

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

CHAPTER 90
SENATE BILL 1557

AN ACT

AMENDING SECTIONS 20-1243 AND 20-1243.01, ARIZONA REVISED STATUTES;
REPEALING SECTION 20-1243.03, ARIZONA REVISED STATUTES; AMENDING TITLE 20,
CHAPTER 6, ARTICLE 1.3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION
20-1243.03; AMENDING SECTIONS 20-1243.05, 20-1243.06 AND 20-1243.07,
ARIZONA REVISED STATUTES; RELATING TO ANNUITY TRANSACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-1243, Arizona Revised Statutes, is amended to
3 read:

4 20-1243. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Annuity" means an annuity that is individually solicited,
7 whether the product is classified as an individual or group annuity.

8 2. "Business entity" has the same meaning prescribed in section
9 20-281.

10 ~~3. "Insurance producer" has the same meaning prescribed in section~~
11 ~~20-281.~~

12 3. "CASH COMPENSATION" MEANS ANY DISCOUNT, CONCESSION, FEE, SERVICE
13 FEE, COMMISSION, SALES CHARGE, LOAN, OVERRIDE OR CASH BENEFIT RECEIVED BY
14 A PRODUCER IN CONNECTION WITH THE RECOMMENDATION OR SALE OF AN ANNUITY
15 FROM AN INSURER OR INTERMEDIARY OR DIRECTLY FROM THE CONSUMER.

16 4. "CONSUMER PROFILE INFORMATION" MEANS INFORMATION THAT IS
17 REASONABLY APPROPRIATE TO DETERMINE WHETHER A RECOMMENDATION ADDRESSES THE
18 CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND FINANCIAL OBJECTIVES,
19 INCLUDING AT LEAST THE FOLLOWING:

20 (a) AGE.

21 (b) ANNUAL INCOME.

22 (c) FINANCIAL SITUATION AND NEEDS, INCLUDING DEBTS AND OTHER
23 OBLIGATIONS.

24 (d) FINANCIAL EXPERIENCE.

25 (e) INSURANCE NEEDS.

26 (f) FINANCIAL OBJECTIVES.

27 (g) INTENDED USE OF THE ANNUITY.

28 (h) FINANCIAL TIME HORIZON.

29 (i) EXISTING ASSETS OR FINANCIAL PRODUCERS, INCLUDING INVESTMENT,
30 ANNUITY AND INSURANCE HOLDINGS.

31 (j) LIQUIDITY NEEDS.

32 (k) LIQUID NET WORTH.

33 (l) RISK TOLERANCE, INCLUDING WILLINGNESS TO ACCEPT NONGUARANTEED
34 ELEMENTS IN THE ANNUITY.

35 (m) FINANCIAL RESOURCES USED TO FUND THE ANNUITY.

36 (n) TAX STATUS.

37 5. "CONTINUING EDUCATION CREDIT" MEANS ONE CONTINUING EDUCATION
38 CREDIT HOUR AS DEFINED IN SECTION 20-2901.

39 6. "CONTINUING EDUCATION PROVIDER" MEANS AN INDIVIDUAL OR ENTITY
40 THAT IS APPROVED TO OFFER CONTINUING EDUCATION COURSES PURSUANT TO CHAPTER
41 18 OF THIS TITLE.

42 7. "FINRA" MEANS THE FINANCIAL INDUSTRY REGULATORY AUTHORITY OR A
43 SUCCEEDING AGENCY.

44 ~~4.~~ 8. "Insurer" has the same meaning prescribed in section 20-104.

1 9. "INTERMEDIARY" MEANS AN ENTITY THAT IS CONTRACTED DIRECTLY WITH
2 AN INSURER OR WITH ANOTHER ENTITY THAT IS CONTRACTED WITH AN INSURER TO
3 FACILITATE THE SALE OF THE INSURER'S ANNUITIES BY PRODUCERS.

4 ~~5.~~ 10. "Managing general agent" has the same meaning prescribed in
5 section 20-311.

6 11. "MATERIAL CONFLICT OF INTEREST":

7 (a) MEANS A PRODUCER'S FINANCIAL INTEREST IN THE SALE OF AN ANNUITY
8 THAT A REASONABLE PERSON WOULD EXPECT TO INFLUENCE THE IMPARTIALITY OF THE
9 PRODUCER'S RECOMMENDATION.

10 (b) DOES NOT INCLUDE CASH COMPENSATION OR NONCASH COMPENSATION.

11 12. "NONCASH COMPENSATION" MEANS ANY FORM OF COMPENSATION THAT IS
12 NOT CASH COMPENSATION, INCLUDING HEALTH INSURANCE, OFFICE RENT, OFFICE
13 SUPPORT AND RETIREMENT BENEFITS.

14 13. "NONGUARANTEED ELEMENTS" MEANS THE PREMIUMS, CREDITED INTEREST
15 RATES INCLUDING ANY BONUS, BENEFITS, VALUES, DIVIDENDS, NONINTEREST BASED
16 CREDITS, CHARGES OR ELEMENTS OF FORMULAS USED TO DETERMINE ANY OF THESE
17 THAT ARE SUBJECT TO COMPANY DISCRETION AND ARE NOT GUARANTEED AT ISSUE.
18 AN ELEMENT IS CONSIDERED NONGUARANTEED IF ANY OF THE UNDERLYING
19 NONGUARANTEED ELEMENTS ARE USED IN ITS CALCULATION.

20 14. "PRODUCER":

21 (a) MEANS AN INSURANCE PRODUCER AS DEFINED IN SECTION 20-281.

22 (b) INCLUDES AN INSURER WHERE NO PRODUCER IS INVOLVED.

23 ~~6.~~ 15. "Recommendation":

24 (a) Means advice provided by ~~an insurance A producer, or an insurer~~
25 ~~if no producer is involved,~~ to an individual consumer that ~~results~~ WAS
26 INTENDED TO RESULT OR DOES RESULT in a purchase, ~~or~~ exchange OR
27 REPLACEMENT of an annuity pursuant to that advice.

28 (b) DOES NOT INCLUDE GENERAL COMMUNICATION TO THE PUBLIC,
29 GENERALIZED CUSTOMER SERVICE ASSISTANCE OR ADMINISTRATIVE SUPPORT, GENERAL
30 EDUCATION INFORMATION AND TOOLS, PROSPECTUSES OR OTHER PRODUCT AND SALES
31 MATERIALS.

32 16. "REPLACEMENT" MEANS A TRANSACTION IN WHICH A NEW ANNUITY IS TO
33 BE PURCHASED AND IT IS KNOWN OR SHOULD BE KNOWN TO THE PROPOSING PRODUCER
34 OR TO THE PROPOSING INSURER, WHETHER OR NOT A PRODUCER IS INVOLVED, THAT
35 BY REASON OF THE TRANSACTION, AN EXISTING ANNUITY OR OTHER INSURANCE
36 POLICY HAS BEEN OR IS TO BE ANY OF THE FOLLOWING:

37 (a) LAPSED, FORFEITED, SURRENDERED OR PARTIALLY SURRENDERED,
38 ASSIGNED TO THE REPLACING INSURER OR OTHERWISE TERMINATED.

39 (b) CONVERTED TO REDUCED PAID-UP INSURANCE, CONTINUED AS EXTENDED
40 TERM INSURANCE OR OTHERWISE REDUCED IN VALUE BY THE USE OF NONFORFEITURE
41 BENEFITS OR OTHER POLICY VALUES.

42 (c) AMENDED SO AS TO EFFECT EITHER A REDUCTION IN BENEFITS OR IN
43 THE TERM FOR WHICH COVERAGE WOULD OTHERWISE REMAIN IN FORCE OR WHICH
44 BENEFITS WOULD BE PAID.

45 (d) REISSUED WITH ANY REDUCTION IN CASH VALUE.

1 (e) USED IN A FINANCED PURCHASE.

2 17. "SEC" MEANS THE UNITED STATES SECURITIES AND EXCHANGE
3 COMMISSION.

4 Sec. 2. Section 20-1243.01, Arizona Revised Statutes, is amended to
5 read:

6 20-1243.01. Scope and limitation of article

7 A. This article applies to any SALE OR recommendation ~~to purchase~~
8 ~~or exchange~~ OF an annuity ~~that is made to a consumer by an insurance~~
9 ~~producer, or an insurer if no producer is involved, that results in the~~
10 ~~recommended purchase or exchange.~~

11 B. ~~Nothing in~~ This article ~~shall be construed to~~ DOES NOT:

12 1. Affect in any manner any provision of title 44, chapters 12
13 and 13.

14 2. CREATE OR IMPLY A PRIVATE CAUSE OF ACTION FOR A VIOLATION OF
15 THIS ARTICLE OR SUBJECT A PRODUCER TO CIVIL LIABILITY UNDER THE BEST
16 INTEREST STANDARD OF CARE PRESCRIBED IN SECTION 20-1243.03 OR UNDER
17 STANDARDS THAT GOVERN THE CONDUCT OF A FIDUCIARY OR FIDUCIARY
18 RELATIONSHIP.

19 Sec. 3. Repeal

20 Section 20-1243.03, Arizona Revised Statutes, is repealed.

21 Sec. 4. Title 20, chapter 6, article 1.3, Arizona Revised Statutes,
22 is amended by adding a new section 20-1243.03, to read:

23 20-1243.03. Duties of insurers and producers; definitions

24 A. WHEN A PRODUCER MAKES A RECOMMENDATION OF AN ANNUITY, THE
25 PRODUCER SHALL ACT IN THE BEST INTEREST OF THE CONSUMER UNDER THE
26 CIRCUMSTANCES KNOWN AT THE TIME THE RECOMMENDATION IS MADE, WITHOUT
27 PLACING THE PRODUCER'S OR THE INSURER'S FINANCIAL INTEREST AHEAD OF THE
28 CONSUMER'S INTEREST. THE PRODUCER HAS ACTED IN THE BEST INTEREST OF THE
29 CONSUMER IF THE PRODUCER HAS SATISFIED THE OBLIGATIONS REGARDING CARE,
30 DISCLOSURE, CONFLICT OF INTEREST AND DOCUMENTATION PRESCRIBED IN THIS
31 SECTION.

32 B. TO SATISFY THE CARE OBLIGATION, IN MAKING A RECOMMENDATION, THE
33 PRODUCER SHALL EXERCISE REASONABLE DILIGENCE, CARE AND SKILL TO DO ALL OF
34 THE FOLLOWING:

35 1. KNOW THE CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND
36 FINANCIAL OBJECTIVES.

37 2. UNDERSTAND THE AVAILABLE RECOMMENDATION OPTIONS AFTER MAKING A
38 REASONABLE INQUIRY INTO OPTIONS AVAILABLE TO THE PRODUCER.

39 3. HAVE A REASONABLE BASIS TO BELIEVE BOTH OF THE FOLLOWING:

40 (a) THE RECOMMENDED OPTION EFFECTIVELY ADDRESSES THE CONSUMER'S
41 FINANCIAL SITUATION, INSURANCE NEEDS AND FINANCIAL OBJECTIVES OVER THE
42 LIFE OF THE PRODUCT, AS EVALUATED IN LIGHT OF THE CONSUMER PROFILE
43 INFORMATION.

1 (b) THE CONSUMER WOULD BENEFIT FROM CERTAIN FEATURES OF THE
2 ANNUITY, SUCH AS ANNUITIZATION, DEATH OR LIVING BENEFITS OR OTHER
3 INSURANCE-RELATED FEATURES.

4 4. COMMUNICATE THE BASIS OR BASES OF THE RECOMMENDATION.

5 5. MAKE REASONABLE EFFORTS TO OBTAIN CONSUMER PROFILE INFORMATION
6 FROM THE CONSUMER BEFORE THE RECOMMENDATION OF AN ANNUITY.

7 6. CONSIDER THE TYPES OF PRODUCTS THE PRODUCER IS AUTHORIZED AND
8 LICENSED TO RECOMMEND OR SELL THAT ADDRESS THE CONSUMER'S FINANCIAL
9 SITUATION, INSURANCE NEEDS AND FINANCIAL OBJECTIVES. THE PRODUCER:

10 (a) IS NOT REQUIRED TO ANALYZE OR CONSIDER ANY PRODUCT OUTSIDE THE
11 PRODUCER'S AUTHORITY AND LICENSE OR OTHER POSSIBLE ALTERNATIVE PRODUCTS OR
12 STRATEGIES THAT ARE AVAILABLE IN THE MARKET AT THE TIME OF RECOMMENDATION.

13 (b) SHALL BE HELD TO STANDARDS THAT APPLY TO PRODUCERS WITH SIMILAR
14 AUTHORITY AND LICENSURE.

15 7. IN THE CASE OF AN EXCHANGE OR REPLACEMENT OF AN ANNUITY,
16 CONSIDER THE WHOLE TRANSACTION, INCLUDING TAKING INTO CONSIDERATION
17 WHETHER:

18 (a) THE CONSUMER WILL INCUR A SURRENDER CHARGE, BE SUBJECT TO THE
19 COMMENCEMENT OF A NEW SURRENDER PERIOD, LOSE EXISTING BENEFITS, SUCH AS
20 DEATH, LIVING OR OTHER CONTRACTUAL BENEFITS, OR BE SUBJECT TO INCREASED
21 FEES, INVESTMENT ADVISORY FEES OR CHARGES FOR RIDERS AND SIMILAR PRODUCT
22 ENHANCEMENTS.

23 (b) THE REPLACING PRODUCT WOULD SUBSTANTIALLY BENEFIT THE CONSUMER
24 IN COMPARISON TO THE REPLACED PRODUCT OVER THE LIFE OF THE PRODUCT.

25 (c) THE CONSUMER HAS HAD ANOTHER ANNUITY EXCHANGE OR REPLACEMENT
26 AND, IN PARTICULAR, AN EXCHANGE OR REPLACEMENT WITHIN THE PRECEDING SIXTY
27 MONTHS.

28 C. THE REQUIREMENTS UNDER THE BEST INTEREST AND CARE OBLIGATIONS
29 UNDER SUBSECTIONS A AND B OF THIS SECTION DO NOT CREATE A FIDUCIARY
30 OBLIGATION OR RELATIONSHIP AND ONLY CREATE A REGULATORY OBLIGATION AS
31 ESTABLISHED IN THIS ARTICLE.

32 D. THE REQUIREMENTS UNDER THE CARE OBLIGATION UNDER SUBSECTION B OF
33 THIS SECTION:

34 1. APPLY TO THE PARTICULAR ANNUITY AS A WHOLE AND THE UNDERLYING
35 SUBACCOUNTS TO WHICH FUNDS ARE ALLOCATED AT THE TIME OF PURCHASE OR
36 EXCHANGE OF AN ANNUITY, AND RIDERS AND SIMILAR PRODUCT ENHANCEMENTS, IF
37 ANY.

38 2. DO NOT MEAN THE ANNUITY WITH THE LOWEST ONETIME OR MULTIPLE
39 OCCURRENCE COMPENSATION STRUCTURE SHALL NECESSARILY BE RECOMMENDED.

40 3. DO NOT MEAN THE PRODUCER HAS ONGOING MONITORING OBLIGATIONS
41 UNDER THE CARE OBLIGATION UNDER SUBSECTION B OF THIS SECTION, ALTHOUGH
42 SUCH AN OBLIGATION MAY BE SEPARATELY OWED UNDER THE TERMS OF A FIDUCIARY,
43 CONSULTING, INVESTMENT ADVISING OR FINANCIAL PLANNING AGREEMENT BETWEEN
44 THE CONSUMER AND THE PRODUCER.

1 4. DO NOT REQUIRE A PRODUCER TO OBTAIN ANY LICENSE OTHER THAN A
2 PRODUCER LICENSE WITH THE APPROPRIATE LINE OF AUTHORITY TO SELL, SOLICIT
3 OR NEGOTIATE INSURANCE IN THIS STATE, INCLUDING ANY SECURITIES LICENSE, IN
4 ORDER TO FULFILL THE DUTIES AND OBLIGATIONS CONTAINED IN THIS ARTICLE IF
5 THE PRODUCER DOES NOT GIVE ADVICE OR PROVIDE SERVICES THAT ARE OTHERWISE
6 SUBJECT TO SECURITIES LAWS OR ENGAGE IN ANY OTHER ACTIVITY REQUIRING OTHER
7 PROFESSIONAL LICENSES.

8 E. UNDER THE CARE OBLIGATION UNDER SUBSECTION B OF THIS SECTION,
9 THE CONSUMER PROFILE INFORMATION, CHARACTERISTICS OF THE INSURER AND
10 PRODUCT COSTS, RATES, BENEFITS AND FEATURES ARE THOSE FACTORS GENERALLY
11 RELEVANT IN MAKING A DETERMINATION WHETHER AN ANNUITY EFFECTIVELY
12 ADDRESSES THE CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND
13 FINANCIAL OBJECTIVES, BUT THE LEVEL OF IMPORTANCE OF EACH FACTOR UNDER THE
14 CARE OBLIGATION UNDER SUBSECTION B OF THIS SECTION MAY VARY DEPENDING ON
15 THE FACTS AND CIRCUMSTANCES OF A PARTICULAR CASE, AND EACH FACTOR MAY NOT
16 BE CONSIDERED IN ISOLATION.

17 F. TO SATISFY THE DISCLOSURE OBLIGATION, BEFORE THE RECOMMENDATION
18 OR SALE OF AN ANNUITY, THE PRODUCER SHALL PROMINENTLY DISCLOSE THE
19 FOLLOWING INFORMATION TO THE CONSUMER ON A FORM SUBSTANTIALLY SIMILAR TO
20 THE "INSURANCE AGENT (PRODUCER) DISCLOSURE FOR ANNUITIES" FORM IN APPENDIX
21 A OF THE 2020 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS SUITABILITY
22 IN ANNUITY TRANSACTIONS MODEL REGULATION:

23 1. A DESCRIPTION OF THE SCOPE AND TERMS OF THE RELATIONSHIP WITH
24 THE CONSUMER AND THE ROLE OF THE PRODUCER IN THE TRANSACTION.

25 2. AN AFFIRMATIVE STATEMENT ON WHETHER THE PRODUCER IS LICENSED AND
26 AUTHORIZED TO SELL THE FOLLOWING PRODUCTS:

- 27 (a) FIXED ANNUITIES.
- 28 (b) FIXED INDEXED ANNUITIES.
- 29 (c) VARIABLE ANNUITIES.
- 30 (d) LIFE INSURANCE.
- 31 (e) MUTUAL FUNDS.
- 32 (f) STOCKS AND BONDS.
- 33 (g) CERTIFICATES OF DEPOSIT.

34 3. AN AFFIRMATIVE STATEMENT DESCRIBING THE INSURERS FOR WHICH THE
35 PRODUCER IS AUTHORIZED, CONTRACTED OR APPOINTED OR OTHERWISE ABLE TO SELL
36 INSURANCE PRODUCTS, USING THE FOLLOWING DESCRIPTIONS:

- 37 (a) ONE INSURER.
- 38 (b) FROM TWO OR MORE INSURERS.
- 39 (c) FROM TWO OR MORE INSURERS ALTHOUGH PRIMARILY CONTRACTED WITH
40 ONE INSURER.

41 4. A DESCRIPTION OF THE SOURCES AND TYPES OF CASH COMPENSATION AND
42 NONCASH COMPENSATION TO BE RECEIVED BY THE PRODUCER, INCLUDING WHETHER THE
43 PRODUCER IS TO BE COMPENSATED FOR THE SALE OF A RECOMMENDED ANNUITY BY
44 COMMISSION AS PART OF A PREMIUM OR OTHER REMUNERATION RECEIVED FROM THE

1 INSURER, INTERMEDIARY OR OTHER PRODUCER OR BY FEE AS A RESULT OF A
2 CONTRACT FOR ADVICE OR CONSULTING SERVICES.

3 5. A NOTICE OF THE CONSUMER'S RIGHT TO REQUEST ADDITIONAL
4 INFORMATION REGARDING CASH COMPENSATION. ON REQUEST OF THE CONSUMER OR
5 THE CONSUMER'S DESIGNATED REPRESENTATIVE, THE PRODUCER SHALL DISCLOSE BOTH
6 OF THE FOLLOWING:

7 (a) A REASONABLE ESTIMATE OF THE AMOUNT OF CASH COMPENSATION TO BE
8 RECEIVED BY THE PRODUCER, WHICH MAY BE STATED AS A RANGE OF AMOUNTS OR
9 PERCENTAGES.

10 (b) WHETHER THE CASH COMPENSATION IS A ONETIME OR MULTIPLE
11 OCCURRENCE AMOUNT AND, IF A MULTIPLE OCCURRENCE AMOUNT, THE FREQUENCY AND
12 AMOUNT OF THE OCCURRENCE, WHICH MAY BE STATED AS A RANGE OF AMOUNTS OR
13 PERCENTAGES.

14 G. THE DISCLOSURE OBLIGATION UNDER SUBSECTION F OF THIS SECTION
15 REQUIRES THAT BEFORE OR AT THE TIME OF THE RECOMMENDATION OR SALE OF AN
16 ANNUITY, THE PRODUCER SHALL HAVE A REASONABLE BASIS TO BELIEVE THE
17 CONSUMER HAS BEEN INFORMED OF VARIOUS FEATURES OF THE ANNUITY, SUCH AS THE
18 POTENTIAL SURRENDER PERIOD AND SURRENDER CHARGE, POTENTIAL TAX PENALTY IF
19 THE CONSUMER SELLS, EXCHANGES, SURRENDERS OR ANNUITIZES THE ANNUITY,
20 MORTALITY AND EXPENSE FEES, INVESTMENT ADVISORY FEES, ANY ANNUAL FEES,
21 POTENTIAL CHARGES FOR AND FEATURES OF RIDERS OR OTHER OPTIONS OF THE
22 ANNUITY, LIMITS ON INTEREST RETURNS, POTENTIAL CHANGES IN NONGUARANTEED
23 ELEMENTS OF THE ANNUITY, INSURANCE AND INVESTMENT COMPONENTS AND MARKET
24 RISK.

25 H. TO SATISFY THE CONFLICT OF INTEREST OBLIGATION, THE PRODUCER
26 SHALL IDENTIFY AND AVOID OR REASONABLY MANAGE AND DISCLOSE MATERIAL
27 CONFLICTS OF INTEREST, INCLUDING MATERIAL CONFLICTS OF INTEREST RELATED TO
28 AN OWNERSHIP INTEREST.

29 I. TO SATISFY THE DOCUMENTATION OBLIGATION, THE PRODUCER AT THE
30 TIME OF RECOMMENDATION OR SALE SHALL:

31 1. MAKE A WRITTEN RECORD OF ANY RECOMMENDATION AND THE BASIS FOR
32 THE RECOMMENDATION SUBJECT TO THIS ARTICLE.

33 2. OBTAIN A CONSUMER-SIGNED STATEMENT ON A FORM SUBSTANTIALLY
34 SIMILAR TO "THE CONSUMER REFUSAL TO PROVIDE INFORMATION" FORM IN APPENDIX
35 B OF THE 2020 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS SUITABILITY
36 IN ANNUITY TRANSACTIONS MODEL REGULATION DOCUMENTING BOTH:

37 (a) A CUSTOMER'S REFUSAL TO PROVIDE THE CONSUMER PROFILE
38 INFORMATION, IF ANY.

39 (b) A CUSTOMER'S UNDERSTANDING OF THE RAMIFICATIONS OF NOT
40 PROVIDING THE CONSUMER PROFILE INFORMATION OR PROVIDING INSUFFICIENT
41 CONSUMER PROFILE INFORMATION.

42 3. OBTAIN A CONSUMER-SIGNED STATEMENT ON A FORM SUBSTANTIALLY
43 SIMILAR TO THE "CONSUMER DECISION TO PURCHASE AN ANNUITY NOT BASED ON A
44 RECOMMENDATION" FORM IN APPENDIX C OF THE 2020 NATIONAL ASSOCIATION OF
45 INSURANCE COMMISSIONERS SUITABILITY IN ANNUITY TRANSACTIONS MODEL

1 REGULATION ACKNOWLEDGING THE ANNUITY TRANSACTION IS NOT RECOMMENDED IF A
2 CUSTOMER DECIDES TO ENTER INTO AN ANNUITY TRANSACTION THAT IS NOT BASED ON
3 THE PRODUCER'S RECOMMENDATION.

4 J. ANY REQUIREMENT APPLICABLE TO A PRODUCER UNDER SUBSECTIONS A, B,
5 C, D, E, F, G, H AND I OF THIS SECTION APPLIES TO EVERY PRODUCER WHO HAS
6 EXERCISED MATERIAL CONTROL OR INFLUENCE IN THE MAKING OF A RECOMMENDATION
7 AND HAS RECEIVED DIRECT COMPENSATION AS A RESULT OF THE RECOMMENDATION OR
8 SALE, REGARDLESS OF WHETHER THE PRODUCER HAS HAD ANY DIRECT CONTACT WITH
9 THE CONSUMER. ACTIVITIES SUCH AS THE FOLLOWING DO NOT IN AND OF
10 THEMSELVES CONSTITUTE MATERIAL CONTROL OR INFLUENCE:

- 11 1. PROVIDING OR DELIVERING MARKETING OR EDUCATIONAL MATERIAL.
- 12 2. PRODUCT WHOLESALING OR OTHER BACK-OFFICE PRODUCT SUPPORT.
- 13 3. GENERAL SUPERVISION OF A PRODUCER.

14 K. AN INSURER'S ISSUANCE OF AN ANNUITY SUBJECT TO THIS SUBSECTION
15 SHALL BE REASONABLE UNDER ALL THE CIRCUMSTANCES ACTUALLY KNOWN TO THE
16 INSURER AT THE TIME THE ANNUITY IS ISSUED. A PRODUCER HAS NO OTHER
17 OBLIGATION UNDER SUBSECTIONS A, B, C, D AND E OF THIS SECTION TO A
18 CONSUMER RELATED TO AN ANNUITY TRANSACTION IF:

- 19 1. NO RECOMMENDATION IS MADE.
- 20 2. A RECOMMENDATION WAS MADE THAT WAS LATER FOUND TO HAVE BEEN
21 PREPARED BASED ON MATERIALLY INACCURATE INFORMATION PROVIDED BY THE
22 CONSUMER.
- 23 3. THE CONSUMER REFUSES TO PROVIDE RELEVANT CONSUMER PROFILE
24 INFORMATION AND THE ANNUITY TRANSACTION IS NOT RECOMMENDED.
- 25 4. THE CONSUMER DECIDES TO ENTER INTO AN ANNUITY TRANSACTION THAT
26 IS NOT BASED ON A RECOMMENDATION BY THE PRODUCER.

27 L. EXCEPT AS ALLOWED UNDER THIS SUBSECTION, AN INSURER MAY NOT
28 ISSUE AN ANNUITY RECOMMENDED TO A CONSUMER UNLESS THERE IS A REASONABLE
29 BASIS TO BELIEVE THE ANNUITY WOULD EFFECTIVELY ADDRESS THE PARTICULAR
30 CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND FINANCIAL OBJECTIVES
31 BASED ON THE CONSUMER'S CONSUMER PROFILE INFORMATION. EACH INSURER SHALL
32 ESTABLISH AND MAINTAIN A SUPERVISION SYSTEM THAT IS REASONABLY DESIGNED TO
33 ACHIEVE THE INSURER'S AND ITS PRODUCERS' COMPLIANCE WITH THIS ARTICLE AND
34 THAT INCLUDES THE FOLLOWING:

- 35 1. REASONABLE PROCEDURES TO INFORM ITS PRODUCERS OF THE
36 REQUIREMENTS OF THIS ARTICLE, INCLUDING INCORPORATING THE REQUIREMENTS OF
37 THIS ARTICLE IN RELEVANT PRODUCER TRAINING MANUALS.
- 38 2. STANDARDS FOR PRODUCER PRODUCT TRAINING, INCLUDING ESTABLISHING
39 AND MAINTAINING REASONABLE PROCEDURES TO ENSURE COMPLIANCE WITH SECTION
40 20-1243.07.
- 41 3. PRODUCT-SPECIFIC TRAINING AND TRAINING MATERIALS THAT EXPLAIN
42 ALL MATERIAL FEATURES OF ITS ANNUITY PRODUCTS TO ITS PRODUCERS.
- 43 4. PROCEDURES FOR REVIEWING EACH RECOMMENDATION BEFORE ISSUING AN
44 ANNUITY THAT ARE DESIGNED TO ENSURE THERE IS A REASONABLE BASIS TO
45 DETERMINE THAT THE RECOMMENDED ANNUITY WOULD EFFECTIVELY ADDRESS THE

1 PARTICULAR CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND FINANCIAL
2 OBJECTIVES. THE REVIEW PROCEDURES MAY APPLY A SCREENING SYSTEM FOR THE
3 PURPOSE OF IDENTIFYING SELECTED TRANSACTIONS FOR ADDITIONAL REVIEW AND MAY
4 BE ACCOMPLISHED ELECTRONICALLY OR THROUGH OTHER MEANS, INCLUDING PHYSICAL
5 REVIEW. THE ELECTRONIC SYSTEM OR OTHER SYSTEM MAY BE DESIGNED TO REQUIRE
6 ADDITIONAL REVIEW OF ONLY THOSE TRANSACTIONS THAT ARE IDENTIFIED FOR
7 ADDITIONAL REVIEW BY THE SELECTION CRITERIA.

8 5. REASONABLE PROCEDURES TO DETECT RECOMMENDATIONS THAT DO NOT
9 COMPLY WITH SUBSECTIONS A, B, C, D, E, F, G, H, I, J, K, O AND P OF THIS
10 SECTION, INCLUDING CONFIRMATION OF THE CONSUMER'S CONSUMER PROFILE
11 INFORMATION, SYSTEMATIC CUSTOMER SURVEYS, PRODUCER AND CONSUMER
12 INTERVIEWS, CONFIRMATION LETTERS, PRODUCER STATEMENTS OR ATTESTATIONS AND
13 PROGRAMS OF INTERNAL MONITORING. THIS PARAGRAPH DOES NOT PREVENT AN
14 INSURER FROM COMPLYING WITH THIS PARAGRAPH BY APPLYING SAMPLING PROCEDURES
15 OR BY CONFIRMING THE CONSUMER PROFILE INFORMATION OR OTHER REQUIRED
16 INFORMATION UNDER THIS SECTION AFTER ISSUING OR DELIVERING THE ANNUITY.

17 6. REASONABLE PROCEDURES TO ASSESS, BEFORE OR ON ISSUANCE OR
18 DELIVERY OF AN ANNUITY, WHETHER A PRODUCER HAS PROVIDED TO THE CONSUMER
19 THE INFORMATION REQUIRED TO BE PROVIDED UNDER THIS SECTION.

20 7. REASONABLE PROCEDURES TO IDENTIFY AND ADDRESS SUSPICIOUS
21 CONSUMER REFUSALS TO PROVIDE CONSUMER PROFILE INFORMATION.

22 8. REASONABLE PROCEDURES TO IDENTIFY AND ELIMINATE ANY SALES
23 CONTESTS, SALES QUOTAS, BONUSES AND NONCASH COMPENSATION THAT ARE BASED ON
24 THE SALES OF SPECIFIC ANNUITIES WITHIN A LIMITED PERIOD OF TIME. THIS
25 PARAGRAPH DOES NOT PROHIBIT THE RECEIPT OF HEALTH INSURANCE, OFFICE RENT,
26 OFFICE SUPPORT, RETIREMENT BENEFITS OR OTHER EMPLOYEE BENEFITS BY
27 EMPLOYEES SO LONG AS THOSE BENEFITS ARE NOT BASED ON THE VOLUME OF SALES
28 OF A SPECIFIC ANNUITY WITHIN A LIMITED PERIOD OF TIME.

29 9. A WRITTEN ANNUAL REPORT TO SENIOR MANAGEMENT, INCLUDING TO THE
30 SENIOR MANAGER RESPONSIBLE FOR AUDIT FUNCTIONS, THAT DETAILS A REVIEW WITH
31 APPROPRIATE TESTING AND THAT IS REASONABLY DESIGNED TO DETERMINE THE
32 EFFECTIVENESS OF THE SUPERVISION SYSTEM, THE EXCEPTIONS FOUND AND
33 CORRECTIVE ACTION TAKEN OR RECOMMENDED, IF ANY.

34 M. AN INSURER MAY CONTRACT FOR PERFORMANCE OF A FUNCTION, INCLUDING
35 MAINTENANCE OF PROCEDURES, REQUIRED UNDER SUBSECTION L OF THIS SECTION BUT
36 IS RESPONSIBLE FOR TAKING APPROPRIATE CORRECTIVE ACTION AND MAY BE SUBJECT
37 TO SANCTIONS AND PENALTIES PURSUANT TO SECTION 20-1243.05 REGARDLESS OF
38 WHETHER THE INSURER CONTRACTS FOR PERFORMANCE OF A FUNCTION AND REGARDLESS
39 OF THE INSURER'S COMPLIANCE WITH PARAGRAPHS 1 AND 2 OF THIS SUBSECTION.
40 AN INSURER'S SUPERVISION SYSTEM UNDER THIS SUBSECTION SHALL INCLUDE
41 SUPERVISION OF CONTRACTUAL PERFORMANCE UNDER THIS SUBSECTION BY
42 INCORPORATING AT LEAST BOTH OF THE FOLLOWING:

43 1. MONITORING AND, AS APPROPRIATE, CONDUCTING AUDITS TO ENSURE THAT
44 THE CONTRACTED FUNCTION IS PROPERLY PERFORMED.

1 2. ANNUALLY OBTAINING A CERTIFICATION FROM A SENIOR MANAGER WHO HAS
2 RESPONSIBILITY FOR THE CONTRACTED FUNCTION THAT THE MANAGER HAS A
3 REASONABLE BASIS TO REPRESENT, AND DOES REPRESENT, THAT THE FUNCTION IS
4 PROPERLY PERFORMED.

5 N. AN INSURER IS NOT REQUIRED TO INCLUDE IN ITS SYSTEM OF
6 SUPERVISION:

7 1. A PRODUCER'S RECOMMENDATIONS TO CONSUMERS OF PRODUCTS OTHER THAN
8 THE ANNUITIES OFFERED BY THE INSURER.

9 2. CONSIDERATION OF OR COMPARISON TO OPTIONS AVAILABLE TO THE
10 PRODUCER OR COMPENSATION RELATING TO THOSE OPTIONS OTHER THAN ANNUITIES OR
11 OTHER PRODUCTS OFFERED BY THE INSURER.

12 O. A PRODUCER OR AN INSURER MAY NOT DISSUADE, OR ATTEMPT TO
13 DISSUADE, A CONSUMER FROM:

14 1. TRUTHFULLY RESPONDING TO AN INSURER'S REQUEST FOR CONFIRMATION
15 OF THE CONSUMER PROFILE INFORMATION.

16 2. FILING A COMPLAINT.

17 3. COOPERATING WITH THE INVESTIGATION OF A COMPLAINT.

18 P. RECOMMENDATIONS AND SALES OF ANNUITIES THAT COMPLY WITH
19 COMPARABLE STANDARDS SATISFY THE REQUIREMENTS UNDER THIS ARTICLE. THIS
20 SUBSECTION APPLIES TO ALL RECOMMENDATIONS AND SALES OF ANNUITIES MADE BY
21 FINANCIAL PROFESSIONALS IN COMPLIANCE WITH BUSINESS RULES, CONTROLS AND
22 PROCEDURES THAT SATISFY A COMPARABLE STANDARD EVEN IF SUCH A STANDARD
23 WOULD NOT OTHERWISE APPLY TO THE PRODUCT OR RECOMMENDATION AT ISSUE. THIS
24 SUBSECTION DOES NOT LIMIT THE DIRECTOR'S ABILITY TO INVESTIGATE AND
25 ENFORCE THIS ARTICLE OR LIMIT THE INSURER'S OBLIGATION TO COMPLY WITH ITS
26 OBLIGATION UNDER SUBSECTION L OF THIS SECTION NOT TO ISSUE AN ANNUITY
27 RECOMMENDED TO A CONSUMER UNLESS THERE IS A REASONABLE BASIS TO BELIEVE
28 THE ANNUITY WOULD EFFECTIVELY ADDRESS THE PARTICULAR CONSUMER'S FINANCIAL
29 SITUATION, INSURANCE NEEDS AND FINANCIAL OBJECTIVES BASED ON THE
30 CONSUMER'S CONSUMER PROFILE INFORMATION, ALTHOUGH THE INSURER MAY BASE ITS
31 ANALYSIS ON INFORMATION RECEIVED FROM EITHER THE FINANCIAL PROFESSIONAL OR
32 THE ENTITY SUPERVISING THE FINANCIAL PROFESSIONAL. AN INSURER COMPLIES
33 WITH THIS SUBSECTION IF THE INSURER DOES ALL OF THE FOLLOWING:

34 1. MONITORS THE RELEVANT CONDUCT OF THE FINANCIAL PROFESSIONAL
35 SEEKING TO RELY ON THIS SUBSECTION OR THE ENTITY RESPONSIBLE FOR
36 SUPERVISING THE FINANCIAL PROFESSIONAL, SUCH AS THE FINANCIAL
37 PROFESSIONAL'S BROKER-DEALER OR AN INVESTMENT ADVISER REGISTERED UNDER
38 FEDERAL OR STATE SECURITIES LAWS USING INFORMATION COLLECTED IN THE NORMAL
39 COURSE OF AN INSURER'S BUSINESS.

40 2. PROVIDES TO THE ENTITY RESPONSIBLE FOR SUPERVISING THE FINANCIAL
41 PROFESSIONAL SEEKING TO RELY ON THIS SUBSECTION, SUCH AS THE FINANCIAL
42 PROFESSIONAL'S BROKER-DEALER OR INVESTMENT ADVISER REGISTERED UNDER
43 FEDERAL OR STATE SECURITIES LAWS, INFORMATION AND REPORTS THAT ARE
44 REASONABLY APPROPRIATE TO ASSIST THE ENTITY TO MAINTAIN ITS SUPERVISION
45 SYSTEM.

1 Q. FOR THE PURPOSES OF THIS SECTION:

2 1. "COMPARABLE STANDARDS" MEANS:

3 (a) WITH RESPECT TO BROKER-DEALERS AND REGISTERED REPRESENTATIVES
4 OF BROKER-DEALERS, APPLICABLE SEC AND FINRA RULES RELATING TO BEST
5 INTEREST OBLIGATIONS AND SUPERVISION OF ANNUITY RECOMMENDATIONS AND SALES,
6 INCLUDING REGULATION BEST INTEREST AND ANY AMENDMENTS OR SUCCESSOR
7 REGULATIONS.

8 (b) WITH RESPECT TO INVESTMENT ADVISERS REGISTERED UNDER FEDERAL OR
9 STATE SECURITIES LAW OR INVESTMENT ADVISER REPRESENTATIVES, THE FIDUCIARY
10 DUTIES AND ALL OTHER REQUIREMENTS IMPOSED ON THE INVESTMENT ADVISERS OR
11 INVESTMENT ADVISER REPRESENTATIVES BY CONTRACT OR UNDER THE INVESTMENT
12 ADVISERS ACT OF 1940, INCLUDING THE FORM ADV AND INTERPRETATIONS.

13 (c) WITH RESPECT TO PLAN FIDUCIARIES OR OTHER FIDUCIARIES, THE
14 FIDUCIARY DUTIES, OBLIGATIONS AND PROHIBITIONS AND ALL OTHER REQUIREMENTS
15 ATTENDANT TO SUCH A STATUS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY
16 ACT OF 1974 OR THE INTERNAL REVENUE CODE AND ANY AMENDMENTS OR SUCCESSOR
17 STATUTES.

18 2. "FINANCIAL PROFESSIONAL" MEANS A PRODUCER THAT IS REGULATED AND
19 ACTING AS:

20 (a) A BROKER-DEALER REGISTERED UNDER FEDERAL OR STATE SECURITIES
21 LAWS OR A REGISTERED REPRESENTATIVE OF A BROKER-DEALER.

22 (b) AN INVESTMENT ADVISER REGISTERED UNDER FEDERAL OR STATE
23 SECURITIES LAWS OR AN INVESTMENT ADVISER REPRESENTATIVE ASSOCIATED WITH
24 THE FEDERAL OR STATE INVESTMENT ADVISER.

25 (c) A PLAN FIDUCIARY UNDER SECTION 3(21) OF THE EMPLOYEE RETIREMENT
26 INCOME SECURITY ACT OF 1974 OR SECTION 4975(e)(3) OF THE INTERNAL REVENUE
27 CODE OR ANY AMENDMENTS OR SUCCESSOR STATUTES.

28 Sec. 5. Section 20-1243.05, Arizona Revised Statutes, is amended to
29 read:

30 20-1243.05. Compliance; enforcement; penalties

31 A. AN INSURER IS RESPONSIBLE FOR COMPLIANCE WITH THIS ARTICLE. IF
32 A VIOLATION OCCURS, EITHER BECAUSE OF THE ACTION OR INACTION OF THE
33 INSURER OR ITS PRODUCER, the director may order:

34 1. ~~Am~~ THE insurer to take reasonably appropriate corrective action
35 for any consumer who is harmed by ~~the insurer's or by the insurer's~~
36 ~~insurance producer's violation of this article~~ A FAILURE TO COMPLY WITH
37 THIS ARTICLE BY THE INSURER, AN ENTITY CONTRACTED TO PERFORM THE INSURER'S
38 SUPERVISORY DUTIES OR THE PRODUCER.

39 2. ~~An insurance~~ A GENERAL AGENCY, INDEPENDENT AGENCY OR THE
40 producer to take reasonably appropriate corrective action for any consumer
41 who is harmed by ~~an insurance~~ THE producer's violation of this article.

42 3. ~~A business entity that employs or contracts with an insurance~~
43 ~~producer to sell, or solicit the sale of, annuities to consumers to take~~
44 ~~reasonably appropriate corrective action for any consumer who is harmed by~~
45 ~~the insurance producer's violation of this article.~~

1 3. APPROPRIATE PENALTIES AND SANCTIONS.

2 B. The director may reduce or eliminate any applicable penalty
3 under sections 20-220, 20-295 and 20-456 for a violation of ~~section~~
4 ~~20-1243.03, subsection A, B or D~~ THIS ARTICLE if corrective action for the
5 consumer was taken promptly after a violation was discovered OR THE
6 VIOLATION WAS NOT PART OF A PATTERN OR PRACTICE.

7 C. THE AUTHORITY TO ENFORCE COMPLIANCE WITH ARTICLE IS VESTED
8 EXCLUSIVELY WITH THE DIRECTOR.

9 Sec. 6. Section 20-1243.06, Arizona Revised Statutes, is amended to
10 read:

11 20-1243.06. Recordkeeping

12 A. Insurers, ~~managing~~ general agents, INDEPENDENT AGENCIES,
13 business entities and ~~insurance~~ producers shall maintain, or be able to
14 make available to the director, records of the information collected from
15 the consumer, DISCLOSURES MADE TO THE CONSUMER, INCLUDING SUMMARIES OF
16 ORAL DISCLOSURES, and other information used in making the recommendations
17 that were the basis for insurance transactions for at least five years ~~or~~
18 ~~until the next regular examination by the insurance regulatory authority~~
19 ~~of its state of domicile, whichever is later,~~ after the insurance
20 transaction is completed by the insurer. An insurer may BUT IS NOT
21 REQUIRED TO maintain documentation on behalf of ~~an insurance~~ A producer.

22 B. Records required to be maintained by this article may be
23 maintained in paper, photographic, microprocess, magnetic, mechanical or
24 electronic media or by any process that accurately reproduces the actual
25 document.

26 Sec. 7. Section 20-1243.07, Arizona Revised Statutes, is amended to
27 read:

28 20-1243.07. Producer training; annuities; continuing
29 education

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

36 B. Before selling, soliciting or negotiating an annuity, ~~an~~
37 ~~insurance~~ A producer with a life insurance line of authority shall
38 complete a onetime four credit-hour training course approved pursuant to
39 section 20-2904 that is provided by an education provider approved
40 pursuant to section 20-2904.

41 C. The minimum length of the training required under subsection B
42 of this section shall be sufficient to qualify for at least four
43 continuing education credit hours, but may be longer. The training
44 required under subsection B of this section shall include information on
45 the following topics:

- 1 1. Types of annuities and various classifications of annuities.
- 2 2. Identification of the parties to an annuity.
- 3 3. How product-specific annuity contract features affect consumers.
- 4 4. The application of income taxation of qualified and nonqualified
- 5 annuities.
- 6 5. The primary uses of annuities.
- 7 6. Appropriate **STANDARD OF CONDUCT**, sales practices, replacement
- 8 requirements and disclosure requirements.

9 D. A provider of an annuity training course intended to comply with
10 this section shall cover all topics listed in subsection C of this section
11 and may not present any marketing information, provide training on sales
12 techniques or provide specific information about a particular insurer's
13 products. Additional topics may be offered in conjunction with and in
14 addition to the topics listed in subsection C of this section. A provider
15 of an annuity training course intended to comply with this section shall
16 register as a continuing education provider in this state and shall comply
17 with the rules and guidelines applicable to ~~insurance~~ producer continuing
18 education courses required by chapter 18 of this title. A provider of an
19 annuity training course shall comply with the reporting requirements and
20 shall issue a certificate of completion in accordance with chapter 18 of
21 this title.

22 E. Annuity training courses may be conducted and completed by
23 classroom or self-study methods in accordance with chapter 18 of this
24 title and any rules of the department. Satisfactory completion of the
25 training requirements of another state that are substantially similar to
26 the provisions of this section satisfy the training requirements of this
27 section. **SATISFACTORY COMPLETION OF THE COMPONENTS OF THE TRAINING**
28 **REQUIREMENTS OF ANY COURSE OR COURSES WITH COMPONENTS THAT ARE**
29 **SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS PRESCRIBED IN THIS SECTION**
30 **SATISFY THE TRAINING REQUIREMENTS OF THIS SECTION.**

31 F. An insurer shall verify that ~~an insurance~~ A producer has
32 completed the annuity training course **REQUIRED UNDER THIS SECTION** before
33 allowing the producer to sell an annuity product for that insurer. An
34 insurer may satisfy its responsibility under this subsection by obtaining
35 certificates of completion of the annuity training course or obtaining
36 reports provided by department-sponsored database systems or vendors or
37 from a reasonably reliable commercial database vendor that has a reporting
38 arrangement with approved insurance education providers.

39 Sec. 8. Insurance producers; annuity training courses;
40 requirements; delayed repeal

41 A. An insurance producer who, before the effective date of this
42 act, has completed an annuity training course pursuant to section
43 20-1243.07, Arizona Revised Statutes, within six months after the
44 effective date of this act shall complete either:

- 1 1. A new four credit hour annuity training course approved by the
2 director of the department of insurance and financial institutions after
3 the effective date of this act.
- 4 2. An additional onetime one credit hour annuity training course,
5 approved by the department of insurance and financial institutions and
6 provided by an education provider approved by the department, on
7 appropriate sales practices, replacement and disclosure requirements
8 prescribed in title 20, chapter 6, article 1.3, Arizona Revised Statutes,
9 as amended by this act
- 10 B. This section is repealed from after December 31, 2021.
- 11 Sec. 9. Effective date
- 12 This act is effective from and after December 31, 2020.

APPROVED BY THE GOVERNOR JUNE 5, 2020.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 5, 2020.