

# HOUSE BILL NO. 6115

August 17, 2020, Introduced by Reps. Rendon, Berman, Markkanen, Wozniak, Eisen, Paquette and Brenda Carter and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending section 4165 (MCL 500.4165), as amended by 2012 PA 544,  
and by adding section 4166.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 4165. (1) Subject to subsection (2), a **recommendation or**  
2 sale made in compliance with ~~financial industry regulatory~~  
3 ~~authority requirements pertaining to suitability and supervision of~~  
4 ~~annuity transactions~~ **comparable standards** satisfies the  
5 requirements of this chapter. This subsection applies to a



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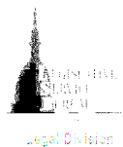
1 ~~financial industry regulatory authority broker dealer sale of a~~  
 2 ~~variable annuity or fixed annuity if the suitability and~~  
 3 ~~supervision are similar to those applied to variable annuity sales.~~  
 4 **recommendation or sale of an annuity made by a financial**  
 5 **professional in compliance with business rules, controls, and**  
 6 **procedures that satisfy a comparable standard even if the standard**  
 7 **would not otherwise apply to the product or recommendation at**  
 8 **issue.** However, this subsection does not limit the ~~commissioner's~~  
 9 **director's** ability to **investigate and enforce** and ~~investigate~~ this  
 10 chapter.

11 (2) Subsection (1) applies if the insurer does both of the  
 12 following:

13 (a) Monitors the ~~financial industry regulatory authority~~  
 14 ~~member broker-dealer~~ **relevant conduct of the financial professional**  
 15 **seeking to rely on subsection (1) or the entity responsible for**  
 16 **supervising the financial professional, such as the financial**  
 17 **professional's broker-dealer or an investment adviser registered**  
 18 **under federal securities laws** using information collected in the  
 19 normal course of the insurer's business.

20 (b) Provides to the ~~financial industry regulatory authority~~  
 21 ~~member broker-dealer~~ **entity responsible for supervising the**  
 22 **financial professional seeking to rely on subsection (1), such as**  
 23 **the financial professional's broker-dealer or investment adviser**  
 24 **registered under federal securities laws,** information and reports  
 25 that are reasonably appropriate to assist the ~~financial industry~~  
 26 ~~regulatory authority member broker-dealer~~ **entity** to maintain its  
 27 supervision system.

28 (3) Subsection (1) does not limit an insurer's obligation to  
 29 comply with section 4155(6). However, an insurer may base its



1 analysis on information received from either the financial  
2 professional or the entity supervising the financial professional.

3 (4) As used in this section:

4 (a) "Comparable standards" means all of the following, as  
5 applicable:

6 (i) With respect to broker-dealers and registered  
7 representatives of broker-dealers, applicable United States  
8 Securities and Exchange Commission and Financial Industry  
9 Regulatory Authority rules pertaining to best interest obligations  
10 and supervision of annuity recommendations and sales, including,  
11 but not limited to, Regulation Best Interest.

12 (ii) With respect to investment advisers registered under  
13 federal securities laws or investment adviser representatives, the  
14 fiduciary duties and all other requirements imposed on the  
15 investment advisers or investment adviser representatives by  
16 contract or under the Investment Advisers Act of 1940, including,  
17 but not limited to, the Form ADV.

18 (iii) With respect to plan fiduciaries or fiduciaries, the  
19 duties, obligations, prohibitions, and all other requirements  
20 attendant to such status under the employee retirement income  
21 security act of 1974, Public Law 93-406, or the internal revenue  
22 code of 1986, 26 USC 1 to 9834.

23 (b) "Financial professional" means a producer that is  
24 regulated and acting as any of the following:

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

27 (ii) An investment adviser registered under federal securities  
28 laws or an investment adviser representative associated with the  
29 federal registered investment adviser.



1 (iii) A plan fiduciary under section 3(21) of the employee  
 2 retirement income security act of 1974 or fiduciary under section  
 3 4975(e) (3) of the internal revenue code of 1986, 26 USC 4975.

4 Sec. 4166. (1) An insurer is responsible for compliance with  
 5 this chapter. If a violation occurs, either because of the action  
 6 or inaction of the insurer or its producer, the director may order  
 7 any of the following:

8 (a) The insurer to take reasonably appropriate corrective  
 9 action for any consumer harmed by a failure to comply with this  
 10 chapter by the insurer, an entity contracted to perform the  
 11 insurer's supervisory duties, or by the producer.

12 (b) The producer to take reasonably appropriate corrective  
 13 action for any consumer harmed by the producer's violation of this  
 14 chapter.

15 (c) Appropriate sanctions.

16 (2) Any order under subsection (1) for a violation of this  
 17 chapter may be reduced or eliminated if corrective action for the  
 18 consumer was taken promptly after a violation was discovered or the  
 19 violation was not part of a pattern or practice.

20 Enacting section 1. This amendatory act takes effect 6 months  
 21 after the date it is enacted into law.

22 Enacting section 2. This amendatory act does not take effect  
 23 unless all of the following bills of the 100th legislature are  
 24 enacted into law:

25 (a) Senate Bill No. \_\_\_\_ or House Bill No. 6112 (request no.  
 26 05748'20).

27 (b) Senate Bill No. \_\_\_\_ or House Bill No. 6113 (request no.  
 28 07415'20).

29 (c) Senate Bill No. \_\_\_\_ or House Bill No. 6114 (request no.



1 07416'20).

