AN ACT REVISING LAWS RELATING TO ANNUITIES; CREATING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROVIDING FOR EXEMPTIONS FROM THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; ESTABLISHING DUTIES FOR INSURERS, INSURANCE PRODUCERS, AND INDEPENDENT AGENCIES; CREATING THE MONTANA ANNUITY DISCLOSURE ACT; PROVIDING DEFINITIONS; ESTABLISHING DISCLOSURE REQUIREMENTS FOR BUYER'S GUIDES AND DISCLOSURE DOCUMENTS; REQUIRING REPORTS TO ANNUITY CONTRACT HOLDERS; PROVIDING PENALTIES FOR VIOLATIONS OF EITHER ACT; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. Short title. [Sections 1 through 6] may be referred to as the "Montana Suitability in Annuity Transactions Act".

Section 2. Purpose -- scope. (1) The purpose of [sections 1 through 6] is 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 addressed.

(2) [Sections 1 through 6] apply to any recommendation to purchase or exchange 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 or exchange.

Section 3. Exemptions. Unless otherwise specifically included, [sections 1 through 6] do not apply to recommendations involving:

(1) direct response solicitations when there is not a recommendation made based on information collected from the consumer;

(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 maintained by an employer or plan sponsor;

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

(f) formal prepaid funeral contracts; or

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

Section 4. Definitions. As used in [sections 1 through 6], 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) "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) "Recommendation" means advice provided by an insurance producer or by an insurer when an insurance producer is not involved to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Section 5. Duties of insurers, insurance producers, and independent agencies. (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.

(2) Prior to the execution of a purchase or exchange 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 information concerning:

(a) the consumer's financial status;

(b) the consumer's tax status;

(c) the consumer's investment objectives; and

(d) other information used or considered reasonable in making recommendations to the consumer by the insurance producer or by the insurer when an insurance producer is not involved.

(3) (a) Except as provided under subsection (3)(b), an insurance producer or an insurer when an insurance producer is not involved does not have any obligation to a consumer under subsection (1) related to any recommendation if a consumer:

(i) refuses to provide relevant information requested by the insurer or insurance producer;

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

(iii) fails to provide complete or accurate information.

(b) Subject to subsection (1), an insurer's or insurance producer's recommendation must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4) (a) An insurer may contract with a third party as provided in subsection (6) to establish and maintain a system to supervise recommendations that is reasonably designed to achieve compliance with this section.

(b) A system designed and maintained by an insurer must at a minimum provide for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of the insurer's records that are reasonably designed to assist in detecting and preventing violations of [sections 1 through 6].

(5) An insurance producer or independent agency shall:

(a) adopt a system established by an insurer to supervise recommendations of the insurance producer or agency's insurance producers that is reasonably designed to achieve compliance with [sections 1 through 6]; or

(b) establish and maintain a system that at a minimum provides for:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of [sections 1 through 6].

(6) (a) An insurer may contract with a third party, including an insurance producer or independent agency, to establish and maintain a system of supervision as provided for in subsection (4) with respect to

insurance producers under contract with or employed by the third party.

(b) An insurer shall make reasonable inquiry to ensure that the third party is performing the functions required under subsection (4) and shall take reasonable action under the circumstances to enforce the third party's contractual obligations to perform the functions.

(c) An insurer may comply with its obligation to make reasonable inquiry by doing each of the following:

(i) annually obtaining a certification from a director, officer, or principal of the third party that the third party is performing the required functions; and

(ii) based on reasonable selection criteria, periodically selecting third parties for a review to determine whether the third parties are performing the required functions.

(7) An insurer, insurance producer, or independent agency is not required by this section to:

(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 producer's recommendations to consumers of products other than the annuities offered by the insurer, insurance producer, or independent agency.

(8) An insurance producer or independent agency contracting as a third party with an insurer pursuant to subsection (6) shall promptly, when requested by the insurer, give a certification as described in subsection (6) or give a clear statement that it is unable to meet the certification criteria.

(9) (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 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 producer.

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

Section 6. Mitigation of responsibility. (1) The commissioner may order:

(a) an insurer or insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurer's or insurance producer's violation of [sections 1 through 6]; or

(b) an insurance producer or independent agency 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 [sections 1 through 6].

(2) A violation of [sections 1 through 6] is an unfair trade practice under Title 33, chapter 18. Fines may be imposed pursuant to 33-1-317.

Section 7. Short title. [Sections 7 through 13] may be referred to as the "Montana Annuity Disclosure Act".

Section 8. Purpose. The purpose of [sections 7 through 13] is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and to foster consumer education. [Sections 7 through 13] specify the minimum information that must be disclosed and the method for disclosing the information in connection with the sale of annuity contracts. The goal of [sections 7 through 13] is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

Section 9. Applicability. (1) [Sections 7 through 13] apply to all group and individual annuity contracts and certificates except:

(a) registered or nonregistered variable annuities or other registered products;

(b) immediate and deferred annuities that do not contain nonguaranteed elements;

(c) structured settlement annuities; and

(d) as provided in subsection (2), annuities used to fund:

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

(ii) a plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, 26 U.S.C. 401(a), 401(k), or 403(b), when the plan, for purposes of the Employment Retirement Income Security Act of 1974, is established or maintained by an employer;

(iii) a governmental plan or church plan defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414, or a deferred compensation plan of a state or local government or a tax-exempt organization under section 457 of the Internal Revenue Code, 26 U.S.C. 457; or

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(2) (a) The provisions of [sections 7 through 13] apply to annuities used to fund a plan or arrangement

when:

(i) the plan or arrangement is funded solely by contributions that an employee elects to make whether on a pretax or after-tax basis;

(ii) the insurer has been notified that plan participants may choose from among two or more fixed annuity providers; and

(iii) there is a direct solicitation of an individual employee by an insurance producer for the purchase of an annuity contract.

(b) As used in this subsection (2), direct solicitation does not include any meeting held by an insurance producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

Section 10. Definitions. As used in [sections 7 through 13], the following definitions apply:

(1) "Contract owner" means the owner named in the annuity contract or a certificate holder in the case of a group annuity contract.

(2) (a) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and are not subject to insurer discretion, but where the values or amounts cannot be determined until some point after issue.

(b) The term includes premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, and charges or elements of formulas used to determine any of these items.

(c) Determinable elements may be described as guaranteed but not determined at issue.

(d) An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(3) "Generic name" means a short title descriptive of the annuity contract being applied for, such as "single premium deferred annuity".

(4) "Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, and charges or elements of formulas used to determine any of these items that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(5) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, and charges or elements of formulas used to determine any of these items that are subject to insurer discretion and are not guaranteed at issue. An element is considered

nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(6) "Structured settlement annuity" means a qualified funding asset as defined in section 130(d) of the Internal Revenue Code, 26 U.S.C. 130(d), or an annuity that would be a qualified funding asset under section 130(d) except that it is not owned by an assignee under a qualified assignment.

Section 11. Standards for disclosure document and buyer's guide. (1) When the application for an annuity contract is taken in a face-to-face meeting, the applicant must be given, at or before the time of application, both the disclosure document and the buyer's guide.

(2) (a) When the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant must be sent both the disclosure document and the buyer's guide not later than 5 business days after the completed application is received by the insurer.

(b) When an application is received as a result of a direct solicitation through the mail, providing a disclosure document and a buyer's guide in the mailing inviting prospective applicants to apply for an annuity contract satisfies the requirement that the disclosure document and buyer's guide be provided not later than 5 business days after receipt of the application.

(c) When an application is received over the internet, taking reasonable steps to make the disclosure document and buyer's guide available for viewing and printing on the insurer's website satisfies the requirement that the disclosure document and the buyer's guide be provided not later than 5 business days of receipt of the application.

(d) A solicitation for an annuity contract provided in other than a face-to-face meeting must include a statement that the proposed applicant may contact the commissioner's office for a free annuity buyer's guide, or an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(3) When the disclosure document and buyer's guide are not provided at or before the time of application, a free-look period of not less than 15 days must be provided for the applicant to return the annuity contract without penalty. This free-look period must run concurrently with any other free-look period provided under state law.

(4) At a minimum, the following information must be included in the disclosure document:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including when appropriate:

(i) the guaranteed elements, nonguaranteed elements, and determinable elements of the contract and their limitations, if any, and an explanation of how the elements operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options both on a guaranteed and nonguaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if one is available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees with an explanation of how they apply; and

(e) information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(5) Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

Section 12. Report to contract owners. (1) For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract.

(2) The report must contain at least the following information:

(a) the beginning and ending date of the current report period;

(b) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(c) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(d) the amount of outstanding loans, if any, as of the end of the current report period.

Section 13. Penalties. In addition to any other penalties provided in Title 33, an insurer or insurance producer that violates a provision of [sections 7 through 13] also violates 33-18-102.

Section 14. Applicability. [This act] applies to all group and individual annuity contracts and certificates subject to the provisions of [sections 1 through 13] sold on or after [the effective date of this act].

Section 15. Codification instruction. [Sections 1 through 13] are intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [sections 1 through 13].

- END -

I hereby certify that the within bill,

SB 0535, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this ____________________________ day

of ________________________________, 2019.

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Speaker of the House

Signed this ____________________________ day

of ________________________________, 2019.

SENATE BILL NO. 535

INTRODUCED BY V. COCCHIARELLA

AN ACT REVISING LAWS RELATING TO ANNUITIES; CREATING THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; PROVIDING FOR EXEMPTIONS FROM THE MONTANA SUITABILITY IN ANNUITY TRANSACTIONS ACT; ESTABLISHING DUTIES FOR INSURERS, INSURANCE PRODUCERS, AND INDEPENDENT AGENCIES; CREATING THE MONTANA ANNUITY DISCLOSURE ACT; PROVIDING DEFINITIONS; ESTABLISHING DISCLOSURE REQUIREMENTS FOR BUYER'S GUIDES AND DISCLOSURE DOCUMENTS; REQUIRING REPORTS TO ANNUITY CONTRACT HOLDERS; PROVIDING PENALTIES FOR VIOLATIONS OF EITHER ACT; AND PROVIDING AN APPLICABILITY DATE.