
UNFINISHED BUSINESS

Bill No: SB 263
Author: Dodd (D)
Amended: 2/8/24
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

SENATE FLOOR: 33-0, 5/30/23

AYES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

NO VOTE RECORDED: Dahle, Gonzalez, Grove, Nguyen, Niello, Ochoa Bogh, Seyarto

ASSEMBLY FLOOR: 70-0, 2/12/24 - See last page for vote

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 (Model #275) of 2020, with some changes, as specified.

Assembly Amendments:

- 1) Correct numerous drafting errors, and made structural changes. Restructure the bill to modify how the current annuity statutes sunset so that the California Department of Insurance (CDI) will maintain enforcement authority over sales prior to the date the new law takes effect. Change the bill to now sunset current Article 9, commencing with Section 10509.910, and replace it with a new Article 9.5 commencing with Section 10509.9200.
- 2) Modify, to ensure that life insurance sales training requirements focus on complex products, training requirements to exempt term life with no cash value and an exemption for direct response providers was removed. Clarify the date of applicability for the training requirements.
- 3) Expand applicability of the annuity best interest standard to expressly include a sale or replacement transaction. Exempt, for existing annuity policyholders, elections of a contractual provision.
- 4) Modify language requiring that a producer's recommendation reflect the care, skill, prudence, and diligence that a prudent person would use, to require the producer's recommendation to reflect the care, skill, prudence, and diligence that a reasonable producer with similar authority and licensure who is familiar with those matters would use under the circumstances then prevailing.
- 5) Apply expressly the disclosure obligation at the time of recommendation, and a producer is expressly required to use NAIC Model #275 Appendix A form. Producers are also subject to more stringent disclosures about the insurers they work for.
- 6) Add clarification language for insurers to utilize transaction monitoring systems to ensure the provisions of the best interest standard are being implemented.
- 7) Modify safe harbor provisions to ensure that the CDI retains enforcement authority over any annuity transaction in California, including when a producer utilizes the safe harbor provision and makes a transaction in compliance with a comparable standard.

ANALYSIS:

Existing law:

- 1) Prohibits any unfair or deceptive practice in the business of insurance.
- 2) Grants, generally speaking, the Insurance Commissioner (Commissioner) 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 Commissioner before being used in the market, but specifies that prior approval by the Commissioner before marketing or use is not required.
- 4) Requires all individual life insurance policies to include a right to return of not less than 10 days nor more than 30 days, specifies that return of the policy within the “free look” period voids the policy and requires all premiums and fees paid to be refunded. Requires a notice of that right be printed on the policy or attached to it.
- 5) 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.
- 6) Regulates, broadly, the sale of replacement life insurance and annuities, and imposes penalties for violation of those provisions.
- 7) 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.
- 8) 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.

- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) Defines "suitability information" to include all of the following information from the consumer:
 - a) Age;
 - b) Annual income;
 - c) Financial situation of needs, including the financial resources used for funding 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;
 - l) Tax status;
 - m) Whether consumer has a reverse mortgage; and

- n) Whether the consumer intends to apply for means tested government benefits, including Medi-Cal.
- 14) 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.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) 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.
- 19) Requires a life insurance agent to complete 24 hour hours of continuing education, including 3 hours of ethics training prior to license renewal. 20) 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 Commissioner may impose penalties, remedies, or administrative actions, as specified.

This bill:

- 1) Requires any life insurance agent, licensed on or after January 1, 2024, who engages in the sale of specified life insurance policies on or after January 1, 2025, to complete four hours of training prior to soliciting individual consumers to sell these life insurance policies, and requires two hours of training prior to each license renewal, as specified.
- 2) States this bill's purpose as ensuring insurance producers, as defined, act in the best interest of the consumer when making a recommendation of an annuity product, and requiring insurers to supervise such recommendations by producers.
- 3) States, expressly, that no private cause of action is created by the best interest standard of care.
- 4) Adds or changes several definitions, including:
 - a) Defines "compensation" as anything of value, if paid as commission, or otherwise and if paid in cash or some other means received by a producer in connection with the recommendation or sale of an annuity, and includes health insurance, office rent, office support, and retirement benefits, but excludes products with the insurer name or logo with an aggregate value of \$150 per year.
 - b) Defines "material conflict of interest" as a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation.
 - c) Redefines "producer" as someone licensed to sell or negotiate insurance, including annuities, and if no agent is involved, the insurer is the producer.
 - d) Redefines "recommendation" as advice or guidance made by a producer to an individual consumer that was intended to result or does result in the purchase, exchange or replacement of an annuity.
- 5) Establishes duties for producers to ensure that annuities are in the consumer's best interest and prohibits the producer from placing the producer's or insurer's financial interest ahead of the consumer's interest when recommending an annuity.
- 6) Requires the producer, in making a recommendation, to exercise reasonable diligence and skill to, among other things:

- a) Know the consumer's financial situation, financial needs, insurance needs, and financial objectives.
 - b) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, as provided, and to believe that the consumer would receive a tangible net benefit from the transaction over the life of the product.
 - c) Communicate the bases of the recommendation to the consumer both orally and in writing and to the insurer in writing.
 - d) Exercise the care, skill, prudence, and diligence that a reasonable producer with similar authority and licensure who is familiar with those matters would use under the circumstances.
 - e) Make a reasonable effort to obtain consumer profile information from the consumer prior to the recommendation of an annuity, as provided.
- 7) States it does not require the producer to analyze or consider any products outside the authority and license of the producer, and does not create a fiduciary obligation or relationship between the producer and the consumer.
- 8) Requires the producer to prominently disclose specified information to the consumer, including but not limited to, a description of the scope and terms of the relationship with the consumer, a description of the products the producer is licensed and authorized to sell, a description of the sources and types of compensation and non-cash compensation to be received by the producer as a result of the sale of an annuity, a reasonable estimate of the amount of cash compensation to be received, and a notice of the customer's right to request more information regarding the producer's compensation.
- 9) Requires a producer to identify and avoid or reasonably manage and prominently disclose any material conflicts of interest, including material conflicts of interest relating to an ownership interest.
- 10) Requires a producer, at the time of recommendation or sale, to satisfy several documentation requirements, as specified.
- 11) Provides that a producer has no obligation to a consumer if no recommendation is made, if a recommendation is made but was based on materially inaccurate information provided by the consumer, if a consumer refuses to provide relevant consumer profile information and no recommendation is made, or if a consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.

- 12) Requires an insurer to establish, maintain, and utilize a supervision system that is reasonably designed to ensure the insurer's and its producers' compliance with these requirements, as specified.
- 13) Requires the insurer to incorporate the requirements under this article into producer training manuals, provide product specific training and training materials that explain all material features of its annuity products to its producers, and maintain and utilize procedures to require its producers to comply with producer annuity training requirements.
- 14) Prohibits an insurer or producer from dissuading, or attempting to dissuade, a consumer from truthfully responding to a request for consumer profile information, filing a complaint, or cooperating with the investigation of a complaint.
- 15) Provides a "safe harbor" for recommendations and sales of annuities by financial professionals, as defined, made in compliance with specified comparable business rules, controls, and procedures that satisfy a comparable standard, but provides that the Commissioner retains authority to enforce, and conduct investigations related to, the requirements in the statute, regardless of whether the financial professional is operating under a comparable standard.
- 16) Requires the insurer to monitor the conduct of the financial professional seeking to utilize the safe harbor, as specified.
- 17) Requires life insurance agents to complete additional annuity product training requirements, as specified.
- 18) Requires a life insurer to provide all consumers who purchase an annuity with a NAIC approved annuity buyer's guide as a standalone document with the annuity or prior to delivery of the annuity.
- 19) Grants the Commissioner authority to adopt reasonable rules and regulations to implement these provisions.
- 20) Maintains the authority of the Commissioner to impose sanctions and penalties, as provided.

Comments

Annuities are specialized insurance contracts that offer a guaranteed income stream, usually for retirees. This bill provides consumer protections to all consumers, but is particularly important for the protections it offers seniors and underserved communities in assuring the sale of an annuity is made in the consumers' best interest. This bill builds on, and in some instances exceeds, the requirements set forth in the 2020 NAIC's Model #275.

The NAIC's Model #275 was created in 2003 to set standards and procedures that insurance producers must follow when recommending annuity products to consumers. In 2010, NAIC's Model #275 was revised to require producers to collect certain information from consumers for the purpose of having reasonable grounds for making recommendations. In 2011, California adopted NAIC's Model #275, with additional consumer protections beyond what was in the model, with AB 689 (Blumenfield, Chapter 295, Statutes of 2011).

NAIC's Model #275 was updated again in 2020. 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 Model #275; and (2) "adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation" within five years of the adoption by the NAIC. Therefore, by 2025, California needs to adopt the updates to California law which contain consumer protections that are at least as stringent as NAIC's Model #275 to avoid dual regulation of fixed annuities by the CDI and the federal government.

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

According to the Assembly Appropriations Committee, "Costs of approximately \$25,000 in fiscal year (FY) 2023-24, \$2.8 million in FY 2024-25, and \$4.0 million ongoing thereafter to the Department of Insurance (CDI) to approve training courses and ensure compliance with specified producer and insurer fiduciary duties (Insurance Fund)."

SUPPORT: (Verified 2/13/24)

California Department of Insurance (source)
California Commission on Aging

OPPOSITION: (Verified 2/13/24)

Center for Economic Justice
Consumer Federation of America
Consumer Federation of California
Life Insurance Consumer Advocacy Center
United Policyholders

ARGUMENTS IN SUPPORT: California Department of Insurance writes in support saying this bill is needed "to avoid federal preemption as well as create additional consumer protections to ensure California's insurance companies and licensed producers who sell annuities are following the highest standards of conduct."

ARGUMENTS IN OPPOSITION: Several consumer groups, including the Life Insurance Consumer Advocacy Center and the Consumer Federation of California, have an "oppose unless amended" position on this bill. These groups argue that the version of this bill from March 7, 2023 had greater consumer protections and therefore this bill should more closely mirror that version instead of its current form. In their letter these groups write, "If the bill is to accomplish its stated goals, it needs amendments to restore critical consumer protections that have been deleted from the bill." Among their concerns are the definition of "material conflict of interest," the timing of when certain disclosures need to be delivered to the consumer, and the existence of the safe-harbor provision.

ASSEMBLY FLOOR: 70-0, 2/12/24

AYES: Aguiar-Curry, Alanis, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Chen, Connolly, Davies, Dixon, Essayli, Flora, Mike Fong, Friedman, Gabriel, Gallagher, Garcia, Gipson, Grayson, Haney, Hart, Holden, Hoover, Irwin, Jackson, Jones-Sawyer, Lackey, Lee, Low, Maienschein, Mathis, McKinnor, Muratsuchi, Stephanie Nguyen, Ortega, Pacheco, Papan, Joe Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Rodriguez, Blanca Rubio, Sanchez, Santiago, Schiavo, Soria, Ta, Ting, Valencia, Villapudua, Waldron, Wallis, Ward, Wicks, Wilson, Wood, Zbur, Robert Rivas

NO VOTE RECORDED: Addis, Bryan, Megan Dahle, Vince Fong, Kalra,
Lowenthal, McCarty, Jim Patterson, Rendon, Weber

Prepared by: Jill Rice / INS. / (916) 651-4110
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