CHAPTER 26.1-34.2
ANNUITY TRANSACTION PRACTICES

26.1-34.2-01. Exemptions.

Unless otherwise specifically included, this chapter does not apply to recommendations involving:

1. Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to this chapter; and
2. Contracts used to fund:
   a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act;
   b. A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code, as amended, if established or maintained by an employer;
   c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the Internal Revenue Code;
   d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
   e. Settlements of or assumptions of liabilities associated with personal injury litigation or a dispute or claim resolution process; or
   f. Formal prepaid funeral contracts.

26.1-34.2-01.1. Scope. (Effective through December 31, 2021)

This chapter applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer by an insurance producer, or an insurer when no producer is involved, that results in the purchase, exchange, or replacement recommended.

Scope. (Effective after December 31, 2021)

This chapter applies to a sale or recommendation of an annuity. This chapter may not be construed to create or imply a private cause of action for a violation of this chapter or to subject a producer to civil liability under the best interest standard of care outlined in section 26.1-34.2-03 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

26.1-34.2-02. Definitions. (Effective through December 31, 2021)

1. "Annuity" means an annuity that is an insurance product under state law which is individually solicited, whether the product is classified as an individual or group annuity.
2. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities.
3. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
4. "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer which results in a purchase, replacement, or exchange of an annuity in accordance with that advice.
5. "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing 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.

6. "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 needs, 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.

Definitions. (Effective after December 31, 2021)

1. "Annuity" means an annuity that is an insurance product under state law which is individually solicited, whether the product is classified as an individual or group annuity.
2. "Cash compensation" means a discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer or intermediary or directly from the consumer.
3. "Comparable standards":
   a. With respect to a broker-dealer and registered representative of a broker-dealer, 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 Regulation Best Interest [17 CFR 240];
   b. With respect to an investment adviser registered under federal or state securities laws or an investment adviser representative, 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 [15 U.S.C. 80b-1 et seq.] or applicable state securities law, including, the form ADV and interpretations; and
   c. 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 [29 U.S.C. 1001 et seq.] or the federal Internal Revenue Code as amended.
4. "Consumer profile information" means 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 following:
   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 willingness to accept nonguaranteed elements in the annuity;
m. Financial resources used to fund the annuity; and
n. Tax status.

5. "Continuing education credit" means one continuing education credit as provided for under section 26.1-26-31.1.
6. "Continuing education provider" means an individual or entity approved to offer continuing education courses pursuant to section 26.1-26-31.1.
7. "Financial professional" means a producer that is regulated and acting as:
   a. A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;
   b. An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or
   c. A plan fiduciary under section 3(21) of the federal Employee Retirement Income Security Act of 1974 [29 CFR 2510.3-21] or fiduciary under section 4975(e)(3) of the Internal Revenue Code [26 U.S.C. 4975(e)(3)] as amended.
8. "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
9. "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.
10. "Material conflict of interest" means a financial interest of the producer in the sale of an annuity which a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash compensation or noncash compensation.
11. "Noncash compensation" means any form of compensation that is not cash compensation, including health insurance, office rent, office support, and retirement benefits.
12. "Nonguaranteed elements" means the premiums, credited interest rates, including a bonus, benefits, values, dividends, noninterest based credits, charges, or elements of formulas used to determine any of these which are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in the element's calculation.
13. "Producer" means an individual or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. The term includes an insurer if no producer is involved.
14. "Recommendation" means advice provided by a producer to an individual consumer which was intended to result or results in a purchase, a replacement, or an exchange of an annuity in accordance with that advice. The term does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.
15. "Replacement" means a transaction in which a new annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer whether or not a producer is involved, that by reason of the transaction, an existing annuity or other insurance policy has been or is to be any of the following:
   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.

26.1-34.2-03. Duties of insurers and insurance producers. (Effective through December 31, 2021)

1. 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, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:
   a. 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;
   b. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or death or living benefit;
   c. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and 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 the consumer's suitability information; and
   d. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:
      (1) 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;
      (2) The consumer would benefit from product enhancements and improvements; and
      (3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six months.
2. Before the execution of a purchase, replacement, 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 the consumer's suitability information.
3. Except as permitted under subsection 4, an insurer may 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 b, neither an insurance producer, nor an insurer, has any obligation to a consumer under subsection 1 or 3 related to any annuity transaction if:
      (1) A recommendation was not made;
      (2) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
      (3) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
      (4) A consumer decides to enter 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 a must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

5. An insurance producer or, when no insurance producer is involved, the responsible insurer representative, at the time of sale shall:
   a. Make a record of any recommendation subject to subsection 1;
   b. Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
   c. Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter an annuity transaction that is not based on the insurance producer's or insurer's recommendation.
6. a. An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and the insurer's insurance producers' compliance with this chapter, including the following:
      (1) The insurer shall maintain reasonable procedures to inform the insurer's insurance producers of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant insurance producer training manuals.
      (2) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require the insurer's insurance producers to comply with the requirements of section 26.1-34.2-03.1.
      (3) The insurer shall provide product-specific training and training materials that explain all material features of the insurer's annuity products to the insurer's insurance producers.
      (4) The insurer shall maintain procedures for review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine that 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 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.
      (5) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. This paragraph does not prevent an insurer from complying with this paragraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.
      (6) Annually, the insurer shall provide a report to senior management, including to 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.
   b. (1) This subsection does not restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under subdivision a. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 26.1-34.2-04, regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph 2.
      (2) An insurer's supervision system under subdivision a must include supervision of contractual performance under this subsection. This includes 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.

c. An insurer is not required to include in the insurer's system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

7. An insurance producer may not dissuade, or attempt to dissuade, a consumer from:
   a. Responding truthfully to an insurer's request for confirmation of suitability information;
   b. Filing a complaint; or
   c. Cooperating with the investigation of a complaint.
8. a. Sales made in compliance with the financial industry regulatory authority requirements pertaining to suitability and supervision of annuity transactions must satisfy the requirements under this chapter. 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, this subsection does not limit the insurance commissioner's ability to enforce, including investigate, this chapter.
   b. For subdivision a to apply, an insurer shall:
      (1) Monitor the financial industry regulatory authority member broker-dealer using information collected in the normal course of an insurer's business; and
      (2) 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.

Duties of insurers and insurance producers. (Effective after December 31, 2021)

1. A producer, if 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 if the producer has satisfied the following obligations regarding care, disclosure, conflict of interest, and documentation:
   a. (1) The producer, in making a recommendation, 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.
      (2) The requirements under this subdivision include making reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity.
      (3) The requirements under this subdivision require a producer to consider the types of products the producer is authorized and licensed to recommend or sell which 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. A producer must be held to standards applicable to producers with similar authority and licensure.

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

(5) 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 of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

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

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

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

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

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

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

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty months.

(11) This chapter may not be construed to require a producer to obtain a license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including a securities license, in order to fulfill the duties and obligations contained in this chapter; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

b. (1) Before the recommendation or sale of an annuity, the producer prominently shall disclose to the consumer on a form substantially similar to a model form designed by the insurance department:

(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:

[1] Fixed annuities;

[2] Fixed indexed annuities;

[3] Variable annuities;

[4] Life insurance;
[5] Mutual funds;
[6] Stocks and bonds; and
[7] Certificates of deposit;

(c) An affirmative statement describing the insurers the producer is authorized, contracted, or appointed, or otherwise able to sell insurance products for, using the following descriptions:

[1] One insurer;
[2] From two or more insurers; or
[3] 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 premium or 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 described in subparagraph d.

(2) Upon request of the consumer or the consumer's designated representative, the producer shall 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 occurrence, which may be stated as a range of amounts or percentages.

(3) Before or at the time of the recommendation or sale of an annuity, the producer must 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; 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. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

d. At the time of recommendation or sale the producer shall:

(1) Make a written record of any recommendation and the basis for the recommendation subject to this chapter;

(2) Obtain a consumer-signed statement on a form substantially similar to a model form established by the insurance department:

(a) A customer's refusal to provide the consumer profile information, if any; and

(b) A customer's understanding of the ramifications of not providing the customer's consumer profile information or providing insufficient consumer profile information; and

(3) Obtain a consumer-signed statement on a form substantially similar to a model form established by the insurance department acknowledging the annuity transaction is not recommended if a customer decides to enter an annuity transaction that is not based on the producer's recommendation.

e. A requirement applicable to a producer under this subsection applies 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 not, in and of themselves, constitute material control or influence.

2. a. Except as provided under subdivision b, a producer does not have an obligation to a consumer under subsection 1 or 3 related to any annuity transaction if:
   (1) A recommendation was not made;
   (2) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
   (3) A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
   (4) A consumer decides to enter an annuity transaction that is not based on a recommendation of the producer.

   b. An insurer's issuance of an annuity subject to subdivision a must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

3. a. Except as permitted under subdivision b, 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. An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and the insurer's producers' compliance with this chapter, including the following:
   (1) The insurer shall establish and maintain reasonable procedures to inform the insurer's producers of the requirements of this chapter and shall incorporate the requirements of this chapter into relevant producer training manuals.
   (2) The insurer shall establish and maintain standards for insurance producer product training and shall maintain reasonable procedures to require the insurer's producers to comply with the requirements of section 26.1-34.2-03.1.
   (3) The insurer shall provide product-specific training and training materials that explain all material features of the insurer's annuity products to the insurer's producers.
   (4) The insurer shall establish and maintain procedures for the review of each recommendation before issuance of an annuity which are designed to ensure there is a reasonable basis to determine that the recommended annuity effectively would address the particular consumer's financial situation, insurance needs, and financial objectives. 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 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.
   (5) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with this paragraph and paragraphs 1, 2, and 4. This may include confirmation of the consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring. This paragraph does not prevent an insurer from complying with this paragraph by applying sampling procedures or by

confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity.

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

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

(8) 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 those benefits are not based on the volume of sales of a specific annuity within a limited period of time.

(9) Annually, the insurer shall provide a written report to senior management, including to 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. (1) This subsection does not restrict an insurer from contracting for performance of a function, including maintenance of procedures, required under this subdivision. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 26.1-34.2-04, regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with paragraph 2.

(2) An insurer's supervision system under this subsection must include supervision of contractual performance under this subsection. This includes 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. An insurer is not required to include in the insurer's system of supervision:

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

(2) Include 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. A producer or an insurer may not dissuade, or attempt to dissuade, a consumer from:

a. Responding truthfully to an insurer's request for confirmation of the consumer profile 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 must satisfy the requirements under this chapter. This subsection applies to recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if the standard would not otherwise apply to the product or recommendation at issue. However, this subsection does not limit the insurance commissioner's ability to enforce, including investigate, this

chapter. This subdivision does not limit the insurer's obligation to comply with subdivision a of subsection 3 although the insurer may base the insurer's analysis on information received from either the financial professional or the entity supervising the financial professional.

b. For subdivision a to apply, an insurer shall:
   (1) Monitor relevant conduct of the financial professional seeking to rely upon subdivision a or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment advisor registered under federal or state securities laws using information collected in the normal course of an insurer's business; and
   (2) Provide to the entity responsible for supervising the financial professional seeking to rely on subdivision a, such as the financial professional's broker-dealer or investment advisor registered under federal or state securities laws, information and reports that are reasonably appropriate to assist the entity to maintain its supervision system.

26.1-34.2-03.1. Insurance producer training. (Effective through December 31, 2021)

1. An insurance producer may 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. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
2. a. (1) An insurance producer who engages in the sale of annuity products shall complete a one-time, four-hour training course.
      (2) An insurance producer who holds a life insurance line of authority on August 1, 2011, and who desires to sell annuities shall complete the requirements of this subsection within twelve months after August 1, 2011. An individual who obtains a life insurance line of authority on or after August 1, 2011, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.
   b. The training required under this subsection must include information on the following topics:
      (1) The types of annuities and various classifications of annuities;
      (2) Identification of the parties to an annuity;
      (3) How fixed, variable, and indexed annuity contract provisions affect consumers;
      (4) The application of income taxation of qualified and nonqualified annuities;
      (5) The primary uses of annuities; and
      (6) Appropriate sales practices, replacement, and disclosure requirements.
   c. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
   d. Providers of annuity training shall issue certificates of completion.
   e. The satisfaction of the training requirements of another state which are substantially similar to the provisions of this subsection are deemed to satisfy the training requirements of this subsection in this state.
   f. An insurer shall verify that 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 the insurer's responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports from a reasonably reliable commercial database vendor that has a reporting arrangement with insurance education providers.

Producer training. (Effective after December 31, 2021)

1. A producer may not solicit the sale of an annuity product unless the producer has adequate knowledge of the product to recommend the annuity and the producer is in compliance with the insurer's standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
2. a. A producer who engages in the sale of annuity products shall complete a one-time, four-hour training course.
   b. The training required under this subsection must include information on the following topics:
      (1) The types of annuities and various classifications of annuities;
      (2) Identification of the parties to an annuity;
      (3) How fixed, variable, and indexed annuity contract provisions affect consumers;
      (4) The application of income taxation of qualified and nonqualified annuities;
      (5) The primary uses of annuities; and
      (6) Appropriate standards of conduct, sales practices, replacement, and disclosure requirements.
   c. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
   d. A producer who has completed an annuity training course approved by the insurance department before January 1, 2022, within six months after such date, shall complete either:
      (1) A new four-credit training course approved by the insurance department after January 1, 2022; or
      (2) An additional one-time, one-credit training course approved by the insurance department and provided by an insurance department-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this chapter.
   e. Providers of annuity training shall issue certificates of completion.
   f. The satisfaction of the training requirements of another state which are substantially similar to the provisions of this subsection are deemed to satisfy the training requirements of this subsection in this state.
   g. The satisfaction of the components of the training requirements of a course with components substantially similar to the provisions of this subsection is deemed to satisfy the training requirements of this subsection in this state.
   h. An insurer shall verify that the 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 the insurer's responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports from a reasonably reliable commercial database vendor that has a reporting arrangement with insurance education providers.

26.1-34.2-04. Mitigation of responsibility - Penalty. (Effective through December 31, 2021)

1. An insurer is responsible for compliance with this chapter. If a violation occurs, either because of the action or inaction of the insurer or the insurer's insurance producer, the commissioner may order:
   a. An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or by the insurer's insurance producer's violation of this chapter;

b. A general agency, independent agency, or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this chapter; and
c. Appropriate penalties and sanctions.
2. Any applicable penalty under section 26.1-01-03.3 for a violation of subsection 1 or 2 or subdivision b of subsection 3 of section 26.1-34.2-03 may be reduced or eliminated, according to a schedule adopted by the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered.

Compliance mitigation - Enforceability - Penalty. (Effective after December 31, 2021)

1. An insurer is responsible for compliance with this chapter. If a violation occurs, either because of the action or inaction of the insurer or the insurer's producer, the commissioner may order:
   a. An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this chapter by the insurer or by the producer;
   b. A general agency, independent agency, or the producer to take reasonably appropriate corrective action for any consumer harmed by the producer's violation of this chapter; and
   c. Appropriate penalties and sanctions.
2. Any applicable penalty under section 26.1-01-03.3 for a violation of this chapter may be reduced or eliminated, according to a schedule adopted by the commissioner, if corrective action for the consumer was taken promptly after a violation was discovered.
3. The authority to enforce compliance with this section is vested exclusively with the commissioner.

26.1-34.2-05. Recordkeeping. (Effective through December 31, 2021)

1. Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the commissioner a record of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for ten years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer.
2. Records required to be maintained by this chapter may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

Recordkeeping. (Effective after December 31, 2021)

1. Insurers, general agents, independent agencies, and producers shall maintain or be able to make available to the commissioner a record 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 ten years after the insurance transaction is completed by the insurer. An insurer is permitted, but is not required, to maintain documentation on behalf of a producer.
2. Records required to be maintained by this chapter may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.