

Introduced by

Representative Keiser

Senator Klein

1 A BILL for an Act to amend and reenact sections 26.1-34.2-01.1, 26.1-34.2-02, 26.1-34.2-03,  
2 26.1-34.2-03.1, 26.1-34.2-04, and 26.1-34.2-05 of the North Dakota Century Code, relating to  
3 annuity transaction practices; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 26.1-34.2-01.1 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **26.1-34.2-01.1. Scope.**

8 This chapter applies to ~~any~~ sale or recommendation to purchase, exchange, or replace of  
9 an annuity made to a consumer by an insurance producer, or an insurer when no producer is  
10 involved, that results in the purchase, exchange, or replacement recommended. This chapter  
11 may not be construed to create or imply a private cause of action for a violation of this chapter  
12 or to subject a producer to civil liability under the best interest standard of care outlined in  
13 section 26.1-34.2-03 or under standards governing the conduct of a fiduciary or a fiduciary  
14 relationship.

15 **SECTION 2. AMENDMENT.** Section 26.1-34.2-02 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **26.1-34.2-02. Definitions.**

- 18 1. "Annuity" means an annuity that is an insurance product under state law which is  
19 individually solicited, whether the product is classified as an individual or group  
20 annuity.
- 21 2. ~~"Insurance producer" means a person required to be licensed under the laws of this~~  
22 ~~state to sell, solicit, or negotiate insurance, including annuities.~~
- 23 3. "Cash compensation" means a discount, concession, fee, service fee, commission,  
24 sales charge, loan, override, or cash benefit received by a producer in connection with

1           the recommendation or sale of an annuity from an insurer or intermediary or directly  
2           from the consumer.

3           3. "Comparable standards":

4           a. With respect to a broker-dealer and registered representative of a broker-dealer,  
5           applicable federal securities and exchange commission and financial industry  
6           regulatory authority rules pertaining to best interest obligations and supervision of  
7           annuity recommendations and sales, including Regulation Best Interest  
8           [17 CFR 240];

9           b. With respect to an investment adviser registered under federal or state securities  
10           laws or an investment adviser representative, the fiduciary duties and all other  
11           requirements imposed on such investment advisers or investment adviser  
12           representatives by contract or under the federal Investment Advisers Act of 1940  
13           [15 U.S.C. 80b-1 et seq.] or applicable state securities law, including, the form  
14           ADV and interpretations; and

15           c. With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions,  
16           and all other requirements attendant to such status under the federal Employee  
17           Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] or the federal  
18           Internal Revenue Code as amended.

19           4. "Consumer profile information" means information that is reasonably appropriate to  
20           determine whether a recommendation addresses the consumer's financial situation,  
21           insurance needs, and financial objectives, including, at a minimum, the following:

22           a. Age;

23           b. Annual income;

24           c. Financial situation and needs, including debts and other obligations;

25           d. Financial experience;

26           e. Insurance needs;

27           f. Financial objectives;

28           g. Intended use of the annuity;

29           h. Financial time horizon;

30           i. Existing assets or financial products, including investment, annuity, and insurance  
31           holdings;

- 1           j. Liquidity needs;  
2           k. Liquid net worth;  
3           l. Risk tolerance, including willingness to accept nonguaranteed elements in the  
4           annuity;  
5           m. Financial resources used to fund the annuity; and  
6           n. Tax status.
- 7           5. "Continuing education credit" means one continuing education credit as provided for  
8           under section 26.1-26-31.1.
- 9           6. "Continuing education provider" means an individual or entity approved to offer  
10           continuing education courses pursuant to section 26.1-26-31.1.
- 11          7. "Financial professional" means a producer that is regulated and acting as:  
12           a. A broker-dealer registered under federal or state securities laws or a registered  
13           representative of a broker-dealer;  
14           b. An investment adviser registered under federal or state securities laws or an  
15           investment adviser representative associated with the federal or state registered  
16           investment adviser; or  
17           c. A plan fiduciary under section 3(21) of the federal Employee Retirement Income  
18           Security Act of 1974 [29 CFR 2510.3-21] or fiduciary under section 4975(e)(3) of  
19           the Internal Revenue Code [26 U.S.C. 4975(e)(3)] as amended.
- 20          8. "Insurer" means a company required to be licensed under the laws of this state to  
21           provide insurance products, including annuities.
- 22          4-9. "Intermediary" means an entity contracted directly with an insurer or with another  
23           entity contracted with an insurer to facilitate the sale of the insurer's annuities by  
24           producers.
- 25          10. "Material conflict of interest" means a financial interest of the producer in the sale of an  
26           annuity which a reasonable person would expect to influence the impartiality of a  
27           recommendation. The term does not include cash compensation or noncash  
28           compensation.
- 29          11. "Noncash compensation" means any form of compensation that is not cash  
30           compensation, including health insurance, office rent, office support, and retirement  
31           benefits.

1        12. "Nonguaranteed elements" means the premiums, credited interest rates, including a  
2        bonus, benefits, values, dividends, noninterest based credits, charges, or elements of  
3        formulas used to determine any of these which are subject to company discretion and  
4        are not guaranteed at issue. An element is considered nonguaranteed if any of the  
5        underlying nonguaranteed elements are used in the element's calculation.

6        13. "Producer" means an individual or entity required to be licensed under the laws of this  
7        state to sell, solicit, or negotiate insurance, including annuities. The term includes an  
8        insurer if no producer is involved.

9        14. "Recommendation" means advice provided by an insurance producer, or an insurer  
10       when no producer is involved, to an individual consumer which results in a purchase,  
11       replacement, or exchange of an annuity in accordance with that advice a producer to  
12       an individual consumer which was intended to result or results in a purchase, a  
13       replacement, or an exchange of an annuity in accordance with that advice. The term  
14       does not include general communication to the public, generalized customer services  
15       assistance or administrative support, general educational information and tools,  
16       prospectuses, or other product and sales material.

17       5-15. "Replacement" means a transaction in which a new policy or contract annuity is to be  
18       purchased, and it is known or should be known to the proposing producer, or to the  
19       proposing insurer if there is now whether or not a producer is involved, that by reason of  
20       the transaction, an existing annuity or other insurance policy or contract has been or is  
21       to be any of the following:

- 22       a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing  
23       insurer, or otherwise terminated;
- 24       b. Converted to reduced paid-up insurance, continued as extended term insurance,  
25       or otherwise reduced in value by the use of nonforfeiture benefits or other policy  
26       values;
- 27       c. Amended so as to effect either a reduction in benefits or in the term for which  
28       coverage would otherwise remain in force or for which benefits would be paid;
- 29       d. Reissued with any reduction in cash value; or
- 30       e. Used in a financed purchase.

- 1           6.   ~~"Suitability information" means information that is reasonably appropriate to determine-~~  
2           ~~the suitability of a recommendation, including the following:~~  
3           a.   Age;  
4           b.   Annual income;  
5           c.   ~~Financial situation and needs, including the financial resources used for the-~~  
6           ~~funding of the annuity;~~  
7           d.   Financial experience;  
8           e.   Financial objectives;  
9           f.   ~~Intended use of the annuity;~~  
10          g.   Financial time horizon;  
11          h.   ~~Existing assets, including investment and life insurance holdings;~~  
12          i.   Liquidity needs;  
13          j.   Liquid net worth;  
14          k.   Risk tolerance; and  
15          l.   Tax status.

16           **SECTION 3. AMENDMENT.** Section 26.1-34.2-03 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **26.1-34.2-03. Duties of insurers and insurance producers.**

- 19           1.   ~~In recommending to a consumer the purchase of an annuity or the exchange of an~~  
20           ~~annuity that results in another insurance transaction or series of insurance~~  
21           ~~transactions, the insurance producer, or the insurer when no producer is involved,~~  
22           ~~must have reasonable grounds for believing that the recommendation is suitable for~~  
23           ~~the consumer on the basis of the facts disclosed by the consumer as to the~~  
24           ~~consumer's investments and other insurance products and as to the consumer's~~  
25           ~~financial situation and needs, including the consumer's suitability information, and that~~  
26           ~~there is a reasonable basis to believe all of the following:~~  
27           a.   TheA producer, if making a recommendation of an annuity, shall act in the best  
28           interest of the consumer under the circumstances known at the time the  
29           recommendation is made, without placing the producer's or the insurer's financial  
30           interest ahead of the consumer's interest. A producer has acted in the best

1 interest of the consumer if the producer has satisfied the following obligations  
2 regarding care, disclosure, conflict of interest, and documentation:

3 a. (1) The producer, in making a recommendation, shall exercise reasonable  
4 diligence, care, and skill to:

5 (a) Know the consumer's financial situation, insurance needs, and  
6 financial objectives;

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

9 (c) Have a reasonable basis to believe the recommended option  
10 effectively addresses the consumer's financial situation, insurance

11 needs, and financial objectives over the life of the product, as  
12 evaluated in light of the consumer profile information; and

13 (d) Communicate the basis or bases of the recommendation.

14 (2) The requirements under this subdivision include making reasonable efforts  
15 to obtain consumer profile information from the consumer before the  
16 recommendation of an annuity.

17 (3) The requirements under this subdivision require a producer to consider the  
18 types of products the producer is authorized and licensed to recommend or  
19 sell which address the consumer's financial situation, insurance needs, and  
20 financial objectives. This does not require analysis or consideration of any  
21 products outside the authority and license of the producer or other possible  
22 alternative products or strategies available in the market at the time of the  
23 recommendation. A producer must be held to standards applicable to  
24 producers with similar authority and licensure.

25 (4) The requirements under this subdivision do not create a fiduciary obligation  
26 or relationship and only create a regulatory obligation as established in this  
27 chapter.

28 (5) The consumer profile information, characteristics of the insurer, and product  
29 costs, rates, benefits, and features are those factors generally relevant in  
30 making a determination whether an annuity effectively addresses the  
31 consumer's financial situation, insurance needs, and financial objectives.

1 but the level of importance of each factor under the care obligation of this  
2 paragraph may vary depending on the facts and circumstances of a  
3 particular case. However, each factor may not be considered in isolation.

4 (6) The requirements under this subdivision include having a reasonable basis  
5 to believe the consumer would benefit from certain features of the annuity,  
6 such as annuitization, death or living benefit, or other insurance-related  
7 features.

8 (7) The requirements under this subdivision apply to the particular annuity as a  
9 whole and the underlying subaccounts to which funds are allocated at the  
10 time of purchase or exchange of an annuity, and riders and similar producer  
11 enhancements, if any.

12 (8) The requirements under this subdivision do not mean the annuity with the  
13 lowest one-time or multiple occurrence compensation structure necessarily  
14 must be recommended.

15 (9) The requirements under this subdivision do not mean the producer has  
16 ongoing monitoring obligations under the care obligation under this  
17 paragraph, although such an obligation may be owed separately under the  
18 terms of a fiduciary, consulting, investment advising, or financial planning  
19 agreement between the consumer and the producer.

20 (10) In the case of an exchange or replacement of an annuity, the producer shall  
21 consider the whole transaction, which includes taking into consideration  
22 whether:

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

28 (b) The replacing product would benefit the consumer substantially in  
29 comparison to the replaced product over the life of the product; and

- 1                   (c) The consumer has had another annuity exchange or replacement  
2                                   and, in particular, an exchange or replacement within the preceding  
3                                   sixty months.
- 4           (11) This chapter may not be construed to require a producer to obtain a license  
5                   other than a producer license with the appropriate line of authority to sell,  
6                   solicit, or negotiate insurance in this state, including a securities license, in  
7                   order to fulfill the duties and obligations contained in this chapter; provided  
8                   the producer does not give advice or provide services that are otherwise  
9                   subject to securities laws or engage in any other activity requiring other  
10                   professional licenses.
- 11           b. (1) Before the recommendation or sale of an annuity, the producer prominently  
12                   shall disclose to the consumer on a form substantially similar to a model  
13                   form designed by the insurance department:
- 14                   (a) A description of the scope and terms of the relationship with the  
15                                   consumer and the role of the producer in the transaction;
- 16                   (b) An affirmative statement on whether the producer is licensed and  
17                                   authorized to sell the following products:
- 18                                   [1] Fixed annuities;  
19                                   [2] Fixed indexed annuities;  
20                                   [3] Variable annuities;  
21                                   [4] Life insurance;  
22                                   [5] Mutual funds;  
23                                   [6] Stocks and bonds; and  
24                                   [7] Certificates of deposit;
- 25                   (c) An affirmative statement describing the insurers the producer is  
26                                   authorized, contracted, or appointed, or otherwise able to sell  
27                                   insurance products for, using the following descriptions:
- 28                                   [1] One insurer;  
29                                   [2] From two or more insurers; or  
30                                   [3] From two or more insurers although primarily contracted with one  
31                                   insurer.



- 1                   (d) A description of the sources and types of cash compensation and  
2                   noncash compensation to be received by the producer, including  
3                   whether the producer is to be compensated for the sale of a  
4                   recommended annuity by commission as part of premium or other  
5                   remuneration received from the insurer, intermediary, or other  
6                   producer or by fee as a result of a contract for advice or consulting  
7                   services; and
- 8                   (e) A notice of the consumer's right to request additional information  
9                   regarding cash compensation described in subparagraph d;
- 10                  (2) Upon request of the consumer or the consumer's designated representative,  
11                  the producer shall disclose:
- 12                   (a) A reasonable estimate of the amount of cash compensation to be  
13                   received by the producer, which may be stated as a range of amounts  
14                   or percentages; and
- 15                   (b) Whether the cash compensation is a one-time or multiple occurrence  
16                   amount, and if a multiple occurrence amount, the frequency and  
17                   amount of the occurrence, which may be stated as a range of  
18                   amounts or percentages;
- 19                  (3) Before or at the time of the recommendation or sale of an annuity, the  
20                  producer must have a reasonable basis to believe the consumer has been  
21                  reasonably informed of various features of the annuity, such as the potential  
22                  surrender period and surrender charge; potential tax penalty if the consumer  
23                  sells, exchanges, surrenders or annuitizes the annuity; mortality and  
24                  expense fees; investment advisory fees; annual fees; potential charges for  
25                  and features of riders or other options of the annuity; limitations on interest  
26                  returns; potential changes in nonguaranteed elements of the annuity;  
27                  insurance and investment components; and market risk;
- 28                  b. ~~The consumer would benefit from certain features of the annuity, such as~~  
29                  ~~tax-deferred growth, annuitization, or death or living benefit;~~
- 30                  e. ~~The particular annuity as a whole, the underlying subaccounts to which funds are~~  
31                  ~~allocated at the time of purchase or exchange of the annuity, and riders and~~

- 1 similar product enhancements, if any, are suitable, and in the case of an  
2 exchange or replacement, the transaction as a whole is suitable, for the particular  
3 consumer based on the consumer's suitability information; and
- 4 d. In the case of an exchange or replacement of an annuity, the exchange or  
5 replacement is suitable, including taking into consideration whether:
- 6 (1) The consumer will incur a surrender charge; be subject to the  
7 commencement of a new surrender period; lose existing benefits, such as  
8 death, living, or other contractual benefits; or be subject to increased fees,  
9 investment advisory fees, or charges for riders and similar product  
10 enhancements;
- 11 (2) The consumer would benefit from product enhancements and  
12 improvements; and
- 13 (3) The consumer has had another annuity exchange or replacement and, in  
14 particular, an exchange or replacement within the preceding thirty-six  
15 months.
- 16 2. Before the execution of a purchase, replacement, or exchange of an annuity resulting  
17 from a recommendation, an insurance producer, or an insurer when no producer is  
18 involved, shall make reasonable efforts to obtain the consumer's suitability  
19 information.
- 20 3. Except as permitted under subsection 4, an insurer may not issue an annuity  
21 recommended to a consumer unless there is a reasonable basis to believe the annuity  
22 is suitable based on the consumer's suitability information.
- 23 4. c. A producer shall identify and avoid or reasonably manage and disclose material  
24 conflicts of interest, including material conflicts of interest related to an ownership  
25 interest.
- 26 d. At the time of recommendation or sale the producer shall:
- 27 (1) Make a written record of any recommendation and the basis for the  
28 recommendation subject to this chapter;
- 29 (2) Obtain a consumer-signed statement on a form substantially similar to a  
30 model form established by the insurance department;

- 1                   (a) A customer's refusal to provide the consumer profile information, if  
2                   any; and
- 3                   (b) A customer's understanding of the ramifications of not providing the  
4                   customer's consumer profile information or providing insufficient  
5                   consumer profile information; and
- 6                   (3) Obtain a consumer-signed statement on a form substantially similar to a  
7                   model form established by the insurance department acknowledging the  
8                   annuity transaction is not recommended if a customer decides to enter an  
9                   annuity transaction that is not based on the producer's recommendation.
- 10                  e. A requirement applicable to a producer under this subsection applies to every  
11                  producer who has exercised material control or influence in the making of a  
12                  recommendation and has received direct compensation as a result of the  
13                  recommendation or sale, regardless of whether the producer has had any direct  
14                  contact with the consumer. Activities such as providing or delivering marketing or  
15                  educational materials, product wholesaling or other back office product support,  
16                  and general supervision of a producer do not, in and of themselves, constitute  
17                  material control or influence.
- 18                  2. a. ~~Except as provided under subdivision b, neither an insurance producer, nor an~~  
19                  ~~insurer, has any~~ does not have an obligation to a consumer under subsection 1  
20                  or 3 related to any annuity transaction if:
- 21                   (1) A recommendation was not made;
- 22                   (2) A recommendation was made and was later found to have been prepared  
23                   based on materially inaccurate information provided by the consumer;
- 24                   (3) A consumer refuses to provide relevant ~~suitability~~consumer profile  
25                   information and the annuity transaction is not recommended; or
- 26                   (4) A consumer decides to enter an annuity transaction that is not based on a  
27                   recommendation of the ~~insurer or the insurance~~ producer.
- 28                  b. An insurer's issuance of an annuity subject to subdivision a must be reasonable  
29                  under all the circumstances actually known to the insurer at the time the annuity  
30                  is issued.

- 1           5.   An insurance producer or, when no insurance producer is involved, the responsible  
2           insurer representative, at the time of sale shall:
- 3           a.   Make a record of any recommendation subject to subsection 1;
- 4           b.   Obtain a customer signed statement documenting a customer's refusal to provide  
5           suitability information, if any; and
- 6           c.   Obtain a customer signed statement acknowledging that an annuity transaction is  
7           not recommended if a customer decides to enter an annuity transaction that is  
8           not based on the insurance producer's or insurer's recommendation.
- 9           6-3.   a.   Except as permitted under subdivision b, an insurer may not issue an annuity  
10           recommended to a consumer unless there is a reasonable basis to believe the  
11           annuity would effectively address the particular consumer's financial situation,  
12           insurance needs, and financial objectives based on the consumer's consumer  
13           profile information.
- 14           b.   An insurer shall establish and maintain a supervision system that is reasonably  
15           designed to achieve the insurer's and the insurer's insurance producers'  
16           compliance with this chapter, including the following:
- 17           (1)   The insurer shall establish and maintain reasonable procedures to inform  
18           the insurer's insurance producers of the requirements of this chapter and  
19           shall incorporate the requirements of this chapter into relevant insurance-  
20           producer training manuals.
- 21           (2)   The insurer shall establish and maintain standards for insurance producer  
22           product training and shall maintain reasonable procedures to require the  
23           insurer's insurance producers to comply with the requirements of section  
24           26.1-34.2-03.1.
- 25           (3)   The insurer shall provide product-specific training and training materials that  
26           explain all material features of the insurer's annuity products to the insurer's  
27           insurance producers.
- 28           (4)   The insurer shall establish and maintain procedures for the review of each  
29           recommendation before issuance of an annuity which are designed to  
30           ensure that there is a reasonable basis to determine that ~~a recommendation~~  
31           is suitable the recommended annuity effectively would address the particular

1 consumer's financial situation, insurance needs, and financial objectives.

2 Such review procedures may apply a screening system for the purpose of  
3 identifying selected transactions for additional review and may be  
4 accomplished electronically or through other means, including physical  
5 review. Such an electronic or other system may be designed to require  
6 additional review only of those transactions identified for additional review  
7 by the selection criteria.

8 (5) The insurer shall establish and maintain reasonable procedures to detect  
9 recommendations that are not ~~suitable~~ in compliance with this paragraph  
10 and paragraphs 1, 2, and 4. This may include confirmation of the consumer  
11 suitability profile information, systematic customer surveys, producer and  
12 consumer interviews, confirmation letters, producer statements or  
13 attestations, and programs of internal monitoring. This paragraph does not  
14 prevent an insurer from complying with this paragraph by applying sampling  
15 procedures or by confirming ~~suitability~~ the consumer profile information or  
16 other required information under this section after issuance or delivery of the  
17 annuity.

18 ~~(6) Annually, the insurer shall provide a report to senior management, including~~  
19 ~~to the senior manager responsible for audit functions, which details a~~  
20 ~~review, with appropriate testing, reasonably designed to determine the~~  
21 ~~effectiveness of the supervision system, the exceptions found, and~~  
22 ~~corrective action taken or recommended, if any~~ The insurer shall establish  
23 and maintain reasonable procedures to assess, before or upon issuance or  
24 delivery of an annuity, whether a producer has provided to the customer the  
25 information required to be provided under this section.

26 ~~b:~~ (7) The insurer shall establish and maintain reasonable procedures to identify  
27 and address suspicious consumer refusals to provide consumer profile  
28 information.

29 (8) The insurer shall establish and maintain reasonable procedures to identify  
30 and eliminate any sales contests, sales quotas, bonuses, and noncash  
31 compensation that are based on the sales of specific annuities within a

1 limited period of time. The requirements of this subdivision are not intended  
2 to prohibit the receipt of health insurance, office rent, office support,  
3 retirement benefits, or other employee benefits by employees as long as  
4 those benefits are not based on the volume of sales of a specific annuity  
5 within a limited period of time.

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

11 c. (1) This subsection does not restrict an insurer from contracting for  
12 performance of a function, including maintenance of procedures, required  
13 under this subdivision a. An insurer is responsible for taking appropriate  
14 corrective action and may be subject to sanctions and penalties pursuant to  
15 section 26.1-34.2-04, regardless of whether the insurer contracts for  
16 performance of a function and regardless of the insurer's compliance with  
17 paragraph 2.

18 (2) An insurer's supervision system under ~~subdivision a~~ this subsection must  
19 include supervision of contractual performance under this subsection. This  
20 includes the following:

- 21 (a) Monitoring and, as appropriate, conducting audits to assure that the  
22 contracted function is properly performed; and  
23 (b) Annually, obtaining a certification from a senior manager who has  
24 responsibility for the contracted function that the manager has a  
25 reasonable basis to represent, and does represent, that the function is  
26 properly performed.

27 e.d. An insurer is not required to include in the insurer's system of supervision ~~an~~  
28 ~~insurance~~:

29 (1) A producer's recommendations to consumers of products other than the  
30 annuities offered by the insurer; or

1                   (2) Include consideration of or comparison to options available to the producer  
2                   or compensation relating to those options other than annuities or other  
3                   products offered by the insurer.

4    7.4. ~~An insurance~~A producer or an insurer may not dissuade, or attempt to dissuade, a  
5           consumer from:

6           a.    Responding truthfully to an insurer's request for confirmation of ~~suitability~~the  
7           consumer profile information;

8           b.    Filing a complaint; or

9           c.    Cooperating with the investigation of a complaint.

10   8.5. a.   ~~Sales~~Recommendations and sales of annuities made in compliance with the  
11           ~~financial industry regulatory authority requirements pertaining to suitability and~~  
12           ~~supervision of annuity transactions~~comparable standards must satisfy the  
13           requirements under this chapter. This subsection applies to ~~financial industry~~  
14           ~~regulatory authority broker-dealer~~recommendations and sales of variable-  
15           annuities and ~~fixed annuities~~ if the ~~suitability and supervision is similar to those~~  
16           ~~applied to variable annuity sales~~made by financial professionals in compliance  
17           with business rules, controls, and procedures that satisfy a comparable standard  
18           even if the standard would not otherwise apply to the product or recommendation  
19           at issue. However, this subsection does not limit the insurance commissioner's  
20           ability to enforce, including investigate, this chapter. This subdivision does not  
21           limit the insurer's obligation to comply with subdivision a of subsection 3 although  
22           the insurer may base the insurer's analysis on information received from either  
23           the financial professional or the entity supervising the financial professional.

24           b.    For subdivision a to apply, an insurer shall:

25           (1)   Monitor relevant conduct of the ~~financial industry regulatory authority~~  
26           ~~member broker-dealer~~professional seeking to rely upon subdivision a or the  
27           entity responsible for supervising the financial professional, such as the  
28           financial professional's broker-dealer or an investment advisor registered  
29           under federal or state securities laws using information collected in the  
30           normal course of an insurer's business; and

- 1           (2) Provide to the entity responsible for supervising the financial industry-  
2           regulatory authority member broker-dealer professional seeking to rely on  
3           subdivision a, such as the financial professional's broker-dealer or  
4           investment advisor registered under federal or state securities laws,  
5           information and reports that are reasonably appropriate to assist the-  
6           ~~financial industry regulatory authority member broker-dealer~~the entity to  
7           maintain its supervision system.

8           **SECTION 4. AMENDMENT.** Section 26.1-34.2-03.1 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10          **26.1-34.2-03.1. ~~Insurance producer~~Producer training.**

- 11          1. ~~An insurance~~A producer may not solicit the sale of an annuity product unless the  
12           insurance producer has adequate knowledge of the product to recommend the annuity  
13           and the ~~insurance~~ producer is in compliance with the insurer's standards for product  
14           training. ~~An insurance~~A producer may rely on insurer-provided product-specific training  
15           standards and materials to comply with this subsection.
- 16          2. a. (1) ~~An insurance~~A producer who engages in the sale of annuity products shall  
17           complete a one-time, four-hour training course.
- 18           (2) ~~An insurance producer who holds a life insurance line of authority on-~~  
19           ~~August 1, 2011, and who desires to sell annuities shall complete the~~  
20           ~~requirements of this subsection within twelve months after August 1, 2011.~~  
21           ~~An individual who obtains a life insurance line of authority on or after-~~  
22           ~~August 1, 2011, may not engage in the sale of annuities until the annuity-~~  
23           ~~training course required under this subsection has been completed.~~
- 24          b. The training required under this subsection must include information on the  
25           following topics:
- 26           (1) The types of annuities and various classifications of annuities;  
27           (2) Identification of the parties to an annuity;  
28           (3) How fixed, variable, and indexed annuity contract provisions affect  
29           consumers;  
30           (4) The application of income taxation of qualified and nonqualified annuities;  
31           (5) The primary uses of annuities; and



- 1                   (6) Appropriate standards of conduct, sales practices, replacement, and  
2                   disclosure requirements.
- 3                   c. Providers of courses intended to comply with this subsection shall cover all topics  
4                   listed in the prescribed outline and may not present any marketing information or  
5                   provide training on sales techniques or provide specific information about a  
6                   particular insurer's products. Additional topics may be offered in conjunction with  
7                   and in addition to the required outline.
- 8                   d. A producer who has completed an annuity training course approved by the  
9                   insurance department before the effective date of this Act, within six months after  
10                   such date, shall complete either:
- 11                   (1) A new four-credit training course approved by the insurance department  
12                   after the effective date of this Act; or
- 13                   (2) An additional one-time, one-credit training course approved by the  
14                   insurance department and provided by a insurance department-approved  
15                   education provider on appropriate sales practices, replacement, and  
16                   disclosure requirements under this chapter.
- 17                   e. Providers of annuity training shall issue certificates of completion.
- 18                   e-f. The satisfaction of the training requirements of another state which are  
19                   substantially similar to the provisions of this subsection are deemed to satisfy the  
20                   training requirements of this subsection in this state.
- 21                   f-g. The satisfaction of the components of the training requirements of a course with  
22                   components substantially similar to the provisions of this subsection is deemed to  
23                   satisfy the training requirements of this subsection in this state.
- 24                   h. An insurer shall verify that ~~an insurance~~the producer has completed the annuity  
25                   training course required under this subsection before allowing the producer to sell  
26                   an annuity product for that insurer. An insurer may satisfy the insurer's  
27                   responsibility under this subsection by obtaining certificates of completion of the  
28                   training course or obtaining reports from a reasonably reliable commercial  
29                   database vendor that has a reporting arrangement with insurance education  
30                   providers.

1       **SECTION 5. AMENDMENT.** Section 26.1-34.2-04 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **26.1-34.2-04. ~~Mitigation of responsibility~~ Compliance mitigation - Enforceability -**  
4 **Penalty.**

- 5       1. An insurer is responsible for compliance with this chapter. If a violation occurs, either  
6 because of the action or inaction of the insurer or the insurer's ~~insurance~~ producer, the  
7 commissioner may order:
- 8       a. An insurer to take reasonably appropriate corrective action for any consumer  
9 harmed by a failure to comply with this chapter by the insurer's insurer or by the  
10 ~~insurer's insurance producer's violation of this chapter~~ producer;
- 11       b. A general agency, independent agency, or the ~~insurance~~ producer to take  
12 reasonably appropriate corrective action for any consumer harmed by the  
13 ~~insurance~~ producer's violation of this chapter; and
- 14       c. Appropriate penalties and sanctions.
- 15       2. Any applicable penalty under section 26.1-01-03.3 for a violation of ~~subsection 1 or 2~~  
16 ~~or subdivision b of subsection 3 of section 26.1-34.2-03~~ this chapter may be reduced or  
17 eliminated, according to a schedule adopted by the commissioner, if corrective action  
18 for the consumer was taken promptly after a violation was discovered.
- 19       3. The authority to enforce compliance with this section is vested exclusively with the  
20 commissioner.

21       **SECTION 6. AMENDMENT.** Section 26.1-34.2-05 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23       **26.1-34.2-05. Recordkeeping.**

- 24       1. Insurers, general agents, independent agencies, and ~~insurance~~ producers shall  
25 maintain or be able to make available to the commissioner a record of the information  
26 collected from the consumer, disclosures made to the consumer, including summaries  
27 of oral disclosures, and other information used in making the recommendations that  
28 were the basis for insurance transactions for ten years after the insurance transaction  
29 is completed by the insurer. An insurer is permitted, but is not required, to maintain  
30 documentation on behalf of ~~an insurance~~ a producer.

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- 1           2. Records required to be maintained by this chapter may be maintained in paper,
- 2                    photographic, microprocess, magnetic, mechanical, or electronic media, or by any
- 3                    process that accurately reproduces the actual document.