

SENATE BILL REPORT

ESSB 5671

As Amended by House, March 13, 2009

Title: An act relating to the suitability of annuities sold in Washington.

Brief Description: Determining the suitability of annuities sold in Washington.

Sponsors: Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Franklin, Shin and Haugen; by request of Insurance Commissioner).

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/10/09, 2/17/09 [DPS].
Passed Senate: 3/06/09, 45-0.
Passed House: 3/13/09, 92-0.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5671 be substituted therefor, and the substitute bill do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin, McDermott, Parlette and Schoesler.

Staff: Philip Brady (786-7460)

Background: The Insurance Commissioner (the commissioner) oversees insurers; insurance producers; insurance solicitors and adjusters; and the market practices of those persons and entities. This includes the sale of fixed and variable annuities.

The Department of Financial Institutions (DFI) regulates sales of most securities, and requires that people selling securities make recommendations that are suitable to the client. Fixed annuities are specifically excluded from DFI's regulation of securities and are not subject to the suitable recommendation requirement. Variable rate annuities are considered securities and are subject to the suitable recommendation requirement.

Summary of Engrossed Substitute Bill: Insurers and producers must comply with a number of requirements in recommending or selling an annuity: they must have reasonable grounds to believe the recommendation is suitable; must make reasonable efforts to obtain

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relevant information from the client; and must make recommendations that are reasonable in light of all circumstances actually known to the insurer and producer.

Insurers may use a third party to monitor producers' compliance with these requirements if there is some reasonable inquiry by the insurer into the practices of the third party. A senior manager of the third party with a reasonable basis of knowledge must certify compliance with this section. Insurers and producers must retain records for at least five years, including the information used in making recommendations to consumers.

The commissioner may order insurers and producers to take reasonably appropriate corrective action, and penalties may be reduced or eliminated in response to corrective actions.

Compliance with Financial Industry Regulatory Authority (FINRA) suitability rules is considered compliance with this section for annuities registered as securities.

This section doesn't apply to annuities that fund specified retirement plans, deferred compensation arrangements, settlements of personal injury litigation, or prepaid funeral contracts.

Nothing in this act is intended to affect the application of the Securities Act of Washington.

Appropriation: None.

Fiscal Note: Requested on February 7, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is about consumer protection. Annuity products are increasingly complicated, and clients rely on their agents. Clients are typically older persons looking for yearly income, and are often vulnerable. Thirty-nine other states require suitability for annuities, including Oregon and Idaho. Some annuities are already covered under securities suitability requirement, and this would cover the unprotected annuities.

CON: Suitability requirements are good. The model act has an exemption for people who comply with the securities side, but this bill doesn't. It should.

OTHER: Suitability requirements are good, but this is not the model language that has been adopted in 31 states. Complying with the model language would be simpler for sellers of these products.

Persons Testifying: PRO: Drew Bouton, Office of the Insurance Commissioner.

CON: Bill Stauffacher, Securities Industry and Financial Markets Association.

OTHER: Mel Sorensen, American Council of Life Insurers.

House Amendment(s): The Commissioner must notify the Legislature and the Governor of any changes regarding the registration of securities that would affect the applicability of this act.