

# Suitability in Annuity Transactions

This Act directs that 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 no producer is 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 and other insurance products and as to the consumer's financial situation and needs.

The Act requires that before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain information concerning the consumer's financial status; the consumer's tax status; the consumer's investment objectives; and other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.

Submitted as:

North Dakota

[SB 2155](#)

Status: Enacted into law in 2007.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as "An Act Relating to Suitability in  
2 Annuity Transactions."

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4           Section 2. [*Exemptions.*] Unless otherwise specifically included, this Act does not apply to  
5 recommendations involving:

6           1. direct response solicitations if there is no recommendation based on information  
7 collected from the consumer pursuant to this Act; and

8           2. contracts used to fund:

9                 a. an employee pension or welfare benefit plan that is covered by the [Employee  
10 Retirement and Income Security Act];

11                b. a plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the  
12 Internal Revenue Code, as amended, if established or maintained by an employer;

13                c. a government or church plan defined in section 414 of the Internal Revenue  
14 Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or  
15 local government or tax exempt organization under section 457 of the Internal Revenue Code;

16                d. a nonqualified deferred compensation arrangement established or maintained by  
17 an employer or plan sponsor;

18                e. settlements of or assumptions of liabilities associated with personal injury  
19 litigation or a dispute or claim resolution process; or

20                f. formal prepaid funeral contracts.

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22           Section 3. [*Definitions.*] As used in this Act:

23           1. "annuity" means a fixed annuity or variable annuity that is individually solicited,  
24 whether the product is classified as an individual or group annuity.

- 25           2. “insurance producer” means a person required to be licensed under the laws of this state  
26 to sell, solicit, or negotiate insurance, including annuities.  
27           3. “insurer” means a company required to be licensed under the laws of this state to  
28 provide insurance products, including annuities.  
29           4. “recommendation” means advice provided by an insurance producer, or an insurer when  
30 no producer is involved, to an individual consumer that results in a purchase or exchange of an  
31 annuity in accordance with that advice.

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33           Section 4. [*Duties of Insurers and Insurance Producers.*]

34           1. In recommending to a consumer the purchase of an annuity or the exchange of an  
35 annuity that results in another insurance transaction or series of insurance transactions, the  
36 insurance producer, or the insurer when no producer is involved, must have reasonable grounds for  
37 believing that the recommendation is suitable for the consumer on the basis of the facts disclosed  
38 by the consumer as to the consumer’s investments and other insurance products and as to the  
39 consumer’s financial situation and needs.

40           2. Before the execution of a purchase or exchange of an annuity resulting from a  
41 recommendation, an insurance producer, or an insurer when no producer is involved, shall make  
42 reasonable efforts to obtain information concerning:

- 43                   a. the consumer’s financial status;  
44                   b. the consumer’s tax status;  
45                   c. the consumer’s investment objectives; and  
46                   d. other information used or considered to be reasonable by the insurance producer,  
47 or the insurer when no producer is involved, in making recommendations to the consumer.

48           3.       a. Except as provided under subdivision b, neither an insurance producer nor an  
49 insurer when no producer is involved has an obligation to a consumer under subsection 1 related  
50 to a recommendation if a consumer:

- 51                               (1) refuses to provide relevant information requested by the insurer or  
52 insurance producer;  
53                               (2) decides to enter into an insurance transaction that is not based on a  
54 recommendation of the insurer or insurance producer; or  
55                               (3) fails to provide complete or accurate information.

56                   b. An insurer or insurance producer’s recommendation subject to subdivision a  
57 must be reasonable under all the circumstances actually known to the insurer or insurance  
58 producer at the time of the recommendation.

59           4.       a. An insurer shall ensure that a system to supervise recommendations that is  
60 reasonably designed to achieve compliance with this Act is established and maintained by  
61 complying with subdivisions c through e, or shall establish and maintain such a system, including:

- 62                               (1) maintaining written procedures; and  
63                               (2) conducting periodic reviews of its records that are reasonably designed

64 to assist in detecting and preventing violations of this Act.

65                   b. A general agent and independent agency shall adopt a system established by an  
66 insurer to supervise recommendations of its insurance producers that is reasonably designed to  
67 achieve compliance with this Act, or shall establish and maintain such a system, including:

- 68                               (1) maintaining written procedures; and  
69                               (2) conducting periodic reviews of records that are reasonably designed to

70 assist in detecting and preventing violations of this Act.

71                   c. An insurer may contract with a third party, including a general agent or  
72 independent agency, to establish and maintain a system of supervision as required by subdivision a  
73 with respect to insurance producers under contract with or employed by the third party.

74 d. An insurer shall make reasonable inquiry to ensure that the third party  
75 contracting under subdivision c is performing the functions required under subdivision a and shall  
76 take action as is reasonable under the circumstances to enforce the contractual obligation to  
77 perform the functions. An insurer may comply with its obligation to make reasonable inquiry by  
78 doing all of the following:

79 (1) the insurer annually obtains a certification from a third-party senior  
80 manager who has responsibility for the delegated functions that the manager has a reasonable basis  
81 to represent, and does represent, that the third party is performing the required functions; and

82 (2) the insurer, based on reasonable selection criteria, periodically selects  
83 third parties contracting under subdivision c for a review to determine whether the third parties are  
84 performing the required functions.

85 (3) the insurer shall perform those procedures to conduct the review that are  
86 reasonable under the circumstances.

87 e. An insurer that contracts with a third party pursuant to subdivision c and that  
88 complies with the requirements to supervise in subdivision d has fulfilled its responsibilities under  
89 subdivision a.

90 f. An insurer, general agent, or independent agency is not required by subdivision a  
91 or b to:

92 (1) review, or provide for review of, all insurance producer solicited  
93 transactions; or

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

97 g. A general agent or independent agency contracting with an insurer pursuant to  
98 subdivision c shall promptly, when requested by the insurer pursuant to subdivision d, give a  
99 certification as described in subdivision d or give a clear statement that it is unable to meet the  
100 certification criteria.

101 h. A person may not provide a certification under paragraph 1 of subdivision d  
102 unless:

103 (1) the person is a senior manager with responsibility for the delegated  
104 functions; and

105 (2) the person has a reasonable basis for making the certification.

106 5. Compliance with the National Association of Securities Dealers conduct rules pertaining  
107 to suitability satisfies the requirements under this section for the recommendation of variable  
108 annuities. However, nothing in this subsection limits the [insurance commissioner's] ability to  
109 enforce the provisions of this Act.

110  
111 Section 5. [*Mitigation of Responsibility - Penalty.*]

112 1. The [commissioner] may order:

113 a. an insurer to take reasonably appropriate corrective action for a consumer  
114 harmed by the insurer's, or by its insurance producer's, violation of this Act;

115 b. an insurance producer to take reasonably appropriate corrective action for a  
116 consumer harmed by the insurance producer's violation of this Act; and

117 c. a general agency or independent agency that employs or contracts with an  
118 insurance producer to sell, or solicit the sale of, annuities to consumers, to take reasonably  
119 appropriate corrective action for a consumer harmed by the insurance producer's violation of this  
120 Act.

121           2. Any applicable penalty under this Act for a violation of this Act may be reduced or  
122 eliminated, according to a schedule adopted by the [commissioner], if corrective action for the  
123 consumer was taken promptly after a violation was discovered.

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125           Section 6. [*Recordkeeping.*]

126           1. Insurers, general agents, independent agencies, and insurance producers shall maintain  
127 or be able to make available to the [commissioner] a record of the information collected from the  
128 consumer and other information used in making the recommendations that were the basis for  
129 insurance transactions for [ten years] after the insurance transaction is completed by the insurer.  
130 An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance  
131 producer.

132           2. Records required to be maintained by this Act may be maintained in paper,  
133 photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that  
134 accurately reproduces the actual document.

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136           Section 7. [*Severability.*] [Insert severability clause.]

137  
138           Section 8. [*Repealer.*] [Insert repealer clause.]

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140           Section 9. [*Effective Date.*] [Insert effective date.]