

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3938/1

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
(by 1-15)

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1 AN ACT **to repeal** 628.347 (2) (b) 1., 628.347 (2) (b) 2., 628.347 (2) (b) 3. and
2 628.347 (2) (b) 4.; **to renumber** 628.347 (5) and 628.347 (7); **to renumber and**
3 **amend** 628.347 (2) (a), 628.347 (2) (b) (intro.), 628.347 (2) (d), 628.347 (4) and
4 628.347 (6) (c); **to amend** 601.41 (4) (a) 1., 628.347 (title), 628.347 (1) (a),
5 628.347 (1) (b), 628.347 (2) (title), 628.347 (5) (title), 628.347 (6) (b) and 628.347
6 (8) (intro.); **to repeal and recreate** 628.347 (2) (c), 628.347 (3) and 628.347 (4)
7 (title); and **to create** 628.347 (1) (c), 628.347 (1) (d), 628.347 (1) (e), 628.347 (2)
8 (a) 1., 628.347 (2) (a) 2., 628.347 (2) (a) 3., 628.347 (2) (a) 4., 628.347 (2) (bm),
9 628.347 (2) (dm), 628.347 (3m), 628.347 (4) (b), 628.347 (4m), 628.347 (5) (am),

1 628.347 (6) (c) 1., 628.347 (6) (c) 2. and 628.347 (7) (b) of the statutes; **relating**
2 **to:** suitability of annuity contracts and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 601.41 (4) (a) 1. of the statutes is amended to read:

4 601.41 (4) (a) 1. Remedial measures or restitution under s. 628.347 (5) (bm).

5 **SECTION 2.** 628.347 (title) of the statutes is amended to read:

6 **628.347 (title) Suitability of in annuity sales to consumers transactions.**

7 **SECTION 3.** 628.347 (1) (a) of the statutes is amended to read:

8 628.347 (1) (a) "Annuity" means a fixed or variable annuity that is an insurance
9 product that is individually solicited, whether the product is classified as an
10 individual or group annuity.

11 **SECTION 4.** 628.347 (1) (b) of the statutes is amended to read:

12 628.347 (1) (b) "Recommendation" means advice provided by an insurance
13 intermediary, or an insurer if no intermediary is involved, to an individual consumer
14 that results in the purchase ~~or~~, exchange, or replacement of an annuity in accordance
15 with that advice.

16 **SECTION 5.** 628.347 (1) (c) of the statutes is created to read:

17 628.347 (1) (c) "Regulatory authority" means the Financial Industry
18 Regulatory Authority or a succeeding agency.

19 **SECTION 6.** 628.347 (1) (d) of the statutes is created to read:

1 628.347 (1) (d) "Replacement" means a transaction in which a new policy or
2 contract is to be purchased and it is known, or should be known to the proposing
3 insurance intermediary, or to the proposing insurer if no intermediary is involved,
4 that by reason of the transaction an existing policy or contract is to be any of the
5 following:

 ****NOTE: The proposed language for this definition uses the terms "policy" and
 "contract." Should those terms be changed to "annuity," or is the intention that what is
 purchased for a "replacement" is not an annuity? Is my removal of "has been" after
 "existing policy or contract" okay?

6 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the
7 replacing insurer, or otherwise terminated.

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

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

 ****NOTE: Did I interpret this correctly? The proposed language was not clear about
 the two alternatives following "either."

14 4. Reissued with a reduction in cash value.

15 5. Used in a financed purchase.

16 **SECTION 7.** 628.347 (1) (e) of the statutes is created to read:

17 628.347 (1) (e) "Suitability information" means information that is reasonably
18 appropriate to determine the suitability of a recommendation, including all of the
19 following:

20 1. Age.

21 2. Annual income.

1 3. Financial situation and needs, including the financial resources used for the
2 funding of the annuity.

3 4. Financial experience.

4 5. Financial objectives.

5 6. Intended use of the annuity.

6 7. Financial time horizon.

7 8. Existing assets, including investment and life insurance holdings.

8 9. Liquidity needs.

9 10. Liquid net worth.

10 11. Risk tolerance.

11 12. Tax status.

12 **SECTION 8.** 628.347 (2) (title) of the statutes is amended to read:

13 628.347 (2) (title) DUTIES OF INSURERS AND INSURANCE INTERMEDIARIES WITH
14 REGARD TO RECOMMENDATIONS AND ISSUANCE OF ANNUITIES.

15 **SECTION 9.** 628.347 (2) (a) of the statutes is renumbered 628.347 (2) (a) (intro.)
16 and amended to read:

17 628.347 (2) (a) (intro.) ~~Except as provided in par. (c), an insurance~~
18 ~~intermediary, or insurer if no intermediary is involved, may not recommend~~ In
19 recommending to a consumer the purchase or exchange of an annuity ~~if the~~
20 ~~recommendation that~~ results in an another insurance transaction or series of
21 insurance transactions ~~unless the, an insurance intermediary, or insurer has if no~~
22 intermediary is involved, shall have reasonable grounds to believe that the
23 recommendation is suitable for the consumer on the basis of facts disclosed by the
24 consumer as to his or her investments, other insurance products, and financial

1 situation and needs, including the consumer's suitability information, and that all
2 of the following are true:

****NOTE: What is meant by a recommendation that results in "another" insurance transaction? Does this mean that the agent recommends the purchase or exchange of an annuity but the consumer does something else?

****NOTE: The definition of "suitability information" includes investments, other insurance products, and financial situation and needs. How is "suitability information" meant to be used here? Can "suitability information" be substituted for "investments, other insurance products, and financial situation and needs"?

3 **SECTION 10.** 628.347 (2) (a) 1. of the statutes is created to read:

4 628.347 (2) (a) 1. The consumer has been reasonably informed of various
5 features of the annuity, such as the potential surrender period and surrender charge,
6 potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the
7 annuity, mortality and expense fees, investment advisory fees, potential charges for
8 and features of riders, limitations on interest returns, insurance and investment
9 components, and market risk.

10 **SECTION 11.** 628.347 (2) (a) 2. of the statutes is created to read:

11 628.347 (2) (a) 2. The consumer would benefit from certain features of the
12 annuity, such as tax-deferred growth, annuitization, or death or living benefit.

13 **SECTION 12.** 628.347 (2) (a) 3. of the statutes is created to read:

14 628.347 (2) (a) 3. The particular annuity as a whole, the underlying
15 subaccounts to which funds are allocated at the time of purchase or exchange of the
16 annuity, and riders and similar product enhancements, if any, are suitable, and in
17 the case of an exchange or replacement, the transaction as a whole is suitable, for the
18 particular consumer based on his or her suitability information.

****NOTE: I replaced the parentheses in the proposed text with commas. Although the language that was in parentheses includes "replacement," the introductory language ("In recommending to a consumer the purchase or exchange of an annuity") does not.

19 **SECTION 13.** 628.347 (2) (a) 4. of the statutes is created to read:

1 628.347 (2) (a) 4. In the case of an exchange or replacement of an annuity, the
2 exchange or replacement is suitable, even after taking into consideration all of the
3 following:

4 a. Whether the consumer will incur a surrender charge, be subject to the
5 commencement of a new surrender period, lose existing benefits, such as death,
6 living, or other contractual benefits, or be subject to increased fees, investment
7 advisory fees, or charges for riders and similar product enhancements.

8 b. Whether the consumer would benefit from product enhancements and
9 improvements.

10 c. Whether the consumer has had another annuity exchange or replacement
11 and, in particular, an exchange or replacement within the preceding 36 months.

 ***NOTE: Once again, this paragraph mentions "replacement" while the
introductory language does not. Should the introductory language refer to the purchase,
exchange, or *replacement* of an annuity, or is replacement a *resulting insurance*
transaction or series of insurance transactions?

12 **SECTION 14.** 628.347 (2) (b) (intro.) of the statutes is renumbered 628.347 (2)
13 (b) and amended to read:

14 628.347 (2) (b) Before ~~making a recommendation described in par. (a) the~~
15 execution of a purchase, exchange, or replacement of an annuity resulting from a
16 recommendation, an insurance intermediary, or insurer if no intermediary is
17 involved, shall make reasonable efforts to obtain the consumer's suitability
18 information concerning all of the following.

 ***NOTE: This doesn't make a lot of sense. Under sub. (2) (a) (intro.), an
intermediary is supposed to have reasonable grounds to believe that a recommendation
is suitable based on the consumer's suitability information. Shouldn't the intermediary
obtain the suitability information before making the recommendation rather than before
executing a purchase or exchange based on a recommendation?

19 **SECTION 15.** 628.347 (2) (b) 1. of the statutes is repealed.

20 **SECTION 16.** 628.347 (2) (b) 2. of the statutes is repealed.

1 SECTION 17. 628.347 (2) (b) 3. of the statutes is repealed.

2 SECTION 18. 628.347 (2) (b) 4. of the statutes is repealed.

3 SECTION 19. 628.347 (2) (bm) of the statutes is created to read:

insurance

4 628.347 (2) (bm) Except as permitted under par. (c), an insurer may not issue
5 an annuity that is recommended by the insurer or its ~~intermediary~~ intermediary to a consumer
6 unless it is reasonable to believe that the annuity is suitable based on the consumer's
7 suitability information.

8 SECTION 20. 628.347 (2) (c) of the statutes is repealed and recreated to read:

9 628.347 (2) (c) 1. Subject to subd. 2., neither an insurance intermediary nor an
10 insurer has any obligation to ensure that an annuity transaction is suitable for a
11 consumer if any of the following applies:

***NOTE: Is the way in which I have changed the proposed language the intended meaning?

12 a. Neither the insurance intermediary nor the insurer made a
13 recommendation.

14 b. The insurance intermediary or insurer made a recommendation but the
15 recommendation was later found to have been prepared based on inaccurate
16 *material* information provided by the consumer.

17 c. The consumer refuses to provide relevant suitability information and the
18 annuity transaction is not recommended.

***NOTE: What does it mean that "the annuity transaction is not recommended"? Does this mean that the intermediary or insurer did not recommend the transaction or do not recommend it (advise against it)?

19 d. The consumer decides to enter into an annuity transaction that is not based
20 on a recommendation of the insurer or the insurance intermediary.

21 SECTION 21. 628.347 (2) (d) of the statutes is renumbered 628.347 (2) (c) 2. and
22 amended to read:

1 628.347 (2) (c) 2. ~~Any recommendation of an insurer or insurance intermediary~~
2 ~~that, under par. (c), is not subject to the obligation under par. (a)~~ An insurer's
3 issuance of an annuity under circumstances specified in subd. 1. a. to d. shall be
4 reasonable under all circumstances actually known to the insurer ~~or insurance~~
5 ~~intermediary~~ at the time the ~~recommendation is made~~ annuity is issued.

6 **SECTION 22.** 628.347 (2) (dm) of the statutes is created to read:

7 628.347 (2) (dm) An insurance intermediary, or insurer if no intermediary is
8 involved, shall at the time of sale do all of the following:

9 1. Make a record of any recommendation subject to par. (a).

10 2. Obtain a customer-signed statement documenting a customer's refusal, if
11 any, to provide suitability information.

12 3. If a customer decides to enter into an annuity transaction that is not based
13 on the insurance intermediary's or insurer's recommendation, obtain a
14 customer-signed statement acknowledging that the annuity transaction is not
15 recommended by the intermediary or insurer.

 ****NOTE: These subdivisions refer to a "customer" instead of a "consumer." Is this
okay or should the word be "consumer"?

 ****NOTE: Is the customer/consumer entering into a transaction without a
recommendation, or is the customer/consumer entering into a transaction that is not
recommended, or either one?

16 **SECTION 23.** 628.347 (3) of the statutes is repealed and recreated to read:

17 628.347 (3) **INSURER'S SUPERVISORY RESPONSIBILITY.** (a) An insurer shall
18 establish a supervision system that is reasonably designed to achieve the insurer's
19 and its insurance intermediaries' compliance with this section. Under the system,
20 the insurer shall do at least all of the following:

1 1. Maintain reasonable procedures to inform its insurance intermediaries of
2 the requirements of this section and incorporate the requirements of this section into
3 relevant insurance intermediary training manuals.

4 2. Establish standards for insurance intermediary product training and
5 maintain reasonable procedures to require its insurance intermediaries to comply
6 with the requirements of sub. (4m).

7 3. Provide product-specific training and training materials that explain all
8 material features of its annuity products to its insurance intermediaries.

9 4. Maintain reasonable procedures to confirm consumer suitability
10 information to the extent reasonably appropriate to identify, and to deter, insurance
11 intermediary submission of inaccurate information. Nothing in this subdivision
12 prevents an insurer from complying with this subdivision by applying sampling
13 procedures or by confirming suitability information after issuance or delivery of the
14 annuity, or both.

15 5. Maintain procedures for review of each recommendation before issuance of
16 an annuity that are designed to ensure that there is a reasonable basis to determine
17 that a recommendation is suitable. An insurer's procedures may apply a system of
18 selection criteria for the purpose of identifying selected transactions for additional
19 review. An insurer's procedures may be accomplished electronically or through other
20 means, including physical review. An electronic or other system may be designed to
21 require additional review only of those transactions identified for additional review
22 by the selection criteria.

23 6. Maintain reasonable procedures to detect recommendations that are not
24 suitable, which may include systematic customer surveys, interviews, confirmation
25 letters, and programs of internal monitoring.

confirmation of consumer suitability

information

Insert 9-25

1 7. Annually provide a report to senior management, including to the senior
2 manager responsible for audit functions, that details a review, with appropriate
3 testing, that is reasonably designed to determine the effectiveness of the supervision
4 system, the exceptions found, and corrective action taken or recommended, if any.

Insert 10-7 ✓

5 (b) 1. Nothing in this subsection restricts an insurer from contracting for the
6 performance of a function required under this subsection. An insurer is subject to
7 and required to comply with, this subsection regardless of whether the insurer
8 contracts for the performance of a function and regardless of the insurer's compliance
9 with subd. 2.

Insert 10-6 ✓

Insert 10-8 ✓

10 2. An insurer's supervision system under par. (a) shall include supervision of
11 any contractual performance under this subsection, including all of the following:

12 a. Monitoring and, as appropriate, ^{conducting} audits to ensure that the contracted
13 function is properly performed.

14 b. Examination of a function under par. (a) 5

Insert 10-14

15 c. Annually obtaining a certification from a senior manager who has
16 responsibility for the contracted function that the manager has a reasonable basis
17 to represent, and does represent, that the function is properly performed.

18 (c) An insurer is not required to include in its system of supervision an
19 insurance intermediary's recommendations to consumers of products other than the
20 annuities offered by the insurer.

21 SECTION 24. 628.347 (3m) of the statutes is created to read:

22 628.347 (3m) PROHIBITED ACTS OF INTERMEDIARY. An insurance intermediary
23 may not dissuade, or attempt to dissuade, a consumer from doing any of the
24 following:

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

3 (b) Filing a complaint.

4 (c) Cooperating with the investigation of a complaint.

5 SECTION 25. 628.347 (4) (title) of the statutes is repealed and recreated to read:

6 628.347 (4) (title) REGULATORY AUTHORITY RULES.

7 SECTION 26. 628.347 (4) of the statutes is renumbered 628.347 (4) (a) and
8 amended to read: *Insert 11-9*

9 628.347 (4) (a) ~~Compliance~~ with the National Association of Securities Dealers
10 ~~Conduct Rules~~ regulatory authority ~~rules~~ pertaining to suitability and supervision
11 of annuity transactions satisfies the requirements under sub. (2) for the
12 recommendation of variable annuities this section. Nothing in this subsection

13 paragraph, however, limits the commissioner's ability to enforce this section

14 SECTION 27. 628.347 (4) (b) of the statutes is created to read:

15 628.347 (4) (b) An insurer ^{does} ~~shall do~~ all of the following:

16 1. Monitor the regulatory authority member broker-dealer using information
17 collected in the normal course of an insurer's business.

18 2. Provide to the regulatory authority member broker-dealer information and
19 reports that are reasonably appropriate to assist the regulatory authority member
20 broker-dealer to maintain its supervision system.

****NOTE: Who or what is the regulatory authority (or FINRA) member broker-dealer and what does it do? What "supervision system" is being referred to? I assume it is not related to the supervision system under sub. (3).

21 *Insert 11-20* SECTION 28. 628.347 (4m) of the statutes is created to read:

22 628.347 (4m) INSURANCE INTERMEDIARY TRAINING. (a) An insurance
23 intermediary may not solicit the sale of an annuity product unless the insurance

Paragraph (a) applies if

requirements

plain

Insert 11-13

strike

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does

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A

1 intermediary has adequate knowledge of the product to recommend the annuity and
2 the insurance intermediary is in compliance with the insurer's standards for product
3 training. An insurance intermediary may rely on insurer-provided product-specific
4 training standards and materials to comply with this paragraph.

5 (b) 1. a. An insurance intermediary who engages in the sale of annuity products
6 shall complete a one-time training course approved by the commissioner and
7 provided by an education provider approved by the commissioner.

8 b. Insurance intermediaries who hold a life insurance line of authority on the
9 effective date of this subd. 1. b. [LRB inserts date], and who desire to sell annuities
10 must complete the requirements of this paragraph within 6 months after the
11 effective date of this subd. 1. b. [LRB inserts date]. Individuals who obtain a life
12 insurance line of authority on or after the effective date of this subd. 1. b. [LRB
13 inserts date], may not engage in the sale of annuities until they have completed the
14 annuity training course required under this paragraph.

15 2. The minimum length of the training required under this paragraph shall be
16 sufficient to qualify for at least 4 continuing education credits, but may be longer.

17 3. The training required under this paragraph shall include information on all
18 of the following topics:

19 a. The types of annuities and various classifications of annuities.

20 b. Identification of the parties to an annuity.

21 c. How fixed, variable, and indexed annuity contract provisions affect
22 consumers.

23 d. The application of income taxation of qualified and non-qualified annuities.

24 e. The primary uses of annuities.

25 f. Appropriate sales practices and replacement and disclosure requirements.

****NOTE: Did I interpret the proposed language correctly, or should it be "appropriate sales practices, replacement, and disclosure requirements"?

1 4. Providers of annuity training courses intended to comply with this
2 paragraph shall cover all of the topics listed under subd. 3. and may not present any
3 marketing information or provide training on sales techniques or provide specific
4 information about a particular insurer's products. Additional topics may be offered
5 in conjunction with and in addition to those listed under subd. 3.

****NOTE: I assumed the list of topics under subd. 3. was what was meant by "prescribed outline" and "required outline." Is that correct?

6 5. A provider of an annuity training course intended to comply with this
7 paragraph shall register as a continuing education provider in this state and comply
8 with the rules and guidelines applicable to insurance intermediary continuing
9 education courses as set forth in [insert reference to State law or regulations
10 governing intermediary continuing education course approval].

****NOTE: Can you provide me with the proper reference?

11 6. Annuity training courses may be conducted and completed by classroom or
12 self-study methods in accordance with [insert reference to State law or regulations
13 governing intermediary continuing education course approval].

****NOTE: Can you provide me with the proper reference?

14 7. Providers of annuity training shall comply with the reporting requirements
15 and shall issue certificates of completion in accordance with [insert reference to State
16 law or regulations governing to intermediary continuing education course approval].

****NOTE: Can you provide me with the proper reference?

17 8. Satisfaction of the training requirements of another state that are
18 substantially similar to the requirements of this paragraph satisfies the training
19 requirements of this paragraph in this state.

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

8 **SECTION 29.** 628.347 (5) (title) of the statutes is amended to read: x

9 628.347 (5) (title) ~~REMEDIAL COMPLIANCE;~~ REMEDIAL MEASURES.

10 **SECTION 30.** 628.347 (5) of the statutes is renumbered 628.347 (5) (bm).

11 **NOTE:** Section 628.347 (5) (a) and (b) in current law are included in the proposed
12 language, but s. 628.347 (5) (c) is not. However, I did not repeal s. 628.347 (5) (c). Do you
13 want it repealed? x

14 **SECTION 31.** 628.347 (5) (am) of the statutes is created to read: x

15 628.347 (5) (am) An insurer is ultimately responsible for compliance with this
16 section. If a violation occurs, either because of the action or inaction of the insurer
17 or its insurance intermediary, the insurer is responsible for taking appropriate
18 corrective action, including canceling a transaction that is not suitable, and is subject
19 to sanctions and penalties.

20 **SECTION 32.** 628.347 (6) (b) of the statutes is amended to read: x

21 628.347 (6) (b) ~~A~~ The commissioner may by rule provide for the reduction or
22 elimination of a penalty under par. (a) for a violation of related to sub. (2) (a), (b), (c),
23 or (d) (dm), including a forfeiture, may be reduced or eliminated to the extent
provided by rule of the commissioner if corrective action is taken for the consumer
promptly after the violation is discovered and the violation is not part of a pattern
or practice.

2
^

^

^

1 **SECTION 33.** 628.347 (6) (c) of the statutes is renumbered 628.347 (6) (c) (intro.)
2 and amended to read:

3 628.347 (6) (c) (intro.) The commissioner may ~~promulgate rules related to by~~
4 rule provide for the reduction or elimination of ~~penalties for violations of this section~~
5 ~~on the basis of prompt action taken to correct any harm caused to consumers by the~~
6 ~~violations. a penalty under par. (a) for a violation of sub. (2) (bm) if all of the following~~
7 apply:

8 **SECTION 34.** 628.347 (6) (c) 1. of the statutes is created to read:

9 628.347 (6) (c) 1. Corrective action for any affected consumer is taken promptly
10 after a violation is discovered.

11 **SECTION 35.** 628.347 (6) (c) 2. of the statutes is created to read:

12 628.347 (6) (c) 2. The insurer reviewed the recommendation and approved
13 issuance of the annuity after consideration of the customer's suitability information
14 as required under sub. (3) (a) 5. The review and approval may be made by applying
15 selection criteria as permitted under sub. (3) (a) 5.

****NOTE: Does this mean that the insurer issued an annuity for which there was
no reasonable basis to believe that it was suitable, but the penalty may be reduced
because the insurer reviewed and approved the recommendation (as opposed to not even
reviewing it)?

Insert 15-15

16 **SECTION 36.** 628.347 (7) of the statutes is renumbered 628.347 (7) (a).

17 **SECTION 37.** 628.347 (7) (b) of the statutes is created to read:

18 628.347 (7) (b) Records that are required to be maintained under this section
19 may be maintained in paper, photographic, microprocess, magnetic, or electronic
20 media or by any process that accurately reproduces the actual document.

21 **SECTION 38.** 628.347 (8) (intro.) of the statutes is amended to read:

22 628.347 (8) EXEMPTIONS. (intro.) This Unless otherwise prescribed by rule, this
23 section does not apply to any of the following:

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FROM THE
LEGISLATIVE REFERENCE BUREAU

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PJK:.....

INSERT 9-25

1 *not* Nothing in this subdivision prevents an insurer from complying with this
2 subdivision by applying sampling procedures or by confirming suitability
3 information after issuance or delivery of the annuity. *last*

****NOTE: Section 628.347 (3) (a) 4, which is not changed in the modified version, adds "or both" at the end of the sentence above. Do you want to include it here also, or is the difference intentional? ✓ ✓

(END OF INSERT 9-25)

INSERT 10-6

4 *not* par. (a), including maintenance of procedures ✓

(END OF INSERT 10-6)

INSERT 10-7

5 *not* responsible for taking appropriate corrective action and may be

(END OF INSERT 10-7)

INSERT 10-8

6 *not* sanctions and penalties under subs. (5) and (6), ✓ ✓

(END OF INSERT 10-8)

INSERT 10-14

7 *not* Applying reasonable procedures to a contracted function under par. (a) 4. that
8 are designed to address any conflict of interest ✓

(END OF INSERT 10-14)

INSERT 11-9



Ins. 11-9

not

1

Subject to pars. (b) and (c), sales made in compliance

(END OF INSERT 11-9)

✓

INSERT 11-13

not

2

or to conduct any investigation necessary for that enforcement

(END OF INSERT 11-13)

✓

INSERT 11-20

***NOTE: Both the original version and the modified version of this provision are confusing. Is how I interpreted the modified model language correct in the introductory provision above?

^

3

SECTION 1. 628.347 (4) (c) of the statutes is created to read:

4

628.347 (4) (c) This subsection applies to regulatory authority broker-dealer

5

sales of variable annuities and fixed annuities if the suitability and supervision are

6

similar to those applied to variable annuity sales.

***NOTE: What does "if the suitability and supervision are similar" mean? Should that say "if the suitability and supervision requirements are similar"? Also, what "variable annuity sales" are being referred to at the end of the sentence? Variable annuity sales that are not regulatory authority broker-dealer sales, meaning if the suitability and supervision (requirements) are similar to those under this section?

(END OF INSERT 11-20)

INSERT 15-15

7

SECTION 2. 628.347 (5) (intro.) of the statutes is amended to read:

8

628.347 (5) ~~REMEDIAL COMPLIANCE; REMEDIAL MEASURES.~~ (intro.) The An insurer

9

is responsible for compliance with this section. If a violation occurs, either because

10

of the action or inaction of the insurer or its intermediary, the commissioner may do

insurance

11

any of the following:

History: 2003 a. 261; 2007 a. 168.

12

SECTION 3. 628.347 (5) (d) of the statutes is created to read:

^

↓

Ins 15-15 contd

1 628.347 (5) (d) Impose any appropriate penalties or sanctions.

2 SECTION 4. 628.347 (6) (b) of the statutes is repealed. X

3 SECTION 5. 628.347 (6) (c) of the statutes is amended to read: X

4 628.347 (6) (c) The commissioner may ~~promulgate rules related to~~ by rule

5 provide for the reduction or elimination of ~~penalties for violations~~ a penalty under

6 par. (a) for a violation of this section ~~on the basis of prompt~~ if corrective action is taken

7 to correct any harm caused to consumers by the violations for the consumer promptly

8 after the violation is discovered and the violation is not part of a pattern or practice.

Handwritten annotations: a circled '8' with an arrow pointing to the word 'and' in the text above, and some scribbles below.

History: 2003 a. 261; 2007 a. 168.

(END OF INSERT 15-15)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3938/P2dn

PJK:/:....

js

- late -

This version contains the modifications that were made in the modified version of the model regulation that was sent to me in December. The draft retains all of the embedded notes that were included in the first version relating to provisions that were not removed from the draft by the modifications.

Pamela J. Kahler
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3938/P2dn
PJK:cjs:rs

January 11, 2010

This version contains the modifications that were made in the modified version of the model regulation that was sent to me in December. The draft retains all of the embedded notes that were included in the first version relating to provisions that were not removed from the draft by the modifications.

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Kahler, Pam

From: Stegall, Jennifer L - OCI [Jennifer.Stegall@wisconsin.gov]
Sent: Friday, January 29, 2010 3:51 PM
To: Kahler, Pam
Subject: RE: annuity suitability re-draft instructions

Yes, sorry for the confusion, please remove the two provisions.

The history is that the 2 provisions were included in the NAIC Suitability working group draft (chaired by Sean/Kim) but then removed when the parent NAIC Life and Annuity Committee adopted revisions to the suitability model. We kept the two provisions in the drafting instructions to you because Sean initially wanted them in the legislation. He has now decided he does not want to pursue those.

Does that help? Bottom line is that we need the two provisions removed from the bill draft.

Give me a call if we should talk further.

Thanks!!

From: Kahler, Pam [mailto:Pam.Kahler@legis.wisconsin.gov]
Sent: Friday, January 29, 2010 3:42 PM
To: Stegall, Jennifer L - OCI
Subject: RE: annuity suitability re-draft instructions

I'm confused about the letter. The draft contains both provisions mentioned in the letter. Was there a later version of the Model that I did not see that removed those provisions? The latest version of the Model that I have includes both provisions. Is it correct that you want me to take out both provisions mentioned in the letter?

Pam

From: Stegall, Jennifer L - OCI [mailto:Jennifer.Stegall@wisconsin.gov]
Sent: Friday, January 29, 2010 3:14 PM
To: Kahler, Pam
Cc: Shaul, Kimberly A - OCI; Nepple, Fred - OCI; Harris, James W - OCI
Subject: annuity suitability re-draft instructions

Hi Pam,

Attached are additional drafting instructions to the P draft you had sent Fred. In addition to these instructions, please remove language from the drafts relating to the two issues outlined in the attached letter. I don't believe I have the most recent draft you are working from so I thought it might be easiest to provide the letter which clearly describes the two issues we need removed.

Thank you for your continued work on this draft. Our goal is to have a final draft ready by early next week.

Have a nice weekend,

Jennifer Stegall
Senior Policy Advisor
Office of the Commissioner of Insurance
608-267-7911

01/29/2010



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Jim Doyle, Governor
Sean Dilweg, Commissioner

Wisconsin.gov

December 18, 2009

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CHAIR NAIC LIFE AND ANNUITIES (A) COMMITTEE
CONNECTICUT INSURANCE DEPARTMENT
153 MARKET ST
HARTFORD CT 06103

MEMBERS, NAIC LIFE AND ANNUITIES (A) COMMITTEE

Re: Revised NAIC Suitability in Annuity Transactions Model Regulation ("Model")

Dear Commissioner Sullivan and Members:

I urge the Committee to adopt the Model with the non-substantive revisions recommended by Jim Mumford (IA), Keith Nyhan (NH) and Mark Franklin (CT). I also want to express my admiration and appreciation for this group's hard work and careful appraisal of the many comments. We differ from their recommendation only on two substantive matters, described below, but acknowledge their forthright effort to bring these issues to the Committee.

The Model, with the non-substantive revisions, represents a broad, if not perfect, consensus. Most important, the Model represents a major improvement in the protection of annuity consumers. It is time to adopt and implement it.

We ask the Committee to modify the recommended revision in only two areas:

1) Confirmation of consumer suitability information.

Restore Section 6 F (1) (d), page 5, as follows:

Section 6 F (1) (d) The insurer shall maintain reasonable procedures to confirm consumer suitability information to the extent reasonably appropriate to identify, and to deter, insurance producer submission of inaccurate information. 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, or both;

The Model requires an insurer to maintain reasonable procedures to independently confirm consumer suitability information. These procedures may be on a sampling basis and may be conducted after issuance. This requirement is similar to FINRA Rule 2821 requirements and should not be deleted as recommended.

The Working Group heard, and rejected, the suggestion that this provision be deleted. The FINRA safe harbor in effect requires an insurer selling through a FINRA member broker to apply "front end" suitability information confirmation mechanisms. Consumers purchasing through other distribution channels should be confident that similar front end confirmation procedures are in place.

An insurer is accountable under the Model for the suitability of the recommendation when suitability information is falsified. Moreover the insurer is required to "maintain reasonable procedures to detect recommendations that are not suitable" [under Section 6 F (1) (e)]. Delayed, and perhaps missed, identification of falsified suitability information from back end analysis of trends or complaints is no substitute for front end confirmation steps to ensure the integrity of the information.

December 18, 2009

Page 2

2) Insurer supervision of contracted suitability review procedures.

Restate, rather than delete, Section 6 F (2) (b) II, page 5, as follows:

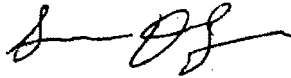
Section 6 F (2) (b) II Reasonable procedures applied to a contracted function under paragraph (1) (d) that are designed to address any conflict of interest.

The Model, under Section 6 F (2) (b) ii, imposes the additional requirement on an insurer to conduct examinations when the insurer contracts for performance of suitability review procedures. The recommended revision deletes this requirement out of a concern that the term "examination" is undefined. We suggest that, rather than accept the recommended deletion of the required examination, that the Committee instead restate the requirement in more general terms as provided in the suggested language above.

The Model's suitability review procedure requirement is critical. We recognize that the insurer remains accountable for the proper performance of this function regardless of whether the insurer contracts for performance of the suitability review procedure. However, after the fact penalties are not a substitute for encouraging properly constructed contractual arrangements that ensure the integrity of suitability review procedures.

I look forward to discussing the Model, and these views, with the Committee.

Sincerely,



Sean Dilweg
Commissioner
Chair, Suitability of Annuity Sales Working Group

Page 3, line 2:

- ✓ 1) The intent is that there must be an annuity that is purchased but the “replaced” product is any type of product, including, but not limited to, an annuity. Hence the first “policy or contract” should be changed to “annuity” but the second left as is. Thus there must be a recommendation to purchase an annuity, however the producer must assess the suitability of the “replacement” of another annuity, life policy, or other product if the purchase results in the “replacement” of that product. For example if the purchase of the annuity is from funds withdrawn from another annuity, life product or other insurance product the producer must consider that effect to determine suitability.
- ✓ 2) Please leave the words “has been” in the definition. This is replacement model language, and is intended to reflect that a transaction is a “replacement” even if the “replaced” product has been surrendered or otherwise utilized prior to the purchase of the replacing product. I.e. the obligation to assess suitability of the replaced product can not be avoided by sequencing the transaction so as to draw on or surrender the replaced product prior to the sale of the replacing product.

✓ **Page 3, line 10:** Ok.

✓ **Page 4, Line 23:** 1) The Model Section 6 A should be read with a comma after “purchase” on line 16 so the clause beginning on line 16 as “if the” modifies only “exchange of an annuity” NOT “purchase. Obviously an “exchange results in “another” insurance transaction, but a “purchase” does not. The intent is to encompass both.

✓ The language in the Model is not the best on this topic. The Model is unchanged in this regard from the original Model that was the basis for existing s. 628.347. You clarified this issue when you drafted s. 628.347 by substituting “a” for “another.” You may wish to retain that clarification.

✓ **Page 5, before line 1:** The answer is yes, however this language parallels FINRA rules and is retained from the original Model. Hence we request that it not be changed in this regard as it is likely to be viewed as having a substantive effect.

✓ **Page 5, line 16:** Commas rather than parentheses are fine. For the reasons outlined above we prefer to leave the language unchanged otherwise, recognizing that the term replacement applies only when there is a recommendation to purchase an annuity that will replace another annuity or other insurance product, not when there is a recommendation to purchase another insurance product and that product will replace an annuity.

✓ **Page 6, line 8:** See discussion above. Please leave the language as is.

✓ **Page 6, line 15:** Yes, please make the change.

✓ **Page 7, line 8:** This change may be regarded as controversial. The Model does not use the word "ensure." Subject to hearing your reasoning our preference is to substitute the Model's cross-references for the words "ensure that an annuity transaction is suitable."

✓ **Page 7, line 15:** The answer is Yes to both. Please leave the language as is.

✓ **Page 8, line 12:** 1) Ok as customer. 2) Either one.

Page 9, lines 6 to 11: The intent of this provision is that an insurer maintains procedures that will have the overall effect of deterring agent submission of misleading suitability information. The intent is that this may be done by confirmation either before or within a reasonable time after the sale and that confirmation is not required for every sale but may be on a sampling basis, i.e. only for selected transactions as long as the overall program is reasonably likely to detect a pattern of submission of misleading information. We believe this provision adequately states this intent. However if you have other language to suggest to clarify the intent we will welcome your suggestion.

✓ **Page 10, before line 1:** Please add "or both."

Page 12, before line 1:

- 1) A FINRA member broker dealer is a securities broker dealer that is a member of FINRA (in essence licensed), the self-regulatory organization that is supervised by the SEC. The supervision system is the system spelled out in FINRA rules that are approved by the SEC (not (3)). The intent of the provision is to provide a "safe harbor" for:
 - a) Annuity recommendations and sales (note broader than "sales") that comply with the suitability standard under FINRA rules; and
 - b) An insurer that relies on a security broker dealer to supervise annuity recommendations and sales, if the security broker dealer implements a supervision system that complies with the FINRA rules that govern annuity sales supervision systems.
- 2) We would appreciate revising the language back to the Model, although your insertion of "subject to pars. (a) and (b)" are fine. This language is a major focus of discussion relating to the Model.
- 3) Please follow the Model's use of the term FINRA, rather than "regulatory authority." We assume you made this change out of a concern that it is inappropriate to use an acronym. However this is an accepted, understood, term in the securities industry. Changing it is likely to cause confusion. If an acronym is not permitted by style standards it probably would be preferable to use the full title as with the current statute (FINRA is the successor agency to the NASD.)

Page 12, line 4:

- 1) FINRA rules apply to variable annuities, not fixed annuities. See below. (Although a pending FINRA proposed rule may have the effect of applying FINRA rules to FINRA member broker dealer sales of fixed annuities). So the provision requires application of a suitability standard and supervision system "similar" to those applied to variable annuities by FINRA.
- 2) No not "requirements" but actual standards and supervision which must be in accordance with the FINRA requirements.
- 3) Only variable sales by a FINRA member broker dealer. Variable annuities, unlike fixed annuities, are securities under federal law. Hence they may ONLY be sold by FINRA member broker dealers and registered security representatives (who are also licensed insurance agents). Fixed annuities are not securities so may be, and are, sold either by FINRA broker dealers or by insurance agencies/insurance agents who are not associated with a FINRA member broker dealer and are not security reps and are not supervised by a broker dealer.
- 4) The point of the "safe harbor" is to allow insurers to rely on the FINRA standards to govern distribution through a broker dealer so that the insurer and the broker dealer don't have to overlay compliance with sub. (3) over compliance with FINRA rules, this would be largely duplicative but both confusing and costly. On the other hand where distribution of non-variable products is through insurance agencies/insurance agents sub. (3) applies.
- 5) Generally we would appreciate it if the Model language could be retained. OCI can address interpretative issues through various means, including rulemaking if necessary.

✓ **Page 13, after line 13:** Either works

✓ **Page 13, after line 18:** Yes that is correct.

✓ **Page 14, after line 2, 5, 8:** In each case these are specified by rule. We suggest: "as set forth in office rules governing intermediary continuing education courses."

✓ **Page 15, line 21:** Please change to 12th month.