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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2023 - 2024 Regular Session

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### SB 263 (Dodd) - Insurance: annuities and life insurance policies

**Version:** May 2, 2023

**Urgency:** No

**Hearing Date:** May 15, 2023

**Policy Vote:** INS. 4 - 0

**Mandate:** No

**Consultant:** Janelle Miyashiro

**Bill Summary:** SB 263 recasts provisions related to the best interest standard of conduct for producers to reflect changes made by the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation #275 of 2020 and adds additional training requirements for licensees selling life insurance policies and annuities, as specified.

**Fiscal Impact:** The Department of Insurance (CDI) reports costs of \$25,000 and 0.16 personnel years (PYs) in Fiscal Year (FY) 2023-24, \$2,847,000 and 14.32 PYs in FY 2024-25, and \$4,027,000 and 28.40 PYs ongoing (Insurance Fund). Costs include additional investigatory and enforcement resources to ensure producers are upholding their fiduciary duty in a client's best interest.

**Background:** *Suitability in Annuity Transactions Model Regulation #275*. Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act confirms state authority to regulate the sale of fixed and fixed indexed annuities and provides an exemption for such annuities from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:

1. Has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's Suitability in Annuity Transactions Model Regulation #275; and
2. "Adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and any successor thereto."

The NAIC considers the 2020 version to be a successor modification to the model that exceeds the requirements of the 2010 version. Therefore, by February 2025, California needs to adopt the updates which contain consumer protections that are at least as stringent as NAIC Model #275 to avoid dual regulation of fixed annuities by the CDI and the federal government.

**Best Interest Standard of Conduct.** To satisfy the best interest obligation, a producer or an insurer must satisfy four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation.

According to the NAIC, to satisfy the four obligations, when making a recommendation, producers must:

- Know the consumer's financial situation, insurance needs and financial objectives;
- Understand the available recommendation options;
- Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives;
- Communicate the basis of the recommendation to the consumer;
- Disclose their role in the transaction, their compensation, and any material conflicts of interest; and
- Document, in writing, any recommendation and the justification for such recommendation.

All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

**Proposed Law:**

- Beginning January 1, 2025, requires an agent who sells life insurance policies to complete four hours of training before soliciting individual consumers to sell life insurance policies and an additional two hours of training before each license renewal. Specifies both of these trainings are in addition to, and not part of other annuity training requirements, as specified.
  - Requires both trainings to be approved by the commissioner and consist of topics and requirements related to life insurance policies, California law, regulations, prohibited sales practices, fraudulent and unfair trade practices, and the recognition of indicators that a prospective insured may lack the short-term memory or judgement to knowingly purchase an insurance product.
  - Provides that these training requirements do not apply to nonresident agents representing an insurer that is a direct response provider, as specified.
- Recasts provisions related to the best interest standard of conduct for producers when making a recommendation to a consumer to purchase, exchange, convert, replace, or modify an annuity, or when soliciting the sale of an annuity product to a consumer, as specified.
  - Specifies that the purpose of the suitability requirements for annuity transactions is to require producers to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish, maintain, and utilize a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers

- that result in transactions involving annuities, so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.
- Specifies insurers and producers have specific duties to ensure that annuities that are recommended are in the consumer's best interest. Provides that a producer has acted in the best interest of the consumer if they have satisfied the following obligations, as specified: Care Obligation, Disclosure Obligation, Conflict of Interest Obligation, Documentation Obligation, Application of the Best Interest Obligation, transactions not based on a recommendation, Supervision System, and Safe Harbor.
  - Requires producers and individuals who hold or obtain a life insurance line of authority to complete specified training requirements, as specified.
  - Provides that these updates become operative on January 1, 2025.
  - States that there is no private cause of action created by the best interest standard of care.
- Beginning January 1, 2025, requires a life insurer to provide a buyer's guide to all consumers who purchase an annuity. Requires the guide to be delivered as a stand-alone document with the annuity or before delivery of the annuity.
  - Establishes new and revises existing definitions for purposes of the suitability requirements for annuity transactions.
  - Makes other technical and conforming changes.

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