SENATE BILL REPORT
SB 5210

As of January 17, 2023

Title: An act relating to the best interest standard for annuities in Washington.

Brief Description: Concerning the best interest standard for annuity transactions.

Sponsors: Senators Stanford, Gildon and Hasegawa.

Brief History:
Committee Activity: Business, Financial Services, Gaming & Trade: 1/17/23.

Brief Summary of Bill

- Requires insurance producers to act in the best interest of the consumer under the circumstances known at the time when making an annuity recommendation.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Staff: Kellee Gunn (786-7429)

Background: Annuities. An annuity is a contract sold by an insurer which exchanges present contributions for future income payments. In Washington State, fixed rate annuities are regulated by the Office of the Insurance Commissioner (OIC), and variable rate annuities are regulated by the Department of Financial Institutions.

When selling an annuity to a consumer, an insurance producer must comply with certain requirements in recommending and selling the annuity such as having reasonable grounds to believe the recommendation is suitable, making reasonable efforts to obtain relevant information from the client, and making recommendations that are reasonable considering all the circumstances known to the insurance producer.

Best Interest Standard. The U.S. Securities and Exchange Commission (SEC), in June

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This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

2019, finalized a regulation best interest (Reg. BI) which established a best interest standard of conduct for broker-dealers beyond existing requirements applied to variable annuities. To satisfy Reg. BI, the broker-dealer complies with four specified component obligations: disclosure, care, conflict of interest, and compliance.

In February 2020, the National Association of Insurance Commissioners (NAIC) approved revisions to a model act on annuities (Model #275), which was completed in 2019, that required agents and insurance carriers to act with reasonable diligence, care and skill in making annuity recommendations to customers.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The NAIC's Model #275 is incorporated into state law requiring insurance producers and insurers who sell annuities to act in the best interest of the consumer. The best interest of the consumer is established based on the circumstances known at the time that the recommendation is made, without placing the producer's, or the insurer's, financial interest ahead of the consumer's interest.

When selling annuities, a producer has satisfied their obligations to the consumer's best interest with the following:

- knowledge of the consumer's financial situation, insurance needs, and financial objectives;
- understanding of the available options;
- reasonable basis for recommending an option that meets the consumer's financial needs; and
- communicating the basis of the recommendation.

Recommendation and sales of annuities made in compliance with comparable standards, such as applicable federal rules pertaining to best interest obligations and supervision of annuity recommendations and sales, satisfy this requirement. Producers are not required to consider other products available in the market other than the products that they sell. The best interest standard does not create a fiduciary obligation or relationship.

Reasonable efforts to obtain consumer profile information from the consumer must be made. When exchanging or replacing an annuity the producer must consider the whole transaction, such as the inherent costs and benefits and any recent annuity transactions, when providing recommendations.

Prior to the recommendation or sale, the producer must disclose certain information to the consumer on OIC's website. Records of the sale or recommendation must be maintained that accurately reproduces the actual document between the producer and consumer.

There is no obligation to the consumer by a producer if:

- no recommendation was made;

- a recommendation was made but was later found to have been prepared based on materially inaccurate information provided by the consumer;
- the consumer refused to provide the relevant information; or
- the consumer goes against the producer's recommendations.

If a violation occurs, OIC may take appropriate corrective action for any consumer harmed.

Nothing shall be construed to create or imply a private cause of action or subject the producer to civil liability under the best interest standard of care or under fiduciary standards of conduct.

Appropriation: None.

Fiscal Note: Requested on January 9, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2024.

Staff Summary of Public Testimony On Proposed Substitute: PRO: This raises the bar for consumers buying annuities in Washington, from a suitability standard to best interest. This is a substitute bill, to make some technical changes, aligning it with the bill introduced on the House side. This revision aligns with SEC's best interest standard. In the best interest standard, the producer will work in the best interest of the consumer, regardless. By establishing clear standards, consumers will be aware of what they are getting and have assurance that the product is in their best interest. The industry, chief regulator, and producers all support this change. This bill helps secure the financial future of middle-income savers. An annuity is like a pension. The average annual income of a person buying an annuity is $70,000. As of today, 30 states ~~who~~ have adopted this regulation. This legislation is an NAIC model act. This will bring security and clarity to consumers and bring uniformity for producers.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Alex Collins, NAIFA - National Association of Insurance and Financial Advisors; Michael Walker, Office of the Insurance Commissioner; John Mangan, American Council of Life Insurers.

Persons Signed In To Testify But Not Testifying: No one.