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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Insurance
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-01-86	Suitability in Annuity Transactions
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0780-01-86-.02	Scope
0780-01-86-.03	Authority
0780-01-86-.04	Exemptions
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0780-01-86-.07	Penalties and Mitigation of Responsibility
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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0780-01-86
Suitability in Annuity Transactions

Chapter 0780-01-86 Suitability in Annuity Transactions is amended by deleting the current language of the Chapter in its entirety and replacing it with the language below:

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Rule 0780-01-86-.01 Purpose.

- (1) The purpose of this Chapter is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- (2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this Chapter.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.02 Scope.

This Chapter shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.03 Authority.

This Chapter is issued under the authority of T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112(a), 56-6-112(d), 56-6-124(a), and 56-8-101 *et seq.*

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.04 Exemptions.

Unless otherwise specifically included, this Chapter shall not apply to transactions involving:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Chapter, or;

- (2) Contracts used to fund:
- (a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (c) A government or church plan defined in Section 414 of the IRC, 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 IRC;
 - (d) A nonqualified deferred compensation arrangement established or 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.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.05 Definitions.

- (1) "Annuity" means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (3) "Continuing Education Credit" or "CE Credit" means one continuing education credit as defined in Tenn. Comp. Rules and Regs. 0780-01-56.
- (4) "Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to Tenn. Comp. Rules and Regs. 0780-01-56.
- (5) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.
- (6) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
- (7) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
- (8) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.
- (9) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
 - (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.
- (10) "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; and
 - (l) Tax status.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.06 Duties of Insurers and of Insurance Producers.

- (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 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 his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:
- (a) The consumer has been reasonably informed of various features of the annuity, 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

- (b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
 - (c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her 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:
 - 1. 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;
 - 2. The consumer would benefit from product enhancements and improvements; and
 - 3. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six (36) months.
- (2) Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.
- (3) Except as permitted under paragraph (4), an insurer shall 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) (a) Except as provided under subparagraph (b) of this paragraph, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under paragraphs (1) or (3) related to any annuity transaction if:
- 1. No recommendation is made;
 - 2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - 3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
 - 4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.
- (b) An insurer's issuance of an annuity subject to subparagraph (a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.
- (5) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:
- (a) Make a record of any recommendation that is subject to rule 0780-01-86-.06(1);
 - (b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

- (c) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.
- (6) (a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:
 - 1. The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this Chapter and shall incorporate the requirements of this Chapter into relevant insurance producer training manuals;
 - 2. The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of rule 0780-01-86-.07;
 - 3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;
 - 4. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures 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. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;
 - 5. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this part prevents an insurer from complying with this part by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
 - 6. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which 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.
- (b)
 - 1. Nothing in rule 0780-01-86-.06(6) restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under subparagraph (a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 0780-01-86-.08 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with part 2. of this subparagraph.
 - 2. An insurer's supervision system under subparagraph (a) shall include supervision of contractual performance under this part. This includes, but is not limited to, the following:
 - (i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

- (c) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.
- (7) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:
- (a) Truthfully responding to an insurer's request for confirmation of suitability information;
 - (b) Filing a complaint; or
 - (c) Cooperating with the investigation of a complaint.
- (8) (a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this Chapter. This paragraph applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this paragraph shall limit the commissioner's ability to enforce, including investigate, the provisions of this Chapter.
- (b) For subparagraph (a) to apply, the insurer shall:
- 1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
 - 2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.07 Insurance Producer Training.

- (1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this rule.
- (2) (a) 1. An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider.
2. Insurance producers who hold a life insurance line of authority on the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter. Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter may not engage in the sale of annuities until the annuity training course required under this rule has been completed.
- (b) The minimum length of the training required under rule 0780-01-86-.07(2) shall be sufficient to qualify for at least four (4) CE credits, but may be longer.
- (c) The training required under rule 0780-01-86-.07(2) shall include information on the following topics:
- 1. The types of annuities and various classifications of annuities;
 - 2. Identification of the parties to an annuity;
 - 3. How product specific annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;
 5. The primary uses of annuities; and
 6. Appropriate sales practices, replacement and disclosure requirements.
- (d) Providers of courses intended to comply with rule 0780-01-86-.07(2) shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
 - (e) A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in Tenn. Comp. Rules and Regs. 0780-01-56.
 - (f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with Tenn. Comp. Rules and Regs. 0780-01-56.
 - (g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with Tenn. Comp. Rules and Regs. 0780-01-56.
 - (h) The satisfaction of the training requirements of another state that are substantially similar to the provisions of rule 0780-01-86-.07(2) shall be deemed to satisfy the training requirements of this rule in this state.
 - (i) An insurer shall verify that an insurance producer has completed the annuity training course required under rule 0780-01-86-.07(2) before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under rule 0780-01-86-.07(2) by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-8-101 *et seq.* 56-8-104(15), 56-8-107, and 56-8-110 and Tenn. Comp. Rules and Regs. 0780-01-56-.08.

Rule 0780-01-86-.08 Compliance Mitigation; Penalties

- (1) An insurer is responsible for compliance with this Chapter. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order, pursuant to statutory authority granting power for such order:
 - (a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this Chapter;
 - (b) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter; and
 - (c) Appropriate penalties and sanctions.
- (2) Any applicable penalty under T.C.A. §§ 56-1-411, 56-2-305, 56-6-112, or 56-8-101, *et seq.* for a violation of this regulation 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.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124,

56-8-101 *et seq.*, 56-8-104(15), 56-8-107, 56-8-109, and 56-8-110.

Rule 0780-01-86-.09 Recordkeeping

- (1) Insurers, general agents, independent agencies and insurance producers shall maintain or 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 five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- (2) Records required to be maintained by this Chapter may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124(a), 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 6/30/2015 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: March 11, 2015

Rulemaking Hearing(s) Conducted on: (add more dates). May 5, 2015



Date: 6/30/15

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

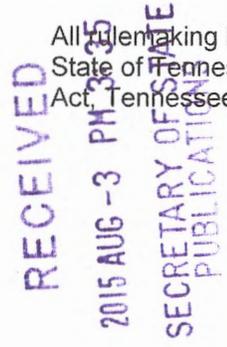
Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 6/30/15

Notary Public Signature: Denise M. Lewis

My commission expires on: 2/15/16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.



Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

7-24-15
Date

Department of State Use Only

Filed with the Department of State on: 8/3/15

Effective on: 11/1/15

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment 1

0780-01-86-.07(2)(a)2.

It was commented by five separate commenters that proposed rule did not contain the six (6) month grace period included in the NAIC model rule during which time current insurance producers may complete the new training imposed under the Suitability in Annuity Transaction rule amendments. As drafted, once the rules take effect, presently licensed insurance producers will be unable to sell annuities until they complete the four (4) hour training course mandated under the proposed rules.

Agency Response to Comment 1

The Department agrees with this comment. The Department agrees to include a six (6) month grace period for agents to complete the continuing education once this rule becomes effective. Once the rule amendments are promulgated, there will be a three (3) month period before the rule takes effect; producers may complete the requisite training for compliance with these amendments during that three (3) month time frame between the rule's promulgation and its effective date or during the six (6) month grace period after the rule becomes effective.

Comment 2

0780-01-86-.06(8)(a)

It was commented that the NAIC model for suitability in annuity transactions reads that “[t]his [paragraph] applies to FINRA broker-dealer sales of annuities if the suitability” and the proposed rule reads that “[t]his paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability” Commenter requests the proposed rule be changed to mimic the NAIC model rule.

Agency Response to Comment 2

The Department agrees with this comment. The Department agrees to use the NAIC model language in part 0780-01-86-.06(8)(a) of the rule.

Comment 3

0780-01-86-.07(2)(c)3.

It was commented that the NAIC model for suitability in annuity transactions reads “[h]ow product specific annuity contract features affect consumers[.]” and the proposed rule reads “[h]ow fixed, variable and indexed annuity contract provisions affect consumers[.]” Commenter requests the proposed rule be changed to mimic the NAIC rule.

Agency Response to Comment 3

The Department agrees with this comment. The Department agrees to use the NAIC model language in part 0780-01-86-.07(2)(c)3. of the rule.

Comment 4

0780-01-86-.05(8)

It was commented that defining the term "recommendation" as advice on whether an individual should purchase an annuity is overly broad and difficult for insurance producers to determine when they are giving such advice. Commenter is concerned that this broad definition will force insurance producers to document each and every annuity sale conversation held with clients.

Agency Response to Comment 4

The Department disagrees with this comment. The Department does not believe the definition of recommendation is overly broad. Recommendation is defined in conjunction with the requirements under this rule as advice on whether an individual should purchase an annuity that results in a purchase in accordance with that advice. Advice that does not result in a purchase, exchange or replacement of an annuity, in accordance with that advice, does not have to be maintained as a record.

Further, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 5

0780-01-86-.06(5)(a)

It was commented that requiring insurance producers to make a record of any recommendation of a purchase of an annuity is a burdensome regulation. Commenter states no such record keeping is currently required for any type of advice or recommendations. Commenter states this regulation will require insurance producers to keep records of all conversations had in discussing annuity sales.

Agency Response to Comment 5

The Department agrees that this rule will require insurance companies and producers to keep additional records that they may currently not keep. However, the Department disagrees with the assessment that these requirements are burdensome. An insurer or an insurance producer must maintain or be able to make available to the commissioner, for five years after the transaction, records of the information collected from a policyholder and other information used in making the recommendation for a policyholder to purchase or exchange an annuity that resulted in another insurance transaction or series of insurance transactions. The annuity suitability rule does not require an insurance company or an insurance producer to keep records of all conversations had concerning annuity sales.

Further, other types of licensees are required to maintain similar types of records. For example, surplus lines agents are required to maintain records on (1) Amount of the insurance and perils insured against; (2) Brief general description of property insured and where located; (3) Gross premium charged; (4) Return premium paid, if any; (5) Rate of premium charged upon the several items of property; (6) Effective date of the contract and its terms; (7) Name and post office address of the insured; (8) Name and home office address of the insurer; (9) Amount collected from the insured; and (10) Other information as required by the commissioner.

Finally, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 6

0780-01-86-.06(5)(c)

It was commented that requiring a customer to sign a statement acknowledging the customer is purchasing an annuity without a recommendation for such when the customer chooses to enter into an annuity transaction without a recommendation for such by an insurance producer is excessive. Commenter states that there is already too much paperwork, and this addition is excessive.

Agency Response to Comment 6

The Department disagrees that this will create excessive paperwork. This annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 7

0780-01-86-.06(6)(a)5.

It was commented that requiring the insurer to maintain reasonable procedures to detect recommendations which are not suitable is unhelpful to consumers as it will create delay in the processing of such annuity purchases, provided this regulation is intended to apply prospectively. It was further commented that regardless of prospective or retroactive application of this regulation, this will create increased underwriting costs to insurers. Commenter is concerned this regulation requires inspection of every record of every recommendation for every sale.

Agency Response to Comment 7

The Department disagrees that this rule will create delay in the processing of annuity purchases. This annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 8

0780-01-86-.07

It was commented that the requirement to complete the four hour training course in order to sell annuities should be required for current producers upon their next license renewal date, rather than upon these rules taking effect.

Agency Response to Comment 8

The Department disagrees with this comment. As discussed above, the Department will allow a grace period for six (6) months for producers to take the required continuing education training. The Department believes that the six (6) month grace period is sufficient for producers to take a four (4) hour continuing education training.

Comment 9

0780-01-86-.09(1)

It was commented that the requirement that insurers and insurance producers keep records regarding information collected and used in recommending annuities, and making such records available to the Commissioner of the Department of Commerce and Insurance places consumer financial and personal information at risk. Commenter is concerned consumers do not want their information shared with the Department.

Agency Response to Comment 9

The Department disagrees with this comment. First, the recordkeeping requirement does not require that all records be turned over to the commissioner.

Second, this rule is being promulgated pursuant to T.C.A. § 56-8-104(15), which makes it an unfair trade practice for any person to replace a life insurance policy or an annuity contract in a manner contrary to rules promulgated by the commissioner pursuant to Title 56, chapter 8, Part 1. Any such records that are turned over to the commissioner would be done so pursuant to an investigation under T.C.A. § 56-8-107 and all materials obtained pursuant to such an investigation are confidential under T.C.A. § 56-8-107(d).

Third, other licensees are required to collect information from policyholders and maintain those records for commissioner inspection. For example, surplus lines agents must maintain records on (1) Amount of the insurance and perils insured against; (2) Brief general description of property insured and where located; (3) Gross premium charged; (4) Return premium paid, if any; (5) Rate of premium charged upon the several items of property; (6) Effective date of the contract and its terms; (7) Name and post office address of the insured; (8) Name and home office address of the insurer; (9) Amount collected from the insured; and (10) Other information as required by the commissioner.

Finally, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 10

0780-01-86

It was commented that this is the first time any regulation has required insurance producers to keep records of advice they provide to customers. Commenter is concerned requiring recommendation records for annuities will set precedent for such requirements in other areas of insurance practice.

Agency Response to Comment 10

The Department disagrees with this comment. The rule does not require insurance companies or producers to maintain a record of all advice given to policyholders. Insurers and producers are required to maintain a record of all recommendations that resulted in another insurance transaction or series of insurance transactions. As discussed above, a recommendation is defined as advice to a policyholder that results in a purchase, exchange or replacement of an annuity in accordance with that advice. Advice that does not result in a purchase, exchange or replacement of an annuity, in accordance with that advice, does not have to be maintained as a record.

Further, other types of licensees are required to maintain similar types of records. For example, as discussed above, surplus lines agents are required to maintain records on (1) Amount of the insurance and perils insured against; (2) Brief general description of property insured and where located; (3) Gross premium charged; (4) Return premium paid, if any; (5) Rate of premium charged upon the several items of property; (6) Effective date of the contract and its terms; (7) Name and post office address of the insured; (8) Name and home office address of the insurer; (9) Amount collected from the insured; and (10) Other information as required by the commissioner.

Finally, this annuity suitability regulation has been adopted in approximately 40 states and is supported by the American Council of Life Insurers. This rule is currently the national standard for determining suitability in annuity transactions. By enacting this rule, Tennessee will require no more of its insurance companies and producers than the vast majority of the states in this country. Further, this rule was developed by the NAIC with industry input and support.

Comment 11

0780-01-86

It was commented that transfer forms created by insurers should include a question which indicates whether the representative processing the transfer has securities licensure. Commenter further stated that that insurers, life insurance companies, and annuity companies should not accept transfers from a security to purchase a non-security product unless the representative holds securities licensure. Commenter states such insurers should have forms including questions which contemplate if funds used in transfers are coming from non-security licensed representatives.

Agency Response to Comment 11

The Department acknowledges that this is an issue which warrants further discussion; however, the Department does not believe that it has the authority to implement such requirements within the scope of this rulemaking. The Department will consider this comment in any future updates to this rule.

Comment 12

0780-01-86

It was commented that insurance producers without securities licensure who move money out of securities, into fixed or indexed annuities may not be making such sales in the best interest of their clients. Commenter further stated that an insurance producer would be unable to competently suggest a fixed or indexed annuity over a security absent the proper securities licensure. Commenter believes this matter needs to be addressed by the proposed rules.

Agency Response to Comment 12

The Department acknowledges that this is an issue which warrants further discussion; however, the Department does not believe that it has the authority to implement such requirements within the scope of this rulemaking. The Department will consider this comment in any future updates to this rule. Nevertheless, the Department will enforce the securities laws against any insurance producer engaging in any securities related activity without the proper securities registrations.

Comment 13

0780-01-86

It was commented that insurance companies should be responsible for restricting insurance producers from transferring money out of securities investments for the purpose of purchasing a product sold by the insurance producer. Commenter suggests insurance companies should require a representative hold a securities license prior to transferring money from any security for any investment purpose.

Agency Response to Comment 13

The Department acknowledges that this is an issue which warrants further discussion; however, the Department does not believe that it has the authority to implement such requirements within the scope of this rulemaking. The Department will consider this comment in any future updates to this rule. Nevertheless, the Department will enforce the securities laws against any insurance producer engaging in any securities related activity without the proper securities' registrations.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110 authorize the Commissioner to promulgate rules in order to regulate the recommendation, sale, exchange, or replacement of annuities. The proposed rules establish requirements for any person seeking to recommend, sell, exchange, or replace annuities in the State of Tennessee. These rules will require the recommendation or sale of annuities be suitable based on the consumer's suitability information. These rules will also require insurance producers to complete four hours of training prior to selling annuities. These rules will further require insurers, general agents, independent agencies, and insurance producers keep records of information upon which annuity recommendations and transactions were based.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) The proposed rules will only apply to insurance producers or insurance companies seeking to recommend, sell, exchange, or replace annuities.
- (2) The projected reporting, recordkeeping, and other administrative costs associated with compliance with this proposed rule, while an increase from that which is currently required, is not anticipated to place any substantial burden on any individual or small business engaged in annuity transactions.
- (3) The effect on small businesses is negligible. The proposed amendment will have no effect on consumers, and will only affect those insurance producers and insurance companies engaged in annuity transactions.
- (4) There are no alternative methods to make the proposed rule less costly, less intrusive, or less burdensome.
- (5) This proposed rule was developed by the NAIC with industry input and support (NAIC Model Rule No. 275). Furthermore, approximately forty (40) states have implemented substantially similar versions of this proposed rule.
- (6) Only insurance producers and insurance companies engaged in annuity transactions are required to comply with this rule. Exempting any producer or company from these proposed rules would place Tennessee residents at a greater risk of engaging in unsuitable annuity transactions at the recommendation of such a producer or company.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rule will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules establish requirements for any person seeking to recommend, sell, exchange, or replace annuities in the State of Tennessee. These rules will require the recommendation or sale of annuities be suitable based on the consumer's suitability information. These rules will also require insurance producers to complete four hours of training prior to selling annuities. These rules will further require insurers, general agents, independent agencies, and insurance producers keep records of information upon which annuity recommendations and transactions were based.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110 authorize the Commissioner to promulgate rules in order to regulate the recommendation, sale, exchange, or replacement of annuities.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules will affect any licensed insurance producer seeking to recommend, sell, exchange, or replace annuities in the State of Tennessee. These rules will also affect insurance companies engaged in the sale of annuities. The Department is not aware of anyone who specifically urges the adoption or rejection of this rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any attorney general opinions or any judicial rulings directly related to this rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Kimberly Biggs, Director of the Agent Licensing Section of the Insurance Division of the Tennessee Department of Commerce and Insurance.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kathleen Dixon, Assistant General Counsel for Insurance; Tony Greer, Chief Counsel for Insurance, Securities, and TennCare Oversight.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Eighth Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243; (615) 532-6830

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

Chapter 0780-1-86
Suitability in Annuity Transactions

Chapter 0780-01-86 Suitability in Annuity Transactions is amended by deleting the current language of the Chapter in its entirety and replacing it with the language below:

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0780-01-86-.09	Recordkeeping Effective Date

Rule 0780-01-86-.01 Purpose.

- (1) The purpose of this Chapter is to require insurers to establish a system to supervise recommendations set forth standards and procedures for and to set forth standards and procedures for recommendations to consumers that result in transactions 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) Nothing herein shall be construed to create or imply a private cause of action for a violation of this Chapter.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.02 Scope.

This Chapter shall apply to any recommendation to purchase, purchase exchange or replacement or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement purchase or exchange recommended.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.03 Authority.

This Chapter is issued under the authority of T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112(a), 56-6-112(d), 56-6-124(a), 56-8-101 *et seq.*, 56-8-104, and 56-8-113.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.04 Exemptions.

Unless otherwise specifically included, this Chapter shall not apply to transactions~~recommendations~~ involving:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Chapter, or; or
- (2) Contracts used to fund:
 - (a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
 - (b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
 - (c) A government or church plan defined in Section 414 of the IRC, 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 IRC;
 - (d) A nonqualified deferred compensation arrangement established or 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.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.05 Definitions.

- (1) "Annuity" means an annuity that is an insurance product under State law~~fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.~~
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance.
- (3) "Continuing Education Credit" or "CE Credit" means one continuing education credit as defined in Tenn. Comp. Rules and Regs. 0780-01-56.
- (3) ~~"Department" means the Tennessee Department of Commerce and Insurance;~~
- (4) "Continuing Education Provider" or "CE Provider" means an individual or entity that is approved to offer continuing education courses pursuant to Tenn. Comp. Rules and Regs. 0780-01-56.
- (5) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

~~(6)~~(4) "Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

~~(6)~~ "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association, trust or corporation;

~~(7)~~(5) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities;

~~(8)~~(7) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement purchase or exchange of an annuity in accordance with that advice.

(9) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(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.

(10) "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; and

(l) Tax status.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.06 Duties of Insurers and of Insurance Producers.

- (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 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 his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:
- (a) The consumer has been reasonably informed of various features of the annuity, 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, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;
 - (b) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
 - (c) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable, for the particular consumer based on his or her 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:
 - 1. 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;
 - 2. The consumer would benefit from product enhancements and improvements; and
 - 3. The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding thirty-six (36) months.
- (2) Prior to the execution of a purchase, exchange or replacement purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer

where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information information concerning:

- (a) ~~The consumer's financial status;~~
- (b) ~~The consumer's tax status;~~
- (c) ~~The consumer's investment objectives; and~~
- (d) ~~Such 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.~~

(3) (a) Except as permitted provided under paragraph (4) Subparagraph (b) of this Paragraph, neither an insurer shall 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. ~~insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Paragraph (1) of this Rule related to any recommendation if a consumer:~~

- 1. ~~Refuses to provide relevant information requested by the insurer or insurance producer;~~
- 2. ~~Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or~~
- 3. ~~Fails to provide complete or accurate information.~~

(b) ~~An insurer or insurance producer's recommendation subject to Paragraph (1) of this Rule must be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.~~

(4) (a) Except as provided under subparagraph (b) of this paragraph, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under paragraphs (1) or (3) related to any annuity transaction if: ~~either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Chapter is established and maintained by complying with Subparagraphs (c) to (e) of this Paragraph, or shall establish and maintain such a system, including, but not limited to:~~

- 1. No recommendation is made; Maintaining written procedures; and
- 2. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Chapter.
- 3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or
- 4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

- ~~(b) An insurer's issuance of an annuity subject to subparagraph (a) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued. 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 Chapter, or shall establish and maintain such a system, including, but not limited to:~~
- ~~1. Maintaining written procedures; and~~
 - ~~2. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this Chapter.~~
- ~~(c) 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 Subparagraph (a) of this Paragraph with respect to insurance producers under contract with or employed by the third party.~~
- ~~(d) An insurer shall make reasonable inquiry to assure that the third party contracting under Subparagraph (c) of this Paragraph is performing the functions required under Subparagraph (a) of this Paragraph and shall take such action as 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; and~~
 - ~~2. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Subparagraph (c) of this Paragraph 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.~~
- ~~(e) An insurer that contracts with a third party pursuant to Subparagraph (c) of this Paragraph and that complies with the requirements to supervise in Subparagraph (d) of this Paragraph shall have fulfilled its responsibilities under Subparagraph (a) of this Paragraph.~~
- ~~(f) An insurer, general agent or independent agency is not required by Subparagraphs (a) or (b) of this Paragraph 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.~~
- ~~(g) A general agent or independent agency contracting with an insurer pursuant to Subparagraph (c) of this Paragraph shall promptly, when requested by the insurer pursuant to Subparagraph (d) of this Paragraph, give a certification as described in Subparagraph (d) of this Paragraph or give a clear statement that it is unable to meet the certification criteria.~~

~~(h) No person may provide a certification under Subparagraph (d)1. of this Paragraph unless:~~

~~1. The person is a senior manager with responsibility for the delegated functions; and~~

~~2. The person has a reasonable basis for making the certification.~~

(5) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(a) Make a record of any recommendation that is subject to rule 0780-01-86-.06(1);

(b) Obtain a customer signed statement documenting a customer's refusal to provide suitability information, if any; and

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

~~Compliance with the National Association of Securities Dealers Conduct Rules, now known as the Financial Industry Regulatory Authority (FINRA), pertaining to suitability shall satisfy the requirements under this Rule for the recommendation of variable annuities. However, nothing in this Paragraph shall limit the commissioner's ability to enforce the provisions of this Chapter.~~

(6) (a) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this regulation, including, but not limited to, the following:

1. The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this Chapter and shall incorporate the requirements of this Chapter into relevant insurance producer training manuals;

2. The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of rule 0780-01-86-.07;

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

4. The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures 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. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

5. The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this part prevents an insurer from complying with this part by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and
 6. The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which 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.
- (b) 1. Nothing in rule 0780-01-86-06(6) restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under subparagraph (a). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 0780-01-86-.08 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with part 2. of this subparagraph.
2. An insurer's supervision system under subparagraph (a) shall include supervision of contractual performance under this part. This includes, but is not limited to, the following:
- (i) Monitoring and, as appropriate, conduction audits to assure that the contracted function is properly performed; and
 - (ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
- (c) An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.
- (7) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:
- (a) Truthfully responding to an insurer's request for confirmation of suitability information;
 - (b) Filing a complaint; or
 - (c) Cooperating with the investigation of a complaint.
- (8) (a) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this Chapter. This paragraph applies to FINRA broker-dealer sales of annuities if the suitability and supervision is similar

to those applied to variable annuity sales. However, nothing in this paragraph shall limit the commissioner's ability to enforce, including investigate, the provisions of this Chapter.

(b) For subparagraph (a) to apply, the insurer shall:

1. Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, and 56-8-110.

Rule 0780-01-86-.07 Insurance Producer Training.

(1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this rule.

(2) (a) 1. An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of commerce and insurance and provided by the department of commerce and insurance-approved education provider.

2. Insurance producers who hold a life insurance line of authority on the effective date of this Chapter and who desire to sell annuities shall complete the requirements of this paragraph within six (6) months after the effective date of this Chapter. Individuals who obtain a life insurance line of authority on or after the effective date of this Chapter may not engage in the sale of annuities until the annuity training course required under this rule has been completed.

(b) The minimum length of the training required under rule 0780-01-86-.07(2) shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(c) The training required under rule 0780-01-86-.07(2) shall include information on the following topics:

1. The types of annuities and various classifications of annuities;

2. Identification of the parties to an annuity;

3. How product specific annuity contract provisions affect consumers;

4. The application of income taxation of qualified and non-qualified annuities;

5. The primary uses of annuities; and
6. Appropriate sales practices, replacement and disclosure requirements.
- (d) Providers of courses intended to comply with rule 0780-01-86-.07(2) shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.
- (e) A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in Tenn. Comp. Rules and Regs. 0780-01-56.
- (f) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with Tenn. Comp. Rules and Regs. 0780-01-56.
- (g) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with Tenn. Comp. Rules and Regs. 0780-01-56.
- (h) The satisfaction of the training requirements of another state that are substantially similar to the provisions of rule 0780-01-86-.07(2) shall be deemed to satisfy the training requirements of this rule in this state.
- (i) An insurer shall verify that an insurance producer has completed the annuity training course required under rule 0780-01-86-.07(2) before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under rule 0780-01-86-.07(2) by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Authority: T.C.A. §§ 56-2-301, 56-2-305, 56-3-508, 56-6-107, 56-6-112, 56-6-118(b), 56-6-124, 56-8-101 et seq., 56-8-104(15), 56-8-107, and 56-8-110 and Tenn. Comp. Rules and Regs. 0780-01-56-.08.

Rule 0780-01-86-.07-08 Compliance Mitigation; Penalties Penalties and Mitigation of Responsibility

- (1) An insurer is responsible for compliance with this Chapter. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order, pursuant to statutory authority granting power for such order: rAny violation of this Chapter subjects an insurer to any applicable sanctions, including but not limited to those found in T.C.A. §§ 56-1-416, 56-2-305, and 56-8-101 et seq.

- (a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this Chapter;
 - (b) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter; and
 - (c) Appropriate penalties and sanctions.
- (2) Any applicable penalty under T.C.A. §§ 56-1-411, 56-2-305, 56-6-112, or 56-8-101, et seq. for a violation of this regulation 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. ~~Any violation of this Chapter subjects an insurance producer to any applicable sanctions, including but not limited to those found in T.C.A. §§ 56-6-112 and 56-8-101 et seq.~~
- (3) ~~The Commissioner may, in accordance with T.C.A. § 56-1-411, order:~~
- ~~(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this Chapter;~~
 - ~~(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter; and~~
 - ~~(c) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Chapter.~~
- (4) ~~Any applicable penalty under the pertinent insurance statutes for a violation of Rule 0780-1-86-.06(1), (2), or (3)(b) may be reduced or eliminated, if corrective action for the consumer was taken promptly after a violation was discovered.~~

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124, 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, 56-8-109, and 56-8-110.

Rule 0780-01-86-.08 09 Recordkeeping

- (1) Insurers, general agents, independent agencies and insurance producers shall maintain or 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 five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.
- (2) Records required to be maintained by this Chapter may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Authority: T.C.A. §§ 56-1-408, 56-1-409, 56-1-411, 56-1-416, 56-2-301, 56-2-305, 56-3-508, 56-6-112, 56-6-124(a), 56-8-101 *et seq.*, 56-8-104(15), 56-8-107, 56-8-109, and 56-8-110.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett