

SENATE BILL REPORT

HB 1120

As Passed Senate, March 29, 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: Representatives Reeves, Corry and Ryu.

Brief History: Passed House: 2/2/23, 97-0.

Committee Activity: Business, Financial Services, Gaming & Trade: 3/09/23, 3/14/23 [DP].

Floor Activity: Passed Senate: 3/29/23, 49-0.

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

Majority Report: Do pass.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Dozier, Ranking Member; Boehnke, Gildon, Hasegawa, Lovick, MacEwen and Mullet.

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.

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.

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 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, that required agents and insurance carriers to act with reasonable diligence, care, and skill in making annuity recommendations to customers.

Summary of Bill: Insurance producers and insurers who sell annuities must 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: Available.

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: PRO: This bill is about valuing retirement options, protecting consumers as they seek help, narrowing the wealth gap, and creating access that works best for working families. It requires planners to let consumers know if they have a conflict of interest.

ACLI is delighted to be supporting this bill with the Office of the Insurance Commissioner. Since this bill was heard in January, 33 states have adopted this model. The disclosures ensure the agent is working in the consumer's best interest.

Persons Testifying: PRO: Representative Kristine Reeves, Prime Sponsor; Bryon Welch, Office of the Insurance Commissioner; Chris Bandoli, National Association of Insurance and Financial Advisors Washington; Kris Tefft, American Council of Life Insurers (ACLI).

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