

SENATE AMENDMENTS TO SENATE BILL 536

By COMMITTEE ON JUDICIARY

March 31

- 1 On page 1 of the printed bill, delete lines 7 through 31 and delete pages 2 through 10 and insert:
- 2 **“SECTION 2. (1) As used in this section:**
- 3 **“(a)(A) ‘Annuity’ means:**
- 4 **“(i) An agreement to make periodic payments, whether fixed or variable, in an amount:**
- 5 **“(I) That is individually solicited, whether the agreement is classified as an individual**
- 6 **annuity or a group annuity; and**
- 7 **“(II) In which the obligation to make all or some of the periodic payments, or the amount**
- 8 **of any periodic payment, depends upon the continuance of human life; and**
- 9 **“(ii) Any additional benefits that safeguard the agreement from lapse or that provide a**
- 10 **special surrender value or special benefit or annuity if the annuitant becomes totally and**
- 11 **permanently disabled.**
- 12 **“(B) ‘Annuity’ does not include:**
- 13 **“(i) A charitable remainder annuity trust or a charitable remainder unitrust as defined**
- 14 **in section 664(d) of the Internal Revenue Code; or**
- 15 **“(ii) Payments made in accordance with settlement provisions of a life insurance policy.**
- 16 **“(b) ‘Cash compensation’ means a discount, concession, fee, service fee, commission,**
- 17 **sales charge, loan, override or cash benefit that a producer receives from an insurer, from**
- 18 **an intermediary or directly from a purchaser as compensation for the producer’s recom-**
- 19 **mendation or sale of an annuity.**
- 20 **“(c) ‘Comparable to the requirements of this section’ means:**
- 21 **“(A) For broker-dealers and registered representatives of broker-dealers, regulations**
- 22 **that the United States Securities and Exchange Commission and the Financial Industry**
- 23 **Regulatory Authority promulgate as best interest obligations and use to supervise annuity**
- 24 **recommendations and sales, including but not limited to Regulation Best Interest, 17 C.F.R.**
- 25 **240.151-1, as in effect on the operative date specified in section 5 of this 2023 Act.**
- 26 **“(B) For investment advisers registered under federal or state securities laws, and for**
- 27 **investment adviser representatives, the fiduciary duties and all other requirements to which**
- 28 **investment advisers and investment adviser representatives are subject under ORS chapter**
- 29 **59 and the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 to 80b-21, including but not lim-**
- 30 **ited to Form ADV, 17 C.F.R. parts 275 and 279, and related interpretations.**
- 31 **“(C) For fiduciaries and plan fiduciaries, the duties, obligations, prohibitions and other**
- 32 **requirements to which fiduciaries and plan fiduciaries are subject under the Internal Re-**
- 33 **venue Code and the Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq., both**
- 34 **as in effect on the operative date specified in section 5 of this 2023 Act.**
- 35 **“(d) ‘Consumer profile information’ means information that is reasonably appropriate to**

1 **determine whether a recommendation or sale of an annuity addresses a consumer’s financial**
2 **situation, insurance needs and financial objectives, including at a minimum:**

3 **“(A) Age;**

4 **“(B) Annual income;**

5 **“(C) Financial situation and needs, including debts and other obligations;**

6 **“(D) Financial experience;**

7 **“(E) Insurance needs;**

8 **“(F) Financial objectives;**

9 **“(G) Intended use for an annuity;**

10 **“(H) Financial time horizon;**

11 **“(I) Existing assets, including investment, annuity and other insurance holdings;**

12 **“(J) Liquidity needs;**

13 **“(K) Liquid net worth;**

14 **“(L) Risk tolerance, including but not limited to the consumer’s willingness to accept**
15 **non-guaranteed elements in the annuity;**

16 **“(M) Financial resources for funding an annuity; and**

17 **“(N) Tax status.**

18 **“(e) ‘Financial professional’ means a producer that is regulated and is acting as:**

19 **“(A) A broker-dealer that is registered under federal or state securities laws, or a reg-**
20 **istered representative of a broker-dealer;**

21 **“(B) An investment adviser registered under federal or state securities laws or an in-**
22 **vestment adviser representative affiliated with the registered investment adviser; or**

23 **“(C) A fiduciary, as described in 29 U.S.C. 1002(21) or as defined in 26 U.S.C. 4975(e)(3),**
24 **both as in effect on the operative date specified in section 5 of this 2023 Act.**

25 **“(f) ‘Intermediary’ means a person that for compensation contracts directly with an**
26 **insurer, or with another person that contracts with the insurer, for the purpose of facili-**
27 **tating a producer’s sale of the insurer’s annuities.**

28 **“(g)(A) ‘Material conflict of interest’ means a producer’s financial interest in the sale of**
29 **an annuity that a reasonable person would expect to influence the impartiality of the**
30 **producer’s recommendation of an annuity.**

31 **“(B) ‘Material conflict of interest’ does not include cash compensation or non-cash com-**
32 **penensation.**

33 **“(h) ‘Non-cash compensation’ means a form of compensation that is not cash compen-**
34 **sation, such as health insurance, office rent, office support or retirement benefits.**

35 **“(i) ‘Non-guaranteed elements’ means a provision in an annuity contract that an insurer**
36 **may determine at the insurer’s discretion and that the insurer does not guarantee, such as:**

37 **“(A) A premium, credited interest rate or bonus, benefit, value, dividend, credit that is**
38 **not based on interest or other charge;**

39 **“(B) A formula that an insurer uses to calculate an item described in subparagraph (A)**
40 **of this paragraph; or**

41 **“(C) Any provision in the annuity contract the calculation of which depends on another**
42 **provision that is not guaranteed.**

43 **“(j) ‘Producer’ means a person that is licensed under ORS 744.052 to 744.089 or an**
44 **insurer, if the insurer solicits, negotiates or sells an annuity without involving a producer.**

45 **“(k)(A) ‘Recommendation’ means a producer’s advice to a consumer that the producer**

1 intends as an inducement to sell, exchange or replace an annuity or that results in a sale,
2 exchange or replacement of an annuity in accordance with the producer's advice.

3 “(B) ‘Recommendation’ does not include a general communication to the public, gener-
4 alized customer service, administrative support, general educational information and tools,
5 prospectuses or other product material or sales material.

6 “(L) ‘Replacement’ means a purchase of a new annuity that an insurer or producer
7 knows or should know will cause an existing annuity or other insurance policy to:

8 “(A) Lapse, become forfeit, be surrendered or partially surrendered, become assigned or
9 partially assigned to the replacing insurer or otherwise terminate;

10 “(B) Convert to paid-up insurance, continue as extended term insurance or otherwise
11 reduce in value using nonforfeiture benefits or other policy values;

12 “(C) Reduce through amendment the annuity’s or other insurance policy’s benefits or the
13 term during which coverage remains effective or in which an insurer pays benefits;

14 “(D) Be reissued with a reduction in cash value; or

15 “(E) Be used in a financed purchase.

16 “(2)(a) Except as provided in paragraph (b) of this subsection, this section applies to any
17 sale or recommendation of an annuity.

18 “(b) This section does not apply to a transaction that involves:

19 “(A) A direct-response solicitation, if a producer does not make a recommendation based
20 on consumer profile information; or

21 “(B) A contract that funds:

22 “(i) An employee pension or welfare benefit plan that is covered under the Employee
23 Retirement and Income Security Act, 29 U.S.C. 1001 et seq., as in effect on the operative date
24 specified in section 5 of this 2023 Act;

25 “(ii) A plan that an employer establishes or maintains in accordance with sections 401(a),
26 401(k), 403(b) or 408(k) or (p) of the Internal Revenue Code;

27 “(iii) A governmental plan or church plan, as defined in section 414(d) and (e) of the
28 Internal Revenue Code;

29 “(iv) A deferred compensation plan that a state or local government or tax exempt or-
30 ganization establishes or maintains in accordance with section 457 of the Internal Revenue
31 Code;

32 “(v) A nonqualified deferred compensation arrangement that an employer or sponsor es-
33 tablishes or maintains;

34 “(vi) A settlement or assumption of liability associated with personal injury litigation or
35 a dispute or claim resolution process; or

36 “(vii) A formal prepaid funeral contract.

37 “(3)(a) A producer, in making a recommendation of an annuity, shall act in the
38 consumer’s best interest, under the circumstances the producer knows at the time the pro-
39 ducer makes the recommendation, without placing the producer’s or insurer’s financial in-
40 terests ahead of the consumer’s interests.

41 “(b) A producer satisfies the producer’s best interest obligations if the producer satisfies
42 the care obligation set forth in subsection (4) of this section, the disclosure obligation set
43 forth in subsection (5) of this section, the conflict of interest obligation set forth in sub-
44 section (6) of this section and the documentation obligation set forth in subsection (7) of this
45 section.

1 “(4)(a) A producer satisfies the care obligation if the producer, in making a recommen-
2 dation, exercises reasonable skill, diligence and care to:

3 “(A) Know the consumer’s financial situation, insurance needs and financial objectives;

4 “(B) Understand the options the producer may recommend to the consumer after making
5 a reasonable inquiry into available options;

6 “(C) Have a reasonable basis for believing that:

7 “(i) The producer’s recommended option effectively addresses the consumer’s financial
8 situation, insurance needs and financial objectives when considered in light of consumer
9 profile information; and

10 “(ii) The consumer will benefit from certain features of the annuity, such as
11 annuitization, death or living benefits or other insurance-related features; and

12 “(D) Communicate to the consumer the basis for the producer’s recommendation.

13 “(b) A producer, in satisfying the care obligation, shall:

14 “(A) Make reasonable efforts to obtain consumer profile information before making a
15 recommendation;

16 “(B) Consider products that the producer may sell in accordance with the producer’s li-
17 cense if the products address the consumer’s financial situation, insurance needs and finan-
18 cial objectives, except that the consideration does not require the producer to analyze or
19 consider products that are outside the scope of the producer’s license, to analyze or consider
20 other products or strategies that are available in the insurance market at the time the pro-
21 ducer makes the recommendation, or to meet any other obligation that a producer with a
22 similar license does not have to meet;

23 “(C) Make a recommendation to address a consumer’s financial situation, insurance
24 needs and financial objectives on the basis of consumer profile information, the character-
25 istics of the insurer and product costs, rates, benefits and features, and vary the importance
26 of consumer profile information, the characteristics of the insurer and product costs, rates,
27 benefits and features to account for the facts and circumstances of a particular case, except
28 that the producer may not consider in isolation any factor set forth in this subparagraph;
29 and

30 “(D) Consider the whole transaction if the transaction will exchange or replace an exist-
31 ing annuity, which requires that the producer consider whether:

32 “(i) The consumer will incur a surrender charge, be required to begin a new surrender
33 period, lose existing death, living or other contractual benefits or incur increased fees, in-
34 vestment advisory fees or charges for riders or similar product enhancements;

35 “(ii) The replacement product will substantially benefit the consumer over the life of the
36 replacement product, in comparison to the existing annuity; and

37 “(iii) The prospective producer had a previous annuity exchange or replacement, partic-
38 ularly within the preceding 60 months.

39 “(c) The care obligation set forth in paragraph (a) of this subsection:

40 “(A) Applies to a particular annuity as a whole, to the underlying subaccounts to which
41 funds are allocated at the time the annuity is purchased or exchanged and to any riders or
42 similar product enhancements; and

43 “(B) Does not:

44 “(i) Create a fiduciary obligation for the producer or a fiduciary relationship between the
45 producer and a consumer;

1 “(ii) Require a producer to necessarily recommend an annuity with the lowest one-time
2 or multiple occurrence compensation structure;

3 “(iii) Require a producer to obtain any license other than a producer license with appro-
4 priate authority to solicit, negotiate or sell insurance in this state and does not require the
5 producer to have or obtain a license to sell securities in this state if the producer does not
6 give advice or provide services that are subject to federal or state securities laws or does
7 not engage in any other activity that requires another professional license; or

8 “(iv) Require of a producer an ongoing obligation to monitor compliance with the re-
9 quirements set forth in paragraph (a) of this subsection, unless a separate fiduciary, con-
10 sulting, investment advising or financial planning agreement with the consumer provides
11 otherwise.

12 “(5)(a) Before making a recommendation of or selling an annuity to a consumer, a pro-
13 ducer shall prominently disclose on a separate form and in a manner substantially similar
14 to the manner the Director of the Department of Consumer and Business Services specifies
15 by rule:

16 “(A) The producer’s role in the transaction and the producer’s relationship with the
17 consumer;

18 “(B) Whether the producer has a license and authority to sell fixed annuities, fixed in-
19 dexed annuities, variable annuities, life insurance, mutual funds, stocks, bonds or certificates
20 of deposit;

21 “(C) Whether the producer may recommend or sell insurance products under contract
22 or otherwise from one insurer, from two or more insurers or from two or more insurers
23 while remaining under a primary contract with one insurer;

24 “(D) The sources and types of the cash compensation and non-cash compensation the
25 producer will receive for making a recommendation of or selling an annuity, including
26 whether the compensation is a commission that is part of a premium or other remuneration
27 the producer receives from the insurer, an intermediary or another producer or whether the
28 compensation is a fee that results from a contract for advice or consulting services;

29 “(E) The consumer’s right to request additional information about the cash compensation
30 the producer disclosed under subparagraph (D) of this paragraph; and

31 “(F) A reasonable estimate, at the request of the consumer or a designated represen-
32 tative of the consumer, of the cash compensation that the producer will receive from re-
33 commending or selling the annuity, whether the producer will receive the cash compensation
34 once or on more than one occasion and, if the compensation occurs on more than one oc-
35 casion, the amount of each payment, all of which the producer may disclose as a range or a
36 percentage.

37 “(b) Before making a recommendation or completing a sale of an annuity to a customer,
38 a producer must have a reasonable basis for believing that the consumer was informed of
39 the annuity’s features, such as the potential tax penalties that could result from the
40 consumer’s sale, exchange, surrender or annuitization of the annuity, the potential surren-
41 der period and surrender charges, any annual fees, mortality and expense fees, investment
42 advisory fees, features of and potential charges for riders or other options, limitations on
43 interest returns, potential charges for non-guaranteed elements of the annuity, the annuity’s
44 insurance and investment components and market risk.

45 “(6) A producer shall identify and avoid, or reasonably manage and disclose, any material

1 conflict of interest, including a material conflict of interest that is related to an ownership
2 interest.

3 “(7) A producer, at the time the producer recommends or sells an annuity to a consumer,
4 shall:

5 “(a) Record in writing the substance of and basis for the producer’s recommendation; and

6 “(b) Obtain from the consumer in the following circumstances a signed statement on
7 separate forms and in a manner substantially similar to the forms and manner the director
8 prescribes by rule:

9 “(A) If a consumer refuses to provide consumer profile information, the consumer’s
10 statement must acknowledge that the consumer refused to provide consumer profile infor-
11 mation and that the consumer understands the ramifications of not providing consumer
12 profile information or providing incomplete consumer profile information.

13 “(B) If a consumer enters into an annuity transaction that is not based on a producer’s
14 recommendation, the consumer’s statement must acknowledge that the annuity transaction
15 is not recommended.

16 “(8) The best interest obligation set forth in subsection (3) of this section applies to any
17 producer who exercises material control or influence over a recommendation or sale of an
18 annuity and who receives direct compensation as a result of the recommendation or sale,
19 even if the producer did not have direct contact with the consumer. Providing or delivering
20 marketing or educational materials, product wholesaling or back office support for, or gen-
21 eral supervision of, a producer does not, alone, constitute material control or influence.

22 “(9)(a) Except as provided in paragraph (b) of this subsection, a producer does not have
23 an obligation under subsection (3) of this section to a consumer if:

24 “(A) The producer does not make a recommendation of an annuity;

25 “(B) The producer made a recommendation based on materially inaccurate information
26 from the consumer;

27 “(C) The consumer refused to provide consumer profile information and the producer did
28 not recommend the annuity that was the subject of the consumer’s transaction; or

29 “(D) The consumer enters into a transaction for an annuity that the producer did not
30 recommend.

31 “(b) An insurer’s issuance of an annuity must be reasonable under all of the circum-
32 stances of which the insurer has actual knowledge at the time the insurer issues the annu-
33 ity.

34 “(10)(a) Except as provided in subsection (9) of this section, an insurer may not issue an
35 annuity on the basis of a recommendation to a consumer unless, after considering the con-
36 sumer profile information, the insurer has a reasonable basis for believing that the annuity
37 would effectively address the consumer’s financial situation, insurance needs and financial
38 objectives.

39 “(b) An insurer shall establish and maintain a supervision system that is reasonably de-
40 signed to ensure that the insurer and the insurer’s producers comply with this section. The
41 system, at a minimum, must:

42 “(A) Have reasonable procedures for educating producers about the requirements of this
43 section and incorporate the education into relevant training materials for producers;

44 “(B) Have standards for training producers on the insurer’s products that require the
45 producers to comply with the requirements of subsection (13) of this section;

1 “(C) Provide product-specific training and training materials that explain all material
2 features of the insurer’s annuity products to producers;

3 “(D) Establish procedures for reviewing each of a producer’s recommendations before the
4 insurer issues an annuity to ensure that a reasonable basis exists for determining that the
5 annuity would effectively address each consumer’s financial situation, insurance needs and
6 financial objectives, which review may consist of screening recommendations, electronically
7 or otherwise, identifying recommendations that require further review and reviewing only
8 the recommendations that meet the criteria for additional review;

9 “(E) Have a method for detecting recommendations that do not comply with the pro-
10 visions of this section, which may include confirming consumer profile information, con-
11 ducting systematic customer surveys and interviews, issuing confirmation letters to
12 purchasers, taking statements or attestations from producers and otherwise conducting
13 internal monitoring, and may consist of taking appropriate samples or confirming consumer
14 profile information after issuing and delivering an annuity;

15 “(F) Assess before or at the time the insurer issues or delivers an annuity whether a
16 producer has provided the information the producer must provide to a consumer under this
17 section;

18 “(G) Have reasonable procedures for identifying and addressing suspicious refusals to
19 provide consumer profile information;

20 “(H) Have reasonable procedures for identifying and eliminating any sales contests, sales
21 quotas, bonuses and non-cash compensation that are based on sales of specific annuities
22 within a limited period of time, except that the procedures need not prohibit non-cash com-
23 pensation that consists of health insurance, office rent, office support, retirement benefits
24 or other employee benefits if the benefits are not based on the sales volume of a specific
25 annuity within a limited period of time; and

26 “(I) Require annual written reports to the insurer’s senior management, including the
27 senior manager with responsibility for auditing functions, that details the insurer’s process
28 of reviewing and testing the effectiveness of the system and taking or recommending cor-
29 rective action to address flaws.

30 “(c) An insurer may contract with another person to perform a function required under
31 this subsection, but the insurer remains responsible for taking appropriate corrective action
32 and is liable under subsection (17) of this section for any sanctions and penalties for failing
33 to comply with the requirements of this section even if the insurer contracted with another
34 person to meet the requirement and even if the insurer complies with the requirements of
35 paragraph (d) of this subsection.

36 “(d) If an insurer contracts with another person under this subsection, the insurer must
37 supervise the contractor’s performance by:

38 “(A) Monitoring the performance and conducting audits if appropriate; and

39 “(B) Obtaining each year from a senior manager with responsibility for the function the
40 contractor performs a certification that the manager has a reasonable basis for believing and
41 does believe that the function is being performed properly.

42 “(e) An insurer need not include in a system described in paragraph (b) of this sub-
43 section:

44 “(A) A producer’s recommendation to consumers of a product that the insurer does not
45 offer; or

1 “(B) A consideration of or comparison to options available to a producer other than an-
2 nnuities the insurer offers or a consideration of or comparison to compensation available to
3 the producer through options other than annuities the insurer offers.

4 “(11) An insurer or a producer may not dissuade or attempt to dissuade a person from
5 truthfully responding to an insurer’s request to confirm consumer profile information, from
6 filing a complaint or from cooperating with an investigation of a complaint.

7 “(12)(a) An insurer or financial professional that makes a recommendation of or sells an
8 annuity in compliance with standards, business rules, controls and procedures that are
9 comparable to the requirements of this section complies with the requirements of this sec-
10 tion if the insurer exercises the supervision described in paragraph (b) of this subsection,
11 even if the standard, business rule, control or procedure does not apply directly to the rec-
12 ommendation or the annuity.

13 “(b) For supervision of a financial professional under standards, business rules, controls
14 and procedures that are comparable to the requirements of this section to qualify as com-
15 plying with the requirements of this section, the insurer shall:

16 “(A) Use information the insurer collects in the normal course of the insurer’s business
17 to monitor the financial professional’s relevant conduct or to monitor any person that is
18 responsible for supervising the financial professional’s conduct, such as the financial
19 professional’s broker-dealer or an investment adviser registered under federal or state se-
20 curities laws; and

21 “(B) Provide to a person that is responsible for supervising the financial professional’s
22 conduct as described in subparagraph (A) of this paragraph reports and information that are
23 reasonably appropriate for assisting the person to properly supervise the financial profes-
24 sional.

25 “(c) This subsection does not affect an insurer’s obligation to comply with subsection
26 (10)(a) of this section, except that the insurer may base an analysis of whether an annuity
27 would effectively address a consumer’s financial situation, insurance needs and financial ob-
28 jectives on information the insurer receives from a financial professional or a person that
29 supervises the conduct of the financial professional.

30 “(d) This subsection does not affect the director’s powers to investigate and enforce the
31 provisions of this section.

32 “(13)(a) A producer may not solicit the sale of an annuity unless the producer has
33 knowledge that is adequate to make a recommendation of the annuity and has complied with
34 the insurer’s standards for product training. A producer may rely for compliance with this
35 subsection on product-specific training standards and materials the insurer provides.

36 “(b) A producer that makes a recommendation of or sells an annuity shall complete, at
37 a minimum, a four-hour training course with a continuing education provider that has reg-
38 istered with the Department of Consumer and Business Services.

39 “(c) A producer with authority to transact life insurance in this state who intends to
40 make recommendations of or sell annuities shall complete the course described in paragraph
41 (b) of this section within 180 days following the operative date specified in section 5 of this
42 2023 Act. A producer that obtains authority to transact life insurance in this state after the
43 operative date specified in section 5 of this 2023 Act may not make a recommendation of or
44 sell an annuity until after completing the course.

45 “(d) A producer that has completed a course described in paragraph (b) of this subsection

1 before the operative date specified in section 5 of this 2023 Act shall within 180 days after the
2 operative date specified in section 5 of this 2023 Act complete either:

3 “(A) A new training course that complies with rules the director adopts under this sec-
4 tion; or

5 “(B) A supplemental one-hour training course on appropriate standards of conduct, sales
6 practices, disclosure requirements and what to be aware of when replacing an existing an-
7 nuity.

8 “(e) A producer may complete a training course described in paragraph (b) of this sub-
9 section in a classroom or by self-study in accordance with rules the director adopts under
10 this section.

11 “(f) A producer that completes in another state a training course or components of a
12 training course that is substantially similar to the requirements specified in this subsection
13 complies with the applicable requirements of this subsection.

14 “(14)(a) A training course described in subsection (13)(b) of this section must be of suf-
15 ficient length to qualify for four continuing education credits, but may be longer, and must
16 cover:

17 “(A) Types and classifications of annuities;

18 “(B) How to identify parties to an annuity;

19 “(C) How contract provisions for specific annuities affect purchasers;

20 “(D) Income taxation of qualified and nonqualified annuities;

21 “(E) Primary uses for annuities; and

22 “(F) Appropriate standards of conduct, sales practices, disclosure requirements and what
23 to be aware of when replacing an existing annuity.

24 “(b) A person that provides a training course described in subsection (13)(b) of this sec-
25 tion:

26 “(A) Shall register with the department as a continuing education provider and comply
27 with rules the director adopts for continuing education providers;

28 “(B) Shall cover in a training course the person intends as compliant with the require-
29 ments of this subsection all of the topics described in paragraph (a) of this subsection;

30 “(C) May cover in a training course topics in addition to the topics described in paragraph
31 (a) of this subsection;

32 “(D) Shall comply with reporting requirements and issue certificates of completion in
33 accordance with rules the director adopts under this section; and

34 “(E) May not present during a training course described in paragraph (a) of this sub-
35 section marketing information or training that concerns sales techniques or that is specific
36 to a particular insurer’s products.

37 “(15) An insurer shall verify that a producer has completed a training course described
38 in subsection (13)(b) of this section before permitting the producer to make a recommen-
39 dation of or sell the insurer’s annuities. For the verification, the insurer shall obtain from
40 the producer a certificate of completion for the course or consult other reliable sources that
41 document the producer’s completion of the course.

42 “(16) An insurer and any producer, contractor, general agent or independent agent affil-
43 iated with the insurer shall maintain, for not less than three years after the date of any
44 recommendation or sale of an annuity, and shall make available to the director upon demand,
45 records of all information collected from and disclosures, including oral disclosures, made to

1 a consumer or purchaser, and any other information that was used in or formed the basis
2 for a recommendation of an annuity. An insurer may, but is not required to, maintain re-
3 cords on a producer's behalf. An insurer may maintain a record under this subsection on
4 paper, as a photograph or in any electronic media that accurately reproduces the content
5 of the record and can be easily retrieved and perceived.

6 “(17)(a) The director may initiate an enforcement proceeding or action against an insurer
7 for the insurer's failure to comply with or violation of this section or for a failure or vio-
8 lation committed by a producer or contractor affiliated with the insurer. The director may:

9 “(A) Require the insurer, the producer, the contractor or a general or independent
10 agency affiliated with the insurer to take reasonably appropriate corrective action to remedy
11 harm to a person injured by the failure or violation; and

12 “(B) Impose a civil penalty or other sanction.

13 “(b) The director may reduce or waive a civil penalty the director imposes under this
14 subsection if the director determines that the insurer took corrective action promptly and
15 that the insurer's failure to comply or violation was not part of a pattern or practice.

16 “(c) The director may adopt rules to carry out the provisions of this section.

17 “(18) This section does not create or imply a private cause of action for a violation of the
18 provisions of this section or subject a producer to civil liability under the best interest obli-
19 gation described in subsection (4) of this section or under standards that govern the conduct
20 of a fiduciary or of a fiduciary relationship.

21 “SECTION 3. ORS 731.156 is amended to read:

22 “731.156. ‘Variable life insurance’ and ‘variable annuity’ mean *[those]* forms of life insurance or
23 annuity benefits, respectively, *[which]* **that** vary according to the investment experience of a sepa-
24 rate account or accounts maintained by the insurer with respect to policies providing such
25 benefits^[.] **or are securities under the Securities Act of 1933, 15 U.S.C. 77a et seq., as in effect**
26 **on the operative date specified in section 5 of this 2023 Act, that vary according to the per-**
27 **formance of a benchmark index, rate or fund if the principal or minimum rate of interest is**
28 **not guaranteed and might be subject to a market value adjustment.** For convenience, reference
29 to ‘variable life insurance’ in the Insurance Code includes variable life insurance and variable an-
30 nuities as defined in this section, except if the inclusion of variable annuities obviously is inappli-
31 cable or if the context requires, or the Insurance Code provides, otherwise.

32 “SECTION 4. Section 2 of this 2023 Act and the amendments to ORS 731.156 by section
33 3 of this 2023 Act apply to annuities that an insurer or producer recommends, sells or issues
34 on or after the operative date specified in section 5 of this 2023 Act.

35 “SECTION 5. (1) Section 2 of this 2023 Act and the amendments to ORS 731.156 by section
36 3 of this 2023 Act become operative on January 1, 2024.

37 “(2) The Director of the Department of Consumer and Business Services may adopt rules
38 and take any other action before the operative date specified in subsection (1) of this section
39 that is necessary to enable the director, on and after the operative date specified in sub-
40 section (1) of this section, to undertake and exercise all of the duties, functions and powers
41 conferred on the director by section 2 of this 2023 Act and the amendments to ORS 731.156
42 by section 3 of this 2023 Act.

43 “SECTION 6. This 2023 Act takes effect on the 91st day after the date on which the 2023
44 regular session of the Eighty-second Legislative Assembly adjourns sine die.”.