LEGISLATIVE BILL 22

Approved by the Governor April 7, 2021

Introduced by Williams, 36.

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

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

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

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

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

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

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

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

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

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

(1) Annuity means an annuity that is an insurance product under state law and is individually solicited, whether the product is classified as an individual or group annuity;

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

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

(a) Age;

(b) Annual income;

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

(d) Financial experience;

(e) Insurance needs;

(f) Financial objectives;

(g) Intended use of the annuity;

(h) Financial time horizon;

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

(j) Liquidity needs;

(k) Liquid net worth;

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

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

(n) Tax status;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) Age;~~

~~(b) Annual income;~~

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

~~(d) Financial experience;~~

~~(e) Financial objectives;~~

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

~~(g) Financial time horizon;~~

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

~~(i) Liquidity needs;~~

~~(j) Liquid net worth;~~

~~(k) Risk tolerance; and~~

~~(l) Tax status.~~

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

44-8106 (1) The ~~insurance~~ producer, when making a recommendation of an annuity, 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. A producer has acted in the best interest of the consumer and met the best interest obligation if the following care, disclosure, conflict of interest, and documentation obligations are satisfied ~~or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer before making a recommendation to a consumer under the Nebraska Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the consumer relating to his or her investments, other insurance products, and the financial situation and needs of the consumer. This information shall include the consumer's suitability information, and, if there is a reasonable basis to believe the information, all of the following~~:

~~(a) That the consumer has been reasonably 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,~~

~~potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk;~~

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

(A) Know the consumer's financial situation, insurance needs, and financial objectives;

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

(C) Have a reasonable basis to believe 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; and

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

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

(iii) The care obligation requires a producer to 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. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.

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

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

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

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

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

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

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

(A) ~~(i)~~ 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) ~~(ii)~~ The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product ~~consumer would benefit from product enhancements and improvements~~; and

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

(xi) Nothing in the Nebraska Protection in Annuity Transactions Act shall be construed to 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, but not limited to, any securities license, in order to fulfill the duties of the care obligation, except that a producer shall not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring another professional license without first obtaining the appropriate license;

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

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

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

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

(D) A description of the sources and types of cash compensation and noncash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission, as part of a premium, by other remuneration received from the insurer, intermediary, or other producer, or by fee as a result of a contract for advice or consulting services; and

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

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

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

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

(iii) As part of the disclosure obligation, the producer shall, prior to or at the time of the recommendation or sale of an annuity, 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, limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance and investment components, and market risk;

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

~~(2) Before the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain the consumer's suitability information.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Any best interest obligation requirement applicable to a producer under this subsection shall apply 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 providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do

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not, in and of themselves, constitute material control or influence.

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

(i) No recommendation is made;

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

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

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

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

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

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

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

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

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

(iv) The insurer shall establish and maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives ~~a recommendation is suitable~~. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

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

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

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

(viii) The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subdivision are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as such benefits are not based upon the volume of sales of a specific annuity within a limited period of time; and

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

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

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

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

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

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

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

(ii) Consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

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

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

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

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

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

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

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

(ii) Provide to the entity responsible for supervising the financial professional seeking to rely on subdivision (a) of this subsection, such as the financial professional's broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

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

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

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

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

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

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

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

(iii) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the federal Employee Retirement Income Security Act of 1974 or the Internal Revenue Code of 1986, as such acts existed on January 1, 2021.

(6)(a) Insurers, general agents, independent agencies, and producers shall maintain or be able to make available to the Director of Insurance 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 five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer.

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

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

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

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

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

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

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

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

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

(c) Appropriate penalties and sanctions.

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

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

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

44-8108 (1) A ~~An insurance~~ producer shall not solicit the sale of an annuity product unless the ~~insurance~~ producer has adequate knowledge of the product to recommend the annuity and the ~~insurance~~ producer is in compliance with the insurer's standards for product training. A ~~An insurance~~ producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

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

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

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

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

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

(ii) Identification of the parties to an annuity;

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

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

(v) The primary uses of annuities; and

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

(d) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

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

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

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

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

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

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

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

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

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

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

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

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

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