

REFERENCE TITLE: *annuity transactions; requirements*

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

SB 1557

Introduced by
Senator Livingston

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 ALL OF 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 ~~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.

(e) USED IN A FINANCED PURCHASE.

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

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

20-1243.01. Scope and limitation of article

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

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

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

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

Sec. 3. Repeal

Section 20-1243.03, Arizona Revised Statutes, is repealed.

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

20-1243.03. Duties of insurers and producers; definitions

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

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

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

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

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

(a) THE RECOMMENDED OPTION EFFECTIVELY ADDRESSES THE CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND FINANCIAL OBJECTIVES OVER THE LIFE OF THE PRODUCT, AS EVALUATED IN LIGHT OF THE CONSUMER PROFILE INFORMATION. THE REQUIREMENTS UNDER THIS SUBDIVISION INCLUDE MAKING REASONABLE EFFORTS TO OBTAIN CONSUMER PROFILE INFORMATION FROM THE CONSUMER BEFORE RECOMMENDING AN ANNUITY.

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

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

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

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

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

(a) 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.

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

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

C. THE REQUIREMENTS UNDER THIS SECTION:

1. DO NOT CREATE A FIDUCIARY OBLIGATION OR RELATIONSHIP AND ONLY CREATE A REGULATORY OBLIGATION AS ESTABLISHED IN THIS SECTION.

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

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

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

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

1 D. THE CONSUMER PROFILE INFORMATION, CHARACTERISTICS OF THE INSURER
2 AND PRODUCT COSTS, RATES, BENEFITS AND FEATURES ARE THOSE FACTORS
3 GENERALLY RELEVANT IN MAKING A DETERMINATION WHETHER AN ANNUITY
4 EFFECTIVELY ADDRESSES THE CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS
5 AND FINANCIAL OBJECTIVES, BUT THE LEVEL OF IMPORTANCE OF EACH FACTOR UNDER
6 THE CARE OBLIGATION UNDER SUBSECTION B OF THIS SECTION MAY VARY DEPENDING
7 ON THE FACTS AND CIRCUMSTANCES OF A PARTICULAR CASE, AND EACH FACTOR MAY
8 NOT BE CONSIDERED IN ISOLATION.

9 E. BEFORE THE RECOMMENDATION OR SALE OF AN ANNUITY, THE PRODUCER
10 SHALL PROMINENTLY DISCLOSE THE FOLLOWING INFORMATION TO THE CONSUMER ON A
11 FORM SUBSTANTIALLY SIMILAR TO THE "INSURANCE AGENT (PRODUCER) DISCLOSURE
12 FOR ANNUITIES" FORM IN APPENDIX A OF THE 2020 NATIONAL ASSOCIATION OF
13 INSURANCE COMMISSIONERS SUITABILITY IN ANNUITY TRANSACTIONS MODEL
14 REGULATION:

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

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

- 19 (a) FIXED ANNUITIES.
- 20 (b) FIXED INDEXED ANNUITIES.
- 21 (c) VARIABLE ANNUITIES.
- 22 (d) LIFE INSURANCE.
- 23 (e) MUTUAL FUNDS.
- 24 (f) STOCKS AND BONDS.
- 25 (g) CERTIFICATES OF DEPOSIT.

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

- 29 (a) ONE INSURER.
- 30 (b) FROM TWO OR MORE INSURERS.
- 31 (c) FROM TWO OR MORE INSURERS ALTHOUGH PRIMARILY CONTRACTED WITH
32 ONE INSURER.

33 4. A DESCRIPTION OF THE SOURCES AND TYPES OF CASH COMPENSATION AND
34 NONCASH COMPENSATION TO BE RECEIVED BY THE PRODUCER, INCLUDING WHETHER THE
35 PRODUCER IS TO BE COMPENSATED FOR THE SALE OF A RECOMMENDED ANNUITY BY
36 COMMISSION AS PART OF A PREMIUM OR OTHER REMUNERATION RECEIVED FROM THE
37 INSURER, INTERMEDIARY OR OTHER PRODUCER OR BY FEE AS A RESULT OF A
38 CONTRACT FOR ADVICE OR CONSULTING SERVICES.

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

- 43 (a) A REASONABLE ESTIMATE OF THE AMOUNT OF CASH COMPENSATION TO BE
44 RECEIVED BY THE PRODUCER, WHICH MAY BE STATED AS A RANGE OF AMOUNTS OR
45 PERCENTAGES.

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

F. BEFORE OR AT THE TIME OF THE RECOMMENDATION OR SALE OF AN ANNUITY, THE PRODUCER SHALL HAVE A REASONABLE BASIS TO BELIEVE THE CONSUMER HAS BEEN 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, ANY ANNUAL FEES, POTENTIAL CHARGES FOR AND FEATURES OF RIDERS OR OTHER OPTIONS OF THE ANNUITY, LIMITS ON INTEREST RETURNS, POTENTIAL CHANGES IN NONGUARANTEED ELEMENTS OF THE ANNUITY, INSURANCE AND INVESTMENT COMPONENTS AND MARKET RISK.

G. THE PRODUCER SHALL IDENTIFY AND AVOID OR REASONABLY MANAGE AND DISCLOSE MATERIAL CONFLICTS OF INTEREST, INCLUDING MATERIAL CONFLICTS OF INTEREST RELATED TO AN OWNERSHIP INTEREST.

H. THE PRODUCER AT THE TIME OF RECOMMENDATION OR SALE SHALL:

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

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

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

(b) A CUSTOMER'S UNDERSTANDING OF THE RAMIFICATION OF NOT PROVIDING THE CONSUMER PROFILE INFORMATION OR PROVIDING INSUFFICIENT CONSUMER PROFILE INFORMATION.

3. OBTAIN A CONSUMER-SIGNED STATEMENT ON A FORM SUBSTANTIALLY SIMILAR TO THE "CONSUMER DECISION TO PURCHASE AN ANNUITY NOT BASED ON A RECOMMENDATION" FORM IN APPENDIX C OF THE 2020 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION ACKNOWLEDGING THE ANNUITY TRANSACTION IS NOT RECOMMENDED IF A CUSTOMER DECIDES TO ENTER INTO AN ANNUITY TRANSACTION THAT IS NOT BASED ON THE PRODUCER'S RECOMMENDATION.

I. ANY REQUIREMENT APPLICABLE TO A PRODUCER UNDER THIS SECTION APPLIES TO EVERY PRODUCER WHO HAS EXERCISED MATERIAL CONTROL OR INFLUENCE IN THE MAKING OF A RECOMMENDATION AND HAS RECEIVED DIRECT COMPENSATION AS A RESULT OF THE RECOMMENDATION OR SALE, REGARDLESS OF WHETHER THE PRODUCER HAS HAD ANY DIRECT CONTACT WITH THE CONSUMER. ACTIVITIES SUCH AS THE FOLLOWING DO NOT IN AND OF THEMSELVES CONSTITUTE MATERIAL CONTROL OR INFLUENCE:

1. PROVIDING OR DELIVERING MARKETING OR EDUCATIONAL MATERIAL.

2. PRODUCT WHOLESALING OR OTHER BACK-OFFICE PRODUCT SUPPORT.

1 3. GENERAL SUPERVISION OF A PRODUCER.

2 J. AN INSURER'S ISSUANCE OF AN ANNUITY SUBJECT TO THIS SUBSECTION
3 SHALL BE REASONABLE UNDER ALL THE CIRCUMSTANCES ACTUALLY KNOWN TO THE
4 INSURER AT THE TIME THE ANNUITY IS ISSUED. A PRODUCER HAS NO OBLIGATION
5 TO A CONSUMER RELATED TO AN ANNUITY TRANSACTION IF:

6 1. NO RECOMMENDATION IS MADE.

7 2. A RECOMMENDATION WAS MADE THAT WAS LATER FOUND TO HAVE BEEN
8 PREPARED BASED ON MATERIALLY INACCURATE INFORMATION PROVIDED BY THE
9 CONSUMER.

10 3. THE CONSUMER REFUSES TO PROVIDE RELEVANT CONSUMER PROFILE
11 INFORMATION AND THE ANNUITY TRANSACTION IS NOT RECOMMENDED.

12 4. THE CONSUMER DECIDES TO ENTER INTO AN ANNUITY TRANSACTION THAT
13 IS NOT BASED ON A RECOMMENDATION BY THE PRODUCER.

14 K. EXCEPT AS ALLOWED UNDER SUBSECTION J OF THIS SECTION, AN INSURER
15 MAY NOT ISSUE AN ANNUITY RECOMMENDED TO A CONSUMER UNLESS THERE IS A
16 REASONABLE BASIS TO BELIEVE THE ANNUITY WOULD EFFECTIVELY ADDRESS THE
17 PARTICULAR CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND FINANCIAL
18 OBJECTIVES BASED ON THE CONSUMER'S CONSUMER PROFILE INFORMATION. EACH
19 INSURER SHALL ESTABLISH AND MAINTAIN A SUPERVISION SYSTEM THAT IS
20 REASONABLY DESIGNED TO ACHIEVE THE INSURER'S AND ITS PRODUCERS' COMPLIANCE
21 WITH THIS ARTICLE AND THAT INCLUDES THE FOLLOWING:

22 1. REASONABLE PROCEDURES TO INFORM ITS PRODUCERS OF THE
23 REQUIREMENTS OF THIS ARTICLE, INCLUDING INCORPORATING THE REQUIREMENTS OF
24 THIS ARTICLE IN RELEVANT PRODUCER TRAINING MANUALS.

25 2. STANDARDS FOR PRODUCER PRODUCT TRAINING, INCLUDING ESTABLISHING
26 AND MAINTAINING REASONABLE PROCEDURES TO ENSURE COMPLIANCE WITH SECTION
27 20-1243.07.

28 3. PRODUCT-SPECIFIC TRAINING AND TRAINING MATERIALS THAT EXPLAIN
29 ALL MATERIAL FEATURES OF ITS ANNUITY PRODUCTS TO ITS PRODUCERS.

30 4. PROCEDURES FOR REVIEWING EACH RECOMMENDATION BEFORE ISSUING AN
31 ANNUITY THAT ARE DESIGNED TO ENSURE THERE IS A REASONABLE BASIS TO
32 DETERMINE THAT THE RECOMMENDED ANNUITY WOULD EFFECTIVELY ADDRESS THE
33 PARTICULAR CONSUMER'S FINANCIAL SITUATION, INSURANCE NEEDS AND FINANCIAL
34 OBJECTIVES. THE REVIEW PROCEDURES MAY APPLY A SCREENING SYSTEM FOR THE
35 PURPOSE OF IDENTIFYING SELECTED TRANSACTIONS FOR ADDITIONAL REVIEW AND MAY
36 BE ACCOMPLISHED ELECTRONICALLY OR THROUGH OTHER MEANS, INCLUDING PHYSICAL
37 REVIEW. THE ELECTRONIC SYSTEM OR OTHER SYSTEM MAY BE DESIGNED TO REQUIRE
38 ADDITIONAL REVIEW OF ONLY THOSE TRANSACTIONS THAT ARE IDENTIFIED FOR
39 ADDITIONAL REVIEW BY THE SELECTION CRITERIA.

40 5. REASONABLE PROCEDURES TO DETECT RECOMMENDATIONS THAT DO NOT
41 COMPLY WITH THIS SECTION, INCLUDING CONFIRMATION OF THE CONSUMER'S
42 CONSUMER PROFILE INFORMATION, SYSTEMATIC CUSTOMER SURVEYS, PRODUCER AND
43 CONSUMER INTERVIEWS, CONFIRMATION LETTERS, PRODUCER STATEMENTS OR
44 ATTESTATIONS AND PROGRAMS OF INTERNAL MONITORING. THIS PARAGRAPH DOES NOT
45 PREVENT AN INSURER FROM COMPLYING WITH THIS PARAGRAPH BY APPLYING SAMPLING

1 PROCEDURES OR BY CONFIRMING THE CONSUMER PROFILE INFORMATION OR OTHER
2 REQUIRED INFORMATION UNDER THIS SECTION AFTER ISSUING OR DELIVERING THE
3 ANNUITY.

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

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

9 8. REASONABLE PROCEDURES TO IDENTIFY AND ELIMINATE ANY SALES
10 CONTESTS, SALES QUOTAS, BONUSES AND NONCASH COMPENSATION THAT ARE BASED ON
11 THE SALES OF SPECIFIC ANNUITIES WITHIN A LIMITED PERIOD OF TIME. THIS
12 PARAGRAPH DOES NOT PROHIBIT THE RECEIPT OF HEALTH INSURANCE, OFFICE RENT,
13 OFFICE SUPPORT, RETIREMENT BENEFITS OR OTHER EMPLOYEE BENEFITS BY
14 EMPLOYEES SO LONG AS THOSE BENEFITS ARE NOT BASED ON THE VOLUME OF SALES
15 OF A SPECIFIC ANNUITY WITHIN A LIMITED PERIOD OF TIME.

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

21 L. AN INSURER MAY CONTRACT FOR PERFORMANCE OF A FUNCTION, INCLUDING
22 MAINTENANCE OF PROCEDURES, REQUIRED UNDER SUBSECTION K OF THIS SECTION BUT
23 IS RESPONSIBLE FOR TAKING APPROPRIATE CORRECTIVE ACTION AND MAY BE SUBJECT
24 TO SANCTIONS AND PENALTIES PURSUANT TO SECTION 20-1243.05 REGARDLESS OF
25 WHETHER THE INSURER CONTRACTS FOR PERFORMANCE OF A FUNCTION AND REGARDLESS
26 OF THE INSURER'S COMPLIANCE WITH PARAGRAPH 2 OF THIS SUBSECTION. AN
27 INSURER'S SUPERVISION SYSTEM SHALL INCLUDE SUPERVISION OF CONTRACTUAL
28 PERFORMANCE BY INCORPORATING AT LEAST BOTH OF THE FOLLOWING:

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

31 2. ANNUALLY OBTAINING A CERTIFICATION FROM A SENIOR MANAGER WHO HAS
32 RESPONSIBILITY FOR THE CONTRACTED FUNCTION THAT THE MANAGER HAS A
33 REASONABLE BASIS TO REPRESENT, AND DOES REPRESENT, THAT THE FUNCTION IS
34 PROPERLY PERFORMED.

35 M. AN INSURER IS NOT REQUIRED TO INCLUDE IN ITS SYSTEM OF
36 SUPERVISION:

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

39 2. CONSIDERATION OF OR COMPARISON TO OPTIONS AVAILABLE TO THE
40 PRODUCER OR COMPENSATION RELATING TO THOSE OPTIONS OTHER THAN ANNUITIES OR
41 OTHER PRODUCTS OFFERED BY THE INSURER.

42 N. A PRODUCER OR AN INSURER MAY NOT DISSUADE, OR ATTEMPT TO
43 DISSUADE, A CONSUMER FROM:

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

1 2. FILING A COMPLAINT.

2 3. COOPERATING WITH THE INVESTIGATION OF A COMPLAINT.

3 0. RECOMMENDATIONS AND SALES OF ANNUITIES THAT COMPLY WITH
4 COMPARABLE STANDARDS SATISFY THE REQUIREMENTS UNDER THIS ARTICLE. THIS
5 SUBSECTION APPLIES TO ALL RECOMMENDATIONS AND SALES OF ANNUITIES MADE BY
6 FINANCIAL PROFESSIONALS IN COMPLIANCE WITH BUSINESS RULES, CONTROLS AND
7 PROCEDURES THAT SATISFY A COMPARABLE STANDARD EVEN IF SUCH A STANDARD
8 WOULD NOT OTHERWISE APPLY TO THE PRODUCT OR RECOMMENDATION AT ISSUE. THIS
9 SUBSECTION DOES NOT LIMIT THE DIRECTOR'S ABILITY TO INVESTIGATE AND
10 ENFORCE THIS ARTICLE OR LIMIT THE INSURER'S OBLIGATION TO COMPLY WITH THIS
11 SUBSECTION, ALTHOUGH THE INSURER MAY BASE ITS ANALYSIS ON INFORMATION
12 RECEIVED FROM EITHER THE FINANCIAL PROFESSIONAL OR THE ENTITY SUPERVISING
13 THE FINANCIAL PROFESSIONAL. AN INSURER COMPLIES WITH THIS SUBSECTION IF
14 THE INSURER DOES ALL OF THE FOLLOWING:

15 1. MONITORS THE RELEVANT CONDUCT OF THE FINANCIAL PROFESSIONAL
16 SEEKING TO RELY ON THIS SUBSECTION OR THE ENTITY RESPONSIBLE FOR
17 SUPERVISING THE FINANCIAL PROFESSIONAL, SUCH AS THE FINANCIAL
18 PROFESSIONAL'S BROKER-DEALER OR AN INVESTMENT ADVISER REGISTERED UNDER
19 FEDERAL OR STATE SECURITIES LAWS USING INFORMATION COLLECTED IN THE NORMAL
20 COURSE OF AN INSURER'S BUSINESS.

21 2. PROVIDES TO THE ENTITY RESPONSIBLE FOR SUPERVISING THE FINANCIAL
22 PROFESSIONAL SEEKING TO RELY ON THIS SUBSECTION, SUCH AS THE FINANCIAL
23 PROFESSIONAL'S BROKER-DEALER OR INVESTMENT ADVISER REGISTERED UNDER
24 FEDERAL OR STATE SECURITIES LAWS, INFORMATION AND REPORTS THAT ARE
25 REASONABLY APPROPRIATE TO ASSIST THE ENTITY TO MAINTAIN ITS SUPERVISION
26 SYSTEM.

27 P. FOR THE PURPOSES OF THIS SECTION:

28 1. "COMPARABLE STANDARDS" MEANS:

29 (a) WITH RESPECT TO BROKER-DEALERS AND REGISTERED REPRESENTATIVES
30 OF BROKER-DEALERS, APPLICABLE SEC AND FINRA RULES RELATING TO BEST
31 INTEREST OBLIGATIONS AND SUPERVISION OF ANNUITY RECOMMENDATIONS AND SALES,
32 INCLUDING REGULATION BEST INTEREST AND ANY AMENDMENTS OR SUCCESSOR
33 REGULATIONS.

34 (b) WITH RESPECT TO INVESTMENT ADVISERS REGISTERED UNDER FEDERAL OR
35 STATE SECURITIES LAW OR INVESTMENT ADVISER REPRESENTATIVES, THE FIDUCIARY
36 DUTIES AND ALL OTHER REQUIREMENTS IMPOSED ON THE INVESTMENT ADVISERS OR
37 INVESTMENT ADVISER REPRESENTATIVES BY CONTRACT OR UNDER THE INVESTMENT
38 ADVISERS ACT OF 1940, INCLUDING THE FORM ADV AND INTERPRETATIONS.

39 (c) WITH RESPECT TO PLAN FIDUCIARIES OR OTHER FIDUCIARIES, THE
40 FIDUCIARY DUTIES AND ALL OTHER REQUIREMENTS ATTENDANT TO SUCH A STATUS
41 UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 OR THE INTERNAL
42 REVENUE CODE AND ANY AMENDMENTS OR SUCCESSOR STATUTES.

43 2. "FINANCIAL PROFESSIONAL" MEANS A PRODUCER THAT IS REGULATED AND
44 ACTING AS:

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

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

(c) A PLAN FIDUCIARY UNDER SECTION 3(21) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 OR SECTION 4975(e)(3) OF THE INTERNAL REVENUE CODE.

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

20-1243.05. Compliance; enforcement; penalties

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

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

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

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

3. APPROPRIATE PENALTIES AND SANCTIONS.

B. The director may reduce or eliminate any applicable penalty under sections 20-220, 20-295 and 20-456 for a violation of ~~section 20-1243.03, subsection A, B or D~~ THIS ARTICLE if corrective action for the consumer was taken promptly after a violation was discovered.

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

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

20-1243.06. Recordkeeping

A. Insurers, managing general agents, business entities and ~~insurance~~ producers shall maintain, or be able to make available to the director, 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 at least five years or until the next regular examination by the insurance regulatory authority of its state of domicile, whichever is later, after the insurance transaction is completed

1 by the insurer. An insurer may **BUT IS NOT REQUIRED TO** maintain
2 documentation on behalf of ~~an insurance~~ A producer.

3 B. Records required to be maintained by this article may be
4 maintained in paper, photographic, microprocess, magnetic, mechanical or
5 electronic media or by any process that accurately reproduces the actual
6 document.

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

9 **20-1243.07. Producer training; annuities; continuing**
10 **education**

11 A. ~~At~~ ~~insurance~~ A producer may not solicit the sale of an annuity
12 product unless the ~~insurance~~ producer has adequate knowledge of the
13 product to recommend the annuity and the ~~insurance~~ producer is in
14 compliance with the insurer's standards for product training. ~~At~~
15 ~~insurance~~ A producer may rely on insurer-provided product-specific
16 training standards and materials to comply with this subsection.

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

22 C. The minimum length of the training required under subsection B
23 of this section shall be sufficient to qualify for at least four
24 continuing education credit hours, but may be longer. The training
25 required under subsection B of this section shall include information on
26 the following topics:

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

35 D. A provider of an annuity training course intended to comply with
36 this section shall cover all topics listed in subsection C of this section
37 and may not present any marketing information, provide training on sales
38 techniques or provide specific information about a particular insurer's
39 products. Additional topics may be offered in conjunction with and in
40 addition to the topics listed in subsection C of this section. A provider
41 of an annuity training course intended to comply with this section shall
42 register as a continuing education provider in this state and shall comply
43 with the rules and guidelines applicable to ~~insurance~~ producer continuing
44 education courses required by chapter 18 of this title. A provider of an
45 annuity training course shall comply with the reporting requirements and

1 shall issue a certificate of completion in accordance with chapter 18 of
2 this title.

3 E. Annuity training courses may be conducted and completed by
4 classroom or self-study methods in accordance with chapter 18 of this
5 title and any rules of the department. Satisfactory completion of the
6 training requirements of another state that are substantially similar to
7 the provisions of this section satisfy the training requirements of this
8 section. **SATISFACTORY COMPLETION OF THE COMPONENTS OF THE TRAINING
9 REQUIREMENTS OF ANY COURSE OR COURSES WITH COMPONENTS THAT ARE
10 SUBSTANTIALLY SIMILAR TO THE REQUIREMENTS PRESCRIBED IN THIS SECTION
11 SATISFY THE TRAINING REQUIREMENTS OF THIS SECTION.**

12 F. An insurer shall verify that ~~an insurance~~ A producer has
13 completed the annuity training course **REQUIRED UNDER THIS SECTION** before
14 allowing the producer to sell an annuity product for that insurer. An
15 insurer may satisfy its responsibility under this subsection by obtaining
16 certificates of completion of the annuity training course or obtaining
17 reports provided by department-sponsored database systems or vendors or
18 from a reasonably reliable commercial database vendor that has a reporting
19 arrangement with approved insurance education providers.

20 Sec. 8. **Insurance producers; annuity training courses;
21 requirements: delayed repeal**

22 A. An insurance producer who, before the effective date of this
23 act, has completed an annuity training course pursuant to section
24 20-1243.07, Arizona Revised Statutes, as amended by this act within six
25 months after the effective date of this act shall complete either:

26 1. A new four credit hour annuity training course approved by the
27 director of the department of insurance and financial institutions after
28 the effective date of this act.

29 2. An additional onetime one credit hour annuity training course,
30 approved by the department of insurance and financial institutions and
31 provided by an education provider approved by the department, on
32 appropriate sales practices, replacement and disclosure requirements
33 prescribed in title 20, chapter 6, article 1.3, Arizona Revised Statutes,
34 as amended by this act

35 B. This section is repealed from after December 31, 2021.