for the purchase of an annuity
1.20 are subject to sections 72A.203 to 72A.2036 and not this subdivision.

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

1.22 Subd. 34. **Suitability of insurance for customer.** In recommending or issuing life,
1.23 endowment, individual accident and sickness, long-term care, ~~annuity~~, life-endowment, or
1.24 Medicare supplement insurance to a customer, an insurer, either directly or through its

2.1 agent, must have reasonable grounds for believing that the recommendation is suitable for
2.2 the customer.

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

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

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

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

2.13 (2) contracts used to fund group plans under:

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

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

2.20 (iii) a government or church plan defined in section 414 of the Internal Revenue
2.21 Code of 1986 as amended, a government or church welfare benefit plan, or a deferred
2.22 compensation plan of a state or local government or tax exempt organization under section
2.23 457 of the Internal Revenue Code of 1986, as amended; or

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

2.26 (3) contracts used to fund, unless there is a recommendation to a consumer regarding
2.27 an annuity in which case sections 72A.203 to 72A.2036 do apply with respect to the
2.28 consumer annuity transaction:

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

2.31 (ii) formal prepaid funeral contracts.

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

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

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

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

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

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

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

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

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

3.20 Subd. 9. **Replacement.** "Replacement" means a transaction in which a new policy or
3.21 contract is to be purchased, and it is known or should be known to the proposing producer,
3.22 or the proposing insurer, whether or not there is an insurance producer, that by reason of
3.23 the transaction, an existing policy or contract has been or is to be any of the following:

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

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

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

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

3.31 (5) used in a financed purchase.

3.32 Subd. 10. **Suitability information.** "Suitability information" means information
3.33 that is reasonably appropriate to determine the suitability of a recommendation, including
3.34 but not limited to the following:

3.35 (1) age;

3.36 (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.

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, 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;

(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 taking into account, among other things, the age of the consumer; 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 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.

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; or

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

(b) An insurer's issuance of an annuity subject to paragraph (a) shall be reasonable under all the circumstances actually known, or which after reasonable inquiry should be known to the insurer or the insurance producer, 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:

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

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

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

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

6.10 (1) the insurer shall maintain reasonable procedures to inform its insurance
6.11 producers of the requirements of sections 72A.203 to 72A.2036 and shall incorporate the
6.12 requirements of sections 72A.203 to 72A.2036 into relevant insurance producer training
6.13 programs and manuals;

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

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

6.19 (4) the insurer shall maintain procedures for review of each recommendation before
6.20 issuance of an annuity that are designed to ensure that there is a reasonable basis to
6.21 determine that a recommendation is suitable taking into account among other things the
6.22 age of the consumer. The review procedures may apply a screening system for the purpose
6.23 of identifying selected transactions for additional review and may be accomplished
6.24 electronically or through other means including, but not limited to, physical review. Such
6.25 an electronic or other system shall be designed to require additional review only of those
6.26 transactions identified for additional review by the selection criteria, taking into account,
6.27 among other things the age of the consumer;

6.28 (5) the insurer shall maintain reasonable procedures to detect recommendations
6.29 that are not suitable. This may include, but is not limited to, confirmation of consumer
6.30 suitability information, systematic customer surveys, interviews, confirmation letters,
6.31 and programs of internal monitoring. Nothing in this clause prevents an insurer from
6.32 complying with this clause by applying sampling procedures, or by confirming suitability
6.33 information after issuance or delivery of the annuity; and

6.34 (6) the insurer shall annually provide a report to senior management, including to the
6.35 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 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) 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 or insurer shall not dissuade, or attempt to dissuade, a consumer from:

(1) providing suitability information to the insurance producer or insurer and 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. **FINRA compliance.** (a) Certain sales made by a broker-dealer 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 no less stringent than to those applied to variable annuity sales under FINRA requirements. However, nothing in this subdivision limits the commissioner of commerce's ability to enforce the provisions of sections 72A.203 to 72A.2036 with respect to sales made in compliance with FINRA requirements and federal

law or limits the responsibilities of the insurer to monitor the broker-dealer as provided in this subdivision.

(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 is otherwise entitled to engage in the sale of annuity products shall complete a onetime four-credit training course approved by the commissioner and provided by a continuing education provider approved by the commissioner prior to commencing the transaction of annuities.

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 no later than six months after January 1, 2013. Individuals who obtain a life insurance line of authority on or after January 1, 2013, may not engage in the sale of annuities until the annuity training course required under this subdivision has been completed. Producers licensed on or after January 1, 2013, have until June 30, 2013, to complete the course.

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

(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;

9.1 (6) appropriate and lawful sales practices, replacement, and disclosure requirements,
9.2 and suitability information and whether an annuity is suitable for a consumer; and

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

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

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

9.12 (f) Annuity training courses may be conducted and completed by classroom or
9.13 self-study methods in accordance with chapter 45. In order to assist compliance with this
9.14 section, all courses approved by the commissioner for the purposes of this section shall be
9.15 given the course title "Annuity Suitability and Disclosure." Only courses satisfying the
9.16 requirements of this section shall use this course title after the effective date of this section.

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

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

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

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

Subdivision 1. **Imposition.** (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, in addition to any available penalties, remedies, or administrative actions order:

(1) an insurer to take reasonably appropriate corrective, including but not limited to canceling a transaction 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.

(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.

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

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 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.

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 LAWS; ENFORCEMENT.**

(a) Nothing in sections 72A.203 to 72A.2036 shall be interpreted to:

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

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

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

11.7 Sec. 10. **EFFECTIVE DATE.**

11.8 This act is effective January 1, 2013.