

House Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

CHAPTER 172

**HOUSE BILL 2162**

AN ACT

AMENDING TITLE 20, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE  
1.3; RELATING TO PROTECTION IN INSURANCE ANNUITY TRANSACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 20, chapter 6, Arizona Revised Statutes, is amended  
3 by adding article 1.3, to read:

4 ARTICLE 1.3. PROTECTION IN ANNUITY TRANSACTIONS

5 20-1243. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ANNUITY" MEANS A FIXED OR VARIABLE ANNUITY THAT IS INDIVIDUALLY  
8 SOLICITED, WHETHER THE PRODUCT IS CLASSIFIED AS AN INDIVIDUAL OR GROUP  
9 ANNUITY.

10 2. "BUSINESS ENTITY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
11 20-281.

12 3. "INSURANCE PRODUCER" HAS THE SAME MEANING PRESCRIBED IN SECTION  
13 20-281.

14 4. "INSURER" HAS THE SAME MEANING PRESCRIBED IN SECTION 20-104.

15 5. "MANAGING GENERAL AGENT" HAS THE SAME MEANING PRESCRIBED IN SECTION  
16 20-311.

17 6. "RECOMMENDATION" MEANS ADVICE PROVIDED BY AN INSURANCE PRODUCER, OR  
18 AN INSURER IF NO PRODUCER IS INVOLVED, TO AN INDIVIDUAL CONSUMER THAT RESULTS  
19 IN A PURCHASE OR EXCHANGE OF AN ANNUITY PURSUANT TO THAT ADVICE.

20 20-1243.01. Scope and limitation of article

21 A. THIS ARTICLE APPLIES TO ANY RECOMMENDATION TO PURCHASE OR EXCHANGE  
22 AN ANNUITY THAT IS MADE TO A CONSUMER BY AN INSURANCE PRODUCER, OR AN INSURER  
23 IF NO PRODUCER IS INVOLVED, THAT RESULTS IN THE RECOMMENDED PURCHASE OR  
24 EXCHANGE.

25 B. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT IN ANY MANNER  
26 ANY PROVISION OF TITLE 44, CHAPTERS 12 AND 13.

27 20-1243.02. Exemptions

28 UNLESS OTHERWISE SPECIFICALLY INCLUDED, THIS ARTICLE DOES NOT APPLY TO  
29 RECOMMENDATIONS INVOLVING:

30 1. DIRECT RESPONSE SOLICITATIONS IF THERE IS NO RECOMMENDATION BASED  
31 ON INFORMATION COLLECTED FROM THE CONSUMER PURSUANT TO THIS ARTICLE.

32 2. CONTRACTS USED TO FUND ANY OF THE FOLLOWING:

33 (a) AN EMPLOYEE PENSION OR WELFARE BENEFIT PLAN THAT IS COVERED BY THE  
34 EMPLOYEE RETIREMENT AND INCOME SECURITY ACT OF 1974 (P.L. 93-406; 88 STAT.  
35 829; 29 UNITED STATES CODE SECTIONS 1001 THROUGH 1461).

36 (b) A PLAN DESCRIBED BY SECTION 401(a), 401(k), 403(b), 408(k) OR  
37 408(p) OF THE INTERNAL REVENUE CODE, IF ESTABLISHED OR MAINTAINED BY AN  
38 EMPLOYER.

39 (c) A GOVERNMENT OR CHURCH PLAN AS DEFINED IN SECTION 414 OF THE  
40 INTERNAL REVENUE CODE, A GOVERNMENT OR CHURCH WELFARE BENEFIT PLAN OR A  
41 DEFERRED COMPENSATION PLAN OF A STATE OR LOCAL GOVERNMENT OR TAX EXEMPT  
42 ORGANIZATION UNDER SECTION 457 OF THE INTERNAL REVENUE CODE.

43 (d) A NONQUALIFIED DEFERRED COMPENSATION ARRANGEMENT ESTABLISHED OR  
44 MAINTAINED BY AN EMPLOYEE OR PLAN SPONSOR.

1 (e) SETTLEMENTS OF, OR ASSUMPTIONS OF LIABILITIES ASSOCIATED WITH,  
2 PERSONAL INJURY LITIGATION OR ANY DISPUTE OR CLAIM RESOLUTION PROCESS.

3 (f) FORMAL PREPAID FUNERAL CONTRACTS.

4 20-1243.03. Duties of insurers and insurance producers

5 A. IN RECOMMENDING TO A CONSUMER THE PURCHASE OF AN ANNUITY OR THE  
6 EXCHANGE OF AN ANNUITY THAT RESULTS IN ANOTHER INSURANCE TRANSACTION OR A  
7 SERIES OF INSURANCE TRANSACTIONS, THE INSURANCE PRODUCER, OR THE INSURER IF  
8 NO PRODUCER IS INVOLVED, SHALL HAVE REASONABLE GROUNDS FOR BELIEVING THAT THE  
9 RECOMMENDATION IS SUITABLE FOR THE CONSUMER ON THE BASIS OF THE FACTS  
10 DISCLOSED BY THE CONSUMER AS TO THE CONSUMER'S INVESTMENTS AND OTHER  
11 INSURANCE PRODUCTS AND AS TO THE CONSUMER'S FINANCIAL SITUATION AND NEEDS.

12 B. BEFORE THE EXECUTION OF A PURCHASE OR EXCHANGE OF AN ANNUITY  
13 RESULTING FROM A RECOMMENDATION, AN INSURANCE PRODUCER, OR AN INSURER IF NO  
14 PRODUCER IS INVOLVED, SHALL MAKE REASONABLE EFFORTS TO OBTAIN INFORMATION  
15 CONCERNING:

16 1. THE CONSUMER'S FINANCIAL STATUS.

17 2. THE CONSUMER'S TAX STATUS.

18 3. THE CONSUMER'S INVESTMENT OBJECTIVES.

19 4. OTHER INFORMATION CONSIDERED TO BE REASONABLE BY THE INSURANCE  
20 PRODUCER, OR THE INSURER IF NO PRODUCER IS INVOLVED, IN MAKING A  
21 RECOMMENDATION TO THE CONSUMER.

22 C. EXCEPT AS PROVIDED UNDER SUBSECTION D, AN INSURANCE PRODUCER, OR  
23 THE INSURER IF NO PRODUCER IS INVOLVED, DOES NOT HAVE ANY OBLIGATION TO A  
24 CONSUMER UNDER SUBSECTION A RELATED TO ANY RECOMMENDATION IF A CONSUMER  
25 EITHER:

26 1. REFUSES TO PROVIDE RELEVANT INFORMATION THAT IS REQUESTED BY THE  
27 INSURER OR INSURANCE PRODUCER.

28 2. DECIDES TO ENTER INTO AN INSURANCE TRANSACTION THAT IS NOT BASED ON  
29 A RECOMMENDATION OF THE INSURER OR INSURANCE PRODUCER.

30 3. FAILS TO PROVIDE COMPLETE OR ACCURATE INFORMATION.

31 D. AN INSURER'S OR INSURANCE PRODUCER'S RECOMMENDATION SHALL BE  
32 REASONABLE UNDER ALL OF THE CIRCUMSTANCES ACTUALLY KNOWN TO THE INSURER OR  
33 INSURANCE PRODUCER AT THE TIME OF THE RECOMMENDATION.

34 20-1243.04. Standards for supervision

35 A. AN INSURER SHALL EITHER ASSURE THAT A SYSTEM TO SUPERVISE  
36 RECOMMENDATIONS THAT IS REASONABLY DESIGNED TO ACHIEVE COMPLIANCE WITH THIS  
37 ARTICLE IS ESTABLISHED AND MAINTAINED BY COMPLYING WITH SUBSECTIONS C, D AND  
38 E, OR ESTABLISH AND MAINTAIN SUCH A SYSTEM. SUCH A SYSTEM INCLUDES:

39 1. MAINTAINING WRITTEN PROCEDURES.

40 2. CONDUCTING PERIODIC REVIEWS OF RECORDS THAT ARE REASONABLY DESIGNED  
41 TO ASSIST IN DETECTING AND PREVENTING VIOLATIONS OF THIS ARTICLE.

42 B. A MANAGING GENERAL AGENT AND BUSINESS ENTITY SHALL EITHER ADOPT A  
43 SYSTEM ESTABLISHED BY AN INSURER TO SUPERVISE RECOMMENDATIONS OF ITS  
44 INSURANCE PRODUCERS THAT IS REASONABLY DESIGNED TO ACHIEVE COMPLIANCE WITH

1 THIS ARTICLE OR ESTABLISH AND MAINTAIN SUCH A SYSTEM. SUCH A SYSTEM  
2 INCLUDES:

- 3 1. MAINTAINING WRITTEN PROCEDURES.  
4 2. CONDUCTING PERIODIC REVIEWS OF RECORDS THAT ARE REASONABLY DESIGNED  
5 TO ASSIST IN DETECTING AND PREVENTING VIOLATIONS OF THIS ARTICLE.

6 C. AN INSURER MAY CONTRACT WITH A THIRD PARTY, INCLUDING A MANAGING  
7 GENERAL AGENT OR BUSINESS ENTITY, TO ESTABLISH AND MAINTAIN A SYSTEM OF  
8 SUPERVISION AS REQUIRED BY SUBSECTION A WITH RESPECT TO INSURANCE PRODUCERS  
9 UNDER CONTRACT WITH OR EMPLOYED BY THE THIRD PARTY.

10 D. AN INSURER SHALL MAKE REASONABLE INQUIRY TO ASSURE THAT THE THIRD  
11 PARTY CONTRACTING UNDER SUBSECTION C IS PERFORMING THE FUNCTIONS REQUIRED  
12 UNDER SUBSECTION A AND SHALL TAKE SUCH ACTION AS IS REASONABLE UNDER THE  
13 CIRCUMSTANCES TO ENFORCE THE CONTRACTUAL OBLIGATION TO PERFORM THE FUNCTIONS.  
14 AN INSURER MAY COMPLY WITH THE OBLIGATION TO MAKE REASONABLE INQUIRY BY DOING  
15 BOTH OF THE FOLLOWING:

16 1. ANNUALLY OBTAINING A CERTIFICATION FROM A THIRD PARTY SENIOR  
17 MANAGER WHO HAS RESPONSIBILITY FOR THE DELEGATED FUNCTIONS THAT THE MANAGER  
18 HAS A REASONABLE BASIS TO REPRESENT, AND DOES REPRESENT, THAT THE THIRD PARTY  
19 IS PERFORMING THE REQUIRED FUNCTIONS.

20 2. BASED ON REASONABLE SELECTION CRITERIA, PERIODICALLY SELECT THIRD  
21 PARTIES CONTRACTING UNDER SUBSECTION C FOR A REVIEW TO DETERMINE IF THE THIRD  
22 PARTIES ARE PERFORMING THE REQUIRED FUNCTIONS. THE INSURER SHALL PERFORM  
23 THOSE PROCEDURES TO CONDUCT THE REVIEW THAT ARE REASONABLE UNDER THE  
24 CIRCUMSTANCES.

25 E. AN INSURER THAT CONTRACTS WITH A THIRD PARTY PURSUANT TO SUBSECTION  
26 C AND THAT COMPLIES WITH THE REQUIREMENTS TO SUPERVISE IN SUBSECTION D  
27 FULFILLS ITS RESPONSIBILITIES UNDER SUBSECTION A.

28 F. AN INSURER, MANAGING GENERAL AGENT OR BUSINESS ENTITY IS NOT  
29 REQUIRED PURSUANT TO SUBSECTION A OR B TO:

30 1. REVIEW, OR PROVIDE FOR REVIEW OF, ALL INSURANCE PRODUCER SOLICITED  
31 TRANSACTIONS.

32 2. INCLUDE IN ITS SYSTEM OF SUPERVISION AN INSURANCE PRODUCER'S  
33 RECOMMENDATIONS TO CONSUMERS OF PRODUCTS OTHER THAN THE ANNUITIES OFFERED BY  
34 THE INSURER, MANAGING GENERAL AGENT OR BUSINESS ENTITY.

35 G. A MANAGING GENERAL AGENT OR BUSINESS ENTITY CONTRACTING WITH AN  
36 INSURER PURSUANT TO SUBSECTION C SHALL PROMPTLY, IF REQUESTED BY THE INSURER  
37 PURSUANT TO SUBSECTION D, GIVE A CERTIFICATION AS DESCRIBED IN SUBSECTION D  
38 OR GIVE A CLEAR STATEMENT THAT IT IS UNABLE TO MEET THE CERTIFICATION  
39 CRITERIA.

40 H. A PERSON SHALL NOT PROVIDE A CERTIFICATION UNDER SUBSECTION D,  
41 PARAGRAPH 1 UNLESS BOTH OF THE FOLLOWING APPLY:

42 1. THE PERSON IS A SENIOR MANAGER WITH RESPONSIBILITY FOR THE  
43 DELEGATED FUNCTIONS.

44 2. THE PERSON HAS A REASONABLE BASIS FOR MAKING THE CERTIFICATION.

1 I. COMPLIANCE WITH THE NATIONAL ASSOCIATION OF SECURITIES DEALERS  
2 CONDUCT RULES PERTAINING TO SUITABILITY SATISFIES THE REQUIREMENTS UNDER THIS  
3 SECTION FOR THE RECOMMENDATION OF VARIABLE ANNUITIES. HOWEVER, THIS  
4 SUBSECTION DOES NOT LIMIT THE DIRECTOR'S ABILITY TO ENFORCE THIS ARTICLE.

5 20-1243.05. Mitigation of responsibility; director orders

6 A. THE DIRECTOR MAY ORDER:

7 1. AN INSURER TO TAKE REASONABLY APPROPRIATE CORRECTIVE ACTION FOR ANY  
8 CONSUMER WHO IS HARMED BY THE INSURER'S OR BY THE INSURER'S INSURANCE  
9 PRODUCER'S VIOLATION OF THIS ARTICLE.

10 2. AN INSURANCE PRODUCER TO TAKE REASONABLY APPROPRIATE CORRECTIVE  
11 ACTION FOR ANY CONSUMER WHO IS HARMED BY AN INSURANCE PRODUCER'S VIOLATION OF  
12 THIS ARTICLE.

13 3. A MANAGING GENERAL AGENT OR BUSINESS ENTITY THAT EMPLOYS OR  
14 CONTRACTS WITH AN INSURANCE PRODUCER TO SELL, OR SOLICIT THE SALE OF,  
15 ANNUITIES TO CONSUMERS TO TAKE REASONABLY APPROPRIATE CORRECTIVE ACTION FOR  
16 ANY CONSUMER WHO IS HARMED BY THE INSURANCE PRODUCER'S VIOLATION OF THIS  
17 ARTICLE.

18 B. THE DIRECTOR MAY REDUCE OR ELIMINATE ANY APPLICABLE PENALTY UNDER  
19 SECTIONS 20-220, 20-295 AND 20-456 FOR A VIOLATION OF SECTION 20-1243.03,  
20 SUBSECTION A, B OR D IF CORRECTIVE ACTION FOR THE CONSUMER WAS TAKEN PROMPTLY  
21 AFTER A VIOLATION WAS DISCOVERED.

22 20-1243.06. Record keeping

23 A. INSURERS, MANAGING GENERAL AGENTS, BUSINESS ENTITIES AND INSURANCE  
24 PRODUCERS SHALL MAINTAIN, OR BE ABLE TO MAKE AVAILABLE TO THE DIRECTOR,  
25 RECORDS OF THE INFORMATION COLLECTED FROM THE CONSUMER AND OTHER INFORMATION  
26 USED IN MAKING THE RECOMMENDATIONS THAT WERE THE BASIS FOR INSURANCE  
27 TRANSACTIONS FOR AT LEAST FIVE YEARS OR UNTIL THE NEXT REGULAR EXAMINATION BY  
28 THE INSURANCE REGULATORY AUTHORITY OF ITS STATE OF DOMICILE, WHICHEVER IS  
29 LATER, AFTER THE INSURANCE TRANSACTION IS COMPLETED BY THE INSURER. AN  
30 INSURER MAY MAINTAIN DOCUMENTATION ON BEHALF OF AN INSURANCE PRODUCER.

31 B. RECORDS REQUIRED TO BE MAINTAINED BY THIS ARTICLE MAY BE MAINTAINED  
32 IN PAPER, PHOTOGRAPHIC, MICROPROCESS, MAGNETIC, MECHANICAL OR ELECTRONIC  
33 MEDIA OR BY ANY PROCESS THAT ACCURATELY REPRODUCES THE ACTUAL DOCUMENT.

**APPROVED BY THE GOVERNOR APRIL 18, 2006.**

**FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2006.**