
SUITABILITY IN ANNUITY TRANSACTIONS

Must be completed and accompany applications for annuities

Applicant's Name _____

Applicant's Address _____

I have made reasonable efforts to obtain the following information regarding the applicant's financial status and objectives prior to making the recommendation of this product.

- | | |
|--|---|
| <input type="checkbox"/> Tax Status | <input type="checkbox"/> Source of funds |
| <input type="checkbox"/> Investment Objectives | <input type="checkbox"/> Dependent information |
| <input type="checkbox"/> Liquidity needs | <input type="checkbox"/> Need for Income |
| <input type="checkbox"/> Investment experience | <input type="checkbox"/> Need for an annuity contract |

Other _____

I understand I must keep records of the information used in making this recommendation, and I agree that I will provide those records to the insurer upon request. The time period for record retention will be no less than that required by the Suitability in Annuity Transactions regulation as adopted by the state in which the contract is issued.

Agent's Signature

Date

If the annuity sold is not the product recommended, the applicant must read the following statement and sign below.

I have chosen to purchase an annuity other than the recommended product.

Applicant's Signature

Date

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Montana Senate Bill 535

33-20-801. Short title. This part may be referred to as the "Montana Suitability in Annuity Transactions Act".

33-20-802. Purpose -- scope. (1) The purpose of this part is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) This part applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer or by an insurer when an insurance producer is not involved that results in the recommended purchase or exchange.

33-20-803. Exemptions. Unless otherwise specifically included, this part does not apply to recommendations involving:

(1) direct response solicitations when there is not a recommendation made based on information collected from the consumer;

(2) contracts used to fund:

(a) an employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(b) a plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code, 26 U.S.C. 401(a), 401(k), 403(b), 408(k), or 408(p), if established or maintained by an employer;

(c) a governmental plan or church plan defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the Internal Revenue Code, 26 U.S.C. 457;

(d) a nonqualified deferred compensation plan maintained by an employer or plan sponsor;

(e) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) formal prepaid funeral contracts; or

(3) variable annuities regulated under Title 30, chapter 10.

33-20-804. Definitions. As used in this part, the following definitions apply:

(1) "Annuity" means a fixed annuity that is individually solicited, regardless of whether the product is classified as an individual or group annuity.

(2) "Insurance producer", in addition to the definition in [33-17-102](#), includes an insurance producer licensed to sell, solicit, or negotiate annuities.

(3) "Insurer", in addition to the definition in [33-1-201](#), includes an insurer providing annuity products.

(4) "Recommendation" means advice provided by an insurance producer or by an insurer when an insurance producer is not involved to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

33-20-805. Duties of insurers, insurance producers, and independent agencies.

(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer or the insurer when an insurance producer is not involved must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's

investments, other insurance products, financial situation, and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer or an insurer when an insurance producer is not involved shall make reasonable efforts to obtain information concerning:

- (a) the consumer's financial status;
- (b) the consumer's tax status;
- (c) the consumer's investment objectives; and

(d) other information used or considered reasonable in making recommendations to the consumer by the insurance producer or by the insurer when an insurance producer is not involved.

(3) (a) Except as provided under subsection (3)(b), an insurance producer or an insurer when an insurance producer is not involved does not have any obligation to a consumer under subsection (1) related to any recommendation if a consumer:

(i) refuses to provide relevant information requested by the insurer or insurance producer;

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

(iii) fails to provide complete or accurate information.

(b) Subject to subsection (1), an insurer's or insurance producer's recommendation must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4) (a) An insurer may contract with a third party as provided in subsection (6) to establish and maintain a system to supervise recommendations that is reasonably designed to achieve compliance with this section.

(b) A system designed and maintained by an insurer must at a minimum provide for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of the insurer's records that are reasonably designed to assist in detecting and preventing violations of this part.

(5) An insurance producer or independent agency shall:

(a) adopt a system established by an insurer to supervise recommendations of the insurance producer or agency's insurance producers that is reasonably designed to achieve compliance with this part; or

(b) establish and maintain a system that at a minimum provides for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this part.

(6) (a) An insurer may contract with a third party, including an insurance producer or independent agency, to establish and maintain a system of supervision as provided for in subsection (4) with respect to insurance producers under contract with or employed by the third party.

(b) An insurer shall make reasonable inquiry to ensure that the third party is performing the functions required under subsection (4) and shall take reasonable action under the circumstances to enforce the third party's contractual obligations to perform the functions.

(c) An insurer may comply with its obligation to make reasonable inquiry by doing each of the following:

(i) annually obtaining a certification from a director, officer, or principal of the third party that the third party is performing the required functions; and

(ii) based on reasonable selection criteria, periodically selecting third parties for a review to determine whether the third parties are performing the required functions.

(7) An insurer, insurance producer, or independent agency is not required by this

section to:

(a) review or provide for review of insurance producer solicited transactions not related to annuities; or

(b) include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, insurance producer, or independent agency.

(8) An insurance producer or independent agency contracting as a third party with an insurer pursuant to subsection (6) shall promptly, when requested by the insurer, give a certification as described in subsection (6) or give a clear statement that it is unable to meet the certification criteria.

(9) (a) Insurers, insurance producers, and independent agencies shall maintain or must be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer.

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

33-20-806. Mitigation of responsibility. (1) The commissioner may order:

(a) an insurer or insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or insurance producer's violation of this part; or

(b) an insurance producer or independent agency that employs or contracts with another insurance producer to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for any consumer harmed by the other insurance producer's violation of this part.

(2) A violation of this part is an unfair trade practice under Title 33, chapter 18. Fines may be imposed pursuant to [33-1-317](#).