

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 22

FINAL READING

Introduced by Williams, 36.

Read first time January 07, 2021

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Nebraska Protection in Annuity
2 Transactions Act; to amend sections 44-8102, 44-8103, 44-8105,
3 44-8106, 44-8107, 44-8108, and 44-8109, Revised Statutes Cumulative
4 Supplement, 2020; to change provisions relating to the purpose of
5 the act; to limit liability; to change applicability of the act; to
6 authorize rules and regulations; to provide, change, and eliminate
7 definitions; to change producer and insurer obligations,
8 supervision, prohibited practices, and record keeping; to provide
9 for safe harbor requirements; to change the powers of the Director
10 of Insurance; to change penalties and training requirements; to
11 provide for applicability; to harmonize provisions; to repeal the
12 original sections; and to declare an emergency.

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

1 Section 1. Section 44-8102, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 44-8102 (1) The purpose of the Nebraska Protection in Annuity
4 Transactions Act is to require producers to act in the best interest of
5 the consumer when making a recommendation of an annuity ~~insurers to~~
6 ~~establish a system to supervise recommendations and to~~ require set forth
7 ~~standards and procedures for recommendations made by insurance producers~~
8 ~~and insurers to~~ establish and maintain a system to supervise
9 recommendations ~~consumers regarding annuity transactions~~ so that the
10 consumers' insurance needs and financial objectives at the time of the
11 transaction are appropriately addressed.

12 (2) Nothing in the Nebraska Protection in Annuity Transactions Act
13 shall be construed to create or imply a private cause of action for a
14 violation of the act or to subject a producer to civil liability under
15 the best interest standard of care outlined in section 44-8106 or under
16 standards governing the conduct of a fiduciary or fiduciary relationship.

17 Sec. 2. Section 44-8103, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 44-8103 (1) The Nebraska Protection in Annuity Transactions Act
20 applies to any recommendation or sale of ~~to purchase, exchange, or~~
21 ~~replace an annuity made to a consumer by an insurance producer, or an~~
22 ~~insurer if an insurance producer is not involved, that results in the~~
23 ~~recommended purchase, exchange, or replacement.~~

24 (2) The Director of Insurance may adopt and promulgate rules and
25 regulations to carry out the Nebraska Protection in Annuity Transactions
26 Act.

27 Sec. 3. Section 44-8105, Revised Statutes Cumulative Supplement,
28 2020, is amended to read:

29 44-8105 For purposes of the Nebraska Protection in Annuity
30 Transactions Act:

31 (1) Annuity means an annuity that is an insurance product under

1 state law and is individually solicited, whether the product is
2 classified as an individual or group annuity;

3 (2) Cash compensation means any discount, concession, fee, service
4 fee, commission, sales charge, loan, override, or cash benefit received
5 by a producer from an insurer or intermediary or directly from the
6 consumer in connection with the recommendation or sale of an annuity;

7 (3) Consumer profile information means any information that is
8 reasonably appropriate to determine whether a recommendation addresses
9 the consumer's financial situation, insurance needs, and financial
10 objectives, including, at a minimum, the consumer's:

11 (a) Age;

12 (b) Annual income;

13 (c) Financial situation and needs, including debts and other
14 obligations;

15 (d) Financial experience;

16 (e) Insurance needs;

17 (f) Financial objectives;

18 (g) Intended use of the annuity;

19 (h) Financial time horizon;

20 (i) Existing assets or financial products, including investment,
21 annuity, and insurance holdings;

22 (j) Liquidity needs;

23 (k) Liquid net worth;

24 (l) Risk tolerance, including, but not limited to, willingness to
25 accept nonguaranteed elements in the annuity;

26 (m) Financial resources used to fund the annuity; and

27 (n) Tax status;

28 (4) Continuing education credit means one clock hour of an approved
29 continuing education activity certified by the Director of Insurance
30 pursuant to subsection (1) of section 44-3905;

31 (5) ~~(2)~~ Continuing education provider means an individual or entity

1 that is approved to offer continuing education activities pursuant to
2 subsection (1) of section 44-3905;

3 (6) ~~(3)~~ Insurer means a company required to be licensed under the
4 laws of this state to provide insurance products, including annuities;

5 (7) Intermediary means an entity contracted (a) directly with an
6 insurer or (b) with another entity that is contracted with an insurer to
7 facilitate the sale of the insurer's annuities by producers;

8 (8) Material conflict of interest means a financial interest of the
9 producer in the sale of an annuity that a reasonable person would expect
10 to influence the impartiality of a recommendation, but does not include
11 cash compensation or noncash compensation;

12 (9) Noncash compensation means any form of compensation that is not
13 cash compensation, including, but not limited to, health insurance,
14 office rent, office support, and retirement benefits;

15 (10) Nonguaranteed elements means the premiums, credited interest
16 rates, including any bonus, benefits, values, dividends, non-interest-
17 based credits, charges, or elements of formulas used to determine any of
18 the listed elements that are subject to company discretion and are not
19 guaranteed at issue. An element is considered nonguaranteed if its
20 calculation uses any underlying nonguaranteed element;

21 (11) Producer ~~(4) Insurance producer~~ means (a) a person required to
22 be licensed under the laws of this state to sell, solicit, or negotiate
23 insurance, including annuities, or (b) if no person described in
24 subdivision (11)(a) of this section is involved, an insurer;

25 (12) ~~(5)~~ Recommendation means advice provided by a ~~an insurance~~
26 producer, ~~or an insurer if an insurance producer is not involved,~~ to an
27 individual a consumer that was intended to result or does result results
28 in a purchase, an ~~or~~ exchange, or a replacement of an annuity in
29 accordance with that advice, but does not include general communication
30 to the public, generalized consumer services assistance or administrative
31 support, general education information and tools, prospectuses, or other

1 product and sales material; and

2 ~~(13) (6)~~ Replacement means a transaction in which a new annuity
3 ~~policy or contract~~ is to be purchased, and it is known or should be known
4 to the proposing producer, or the proposing insurer ~~if there is no~~
5 ~~producer,~~ that, by reason of the transaction, an existing annuity or
6 other insurance policy or contract has been or is to be:

7 (a) Lapsed, forfeited, surrendered, or partially surrendered,
8 assigned to the replacing insurer, or otherwise terminated;

9 (b) Converted to reduced paid-up insurance, continued as extended
10 term insurance, or otherwise reduced in value by the use of nonforfeiture
11 benefits or other policy values;

12 (c) Amended so as to effect either a reduction in benefits or in the
13 term for which coverage would otherwise remain in force or for which
14 benefits would be paid;

15 (d) Reissued with any reduction in cash value; or

16 (e) Used in a financed purchase. ; and

17 ~~(7) Suitability information means information that is reasonably~~
18 ~~appropriate to determine the suitability of a recommendation, including~~
19 ~~the following:~~

20 ~~(a) Age;~~

21 ~~(b) Annual income;~~

22 ~~(c) Financial situation and need, including the financial resources~~
23 ~~used for the funding of the annuity;~~

24 ~~(d) Financial experience;~~

25 ~~(e) Financial objectives;~~

26 ~~(f) Intended use of the annuity;~~

27 ~~(g) Financial time horizon;~~

28 ~~(h) Existing assets, including investment and life insurance~~
29 ~~holdings;~~

30 ~~(i) Liquidity needs;~~

31 ~~(j) Liquid net worth;~~

1 ~~(k) Risk tolerance; and~~

2 ~~(l) Tax status.~~

3 Sec. 4. Section 44-8106, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 44-8106 (1) ~~The insurance producer, when making a recommendation of~~
6 ~~an annuity, shall act in the best interest of the consumer under the~~
7 ~~circumstances known at the time the recommendation is made, without~~
8 ~~placing the producer's or the insurer's financial interest ahead of the~~
9 ~~consumer's interest. A producer has acted in the best interest of the~~
10 ~~consumer and met the best interest obligation if the following care,~~
11 ~~disclosure, conflict of interest, and documentation obligations are~~
12 ~~satisfied or insurer if an insurance producer is not involved, shall have~~
13 ~~reasonable grounds to believe that the recommendation is suitable for the~~
14 ~~consumer based on the facts disclosed by the consumer before making a~~
15 ~~recommendation to a consumer under the Nebraska Protection in Annuity~~
16 ~~Transactions Act. The recommendation shall be based on the facts~~
17 ~~disclosed by the consumer relating to his or her investments, other~~
18 ~~insurance products, and the financial situation and needs of the~~
19 ~~consumer. This information shall include the consumer's suitability~~
20 ~~information, and, if there is a reasonable basis to believe the~~
21 ~~information, all of the following:~~

22 ~~(a) That the consumer has been reasonably informed of various~~
23 ~~features of the annuity, such as the potential surrender period and~~
24 ~~surrender charge, potential tax penalty if the consumer sells, exchanges,~~
25 ~~surrenders, or annuitizes the annuity, mortality and expense fees,~~
26 ~~investment advisory fees, potential charges for and features of riders,~~
27 ~~limitations on interest returns, insurance and investment components, and~~
28 ~~market risk;~~

29 ~~(a)(i) In meeting the care obligation for making a recommendation,~~
30 ~~the producer shall exercise reasonable diligence, care, and skill to:~~

31 ~~(A) Know the consumer's financial situation, insurance needs, and~~

1 financial objectives;

2 (B) Understand the available recommendation options after making a
3 reasonable inquiry into options available to the producer;

4 (C) Have a reasonable basis to believe the recommended option
5 effectively addresses the consumer's financial situation, insurance
6 needs, and financial objectives over the life of the product, as
7 evaluated in light of the consumer profile information; and

8 (D) Communicate the basis or bases of the recommendation.

9 (ii) The care obligation requirements under subdivision (a)(i) of
10 this subsection include making reasonable efforts to obtain consumer
11 profile information from the consumer prior to the recommendation of an
12 annuity.

13 (iii) The care obligation requires a producer to consider the types
14 of products the producer is authorized and licensed to recommend or sell
15 that address the consumer's financial situation, insurance needs, and
16 financial objectives. This does not require analysis or consideration of
17 any products outside the authority and license of the producer or other
18 possible alternative products or strategies available in the market at
19 the time of the recommendation. Producers shall be held to standards
20 applicable to producers with similar authority and licensure.

21 (iv) The care obligation does not create a fiduciary obligation or
22 relationship and only creates a regulatory obligation as established in
23 this subsection.

24 (v) The consumer profile information, characteristics of the
25 insurer, and product costs, rates, benefits, and features are those
26 factors generally relevant in making a determination whether an annuity
27 effectively addresses the consumer's financial situation, insurance
28 needs, and financial objectives, but the level of importance of each
29 factor under the care obligation may vary depending on the facts and
30 circumstances. However, in no instance shall each factor be considered in
31 isolation.

1 (vi) The care obligation requires the producer to have a reasonable
2 basis to believe ~~(b) That the consumer would benefit from certain~~
3 features of the annuity, such as tax-deferred growth, annuitization, or
4 death or living benefit, or other insurance-related features. †

5 (vii) The care obligation requirements under subdivision (1)(a) of
6 this section apply to ~~(c) That the particular annuity as a whole and †~~
7 the underlying subaccounts to which funds are allocated at the time of
8 purchase or exchange of an ~~the annuity, and to riders and similar product~~
9 enhancements, if any. †, are suitable, and in the case of an exchange or
10 replacement, the transaction as a whole is suitable for the particular
11 consumer based on his or her suitability information; and

12 (viii) The care obligation does not require that the annuity with
13 the lowest one-time or multiple occurrence compensation structure be
14 recommended.

15 (ix) The care obligation does not include an ongoing monitoring
16 obligation for the producer, although an ongoing monitoring obligation
17 may be separately owed under the terms of a fiduciary, consulting,
18 investment advising, or financial planning agreement between the consumer
19 and the producer.

20 (x) (d) In the case of an exchange or replacement of an annuity, the
21 care obligation requires the producer to consider the whole transaction,
22 which includes taking into the exchange or replacement is suitable,
23 including the consideration as to whether:

24 (A) (i) The consumer will incur a surrender charge, be subject to
25 the commencement of a new surrender period, lose existing benefits, such
26 as death, living, or other contractual benefits, or be subject to
27 increased fees, investment advisory fees, or charges for riders and
28 similar product enhancements;

29 (B) (ii) The replacing product would substantially benefit the
30 consumer in comparison to the replaced product over the life of the
31 product consumer would benefit from product enhancements and

1 ~~improvements; and~~

2 ~~(C) (iii) The consumer has had another annuity exchange or~~
3 ~~replacement and, in particular, an exchange or replacement within the~~
4 ~~preceding sixty thirty-six months.~~

5 ~~(xi) Nothing in the Nebraska Protection in Annuity Transactions Act~~
6 ~~shall be construed to require a producer to obtain any license other than~~
7 ~~a producer license with the appropriate line of authority to sell,~~
8 ~~solicit, or negotiate insurance in this state, including, but not limited~~
9 ~~to, any securities license, in order to fulfill the duties of the care~~
10 ~~obligation, except that a producer shall not give advice or provide~~
11 ~~services that are otherwise subject to securities laws or engage in any~~
12 ~~other activity requiring another professional license without first~~
13 ~~obtaining the appropriate license;~~

14 ~~(b)(i) In meeting the disclosure obligation, the producer shall,~~
15 ~~prior to the recommendation or sale of an annuity, prominently disclose~~
16 ~~to the consumer on a form created or previously approved by the~~
17 ~~Department of Insurance;~~

18 ~~(A) A description of the scope and terms of the relationship with~~
19 ~~the consumer and the role of the producer in the transaction;~~

20 ~~(B) An affirmative statement on whether the producer is licensed and~~
21 ~~authorized to sell the following products: Fixed annuities; fixed indexed~~
22 ~~annuities; variable annuities; life insurance; mutual funds; stocks and~~
23 ~~bonds; or certificates of deposit;~~

24 ~~(C) An affirmative statement describing the insurers the producer is~~
25 ~~authorized, contracted, appointed, or otherwise able to sell insurance~~
26 ~~products for using one of the following descriptions: From one insurer;~~
27 ~~from two or more insurers; or from two or more insurers although~~
28 ~~primarily contracted with one insurer;~~

29 ~~(D) A description of the sources and types of cash compensation and~~
30 ~~noncash compensation to be received by the producer, including whether~~
31 ~~the producer is to be compensated for the sale of a recommended annuity~~

1 by commission, as part of a premium, by other remuneration received from
2 the insurer, intermediary, or other producer, or by fee as a result of a
3 contract for advice or consulting services; and

4 (E) A notice of the consumer's right to request additional
5 information regarding cash compensation as described in subdivision (b)
6 (ii) of this subsection.

7 (ii) As part of the disclosure obligation, the producer shall, upon
8 request of the consumer or the consumer's designated representative,
9 disclose:

10 (A) A reasonable estimate of the amount of cash compensation to be
11 received by the producer, which may be stated as a range of amounts or
12 percentages; and

13 (B) Whether the cash compensation is a one-time or multiple
14 occurrence amount, and if a multiple occurrence amount, the frequency and
15 amount of the occurrences, which may be stated as a range of amounts or
16 percentages.

17 (iii) As part of the disclosure obligation, the producer shall,
18 prior to or at the time of the recommendation or sale of an annuity, have
19 a reasonable basis to believe the consumer has been informed of various
20 features of the annuity, such as the potential surrender period and
21 surrender charge, potential tax penalty if the consumer sells, exchanges,
22 surrenders, or annuitizes the annuity, mortality and expense fees,
23 investment advisory fees, any annual fees, potential charges for and
24 features of riders or other options of the annuity, limitations on
25 interest returns, potential changes in nonguaranteed elements of the
26 annuity, insurance and investment components, and market risk;

27 (c) In meeting the conflict of interest obligation, the producer
28 shall identify and avoid or reasonably manage and disclose material
29 conflicts of interest, including, but not limited to, material conflicts
30 of interest related to an ownership interest;

31 (2) Before the execution of a purchase, exchange, or replacement of

1 ~~an annuity resulting from a recommendation, an insurance producer, or an~~
2 ~~insurer if an insurance producer is not involved, shall make reasonable~~
3 ~~efforts to obtain the consumer's suitability information.~~

4 ~~(3) Except as expressly permitted under subsection (4) of this~~
5 ~~section, an insurer shall not issue an annuity recommended to a consumer~~
6 ~~unless there is a reasonable basis to believe the annuity is suitable~~
7 ~~based on the consumer's suitability information.~~

8 ~~(4)(a) Except as provided under subdivision (4)(b) of this section,~~
9 ~~neither an insurance producer, nor an insurer, shall have any obligation~~
10 ~~to a consumer under subsection (1) or (3) of this section related to any~~
11 ~~annuity transaction if:~~

12 ~~(i) No recommendation is made;~~

13 ~~(ii) A recommendation was made and was later found to have been~~
14 ~~prepared based on materially inaccurate information provided by the~~
15 ~~consumer;~~

16 ~~(iii) A consumer refuses to provide relevant suitability information~~
17 ~~and the annuity transaction is not recommended; or~~

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

20 ~~(b) An insurer's issuance of an annuity subject to subdivision (4)~~
21 ~~(a) of this section shall be reasonable under all the circumstances~~
22 ~~actually known to the insurer at the time the annuity is issued.~~

23 ~~(d) In meeting the documentation obligation, a (5) An insurance~~
24 ~~producer, or if no insurance producer is involved, the responsible~~
25 ~~insurer representative, shall at the time of sale:~~

26 ~~(i) (a) Make a written record of any recommendation subject to the~~
27 ~~Nebraska Protection in Annuity Transactions Act and of the basis for such~~
28 ~~recommendation subsection (1) of this section;~~

29 ~~(ii) (b) Obtain a consumer-signed customer-signed statement on a~~
30 ~~form created or previously approved by the Department of Insurance~~
31 ~~documenting: a customer's refusal to provide suitability information, if~~

1 ~~any; and~~

2 (A) Any refusal by the consumer to provide consumer profile
3 information; and

4 (B) The consumer's understanding of the ramifications of not
5 providing consumer profile information or providing insufficient consumer
6 profile information; and

7 (iii) ~~(c)~~ Obtain a consumer-signed ~~customer-signed~~ statement on a
8 form created or previously approved by the Department of Insurance
9 acknowledging that ~~the~~ an annuity transaction is not recommended if a
10 consumer ~~customer~~ decides to enter into an annuity transaction that is
11 not based on the insurance producer's or insurer's recommendation; and -

12 (e) Any best interest obligation requirement applicable to a
13 producer under this subsection shall apply to every producer who has
14 exercised material control or influence in the making of a recommendation
15 and has received direct compensation as a result of the recommendation or
16 sale, regardless of whether the producer has had any direct contact with
17 the consumer. Activities such as providing or delivering marketing or
18 educational materials, product wholesaling or other back office product
19 support, and general supervision of a producer do not, in and of
20 themselves, constitute material control or influence.

21 (2)(a) Except as provided in subdivision (2)(b) of this section, a
22 producer shall have no obligation to a consumer under subdivision (1)(a)
23 of this section related to any annuity transaction if:

24 (i) No recommendation is made;

25 (ii) A recommendation was made and was later found to have been
26 prepared based on materially inaccurate information provided by the
27 consumer;

28 (iii) A consumer refuses to provide relevant consumer profile
29 information and the annuity transaction is not recommended; or

30 (iv) A consumer decides to enter into an annuity transaction that is
31 not based on a recommendation of the producer.

1 (b) An insurer's issuance of an annuity subject to subdivision (2)
2 (a) of this section shall be deemed reasonable under all the
3 circumstances actually known to the insurer at the time the annuity is
4 issued.

5 (3)(a) Except as permitted under subsection (2) of this section, an
6 insurer may not issue an annuity recommended to a consumer unless there
7 is a reasonable basis to believe the annuity would effectively address
8 the particular consumer's financial situation, insurance needs, and
9 financial objectives based on the consumer's consumer profile
10 information.

11 (b) ~~(6)(a)~~ An insurer shall establish and maintain a supervision
12 system that is reasonably designed to achieve the insurer's and its
13 insurance producers' compliance with the Nebraska Protection in Annuity
14 Transactions Act this section, including, but not limited to, the
15 following requirements:

16 (i) The insurer shall maintain reasonable procedures to inform its
17 insurance producers of the requirements of the act this section and shall
18 incorporate such requirements into relevant insurance producer training
19 manuals;

20 (ii) The insurer shall establish and maintain standards for
21 insurance producer product training and shall establish and maintain
22 reasonable procedures to require its insurance producers to comply with
23 the requirements of section 44-8108;

24 (iii) The insurer shall provide product-specific training and
25 training materials which explain all material features of its annuity
26 products to its insurance producers;

27 (iv) The insurer shall establish and maintain procedures for review
28 of each recommendation prior to issuance of an annuity that are designed
29 to ensure that there is a reasonable basis to determine that the
30 recommended annuity would effectively address the particular consumer's
31 financial situation, insurance needs, and financial objectives a

1 ~~recommendation is suitable.~~ Such review procedures may apply a screening
2 system for the purpose of identifying selected transactions for
3 additional review and may be accomplished electronically or through other
4 means including, but not limited to, physical review. Such an electronic
5 or other system may be designed to require additional review only of
6 those transactions identified for additional review by the selection
7 criteria;

8 (v) The insurer shall establish and maintain reasonable procedures
9 to detect recommendations that are not in compliance with subsections
10 (1), (2), (4), and (5) of this section. This may include ~~suitable,~~
11 ~~including,~~ but is not limited to, confirmation of the consumer profile
12 ~~consumer suitability~~ information, systematic consumer ~~customer~~ surveys,
13 producer and consumer interviews, confirmation letters, producer
14 statements or attestations, and programs of internal monitoring. Nothing
15 in this subdivision shall prevent an insurer from complying with this
16 subdivision by applying sampling procedures or by confirming the consumer
17 profile suitability information or other required information under this
18 section after issuance or delivery of the annuity;~~and~~

19 (vi) The insurer shall establish and maintain reasonable procedures
20 to assess, prior to or upon issuance or delivery of an annuity, whether a
21 producer has provided to the consumer the information required to be
22 provided under this section;

23 (vii) The insurer shall establish and maintain reasonable procedures
24 to identify and address suspicious consumer refusals to provide consumer
25 profile information;

26 (viii) The insurer shall establish and maintain reasonable
27 procedures to identify and eliminate any sales contests, sales quotas,
28 bonuses, and noncash compensation that are based on the sales of specific
29 annuities within a limited period of time. The requirements of this
30 subdivision are not intended to prohibit the receipt of health insurance,
31 office rent, office support, retirement benefits, or other employee

1 benefits by employees as long as such benefits are not based upon the
2 volume of sales of a specific annuity within a limited period of time;
3 and

4 (ix) ~~(vi)~~ The insurer shall annually provide a written report to
5 senior management, including the senior manager responsible for audit
6 functions, which details a review, with appropriate testing, reasonably
7 designed to determine the effectiveness of the supervision system, the
8 exceptions found, and corrective action taken or recommended, if any.

9 (c)(i) ~~(b)(i)~~ Nothing in this subsection restricts an insurer from
10 contracting for performance of a function, including maintenance of
11 procedures, required under ~~subdivision (a)~~ of this subsection. An insurer
12 is responsible for taking appropriate corrective action and may be
13 subject to sanctions and penalties pursuant to section 44-8107 regardless
14 of whether the insurer contracts for performance of a function and
15 regardless of the insurer's compliance with subdivision (b) ~~(b)(ii)~~ of
16 this subsection.

17 (ii) An insurer's supervision system under ~~subdivision (a)~~ of this
18 subsection shall include supervision of contractual performance under
19 this subsection. This includes, but is not limited to, the following:

20 (A) Monitoring and, as appropriate, conducting audits to assure that
21 the contracted function is properly performed; and

22 (B) Annually obtaining a certification from a senior manager who has
23 responsibility for the contracted function that the manager has a
24 reasonable basis to represent, and does represent, that the function is
25 properly performed.

26 (d) ~~(e)~~ An insurer is not required to include in its system of
27 supervision:

28 (i) A supervise an insurance producer's recommendations to consumers
29 of products other than the annuities offered by the insurer; or -

30 (ii) Consideration of or comparison to options available to the
31 producer or compensation relating to those options other than annuities

1 or other products offered by the insurer.

2 (4) Neither a (7) An insurance producer nor an insurer shall not
3 dissuade, or attempt to dissuade, a consumer from:

4 (a) Truthfully responding to an insurer's request for confirmation
5 of the consumer profile suitability information;

6 (b) Filing a complaint; or

7 (c) Cooperating with the investigation of a complaint.

8 (5)(a) Recommendations and sales of annuities made in compliance
9 with comparable standards shall satisfy the safe harbor requirements
10 under this subsection. This subsection applies to all recommendations and
11 sales of annuities made by financial professionals in compliance with
12 business rules, controls, and procedures that satisfy a comparable
13 standard even if such standard would not otherwise apply to the product
14 or recommendation at issue. However, nothing in this subsection shall
15 limit the ability of the Director of Insurance to investigate and enforce
16 the provisions of this subsection.

17 (b) Nothing in subdivision (a) of this subsection shall limit the
18 insurer's obligation to comply with subdivision (3)(a) of this section,
19 although the insurer may base its analysis on information received from
20 either the financial professional or the entity supervising the financial
21 professional.

22 (c) For subdivision (a) of this subsection to apply, an insurer
23 shall:

24 (i) Monitor the relevant conduct of the financial professional
25 seeking to rely on subdivision (a) of this subsection or the entity
26 responsible for supervising the financial professional, such as the
27 financial professional's broker-dealer or an investment adviser
28 registered under federal securities laws using information collected in
29 the normal course of an insurer's business; and

30 (ii) Provide to the entity responsible for supervising the financial
31 professional seeking to rely on subdivision (a) of this subsection, such

1 as the financial professional's broker-dealer or investment adviser
2 registered under federal securities laws, information and reports that
3 are reasonably appropriate to assist such entity to maintain its
4 supervision system.

5 (d) For purposes of this subsection, financial professional means a
6 producer that is regulated and acting as:

7 (i) A broker-dealer registered under federal securities laws or a
8 registered representative of a broker-dealer;

9 (ii) An investment adviser registered under federal securities laws
10 or an investment adviser representative associated with a federal
11 registered investment adviser; or

12 (iii) A plan fiduciary under section 3(21) of the federal Employee
13 Retirement Income Security Act of 1974 or a fiduciary under section
14 4975(e)(3) of the Internal Revenue Code of 1986, as such sections existed
15 on January 1, 2021.

16 (e) For purposes of this subsection, comparable standards means:

17 (i) With respect to broker-dealers and registered representatives of
18 broker-dealers, applicable federal Securities and Exchange Commission and
19 Financial Industry Regulatory Authority rules pertaining to best interest
20 obligations and supervision of annuity recommendations and sales,
21 including, but not limited to, Regulation Best Interest, as such rules
22 existed on January 1, 2021;

23 (ii) With respect to investment advisers registered under federal
24 securities laws or investment adviser representatives, the fiduciary
25 duties and all other requirements imposed on such investment advisers or
26 investment adviser representatives by contract or under the federal
27 Investment Advisers Act of 1940, including, but not limited to, Form ADV
28 and interpretations of Form ADV as such form and interpretations existed
29 on January 1, 2021; and

30 (iii) With respect to plan fiduciaries or fiduciaries, the duties,
31 obligations, prohibitions, and all other requirements attendant to such

1 status under the federal Employee Retirement Income Security Act of 1974
2 or the Internal Revenue Code of 1986, as such acts existed on January 1,
3 2021.

4 (6)(a) Insurers, general agents, independent agencies, and producers
5 shall maintain or be able to make available to the Director of Insurance
6 records of the information collected from the consumer, disclosures made
7 to the consumer, including summaries of oral disclosures, and other
8 information used in making the recommendations that were the basis for
9 insurance transactions for five years after the insurance transaction is
10 completed by the insurer. An insurer is permitted, but shall not be
11 required, to maintain documentation on behalf of a producer.

12 (b) Records required to be maintained by this subsection may be
13 maintained in paper, photographic, microprocess, magnetic, mechanical, or
14 electronic media or by any process that accurately reproduces the actual
15 document.

16 ~~(8)(a) Compliance with the Financial Industry Regulatory Authority~~
17 ~~Rules pertaining to suitability and supervision of annuity transactions~~
18 ~~shall satisfy the requirements under this section if the insurer complies~~
19 ~~with the requirements of subdivision (6)(b) of this section. This~~
20 ~~subsection applies to Financial Industry Regulatory Authority broker-~~
21 ~~dealer sales of variable annuities and fixed annuities if the suitability~~
22 ~~and supervision is similar to those applied to variable annuity sales.~~
23 ~~However, nothing in this subsection shall limit the ability of the~~
24 ~~Director of Insurance to investigate potential violations of and enforce~~
25 ~~the Nebraska Protection in Annuity Transactions Act.~~

26 ~~(b) An insurer seeking to comply with the Financial Industry~~
27 ~~Regulatory Authority broker-dealer sales of variable annuities and fixed~~
28 ~~annuities to satisfy the requirements of this section shall:~~

29 ~~(i) Monitor the Financial Industry Regulatory Authority member~~
30 ~~broker-dealer using information collected in the normal course of an~~
31 ~~insurer's business; and~~

1 ~~(ii) Provide to the Financial Industry Regulatory Authority member~~
2 ~~broker-dealer information and reports that are reasonably appropriate to~~
3 ~~assist the Financial Industry Regulatory Authority member broker-dealer~~
4 ~~to maintain its supervision system.~~

5 Sec. 5. Section 44-8107, Revised Statutes Cumulative Supplement,
6 2020, is amended to read:

7 44-8107 (1) An insurer is responsible for compliance with the
8 Nebraska Protection in Annuity Transactions Act. If a violation occurs,
9 either because of the action or inaction of the insurer or its insurance
10 producer, the Director of Insurance may order:

11 (a) An insurer to take reasonably appropriate corrective action for
12 any consumer harmed by a failure to comply with the Nebraska Protection
13 in Annuity Transactions Act by the insurer, an entity contracted to
14 perform the insurer's supervisory duties, or by the producer ~~an insurance~~
15 ~~producer's or insurer's violation of the act; and~~

16 (b) A general agency, an independent agency, or the An insurance
17 producer to take reasonably appropriate corrective action for any
18 consumer harmed by the insurance producer's violation of the act; and -

19 (c) Appropriate penalties and sanctions.

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

22 (3) The director may reduce or eliminate any applicable penalty
23 under section 44-1529 for a violation of the Nebraska Protection in
24 Annuity Transactions Act subsection (1) or (2) of section 44-8106 or
25 subdivision (4)(b) of such section if corrective action for the consumer
26 was taken promptly after a violation was discovered or the violation was
27 not part of a pattern or practice.

28 Sec. 6. Section 44-8108, Revised Statutes Cumulative Supplement,
29 2020, is amended to read:

30 44-8108 (1) A An insurance producer shall not solicit the sale of an
31 annuity product unless the ~~insurance~~ producer has adequate knowledge of

1 the product to recommend the annuity and the ~~insurance~~ producer is in
2 compliance with the insurer's standards for product training. ~~A~~ An
3 ~~insurance~~ producer may rely on insurer-provided product-specific training
4 standards and materials to comply with this subsection.

5 (2)(a)(i) ~~A~~ An ~~insurance~~ producer who engages in the sale of annuity
6 products shall complete a one-time four-credit training course approved
7 by the Department of Insurance and provided by a department-approved
8 education provider.

9 (ii) Producers ~~Insurance producers~~ who hold a life insurance line of
10 authority on July 1, 2021 ~~19, 2012~~, and who desire to sell annuities
11 shall complete the requirements of this subsection within six months
12 after July 1, 2021 ~~19, 2012~~. Individuals who obtain a life insurance line
13 of authority on or after July 1, 2021 ~~19, 2012~~, shall not engage in the
14 sale of annuities until the annuity training course required under this
15 subsection has been completed.

16 (b) The minimum length of the training required under this
17 subsection shall be sufficient to qualify for at least four continuing
18 education credits, but may be longer.

19 (c) The training required under this subsection shall include
20 information on the following topics:

21 (i) The types of annuities and various classifications of annuities;

22 (ii) Identification of the parties to an annuity;

23 (iii) How fixed, variable, and indexed annuity contract provisions
24 affect consumers;

25 (iv) The application of income taxation of qualified and
26 nonqualified annuities;

27 (v) The primary uses of annuities; and

28 (vi) Appropriate sales practices and replacement and disclosure
29 requirements.

30 (d) Providers of courses intended to comply with this subsection
31 shall cover all topics listed in the prescribed outline and shall not

1 present any marketing information or provide training on sales techniques
2 or specific information about a particular insurer's products. Additional
3 topics may be offered in conjunction with and in addition to the required
4 outline.

5 (e) A provider of an annuity training course intended to comply with
6 this subsection shall register as a continuing education provider in this
7 state and comply with the requirements applicable to insurance producer
8 continuing education activities as set forth in section 44-3905.

9 (f) A producer who has completed an annuity training course approved
10 by the Department of Insurance prior to July 1, 2021, shall, within six
11 months after July 1, 2021, complete either:

12 (i) A new four-credit training course approved by the Department of
13 Insurance after the effective date of this act; or

14 (ii) An additional one-time, one-credit training course approved by
15 the Department of Insurance and provided by a Department of Insurance
16 approved education provider on appropriate sales practices and
17 replacement and disclosure requirements under the Nebraska Protection in
18 Annuity Transactions Act.

19 ~~(g)~~ Annuity training courses may be conducted and completed by
20 classroom or self-study methods in accordance with sections 44-3901 to
21 44-3908.

22 ~~(h)~~ Providers of annuity training shall comply with the
23 reporting requirements and shall issue certificates of completion in
24 accordance with sections 44-3901 to 44-3908.

25 ~~(i)~~ ~~(h)~~ The satisfaction of training requirements of another state
26 that are substantially similar to the provisions of this subsection shall
27 be deemed to satisfy the training requirements of this subsection.

28 (j) The satisfaction of the components of the training requirements
29 of any course or courses with components substantially similar to the
30 provisions of this subsection shall be deemed to satisfy the training
31 requirements of this subsection.

1 (k) (i) An insurer shall verify that each ~~an insurance~~ producer has
2 completed the annuity training course required under this subsection
3 before allowing the producer to sell an annuity product for that insurer.
4 An insurer may satisfy its responsibility under this subsection by
5 obtaining certificates of completion of the training course or obtaining
6 reports provided by National Association of Insurance Commissioners-
7 sponsored data base systems or vendors or from a reasonably reliable
8 commercial data base vendor that has a reporting arrangement with
9 approved insurance education providers.

10 Sec. 7. Section 44-8109, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 44-8109 The changes made to the Nebraska Protection in Annuity
13 Transactions Act by this legislative bill ~~Laws 2012, LB887~~, shall apply
14 to solicitations occurring on and after January 1, 2022 ~~2013~~.

15 Sec. 8. Original sections 44-8102, 44-8103, 44-8105, 44-8106,
16 44-8107, 44-8108, and 44-8109, Revised Statutes Cumulative Supplement,
17 2020, are repealed.

18 Sec. 9. Since an emergency exists, this act takes effect when
19 passed and approved according to law.