



ARIZONA STATE SENATE
Fifty-Fourth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1557

annuity transactions; requirements

Purpose

Repeals and replaces the duties of insurers and insurance producers relating to annuity transactions.

Background

Current statute governs a recommendation to purchase or exchange an annuity that is made to a consumer by an insurance producer, or an insurer if no producer is involved, that results in the recommended purchase or exchange ([A.R.S. § 20-1243.01](#)).

In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or a series of insurance transactions, the insurance producer, or the insurer if no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer relating to the consumer's investments and other insurance products and the consumer's financial situation and needs.

An insurance producer, or the insurer if no producer is involved, does not have any obligation to a consumer related to any recommendation if a consumer either: 1) refuses to provide relevant information that is requested by the insurer or insurance producer; 2) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or 3) fails to provide complete or accurate information ([A.R.S. § 20-1243.03](#)).

The Director of the Department of Insurance and Financial Institutions (DIFI) may order: 1) an insurer or insurance producer to take reasonably appropriate corrective action for a harmed consumer; and 2) a business entity that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to consumers to take reasonably appropriate corrective action for a harmed consumer. The Director may reduce or eliminate applicable penalties if corrective action for the consumer was taken promptly after a violation was discovered ([A.R.S. § 20-1243.05](#)).

Before selling, soliciting or negotiating an annuity, an insurance producer with a life insurance life of authority must complete an annuity training. The training must include: 1) types of annuities and various classifications of annuities; 2) identification of the parties to an annuity; 3) how product-specific annuity contract features affect consumers; 4) the application of income taxation of qualified and nonqualified annuities; 5) the primary uses of annuities; and 6) appropriate sales practices, replacement requirements and disclosure requirements ([A.R.S. § 20-1243.07](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Duties of Insurers and Producers in Annuity Transactions

1. Defines *producer* as an insurance producer and an insurer where no producer is involved.
2. Requires a producer, when making a recommendation of an annuity, to act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's financial interest ahead of the consumer's interest.
3. Specifies that a producer has acted in the best interest of the consumer if the producer has satisfied the statutory obligations regarding care, disclosure, conflict of interest and documentation.
4. Requires a producer, in making a recommendation, to exercise reasonable diligence, care and skill to:
 - a) know the consumer's financial situation, insurance needs and financial objectives;
 - b) understand the available recommendation options after making a reasonable inquiry into options available to the producer;
 - c) have a reasonable basis to believe that the:
 - i. recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and
 - ii. consumer would benefit from certain features of the annuity, such as annuitization, death or living benefits or other insurance-related features.
 - d) consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs and financial objectives; and
 - e) consider the whole transaction, in the case of an exchange or replacement or an annuity, including considering whether:
 - i. the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefit, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;
 - ii. the replacing product would substantively benefit the consumer in comparison to the replaced product over the life of the product; and
 - iii. the consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.
5. Includes, in the producer's requirements relating to a basis of belief, making reasonable efforts to obtain consumer profile information from the consumer before recommending an annuity.
6. Specifies that a producer, when considering the types of products a producer is authorized or licensed to sell:
 - a) is not required to analyze or consider any product outside their authority and license or other possible alternatives products or strategies that are available in the market at the time of recommendation; and
 - b) must be held to the same standards that apply to producers with similar authority and licensure.

7. Requires a producer, before the recommendation or sale of an annuity, to prominently disclose to the consumer, on a prescribed form:
 - a) a description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;
 - b) an affirmative statement on whether the producer is licensed and authorized to sell:
 - i. fixed annuities;
 - ii. fixed indexed annuities;
 - iii. variable annuities;
 - iv. life insurance;
 - v. mutual funds;
 - vi. stocks and bonds; and
 - vii. certificates of deposit.
 - c) an affirmative statement describing the insurers for which the producer is authorized, contracted or appointed or otherwise able to sell insurance products, using the following descriptions:
 - i. one insurer;
 - ii. from two or more insurers; and
 - iii. from two or more insurers although primarily contracted with one insurer.
 - d) a description of the sources and types of cash compensation and noncash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of a premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and
 - e) a notice of the consumer's right to request additional information regarding cash compensation.
8. Requires a producer, on request of the consumer or the consumer's designated representative, to disclose:
 - a) a reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and
 - b) whether the cash compensation is a onetime or multiple occurrence amount.
9. Requires a producer, if the cash compensation is a multiple occurrence amount, to disclose the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.
10. Requires the producer, before or at the time of the recommendation or sale of an annuity, to have a reasonable basis to believe the consumer has been informed of any:
 - a) potential surrender period and surrender charge;
 - b) potential tax penalty if the consumer parts with the annuity;
 - c) mortality and expense fees, investment advisory fees and any annual fees;
 - d) potential charges for and features of riders or other options of the annuity;
 - e) limits on interest returns;
 - f) potential changes in nonguaranteed elements of the annuity, insurance and investment components; and
 - g) market risk.

11. Requires a producer to identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.
12. Requires a producer at the time of recommendation or sale to:
 - a) make a written record of any recommendation and the basis for the recommendation;
 - b) obtain a consumer-signed statement on a prescribed form that includes:
 - i. a customer's refusal to provide the consumer profile information, if any; and
 - ii. a customer's understanding of the ramification of not providing the consumer profile information or providing insufficient consumer profile information; and
 - c) obtain a consumer-signed statement, on a prescribed form, acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer's recommendation.
13. States that a producer has no obligation to a consumer related to an annuity transaction, if:
 - a) no recommendation is made;
 - b) a recommendation was made that was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - c) the consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
 - d) the consumer decides to enter into an annuity transaction that is not based on a recommendation by the producer.
14. Prohibits an insurer from issuing an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.
15. Requires each producer to establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its producers' statutory compliance, by including:
 - a) reasonable procedures to inform its producers of statutory requirements, including incorporating the statutory requirements in relevant producer training manuals;
 - b) standards for producer product training, including establishing and maintaining reasonable procedures to ensure continuing education compliance;
 - c) product-specific training and training materials that explain all material features of its annuity products to its producers;
 - d) procedures for reviewing each recommendation before issuing an annuity that are designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives;
 - e) reasonable procedures to detect recommendations that do not comply with statutory requirements, including confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring;
 - f) reasonable procedures to assess, before or on issuance or delivery of an annuity, whether a producer has provided the consumer required information;
 - g) reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information;

- h) reasonable procedures to identify and eliminate any sales, contests, sales quotas, bonuses and noncash compensation that are based on the sales of specific annuities within a limited period of time; and
 - i) a written annual report to senior management that details a review with appropriate testing and that is reasonably designed to determine the effectiveness of the supervision system, the exceptions found and corrective action taken or recommended, if any.
16. Allows producer review procedures to apply a screening system for the purpose of identifying selected transactions for additional review that may be accomplished electronically or through other means, including physical review.
17. Allows the electronic system or other system to be designed to require additional review of only those transactions that are identified for additional review by the selection criteria.
18. Allows an insurer to contract for performance of a function, including maintenance of procedures required for the supervision system, and states that the insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties regardless of whether the insurer contracts for performance of a function or complies with the annual certification.
19. Requires an insurer's supervision system to include supervision of contractual performance by incorporating at least the:
- a) monitoring and conducting of audits to ensure that the contracted function is properly performed; and
 - b) annual obtainment of a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.
20. States that an insurer, for inclusion in their system of supervision, is not required to include:
- a) a producer's recommendations to consumers of products other than the annuities offered by the insurer; and
 - b) consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.
21. Prohibits a producer or an insurer from dissuading, or attempting to dissuade, a consumer from:
- a) truthfully responding to an insurer's request for confirmation of the consumer profile information;
 - b) filing a complaint; or
 - c) cooperating with the investigation of a complaint.
22. Determines that an insurer complies with comparable standards in all recommendations and sales of annuities made by financial professionals, if the insurer:
- a) monitors the relevant conduct of the financial professional or the entity responsible for supervising the financial professional; and
 - b) provides to the entity responsible for supervising the financial professional information and reports that are reasonably appropriate to assist the entity to maintain its supervision system.

23. Specifies that the following activities do not in and of themselves constitute material control or influence:
 - a) providing or delivering marketing or educational material;
 - b) product wholesaling or other back-office product support; and
 - c) general supervision of a producer.
24. States that any statutory requirement applicable to a producer applies to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer.
25. States that the consumer profile information, characteristics of the insurer and product costs, rates, benefits and features are those factors generally relevant in making a determination of whether an annuity effectively addresses the consumer's financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation may vary depending on the facts and circumstances of a particular case, and each factor may not be considered in isolation.
26. States that the requirements for the duties of producers:
 - a) do not create a fiduciary obligation or relationship and only create a regulatory obligation as outlined;
 - b) apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity and riders and similar product enhancements, if any;
 - c) do not mean the annuity with the lowest onetime or multiple-occurrence compensation structure should necessarily be recommended;
 - d) do not mean the producer has ongoing monitoring obligations under the care obligation, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer; and
 - e) do not require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in Arizona, including any securities license, in order to fulfill the statutory duties and obligations if the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

Annuity Training Courses

27. Requires continuing education training required for a producer with a life insurance line of authority to include information on appropriate standards of conduct.
28. Specifies that satisfactory completion of the components of the training requirements of any course or courses with components that are substantially similar to the statutory requirements of the annuity training course satisfy the training requirements.

29. Requires, within six months of the effective date of this legislation and until January 1, 2022, an insurance producer who has completed an annuity training course before the effective date of this legislation to complete the following training courses, approved by the Director of DIFI:
- a) a new four-credit-hour annuity training course; and
 - b) an additional onetime one-credit-hour annuity training course on appropriate sales practices, replacement and disclosure requirements.

Miscellaneous

30. Vests the authority to enforce compliance with statutes governing annuities with the Director of the DIFI.
31. Allows the Director of DIFI, if a violation occurs because of action or inaction of an insurer or producer, to order appropriate penalties and sanctions.
32. Removes the permission of the Director of DIFI to order a business entity that employs or contracts with an insurance producer to sell, or solicit the sale of, annuities to consumers to take reasonable appropriate corrective action for any consumer who is harmed by an insurance producer's violation.
33. Specifies that statutes governing the sale or recommendation of an annuity do not create or imply a private cause of action for a violation of annuity statutes or subject a producer to civil liability under the best interest standard of care or under standards that govern the conduct of a fiduciary or fiduciary relationship.
34. Requires insurers, managing general agents, business entities and producers to maintain disclosures made to the consumer, including summaries of oral disclosures.
35. Modifies the definition of *recommendation* to mean advice provided to an individual consumer and intended to result in a purchase, exchange or replacement, rather than only a purchase or exchange, of an annuity.
36. Defines terms.
37. Makes technical and conforming changes.
38. Becomes effective on the general effective date.

Prepared by Senate Research

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