



February 22, 2024

The Honorable Governor Gavin Newsom
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: VETO SB 263 (Dodd)

Dear Governor Newsom:

Our coalition of consumer and senior groups urges you to veto SB 263 (Dodd) because it is bad for California consumers. The bill also directly undermines an important Biden Administration policy recently announced by the President himself – protecting consumers of retirement products such as annuities by requiring agents that sell such products to act in the best interest of their customers, rather than maximizing their own financial interests.

Although SB 263 started out last year as a strong consumer protection bill – the March 7, 2023, version paralleled New York's Regulation 187 as a model for how best to protect consumers of life insurance products from abusive sales practices – amendments pushed by the insurance industry weakened the SB 263 so much that our coalition has been forced to oppose the bill. The end result works one of the biggest frauds ever perpetrated on California consumers with the consent of their Legislature.

SB 263 Misleads Consumers Into Thinking They Are Protected When They Are Not

SB 263 in its current form closely tracks the *Suitability in Annuity Transactions* Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) in 2020. The standard of care set forth in the NAIC Model (and thus SB 263) is a "best interest" standard in name only. While

the original version of SB 263 prohibited agents from considering their own financial interests when recommending insurance products to their customers, that language was deleted by industry amendment, and language was substituted that causes the “best interest” requirement to be “deemed” satisfied if certain component obligations are met. Those component obligations have little to do with insuring that agents only make recommendations that are in the best interests of their customers.

Making matters worse, SB 263 uses definitional sleight of hand to authorize agents to lie to consumers by telling consumers that they have no conflicts of interest even when they stand to earn many thousands of dollars in commissions if the consumer accepts the agent's recommendation. Although SB 263 on its face requires agents to disclose material conflicts of interest, “material conflict of interest” **is defined to exclude “cash or non-cash compensation.”** This definition exempts from the disclosure requirement nearly all conflicts of interest because nearly all conflicts of interest between agents and their customers arise from cash or non-cash compensation. SB 263 thus requires an agent to disclose stock ownership in a life insurance company whose annuity is being recommended (likely a very small conflict of interest) but does not require disclosure of the commissions the producer would earn if the consumer accepts the producer's recommendation (often a very significant conflict of interest).

And while SB 263 sensibly requires agents and insurers to “to identify and reasonably manage” conflicts of interest, this obligation is again defeated by the bill's definitional sleight of hand. Under SB 263, agents and insurers **are not required even to try to reasonably manage conflicts of interest arising from cash or non-cash compensation.**

Adoption of SB 263 Would Undermine the Biden Administration's Retirement Security Proposal

On October 30, 2023, the federal Department of Labor announced a proposed regulation (called the Retirement Security Proposal) that would impose a true fiduciary standard on producers selling annuities within a retirement plan or IRA. The President personally condemned the higher costs consumers incur because of conflicted advice when buying annuities. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/31/remarks-by-president-biden-on-protecting-americans-retirement-security/#:~:text=So%2C%20here's%20what%20my%20administration,gets%20the%20the%20best%20payday.> In addition, the White House issued a statement that pointedly criticized the NAIC Model for its “inadequate protections and misaligned incentives.” See Fact Sheet at <https://www.whitehouse.gov/briefing->

[room/statements-releases/2023/10/31/fact-sheet-president-biden-to-announce-new-actions-to-protect-retirement-security-by-cracking-down-on-junk-fees-in-retirement-investment-advice/](https://www.consumer-federation.org/statements-releases/2023/10/31/fact-sheet-president-biden-to-announce-new-actions-to-protect-retirement-security-by-cracking-down-on-junk-fees-in-retirement-investment-advice/).

The insurance industry is vigorously opposing the Retirement Security Proposal. Adoption of the NAIC Model/SB 263 in California could readily be weaponized by an argument that if even a traditionally consumer-protective state like California does not think a genuine best interest standard is necessary to protect annuity consumers, that proves the Retirement Security Proposal is unnecessary and excessive government regulation. This dynamic may explain why the industry is trying to rush SB 263 to passage even though the new law would not take effect until January 1, 2025.

Our coalition believes that no bill at all would be better than SB 263 in its current form. It is true that would open the door to potential federal regulation of the approximately half of all fixed annuity sales that are made outside retirement plans and IRA's (and thus outside the Labor Department's jurisdiction). But passage of SB 263 in its current form would demonstrate that California is not interested in protecting annuity consumers and that consumers would be better off if the federal government regulated not just variable annuities and fixed annuities purchased in retirement plans or IRA's but **all** annuities.

Sincerely,

/s/ Brian P. Brosnahan

Executive Director
Life Insurance Consumer Advocacy Center

/s/ Amy Bach

Executive Director
United Policyholders

/s/ Robert Herrell

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CC: The Honorable Bill Dodd
Michael Martinez, Chief Deputy Commissioner, CDI
Josephine Figueroa, Deputy Commissioner for Legislative Affairs, CDI