

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 120

Introduced By: Banking, Commerce and Insurance Committee; Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4

Read first time: January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Senior Protection in Annuity
2 Transactions Act; to amend sections 44-8101, 44-8102,
3 44-8103, 44-8104, 44-8105, 44-8106, and 44-8107, Revised
4 Statutes Cumulative Supplement, 2006; to rename the act; to
5 eliminate a defined term; to change the applicability of the
6 act; to harmonize provisions; and to repeal the original
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-8101, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 44-8101. Sections 44-8101 to 44-8107 shall be known and may
4 be cited as the Nebraska ~~Senior~~ Protection in Annuity Transactions
5 Act.

6 Sec. 2. Section 44-8102, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 44-8102. The purpose of the Nebraska ~~Senior~~ Protection in
9 Annuity Transactions Act is to set forth standards and procedures for
10 recommendations made by insurance producers and insurers to ~~senior~~
11 consumers regarding annuity transactions so that ~~senior~~ consumers'
12 insurance needs and financial objectives at the time of the
13 transaction are appropriately addressed.

14 Sec. 3. Section 44-8103, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 44-8103. The Nebraska ~~Senior~~ Protection in Annuity
17 Transactions Act applies to any recommendation to purchase or exchange
18 an annuity made to a ~~senior~~ consumer by an insurance producer, or an
19 insurer if an insurance producer is not involved, that results in the
20 recommended purchase or exchange.

21 Sec. 4. Section 44-8104, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 44-8104. Unless otherwise specifically included, the
24 Nebraska ~~Senior~~ Protection in Annuity Transactions Act does not
25 apply to recommendations involving:

26 (1) Direct response solicitations if there is no
27 recommendation based on information collected from the ~~senior~~

1 consumer pursuant to the act; or

2 (2) Contracts used to fund:

3 (a) An employee pension or welfare benefit plan that is
4 covered by the federal Employee Retirement Income Security Act of
5 1974;

6 (b) A plan described by section 401(a), 401(k), 403(b),
7 408(k), or 408(p) of the Internal Revenue Code if established or
8 maintained by an employer;

9 (c) A government or church plan defined in section 414 of
10 the Internal Revenue Code, a government or church welfare benefit
11 plan, or a deferred compensation plan of a state or local government
12 or tax exempt organization under section 457 of the Internal Revenue
13 Code;

14 (d) A nonqualified deferred compensation arrangement
15 established or maintained by an employer or plan sponsor;

16 (e) Settlements of or assumptions of liabilities associated
17 with personal injury litigation or any dispute or claim resolution
18 process; or

19 (f) Contracts entered into pursuant to the Burial Pre-Need
20 Sale Act.

21 Sec. 5. Section 44-8105, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 44-8105. For purposes of the Nebraska ~~Senior~~ Protection in
24 Annuity Transactions Act:

25 (1) Annuity means a fixed annuity or variable annuity that
26 is individually solicited, whether the product is classified as an
27 individual or group annuity;

1 (2) Insurer means a company required to be licensed under
2 the laws of this state to provide insurance products, including
3 annuities;

4 (3) Insurance producer means a person required to be
5 licensed under the laws of this state to sell, solicit, or negotiate
6 insurance, including annuities; and

7 (4) Recommendation means advice provided by an insurance
8 producer, or an insurer if an insurance producer is not involved, to a
9 ~~senior~~ consumer that results in a purchase or exchange of an annuity
10 in accordance with that advice. ~~and~~

11 ~~(5) Senior consumer means a person sixty five years of age
12 or older. In the event of a joint purchase by more than one person,
13 the purchaser will be considered to be a senior consumer if any of
14 the purchasers is sixty five years of age or older.~~

15 Sec. 6. Section 44-8106, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 44-8106. (1) The insurance producer, or insurer if an
18 insurance producer is not involved, shall have reasonable grounds to
19 believe that the recommendation is suitable for the ~~senior~~ consumer
20 based on the facts disclosed by the ~~senior~~ consumer before making a
21 recommendation to a ~~senior~~ consumer under the Nebraska ~~Senior~~
22 Protection in Annuity Transactions Act. The recommendation shall be
23 based on the facts disclosed by the ~~senior~~ consumer relating to his
24 or her investments, other insurance products, and the financial
25 situation and needs of the ~~senior~~ consumer.

26 (2) Before the execution of a purchase or exchange of an
27 annuity resulting from a recommendation, an insurance producer, or an

1 insurer if an insurance producer is not involved, shall make
2 reasonable efforts to obtain information concerning:

3 (a) The ~~senior~~ consumer's financial status, including
4 investments held by the ~~senior~~ consumer;

5 (b) Other insurance products owned by the ~~senior~~ consumer;

6 (c) The ~~senior~~ consumer's tax status;

7 (d) The ~~senior~~ consumer's investment objectives; and

8 (e) Such other information used or considered to be
9 reasonable in making recommendations to the ~~senior~~ consumer.

10 (3)(a) Except as provided under subdivision (3)(b) of this
11 section, neither an insurance producer, nor an insurer if an insurance
12 producer is not involved, shall have any obligation to a ~~senior~~
13 consumer under subsection (1) of this section related to any
14 recommendation if the ~~senior~~ consumer:

15 (i) Refuses to provide relevant information requested by the
16 insurance producer or insurer;

17 (ii) Decides to enter into an insurance transaction that is
18 not based on a recommendation of the insurance producer or insurer; or

19 (iii) Fails to provide complete or accurate information.

20 (b) If a ~~senior~~ consumer provides information as described
21 in subdivision (3)(a) of this section, an insurance producer or
22 insurer shall make a recommendation that is reasonable under all the
23 circumstances that are actually known to the insurance producer or
24 insurer at the time of the recommendation.

25 (4)(a) An insurer shall:

26 (i) Assure that a system to supervise recommendations that
27 is reasonably designed to achieve compliance with the Nebraska ~~Senior~~

1 Protection in Annuity Transactions Act is established and maintained
2 by complying with subdivisions (4)(d) through (f) of this section; or

3 (ii) Establish and maintain a system to supervise
4 recommendations.

5 (b) Such system shall include, but not be limited to:

6 (i) Maintaining written procedures; and

7 (ii) Conducting periodic reviews of its records that are
8 reasonably designed to assist in detecting and preventing violations
9 of the act.

10 (c) A general agent and independent agency shall either
11 adopt a system established by an insurer to supervise recommendations
12 of its insurance producers that is reasonably designed to achieve
13 compliance with the act or establish and maintain such a system. Such
14 system shall include, but not be limited to:

15 (i) Maintaining written procedures; and

16 (ii) Conducting periodic reviews of records that are
17 reasonably designed to assist in detecting and preventing violations
18 of the act.

19 (d) An insurer may contract with a third party, including a
20 general agent or independent agency, to establish and maintain a
21 system of supervision as required by subdivision (4)(a) of this
22 section with respect to insurance producers under contract with or
23 employed by the third party.

24 (e) An insurer shall make reasonable inquiry to assure that
25 the third party contracting under subdivision (4)(d) of this section
26 is performing the functions required under subdivision (4)(a) of this
27 section and shall take such reasonable action to enforce the

1 contractual obligation to perform the functions. An insurer may comply
2 with its obligation to make reasonable inquiry by doing the following:

3 (i) Obtaining annually a certification from a third-party
4 senior manager that the manager represents that the third party is
5 performing the required functions; and

6 (ii) Periodically selecting third parties contracting under
7 subdivision (4)(d) of this section to determine whether the third
8 parties are performing the required functions. The insurer shall
9 perform those procedures to conduct the review that are reasonable
10 under the circumstances. Such third parties shall be selected based on
11 reasonable selection criteria.

12 (f) An insurer shall have fulfilled its responsibilities
13 under subdivision (4)(a) of this section if the insurer:

14 (i) Contracts with a third party pursuant to subdivision
15 (4)(d) of this section; and

16 (ii) Complies with the requirements to supervise in
17 subdivision (4)(e) of this section.

18 (g) An insurer, general agent, or independent agency is not
19 required by subdivision (4)(a) or (b) of this section to:

20 (i) Review all insurance producer solicited transactions; or

21 (ii) Supervise an insurance producer's recommendations to
22 ~~senior~~ consumers of products other than the annuities offered by the
23 insurer, general agent, or independent agency.

24 (h) A general agent or independent agency contracting with
25 an insurer pursuant to subdivision (4)(d) of this section shall, when
26 requested by the insurer pursuant to subdivision (4)(e) of this
27 section, promptly give a certification as described in subdivision

1 (4)(e)(i) of this section or give a clear statement that it is unable
2 to meet the certification criteria.

3 (i) No person may provide a certification under subdivision
4 (4)(e)(i) of this section unless:

5 (i) The person is a senior manager with responsibility for
6 the delegated functions; and

7 (ii) The person has a reasonable basis for making the
8 certification.

9 (5) Compliance with the National Association of Securities
10 Dealers Conduct Rules pertaining to suitability shall satisfy the
11 requirements under this section for the recommendation of variable
12 annuities. However, nothing in this subsection shall limit the ability
13 of the Director of Insurance to enforce the act.

14 Sec. 7. Section 44-8107, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 44-8107. (1) The Director of Insurance may order:

17 (a) An insurer to take reasonably appropriate corrective
18 action for any ~~senior~~ consumer harmed by an insurance producer's or
19 insurer's violation of the Nebraska ~~Senior~~ Protection in Annuity
20 Transactions Act;

21 (b) An insurance producer to take reasonably appropriate
22 corrective action for any ~~senior~~ consumer harmed by the insurance
23 producer's violation of the act; and

24 (c) A general agency or independent agency that employs or
25 contracts with an insurance producer to sell or solicit the sale of
26 annuities to ~~senior~~ consumers, to take reasonably appropriate
27 corrective action for any ~~senior~~ consumer harmed by the insurance

1 producer's violation of the act.

2 (2) A violation of the act shall be an unfair trade practice
3 in the business of insurance under the Unfair Insurance Trade
4 Practices Act.

5 (3) The director may reduce or eliminate any applicable
6 penalty under section 44-1529 for a violation of subsection (1) or (2)
7 of section 44-8106 or subdivision (3)(b) of such section if corrective
8 action for the ~~senior~~ consumer was taken promptly after a violation
9 was discovered.

10 Sec. 8. Original sections 44-8101, 44-8102, 44-8103,
11 44-8104, 44-8105, 44-8106, and 44-8107, Revised Statutes Cumulative
12 Supplement, 2006, are repealed.