

---

THIRD READING

---

Bill No: SB 263  
Author: Dodd (D)  
Amended: 5/2/23  
Vote: 21

---

SENATE INSURANCE COMMITTEE: 4-0, 4/26/23  
AYES: Rubio, Alvarado-Gil, Dodd, Portantino  
NO VOTE RECORDED: Nguyen, Jones, Niello

SENATE APPROPRIATIONS COMMITTEE: 6-0 5/18/23  
AYES: Portantino, Jones, Ashby, Bradford, Wahab, Wiener  
NO VOTE RECORDED: Seyarto

---

**SUBJECT:** Insurance: annuities and life insurance policies

**SOURCE:** California Department of Insurance

---

**DIGEST:** This bill revises the Suitability Requirements for Annuity Transactions in California law to generally reflect changes made by the National Association of Insurance Commissioners (NAIC) Suitability in Annuity Transactions Model Regulation #275 of 2020, with some changes, as specified.

**ANALYSIS:**

Existing law:

- 1) Prohibits any unfair or deceptive practice in the business of insurance.
- 2) Grants, generally speaking, the Insurance Commissioner (IC) broad powers to determine if annuities and life insurance products are fair to the public.
- 3) Requires that all annuity and life insurance forms be filed with the IC before being used in the market, but specifies that prior approval by the IC before marketing or use is not required.

- 4) Regards, generally speaking, senior citizens a protected class in the sale of life insurance and annuities, specifies that all insurance agents and brokers owe a senior 65 and older a duty of honesty, good faith and fair dealing, and requires every individual life insurance or individual annuity contract issued to a senior to include a right of return of no less than 30 days.
- 5) Regulates the sale of replacement life insurance and annuities, and imposes penalties for violation of those provisions.
- 6) Defines replacement of a life insurance or annuity to include products that are lapsed, forfeited, surrendered, or otherwise terminated, or other methods that generally reduce the benefits due to the consumer under the existing product.
- 7) Imposes specified duties on insurance agents and brokers (producers) who accept an application for life insurance or an annuity, including a signed statement indicating whether the agent knows replacement is or may be involved in the transaction, and if a replacement is involved, provide a specified notice to the applicant regarding decisions about replacement that must be signed by both the producer and applicant.
- 8) Requires the insurer to ensure its producers or other personnel responsible in the application process comply with this requirement, and requires each completed application for life insurance or an annuity to include a statement signed by the applicant on whether the product will replace an existing life insurance policy or annuity and that recommends the consumer seek more information about the implications of such a decision.
- 9) Creates a rebuttable presumption of a violation of the statute if a producer or insurer recommends the replacement of a policy by presenting materially inaccurate information in the comparison of the existing policy's premiums and benefits or dividends and values, or if recommends a senior purchase an unnecessary replacement annuity.
- 10) Requires insurers to have a system to supervise recommendations and establish standards and procedures for the sale of annuity products, whether purchase, exchange or replacement, so that the needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
- 11) Requires, before recommending an annuity product to a consumer, the producer, or insurer if no producer is involved, to have reasonable grounds to believe the annuity is suitable, as specified.

- 12) Defines “suitability information” to include specified information from the consumer.
- 13) Requires the producer, or insurer if no producer is involved, to have a reasonable basis to believe that the consumer has been informed of the features of the annuity and the consumer would receive a tangible net benefit from the transaction.
- 14) Prohibits an insurer from issuing 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, as specified.
- 15) Provides that no violation has occurred if no recommendation has been made or if the recommendation was made based on materially inaccurate information provided by the consumer or if the consumer refuses to provide relevant suitability information and no recommendation is made.
- 16) Provides that if no recommendation is made, or if the consumer proceeds without providing all suitability information and an annuity transaction is not recommended, the producer shall obtain a customer signed statement documenting the consumer’s refusal to provide suitability information and acknowledging that an annuity transaction is not recommended.
- 17) Requires a minimum of 20 hours of pre-licensing study to qualify for a life insurance agent license, and an additional 12 hours of study on ethics and the Insurance Code.
- 18) Requires a life insurance agent to complete 24 hour hours of continuing education, including 3 hours of ethics training prior to license renewal.
- 19) Requires any life insurance agent who sells annuities to complete 8 hours of training prior to soliciting individual consumers to sell annuities, and requires 4 hours of training prior to each license renewal, as specified.
- 20) Requires an insurer to verify that a producer has completed the required training prior to selling any annuity products for the insurer.
- 21) Specifies that an insurer is responsible for compliance with the above provisions, and if a violation occurs the IC may impose penalties, remedies, or administrative actions, as specified.

This bill:

- 1) Requires, beginning January 1, 2025, 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.
  - a) 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.
  - b) Provides that these training requirements do not apply to nonresident agents representing an insurer that is a direct response provider, as specified.
- 2) 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.
  - a) 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.
  - b) 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.
  - c) Requires producers and individuals who hold or obtain a life insurance line of authority to complete specified training requirements, as specified.
  - d) Provides that these updates become operative on January 1, 2025.

- e) States that there is no private cause of action created by the best interest standard of care.
- 3) Requires, beginning January 1, 2025, 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.
- 4) Establishes new and revises existing definitions for purposes of the suitability requirements for annuity transactions.
- 5) Makes other technical and conforming changes.

### Comments

According to the author:

SB 263 builds on, and in some instances exceeds, the requirements set forth in the 2020 NAIC Model, to provide consistency with current California consumer protection laws and include other important protections to consumers for ... annuity ... sales.

SB 263 will protect consumers, including vulnerable seniors, from potential abuse and exploitation of harmful annuity ... transactions by requiring a more robust evaluation of the consumer's financial situation, financial needs, insurance needs, and financial objectives to ensure that sales are in the consumers' best interest. SB 263 requires producers to put the consumer's interests ahead of their sales and to consider required information about a consumer before making recommendations.

**FISCAL EFFECT:** Appropriation: No   Fiscal Com.: Yes   Local: No

According to the Senate Appropriations Committee, 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.

**SUPPORT:** (Verified 5/19/23)

California Department of Insurance (source)

**OPPOSITION:** (Verified 5/19/23)

American Council of Life Insurers  
Association of California Life & Health Insurance Companies  
Center for Economic Justice  
Consumer Federation of America  
Consumer Federation of California  
Federation of Americans for Consumer Choice  
Finseca  
Independent Insurance Agents & Brokers of California, Inc.  
Insured Retirement Institute  
Life Insurance Consumer Advocacy Center  
National Association for Fixed Annuities  
National Association of Insurance and Financial Advisors - California  
United Policyholders

**ARGUMENTS IN SUPPORT:** The California Department of Insurance has sponsored SB 263 because to date, 27 states have adopted versions of this NAIC Model, thereby avoiding dual oversight and regulation of fixed annuities by those states' departments of insurance and the federal government (namely the U.S. Securities and Exchange Commission) by 2025, a necessary step further mandated with the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. SB 263 would help bring about much-needed reform and provide more consumer protections with higher standards of conduct, stronger enforcement tools for the regulator, more rigorous communication requirements between the consumer, producers, and insurance company, and additional required training for producers, among other consumer protections. The Commissioner asserts that California can and should do more to stop the financial abuse of our seniors and other vulnerable individuals, especially as it pertains to the sale of unsuitable annuities and believes that this bill does just that.

**ARGUMENTS IN OPPOSITION:** A coalition of insurance, producer, and financial service trade associations, including American Council of Life Insurers, Association of California Life & Health Insurance Companies, National Association of Insurance and Financial Advisors – California, Finseca, Independent Insurance Agents & Brokers of California, Inc., Insured Retirement Institute, Federation of Americans for Consumer Choice, and National Association for Fixed Annuities have a number of amendments they are seeking, including:

Section 5: §10509.911 A change to the bill's current definition of its scope which is to include any recommendation "to purchase, exchange, convert,

replace or modify an annuity, or elect a contractual provision of an in-force annuity.” Because the term “convert” typically applies to life insurance products which are now out of scope of the bill. And applying best interest duties of care to in-force annuity modifications, or the election of a contractual provision are so broad that these phrases will certainly capture situations when no compensation is being received by a producer. This seems counter to what the bill is trying to achieve and the bill.

Section 9: §10509.914 Regarding the ways in which a producer must communicate the basis of a recommendation, adding the explicit requirement that a recommendation is communicated orally, is discriminatory against deaf consumers, creates a compliance monitoring challenge for carriers, and it is generally duplicative of §10509.914(d) where a written record of a communication is required. Therefore, we believe this section should adopt the NAIC Model language that requires a communication of the basis of a recommendation but is neutral on how that is done

Section 12: §10509.920 Prior versions of this bill included the important clarification that the bill is only prospective and has no retroactive applicability, however the most recent set of amendments completely removed this clarification. We believe this amendment should be reinstated. Lastly, we believe it is critically important to keep the safe harbor language in current law: INS §10509.912. This language has been in place and working effectively for the current suitability statute enacted 11 years ago. It recognizes the fact that other regulatory regimes provide substantially similar levels of consumer protection and therefore consumer interests are not further served by requiring producers and insurers to comply with multiple sets of rules that effectively achieve the same objectives.

Prepared by: Jill Rice / INS. / (916) 651-4110  
5/20/23 12:41:11

\*\*\*\* END \*\*\*\*