

ESSB 5671 - H COMM AMD

By Committee on Financial Institutions & Insurance

ADOPTED 03/13/2009

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The purpose of this act is to permit and
4 set standards for producers and insurers selling annuity products
5 issued after the effective date of this section that ensure consumers
6 purchase annuities suitable to their financial and insurance needs and
7 life circumstances.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.23 RCW
9 to read as follows:

10 (1) For the purposes of this section:

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

14 (b) "Recommendation" means advice provided by an insurance
15 producer, or an insurer when no producer is involved, to an individual
16 consumer that results in a purchase or exchange of an annuity in
17 accordance with that advice.

18 (2) Insurers and insurance producers must comply with the following
19 requirements in recommending and executing a purchase or exchange of an
20 annuity:

21 (a) In recommending the purchase of an annuity or the exchange of
22 an annuity that results in another insurance transaction or series of
23 insurance transactions to a consumer, the insurance producer, or the
24 insurer when no producer is involved, must have reasonable grounds for
25 believing that the recommendation is suitable for the consumer on the
26 basis of the facts disclosed by the consumer about their investments
27 and other insurance products and as to their financial situation and
28 needs.

1 (b) Prior to the execution of a purchase or exchange of an annuity
2 resulting from a recommendation, an insurance producer, or an insurer
3 when no producer is involved, shall make reasonable efforts to obtain
4 information concerning:

5 (i) The consumer's financial status;

6 (ii) The consumer's tax status;

7 (iii) The consumer's investment objectives; and

8 (iv) Other information used or considered to be reasonable by the
9 insurance producer, or the insurer when no producer is involved, in
10 making recommendations to the consumer.

11 (3) An insurer or insurance producer's recommendation must be
12 reasonable under all circumstances actually known to the insurer or
13 insurance producer at the time of the recommendation. Neither an
14 insurance producer nor an insurer when no producer is involved, has any
15 obligation to a consumer under subsection (2) of this section related
16 to any recommendation if a consumer:

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

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

21 (c) Fails to provide complete or accurate information.

22 (4) An insurer must assure that a system to supervise
23 recommendations, reasonably designed to achieve compliance with this
24 section, is established and maintained. The system must include, but
25 is not limited to, written procedures and conducting periodic review of
26 its records that are reasonably designed to assist in detecting and
27 preventing violations of this section.

28 (a) An insurer may contract with a third party, including insurance
29 producers, a general agent, or independent agency, to establish and
30 maintain a system of supervision as required in this subsection with
31 respect to insurance producers under contract with or employed by the
32 third party. An insurer must make reasonable inquiry to assure that
33 the third party is performing the functions required in this subsection
34 and must take action as is reasonable under the circumstances to
35 enforce the contractual obligation to perform the functions. An
36 insurer may comply with its obligation to make reasonable inquiry by
37 doing all of the following:

1 (i) Annually obtaining a certification from a third party senior
2 manager with responsibility for the delegated functions that the
3 manager has a reasonable basis to represent, and does represent, that
4 the third party is performing the required functions; and

5 (ii) Based on reasonable selection criteria, periodically selecting
6 third parties contracting under this subsection for a review to
7 determine whether the third parties are performing the required
8 functions. The insurer shall perform those procedures to conduct the
9 review that are reasonable under the circumstances.

10 (b) An insurer, or the contracted third party if a general agent or
11 independent agency, is not required to:

12 (i) Review, or provide for review of, all insurance producer
13 solicited transactions; or

14 (ii) Include in its system of supervision an insurance producer's
15 recommendations to consumers of products other than the annuities
16 offered by the insurer, general agent, or independent agency.

17 (c) A general agent or independent agency contracting with an
18 insurer to supervise compliance with this section shall promptly, when
19 requested by the insurer, give a certification of compliance or give a
20 clear statement that it is unable to meet the certification criteria.
21 A person may not provide a certification unless the person:

22 (i) Is a senior manager with responsibility for the delegated
23 functions; and

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

25 (5) Compliance with the financial industry regulatory authority
26 conduct rules pertaining to suitability satisfies the requirements
27 under this section for the recommendation of annuities registered under
28 the securities act of 1933 (15 U.S.C. Sec. 77(a) et seq. or as
29 hereafter amended). The insurance commissioner must notify the
30 appropriate committees of the house of representatives and senate if
31 there are changes regarding the registration of annuities under the
32 securities act of 1933 that affect the application of this subsection.
33 This subsection does not limit the insurance commissioner's ability to
34 enforce this section.

35 (6) The commissioner may order an insurer, an insurance producer,
36 or both, to take reasonably appropriate corrective action for any
37 consumer harmed by the insurer's or insurance producer's violation of
38 this section.

1 (a) Any applicable penalty under this or other sections of Title 48
2 RCW may be reduced or eliminated by the commissioner if corrective
3 action for the consumer was taken promptly after a violation was
4 discovered.

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

7 (7) Insurers and insurance producers must maintain or be able to
8 make available to the commissioner records of the information collected
9 from the consumer and other information used in making the
10 recommendations that were the basis for the insurance transaction for
11 five years after the insurance transaction is completed by the insurer,
12 or for five years after the annuity begins paying benefits, whichever
13 is longer. An insurer is permitted, but is not required, to maintain
14 documentation on behalf of an insurance producer. This section does
15 not relieve an insurance producer of the obligation to maintain records
16 of insurance transactions as required by RCW 48.17.470.

17 (8) The commissioner may adopt rules to implement and administer
18 this section.

19 (9) Unless otherwise specifically included, this section does not
20 apply to recommendations involving:

21 (a) Direct response solicitations when there is no recommendation
22 based on information collected from the consumer under this section; or

23 (b) Contracts used to fund:

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

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

29 (iii) A government or church plan defined in section 414 of the
30 internal revenue code, a government or church welfare benefit plan or
31 a deferred compensation plan of a state or local government or tax
32 exempt organization under section 457 of the internal revenue code;

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

35 (v) Settlements of or assumptions of liabilities associated with
36 personal injury litigation or any dispute or claim resolution process;
37 or

38 (vi) Formal prepaid funeral contracts.

1 (10) This section does not affect the application of chapter 21.20
2 RCW."

3 Correct the title.

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