

Senate Bill 95

By: Senators Unterman of the 45th, Thomas of the 54th, Chapman of the 3rd, Butler of the 55th and Tate of the 38th

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 establish that it is an unfair trade practice to fail to consider the suitability of insurance for
3 a person 65 years of age or older; to provide for requirements for the solicitation, negotiation,
4 and procurement of annuity contracts; to provide for applicability; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in
9 subsection (b) of Code Section 33-6-4, relating to unfair methods of competition and unfair
10 or deceptive acts or practices prohibited, by striking "or" at the end of paragraph (14.1), by
11 striking the period and inserting "; or" at the end of paragraph (15), and by adding a new
12 paragraph to read as follows:

13 "(16) An insurer, either directly or through its agent, recommending to a consumer 65
14 years of age or older that such consumer purchase any fixed annuity or variable annuity
15 that is individually solicited, whether the product is classified as an individual or group
16 annuity, without having reasonable grounds for believing that such recommendation is
17 suitable for such consumer and without making reasonable inquiries to determine
18 suitability. The suitability of a recommended annuity purchase shall be determined by
19 reference to the totality of the particular consumer's circumstances, including, but not
20 limited to, the consumer's income, the consumer's need for an annuity, and the values,
21 benefits, and costs of the consumer's existing investment program or other insurance
22 products, if any, when compared to the values, benefits, and costs of the recommended
23 annuity or annuities."

24 **SECTION 2.**

25 Said title is further amended in Chapter 28, relating to annuity and pure endowment
26 contracts, by adding a new Code section to read as follows:

27 "33-28-8.

28 (a) This Code section shall apply to any recommendation to purchase or exchange an
29 annuity made to a consumer 65 years of age or older by an insurance producer, or an
30 insurer where no insurance producer is involved, that results in the purchase or exchange
31 recommended.

32 (b) Unless otherwise specifically included, this Code section shall not apply to
33 recommendations involving:

34 (1) Direct response solicitations where there is no recommendation based on information
35 collected from the consumer pursuant to this Code section;

36 (2) Contracts used to fund:

37 (A) An employee pension or welfare benefit plan that is covered by the Employee
38 Retirement and Income Security Act (ERISA);

39 (B) A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the
40 Internal Revenue Code (IRC), as amended, if established or maintained by an
41 employer;

42 (C) A government or church plan defined in Section 414 of the IRC, a government or
43 church welfare benefit plan, or a deferred compensation plan of a state or local
44 government or tax exempt organization under Section 457 of the IRC;

45 (D) A nonqualified deferred compensation arrangement established or maintained by
46 an employer or plan sponsor;

47 (E) Settlements or assumptions of liabilities associated with personal injury litigation
48 or any dispute or claim resolution process; or

49 (F) Formal prepaid funeral contracts.

50 (c) As used in this Code section, the term:

51 (1) 'Annuity' means a fixed annuity or variable annuity that is individually solicited,
52 whether the product is classified as an individual or group annuity.

53 (2) 'Insurance producer' means a person required to be licensed under the laws of this
54 state to sell, solicit, or negotiate insurance, including annuities.

55 (3) 'Insurer' means a company required to be licensed under the laws of this state to
56 provide insurance products, including annuities.

57 (4) 'Recommendation' means advice provided by an insurance producer, or an insurer
58 where no insurance producer is involved, to an individual consumer that results in a
59 purchase or exchange of an annuity in accordance with that advice.

60 (5) 'Senior consumer' means a person 65 years of age or older. In the event of a joint
 61 purchase by more than one party, the purchaser shall be considered a senior consumer if
 62 any one of the parties is 65 years of age or older.

63 (d)(1) When making a recommendation to a senior consumer to purchase or exchange
 64 an annuity that results in another insurance transaction or series of insurance transactions,
 65 the insurance producer, or the insurer where no insurance producer is involved, shall have
 66 reasonable grounds for believing that such recommendation is suitable for such senior
 67 consumer on the basis of facts disclosed by such senior consumer as to his or her
 68 investments and other insurance products and his or her financial situation and needs.

69 (2) Prior to the execution of a purchase or exchange of an annuity resulting from a
 70 recommendation, an insurance producer, or an insurer where no insurance producer is
 71 involved, shall make reasonable efforts to obtain information concerning:

72 (A) The senior consumer's financial status;

73 (B) The senior consumer's tax status;

74 (C) The senior consumer's investment objectives; and

75 (D) Such other information used or considered to be reasonable by the insurance
 76 producer, or the insurer where no insurance producer is involved, in making
 77 recommendations to the senior consumer.

78 (3)(A) Except as provided under subparagraph (B) of this paragraph, neither an
 79 insurance producer, nor an insurer where no insurance producer is involved, shall have
 80 any obligation to a senior consumer under paragraph (2) of this subsection related to
 81 any recommendation if a senior consumer:

82 (i) Refuses to provide relevant information requested by the insurer or insurance
 83 producer;

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

86 (iii) Fails to provide complete or accurate information.

87 (B) An insurer or insurance producer's recommendation subject to subparagraph (A)
 88 of this paragraph shall be reasonable under all the circumstances actually known to the
 89 insurer or insurance producer at the time of the recommendation.

90 (4)(A) An insurer either shall assure that a system to supervise recommendations that
 91 is reasonably designed to achieve compliance with this Code section is established and
 92 maintained by complying with subparagraphs (C) through (E) of this paragraph or shall
 93 establish and maintain such a system, including, but not limited to:

94 (i) Maintaining written procedures; and

95 (ii) Conducting periodic reviews of its records that are reasonably designed to assist
 96 in detecting and preventing violations of this Code section.

97 (B) A general agent and independent agency either shall adopt a system established by
98 an insurer to supervise recommendations of its insurance producers that is reasonably
99 designed to achieve compliance with this Code section or shall establish and maintain
100 such a system, including, but not limited to:

101 (i) Maintaining written procedures; and

102 (ii) Conducting periodic reviews of its records that are reasonably designed to assist
103 in detecting and preventing violations of this Code section.

104 (C) An insurer may contract with a third party, including a general agent or
105 independent agency, to establish and maintain a system of supervision as required by
106 subparagraph (A) of this paragraph with respect to insurance producers under contract
107 with or employed by such third party.

108 (D) An insurer shall make reasonable inquiry to assure that the third party contracting
109 under subparagraph (C) of this paragraph is performing the functions required under
110 subparagraph (A) of this paragraph and shall take such action as is reasonable under the
111 circumstances to enforce the contractual obligation to perform the functions. An
112 insurer may comply with its obligation to make reasonable inquiry by:

113 (i) Annually obtaining a certification from a third party senior manager who has
114 responsibility for the delegated functions that the manager has a reasonable basis to
115 represent, and does represent, that the third party is performing the required functions;
116 and

117 (ii) Based on reasonable selection criteria, periodically selecting third parties
118 contracting under subparagraph (C) of this paragraph for a review to determine
119 whether such third parties are performing the required functions. The insurer shall
120 perform those procedures to conduct the review that are reasonable under the
121 circumstances.

122 (E) An insurer that contracts with a third party pursuant to subparagraph (C) of this
123 paragraph and that complies with the requirements to supervise in subparagraph (D) of
124 this paragraph shall have fulfilled its responsibilities under subparagraph (A) of this
125 paragraph.

126 (F) An insurer, general agent, or independent agency shall not be required by
127 subparagraph (A) or (B) of this paragraph to:

128 (i) Review, or provide for the review of, all insurance producer solicited transactions;
129 and

130 (ii) Include in its system of supervision an insurance producer's recommendations to
131 consumers of products other than the annuities offered by the insurer, general agent,
132 or independent agency.

133 (G) A general agent or independent agency contracting with an insurer pursuant to
134 subparagraph (C) of this paragraph shall promptly, when requested by the insurer
135 pursuant to subparagraph (D) of this paragraph, give a certification as described in
136 subparagraph (D) of this paragraph or give a clear statement that it is unable to meet the
137 certification criteria.

138 (H) No person shall provide a certification under division (i) of subparagraph (D) of
139 this paragraph unless:

140 (i) The person is a senior manager with responsibility for the delegated functions; and

141 (ii) The person has a reasonable basis for making the certification.

142 (5) Compliance with the National Association of Securities Dealers Conduct Rules
143 pertaining to suitability shall satisfy the requirements under this Code section for the
144 recommendation of variable annuities to senior consumers. However, nothing in this
145 paragraph shall limit the Commissioner's ability to enforce the provisions of this Code
146 section.

147 (e)(1) The Commissioner may order:

148 (A) An insurer to take reasonably appropriate corrective action for any senior
149 consumer harmed by the insurer's, or by its insurance producer's, violation of this
150 regulation;

151 (B) An insurance producer to take reasonably appropriate corrective action for any
152 senior consumer harmed by the insurance producer's violation of this Code section; and

153 (C) A general agency or independent agency that employs or contracts with an
154 insurance producer to sell, or solicit the sale of, annuities to senior consumers to take
155 reasonably appropriate corrective action for any senior consumer harmed by the
156 insurance producer's violation of this Code section.

157 (2) Any applicable penalty under Code Section 33-2-24 for a violation of this Code
158 section may be reduced or eliminated if corrective action for the senior consumer was
159 taken promptly after a violation was discovered.

160 (f)(1) Insurers, general agents, independent agencies, and insurance producers shall
161 maintain or be able to make available to the Commissioner records of the information
162 collected from the senior consumer and other information used in making the
163 recommendations that were the basis for insurance transactions for ten years after the
164 insurance transaction is completed by the insurer. An insurer is permitted, but shall not
165 be required, to maintain documentation on behalf of an insurance producer.

166 (2) Records required to be maintained by this Code section may be maintained in paper,
167 photographic, microprocess, magnetic, mechanical, or electronic media or by any process
168 that accurately reproduces the actual document.

169 (g) Nothing in this Code section shall be construed as overriding or limiting any regulation
170 of the department in effect as of the effective date of this Code section to the extent that
171 such regulation provides for consumers other than senior consumers."

172

SECTION 3.

173 All laws and parts of laws in conflict with this Act are repealed.