FACT SHEET: COMPARISON OF MARCH 7 AND MAY 2 VERSIONS OF SB 263

The Problem	How the March 7 SB 263 Fixes the Problem	How the May 2 SB 263 Fails to Fix the Problem
Agents recommending life insurance products that are ***not suitable for the consumer but are very profitable for the agent***.	Agents are required to make only recommendations that are in the best interest of the consumer; ***only the consumer's interest may be considered*** in making a recommendation.	Agents are free to consider their own financial interests and to weigh them against the consumer's interests, yet agents can claim that they are bound by a consumer's best interest standard.
Agents have ***undisclosed conflicts of interes***t with their customers, typically resulting from large commissions they earn only if they convince the consumer to buy the product.	Agents are required to ***identify and eliminate conflicts of interest if possible***; if not possible, the agent must disclose the conflict to the consumer	Almost all agent conflicts of interest are completely unregulated because the definition of "material conflict of interest" ***excludes those arising from "cash and noncash compensation."***
Rampant sales abuses in the life insurance market, resulting in ***over six times as many complaints*** to the Department of Insurance than in the annuities market.	SB 263, like New York's Regulation 187, ***applies to life insurance*** and annuities.	The NAIC Model ***does not apply*** to life insurance policies.
Consumers do not understand ***the agent's role and personal stake*** in a life insurance transaction.	An agent must disclose that they are an agent ***for the insurance company***, not the consumer; the agent must disclose ***a reasonable estimate of the compensation they will receive*** if the consumer accepts the agent's recommendation. Disclosure must be made at the time the recommendation is made.	Agents are ***not explicitly required to disclose*** that they work for the insurance company. Agents need disclose compensation ***only upon the consumer's request***; few consumers know how important it is to request that information, which may be grounds for the consumer to think more critically about the agent's recommendation. Those disclosures the NAIC Model does require may be made, at the agent's option, at the time the policy is delivered and accepted, which is far too late in the process for the disclosures to be helpful to the consumer.

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Consumers typically make a decision to buy an annuity at or before the time they submit an application for the product, which typically follows a recommendation from the agent to buy that annuity; disclosures provided after that point are of little use to the consumer.	Required disclosures must be provided at or before the time a recommendation is made.	Required disclosures may be provided at or before the time of the recommendation ***or sale*** of an annuity, which means the agent may delay providing the disclosures until the annuity is issued and delivered to the consumer.
The SEC's Regulation BI imposes a limited "best interest" standard similar to SB 263's, but that standard applies only to transactions involving annuities that are securities, principally variable annuities.	Agents are required to meet the best interest standard of SB 263 regardless of whether Regulation BI or any other standard also applies to the transaction	Agents may invoke a "safe harbor" against liability by claiming to be following Regulation BI even for transactions involving annuities that are not securities (e.g., indexed annuities); Regulation BI does not apply to such transactions and no regulator is supervising the agent's compliance with any standard. The Senate Bill analysis recognized this problem with the April 17, 2023 version of the bill, and the author stated at the Senate Insurance Committee that the issue would be reviewed. But the problem remains to be addressed. Even the BIG I insurance agents' group has criticized the approach taken by the NAIC Model Regulation and the May 2, 2023 version of SB 263.
Agents and insurers selling life insurance products ***without adequate information*** about the consumer's situation to assess whether the product is suitable for the consumer; agents selling life insurance products ***they are not willing to recommend***.	Agents and insurers are ***prohibited*** from selling life insurance and annuities if they do not have sufficient information about the consumer's situation to assess whether the product is suitable for the consumer. Agents are ***prohibited*** from selling life insurance and	Agents and insurers can sell products even if they lack sufficient information about the consumer's situation to assess whether the product is suitable for the consumer. Agents can sell products they are not willing to recommend. In both cases, agents receive ***a liability shield*** if they get

	annuities they are not willing to recommend.	the consumer to sign a disclosure form.
Insurance companies offer agents sales contests, sales quotas, bonuses, and other compensation systems that ***increase the agent's incentives to sell unsuitable products, particularly if the agent is near the sales threshold needed to qualify for the benefit*****;** these kinds of programs aggravate the conflict of interest already present in a commission-based compensation system.	Insurers may pay agents traditional commissions, but they ***may not use compensation systems that favor particular products offered by the agent or offer agents sales contests, sales quotas, or bonuses.*** Insurers must compensate agents only by commissions or fees; they may not use trips and prizes or other non-commission compensation that is difficult to disclose to consumers.	Insurers ***are not restricted*** in how they design compensation systems for agents except for a prohibition on a narrow class of bonus and quota programs.