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ENGROSSED SUBSTITUTE SENATE BILL 5671

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State of Washington

61st Legislature

2009 Regular Session

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Franklin, Shin, and Haugen; by request of Insurance Commissioner)

READ FIRST TIME 02/19/09.

1 AN ACT Relating to the suitability of annuities sold in Washington;  
2 adding a new section to chapter 48.23 RCW; and creating a new section.

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

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

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

11 (1) For the purposes of this section:

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

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

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

4 (a) In recommending the purchase of an annuity or the exchange of  
5 an annuity that results in another insurance transaction or series of  
6 insurance transactions to a consumer, the insurance producer, or the  
7 insurer when no producer is involved, must have reasonable grounds for  
8 believing that the recommendation is suitable for the consumer on the  
9 basis of the facts disclosed by the consumer about their investments  
10 and other insurance products and as to their financial situation and  
11 needs.

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

16 (i) The consumer's financial status;

17 (ii) The consumer's tax status;

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

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

22 (3) An insurer or insurance producer's recommendation must be  
23 reasonable under all circumstances actually known to the insurer or  
24 insurance producer at the time of the recommendation. Neither an  
25 insurance producer nor an insurer when no producer is involved, has any  
26 obligation to a consumer under subsection (2) of this section related  
27 to any recommendation if a consumer:

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

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

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

33 (4) An insurer must assure that a system to supervise  
34 recommendations, reasonably designed to achieve compliance with this  
35 section, is established and maintained. The system must include, but  
36 is not limited to, written procedures and conducting periodic review of  
37 its records that are reasonably designed to assist in detecting and  
38 preventing violations of this section.

1 (a) An insurer may contract with a third party, including insurance  
2 producers, a general agent, or independent agency, to establish and  
3 maintain a system of supervision as required in this subsection with  
4 respect to insurance producers under contract with or employed by the  
5 third party. An insurer must make reasonable inquiry to assure that  
6 the third party is performing the functions required in this subsection  
7 and must take action as is reasonable under the circumstances to  
8 enforce the contractual obligation to perform the functions. An  
9 insurer may comply with its obligation to make reasonable inquiry by  
10 doing all of the following:

11 (i) Annually obtaining a certification from a third party senior  
12 manager with responsibility for the delegated functions that the  
13 manager has a reasonable basis to represent, and does represent, that  
14 the third party is performing the required functions; and

15 (ii) Based on reasonable selection criteria, periodically selecting  
16 third parties contracting under this subsection for a review to  
17 determine whether the third parties are performing the required  
18 functions. The insurer shall perform those procedures to conduct the  
19 review that are reasonable under the circumstances.

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

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

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

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

32 (i) Is a senior manager with responsibility for the delegated  
33 functions; and

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

35 (5) Compliance with the financial industry regulatory authority  
36 conduct rules pertaining to suitability satisfies the requirements  
37 under this section for the recommendation of annuities registered under

1 the securities act of 1933 (15 U.S.C. Sec. 77(a) et seq. or as  
2 hereafter amended). This subsection does not limit the insurance  
3 commissioner's ability to enforce this section.

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

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

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

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

24 (8) The commissioner may adopt rules to implement and administer  
25 this section.

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

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

30 (b) Contracts used to fund:

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

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

36 (iii) A government or church plan defined in section 414 of the  
37 internal revenue code, a government or church welfare benefit plan or

1 a deferred compensation plan of a state or local government or tax  
2 exempt organization under section 457 of the internal revenue code;  
3 (iv) A nonqualified deferred compensation arrangement established  
4 or maintained by an employer or plan sponsor;  
5 (v) Settlements of or assumptions of liabilities associated with  
6 personal injury litigation or any dispute or claim resolution process;  
7 or  
8 (vi) Formal prepaid funeral contracts.  
9 (10) This section does not affect the application of chapter 21.20  
10 RCW.

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