AN ACT GENERALLY REVISING INSURANCE LAWS; REVISING LAWS RELATING TO ANNUITIES; UPDATING MONTANA STATUTORY LANGUAGE TO CONFORM WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS LANGUAGE; AMENDING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROHIBITING A PRIVATE CAUSE OF ACTION RELATING TO STANDARDS GOVERNING CONDUCT OF A FIDUCIARY OR A FIDUCIARY RELATIONSHIP; REVISING LAWS RELATING TO DUTIES OF INSURERS RELATING TO ANNUITY TRANSACTIONS; REVISING LAWS RELATED TO COMPLIANCE MITIGATION; REVISING LAWS RELATED TO PRODUCER TRAINING; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 33-20-802, 33-20-803, 33-20-804, 33-20-805, 33-20-806, AND 33-20-807, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-20-802, MCA, is amended to read:

"**33-20-802. Purpose -- scope.** (1) The purpose of this part is to require producers to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations ~~and to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products~~ so that the insurance needs and financial objectives of consumers at the time of the transaction are ~~appropriately~~ effectively addressed.

(2) This part applies to any sale or recommendation ~~to purchase, exchange, or replace~~ of an annuity ~~made to a consumer by an insurance producer or by an insurer when an insurance producer is not involved that results in the recommended purchase, exchange, or replacement~~.

(3) Nothing in this part may be construed to create or imply a private cause of action for a violation of this part or to subject a producer to civil liability under the best interest standard of care outlined in 33-20-805 or

under standards governing the conduct of a fiduciary or a fiduciary relationship."

Section 2. Section 33-20-803, MCA, is amended to read:

"**33-20-803. Exemptions.** Unless otherwise specifically included, this part does not apply to recommendations involving:

(1) direct response solicitations when there is ~~not a~~ no recommendation made based on information collected from the consumer pursuant to this part;

(2) contracts used to fund:

(a) an employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(b) a plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code, 26 U.S.C. 401(a), 401(k), 403(b), 408(k), or 408(p), if established or maintained by an employer;

(c) a governmental plan or church plan defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414, 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, 26 U.S.C. 457;

(d) a nonqualified deferred compensation plan established or maintained by an employer or plan sponsor;

~~(e)~~(3) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

~~(f)~~(4) formal prepaid funeral contracts; or

~~(3)~~(5) variable annuities regulated under Title 30, chapter 10."

Section 3. Section 33-20-804, MCA, is amended to read:

"**33-20-804. Definitions.** As used in this part, the following definitions apply:

(1) "Annuity" means a fixed annuity that is individually solicited, regardless of whether the product is classified as an individual or group annuity.

(2) "Cash compensation" means any 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, intermediary, or directly from the consumer.

(3) "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 but not limited to willingness to accept nonguaranteed elements in the annuity;

(m) financial resources used to fund the annuity; and

(n) tax status.

(4) "Continuing education credit" or "CE credit" means one continuing education credit as provided in Title 33, chapter 17.

(5) "Continuing education provider" or "CE provider" means an individual or entity that is approved to offer continuing education courses pursuant to Title 33, chapter 17.

(6) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

(7) "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.

(8) (a) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity

that a reasonable person would expect to influence the impartiality of a recommendation.

(b) The term does not include cash compensation or noncash compensation.

(9) "Noncash compensation" means any form of compensation that is not cash compensation, including but not limited to health insurance, office rent, office support, and retirement benefits.

(10) "Nonguaranteed elements" means the premiums, credited interest rates including any bonuses, benefits, values, dividends, noninterest-based credits, charges, or elements of formulas used to determine any of these, that 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 its calculation.

(11) "Producer" or "insurance producer" means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For the purposes of this part, the term includes an insurer in which no producer is involved.

~~(2) "Insurance producer", in addition to the definition in 33-17-102, includes an insurance producer licensed to sell, solicit, or negotiate annuities.~~

~~(3) "Insurer", in addition to the definition in 33-1-201, includes an insurer providing annuity products.~~

~~(4)~~(12) (a) "Recommendation" means advice provided by ~~an insurance~~ a producer ~~or by an insurer when an insurance producer is not involved~~ to an individual consumer that was intended to result or does result ~~results~~ in a purchase, an exchange, or a replacement of an annuity in accordance with that advice.

(b) 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.

~~(5)~~(13) "Replacement" means a transaction in which a new ~~policy or contract~~ 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 ~~when an insurance~~ a producer is ~~not~~ involved, that by reason of the transaction, an existing annuity or other insurance policy or contract 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.

~~(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;~~

~~(l) tax status; and~~

~~(m) whether the consumer has a reverse mortgage.~~"

Section 4. Section 33-20-805, MCA, is amended to read:

"**33-20-805. Duties of insurers~~, insurance~~ and producers~~, and independent agencies~~ -- best interest obligations.** (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 an insurance producer is not 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, other insurance products, financial situation, and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~ A producer, when 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) The producer, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

(i) know the consumer's financial situation, insurance needs, and financial objectives;

(ii) understand the available recommendation options after making a reasonable inquiry into options available to the producer;

(iii) 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

(iv) communicate the basis or bases of the recommendation to the consumer in writing.

(b) The requirements under subsection (1)(a)(i) include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(c) The requirements under subsection (1)(a) require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that 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. Producers are to be held to standards applicable to producers with similar authority and licensure.

(d) The requirements under this subsection (1) do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this part.

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

(f) The requirements under subsection (1)(a)(i) 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.

(g) The requirements under subsection (1)(a)(i) 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.

(h) The requirements under subsection (1)(a)(i) do not mean the annuity with the lowest one-time or multiple occurrence compensation structure may necessarily be recommended.

(i) The requirements under subsection (1)(a)(i) do not mean the producer has ongoing monitoring obligations under the care obligation under this section, although this obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

(2) 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 substantially benefit the consumer 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 60 months.

(3) Nothing in this part may 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 but not limited to any securities license, in order to fulfill the duties and obligations contained in this part, provided the producer does not discuss risks specific to a consumer's individual securities holdings, does not provide advice regarding a consumer's specific securities or securities investment performance, does not compare a consumer's securities or securities investment performance with the annuity products being recommended, does not recommend the liquidation of specific securities or identify specific securities that could be used to fund the purchase of a recommended annuity product, does not recommend specific allocations

between insurance and securities products, does not offer research, analysis, or recommendations to a consumer regarding specific securities, and does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(4) (a) Prior to the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to a model form established by the insurance department:

(i) a description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) an affirmative statement on whether the producer is licensed and authorized to sell the following products:

(A) fixed annuities;

(B) fixed indexed annuities;

(C) variable annuities;

(D) life insurance;

(E) mutual funds;

(F) stocks and bonds; and

(G) certificates of deposit;

(iii) 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:

(A) from one insurer;

(B) from two or more insurers; or

(C) from two or more insurers although primarily contracted with one insurer;

(iv) 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

(v) a notice of the consumer's right to request additional information regarding cash compensation described in subsection (4)(b).

(b) On request of the consumer or the consumer's designated representative, the producer shall disclose:

(i) 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

(ii) 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.

~~(a)~~(c) Prior to, or at the time of the recommendation or sale of an annuity, the producer has a reasonable basis to believe the consumer has been ~~reasonably~~ informed of various features of the annuity, ~~including~~ 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, any 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~~;~~.

(d) 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.

(e) A producer shall, at the time of recommendation or sale:

(i) make a written record of a recommendation and the basis for the recommendation subject to this part;

(ii) obtain a signed statement from a consumer on a form substantially similar to a model form established by the insurance department documenting:

(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

(iii) obtain a signed statement from a consumer 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 into an annuity transaction that is not based on the producer’s recommendation.

(5) Any requirement applicable to a producer under this section must apply to each 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.

~~(b) the consumer would receive a benefit from the transaction;~~

~~(c) the particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase, exchange, or replacement of the annuity, and riders and similar product enhancements, if any, are 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:~~

~~(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~

~~(ii) the consumer would benefit from product enhancements and improvements;~~

~~(iii) the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months; and~~

~~(iv) the transaction as a whole is suitable for the consumer based on the consumer's suitability information.~~

~~(2) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurance producer or an insurer when an insurance producer is not 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)~~(6) (a) Except as provided under ~~subsection (4)(b), an insurance producer or an insurer when an insurance producer is not involved does not have any~~ subsection (6)(b), a producer has no obligation to a consumer under subsection ~~(1) or (3)~~ (1) related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation is made but later found to have been prepared based on materially inaccurate information provided by the consumer;

(iii) the consumer refuses to provide relevant ~~suitability~~ consumer profile information ~~requested by the insurer or insurance producer~~ and the annuity transaction is not recommended; or

(iv) the consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or insurance producer.

(b) An insurer's ~~or insurance producer's~~ issuance of an annuity under this subsection ~~(4)(a)~~ (6) must be reasonable under all the circumstances actually known ~~or which after reasonable inquiry should be known~~ to the insurer ~~or insurance producer~~ at the time the annuity is issued.

~~(5) An insurance producer or an insurer when an insurance producer is not involved shall at the time of sale:~~

~~(a) make a record of any recommendation subject to subsection (1);~~

~~(b) obtain a statement signed by the consumer acknowledging the consumer's refusal to provide suitability information, if any; and~~

~~(c) if a consumer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation, obtain a statement signed by the consumer acknowledging that the annuity transaction is not recommended.~~

(7) (a) Except as permitted under subsection (6), 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.

~~(6)~~(b) An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its ~~insurance~~ producers' compliance with this ~~section~~ part and, at a minimum, ~~shall~~ include the following:

~~(a)~~(i) the insurer shall establish and ~~—~~ maintain reasonable procedures to inform its ~~insurance~~ producers of the requirements of this ~~section~~ part and shall incorporate the requirements of this ~~section~~ part into relevant ~~insurance~~ producer training manuals;

~~(b)~~(ii) the insurer shall establish and maintain standards for ~~insurance~~ producer product training and shall establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of 33-20-807;

~~(c)~~(iii) the insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its ~~insurance~~ producers;

~~(d)~~(iv) the insurer shall establish and maintain procedures for the review of each recommendation prior to the issuance of an annuity that are designed to ensure ~~that~~ there is a reasonable basis ~~for determining~~ to determine that ~~a recommendation is suitable for the consumer prior to issuance of an annuity~~ the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives. The review procedures ~~must establish selection criteria~~ 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 but not limited to physical review. The electronic system or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

~~(e)~~(v) the insurer shall establish and maintain reasonable procedures~~, such as~~ to detect recommendations that are not in compliance with subsections (1), (4), (5), (6), (8), and (9). This may include but is not limited to confirmation of the ~~consumer suitability~~ consumer's consumer profile information, systematic consumer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations, and programs of internal monitoring~~, to detect recommendations that are not suitable; and~~. Nothing in this subsection prevents an insurer from complying with this subsection by applying sampling procedures or by confirming consumer profile information or other required information under this section after issuance or delivery of the annuity.

(vi) the insurer shall establish and maintain reasonable procedures to assess, prior to or on issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;

(vii) the insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

(viii) 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 subsection (7) 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.

~~(f)~~(ix) the insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, that 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.

~~(7) (a) An~~ (c) (i) Nothing in this subsection (7) restricts an insurer from ~~may contract with a third party to establish and maintain a system of supervision as provided for in~~ contracting for performance of a function, including maintenance procedures, required under this subsection ~~(6)~~ (7).

~~(b)~~ An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under ~~33-1-317 and 33-1-318~~ 33-20-806 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subsection ~~(7)(c)~~ (7)(c)(ii).

~~(c)~~(ii) An insurer's supervision system under this subsection ~~(6)~~ (7) must include supervision of contractual ~~the~~ performance ~~of third parties under this subsection~~. ~~(7) and must include, at a minimum,~~ This includes but is not limited to the following:

~~(i)~~(A) annually obtaining a certification from a senior manager who has responsibility for the contracted function ~~director, officer, or principal of the third party that the third party is performing the required functions;~~ that the manager has reasonable basis to represent, and does represent that the function is being properly performed; and

~~(ii)~~(B) monitoring and, as appropriate, conducting audits to ensure that the ~~third parties are performing the required functions~~ contracted function is properly performed.

~~(8)~~(d) An insurer is not required ~~by this section~~ to include in its system of supervision:

(i)~~(a) review or provide for review of insurance producer solicited transactions not related to annuities; or~~

~~(b) include in its system of supervision an insurance~~ a producer's recommendations to consumers of products other than the annuities offered by the insurer~~.~~; or

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

~~(9)~~(8) ~~An insurance~~ A producer or an insurer ~~when an insurance producer is not involved~~ may not dissuade or attempt to dissuade a consumer from:

(a) truthfully responding to an insurer's request for confirmation of ~~suitability~~ the consumer profile information;

(b) filing a complaint; or

(c) cooperating with the investigation of a complaint.

(9) (a) Recommendations and sales of annuities made in compliance with comparable standards must satisfy the requirements under this part. This subsection (9) applies to all 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, nothing in this subsection (9) may limit the insurance commissioner's ability to investigate and enforce the provisions of this part.

(b) Nothing in subsection (9)(a) may limit the insurer's obligation to comply with subsection (7) of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c) For subsection (9)(a) to apply, an insurer shall:

(i) monitor the relevant conduct of the financial professional seeking to rely on subsection (9)(a) or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws, using information collected in the normal course of an insurer's business; and

(ii) provide to the entity responsible for supervising the financial professional seeking to rely on subsection (9)(a), such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist the entity to maintain its supervision system.

(d) For the purposes of this subsection, "financial professional" means a producer that is regulated and acting as:

(i) a broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(ii) 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

(iii) a plan fiduciary under section 3(21) of the Employee Retirement Income Security Act of 1974 or a fiduciary under section 4975(e)(3) of the Internal Revenue Code.

(e) For the purposes of this subsection, "comparable standards" means:

(i) with respect to broker-dealers and registered representatives of broker-dealers, applicable securities and exchange commission and financial industry regulatory authority rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including but not limited to regulation best interest;

(ii) with respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on the investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, Title 30, chapter 10, including but not limited to the Form ADV and interpretations; and

(iii) with respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to the status under the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., or the Internal Revenue Code.

~~(10)~~(10) (a) Insurers, insurance producers, and independent agencies shall maintain or ~~must~~ be able to make available to the commissioner records 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 5 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~~ a producer.

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

Section 5. Section 33-20-806, MCA, is amended to read:

"**33-20-806.** ~~**Mitigation of responsibility**~~ **Compliance mitigation -- penalties -- enforcement.** (1) ~~The~~ An insurer is responsible for compliance with this part. If a violation occurs, either because of the action or inaction of the insurer or its producer, the commissioner may order:

(a) an insurer or insurance producer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this part by ~~the insurer's or insurance producer's violation of this part~~ the insurer, an entity contracted to perform the insurer's supervisory duties, or the producer; or

(b) ~~an insurance producer or~~ a general agency, independent agency, or the ~~that employs or contracts with another insurance~~ producer ~~to sell or solicit the sale of annuities to consumers~~ to take reasonably appropriate corrective action for any consumer harmed by the ~~other insurance~~ producer's violation of this part; and

(c) appropriate penalties and sanctions.

(2) A violation of this part is an unfair trade practice under Title 33, chapter 18. Fines may be imposed pursuant to 33-1-317.

(3) Any applicable penalty for a violation of this part may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

(4) The authority to enforce compliance with this part is vested exclusively with the commissioner."

Section 6. Section 33-20-807, MCA, is amended to read:

"**33-20-807.** ~~**Annuity education**~~ **Producer training.** (1) ~~An insurance~~ A producer may not solicit the sale of an annuity product unless~~:~~

~~(a)~~ the ~~insurance~~ producer has adequate knowledge of the product to recommend the ~~annuity;~~ annuity and

~~(b)~~ the ~~insurance~~ 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 section.

(2) (a) (i) A producer who engages in the sale of annuity products shall complete a one-time, 4-credit training course approved by the department of insurance and provided by the department of insurance-

approved education provider.

(ii) Producers who hold a life insurance line of authority on [the effective date of this act] and who desire to sell annuities shall complete the requirements of this section within 6 months after [the effective date of this act]. Individuals who obtain a life insurance line of authority on or after [the effective date of this act] may not engage in the sale of annuities until the annuity training course required under this section has been completed.

(b) The minimum length of the training required under this subsection (2) must be sufficient to qualify for at least 4 continuing education credits, but may be longer.

~~(2)~~(c) The training required under this section must include, at a minimum, information on the following topics:

~~(a)~~(i) the types of annuities and various classifications of annuities;

~~(b)~~(ii) identification of the parties to an annuity;

~~(c)~~(iii) how product-specific annuity contract features affect consumers;

~~(d)~~(iv) the application of income taxation of qualified and nonqualified annuities;

~~(e)~~(v) the primary uses of annuities; and

~~(f)~~(vi) appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

~~(3)~~(d) Training required under this section may not include any information on marketing, sales techniques, or the specific aspects of a particular insurer's products.

~~(4)~~(e) An insurer shall verify that ~~an insurance~~ a producer has completed the training under this section before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this section by obtaining certificates of completion of the training course or obtaining reports provided by a database system satisfactory to the commissioner.

(f) A producer who has completed an annuity training course approved by the department of insurance prior to [the effective date of this act] shall, within 6 months after [the effective date of this act], complete either:

(i) a new 4-credit training course approved by the department of insurance after [the effective date of this act]; or

(ii) an additional one-time, 1-credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices and replacement and disclosure requirements under this part.

(g) The satisfaction of the components of the training requirements of a course or courses with components substantially similar to the provisions of this section must be considered to satisfy the training requirements of this section in this state."

- END -

I hereby certify that the within bill,

SB 363, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this ______________________________day

of__________________________________, 2021.

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Speaker of the House

Signed this ______________________________day
of__________________________________, 2021.

SENATE BILL NO. 363

INTRODUCED BY S. FITZPATRICK

AN ACT GENERALLY REVISING INSURANCE LAWS; REVISING LAWS RELATING TO ANNUITIES; UPDATING MONTANA STATUTORY LANGUAGE TO CONFORM WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS LANGUAGE; AMENDING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROHIBITING A PRIVATE CAUSE OF ACTION RELATING TO STANDARDS GOVERNING CONDUCT OF A FIDUCIARY OR A FIDUCIARY RELATIONSHIP; REVISING LAWS RELATING TO DUTIES OF INSURERS RELATING TO ANNUITY TRANSACTIONS; REVISING LAWS RELATED TO COMPLIANCE MITIGATION; REVISING LAWS RELATED TO PRODUCER TRAINING; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 33-20-802, 33-20-803, 33-20-804, 33-20-805, 33-20-806, AND 33-20-807, MCA.