

AMENDED IN SENATE MARCH 7, 2023

SENATE BILL

No. 263

Introduced by Senator Dodd

January 30, 2023

An act to amend ~~Section 10509.914~~ of Sections 10509.910, 10509.911, 10509.912, 10509.913, and 10509.915 of, to amend and renumber Sections 10509.916, 10509.917, and 10509.918 of, to add Sections 1749.81 and 10509.916 to, and to repeal and add Section 10509.914 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 263, as amended, Dodd. Insurance: ~~annuity recommendations, annuities and life insurance policies.~~

Existing law generally regulates classes of insurance, including life insurance and annuities. Existing law requires insurers to establish a system to supervise recommendations and set standards and procedures for recommendations for annuity products, which applies to any recommendation to purchase, exchange, or replace an annuity made to a consumer that results in the purchase, exchange, or replacement that was recommended. Existing law requires an insurance producer recommending the purchase or exchange of an annuity to have reasonable grounds for believing that the recommendation is suitable for the consumer, as specified.

This bill would revise and recast those provisions, making them also applicable to life insurance policies. The bill would require insurance producers to act in the best interest of the consumer when making a recommendation of an annuity or life insurance policy. The bill would require an insurer to establish, maintain, and utilize a system to supervise recommendations for annuities or life insurance policies,

which would apply to any recommendation made to a consumer to purchase, convert, replace, or modify an annuity or life insurance policy. The bill would set forth various duties of an insurer and producer to ensure that recommended annuities and life insurance policies are only in the consumer's best interest, and would specify obligations that ensure a producer has acted in the best interest of a consumer, including the provision of specified forms and information to the consumer. The bill would require a life insurer to provide a buyer's guide to all consumers who purchase an annuity.

This bill would require a life agent or insurance producer who engages in the sale of life insurance policies to complete specified hours of life insurance training courses before soliciting or transacting life insurance policies or renewing their license.

~~Existing law requires, when recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or an insurer if no producer is involved, to have reasonable grounds for believing that the recommendation is suitable for the consumer based on the facts disclosed by the consumer as to their investments, financial situation, and needs, and that there is a reasonable basis to believe, among other things, the consumer would receive a tangible net benefit from the transaction.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1749.81 is added to the Insurance Code,
- 2 to read:
- 3 1749.81. (a) A life agent who sells life insurance policies shall
- 4 satisfactorily complete four hours of training before soliciting
- 5 individual consumers to sell life insurance policies. This training
- 6 is in addition to, and is not a part of, the annuity training required
- 7 by subdivision (a) of Section 1749.8.
- 8 (b) A life agent who sells life insurance policies shall
- 9 satisfactorily complete two hours of training before each license
- 10 renewal. Completion of the four-hour life insurance policy training
- 11 required by subdivision (a) does not satisfy the two-hour life

1 *insurance policy training required by this subdivision. This training*
2 *is in addition to, and is not a part of, the annuity training required*
3 *by subdivision (b) of Section 1749.8. For resident licensees, this*
4 *requirement shall count toward the licensee's continuing education*
5 *requirement, but may still result in completing more than the*
6 *minimum number of continuing education hours set forth in this*
7 *section.*

8 *(c) The training required by this section shall be approved by*
9 *the commissioner and shall consist of topics related to life*
10 *insurance policies, California law, regulations, and requirements*
11 *related to life insurance policies, prohibited sales practices, the*
12 *recognition of indicators that a prospective insured may lack the*
13 *short-term memory or judgment to knowingly purchase an*
14 *insurance product, and fraudulent and unfair trade practices.*
15 *Subject matter determined by the commissioner to be primarily*
16 *intended to promote the sale or marketing of life insurance policies*
17 *shall not qualify for credit toward the training requirement. A*
18 *course or seminar that is disapproved under this section shall be*
19 *presumed invalid for credit toward the training requirement of*
20 *this section unless it is approved in writing by the commissioner.*
21 *The training required by this section is in addition to the topics*
22 *listed in subdivision (c) of Section 10509.915.*

23 *(d) The training requirements set forth in this section shall not*
24 *apply to nonresident agents representing an insurer that is a direct*
25 *response provider.*

26 *(e) For the purposes of this section, "direct response provider"*
27 *means an insurer that meets each of the following criteria:*

28 *(1) The insurer does not initiate telephone contact with insureds*
29 *or prospective insureds.*

30 *(2) Agents of the insurer speak with insureds and prospective*
31 *insureds only by telephone, and at the request of the insureds or*
32 *prospective insureds.*

33 *(3) Agents of the insurer are assigned to speak with insureds*
34 *or prospective insureds on a random basis, when contacted.*

35 *(4) Agents of the insurer are salaried and do not receive*
36 *commissions for sales or referrals.*

37 *SEC. 2. Section 10509.910 of the Insurance Code is amended*
38 *to read:*

39 *10509.910. The purpose of this article is to require insurance*
40 *producers to act in the best interest of the consumer when making*

1 *a recommendation of an annuity or life insurance policy and to*
2 *require insurers to ~~establish~~ establish, maintain, and utilize a*
3 *system to supervise recommendations and to set forth standards*
4 *and procedures for recommendations to consumers that result in*
5 *transactions involving ~~annuity products, annuities or life insurance~~*
6 *policies, so that the insurance needs and financial objectives of*
7 *consumers at the time of the transaction are ~~appropriately~~ effectively*
8 *addressed.*

9 *SEC. 3. Section 10509.911 of the Insurance Code is amended*
10 *to read:*

11 10509.911. (a) This article shall apply to any recommendation
12 *made to a consumer to purchase, exchange, ~~or replace~~ convert,*
13 *replace, or modify an annuity ~~made to a consumer that results in~~*
14 *the purchase, exchange, or replacement that was recommended.*
15 *or life insurance policy, or to elect a contractual provision of an*
16 *in-force annuity or life insurance policy.*

17 (b) ~~Nothing in this act shall be interpreted to~~ *This article does*
18 *not preclude, preempt, or otherwise interfere with the application*
19 *of any other laws of this state that may apply in any matter*
20 *involving the sale of an annuity or life insurance policy that is*
21 *subject to this article.*

22 *SEC. 4. Section 10509.912 of the Insurance Code is amended*
23 *to read:*

24 10509.912. Unless otherwise specifically included, this article
25 ~~shall~~ *does not apply to transactions involving any of the following:*

26 (a) Direct response solicitations where there is no
27 recommendation based on information collected from the consumer
28 pursuant to this article.

29 (b) *Settlements of or assumptions of liabilities associated with*
30 *personal injury litigation or a dispute or claim resolution process.*

31 (c) *Formal prepaid funeral contracts.*

32 ~~(b) Contracts~~

33 (d) *Annuities and life insurance policies used to fund any of the*
34 ~~following:~~ *following if a recommendation is not made to an*
35 *individual consumer:*

36 (1) An employee pension or welfare benefit plan that is covered
37 by the federal Employee Retirement Income Security Act (ERISA)
38 of 1974 (29 U.S.C. Sec. 1001 et seq.).

(2) A plan described by Section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer.

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the IRC.

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

~~(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.~~

~~(6) Formal prepaid funeral contracts.~~

SEC. 5. Section 10509.913 of the Insurance Code is amended to read:

10509.913. For purposes of this article:

(a) “Annuity” means an annuity that is an insurance product under California law that is individually solicited, regardless of whether or not the product is classified as an individual or group annuity.

(b) “Commissioner” means the Insurance Commissioner.

(c) (1) “Compensation” means anything of value, if paid as commission or otherwise and if paid as cash or by some other means, received by a producer in connection with the recommendation or sale of an annuity or life insurance policy from an insurer, intermediary, or directly from the consumer.

(2) “Compensation” includes money, credits, loans, interest on premium, forgiveness of principal or interest, any discounts, concessions, fees, service fees, commissions, sales charges, overrides, cash benefits, trips, prizes, or gifts. “Compensation” also includes any health insurance, office rent, office support, and retirement benefits.

(3) “Compensation” does not mean tangible goods with the insurer name, logo, or other advertisement that have an aggregate value of less than one hundred fifty dollars (\$150) per year per insurer.

(d) “Consumer profile information” means information that is reasonably appropriate to determine the suitability of a recommendation.

1 *(1) For a life insurance policy solely providing term life*
2 *insurance with no cash value, “consumer profile information”*
3 *means all of the following:*

4 *(A) Age.*

5 *(B) Annual income.*

6 *(C) Financial situation and needs, including debts and other*
7 *obligations, and the financial resources used for the funding of*
8 *the life insurance policy.*

9 *(D) Insurance needs.*

10 *(E) Financial objectives.*

11 *(F) Intended use of the life insurance policy, including any*
12 *riders attached thereto.*

13 *(G) Financial time horizon, including the duration of existing*
14 *liabilities and obligations.*

15 *(H) Existing assets, including investment and insurance*
16 *holdings.*

17 *(I) Willingness to accept nonguaranteed elements in the policy,*
18 *including variability in premium, death benefit, or fees.*

19 *(J) Any other relevant information that the producer or the*
20 *insurer knew or reasonably should have known about, as provided*
21 *by the consumer or by observing the consumer’s circumstances.*

22 *(2) For an annuity or life insurance policy other than a life*
23 *insurance policy solely providing term life insurance with no cash*
24 *value, “consumer profile information” means all of the following:*

25 *(A) Age.*

26 *(B) Annual income.*

27 *(C) Financial situation and needs, including debts and other*
28 *obligations, and the financial resources used for the funding of*
29 *the annuity or life insurance policy.*

30 *(D) Financial experience.*

31 *(E) Insurance needs.*

32 *(F) Financial objectives.*

33 *(G) Intended use of the annuity or life insurance policy,*
34 *including any riders attached thereto.*

35 *(H) Financial time horizon, including the duration of existing*
36 *liabilities and obligations.*

37 *(I) Existing assets, including investments, annuity and life*
38 *insurance, and other insurance holdings, and other financial*
39 *products.*

40 *(J) Liquidity needs.*

1 (K) *Liquid net worth.*

2 (L) *Risk tolerance, such as willingness to accept variability in*
3 *premiums, returns, death benefits, values, credits, or fees and other*
4 *charges, and other nonguaranteed elements in the annuity or life*
5 *insurance policy.*

6 (M) *Tax status.*

7 (N) *Whether or not the consumer has a reverse mortgage.*

8 (O) *Whether or not the consumer intends to apply for*
9 *means-tested government benefits, including Medi-Cal or the*
10 *veterans' aid and attendance benefit.*

11 (P) *Any other relevant information that the producer or the*
12 *insurer knew or reasonably should have known about, as provided*
13 *by the consumer or by observing the consumer's circumstances*
14 *information.*

15 ~~(e)~~

16 (e) "Continuing education credit" or "CE credit" means one
17 continuing education credit hour as defined in Section 2188.2(i)
18 of Title 10 of the California Code of Regulations.

19 ~~(d)~~

20 (f) "Continuing education provider" or "CE provider" means
21 an individual or entity that is certified to offer continuing education
22 courses pursuant to Section 2186.1(b) and Section 2188 of Title
23 10 of the California Code of Regulations.

24 (g) "FINRA" means the Financial Industry Regulatory Authority
25 or a successor agency.

26 ~~(e)~~

27 (h) "Insurance producer" means a ~~person~~ person, as defined in
28 Section 19, required to be licensed under California law to sell,
29 solicit, or negotiate insurance, including annuities. An insurance
30 producer is also referred to in this article as a "producer."
31 "Producer" includes an insurer when no producer is involved.

32 (i) "Insurer" means either of the following:

33 ~~(f) "Insurer" means a~~

34 (1) A company required to be licensed or to hold a certificate
35 of authority, or both, under California law to provide insurance
36 products, including ~~annuities.~~ annuities or life insurance policies.

37 ~~(g) "Recommendation" means advice or guidance provided or~~
38 ~~made by an insurance producer or by an insurer to an individual~~
39 ~~consumer that results in a purchase, exchange, or replacement of~~
40 ~~an annuity in accordance with that advice or guidance.~~

(2) A fraternal benefit society, as defined in Section 10990.

(j) “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities or life insurance policies by producers.

(k) “Life insurance policy” means a life insurance policy that is an insurance product under California law that is individually solicited, regardless of whether or not the product is classified as individual or group life insurance.

(l) “Material conflict of interest” means a financial interest of the producer in the sale of an annuity or life insurance policy that a reasonable person would expect to influence the impartiality of a recommendation.

(m) “Nonguaranteed elements” means the premiums, benefits, values, credits, charges, and other elements not guaranteed over the life of the annuity or life insurance policy, such as credited interest rates including any temporary bonus interest rate, dividends, noninterest based credits, index parameters, periodic expense charges, or elements of formulas used to determine any of these nonguaranteed elements, that are subject to insurer discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(n) (1) “Recommendation” means advice, guidance, or acts directed to a consumer by a producer, or an insurer, that a consumer may reasonably interpret to be advice or guidance or that the producer intends to be advice or guidance regarding whether or not to do any of the following:

(A) Purchase, exchange, convert, modify, or replace an annuity or a life insurance policy.

(B) Refrain from purchasing, exchanging, converting, modifying, or replacing an annuity or a life insurance policy.

(C) Elect a contractual provision with respect to an in-force annuity or life insurance policy in accordance with that advice, guidance, or those acts.

(2) “Recommendation” does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(h)

1 (o) “Replacement” means a transaction in which a new *annuity*
2 *or life insurance* policy ~~or contract~~ is to be purchased, and it is
3 known or should be known to the proposing producer, or to the
4 proposing insurer, regardless of whether or not there is a producer,
5 that by reason of the transaction, an existing *annuity or life*
6 *insurance* policy ~~or contract~~ has been or is to be any of the
7 following:

8 (1) Lapsed, forfeited, surrendered or partially surrendered,
9 assigned to the replacing insurer, or otherwise terminated.

10 (2) Converted to reduced paid-up insurance, continued as
11 extended term insurance, or otherwise reduced in value by the use
12 of nonforfeiture benefits or other policy values.

13 (3) Amended so as to effect either a reduction in benefits or a
14 reduction in the term for which coverage would otherwise remain
15 in force or for which benefits would be paid.

16 (4) Reissued with any reduction in cash value.

17 (5) Used in a financed purchase.

18 (i) ~~“Suitability information” means information that is~~
19 ~~reasonably appropriate to determine the suitability of a~~
20 ~~recommendation, including all of the following:~~

21 ~~(1) Age.~~

22 ~~(2) Annual income.~~

23 ~~(3) Financial situation and needs, including the financial~~
24 ~~resources used for the funding of the annuity.~~

25 ~~(4) Financial experience.~~

26 ~~(5) Financial objectives.~~

27 ~~(6) Intended use of the annuity.~~

28 ~~(7) Financial time horizon.~~

29 ~~(8) Existing assets, including investment and life insurance~~
30 ~~holdings.~~

31 ~~(9) Liquidity needs.~~

32 ~~(10) Liquid net worth.~~

33 ~~(11) Risk tolerance.~~

34 ~~(12) Tax status.~~

35 ~~(13) Whether or not the consumer has a reverse mortgage.~~

36 ~~(14) Whether or not the consumer intends to apply for~~
37 ~~means-tested government benefits, including, but not limited to,~~
38 ~~Medi-Cal or the veterans’ aid and attendance benefit.~~

39 *SEC. 6. Section 10509.914 of the Insurance Code is repealed.*

1 ~~10509.914. (a) In recommending to a consumer the purchase~~
2 ~~of an annuity or the exchange of an annuity that results in another~~
3 ~~insurance transaction or series of insurance transactions, the~~
4 ~~insurance producer, or an insurer if no producer is involved, shall~~
5 ~~have reasonable grounds for believing that the recommendation~~
6 ~~is suitable for the consumer on the basis of the facts disclosed by~~
7 ~~the consumer as to his or her investments and other insurance~~
8 ~~products and as to his or her financial situation and needs, including~~
9 ~~the consumer's suitability information, and that there is a~~
10 ~~reasonable basis to believe all of the following:~~

11 ~~(1) The consumer has been reasonably informed of various~~
12 ~~features of the annuity, such as the potential surrender period and~~
13 ~~surrender charge, potential tax penalty if the consumer sells,~~
14 ~~exchanges, surrenders, or annuitizes the annuity, mortality and~~
15 ~~expense fees, investment advisory fees, potential charges for and~~
16 ~~features of riders, limitations on interest returns, insurance and~~
17 ~~investment components, and market risk.~~

18 ~~(2) The consumer would receive a tangible net benefit from the~~
19 ~~transaction.~~

20 ~~(3) The particular annuity as a whole, the underlying~~
21 ~~subaccounts to which funds are allocated at the time of purchase~~
22 ~~or exchange of the annuity, and riders and similar product~~
23 ~~enhancements, if any, are suitable, and in the case of an exchange~~
24 ~~or replacement, the transaction as a whole is suitable, for the~~
25 ~~particular consumer based on his or her suitability information.~~

26 ~~(4) In the case of an exchange or replacement of an annuity, the~~
27 ~~exchange or replacement is suitable, including taking into~~
28 ~~consideration all of the following:~~

29 ~~(A) Whether the consumer will incur a surrender charge, be~~
30 ~~subject to the commencement of a new surrender period, lose~~
31 ~~existing benefits, such as death, living, or other contractual benefits,~~
32 ~~or be subject to increased fees, investment advisory fees, or charges~~
33 ~~for riders and similar product enhancements.~~

34 ~~(B) Whether the consumer would benefit from product~~
35 ~~enhancements and improvements.~~

36 ~~(C) Whether the consumer has had another annuity exchange~~
37 ~~or replacement and, in particular, an exchange or replacement~~
38 ~~within the preceding 60 months.~~

39 ~~(b) Prior to the execution of a purchase, exchange, or~~
40 ~~replacement of an annuity resulting from a recommendation, an~~

1 insurance producer, or an insurer where no producer is involved,
2 shall make reasonable efforts to obtain the consumer's suitability
3 information.

4 (e) Except as permitted under subdivision (d), an insurer shall
5 not issue an annuity recommended to a consumer unless there is
6 a reasonable basis to believe the annuity is suitable based on the
7 consumer's suitability information. The preceding sentence and
8 subdivision (d) notwithstanding, neither a producer nor an insurer
9 shall in any event recommend to a person 65 years of age or older
10 the sale of an annuity to replace an existing annuity that requires
11 the insured to pay a surrender charge for the annuity that is being
12 replaced, where purchase of the annuity does not confer a
13 substantial financial benefit over the life of the policy to the
14 consumer, so that a reasonable person would believe the purchase
15 is unnecessary.

16 (d) (1) Except as provided under paragraph (2), neither an
17 insurance producer nor an insurer shall have any obligation to a
18 consumer under subdivision (a) or (e) related to an annuity
19 transaction if any of the following occur:

20 (A) No recommendation is made.

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

24 (C) A consumer refuses to provide relevant suitability
25 information and the annuity transaction is not recommended.

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

29 (2) An insurer's issuance of an annuity subject to paragraph (1)
30 shall be reasonable under all the circumstances which are actually
31 known, or which after reasonable inquiry should be known, to the
32 insurer or the insurance producer at the time the annuity is issued.

33 (e) An insurance producer or, where no insurance producer is
34 involved, the responsible insurer representative, shall at the time
35 of sale do all of the following:

36 (1) Make a record of any recommendation subject to subdivision
37 (a).

38 (2) Obtain a customer-signed statement documenting the
39 customer's refusal to provide suitability information, if any.

~~(3) Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~

~~(f) (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with this article, including, but not limited to, all of the following:~~

~~(A) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this article and shall incorporate the requirements of this article into relevant insurance producer training manuals.~~

~~(B) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of Section 10509.915.~~

~~(C) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers.~~

~~(D) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. The review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. An electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria.~~

~~(E) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information; systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity.~~

~~(F) The insurer shall annually provide a report to its senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing,~~

1 reasonably designed to determine the effectiveness of the
2 supervision system, the exceptions found, and corrective action
3 taken or recommended, if any.

4 (2) (A) Nothing in this subdivision restricts an insurer from
5 contracting for performance of a function, including maintenance
6 of procedures, required under paragraph (1). An insurer is
7 responsible for taking appropriate corrective action, and may be
8 subject to sanctions and penalties pursuant to Section 10509.916
9 regardless of whether the insurer contracts for performance of a
10 function and regardless of the insurer's compliance with
11 subparagraph (B). An insurer is responsible for the compliance of
12 its insurance producer with the provisions of this article regardless
13 of whether the insurer contracts for performance of a function
14 required under this subdivision and regardless of the insurer's
15 compliance with subparagraph (B).

16 (B) An insurer's supervision system under paragraph (1) shall
17 include reasonable supervision of contractual performance under
18 this subdivision. This includes, but is not limited to, both of the
19 following:

20 (i) Reasonable monitoring and, as appropriate, conducting audits
21 to ensure that the contracted function is properly performed.

22 (ii) Annually obtaining a certification from a senior manager
23 who has responsibility for the contracted function that the manager
24 has a reasonable basis to represent, and does represent, that the
25 function is properly performed.

26 (3) An insurer is not required to include in its system of
27 supervision an insurance producer's recommendations to
28 consumers of products other than the annuities offered by the
29 insurer.

30 (g) An insurance producer or insurer shall not dissuade, or
31 attempt to dissuade, a consumer from any of the following:

32 (1) Truthfully responding to an insurer's request for confirmation
33 of suitability information.

34 (2) Filing a complaint.

35 (3) Cooperating with the investigation of a complaint.

36 (h) (1) This subdivision applies to FINRA broker-dealer sales
37 of variable and fixed annuities.

38 (2) Sales by FINRA broker-dealers that comply with the
39 suitability and supervision system requirements set forth in FINRA
40 Rule 2330, or any successor rule, shall satisfy the suitability and

~~supervision system requirements of this article, provided that the suitability criteria used also include both of the following:~~

~~(A) The consumer's income.~~

~~(B) The intended use of the annuity.~~

~~(3) Except as provided in paragraphs (1) and (2), all other provisions of this article remain applicable to these broker-dealer sales.~~

~~(4) Nothing in this subdivision shall limit the commissioner's ability to enforce, including conducting investigations related to, the provisions of this article.~~

~~(5) "FINRA" means the Financial Industry Regulatory Authority or a successor agency.~~

SEC. 7. Section 10509.914 is added to the Insurance Code, to read:

10509.914. Insurers and producers have the following duties to ensure that annuities and life insurance policies that are recommended are only in the consumer's best interest:

(a) Best Interest Obligation. A producer or insurer, when making a recommendation of an annuity or a life insurance policy, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made. A producer has acted in the best interest of the consumer if they have satisfied all of the following obligations regarding care, disclosure, conflict of interest, and documentation:

(1) Care Obligation.

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

(i) Know the consumer's financial situation, financial needs, insurance needs, and financial objectives.

(ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer.

(iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, financial needs, insurance needs, and financial objectives over the life of the annuity or life insurance policy, as evaluated in light of the consumer profile information.

(iv) Have a reasonable basis to believe that the consumer would receive a tangible net benefit from the transaction over the life of the annuity or life insurance policy.

1 (v) *Communicate the basis or bases of the recommendation to*
2 *the consumer orally and in writing and to the insurer in writing.*

3 (B) *The producer's or insurer's recommendation to the*
4 *consumer shall be based on an evaluation of the consumer's*
5 *relevant consumer profile information and other relevant*
6 *information, and shall reflect the care, skill, prudence, and*
7 *diligence that a prudent person acting in a like capacity and*
8 *familiar with those matters would use under the circumstances*
9 *then prevailing.*

10 (C) *Only the interests of the consumer shall be considered in*
11 *making the recommendation and complying with other obligations*
12 *under this section.*

13 (D) *The requirements under subparagraph (A) include all of*
14 *the following:*

15 (i) *Making reasonable efforts to obtain consumer profile*
16 *information from the consumer before recommending an annuity*
17 *or life insurance policy.*

18 (I) *If the consumer does not provide the producer with complete*
19 *consumer profile information, the producer shall not submit an*
20 *application on behalf of the consumer to the insurer.*

21 (II) *The insurer shall not issue the annuity or life insurance*
22 *policy if the consumer has refused to provide complete consumer*
23 *profile information.*

24 (ii) (I) *Considering those factors generally relevant in making*
25 *a determination about whether or not an annuity or life insurance*
26 *policy effectively addresses the consumer's financial situation,*
27 *financial needs, insurance needs, and financial objectives. The*
28 *factors generally relevant in making this determination include*
29 *the consumer profile information, characteristics of the insurer,*
30 *and product costs, rates, benefits, and features. The features to be*
31 *considered include:*

32 (ia) *The length of the surrender charge period and surrender*
33 *charge amounts.*

34 (ib) *Product costs, such as cost of insurance charges, annual*
35 *and other periodic fees and expense charges, mortality and expense*
36 *fees, investment advisory fees, investment and interest option fees.*

37 (ic) *Costs and features of riders or other options.*

38 (id) *Minimum guarantees, including guaranteed interest rates,*
39 *participation rates, caps, spreads, floors, buffers, and limitations*
40 *on interest returns.*

- 1 ~~(ie) Crediting rates.~~
2 ~~(if) Insurance and investment components.~~
3 ~~(ig) Potential changes in nonguaranteed elements of the annuity~~
4 ~~or life insurance policy.~~
5 ~~(ih) Market risk.~~
6 ~~(ii) Any secondary guarantee period, equity-index features,~~
7 ~~availability of cash value, annuity or life insurance policy~~
8 ~~exclusions or restrictions.~~
9 ~~(ij) Other relevant information that the producer knew or~~
10 ~~reasonably should have known about as provided by the consumer~~
11 ~~or by observing the consumer's circumstances.~~
12 ~~(II) The level of importance of each factor under the care~~
13 ~~obligation of this paragraph may vary depending on the facts and~~
14 ~~circumstances of a particular case, but each factor shall not be~~
15 ~~considered in isolation.~~
16 ~~(iii) Having a reasonable basis to believe the consumer would~~
17 ~~benefit from certain features of the annuity or life insurance policy,~~
18 ~~such as annuitization, death or living benefit, or other~~
19 ~~insurance-related features.~~
20 ~~(E) The requirements under subparagraph (A) require a~~
21 ~~producer to consider the types of products the producer is~~
22 ~~authorized and licensed to recommend or sell that address the~~
23 ~~consumer's financial situation, financial needs, insurance needs,~~
24 ~~and financial objectives. This does not require analysis or~~
25 ~~consideration of any products outside the authority and license of~~
26 ~~the producer. Producers shall be held to consumer protection~~
27 ~~standards that meet or exceed the standards set forth in this~~
28 ~~subdivision.~~
29 ~~(F) The requirements under subparagraph (A) apply to the~~
30 ~~particular annuity or life insurance policy as a whole and the~~
31 ~~underlying subaccounts, if any, to which funds are allocated at~~
32 ~~the time of purchase or exchange of an annuity or life insurance~~
33 ~~policy, and riders and similar product enhancements, if any.~~
34 ~~(G) The requirements under subparagraph (A) do not mean~~
35 ~~either of the following:~~
36 ~~(i) The annuity or life insurance policy with the lowest one-time~~
37 ~~or multiple occurrence compensation structure are always in the~~
38 ~~best interest of the consumer.~~
39 ~~(ii) The producer has ongoing monitoring obligations under~~
40 ~~the care obligation under this paragraph, although that obligation~~

1 *may be separately owed under the terms of a fiduciary, consulting,*
2 *investment advising, or financial planning agreement between the*
3 *consumer and the producer.*

4 *(H) For an exchange or replacement of an annuity or life*
5 *insurance policy, the producer, or insurer if no producer is*
6 *involved, shall consider the whole transaction, which includes*
7 *taking into consideration all of the following:*

8 *(i) If the consumer will do any of the following:*

9 *(I) Lose existing benefits, such as:*

10 *(ia) Contract provisions that prorate crediting between*
11 *anniversaries or other contractually specified time periods.*

12 *(ib) The loss or reduction of death benefits, living benefits,*
13 *favorable index parameters, or other contractual benefits or*
14 *features, including free withdrawals, loans, rate guarantees, bonus*
15 *earnings, accelerated death benefits, and secondary guarantees.*

16 *(ic) Decreased coverage duration.*

17 *(id) Decreased income amount.*

18 *(ie) Other contract benefits.*

19 *(II) Be subject to surrender charges, a new graded or modified*
20 *death benefits period, loss of unvested credits, recapture charges,*
21 *loss of persistency-related credits, loss of prorated gains if in*
22 *between anniversaries or other contractually specified time*
23 *periods, or an adverse market-value adjustment or tax implications*
24 *if the consumer surrenders or borrows from the policy.*

25 *(III) Incur new or increased premiums, fees or charges, such*
26 *as a new vesting schedule, a new surrender charge period or a*
27 *change in surrender charges, an adverse change in health rating,*
28 *new or different investment advisory fees, interest option fees,*
29 *premium loads, or charges for riders, and similar product*
30 *enhancements.*

31 *(ii) How those items stated in clause (ii) of subparagraph (B)*
32 *that are contained in the recommended annuity or life insurance*
33 *policy compare with those in the annuity or life insurance policy*
34 *that is being exchanged or replaced.*

35 *(iii) If the replacing product would provide a substantial*
36 *financial benefit to the consumer in comparison to the replaced*
37 *product over the life of the product so that a reasonable person*
38 *would believe the purchase is not unnecessary.*

(iv) If the consumer has had another annuity or life insurance policy exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(I) This article does not require a producer to obtain a license other than a producer license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including a securities license, in order to fulfill the duties and obligations of this section as long as the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

(2) Disclosure Obligation.

(A) At the time of recommendation of an annuity or life insurance policy, the producer shall disclose to the consumer orally and in writing using the Insurance Agent (Producer) Compensation Disclosure for Annuities and Life Insurance Policies form. No part of the form shall be amended or omitted. This form shall not be part of the application or policy. The disclosure form shall be in a freestanding document, using no smaller than 10-point type, and shall be in the following form:

INSURANCE AGENT (PRODUCER) COMPENSATION DISCLOSURE
FOR ANNUITIES and LIFE INSURANCE POLICIES

Do Not Sign Unless You Have Read and Understand the Information in this Form

Date: _____

INSURANCE AGENT (PRODUCER) INFORMATION (“Me,” “I,” “My”)

First Name: _____ Last Name: _____

Business/Agency Name: _____ Website: _____

Business Mailing Address: _____

Business Telephone Number: _____

Email Address: _____

California Producer License Number: _____

CUSTOMER INFORMATION (“You,” “Your”)

First Name: _____ Last Name: _____

What Types of Products Can I Sell You?

I am licensed to sell annuities and/or life insurance policies to You in accordance with California law. If I recommend that You buy an annuity and/or

life insurance policy, it means I believe that it effectively meets Your financial situation, insurance needs, and financial objectives. Other financial products, such as life insurance or stocks, bonds, and mutual funds, may also meet Your needs.

I offer the following products:

Annuities:

☐ Immediate Fixed Annuities

☐ Deferred Fixed Annuities

☐ Fixed Indexed Annuities

☐ Variable Annuities

☐ Index-Linked Variable

Annuities

☐ Other Annuity

(Specify): _____

Life Insurance:

☐ Term Life Insurance Policies

☐ Whole Life Insurance Policies

☐ Universal Life Insurance Policies

☐ Variable Universal Life

Insurance Policies

☐ Indexed Universal Life Insurance Policies

☐ Variable Life Insurance Policies

☐ Other Life Insurance

(Specify): _____

I need a separate license to provide advice about or to sell noninsurance financial products. I have checked below any noninsurance financial products that I am licensed and authorized to provide advice about or to sell.

Securities:

☐ Mutual Funds

☐ Stocks and Bonds

☐ Options

☐ Other Securities

(Specify): _____

Savings Products:

☐ Certificates of Deposit

☐ Other Savings Products

(Specify): _____

Whose Annuities and/or Life Insurance Policies Can I Sell to You?

For purposes of this disclosure, insurance companies owned by the same insurance holding company or that otherwise share common management or control shall be considered to be one insurer.

I am authorized to sell:

<input type="checkbox"/> Annuities from Only One Insurer	<input type="checkbox"/> Life Insurance Policies from Only One Insurer
<input type="checkbox"/> Annuities from Two or More Insurers	<input type="checkbox"/> Life Insurance Policies from Two or More Insurers

<input type="checkbox"/> Annuities from Two or More Insurers although I primarily sell annuities from: _____ _____	<input type="checkbox"/> Life Insurance Policies from Two or More Insurers although I primarily sell life insurance from: _____ _____
-----------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------

Who I Do Work For and How I'm Paid for My Work:

It's important for You to understand who I work for and how I'm paid for my work. I am an agent for one or more insurance companies whose products I sell. Depending on the particular annuity or life insurance policy You purchase, I may be paid a commission or a fee. Commissions are generally paid to Me by the insurance company, while fees are generally paid to Me by You. My commission may be based on the amount of premiums paid for the annuity or life insurance policy purchased.

The compensation paid to Me may vary depending on a number of factors, including (if applicable) the annuity or life insurance policy and the insurance company that You select, the volume of business I provide to the insurance company, or the profitability of the annuities and life insurance policies that I provide to the insurer.

Depending on the particular annuity or life insurance policy You buy, I will or may be paid cash compensation as follows:

☐ Commission, which is usually paid by the insurance company or other sources. If other sources, describe: _____

☐ Fees (such as a fixed amount, an hourly rate, or a percentage of your payment), which are usually paid directly by the customer.

☐ Other (Describe): _____

My Estimated Compensation for the Product(s) I am Recommending for You:

My compensation may include commissions or fees. Here is an explanation of the commissions or fees I may receive for selling the product I'm recommending for You. (Producer must include product name, insurance company, initial estimated premium, and estimated commissions or fees for

years 1 through 10.) Complete an additional form for each product being recommended.

Product Name	Insurance Company Name	Initial Estimated Premium	My Estimated Commission or Fees (years 1 through 10)	Material Conflicts of Interest that I am unable to eliminate
			1. 2. 3. 4. 5. 6. 7. 8. 9. 10. TOTAL years 1-10: \$ _____	

My Ownership Interest in the Insurance Company or any Parent, Subsidiary or Affiliate of the Insurance Company (state % of ownership): _____

Does the Insurance Company have an Ownership Interest in the Insurance Agency I Work With, or in any Parent, Affiliate or Subsidiary of the Agency?
☐Yes ☐No (check one)

I am required to identify and eliminate any material conflicts of interest, if possible. If the material conflict of interest cannot be eliminated, I must (1) take action to ensure the conflict of interest does not prevent Me from acting in Your best interest, (2) disclose the material conflict of interest to You, and (3) disclose the actions taken to ensure the material conflicts of interest do not prevent Me from acting in Your best interests. These are the actions I have taken to ensure material conflicts of interest that I have not been able to eliminate do not prevent Me from acting in Your best interest: _____

1
2 ***If Compensation Amounts or Values Are Unknown:***
3 *If the nature, amount, or value of any compensation I am required to disclose*
4 *is not known and cannot be estimated at the time this disclosure is required,*
5 *then I shall include in the disclosure: (1) a description of the circumstances*
6 *that may determine the receipt and amount or value of such compensation;*
7 *and (2) a reasonable estimate of the amount or value, which may be stated as*
8 *a range of amounts or values.*

9
10 *Description of circumstances that may determine the receipt and amount or*
11 *value of such compensation: _____*
12 _____
13 _____

14
15 *Reasonable estimated range of compensation amounts or values: _____*
16 _____
17 _____

18
19 ***Alternate products discussed:*** *(Producer must include product name, insurance*
20 *company, initial estimated premium for each product, and estimated*
21 *compensation for each (including estimated commission or fees for years 1*
22 *through 10) and attach additional page(s) if necessary):*

Product Name	Insurance Company	Initial Estimated Premium	Estimated Commission or Fees (years 1 through 10)
			1. 2. 3. 4. 5. 6. 7. 8. 9. 10. TOTAL years 1–10: \$ _____
			1.

1			2.
2			3.
3			4.
4			5.
5			6.
6			7.
7			8.
8			9.
9			10.
10			TOTAL years 1-10:
11			\$ _____

If You have questions about the above compensation I will be paid for this transaction, please ask me.

By signing below, You acknowledge that You have read and understand the information provided to You in this document.

Customer Signature

Agent (Producer) Signature

Date

Date

(B) At the time of the recommendation of an annuity or life insurance policy, the producer shall have a reasonable basis to believe the consumer has been reasonably informed of various features of the annuity or life insurance policy, and potential consequences of the sale or in-force transaction, both favorable and unfavorable, such as the potential surrender period and surrender charge, any secondary guarantee period, equity-index features, availability of cash value, death benefit, mortality and expense fees, cost of insurance charges, investment advisory fees, any annual fees and other periodic fees, policy exclusions or restrictions, potential charges for and features of riders or other options of the annuity or life insurance policy, guaranteed interest rates, including whether any guaranteed interest rates are based on any period other than annual, such as retrospective or cumulative guarantees, limitations on interest returns, provisions that do not prorate investment or other credit to the date of policy

1 or annuity termination, insurance and investment components,
2 potential changes in nonguaranteed elements of the annuity or life
3 insurance policy, insurance and investment components and market
4 risk, and potential tax penalty if the consumer sells, modifies,
5 exchanges, surrenders, or lapses the annuity or life insurance
6 policy, or annuitizes the annuity.

7 (3) *Conflict of Interest Obligation.* A producer shall identify
8 and eliminate any material conflicts of interest, if possible. If it is
9 impossible to eliminate any material conflicts of interest, the
10 producer shall disclose and reasonably manage the material
11 conflicts of interest, including material conflicts of interest relating
12 to an ownership interest.

13 (A) *The producer's receipt of compensation or other incentives*
14 *permitted by applicable California law is permitted if the amount*
15 *of the compensation or the receipt of an incentive does not*
16 *influence the recommendation. The only compensation that may*
17 *be paid or provided to or received by a producer is commissions*
18 *or fees.*

19 (B) *If a material conflict of interest cannot be eliminated, the*
20 *producer shall do all of the following:*

21 (i) *Take action to ensure the conflict of interest does not prevent*
22 *the producer from acting in the best interest of the consumer.*

23 (ii) *Disclose the material conflict of interest to the consumer.*

24 (iii) *Disclose the actions taken to ensure the material conflicts*
25 *of interest do not prevent the producer from acting in the best*
26 *interests of the consumer.*

27 (4) *Documentation Obligation.* At the time of recommendation,
28 a producer shall do both of the following:

29 (A) *Provide the consumer and the insurer with a written record*
30 *of any recommendation and, in a reasonable summary format, all*
31 *relevant suitability considerations and product information, both*
32 *favorable and unfavorable, that provide the basis for any*
33 *recommendations.*

34 (B) *When the recommendation or sale is a replacement, the*
35 *producer shall complete and provide the insurer with a written*
36 *copy of the required Replacement Product Comparison Form. No*
37 *part of the form shall be amended or omitted, however, additional*
38 *pages may be attached that show additional relevant features that*
39 *were compared and considered in determining the*
40 *recommendation. This form shall not be part of the application or*

policy. The disclosure form shall be in no less than 10-point type and shall read as follows:

REPLACEMENT PRODUCT COMPARISON FORM

The agent (producer) or insurer is required to complete this form when recommending the replacement of an annuity or life insurance policy. California Insurance Code Section 10509.2 defines the word “replacement.” **A comparison shall be completed for each product being replaced**, and shall consider, at a minimum, the features and benefits listed below, along with all of the items to be considered in California Insurance Code Section 10509.914.

	Existing Life Insurance Policy	Existing Annuity	Proposed Replacement Policy
1. Company Name			Replacing within same insurer group? <input type="checkbox"/> Yes <input type="checkbox"/> No
2. Product Name			
3. Policy Number			N/A
4. Policy Type	<input type="checkbox"/> Term Life <input type="checkbox"/> Whole Life <input type="checkbox"/> Universal Life <input type="checkbox"/> Variable Universal Life <input type="checkbox"/> Indexed Universal Life <input type="checkbox"/> Variable Life <input type="checkbox"/> Other _____	<input type="checkbox"/> Deferred Fixed Annuity <input type="checkbox"/> Immediate Fixed Annuity <input type="checkbox"/> Fixed Indexed Annuity <input type="checkbox"/> Variable Annuity <input type="checkbox"/> Index-Linked Variable Annuity <input type="checkbox"/> Other _____	<input type="checkbox"/> Life <input type="checkbox"/> Annuity <input type="checkbox"/> _____ [Insert Policy Type/Name]
5. Issue Date			
6. Initial Premium	\$ _____	\$ _____	\$ _____
7. Source of Initial Premium			

1	8. Owner Age	N/A	N/A	Current Age _____
2	9. Has the owner	N/A	N/A	<input type="checkbox"/> Yes
3	surrendered,			<input type="checkbox"/> No
4	exchanged, or			
5	replaced another			
6	policy within the			
7	last 60 months?			
8	10. Current			
9	Account Value	\$ _____	\$ _____	
10	11. Current Cash			
11	Surrender			
12	Value	\$ _____	\$ _____	
13	12. Current			% _____
14	Surrender	\$ _____	\$ _____	[Year 1 (%), 2 (%),
15	Charges	% _____	% _____	3 (%), etc.]
16	13. Surrender			
17	Charge			
18	Schedule			
19	for Remaining			
20	Years (indicate			
21	percentage per			
22	year for existing			
23	policy)			
24	14. Market Value	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
25	Adjustment	\$ _____	\$ _____	
26	(+/-)			
27	15. Interest Rates	Current Interest	Current Interest	Current Interest
28		Rate % _____	Rate % _____	Rate % _____
29				
30		Minimum	Minimum	Minimum
31		Guaranteed	Guaranteed	Guaranteed
32		Interest Rate	Interest Rate	Interest Rate
33		% _____	% _____	% _____
34				
35		Initial Rate	Initial Rate	Initial Rate
36		Guarantee	Guarantee	Guarantee
37		Period and Rate	Period and Rate	Period and Rate
38		% _____	% _____	% _____
39				

	<i>Interest Crediting Method (prorated, non-prorated, quarterly, anniversary, etc.) _____</i>	<i>Interest Crediting Method (prorated, non-prorated, quarterly, anniversary, etc.) _____</i>	<i>Interest Crediting Method (prorated, non-prorated, quarterly, anniversary, etc.) _____</i>
16. <i>Current/ Proposed Death Benefit Amount</i>	\$ _____	\$ _____	\$ _____
17. <i>Bonus Amount or Bonus Interest Rate (include Bonus Time Constraints or Vesting Period)</i>	\$ _____ or % _____ <input type="checkbox"/> N/A	\$ _____ or % _____ <input type="checkbox"/> N/A	\$ _____ or % _____ <input type="checkbox"/> N/A
18. <i>Accelerated Death Benefits?</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
19. <i>Annualized Premium = Base Policy + all Riders</i>			
20. <i>Fees and Charges</i>			
21. <i>Waivers, Riders, and Enhanced Benefits (e.g. Terminal Illness, LTC Rider, Living Benefit, Free Withdrawal %, Return of Premium Provision or Rider, etc.)</i>			

Primary reason(s) for recommending the replacement: _____

OTHER CONSIDERATIONS:

<p><i>Is the existing life insurance out of its contestability period?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p><i>Is there an Outstanding Loan against the policy?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Outstanding Loan Balance</i> \$ _____</p>
<p><i>Has the Guaranteed Minimum Withdrawal Benefit (GMWB) been activated on the existing annuity?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <i>If yes, at what %/value and frequency are the income payments?</i> _____</p>	<p><i>Has the Guaranteed Lifetime Withdrawal Benefit (GLWB) been activated on the existing annuity?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <i>If yes, at what %/value and frequency are the income payments?</i> _____</p>
<p><i>Will a Bonus Recapture apply at the time of surrender or exchange of the existing policy?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Original Bonus Rate % and Amount:</i> _____% and \$ _____ <i>Actual Bonus Recapture Amount \$</i> _____</p>	

Applicant Acknowledgment: *I acknowledge that a copy of this completed comparison form has been provided to me, and that I can ask questions about the content of this form to the agent or insurer who completed it.*

Applicant First and Last Name: _____ *Applicant Email Address:* _____

Applicant Signature _____ *Date* _____

Agent (Producer)/Insurer Representative

First and Last Name: _____

Agent (Producer)/Insurer Email Address: _____

Agent (Producer)/Insurer Business Telephone Number: _____

1 **Agent (Producer)/Insurer Statement:** *The replacing product ☐ would ☐ would*
2 *not substantially benefit the consumer in comparison to the replaced product*
3 *over the life of the product.*

4 _____
5 Agent (Producer)/Insurer Representative Date
6 Signature

7
8 (5) *Application of the Best Interest Obligation. Any requirement*
9 *applicable to a producer under this subdivision shall apply to*
10 *every producer who has exercised material control or influence*
11 *in the making of a recommendation and has received direct*
12 *compensation as a result of the recommendation or sale, regardless*
13 *of whether or not the producer has had any direct contact with the*
14 *consumer. Activities such as providing or delivering marketing or*
15 *educational materials, product wholesaling or other back office*
16 *product support, and general supervision of a producer do not, in*
17 *and of themselves, constitute material control or influence.*

18 (b) *Supervision System.*

19 (1) *An insurer shall not issue an annuity or life insurance policy*
20 *recommended to a consumer unless there is a reasonable basis to*
21 *believe the annuity or life insurance policy would be in the best*
22 *interest of the consumer, confer a tangible financial benefit over*
23 *the life of the annuity or life insurance policy based on the*
24 *consumer's consumer profile information and other relevant*
25 *information that was obtained by the producer or insurer, and*
26 *effectively address the particular consumer's financial situation,*
27 *financial needs, insurance needs, and financial objectives. If an*
28 *annuity or life insurance policy is being replaced, the insurer shall*
29 *review the Replacement Product Comparison Form required by*
30 *subparagraph (B) of paragraph (4) of subdivision (a), and after*
31 *doing so, the insurer shall determine if it also has a reasonable*
32 *basis to believe the annuity or life insurance policy will confer a*
33 *substantial financial benefit to the consumer over the life of the*
34 *annuity or life insurance policy when compared to the replaced*
35 *product.*

36 (2) *An insurer shall establish, maintain, and utilize a supervision*
37 *system that is reasonably designed to achieve the insurer's and*
38 *its insurance producers' compliance with this article, including,*
39 *but not limited to, all of the following:*

1 (A) The insurer shall establish, maintain, and utilize reasonable
2 procedures to inform its insurance producers of the requirements
3 of this article and shall incorporate the requirements of this article
4 into relevant insurance producer training manuals.

5 (B) The insurer shall establish, maintain, and utilize reasonable
6 standards for insurance producer product training, and shall
7 maintain and utilize reasonable procedures to require its insurance
8 producers to comply with the requirements of Section 10509.915.

9 (C) The insurer shall provide product-specific training and
10 training materials that explain all material features of its annuities
11 and life insurance policies to its insurance producers.

12 (D) The insurer shall establish, maintain, and utilize procedures
13 for review of each recommendation before issuing an annuity or
14 life insurance policy that are designed to ensure there is a
15 reasonable basis to determine that the recommended annuity or
16 life insurance policy would effectively address the particular
17 consumer's financial situation, financial needs, insurance needs,
18 and financial objectives. The review procedures shall apply a
19 screening system for the purpose of identifying selected
20 transactions for additional review and may be accomplished
21 electronically or through other means, including, but not limited
22 to, physical review. An electronic or other system may be designed
23 to require additional review only of those transactions identified
24 for additional review by the selection criteria.

25 (E) (i) The insurer shall establish, maintain, and utilize
26 reasonable procedures to detect recommendations that are not in
27 compliance with this article. This consists of programs of internal
28 monitoring and shall include at least three of the following
29 methods:

30 (I) Confirmation of the consumer's profile information.

31 (II) Systematic customer surveys.

32 (III) Producer and consumer interviews.

33 (IV) Confirmation letters.

34 (V) Producer statements or attestations.

35 (ii) This subparagraph does not prevent an insurer from
36 complying with this subdivision by applying sampling procedures,
37 or by confirming consumer profile information or other required
38 information under subdivision (a) after issuance or delivery of the
39 annuity or life insurance policy.

1 (F) *The insurer shall establish, maintain, and utilize reasonable*
2 *procedures to assess, before or upon issuance or delivery of an*
3 *annuity or life insurance policy, whether or not a producer has*
4 *provided to the consumer the information required to be provided*
5 *under subdivision (a).*

6 (G) *The insurer shall establish, maintain, and utilize reasonable*
7 *procedures to identify and address consumer refusals to provide*
8 *complete consumer profile information and consumer profile*
9 *information that differs from what the consumer represented to*
10 *the producer.*

11 (H) *An insurer shall not utilize any compensation structure for*
12 *recommendations or sales that creates a material conflict of*
13 *interest, including compensation structures that favor particular*
14 *products offered by a producer. Insurers shall compensate*
15 *producers only by paying commissions or fees. Insurers may not*
16 *offer any sales contests, sales quotas, bonuses, noncash*
17 *compensation, or other cash compensation. The requirements of*
18 *this subparagraph do not prohibit the insurer's employees from*
19 *receiving health insurance, retirement benefits, or other employee*
20 *benefits if the insurers' employees' compensation is not based*
21 *upon the volume of sales of annuities or life insurance policies.*

22 (I) *The insurer shall biannually provide a written report to its*
23 *senior management, including to the senior manager responsible*
24 *for audit functions, that details a review, with appropriate testing,*
25 *reasonably designed to determine the effectiveness of the*
26 *supervision system, the exceptions found, and corrective action*
27 *taken or recommended, if any.*

28 (3) (A) *This subdivision does not restrict an insurer from*
29 *contracting for performance of a function, including maintenance*
30 *of procedures, required under paragraph (2). An insurer is*
31 *responsible for taking appropriate corrective action, and may be*
32 *subject to sanctions and penalties pursuant to Section 10509.917*
33 *regardless of whether or not the insurer contracts for performance*
34 *of a function and regardless of the insurer's compliance with*
35 *subparagraph (B). An insurer is responsible for the compliance*
36 *of its insurance producer with the provisions of this article*
37 *regardless of whether the insurer contracts for performance of a*
38 *function required under this subdivision and regardless of the*
39 *insurer's compliance with subparagraph (B).*

1 (B) An insurer's supervision system under paragraph (2) shall
2 include reasonable supervision of contractual performance under
3 this subdivision. This includes both of the following:

4 (i) Reasonable monitoring and, as appropriate, conducting
5 audits to ensure that the contracted function is properly performed.

6 (ii) Biannually obtaining a certification from a senior manager
7 who has responsibility for the contracted function that the manager
8 has a reasonable basis to represent, and does represent, that the
9 function is properly performed.

10 (4) An insurer is not required to include in its system of
11 supervision an insurance producer's recommendations to
12 consumers of products other than the annuities or life insurance
13 policies offered by the insurer.

14 (c) Prohibited Practices. An insurance producer or insurer shall
15 not dissuade, or attempt to dissuade, a consumer from any of the
16 following:

17 (1) Truthfully responding to an insurer's request for
18 confirmation of the consumer profile information.

19 (2) Filing a complaint.

20 (3) Cooperating with the investigation of a complaint.

21 (d) Safe Harbor.

22 (1) Recommendations and sales of annuities and life insurance
23 policies made by financial professionals in compliance with laws,
24 regulations, business rules, controls, and procedures that satisfy
25 consumer protection standards that are equal to or greater than
26 those contained in this article shall satisfy the requirements under
27 this article even if those standards would not otherwise apply to
28 the product or recommendation at issue. This subdivision does not
29 limit the insurance commissioner's ability to enforce, including
30 conducting investigations related to, the provisions of this article.

31 (2) Paragraph (1) does not limit the insurer's obligation to
32 comply with subdivision (b), although the insurer may base its
33 analysis on information received from either the financial
34 professional or the entity supervising the financial professional.

35 (3) For purposes of this subdivision, "financial professional"
36 means a producer that is regulated and acting as either of the
37 following:

38 (A) An investment adviser registered under federal or California
39 laws.

(B) A plan fiduciary under Section 3(21) of the federal Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. Sec. 1001 et seq.) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

(4) Sales by FINRA-registered broker-dealers and registered representatives of broker-dealers shall be subject to paragraph (1) only after FINRA establishes consumer protection standards that meet or exceed those contained in subdivision (a), including the requirements that the producer's recommendation to the consumer is based on an evaluation of the consumer's relevant consumer profile information and other relevant information, and reflects the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with the matters would use under the prevailing circumstances, and only the interests of the consumer shall be considered in making the recommendation and complying with other obligations under this article.

(5) For paragraph (1) to apply, an insurer shall do both of the following:

(A) Monitor the relevant conduct of the financial professional seeking to rely on paragraph (1) or the entity responsible for supervising the financial professional using information collected in the normal course of an insurer's business.

(B) Provide to the entity responsible for supervising the financial professional seeking to rely on paragraph (1) information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

SEC. 8. Section 10509.915 of the Insurance Code is amended to read:

10509.915. (a) An insurance producer shall not solicit the sale of an annuity-product or life insurance policy unless the insurance producer has adequate knowledge of the product to recommend the annuity or life insurance policy and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subdivision.

(b) (1) An insurance producer who is otherwise entitled to engage in the sale of annuity products shall complete a one-time eight-credit-hour eight-credit hour annuity training course approved

1 by the commissioner and provided by a commissioner-approved
2 education provider, prior to commencing the transaction of
3 annuities, pursuant to subdivision (a) of Section 1749.8.

4 (2) In addition to the requirement set forth in paragraph (1),
5 every producer who engages in this state in the sale of annuity
6 products shall satisfactorily complete four continuing education
7 credits prior to license renewal every two years, pursuant to
8 subdivision (b) of Section 1749.8.

9 (3) The training required under this subdivision shall include
10 information on all of the following topics:

11 (A) The types of annuities and various classifications of
12 annuities.

13 (B) Identification of the parties to an annuity.

14 (C) How fixed, variable, *index-linked variable annuity*, and
15 indexed annuity contract provisions affect consumers.

16 (D) The application of income taxation of qualified and
17 nonqualified annuities.

18 (E) The primary uses of annuities.

19 (F) Prohibited sales practices, the recognition of indicators that
20 a prospective insured may lack the short-term memory or judgment
21 to knowingly purchase an insurance product, and fraudulent and
22 unfair trade practices, as well as replacement and disclosure
23 requirements for sales of annuities, all as provided under California
24 law, including, but not limited to, this article.

25 (c) (1) *An insurance producer who is otherwise entitled to*
26 *engage in the sale of life insurance policies shall complete a*
27 *one-time, four-credit hour life insurance policy training course*
28 *approved by the commissioner and provided by a*
29 *commissioner-approved education provider before transacting*
30 *life insurance policies, pursuant to subdivision (a) of 1749.81.*

31 (2) *In addition to the requirement set forth in paragraph (1), a*
32 *producer who engages in this state in the sale of life insurance*
33 *policies shall satisfactorily complete two continuing education*
34 *credits before license renewal every two years, pursuant to*
35 *subdivision (b) of Section 1749.81.*

36 (3) *The training required under this subdivision shall include*
37 *information on all of the following topics:*

38 (A) *The types of life insurance policies and various*
39 *classifications of life insurance policies.*

40 (B) *Identification of the parties to a life insurance policy.*

1 (C) *How the provisions in term life, whole life, universal life,*
2 *indexed universal life, and other variable life policies affect*
3 *consumers.*

4 (D) *The primary uses of life insurance policies and the potential*
5 *advantages and disadvantages of purchasing the types of insurance*
6 *listed in subparagraph (C).*

7 (E) *Prohibited sales practices, the recognition of indicators that*
8 *a prospective insured may lack the short-term memory or judgment*
9 *to knowingly purchase an insurance product, and fraudulent and*
10 *unfair trade practices, as well as replacement and disclosure*
11 *requirements for sales of life insurance policies, all as provided*
12 *under California law, including, but not limited to, this article.*

13 ~~(4)~~

14 (d) Providers of courses intended to comply with this section
15 shall cover all topics listed ~~in the prescribed outline for annuities~~
16 *in paragraph (3) of subdivision (b) and life insurance policies in*
17 *paragraph (3) of subdivision (c), and shall not present any*
18 *marketing information or provide training on sales techniques or*
19 *provide specific information about a particular insurer's products.*
20 Additional topics may be offered in conjunction with and in
21 addition to the required outline.

22 ~~(5)~~

23 (e) A provider of an annuity *or life insurance policy* training
24 course intended to comply with this section shall register as a CE
25 provider in this state and comply with the rules and guidelines
26 applicable to insurance producer continuing education courses as
27 set forth in Section 1749.8, ~~in Section 1749.81,~~ and subdivisions
28 (d) and (e) of Section 1749.1, and in Sections 2188, 2188.1, 2188.2,
29 2188.3, 2188.4, 2188.6, 2188.7, 2188.8, 2188.50, and 2188.9 of
30 Title 10 of the California Code of Regulations.

31 ~~(6)~~

32 (f) Annuity *and life insurance policy* training courses may be
33 conducted and completed by classroom or self-study methods in
34 accordance with Sections 2188.2 and 2188.3 of Title 10 of the
35 California Code of Regulations.

36 ~~(7)~~

37 (g) Providers of annuity *and life insurance policy* training shall
38 comply with the reporting requirements and shall issue certificates
39 of completion in accordance with Section 2188.8 of Title 10 of
40 the California Code of Regulations.

1 ~~(8)~~

2 (h) An insurer shall verify that an insurance producer has
3 completed the annuity *or life insurance policy* training required
4 under this section before allowing the producer to sell an annuity
5 ~~product or life insurance policy~~ for that insurer. An insurer may
6 satisfy its responsibility under this paragraph by obtaining
7 certificates of completion of the training course or obtaining reports
8 provided by commissioner-sponsored database systems or vendors
9 or from a reasonably reliable commercial database vendor that has
10 a reporting arrangement with approved insurance education
11 providers.

12 SEC. 9. *Section 10509.916 is added to the Insurance Code, to*
13 *read:*

14 10509.916. (a) *A life insurer shall provide to all consumers*
15 *who purchase an annuity a buyer's guide that shall be delivered*
16 *as a stand-alone document with the annuity or before delivery of*
17 *the annuity.*

18 (b) *For the purposes of this section, "buyer's guide" means the*
19 *National Association of Insurance Commissioners' approved*
20 *Annuity Buyer's Guide most relevant to the type of product being*
21 *recommended.*

22 SEC. 10. *Section 10509.916 of the Insurance Code is amended*
23 *and renumbered to read:*

24 ~~10509.916.~~

25 10509.917. (a) An insurer is responsible for compliance with
26 this article. If a violation occurs, either because of the action or
27 inaction of the insurer or its insurance producer, the commissioner
28 may, in addition to any other available penalties, remedies, or
29 administrative actions, order any or all of the following:

30 (1) An insurer to take reasonably appropriate corrective action
31 for any consumer harmed by the insurer's, or by its insurance
32 producer's, violation of this article.

33 (2) A managing general agent or an insurance producer to take
34 reasonably appropriate corrective action for any consumer harmed
35 by the insurance producer's violation of this article.

36 (3) Penalties and sanctions pursuant to Section 10509.9. For
37 purposes of Section 10509.9, this article shall be deemed to be
38 part of Article 8 (commencing with Section 10509), and the
39 commissioner may in a single enforcement action seek penalties
40 for a first and a second or subsequent violation.

1 (b) Nothing in this article shall affect any obligation of an insurer
2 for acts of its agents, or any consumer remedy or cause of action
3 that is otherwise provided for.

4 *SEC. 11. Section 10509.917 of the Insurance Code is amended*
5 *and renumbered to read:*

6 ~~10509.917.~~

7 *10509.918.* (a) Insurers and insurance producers shall maintain
8 or be able to make available to the commissioner records of the
9 information collected from the consumer and other information
10 used in making the recommendations that were the basis for
11 insurance transactions for five years after the insurance transaction
12 is completed by the insurer. An insurer is permitted, but shall not
13 be required, to maintain documentation on behalf of an insurance
14 producer.

15 (b) Records required to be maintained by this article may be
16 maintained in paper, photographic, microprocess, magnetic,
17 mechanical, or electronic media, or by any process that accurately
18 reproduces the actual document.

19 *SEC. 12. Section 10509.918 of the Insurance Code is amended*
20 *and renumbered to read:*

21 ~~10509.918.~~

22 *10509.919.* The commissioner shall, from time to time as
23 conditions warrant, after notice and hearing, adopt reasonable rules
24 and regulations, and amendments and additions thereto, as are
25 necessary to administer this article. *Those rules and regulations*
26 *may include modifications of the Insurance Agent (Producer)*
27 *Compensation Disclosure for Annuities and Life Insurance Policies*
28 *form in paragraph (2) of subdivision (a) of Section 10509.914 and*
29 *Replacement Product Comparison Form in subparagraph (B) of*
30 *paragraph (4) of subdivision (a) of Section 10509.914 that the*
31 *commissioner finds likely to increase consumer understanding of*
32 *annuity or life insurance transactions.* The commissioner may
33 adopt regulations not inconsistent with this article pursuant to
34 Section 989J of the federal Dodd-Frank Wall Street Reform and
35 Consumer Protection Act (Public Law 111-203).

1
2
3
4
5

**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, January 30, 2023. (JR11)**

O