Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 263 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 33-0

SUBJECT: Insurance: annuities and life insurance policies

SUMMARY: Revises and recasts, beginning January 1, 2025, provisions related to the standards and procedures for the recommendation of annuity products, including any recommendation to purchase, exchange, or replace an annuity. Specifically, **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 the 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) Expressly states 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 Insurance Commissioner (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 National Association of Insurance Commissioners (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.

EXISTING LAW:

1) Provides for the regulation of insurers, agents and brokers, and other insurance-like organizations by the Commissioner.

2) 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. (Ins. Code Section 10509.914)

3) 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. (Ins. Code Section 10509.914)

4) 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. (Ins. Code Section 10509.914)

5) 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. (Ins. Code Section 10509.914)

6) 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. (Ins. Code Section 10509.915)

7) 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. (Ins. Code Section 10509.916)

8) Grants the Commissioner authority to adopt reasonable rules and regulations to implement existing law. (Ins. Code Section 10509.918)

FISCAL EFFECT: Unknown

COMMENTS:

1) *Purpose*. According to the author:

   SB 263 will protect consumers, including vulnerable seniors, from potential abuse and exploitation by curtailing harmful sales of annuities by requiring producers to consider the best interest of the consumer in making a recommendation and complying with the obligations set forth in SB 263. A producer or an insurer will now be required to satisfy a best interest standard of conduct by satisfying four obligations: 1) care; 2) disclosure; 3) conflict of interest; 5 and 4) documentation. SB 263 exceeds the requirements of the NAIC model through additional required training, stronger enforcement mechanisms and other obligations that increase consumer awareness of their purchase of an annuity.

2) *Annuities*. Annuities are specialized insurance contracts that offer a guaranteed income stream, usually for retirees. The intention of an annuity is to pay out invested funds in a fixed income stream in the future to help individuals address the risk of outliving their savings. For insurers, producers, and consumers, annuities are appealing because they require no individual underwriting for insurers, they are easily marketed as a guarantee of adequate income for life for seniors, and are often accompanied by high commissions for producers.

   Annuities come in many forms and require a greater level of sophistication and education by the consumer versus other insurance products they might be familiar with. Many people do not understand some of the basic features of annuities, and particularly deferred annuities.

   Seniors sometimes are persuaded to invest their entire life savings in these types of products, leaving them with no liquid assets or income for years. The upfront premium monies invested are unavailable for many years and the withdrawal of funds from annuities frequently involves the payment of large penalties.

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.

3) *National Association of Insurance Commissioners (NAIC) Model Law.* This bill builds on, and in some instances exceeds, the requirements set forth in the 2020 NAIC Model. 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, 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 Model #275, with additional consumer protections beyond what was in the model. (AB 689 (Blumenfield) Chapter 295, Statutes of 2011)

   NAIC 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 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. Therefore, by 2025, California needs to adopt the updates to California law which contain consumer protections that are at least as stringent as NAIC Model #275 to avoid dual regulation of fixed annuities by the California Department of Insurance (CDI) and the federal government.

4) *Arguments in Support*. CDI, the sponsor of this bill, writes in support say 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."

5) *Arguments in Opposition*. Several consumer groups, including the Life Insurance Consumer Advocacy Center (LICAC) 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" and the timing of when certain disclosures need to be delivered to the consumer.

   Note that as a result of the June 21, 2023 amendments several organizations that previously had an "oppose unless amended" position on this bill are now neutral, including the Federation of Americans for Consumer Choice, the National Association of Insurance and Financial Advisors of California, the Independent Insurance Agents & Brokers of California, the Association of California Life and Health Insurance Companies, and Finesca.

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   a) SB 927 (Archuleta) of 2022 would have extended the "free look" period for life insurance policies. Held in Senate Appropriations.

   b) AB 689 (Blumenfield) Chapter 295, Statutes of 2011) enacted the 2010 NAIC Suitability in Annuity Transactions Model Regulation in California.

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California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
Consumer Federation of California
Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086

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Oppose Unless Amended
Center Economic Justice
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Opposition

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   Seniors sometimes are persuaded to invest their entire life savings in these types of products, leaving them with no liquid assets or income for years. The upfront premium monies invested are unavailable for many years and the withdrawal of funds from annuities frequently involves the payment of large penalties.

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.

3) *National Association of Insurance Commissioners (NAIC) Model Law.* This bill builds on, and in some instances exceeds, the requirements set forth in the 2020 NAIC Model. 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, 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 Model #275, with additional consumer protections beyond what was in the model. (AB 689 (Blumenfield) Chapter 295, Statutes of 2011)

   NAIC 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 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. Therefore, by 2025, California needs to adopt the updates to California law which contain consumer protections that are at least as stringent as NAIC Model #275 to avoid dual regulation of fixed annuities by the California Department of Insurance (CDI) and the federal government.

4) *Arguments in Support*. CDI, the sponsor of this bill, writes in support say 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."

5) *Arguments in Opposition*. Several consumer groups, including the Life Insurance Consumer Advocacy Center (LICAC) 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" and the timing of when certain disclosures need to be delivered to the consumer.

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a) SB 927 (Archuleta) of 2022 would have extended the “free look” period for life insurance policies. Held in Senate Appropriations.

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REGISTERED SUPPORT / OPPOSITION:

Support

California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
Consumer Federation of California
Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 263 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 33-0

SUBJECT: Insurance: annuities and life insurance policies

SUMMARY: Revises and recasts, beginning January 1, 2025, provisions related to the standards and procedures for the recommendation of annuity products, including any recommendation to purchase, exchange, or replace an annuity. Specifically, **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 the 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) Expressly states 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 Insurance Commissioner (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 National Association of Insurance Commissioners (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.

EXISTING LAW:

1) Provides for the regulation of insurers, agents and brokers, and other insurance-like organizations by the Commissioner.

2) 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. (Ins. Code Section 10509.914)

3) 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. (Ins. Code Section 10509.914)

4) 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. (Ins. Code Section 10509.914)

5) 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. (Ins. Code Section 10509.914)

6) 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. (Ins. Code Section 10509.915)

7) 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. (Ins. Code Section 10509.916)

8) Grants the Commissioner authority to adopt reasonable rules and regulations to implement existing law. (Ins. Code Section 10509.918)

FISCAL EFFECT: Unknown

COMMENTS:

1) *Purpose*. According to the author:

   SB 263 will protect consumers, including vulnerable seniors, from potential abuse and exploitation by curtailing harmful sales of annuities by requiring producers to consider the best interest of the consumer in making a recommendation and complying with the obligations set forth in SB 263. A producer or an insurer will now be required to satisfy a best interest standard of conduct by satisfying four obligations: 1) care; 2) disclosure; 3) conflict of interest; 5 and 4) documentation. SB 263 exceeds the requirements of the NAIC model through additional required training, stronger enforcement mechanisms and other obligations that increase consumer awareness of their purchase of an annuity.

2) *Annuities*. Annuities are specialized insurance contracts that offer a guaranteed income stream, usually for retirees. The intention of an annuity is to pay out invested funds in a fixed income stream in the future to help individuals address the risk of outliving their savings. For insurers, producers, and consumers, annuities are appealing because they require no individual underwriting for insurers, they are easily marketed as a guarantee of adequate income for life for seniors, and are often accompanied by high commissions for producers.

   Annuities come in many forms and require a greater level of sophistication and education by the consumer versus other insurance products they might be familiar with. Many people do not understand some of the basic features of annuities, and particularly deferred annuities.

   Seniors sometimes are persuaded to invest their entire life savings in these types of products, leaving them with no liquid assets or income for years. The upfront premium monies invested are unavailable for many years and the withdrawal of funds from annuities frequently involves the payment of large penalties.

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.

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4) *Arguments in Support*. CDI, the sponsor of this bill, writes in support say 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."

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a) SB 927 (Archuleta) of 2022 would have extended the "free look" period for life insurance policies. Held in Senate Appropriations.

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Support

California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
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Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 263 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 33-0

SUBJECT: Insurance: annuities and life insurance policies

SUMMARY: Revises and recasts, beginning January 1, 2025, provisions related to the standards and procedures for the recommendation of annuity products, including any recommendation to purchase, exchange, or replace an annuity. Specifically, **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.

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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.

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EXISTING LAW:

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FISCAL EFFECT: Unknown

COMMENTS:

1) *Purpose*. According to the author:

   SB 263 will protect consumers, including vulnerable seniors, from potential abuse and exploitation by curtailing harmful sales of annuities by requiring producers to consider the best interest of the consumer in making a recommendation and complying with the obligations set forth in SB 263. A producer or an insurer will now be required to satisfy a best interest standard of conduct by satisfying four obligations: 1) care; 2) disclosure; 3) conflict of interest; 5 and 4) documentation. SB 263 exceeds the requirements of the NAIC model through additional required training, stronger enforcement mechanisms and other obligations that increase consumer awareness of their purchase of an annuity.

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Support

California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
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Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 263 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 33-0

SUBJECT: Insurance: annuities and life insurance policies

SUMMARY: Revises and recasts, beginning January 1, 2025, provisions related to the standards and procedures for the recommendation of annuity products, including any recommendation to purchase, exchange, or replace an annuity. Specifically, **this bill**:

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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 Insurance Commissioner (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 National Association of Insurance Commissioners (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.

EXISTING LAW:

1) Provides for the regulation of insurers, agents and brokers, and other insurance-like organizations by the Commissioner.

2) 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. (Ins. Code Section 10509.914)

3) 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. (Ins. Code Section 10509.914)

4) 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. (Ins. Code Section 10509.914)

5) 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. (Ins. Code Section 10509.914)

6) 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. (Ins. Code Section 10509.915)

7) 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. (Ins. Code Section 10509.916)

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FISCAL EFFECT: Unknown

COMMENTS:

1) *Purpose*. According to the author:

   SB 263 will protect consumers, including vulnerable seniors, from potential abuse and exploitation by curtailing harmful sales of annuities by requiring producers to consider the best interest of the consumer in making a recommendation and complying with the obligations set forth in SB 263. A producer or an insurer will now be required to satisfy a best interest standard of conduct by satisfying four obligations: 1) care; 2) disclosure; 3) conflict of interest; 5 and 4) documentation. SB 263 exceeds the requirements of the NAIC model through additional required training, stronger enforcement mechanisms and other obligations that increase consumer awareness of their purchase of an annuity.

2) *Annuities*. Annuities are specialized insurance contracts that offer a guaranteed income stream, usually for retirees. The intention of an annuity is to pay out invested funds in a fixed income stream in the future to help individuals address the risk of outliving their savings. For insurers, producers, and consumers, annuities are appealing because they require no individual underwriting for insurers, they are easily marketed as a guarantee of adequate income for life for seniors, and are often accompanied by high commissions for producers.

   Annuities come in many forms and require a greater level of sophistication and education by the consumer versus other insurance products they might be familiar with. Many people do not understand some of the basic features of annuities, and particularly deferred annuities.

   Seniors sometimes are persuaded to invest their entire life savings in these types of products, leaving them with no liquid assets or income for years. The upfront premium monies invested are unavailable for many years and the withdrawal of funds from annuities frequently involves the payment of large penalties.

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.

3) *National Association of Insurance Commissioners (NAIC) Model Law.* This bill builds on, and in some instances exceeds, the requirements set forth in the 2020 NAIC Model. 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, 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 Model #275, with additional consumer protections beyond what was in the model. (AB 689 (Blumenfield) Chapter 295, Statutes of 2011)

   NAIC 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 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. Therefore, by 2025, California needs to adopt the updates to California law which contain consumer protections that are at least as stringent as NAIC Model #275 to avoid dual regulation of fixed annuities by the California Department of Insurance (CDI) and the federal government.

4) *Arguments in Support*. CDI, the sponsor of this bill, writes in support say 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."

5) *Arguments in Opposition*. Several consumer groups, including the Life Insurance Consumer Advocacy Center (LICAC) 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" and the timing of when certain disclosures need to be delivered to the consumer.

   Note that as a result of the June 21, 2023 amendments several organizations that previously had an "oppose unless amended" position on this bill are now neutral, including the Federation of Americans for Consumer Choice, the National Association of Insurance and Financial Advisors of California, the Independent Insurance Agents & Brokers of California, the Association of California Life and Health Insurance Companies, and Finesca.

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a) SB 927 (Archuleta) of 2022 would have extended the “free look” period for life insurance policies. Held in Senate Appropriations.

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California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
Consumer Federation of California
Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 263 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 33-0

SUBJECT: Insurance: annuities and life insurance policies

SUMMARY: Revises and recasts, beginning January 1, 2025, provisions related to the standards and procedures for the recommendation of annuity products, including any recommendation to purchase, exchange, or replace an annuity. Specifically, **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 the 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) Expressly states 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.

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FISCAL EFFECT: Unknown

COMMENTS:

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> SB 263 will protect consumers, including vulnerable seniors, from potential abuse and exploitation by curtailing harmful sales of annuities by requiring producers to consider the best interest of the consumer in making a recommendation and complying with the obligations set forth in SB 263. A producer or an insurer will now be required to satisfy a best interest standard of conduct by satisfying four obligations: 1) care; 2) disclosure; 3) conflict of interest; 5 and 4) documentation. SB 263 exceeds the requirements of the NAIC model through additional required training, stronger enforcement mechanisms and other obligations that increase consumer awareness of their purchase of an annuity.

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California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
Consumer Federation of California
Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 263 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 33-0

SUBJECT: Insurance: annuities and life insurance policies

SUMMARY: Revises and recasts, beginning January 1, 2025, provisions related to the standards and procedures for the recommendation of annuity products, including any recommendation to purchase, exchange, or replace an annuity. Specifically, **this bill**:

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Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
SB 263 (Dodd) – As Amended June 21, 2023

SENATE VOTE: 33-0

SUBJECT: Insurance: annuities and life insurance policies

SUMMARY: Revises and recasts, beginning January 1, 2025, provisions related to the standards and procedures for the recommendation of annuity products, including any recommendation to purchase, exchange, or replace an annuity. Specifically, **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 the 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) Expressly states 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 Insurance Commissioner (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 National Association of Insurance Commissioners (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.

EXISTING LAW:

1) Provides for the regulation of insurers, agents and brokers, and other insurance-like organizations by the Commissioner.

2) 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. (Ins. Code Section 10509.914)

3) 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. (Ins. Code Section 10509.914)

4) 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. (Ins. Code Section 10509.914)

5) 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. (Ins. Code Section 10509.914)

6) 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. (Ins. Code Section 10509.915)

7) 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. (Ins. Code Section 10509.916)

8) Grants the Commissioner authority to adopt reasonable rules and regulations to implement existing law. (Ins. Code Section 10509.918)

FISCAL EFFECT: Unknown

COMMENTS:

1) *Purpose*. According to the author:

   SB 263 will protect consumers, including vulnerable seniors, from potential abuse and exploitation by curtailing harmful sales of annuities by requiring producers to consider the best interest of the consumer in making a recommendation and complying with the obligations set forth in SB 263. A producer or an insurer will now be required to satisfy a best interest standard of conduct by satisfying four obligations: 1) care; 2) disclosure; 3) conflict of interest; 5 and 4) documentation. SB 263 exceeds the requirements of the NAIC model through additional required training, stronger enforcement mechanisms and other obligations that increase consumer awareness of their purchase of an annuity.

2) *Annuities*. Annuities are specialized insurance contracts that offer a guaranteed income stream, usually for retirees. The intention of an annuity is to pay out invested funds in a fixed income stream in the future to help individuals address the risk of outliving their savings. For insurers, producers, and consumers, annuities are appealing because they require no individual underwriting for insurers, they are easily marketed as a guarantee of adequate income for life for seniors, and are often accompanied by high commissions for producers.

   Annuities come in many forms and require a greater level of sophistication and education by the consumer versus other insurance products they might be familiar with. Many people do not understand some of the basic features of annuities, and particularly deferred annuities.

   Seniors sometimes are persuaded to invest their entire life savings in these types of products, leaving them with no liquid assets or income for years. The upfront premium monies invested are unavailable for many years and the withdrawal of funds from annuities frequently involves the payment of large penalties.

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.

3) *National Association of Insurance Commissioners (NAIC) Model Law.* This bill builds on, and in some instances exceeds, the requirements set forth in the 2020 NAIC Model. 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, 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 Model #275, with additional consumer protections beyond what was in the model. (AB 689 (Blumenfield) Chapter 295, Statutes of 2011)

   NAIC 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 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. Therefore, by 2025, California needs to adopt the updates to California law which contain consumer protections that are at least as stringent as NAIC Model #275 to avoid dual regulation of fixed annuities by the California Department of Insurance (CDI) and the federal government.

4) *Arguments in Support*. CDI, the sponsor of this bill, writes in support say 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."

5) *Arguments in Opposition*. Several consumer groups, including the Life Insurance Consumer Advocacy Center (LICAC) 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" and the timing of when certain disclosures need to be delivered to the consumer.

   Note that as a result of the June 21, 2023 amendments several organizations that previously had an "oppose unless amended" position on this bill are now neutral, including the Federation of Americans for Consumer Choice, the National Association of Insurance and Financial Advisors of California, the Independent Insurance Agents & Brokers of California, the Association of California Life and Health Insurance Companies, and Finesca.

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   a) SB 927 (Archuleta) of 2022 would have extended the "free look" period for life insurance policies. Held in Senate Appropriations.

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California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
Consumer Federation of California
Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

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2) *Annuities*. Annuities are specialized insurance contracts that offer a guaranteed income stream, usually for retirees. The intention of an annuity is to pay out invested funds in a fixed income stream in the future to help individuals address the risk of outliving their savings. For insurers, producers, and consumers, annuities are appealing because they require no individual underwriting for insurers, they are easily marketed as a guarantee of adequate income for life for seniors, and are often accompanied by high commissions for producers.

   Annuities come in many forms and require a greater level of sophistication and education by the consumer versus other insurance products they might be familiar with. Many people do not understand some of the basic features of annuities, and particularly deferred annuities.

   Seniors sometimes are persuaded to invest their entire life savings in these types of products, leaving them with no liquid assets or income for years. The upfront premium monies invested are unavailable for many years and the withdrawal of funds from annuities frequently involves the payment of large penalties.

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.

3) *National Association of Insurance Commissioners (NAIC) Model Law.* This bill builds on, and in some instances exceeds, the requirements set forth in the 2020 NAIC Model. 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, 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 Model #275, with additional consumer protections beyond what was in the model. (AB 689 (Blumenfield) Chapter 295, Statutes of 2011)

   NAIC 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 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. Therefore, by 2025, California needs to adopt the updates to California law which contain consumer protections that are at least as stringent as NAIC Model #275 to avoid dual regulation of fixed annuities by the California Department of Insurance (CDI) and the federal government.

4) *Arguments in Support*. CDI, the sponsor of this bill, writes in support say 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."

5) *Arguments in Opposition*. Several consumer groups, including the Life Insurance Consumer Advocacy Center (LICAC) 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" and the timing of when certain disclosures need to be delivered to the consumer.

   Note that as a result of the June 21, 2023 amendments several organizations that previously had an "oppose unless amended" position on this bill are now neutral, including the Federation of Americans for Consumer Choice, the National Association of Insurance and Financial Advisors of California, the Independent Insurance Agents & Brokers of California, the Association of California Life and Health Insurance Companies, and Finesca.

6) *Prior Legislation*.

   a) SB 927 (Archuleta) of 2022 would have extended the "free look" period for life insurance policies. Held in Senate Appropriations.

   b) AB 689 (Blumenfield) Chapter 295, Statutes of 2011) enacted the 2010 NAIC Suitability in Annuity Transactions Model Regulation in California.

REGISTERED SUPPORT / OPPOSITION:

Support

California Commission on Aging
Insurance Commissioner Ricardo Lara / California Department of Insurance

Oppose Unless Amended
Center Economic Justice
Chartered Financial Analyst
Consumer Federation of California
Life Insurance Consumer Advocacy Center
United Policyholders

Opposition

None on file.

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