



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 343
[2009 Senate Bill 572]

Annuity Contracts

Current law generally provides that an insurance intermediary (intermediary) or insurer may not make a recommendation to a consumer regarding the purchase or exchange of an annuity unless they have reasonable grounds to believe that the recommendation is suitable for the consumer. Current law also requires an insurer to have a system for supervising annuity transaction recommendations and specifies certain requirements with which the supervisory system must comply. The Act makes changes to these requirements, as described below.

Limitation on Issuance of Annuities

Current law generally provides that an intermediary or insurer may not make a recommendation to a consumer regarding the purchase or exchange of an annuity unless they have reasonable grounds to believe that the recommendation is suitable for the consumer.

This Act provides, in addition, that an insurer may not *issue* an annuity that is recommended by the insurer or its intermediary to a consumer unless it is reasonable to believe that the annuity is suitable based on the consumer's suitability information, described below.

Recommendation; Suitability; Records

The Act adds types of information that an insurer or intermediary must consider when determining whether a recommendation to a consumer for the purchase, exchange, or replacement of an annuity is suitable. This includes the consumer's risk tolerance, liquidity needs, intended use of the annuity, and financial time horizon. The Act prohibits an intermediary from dissuading, or attempting to dissuade, a consumer from truthfully responding to a request for confirmation of suitability information.

The Act also specifies that a recommendation may not be made unless all of the following are true:

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- The consumer has been informed of various specified features of the annuity such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components, and market risk.

- The consumer would benefit from certain features of the annuity, such as tax-deferred growth annuitization, or death or living benefit.

- The annuity as a whole is suitable for the consumer.

- In the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer, including taking into account such things as whether the consumer will incur a surrender charge, lose existing benefits, or be subject to increased fees.

Current law specifies that an insurer or intermediary has no obligation to a consumer regarding a *recommendation* if the consumer refuses or fails to provide complete or accurate information or enters into a transaction that was not recommended. The Act provides instead that an insurer or intermediary has no obligation to a consumer regarding an *annuity transaction* under any of the following circumstances:

- The insurer or intermediary did not make a recommendation.

- The consumer provided inaccurate information upon which the recommendation was made.

- The consumer refused to provide relevant suitability information and the transaction was not recommended.

- The consumer enters into a transaction that was not recommended.

The Act 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.

Supervision of Annuity Transactions

The Act expands what is required for an insurer's system for supervising annuity transaction recommendations. Under the Act, an insurer must do all of the following:

- Maintain reasonable procedures to inform intermediaries of the statutory requirements for annuity transactions.

- Incorporate the statutory requirements into relevant training manuals.

- Establish standards for training of intermediaries.

- 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.
- Maintain reasonable procedures to detect recommendations that are not suitable.

Training of Intermediaries

The Act 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.

Reduction or Elimination of Penalties

Under current law, the Commissioner of Insurance may promulgate rules to reduce or eliminate penalties for violations of laws related to sales of annuities if, after a violation is discovered, corrective action is promptly taken for the consumer. The Act specifies that the corrective action must be taken promptly after the violation is discovered and that a penalty may be reduced or eliminated only if the violation is not a part of a pattern or practice. These provisions took effect on May 28, 2010.

Effective date: All provisions of the Act (other than those described immediately above pertaining to reduction or elimination of penalties) take effect on May 1, 2011.

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