

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3938/F2

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Stays

revision

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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SAV

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

1 628.347 (7) (b) of the statutes; **relating to:** suitability of annuity contracts and
2 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. 628.347 (title) of the statutes is amended to read:

4 **628.347 (title) Suitability of in annuity sales to consumers transactions.**

5 SECTION 2. 628.347 (1) (a) of the statutes is amended to read:

6 628.347 (1) (a) "Annuity" means a fixed or variable annuity that is an insurance
7 product that is individually solicited, whether the product is classified as an
8 individual or group annuity.

9 SECTION 3. 628.347 (1) (b) of the statutes is amended to read:

10 628.347 (1) (b) "Recommendation" means advice provided by an insurance
11 intermediary, or an insurer if no intermediary is involved, to an individual consumer
12 that results in the purchase ~~or~~, exchange, or replacement of an annuity in accordance
13 with that advice.

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

15 628.347 (1) (c) "Regulatory authority" means the Financial Industry
16 Regulatory Authority or a succeeding agency.

17 SECTION 5. 628.347 (1) (d) of the statutes is created to read:

18 628.347 (1) (d) "Replacement" means a transaction in which a new annuity
19 contract is to be purchased and it is known, or should be known to the proposing
20 insurance intermediary, or to the proposing insurer if no intermediary is involved,

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1 that by reason of the transaction an existing policy or contract ^{has been or} is to be any of the
2 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?

- 3 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the
- 4 replacing insurer, or otherwise terminated.
- 5 2. Converted to reduced paid-up insurance, continued as extended term
- 6 insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other
- 7 policy values.
- 8 3. Amended so as to effect either a reduction in benefits or a reduction in the
- 9 term for which coverage would otherwise remain in force or for which benefits would
- 10 otherwise be paid.

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

- 11 4. Reissued with a reduction in cash value.
- 12 5. Used in a financed purchase.

13 **SECTION 6.** 628.347 (1) (e) of the statutes is created to read:
14 628.347 (1) (e) "Suitability information" means information that is reasonably
15 appropriate to determine the suitability of a recommendation, including all of the
16 following:

- 17 1. Age.
- 18 2. Annual income.
- 19 3. Financial situation and needs, including the financial resources used for the
- 20 funding of the annuity.
- 21 4. Financial experience.

- 1 5. Financial objectives.
- 2 6. Intended use of the annuity.
- 3 7. Financial time horizon.
- 4 8. Existing assets, including investment and life insurance holdings.
- 5 9. Liquidity needs.
- 6 10. Liquid net worth.
- 7 11. Risk tolerance.
- 8 12. Tax status.

SECTION 7. 628.347 (2) (title) of the statutes is amended to read:

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

SECTION 8. 628.347 (2) (a) of the statutes is renumbered 628.347 (2) (a) (intro.) and amended to read:

628.347 (2) (a) (intro.) ~~Except as provided in par. (c), an insurance intermediary, or insurer if no intermediary is involved, may not recommend~~ In recommending to a consumer the purchase ^{of an annuity,} or exchange ^{the} of an annuity ~~if the recommendation that results in an~~ another insurance transaction or series of insurance transactions ~~unless the,~~ an insurance intermediary, or insurer has if no intermediary is involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer on the basis of facts disclosed by the consumer as to his or her investments, other insurance products, and financial situation and needs, including the consumer's suitability information, and that all 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"?

1 **SECTION 9.** 628.347 (2) (a) 1. of the statutes is created to read:

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

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

9 628.347 (2) (a) 2. The consumer would benefit from certain features of the
10 annuity, such as tax-deferred growth, annuitization, or death or living benefit.

11 **SECTION 11.** 628.347 (2) (a) 3. of the statutes is created to read:

12 628.347 (2) (a) 3. The particular annuity as a whole, the underlying
13 subaccounts to which funds are allocated at the time of purchase or exchange of the
14 annuity, and riders and similar product enhancements, if any, are suitable, and in
15 the case of an exchange or replacement, the transaction as a whole is suitable, for the
16 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.

17 **SECTION 12.** 628.347 (2) (a) 4. of the statutes is created to read:

18 628.347 (2) (a) 4. In the case of an exchange or replacement of an annuity, the
19 exchange or replacement is suitable, even after taking into consideration all of the
20 following:

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

5 b. Whether the consumer would benefit from product enhancements and
6 improvements.

7 c. Whether the consumer has had another annuity exchange or replacement
8 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?

9 SECTION 13. 628.347 (2) (b) (intro.) of the statutes is renumbered 628.347 (2)
10 (b) and amended to read:

11 628.347 (2) (b) Before ^{PLAIN}making a recommendation described in par. (a) ~~the~~
12 ~~execution of a purchase, exchange, or replacement of an annuity resulting from a~~
13 ~~recommendation,~~ an insurance intermediary, or insurer if no intermediary is
14 involved, shall make reasonable efforts to obtain the consumer's suitability
15 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?

16 SECTION 14. 628.347 (2) (b) 1. of the statutes is repealed.

17 SECTION 15. 628.347 (2) (b) 2. of the statutes is repealed.

18 SECTION 16. 628.347 (2) (b) 3. of the statutes is repealed.

19 SECTION 17. 628.347 (2) (b) 4. of the statutes is repealed.

20 SECTION 18. 628.347 (2) (bm) of the statutes is created to read:

1 628.347 (2) (bm) Except as permitted under par. (c), an insurer may not issue
2 an annuity that is recommended by the insurer or its insurance intermediary to a
3 consumer unless it is reasonable to believe that the annuity is suitable based on the
4 consumer's suitability information.

5 **SECTION 19.** 628.347 (2) (c) of the statutes is repealed and recreated to read:

6 628.347 (2) (c) 1. Subject to subd. 2., neither an insurance intermediary nor an
7 insurer has any obligation to ensure that an annuity transaction is suitable for a
8 consumer if any of the following applies:

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

9 a. Neither the insurance intermediary nor the insurer made a
10 recommendation.

11 b. The insurance intermediary or insurer made a recommendation but the
12 recommendation was later found to have been prepared based on inaccurate
13 material information provided by the consumer.

14 c. The consumer refuses to provide relevant suitability information and the
15 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)?

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

18 **SECTION 20.** 628.347 (2) (d) of the statutes is renumbered 628.347 (2) (c) 2. and
19 amended to read:

20 628.347 (2) (c) 2. ~~Any recommendation of an insurer or insurance intermediary~~
21 ~~that, under par. (c), is not subject to the obligation under par. (a)~~ An insurer's
22 issuance of an annuity under circumstances specified in subd. 1. a. to d. shall be

1 reasonable under all circumstances actually known to the insurer or insurance
2 intermediary at the time the recommendation is made annuity is issued.

3 **SECTION 21.** 628.347 (2) (dm) of the statutes is created to read:

4 628.347 (2) (dm) An insurance intermediary, or insurer if no intermediary is
5 involved, shall at the time of sale do all of the following:

- 6 1. Make a record of any recommendation subject to par. (a).
- 7 2. Obtain a customer-signed statement documenting a customer's refusal, if
8 any, to provide suitability information.
- 9 3. If a customer decides to enter into an annuity transaction that is not based
10 on the insurance intermediary's or insurer's recommendation, obtain a
11 customer-signed statement acknowledging that the annuity transaction is not
12 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?

13 **SECTION 22.** 628.347 (3) of the statutes is repealed and recreated to read:

14 628.347 (3) **INSURER'S SUPERVISORY RESPONSIBILITY.** (a) An insurer shall
15 establish a supervision system that is reasonably designed to achieve the insurer's
16 and its insurance intermediaries' compliance with this section. Under the system,
17 the insurer shall do at least all of the following:

- 18 1. Maintain reasonable procedures to inform its insurance intermediaries of
19 the requirements of this section and incorporate the requirements of this section into
20 relevant insurance intermediary training manuals.

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

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

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

12 4 ← 5. Maintain procedures for review of each recommendation before issuance of
13 an annuity that are designed to ensure that there is a reasonable basis to determine
14 that a recommendation is suitable. An insurer's procedures may apply a system of
15 selection criteria for the purpose of identifying selected transactions for additional
16 review. An insurer's procedures may be accomplished electronically or through other
17 means, including physical review. An electronic or other system may be designed to
18 require additional review only of those transactions identified for additional review
19 by the selection criteria.

20 5 ← 6. Maintain reasonable procedures to detect recommendations that are not
21 suitable, which may include confirmation of consumer suitability information,
22 systematic customer surveys, interviews, confirmation letters, and programs of
23 internal monitoring. Nothing in this subdivision prevents an insurer from
24 complying with this subdivision by applying sampling procedures or by confirming
25 suitability information after issuance or delivery of the annuity, or both

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

1 ~~b~~ ← 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.

5 (b) 1. Nothing in this subsection restricts an insurer from contracting for the
6 performance of a function required par. (a), including maintenance of procedures.
7 An insurer is responsible for taking appropriate corrective action and may be subject
8 to, sanctions and penalties under subs. (5) and (6), regardless of whether the insurer
9 contracts for the performance of a function and regardless of the insurer's compliance
10 with subd. 2.

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

13 a. Monitoring and, as appropriate, conducting audits to ensure that the
14 contracted function is properly performed.

15 b. Applying reasonable procedures to a contracted function under par. (a) 4.
16 that are designed to address any conflict of interest.

17 ~~b~~ ← Annually obtaining a certification from a senior manager who has
18 responsibility for the contracted function that the manager has a reasonable basis
19 to represent, and does represent, that the function is properly performed.

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

23 SECTION 23. 628.347 (3m) of the statutes is created to read:

1 628.347 (3m) PROHIBITED ACTS OF INTERMEDIARY. An insurance intermediary
2 may not dissuade, or attempt to dissuade, a consumer from doing any of the
3 following:

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

6 (b) Filing a complaint.

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

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8 SECTION 24. 628.347 (4) (title) of the statutes is repealed and recreated to read:

9 628.347 (4) (title) REGULATORY AUTHORITY RULES.

10 SECTION 25. 628.347 (4) of the statutes is renumbered 628.347 (4) (a) and
11 amended to read:

12 628.347 (4) (a) Compliance Subject to pars. (b) and (c), sales made in
13 compliance with the National Association of Securities Dealers Conduct Rules
14 regulatory authority requirements pertaining to suitability and supervision of
15 annuity transactions satisfies the requirements under sub. (2) for the
16 recommendation of variable annuities this section. Nothing in this subsection,
17 however, limits the commissioner's ability to enforce this section or to conduct any
18 investigation necessary for that enforcement.

Insert 11-18

19 SECTION 26. 628.347 (4) (b) of the statutes is created to read:

20 628.347 (4) (b) Paragraph (a) applies if an insurer ^{For par.} ^{to apply's} ^{must do} does all of the following:

21 1. Monitor ^{FINRA} the regulatory authority member broker-dealer using information
22 collected in the normal course of an insurer's business.

23 2. Provides ^{FINRA} to the regulatory authority member broker-dealer information and
24 reports that are reasonably appropriate to assist the ^{FINRA} regulatory authority member
25 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).

***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?

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

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

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

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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?

5

SECTION 28. 628.347 (4m) of the statutes is created to read:

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628.347 (4m) INSURANCE INTERMEDIARY TRAINING. (a) An insurance

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intermediary may not solicit the sale of an annuity product unless the insurance

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intermediary has adequate knowledge of the product to recommend the annuity and

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the insurance intermediary is in compliance with the insurer's standards for product

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training. An insurance intermediary may rely on insurer-provided product-specific

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training standards and materials to comply with this paragraph.

12

(b) 1. a. An insurance intermediary who engages in the sale of annuity products

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shall complete a one-time training course approved by the commissioner and

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provided by an education provider approved by the commissioner.

15

b. Insurance intermediaries who hold a life insurance line of authority on the

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effective date of this subd. 1. b. [LRB inserts date], and who desire to sell annuities

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must complete the requirements of this paragraph within 6 months after the

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effective date of this subd. 1. b. [LRB inserts date]. Individuals who obtain a life

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insurance line of authority on or after the effective date of this subd. 1. b. [LRB

1 inserts date], may not engage in the sale of annuities until they have completed the
2 annuity training course required under this paragraph.

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

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

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

8 b. Identification of the parties to an annuity.

9 c. How fixed, variable, and indexed annuity contract provisions affect
10 consumers.

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

12 e. The primary uses of annuities.

13 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"?

14 4. Providers of annuity training courses intended to comply with this
15 paragraph shall cover all of the topics listed under subd. 3. and may not present any
16 marketing information or provide training on sales techniques or provide specific
17 information about a particular insurer's products. Additional topics may be offered
18 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?

19 5. A provider of an annuity training course intended to comply with this
20 paragraph shall register as a continuing education provider in this state and comply
21 with the rules and guidelines applicable to insurance intermediary continuing

1 education courses as set forth in [insert reference to State law or regulations]

2 governing intermediary continuing education course approval

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

Insert 14-1

3 6. Annuity training courses may be conducted and completed by classroom or

4 self-study methods in accordance with [insert reference to State law or regulations]

5 governing intermediary continuing education course approval

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

Insert 14-1

6 7. Providers of annuity training shall comply with the reporting requirements

7 and shall issue certificates of completion in accordance with [insert reference to State

8 law or regulations governing to intermediary continuing education course approval]

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

9 8. Satisfaction of the training requirements of another state that are
10 substantially similar to the requirements of this paragraph satisfies the training
11 requirements of this paragraph in this state.

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

19 SECTION 29. 628.347 (5) (intro.) of the statutes is amended to read:

20 628.347 (5) ~~REMEDIAL COMPLIANCE; REMEDIAL MEASURES.~~ (intro.) The An insurer
21 is responsible for compliance with this section. If a violation occurs, either because

1 of the action or inaction of the insurer or its insurance intermediary, the
2 commissioner may do any of the following:

3 **SECTION 30.** 628.347 (5) (d) of the statutes is created to read:

4 628.347 (5) (d) Impose any appropriate penalties or sanctions.

5 **SECTION 31.** 628.347 (6) (b) of the statutes is repealed.

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

7 628.347 (6) (c) The commissioner may ~~promulgate rules related to~~ by rule
8 provide for the reduction or elimination of ~~penalties for violations~~ a penalty under
9 par. (a) for a violation of this section on the basis of prompt if corrective action is taken
10 to correct any harm caused to consumers by the violations for the consumer promptly
11 after the violation is discovered or the violation is not part of a pattern or practice.

12 **SECTION 33.** 628.347 (7) of the statutes is renumbered 628.347 (7) (a).

13 **SECTION 34.** 628.347 (7) (b) of the statutes is created to read:

14 628.347 (7) (b) Records that are required to be maintained under this section
15 may be maintained in paper, photographic, microprocess, magnetic, or electronic
16 media or by any process that accurately reproduces the actual document.

17 **SECTION 35.** 628.347 (8) (intro.) of the statutes is amended to read:

18 628.347 (8) EXEMPTIONS. (intro.) This Unless otherwise prescribed by rule, this
19 section does not apply to any of the following:

20 **SECTION 36. Effective date.**

21 (1) This act takes effect on the first day of the ~~(7th)~~ ^{12th} month beginning after
22 publication.

23 (END)

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3938/P2ins
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not the name of the
~~this~~ electronic version
of this document.
Instead, it is called
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Under current law, an insurance intermediary (intermediary), or insurer if no intermediary is involved, may not recommend to a consumer the purchase of an annuity, or recommend to a consumer the exchange of an annuity that results in an insurance transaction, unless the intermediary or insurer has reasonable grounds to believe that the recommendation is suitable for the consumer based on facts disclosed by the consumer as to his or her investments, other insurance products, and
✓ financial situation and needs. Before making a recommendation, the intermediary or insurer must make reasonable efforts to obtain information from the consumer
✓ about his or her financial status, tax status, and investment objectives. Current law requires insurers to have a system for supervising annuity transaction
✓ recommendations and provides certain requirements with which the supervisory system must comply. The commissioner of insurance (commissioner) may order an insurer or intermediary to take corrective action if a consumer is harmed by a
✓ violation of the provisions regulating annuity transaction recommendations, and the commissioner may promulgate rules to reduce or eliminate penalties for violations
✓ of the provisions if, after a violation is discovered, corrective action is promptly taken for the consumer.

This bill makes various changes to the annuity transaction provisions. The bill adds types of information that an insurer or insurance intermediary must consider when determining whether a recommendation to a consumer for the purchase, exchange, or replacement of an annuity is suitable (suitability information), such as the consumer's risk tolerance, liquidity needs, intended use of the annuity, and financial time horizon. In addition, the bill requires that the consumer have been
✓ reasonably informed of various specified features of the annuity; that the consumer would benefit from certain features of the annuity, such as tax-deferred growth; that the annuity as a whole is suitable; and that, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer after
✓ the intermediary or insurer takes into account such things as whether the consumer will incur a surrender charge or be subject to increased fees. While the intermediary or insurer must still make reasonable efforts to obtain the consumer's suitability information before making a recommendation, an insurer is prohibited from issuing an annuity that is recommended unless it is reasonable to believe that the annuity is suitable, based on the consumer's suitability information. The bill requires an intermediary or insurer, at the time of a sale, to make a record of any recommendation that was made; to obtain the consumer's signature that he or she refused to provide suitability information, if that is the case; and to obtain a signed statement from the consumer that the consumer is entering into an annuity transaction that was not recommended by the insurer or intermediary, if that is the case. The bill prohibits an intermediary from dissuading, or attempting to dissuade, a consumer from truthfully responding to a request for confirmation of suitability information or from filing a complaint or from cooperating with the investigation of a complaint.

Ins A contd

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The bill expands on what is required for an insurer's system for supervising annuity transaction recommendations. Under the bill, an insurer must maintain reasonable procedures to inform intermediaries of the statutory requirements for annuity transactions, including incorporating the requirements into training manuals; establish standards for requiring intermediaries to comply with training requirements; provide intermediaries with product-specific training; maintain procedures for reviewing each recommendation before the issuance of an annuity to ensure that there is a reasonable basis to determine that a recommendation is suitable; and maintain reasonable procedures to detect recommendations that are not suitable.

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The bill prohibits an intermediary from soliciting the sale of an annuity product unless the intermediary has adequate knowledge of the product to recommend it and establishes intermediary training requirements related to selling annuities. An intermediary who sells annuity products must complete a one-time training course that qualifies for at least four continuing education credits and that includes information on such topics as the types and classifications of annuities; how fixed, variable, and indexed annuity contract provisions affect consumers; taxation of annuities; appropriate sales practices; and disclosure requirements. Both the course and course provider, which must be registered as a continuing education provider in this state, must be approved by the commissioner. An insurer must verify that an intermediary has completed the course before allowing the intermediary to sell an annuity product for the insurer.

education

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Under the bill, the commissioner retains the authority to promulgate rules to reduce or eliminate penalties for violations of the provisions if corrective action is promptly taken for the consumer. In addition, the commissioner may reduce or eliminate a penalty if the violation is not a part of a pattern or practice.

(END OF INSERT A)

INSERT 7-8

not

1 under par. (a) or (bm) related to any annuity transaction

(END OF INSERT 7-8)

INSERT 11-18

2 **SECTION 1.** 628.347 (4) of the statutes is renumbered 628.347 (4) (a) and
 3 amended to read:

4 628.347 (4) (a) Compliance Subject to pars. (b) and (c), sales made in
 5 compliance with the National Association of Securities Dealers Conduct Rules
 6 FINRA requirements pertaining to suitability satisfies and supervision of annuity

Ins 11-18 contd

1 ~~PINRA requirements pertaining to suitability satisfies and supervision of annuity~~
 2 ~~transactions satisfy~~ the requirements under sub. (2) ~~for the recommendation of~~
 3 ~~variable annuities~~ this section. Nothing in this subsection, however, limits the
 4 commissioner's ability to enforce this section, including conducting any
 5 investigation necessary for that enforcement.

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

(END OF INSERT 11-18)

INSERT 14-1

6 *wof* rules of the office governing intermediary continuing education requirements

(END OF INSERT 14-1)

LPS: this line is marked for deletion because it is a duplicate of the last line showing on page 2. When you open the insert, there may not be a duplicate line here. If there is no duplication, when you open the doc, there is nothing to delete.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3938/Edn
PJK:cjs
stays

— date —

For s. 628.347 (4), I wasn't quite sure how much of the exact model language you wanted me to restore. I kept the newly created par. (c) as is, although the model included that language in par. (a). Let me know if it makes a difference that the exact language of the model is in a separate paragraph. Perhaps the model incorrectly refers to "this subsection" when the intention was to refer to "this paragraph"?

In par. (a), I did not restore the exact model language about "the commissioner's ability to enforce, *including investigate*, this section," since normally a section of the statutes is not investigated, actions taken under the statute are. I think the language I used captures the same idea. Let me know, however, if you think the change is a problem.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

9 In par. (c) ↑ is the absence of ↓member↓
↓broker-dealer↓
↓broker-dealer↓ okay?

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3938/1dn
PJK:cjs:md

February 2, 2010

For s. 628.347 (4), I wasn't quite sure how much of the exact model language you wanted me to restore. I kept the newly created par. (c) as is, although the model included that language in par. (a). Let me know if it makes a difference that the exact language of the model is in a separate paragraph. Perhaps the model incorrectly refers to "this subsection" when the intention was to refer to "this paragraph"?

In par. (a), I did not restore the exact model language about "the commissioner's ability to enforce, *including investigate*, this section," since normally a section of the statutes is not investigated, actions taken under the statute are. I think the language I used captures the same idea. Let me know, however, if you think the change is a problem.

In par. (c), is the absence of "member" before "broker-dealer" okay?

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Nepple, Fred - OCI [Fred.Nepple@wisconsin.gov]
Sent: Friday, February 05, 2010 10:55 AM
To: Kahler, Pam
Cc: Stegall, Jennifer L - OCI
Subject: LRB 3938/1

Pam

Thank you for your as always careful efforts to draft this bill. We have a few changes only. I believe the office is hoping to circulate a final draft Monday if you can accommodate us:

- ✓ 1) Page 6, line 21, please substitute "including" for "even after." This language parallels FINRA Rule 2821. Use of "even after" may be regarded as a substantive change.
- ✓ 2) Page 9, line 18, after "apply a" please insert "screening." and delete on line 18 and 19 "of selection criteria". This restore the language to the Model. While we agree your language reflects the intent, the change may be regarded as substantive.
- ✓ 3) Page 14, lines 20 to 24: This provision, as with the whole bill, has a 12th month delayed effective date. Please add authority to promulgate rules on the day after publication. Perhaps this is can be done by simply making this amendment effective on publication?

Fred Nepple, General Counsel

Fred.Nepple@oci.state.wi.us

Ph: (608)266-7726 FAX: (608)264-6228

Wisconsin Office of the Commissioner of Ins <http://oci.wi.gov>

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2009 BILL

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1 AN ACT *to repeal* 628.347 (2) (b) 1., 628.347 (2) (b) 2., 628.347 (2) (b) 3., 628.347
 2 (2) (b) 4. and 628.347 (6) (b); *to renumber* 628.347 (7); *to renumber and*
 3 *amend* 628.347 (2) (a), 628.347 (2) (b) (intro.), 628.347 (2) (d) and 628.347 (4);
 4 *to amend* 628.347 (title), 628.347 (1) (a), 628.347 (1) (b), 628.347 (2) (title),
 5 628.347 (5) (intro.), 628.347 (6) (c) and 628.347 (8) (intro.); *to repeal and*
 6 *recreate* 628.347 (2) (c), 628.347 (3) and 628.347 (4) (title); and *to create*
 7 628.347 (1) (am), 628.347 (1) (d), 628.347 (1) (e), 628.347 (2) (a) 1., 628.347 (2)
 8 (a) 2., 628.347 (2) (a) 3., 628.347 (2) (a) 4., 628.347 (2) (bm), 628.347 (2) (dm),
 9 628.347 (3m), 628.347 (4) (b), 628.347 (4) (c), 628.347 (4m), 628.347 (5) (d) and
 10 628.347 (7) (b) of the statutes; **relating to:** suitability of annuity contracts and
 11 granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, an insurance intermediary (intermediary), or insurer if no intermediary is involved, may not recommend to a consumer the purchase of an annuity, or recommend to a consumer the exchange of an annuity that results in an insurance transaction, unless the intermediary or insurer has reasonable grounds

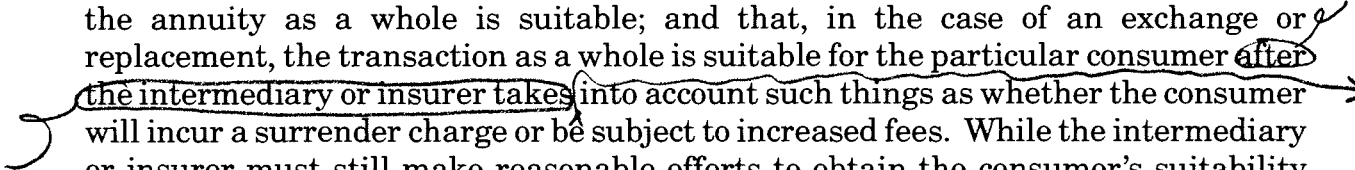
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to believe that the recommendation is suitable for the consumer based on facts disclosed by the consumer as to his or her investments, other insurance products, and financial situation and needs. Before making a recommendation, the intermediary or insurer must make reasonable efforts to obtain information from the consumer about his or her financial status, tax status, and investment objectives. Current law requires insurers to have a system for supervising annuity transaction recommendations and provides certain requirements with which the supervisory system must comply. The commissioner of insurance (commissioner) may order an insurer or intermediary to take corrective action if a consumer is harmed by a violation of the provisions regulating annuity transaction recommendations, and the commissioner may promulgate rules to reduce or eliminate penalties for violations of the provisions if, after a violation is discovered, corrective action is promptly taken for the consumer.

This bill makes various changes to the annuity transaction provisions. The bill adds types of information that an insurer or insurance intermediary must consider when determining whether a recommendation to a consumer for the purchase, exchange, or replacement of an annuity is suitable (suitability information), such as the consumer's risk tolerance, liquidity needs, intended use of the annuity, and financial time horizon. In addition, the bill requires that the consumer have been reasonably informed of various specified features of the annuity; that the consumer would benefit from certain features of the annuity, such as tax-deferred growth; that the annuity as a whole is suitable; and that, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer after the intermediary or insurer takes into account such things as whether the consumer will incur a surrender charge or be subject to increased fees. While the intermediary or insurer must still make reasonable efforts to obtain the consumer's suitability information before making a recommendation, an insurer is prohibited from issuing an annuity that is recommended unless it is reasonable to believe that the annuity is suitable, based on the consumer's suitability information. The bill requires an intermediary or insurer, at the time of a sale, to make a record of any recommendation that was made; to obtain the consumer's signature that he or she refused to provide suitability information, if that is the case; and to obtain a signed statement from the consumer that the consumer is entering into an annuity transaction that was not recommended by the insurer or intermediary, if that is the case. The bill prohibits an intermediary from dissuading, or attempting to dissuade, a consumer from truthfully responding to a request for confirmation of suitability information or from filing a complaint or from cooperating with the investigation of a complaint.

The bill expands on what is required for an insurer's system for supervising annuity transaction recommendations. Under the bill, an insurer must maintain reasonable procedures to inform intermediaries of the statutory requirements for annuity transactions, including incorporating the requirements into training manuals; establish standards for requiring intermediaries to comply with training requirements; provide intermediaries with product-specific training; maintain procedures for reviewing each recommendation before the issuance of an annuity to

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ensure that there is a reasonable basis to determine that a recommendation is suitable; and maintain reasonable procedures to detect recommendations that are not suitable.

The bill prohibits an intermediary from soliciting the sale of an annuity product unless the intermediary has adequate knowledge of the product to recommend it and establishes intermediary training requirements related to selling annuities. An intermediary who sells annuity products must complete a one-time training course that qualifies for at least four continuing education credits and that includes information on such topics as the types and classifications of annuities; how fixed, variable, and indexed annuity contract provisions affect consumers; taxation of annuities; appropriate sales practices; and disclosure requirements. Both the course and course provider, which must be registered as a continuing education provider in this state, must be approved by the commissioner. An insurer must verify that an intermediary has completed the course before allowing the intermediary to sell an annuity product for the insurer.

Under the bill, the commissioner retains the authority to promulgate rules to reduce or eliminate penalties for violations of the provisions if corrective action is promptly taken for the consumer. In addition, the commissioner may reduce or eliminate a penalty if the violation is not a part of a pattern or practice.

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

1 **SECTION 1.** 628.347 (title) of the statutes is amended to read:

2 **628.347** (title) **Suitability of in annuity sales to consumers**
3 **transactions.**

4 **SECTION 2.** 628.347 (1) (a) of the statutes is amended to read:

5 628.347 (1) (a) "Annuity" means a fixed or variable annuity that is an insurance
6 product that is individually solicited, whether the product is classified as an
7 individual or group annuity.

8 **SECTION 3.** 628.347 (1) (am) of the statutes is created to read:

9 628.347 (1) (am) "FINRA" means the Financial Industry Regulatory Authority
10 or a succeeding agency.

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

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

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

6 628.347 (1) (d) "Replacement" means a transaction in which a new annuity is
7 to be purchased and it is known, or should be known to the proposing insurance
8 intermediary, or to the proposing insurer if no intermediary is involved, that by
9 reason of the transaction an existing policy or contract has been or is to be any of the
10 following:

11 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the
12 replacing insurer, or otherwise terminated.

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

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

19 4. Reissued with a reduction in cash value.

20 5. Used in a financed purchase.

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

22 628.347 (1) (e) "Suitability information" means information that is reasonably
23 appropriate to determine the suitability of a recommendation, including all of the
24 following:

25 1. Age.

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- 1 2. Annual income.
- 2 3. Financial situation and needs, including the financial resources used for the
- 3 funding of the annuity.
- 4 4. Financial experience.
- 5 5. Financial objectives.
- 6 6. Intended use of the annuity.
- 7 7. Financial time horizon.
- 8 8. Existing assets, including investment and life insurance holdings.
- 9 9. Liquidity needs.
- 10 10. Liquid net worth.
- 11 11. Risk tolerance.
- 12 12. Tax status.

13 **SECTION 7.** 628.347 (2) (title) of the statutes is amended to read:

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

16 **SECTION 8.** 628.347 (2) (a) of the statutes is renumbered 628.347 (2) (a) (intro.)
17 and amended to read:

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

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

3 **SECTION 9.** 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 10.** 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 11.** 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.

19 **SECTION 12.** 628.347 (2) (a) 4. of the statutes is created to read:

20 628.347 (2) (a) 4. In the case of an exchange or replacement of an annuity, the
21 exchange or replacement is suitable, even after ^{including} taking into consideration all of the
22 following:

23 a. Whether the consumer will incur a surrender charge, be subject to the
24 commencement of a new surrender period, lose existing benefits, such as death,

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1 living, or other contractual benefits, or be subject to increased fees, investment
2 advisory fees, or charges for riders and similar product enhancements.

3 b. Whether the consumer would benefit from product enhancements and
4 improvements.

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

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

9 628.347 (2) (b) Before making a recommendation described in par. (a), an
10 insurance intermediary, or insurer if no intermediary is involved, shall make
11 reasonable efforts to obtain the consumer's suitability information ~~concerning all of~~
12 ~~the following:~~

13 **SECTION 14.** 628.347 (2) (b) 1. of the statutes is repealed.

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

15 **SECTION 16.** 628.347 (2) (b) 3. of the statutes is repealed.

16 **SECTION 17.** 628.347 (2) (b) 4. of the statutes is repealed.

17 **SECTION 18.** 628.347 (2) (bm) of the statutes is created to read:

18 628.347 (2) (bm) Except as permitted under par. (c), an insurer may not issue
19 an annuity that is recommended by the insurer or its insurance intermediary to a
20 consumer unless it is reasonable to believe that the annuity is suitable based on the
21 consumer's suitability information.

22 **SECTION 19.** 628.347 (2) (c) of the statutes is repealed and recreated to read:

23 628.347 (2) (c) 1. Subject to subd. 2., neither an insurance intermediary nor an
24 insurer has any obligation to a consumer under par. (a) or (bm) related to any annuity
25 transaction if any of the following applies:

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1 a. Neither the insurance intermediary nor the insurer made a
2 recommendation.

3 b. The insurance intermediary or insurer made a recommendation but the
4 recommendation was later found to have been prepared based on inaccurate
5 material information provided by the consumer.

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

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

10 **SECTION 20.** 628.347 (2) (d) of the statutes is renumbered 628.347 (2) (c) 2. and
11 amended to read:

12 628.347 (2) (c) 2. ~~Any recommendation of an insurer or insurance intermediary~~
13 ~~that, under par. (c), is not subject to the obligation under par. (a)~~ An insurer's
14 issuance of an annuity under circumstances specified in subd. 1. a. to d. shall be
15 reasonable under all circumstances actually known to the insurer ~~or insurance~~
16 ~~intermediary at the time the recommendation is made~~ annuity is issued.

17 **SECTION 21.** 628.347 (2) (dm) of the statutes is created to read:

18 628.347 (2) (dm) An insurance intermediary, or insurer if no intermediary is
19 involved, shall at the time of sale do all of the following:

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

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

23 3. If a customer decides to enter into an annuity transaction that is not based
24 on the insurance intermediary's or insurer's recommendation, obtain a

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1 customer-signed statement acknowledging that the annuity transaction is not
2 recommended by the intermediary or insurer.

3 **SECTION 22.** 628.347 (3) of the statutes is repealed and recreated to read:

4 628.347 (3) INSURER'S SUPERVISORY RESPONSIBILITY. (a) An insurer shall
5 establish a supervision system that is reasonably designed to achieve the insurer's
6 and its insurance intermediaries' compliance with this section. Under the system,
7 the insurer shall do at least all of the following:

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

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

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

16 4. Maintain procedures for review of each recommendation before issuance of
17 an annuity that are designed to ensure that there is a reasonable basis to determine
18 that a recommendation is suitable. An insurer's procedures may apply a system of

19 selection criteria for the purpose of identifying selected transactions for additional
20 review. An insurer's procedures may be accomplished electronically or through other
21 means, including physical review. An electronic or other system may be designed to
22 require additional review only of those transactions identified for additional review
23 by the selection criteria.

24 5. Maintain reasonable procedures to detect recommendations that are not
25 suitable, which may include confirmation of consumer suitability information,

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screening

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1 systematic customer surveys, interviews, confirmation letters, and programs of
2 internal monitoring. Nothing in this subdivision prevents an insurer from
3 complying with this subdivision by applying sampling procedures or by confirming
4 suitability information after issuance or delivery of the annuity, or both.

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

9 (b) 1. Nothing in this subsection restricts an insurer from contracting for the
10 performance of a function required par. (a), including maintenance of procedures.
11 An insurer is responsible for taking appropriate corrective action and may be subject
12 to, sanctions and penalties under subs. (5) and (6), regardless of whether the insurer
13 contracts for the performance of a function and regardless of the insurer's compliance
14 with subd. 2.

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

17 a. Monitoring and, as appropriate, conducting audits to ensure that the
18 contracted function is properly performed.

19 b. Annually obtaining a certification from a senior manager who has
20 responsibility for the contracted function that the manager has a reasonable basis
21 to represent, and does represent, that the function is properly performed.

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

25 **SECTION 23.** 628.347 (3m) of the statutes is created to read:

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1 628.347 (3m) PROHIBITED ACTS OF INTERMEDIARY. An insurance intermediary
2 may not dissuade, or attempt to dissuade, a consumer from doing any of the
3 following:

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

6 (b) Filing a complaint.

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

8 **SECTION 24.** 628.347 (4) (title) of the statutes is repealed and recreated to read:

9 628.347 (4) (title) FINANCIAL INDUSTRY REGULATORY AUTHORITY RULES.

10 **SECTION 25.** 628.347 (4) of the statutes is renumbered 628.347 (4) (a) and
11 amended to read:

12 628.347 (4) (a) ~~Compliance~~ Subject to pars. (b) and (c), sales made in
13 compliance with the National Association of Securities Dealers Conduct Rules
14 FINRA requirements pertaining to suitability satisfies and supervision of annuity
15 transactions satisfy the requirements under ~~sub. (2) for the recommendation of~~
16 ~~variable annuities~~ this section. Nothing in this subsection, however, limits the
17 commissioner's ability to enforce this section, including conducting any
18 investigation necessary for that enforcement.

19 **SECTION 26.** 628.347 (4) (b) of the statutes is created to read:

20 628.347 (4) (b) For par. (a) to apply, an insurer must do all of the following:

21 1. Monitor the FINRA member broker-dealer using information collected in
22 the normal course of an insurer's business.

23 2. Provide to the FINRA member broker-dealer information and reports that
24 are reasonably appropriate to assist the FINRA member broker-dealer to maintain
25 its supervision system.

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1 **SECTION 27.** 628.347 (4) (c) of the statutes is created to read:

2 628.347 (4) (c) This subsection applies to FINRA broker-dealer sales of
3 variable annuities and fixed annuities if the suitability and supervision are similar
4 to those applied to variable annuity sales.

5 **SECTION 28.** 628.347 (4m) of the statutes is created to read:

6 628.347 (4m) INSURANCE INTERMEDIARY TRAINING. (a) An insurance
7 intermediary may not solicit the sale of an annuity product unless the insurance
8 intermediary has adequate knowledge of the product to recommend the annuity and
9 the insurance intermediary is in compliance with the insurer's standards for product
10 training. An insurance intermediary may rely on insurer-provided product-specific
11 training standards and materials to comply with this paragraph.

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

15 b. Insurance intermediaries who hold a life insurance line of authority on the
16 effective date of this subd. 1. b. [LRB inserts date], and who desire to sell annuities
17 must complete the requirements of this paragraph within 6 months after the
18 effective date of this subd. 1. b. [LRB inserts date]. Individuals who obtain a life
19 insurance line of authority on or after the effective date of this subd. 1. b. [LRB
20 inserts date], may not engage in the sale of annuities until they have completed the
21 annuity training course required under this paragraph.

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

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

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- 1 a. The types of annuities and various classifications of annuities.
- 2 b. Identification of the parties to an annuity.
- 3 c. How fixed, variable, and indexed annuity contract provisions affect
4 consumers.
- 5 d. The application of income taxation of qualified and non-qualified annuities.
- 6 e. The primary uses of annuities.
- 7 f. Appropriate sales practices and replacement and disclosure requirements.
- 8 4. Providers of annuity training courses intended to comply with this
9 paragraph shall cover all of the topics listed under subd. 3. and may not present any
10 marketing information or provide training on sales techniques or provide specific
11 information about a particular insurer's products. Additional topics may be offered
12 in conjunction with and in addition to those listed under subd. 3.
- 13 5. A provider of an annuity training course intended to comply with this
14 paragraph shall register as a continuing education provider in this state and comply
15 with the rules and guidelines applicable to insurance intermediary continuing
16 education courses as set forth in rules of the office governing intermediary
17 continuing education requirements.
- 18 6. Annuity training courses may be conducted and completed by classroom or
19 self-study methods in accordance with rules of the office governing intermediary
20 continuing education requirements.
- 21 7. Providers of annuity training shall comply with the reporting requirements
22 and shall issue certificates of completion in accordance with rules of the office
23 governing intermediary continuing education requirements.

BILL**SECTION 28**

1 8. Satisfaction of the training requirements of another state that are
2 substantially similar to the requirements of this paragraph satisfies the training
3 requirements of this paragraph in this state.

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

11 **SECTION 29.** 628.347 (5) (intro.) of the statutes is amended to read:

12 628.347 (5) ~~REMEDIAL COMPLIANCE; REMEDIAL MEASURES.~~ (intro.) The An insurer
13 is responsible for compliance with this section. If a violation occurs, either because
14 of the action or inaction of the insurer or its insurance intermediary, the
15 commissioner may do any of the following:

16 **SECTION 30.** 628.347 (5) (d) of the statutes is created to read:

17 628.347 (5) (d) Impose any appropriate penalties or sanctions.

18 **SECTION 31.** 628.347 (6) (b) of the statutes is repealed.

19 **SECTION 32.** 628.347 (6) (c) of the statutes is amended to read:

20 628.347 (6) (c) The commissioner may ~~promulgate rules related to~~ by rule
21 provide for the reduction or elimination of penalties for violations a penalty under
22 par. (a) for a violation of this section on the basis of prompt if corrective action is taken
23 to correct any harm caused to consumers by the violations for the consumer promptly
24 after the violation is discovered or the violation is not part of a pattern or practice.

25 **SECTION 33.** 628.347 (7) of the statutes is renumbered 628.347 (7) (a).

BILL

1 **SECTION 34.** 628.347 (7) (b) of the statutes is created to read:

2 628.347 (7) (b) Records that are required to be maintained under this section
3 may be maintained in paper, photographic, microprocess, magnetic, or electronic
4 media or by any process that accurately reproduces the actual document.

5 **SECTION 35.** 628.347 (8) (intro.) of the statutes is amended to read:

6 628.347 (8) EXEMPTIONS. (intro.) This Unless otherwise prescribed by rule, this
7 section does not apply to any of the following:

8 **SECTION 36. Effective date.**

9 (1) This act takes effect on the first day of the 12th month beginning after
10 publication.

11

(END)

Insert 15-10

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3938/2ins
PJK:.....

INSERT 15-10

1 **SECTION 36. Effective dates.** This act takes effect on the first day of the 12th
2 month beginning after publication, except as follows:

3 (1) **RULE REDUCING OR ELIMINATING PENALTY.** The treatment of section 628.347
4 (6) (b) and (c) of the statutes takes effect on the day after publication.

(END OF INSERT 15-10)

Barman, Mike

From: Williams, Ritch
Sent: Monday, February 08, 2010 10:46 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3938/2 Topic: Suitability of annuities

Please Jacket LRB 09-3938/2 for the ASSEMBLY.

Rep. Cullens' Office

Barman, Mike

From: Stegall, Jennifer L - OCI [Jennifer.Stegall@wisconsin.gov]
Sent: Monday, February 08, 2010 11:29 AM
To: Barman, Mike
Subject: RE: Draft Review: LRB 09-3938/2 Topic: Suitability of annuities

Yes, thank you!

Sen. Wirsch will likely make the same request. We are OK with that too.

From: Barman, Mike [mailto:Mike.Barman@legis.wisconsin.gov]
Sent: Monday, February 08, 2010 11:22 AM
To: Stegall, Jennifer L - OCI
Subject: FW: Draft Review: LRB 09-3938/2 Topic: Suitability of annuities
Importance: High

Rep. Cullen's office requested we "jacket" your draft (LRB 09-3938/2) and send it to their office ... is that OK with you?

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

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Please Jacket LRB 09-3938/2 for the ASSEMBLY.

Barman, Mike

From: Barman, Mike
Sent: Monday, February 08, 2010 11:36 AM
To: Stegall, Jennifer L - OCI
Subject: FW: Draft Review: LRB 09-3938/2 Topic: Suitability of annuities

Jennifer,

If there is going to be a Senate version you will need to contact Pam Kahler (266-2682) to have a companion bill drafted.

Mike Barman

From: Kahler, Pam
Sent: Monday, February 08, 2010 11:33 AM
To: Barman, Mike
Subject: RE: Draft Review: LRB 09-3938/2 Topic: Suitability of annuities

None requested.

From: Barman, Mike
Sent: Monday, February 08, 2010 11:33 AM
To: Kahler, Pam
Subject: FW: Draft Review: LRB 09-3938/2 Topic: Suitability of annuities

Is there a "companion bill" drafted?

From: Stegall, Jennifer L - OCI [mailto:Jennifer.Stegall@wisconsin.gov]
Sent: Monday, February 08, 2010 11:29 AM
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02/08/2010

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