
SENATE BILL 5210

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By Senators Stanford, Gildon, and Hasegawa

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1 AN ACT Relating to the best interest standard for annuities in
2 Washington; amending RCW 48.23.015; creating a new section; and
3 providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The purpose of this act is to require
6 producers, as defined in RCW 48.23.015, to act in the best interest
7 of the consumer when making a recommendation of an annuity and to
8 require insurers to establish and maintain a system to supervise
9 recommendations so that the insurance needs and financial objectives
10 of consumers at the time of the transaction are effectively
11 addressed.

12 **Sec. 2.** RCW 48.23.015 and 2009 c 18 s 2 are each amended to read
13 as follows:

14 (1) For the purposes of this section:

15 (a) "Annuity" means a fixed annuity or variable annuity that is
16 individually solicited, whether the product is classified as an
17 individual or group annuity.

18 (b) "Cash compensation" means any discount, concession, fee,
19 service fee, commission, sales charge, loan, override, or cash
20 benefit received by a producer in connection with the recommendation

1 or sale of an annuity from an insurer, intermediary, or directly from
2 the consumer.

3 (c) "Consumer profile information" means information that is
4 reasonably appropriate to determine whether a recommendation
5 addresses the consumer's financial situation, insurance needs, and
6 financial objectives including, at a minimum, the following:

7 (i) Age;

8 (ii) Annual income;

9 (iii) Financial situation and needs, including debts and other
10 obligations;

11 (iv) Financial experience;

12 (v) Insurance needs;

13 (vi) Financial objectives;

14 (vii) Intended use of the annuity;

15 (viii) Financial time horizon;

16 (ix) Existing assets or financial products, including investment,
17 annuity, and insurance holdings;

18 (x) Liquidity needs;

19 (xi) Liquid net worth;

20 (xii) Risk tolerance including, but not limited to, willingness
21 to accept nonguaranteed elements in the annuity;

22 (xiii) Financial resources used to fund the annuity; and

23 (xiv) Tax status.

24 (d) "FINRA" means the financial industry regulatory authority or
25 a successor agency.

26 (e) "Insurer" means a company required to be authorized under the
27 laws of this state to provide insurance products, including
28 annuities.

29 (f) "Intermediary" means an entity contracted directly with an
30 insurer or with another entity contracted with an insurer to
31 facilitate the sale of the insurer's annuities by producers.

32 (g) "Material conflict of interest" means a financial interest of
33 the producer in the sale of an annuity that a reasonable person would
34 expect to influence the impartiality of a recommendation. "Material
35 conflict of interest" does not include cash compensation or noncash
36 compensation.

37 (h) "Noncash compensation" means any form of compensation that is
38 not cash compensation including, but not limited to, health
39 insurance, office rent, office support, and retirement benefits.

1 (i) "Nonguaranteed elements" means the premiums, credited
2 interest rates including any bonuses, benefits, values, dividends,
3 noninterest based credits, charges, or elements of formulas used to
4 determine any of these, that are subject to company discretion and
5 are not guaranteed at issue. An element is considered nonguaranteed
6 if any of the underlying nonguaranteed elements are used in its
7 calculation.

8 (j) "Producer" has the same meaning as "insurance producer" in
9 RCW 48.17.010 and also includes an insurer where no producer is
10 involved.

11 (k) "Recommendation" means advice provided by ((an insurance)) a
12 producer((, or an insurer when no producer is involved,)) to an
13 individual consumer that ((results)) was intended to or does result
14 in a purchase ((or)), an exchange, or a replacement of an annuity in
15 accordance with that advice. "Recommendation" does not include
16 general communication to the public, generalized customer services
17 assistance or administrative support, general educational information
18 and tools, prospectuses, or other product and sales material.

19 (l) "Replacement" means a transaction in which a new annuity is
20 to be purchased, and it is known or should be known to the proposing
21 producer or proposing insurer, whether or not a producer is involved,
22 that by reason of the transaction, an existing annuity or other
23 insurance policy has been or is to be any of the following:

24 (i) Lapsed, forfeited, surrendered or partially surrendered,
25 assigned to the replacing insurer, or otherwise terminated;

26 (ii) Converted to reduced paid-up insurance, continued as
27 extended term insurance, or otherwise reduced in value by the use of
28 nonforfeiture benefits or other policy values;

29 (iii) Amended so as to effect either a reduction in benefits or
30 in the term for which coverage would otherwise remain in force or for
31 which benefits would be paid;

32 (iv) Reissued with any reduction in cash value; or

33 (v) Used in a financed purchase.

34 (m) "SEC" means the United States securities and exchange
35 commission.

36 ~~(2) ((Insurers and insurance producers must comply with the~~
37 ~~following requirements in recommending and executing a purchase or~~
38 ~~exchange of an annuity:~~

39 ~~(a) In recommending the purchase of an annuity or the exchange of~~
40 ~~an annuity that results in another insurance transaction or series of~~

1 ~~insurance transactions to a consumer, the insurance producer, or the~~
2 ~~insurer when no producer is involved, must have reasonable grounds~~
3 ~~for believing that the recommendation is suitable for the consumer on~~
4 ~~the basis of the facts disclosed by the consumer about their~~
5 ~~investments and other insurance products and as to their financial~~
6 ~~situation and needs.~~

7 ~~(b) Prior to the execution of a purchase or exchange of an~~
8 ~~annuity resulting from a recommendation, an insurance producer, or an~~
9 ~~insurer when no producer is involved, shall make reasonable efforts~~
10 ~~to obtain information concerning:~~

11 ~~(i) The consumer's financial status;~~

12 ~~(ii) The consumer's tax status;~~

13 ~~(iii) The consumer's investment objectives; and~~

14 ~~(iv) Other information used or considered to be reasonable by the~~
15 ~~insurance producer, or the insurer when no producer is involved, in~~
16 ~~making recommendations to the consumer.~~

17 ~~(3) An insurer or insurance producer's recommendation))~~ A
18 producer, when making a recommendation of an annuity, shall act in
19 the best interest of the consumer under the circumstances known at
20 the time the recommendation is made, without placing the producer's
21 or the insurer's financial interest ahead of the consumer's interest.
22 A producer has acted in the best interest of the consumer if they
23 have satisfied the following obligations regarding care, disclosure,
24 conflict of interest, and documentation:

25 (a) (i) The producer, in making a recommendation shall exercise
26 reasonable diligence, care, and skill to:

27 (A) Know the consumer's financial situation, insurance needs, and
28 financial objectives;

29 (B) Understand the available recommendation options after making
30 a reasonable inquiry into options available to the producer;

31 (C) Have a reasonable basis to believe the recommended option
32 effectively addresses the consumer's financial situation, insurance
33 needs, and financial objectives over the life of the product, as
34 evaluated in light of the consumer profile information; and

35 (D) Communicate the basis or bases of the recommendation.

36 (ii) The requirements under (a) (i) of this subsection include
37 making reasonable efforts to obtain consumer profile information from
38 the consumer prior to the recommendation of an annuity.

39 (iii) The requirements under (a) (i) of this subsection require a
40 producer to consider the types of products the producer is authorized

1 and licensed to recommend or sell that address the consumer's
2 financial situation, insurance needs, and financial objectives. This
3 does not require analysis or consideration of any products outside
4 the authority and license of the producer or other possible
5 alternative products or strategies available in the market at the
6 time of the recommendation. Producers shall be held to standards
7 applicable to producers with similar authority and licensure.

8 (iv) The requirements under this subsection do not create a
9 fiduciary obligation or relationship and only create a regulatory
10 obligation as established in this section.

11 (v) The consumer profile information, characteristics of the
12 insurer, and product costs, rates, benefits, and features are those
13 factors generally relevant in making a determination whether an
14 annuity effectively addresses the consumer's financial situation,
15 insurance needs, and financial objectives, but the level of
16 importance of each factor under the care obligation of this section
17 may vary depending on the facts and circumstances of a particular
18 case. However, each factor may not be considered in isolation.

19 (vi) The requirements under (a)(i) of this subsection include
20 having a reasonable basis to believe the consumer would benefit from
21 certain features of the annuity, such as annuitization, death or
22 living benefit, or other insurance-related features.

23 (vii) The requirements under (a)(i) of this subsection apply to
24 the particular annuity as a whole and the underlying subaccounts to
25 which funds are allocated at the time of purchase or exchange of an
26 annuity, and riders and similar producer enhancements, if any.

27 (viii) The requirements under (a)(i) of this subsection do not
28 mean the annuity with the lowest one-time or multiple occurrence
29 compensation structure shall necessarily be recommended.

30 (ix) The requirements under (a)(i) of this subsection do not mean
31 the producer has ongoing monitoring obligations under the care
32 obligation under this section, although such an obligation may be
33 separately owed under the terms of a fiduciary, consulting,
34 investment advising, or financial planning agreement between the
35 consumer and the producer.

36 (x) In the case of an exchange or replacement of an annuity, the
37 producer shall consider the whole transaction, which includes taking
38 into consideration whether:

39 (A) The consumer will incur a surrender charge, be subject to the
40 commencement of a new surrender period, lose existing benefits, such

1 as death, living, or other contractual benefits, or be subject to
2 increased fees, investment advisory fees, or charges for riders and
3 similar product enhancements;

4 (B) The replacing product would substantially benefit the
5 consumer in comparison to the replaced product over the life of the
6 product; and

7 (C) The consumer has had another annuity exchange or replacement
8 and, in particular, an exchange or replacement within the preceding
9 60 months.

10 (xi) Nothing in this section should be construed to require a
11 producer to obtain any license other than a producer license with the
12 appropriate line of authority to sell, solicit, or negotiate
13 insurance in this state, including but not limited to any securities
14 license, in order to fulfill the duties and obligations contained in
15 this section; provided the producer does not give advice or provide
16 services that are otherwise subject to securities laws or engage in
17 any other activity requiring other professional licenses.

18 (b) (i) Prior to the recommendation or sale of an annuity, the
19 producer shall prominently disclose to the consumer on a form
20 substantially similar to appendix A, as published on the
21 commissioner's website:

22 (A) A description of the scope and terms of the relationship with
23 the consumer and the role of the producer in the transaction;

24 (B) An affirmative statement on whether the producer is licensed
25 and authorized to sell the following products:

26 (I) Fixed annuities;

27 (II) Fixed indexed annuities;

28 (III) Variable annuities;

29 (IV) Life insurance;

30 (V) Mutual funds;

31 (VI) Stocks and bonds; and

32 (VII) Certificates of deposit;

33 (C) An affirmative statement describing the insurers the producer
34 is authorized, contracted, appointed, or otherwise able to sell
35 insurance products for, using the following descriptions:

36 (I) From one insurer;

37 (II) From two or more insurers; or

38 (III) From two or more insurers although primarily contracted
39 with one insurer;

1 (D) A description of the sources and types of cash compensation
2 and noncash compensation to be received by the producer, including
3 whether the producer is to be compensated for the sale of a
4 recommended annuity by commission as part of premium or other
5 remuneration received from the insurer, intermediary, or other
6 producer or by fee as a result of a contract for advice or consulting
7 services; and

8 (E) A notice of the consumer's right to request additional
9 information regarding cash compensation described in this subsection
10 (2)(b);

11 (ii) Upon request of the consumer or the consumer's designated
12 representative, the producer shall disclose:

13 (A) A reasonable estimate of the amount of cash compensation to
14 be received by the producer, which may be stated as a range of
15 amounts or percentages; and

16 (B) Whether the cash compensation is a one-time or multiple
17 occurrence amount, and if a multiple occurrence amount, the frequency
18 and amount of the occurrence, which may be stated as a range of
19 amounts or percentages; and

20 (iii) Prior to or at the time of the recommendation or sale of an
21 annuity, the producer shall have a reasonable basis to believe the
22 consumer has been informed of various features of the annuity, such
23 as the potential surrender period and surrender charge, potential tax
24 penalty if the consumer sells, exchanges, surrenders, or annuitizes
25 the annuity, mortality and expense fees, investment advisory fees,
26 any annual fees, potential charges for and features of riders or
27 other options of the annuity, limitations on interest returns,
28 potential changes in nonguaranteed elements of the annuity, insurance
29 and investment components, and market risk.

30 (c) A producer shall identify and avoid or reasonably manage and
31 disclose material conflicts of interest, including material conflicts
32 of interest related to an ownership interest.

33 (d) A producer shall at the time of recommendation or sale:

34 (i) Make a written record of any recommendation and the basis for
35 the recommendation subject to this section;

36 (ii) Obtain a consumer signed statement on a form substantially
37 similar to appendix B as published on the commissioner's website
38 documenting:

39 (A) A customer's refusal to provide the consumer profile
40 information, if any; and

1 (B) A customer's understanding of the ramifications of not
2 providing his or her consumer profile information or providing
3 insufficient consumer profile information; and

4 (iii) Obtain a consumer signed statement on a form substantially
5 similar to appendix C as published on the commissioner's website
6 acknowledging the annuity transaction is not recommended if a
7 customer decides to enter into an annuity transaction that is not
8 based on the producer's recommendation.

9 (e) Any requirement applicable to a producer under this
10 subsection shall apply to every producer who has exercised material
11 control or influence in the making of a recommendation and has
12 received direct compensation as a result of the recommendation or
13 sale, regardless of whether the producer has had any direct contact
14 with the consumer. Activities such as providing or delivering
15 marketing or educational materials, product wholesaling, or other
16 back office product support, and general supervision of a producer do
17 not, in and of themselves, constitute material control or influence.

18 (3) (a) Except as provided under (b) of this subsection, a
19 producer shall have no obligation to a consumer under subsection
20 (2) (a) of this section related to any annuity transaction if:

21 (i) No recommendation is made;

22 (ii) A recommendation was made and was later found to have been
23 prepared based on materially inaccurate information provided by the
24 consumer;

25 (iii) A consumer refuses to provide relevant consumer profile
26 information and the annuity transaction is not recommended; or

27 (iv) A consumer decides to enter into an annuity transaction that
28 is not based on a recommendation of the producer.

29 (b) An insurer's issuance of an annuity subject to (a) of this
30 subsection must be reasonable under all the circumstances actually
31 known to the insurer ((or insurance producer)) at the time ((of the
32 recommendation. Neither an insurance producer nor an insurer when no
33 producer is involved, has any obligation to a consumer under
34 subsection (2) of this section related to any recommendation if a
35 consumer:

36 (a) Refuses to provide relevant information requested by the
37 insurer or insurance producer;

38 (b) Decides to enter into an insurance transaction that is not
39 based on a recommendation of the insurer or insurance producer; or

1 ~~(c) Fails to provide complete or accurate information))~~ the
2 annuity is issued.

3 (4) (a) Except as permitted under subsection (3) of this section,
4 an insurer may not issue an annuity recommended to a consumer unless
5 there is a reasonable basis to believe the annuity would effectively
6 address the particular consumer's financial situation, insurance
7 needs, and financial objectives based on the consumer's consumer
8 profile information.

9 (b) An insurer must ~~((assure that a system to supervise~~
10 ~~recommendations,))~~ establish and maintain a supervision system that
11 is reasonably designed to achieve the insurer's and the producer's
12 compliance with this section~~((, is established and maintained. The~~
13 ~~system must include, but is not limited to, written procedures and~~
14 ~~conducting periodic review of its records that are reasonably~~
15 ~~designed to assist in detecting and preventing violations of this~~
16 ~~section))~~ .

17 ~~((a))~~ (c) An insurer may contract with a third party, including
18 ~~((insurance))~~ producers, a general agent, or independent agency, to
19 establish and maintain a system of supervision as required in this
20 subsection with respect to ~~((insurance))~~ producers under contract
21 with or employed by the third party. An insurer must make reasonable
22 inquiry to assure that the third party is performing the functions
23 required in this subsection and must take action as is reasonable
24 under the circumstances to enforce the contractual obligation to
25 perform the functions. An insurer may comply with its obligation to
26 make reasonable inquiry by doing all of the following:

27 (i) Annually obtaining a certification from a third party senior
28 manager with responsibility for the delegated functions that the
29 manager has a reasonable basis to represent, and does represent, that
30 the third party is performing the required functions; and

31 (ii) Based on reasonable selection criteria, periodically
32 selecting third parties contracting under this subsection for a
33 review to determine whether the third parties are performing the
34 required functions. The insurer shall perform those procedures to
35 conduct the review that are reasonable under the circumstances.

36 ~~((b))~~ (d) An insurer, or the contracted third party if a
37 general agent or independent agency, is not required to:

38 (i) Review, or provide for review of, all ~~((insurance))~~ producer
39 solicited transactions; or

1 (ii) Include in its system of supervision (~~(an insurance)~~) a
2 producer's recommendations to consumers of products other than the
3 annuities offered by the insurer, general agent, or independent
4 agency.

5 (~~(e)~~) (e) A general agent or independent agency contracting
6 with an insurer to supervise compliance with this section shall
7 promptly, when requested by the insurer, give a certification of
8 compliance or give a clear statement that it is unable to meet the
9 certification criteria. A person may not provide a certification
10 unless the person:

11 (i) Is a senior manager with responsibility for the delegated
12 functions; and

13 (ii) Has a reasonable basis for making the certification.

14 (5) (~~Compliance with the financial industry regulatory authority~~
15 ~~conduct rules pertaining to suitability satisfies the requirements~~
16 ~~under this section for the recommendation of annuities registered~~
17 ~~under the securities act of 1933 (15 U.S.C. Sec. 77(a) et seq. or as~~
18 ~~hereafter amended). The insurance commissioner must notify the~~
19 ~~appropriate committees of the house of representatives and senate if~~
20 ~~there are changes regarding the registration of annuities under the~~
21 ~~securities act of 1933 that affect the application of this~~
22 ~~subsection. This)) (a) Recommendations and sales of annuities made in
23 compliance with comparable standards shall satisfy the requirements
24 under this section. This subsection applies to recommendations and
25 sales of annuities made by financial professionals in compliance with
26 business rules, controls, and procedures that satisfy a comparable
27 standard even if such a standard would not otherwise apply to the
28 product or recommendation at issue. However, nothing in this
29 subsection (~~does not~~) shall limit the insurance commissioner's
30 ability to investigate and enforce the provisions of this section.~~

31 (b) Nothing in (a) of this subsection shall limit the insurer's
32 obligation to comply with subsection (4)(a) of this section, although
33 the insurer may base its analysis on information received from either
34 the financial professional or the entity supervising the financial
35 professional.

36 (c) For (a) of this subsection to apply, an insurer shall:

37 (i) Monitor the relevant conduct of the financial professional
38 seeking to rely on (a) of this subsection or the entity responsible
39 for supervising the financial professional, such as the financial
40 professional's broker-dealer or an investment adviser registered

1 under federal or state securities laws using information collected in
2 the normal course of an insurer's business; and

3 (ii) Provide to the entity responsible for supervising the
4 financial professional seeking to rely on (a) of this subsection,
5 such as the financial professional's broker-dealer or investment
6 adviser registered under federal or state securities laws,
7 information and reports that are reasonably appropriate to assist
8 such entity to maintain its supervision system.

9 (d) For purposes of this subsection, "financial professional"
10 means a producer that is regulated and acting as:

11 (i) A broker-dealer registered under federal or state securities
12 laws or a registered representative of a broker-dealer;

13 (ii) An investment adviser registered under federal or state
14 securities laws or an investment adviser representative associated
15 with the federal or state registered investment adviser; or

16 (iii) A plan fiduciary under section 3(21) of the employee
17 retirement income security act of 1974 (ERISA) or fiduciary under
18 section 4975(e)(3) of the internal revenue code (IRC) or any
19 amendments or successor statutes thereto.

20 (e) For purposes of this subsection, "comparable standards"
21 means:

22 (i) With respect to broker-dealers and registered representatives
23 of broker-dealers, applicable SEC and FINRA rules pertaining to best
24 interest obligations and supervision of annuity recommendations and
25 sales including, but not limited to, regulation best interest and any
26 amendments or successor regulations thereto;

27 (ii) With respect to investment advisers registered under federal
28 or state securities laws or investment adviser representatives, the
29 fiduciary duties and all other requirements imposed on such
30 investment advisers or investment adviser representatives by contract
31 or under the investment advisers act of 1940 or applicable state
32 securities law including, but not limited to, the Form ADV and
33 interpretations; and

34 (iii) With respect to plan fiduciaries or fiduciaries, the
35 duties, obligations, prohibitions, and all other requirements
36 attendant to such status under ERISA or the IRC and any amendments or
37 successor statutes thereto.

38 (6) ((The)) An insurer is responsible for compliance with this
39 section. If a violation occurs, either because of the action or

1 inaction of the insurer or its producer, the commissioner may order
2 ((an)):

3 (a) An insurer((, an insurance producer, or both,)) to take
4 reasonably appropriate corrective action for any consumer harmed by
5 ((the insurer's or insurance producer's violation of this section.

6 -a-)) a failure to comply with this act by the insurer, an entity
7 contracted to perform the insurer's supervisory duties, or by the
8 producer;

9 (b) A general agency, independent agency, or the producer to take
10 reasonably appropriate corrective action for any consumer harmed by
11 the producer's violation of this section; and

12 (c) Appropriate penalties and sanctions.

13 (7) Any applicable penalty under this or other sections of Title
14 48 RCW may be reduced or eliminated by the commissioner if corrective
15 action for the consumer was taken promptly after a violation was
16 discovered or the violation was not part of a pattern or practice.

17 ((b-)) This subsection does not limit the commissioner's ability to
18 enforce this section or other applicable sections of Title 48 RCW.

19 ((7-)) (8) The authority to enforce compliance with this section
20 is vested exclusively with the commissioner.

21 (9) Insurers, general agents, independent agencies, and
22 ((insurance)) producers must maintain or be able to make available to
23 the commissioner records of the information collected from the
24 consumer, disclosures made to the consumer, including summaries of
25 oral disclosures, and other information used in making the
26 recommendations that were the basis for the insurance transaction for
27 five years after the insurance transaction is completed by the
28 insurer((, or for five years after the annuity begins paying
29 benefits, whichever is longer)). An insurer is permitted, but is not
30 required, to maintain documentation on behalf of ((an insurance)) a
31 producer. This section does not relieve ((an insurance)) a producer
32 of the obligation to maintain records of insurance transactions as
33 required by RCW 48.17.470.

34 ((8-)) (10) Records required to be maintained by this regulation
35 may be maintained in paper, photographic, microprocess, magnetic,
36 mechanical, or electronic media or by any process that accurately
37 reproduces the actual document.

38 (11) The commissioner may adopt rules to implement and administer
39 this section.

1 ~~((9))~~ (12) Unless otherwise specifically included, this section
2 does not apply to recommendations involving:

3 (a) Direct response solicitations when there is no recommendation
4 based on information collected from the consumer under this section;
5 ~~((e))~~

6 (b) Contracts used to fund:

7 (i) An employee pension or welfare benefit plan that is covered
8 by the employment and income security act;

9 (ii) A plan described by sections 401(a), 401(k), 403(b), 408(k),
10 or 408(p) of the internal revenue code, as amended, if established or
11 maintained by an employer;

12 (iii) A government or church plan defined in section 414 of the
13 internal revenue code, a government or church welfare benefit plan or
14 a deferred compensation plan of a state or local government or tax
15 exempt organization under section 457 of the internal revenue code;

16 or

17 (iv) A nonqualified deferred compensation arrangement established
18 or maintained by an employer or plan sponsor;

19 ~~((v))~~ (c) Settlements of or assumptions of liabilities
20 associated with personal injury litigation or any dispute or claim
21 resolution process; or

22 ~~((vi))~~ (d) Formal prepaid funeral contracts.

23 ~~((10))~~ (13) This section does not affect the application of
24 chapter 21.20 RCW.

25 (14) Nothing in this section shall be construed to create or
26 imply a private cause of action for a violation of this section or to
27 subject a producer to civil liability under the best interest
28 standard of care outlined in subsection (2) of this section or under
29 standards governing the conduct of a fiduciary or a fiduciary
30 relationship.

31 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2024.

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