§ 58-60-170. (Contingent repeal – see note) Duties of insurers and insurance producers.

(a) 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 where no producer is involved, shall 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.

(b) Before recommending the purchase or exchange of an annuity resulting from a recommendation, the insurance producer, or the insurer where no producer is involved, shall make reasonable efforts to obtain information about the particular consumer's circumstances, including, but not limited to, all of the following:

(1) The consumer's financial status.
(2) The consumer's tax status.
(3) The consumer's investment objectives.
(4) Any other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(c) Except as provided under subdivision (1) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection (a) of this section related to any recommendation if a consumer does any of the following:

(1) Refuses to provide relevant information requested by the insurer or insurance producer. An insurer or insurance producer's recommendation subject to this subdivision shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.
(2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer.
(3) Fails to provide complete or accurate information requested by the insurer or insurance producer.

(d) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Part is established and maintained by complying with subsections (e), (f), and (g) of this section, or shall establish and maintain such a system, including:

(1) Maintaining written procedures.
(2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Part.

(e) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this Part, or shall establish and maintain such a system, including:

(1) Maintaining written procedures.
(2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this Part.

(f) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subsection (d) of this section with respect to insurance producers under contract with, or employed by, the third party. An insurer shall make reasonable inquiry to assure that the third-party contracting under this subsection is performing the functions required under subsection (d) of this section and shall take any action that is reasonable under the circumstances to enforce the contractual
obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(1) The insurer annually obtains a certification from a third-party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions. No person may provide a certification under this subdivision unless (i) the person is a senior manager with responsibility for the delegated functions; and (ii) the person has a reasonable basis for making the certification.

(2) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

An insurer that contracts with a third party, and that complies with the requirements to supervise the third party pursuant to this subsection, shall have fulfilled its responsibilities under subsection (d) of this section.

A general agent or independent agency contracting with an insurer shall promptly, when requested by the insurer pursuant to this subsection, give a certification as described in this subsection or give a clear statement that it is unable to meet the certification criteria.

(g) An insurer, general agent, or independent agency is not required by subsections (d) or (e) of this section to:

(1) Review, or provide for review of, all insurance producer solicited transactions; or

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

(h) Compliance with the Financial Industry Regulatory Authority Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of annuities subject to the Conduct Rules. Nothing in this subsection limits the Commissioner's ability to enforce the provisions of this Article. (2007-298, s. 1.1; 2009-382, s. 36; 2017-136, s. 5.)