2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1160

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

HB 1160
1/19/2021

Annuity transaction practices

(8:14) Chairman Lefor opens the hearing on HB 1160.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	A
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Updates North Dakota's annuity suitability law
- Requires insurers and financial sales professionals to act in the best interest of annuity purchasers
- Consumers receive additional, user-friendly disclosure materials

Vice Chairman Keiser: Introduces HB 1160. Attachment #1252

Bruce Ferguson~Senior Vice President-State Relations-American Council of Life Insurers: Attachment #1253.

Jon Godfread~ND Insurance Commissioner: testified in support.

Pat Ward~Representing State Farm. Attachment #1506.

Liz Pujolas~Insured Retirement Institute: Attachments #1360 &1359.

Wessett Bisset~Independent Insurance Agent & Brokers of America: Attachment #1286.

Jon Godfread~ND Insurance Commissioner: Answered questions.

(8:51) Chairman Lefor closes the hearing.

Vice Chairman Keiser moved to amend to "January 1, 2020" verbally.

Rep Stemen second the motion

Voice vote. Motion carried.

Rep D Ruby moved to a Do Pass as Amended.

Rep Stemen second the motion

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	AB
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Roll call taken, Motion carried 13-0-1. Rep Stemen is the carrier.

(8:54) End time.

Ellen LeTang, Committee Clerk

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Adopted by the Industry, Business and Labor Committee

January 19, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1160

Page 1, line 3, remove "and"

Page 1, line 3, after "penalty" insert "; and to provide an effective date"

Page 19, after line 3, insert:

"**SECTION 7. EFFECTIVE DATE.** This Act becomes effective January 1, 2022."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1160: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1160 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "and"

Page 1, line 3, after "penalty" insert "; and to provide an effective date"

Page 19, after line 3, insert:

"**SECTION 7. EFFECTIVE DATE.** This Act becomes effective January 1, 2022."

Renumber accordingly

1252

STATEMENT IN SUPPORT OF HOUSE BILL 1160 (Representative Keiser, Senator Klein)

- The undersigned associations representing insurers and financial professionals issuing and selling annuities strongly support House Bill 1160, which will help North Dakotans save for their retirement. Together, these associations account for more than 94 percent of the annuities issued and sold in the Peace Garden State.

- An annuity – a personal pension – is the only private market financial product that guarantees lifetime income, providing protection for North Dakotans against outliving their savings. Many middle-income consumers rely on annuities for financial security. The median annual household income of annuity owners is $64,000, and individuals who own annuities are less dependent on public programs in their retirement years.

- In 2019 alone, $192 million in annuity benefits were paid out to North Dakota residents, helping them maintain security through retirement.

- House Bill 1160 updates North Dakota's existing law governing annuity sales practices to incorporate changes that have been approved by the National Association of Insurance Commissioners after two years of extensive debate.

    - It provides that insurers and financial sales professionals must act in the best interest of annuity purchasers without putting their own financial interests ahead of the consumers' interests. It sets forth clear obligations that when met are deemed to satisfy the best interest standard of care.

    - It also makes sure consumers receive additional, user-friendly disclosure materials that will help them make informed decisions, all while preserving access to valuable financial advice and products.

    - It safeguards the ability of small and moderate savers to access the financial guidance they want to plan for their own financial futures.

- House Bill 1160 also aligns well with federal SEC standards for securities recommendations. Together, they will give consumers – regardless of where in the United States they live or move to – the benefit of strong and consistent state and federal consumer protections when planning for their retirement.

For these reasons, we strongly encourage the North Dakota legislature to pass House Bill 1160.

Signed,

American Council of Life Insurers (ACLI)
J. Bruce Ferguson, Senior Vice President State Relations bruceferguson@acli.com

Federation of Americans for Consumer Choice (FACC)
Kim O'Brien, Chief Executive Officer kim@facchoice.com

Financial Security for All (FINSECA)
Josh Caron, Vice President of Legislative Affairs jcaron@finseca.org

Financial Services Institute (FSI)
Dan Barry, Director of State Legislative Affairs Dan.Barry@financialservices.org

Indexed Annuity Leadership Council (IALC)
Jim Poolman, Executive Director JimPoolman@FIAinsights.org

Insured Retirement Institute (IRI)
Liz Pujolas, Director of State Affairs lpujolas@irionline.org

National Association for Fixed Annuities (NAFA)
Pam Heinrich, General Counsel and Director of Government Affairs pam@nafa.org

National Association of Insurance and Financial Advisors (NAIFA)
Diane Boyle, Senior Vice President, Government Relations dboyle@naifa.org

ACLI
Financial Security...for Life.

1253

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS

Before the House Industry, Business and Labor Committee

January 19, 2021

House Bill 1160 – An Act Relating to Annuity Transactions

Chairman Lefor and members of the House Industry, Business and Labor Committee, I am writing on behalf of the American Council of Life Insurers (ACLI) to express our support for House Bill 1160, sponsored by Representative Keiser and Senator Klein.

ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry and its consumers. Ninety million American families rely on the life insurance industry for financial protection and retirement security. Our member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, and reinsurance as well as supplemental benefits such as dental and vision plans.

ACLI members account for 94 percent of the annuity contracts issued in North Dakota. In 2019 alone, life insurers paid out $192 million in annuity benefits to North Dakota residents, helping them maintain security through retirement and become less dependent on public programs in their retirement years.

An annuity – a personal pension – is the only private market financial product that guarantees lifetime income, providing protection for North Dakotans against outliving their savings. Many middle-income consumers rely on annuities for financial security. The median annual household income of annuity owners is $64,000.

House Bill 1160 updates North Dakota's annuity suitability law to conform with the enhancements to the Suitability in Annuity Transactions Model Regulation recently approved by the National Association of Insurance Commissioners (NAIC), after two years of extensive debate involving all stakeholders. It requires insurers and financial sales professionals to act in the best interest of annuity purchasers without putting their own financial interests ahead of the consumers' interests. House Bill 1160 also makes sure consumers receive additional, user-friendly disclosure materials that will help them make informed purchase decisions.

At the attached coalition letter indicates, House Bill 1160 enjoys broad support from the financial services community, and we urge the Committee's adoption.

American Council of Life Insurers
101 Constitution Avenue, NW, Washington, DC 20001-2133
www.acli.com

A Higher Standard of Care + Improved Transparency = A More Informed and Satisfied Consumer

The drafters of the NAIC Model upon which House Bill 1160 is based spent months developing clear obligations that, when met, are deemed to satisfy the best interest standard of care. These obligations fall into four general categories: care, disclosure, conflict of interest and documentation.

When making a recommendation to a consumer for any annuity purchase, an insurer or producer satisfies these obligations by:

- Knowing the consumer's financial situation, insurance needs and financial objectives (page 6, lines 5-6);
- Understanding the available recommendation options (page 5, lines 7-8);
- Having a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives (page 5, lines 9-12);
- Communicating the basis of the recommendation to the consumer (page 5, line 13);
- Disclosing on a user-friendly form approved by the Insurance Commissioner:
    - A description of the relationship with the consumer and their role in the transaction (page 8, lines 14-31); and
    - The sources and types of compensation to be received for the sale of a recommended annuity, with additional detail available upon request of the consumer (page 9, lines 1-18);
- Disclosing any material conflicts of interest (page lines 23-25); and
- Documenting in writing any recommendation and the justification for the recommendation (page 10. Line 26 through page page 11, line 27).

Despite the precision and clarity built into the NAIC Model by the nation's regulators who drafted it, some interested parties expressed concern that these obligations were overly subjective. To address this concern, the NAIC drafters added language to the Model which is reflected right up front in House Bill 1160 (page one, lines 10-14). This bill makes it absolutely clear that nothing in this chapter creates a private right of action or subjects a producer to civil liability under the best interest standard of care or under a fiduciary relationship.

Significant New Duties and Responsibilities for Insurers

Under House Bill 1160, insurers and producers have shared duties and responsibilities for acting in the best interest of their customers. For example, some direct-to-insurer annuity transactions do not involve a producer, such as when a consumer chooses to purchase an annuity from an insurer on-line or through a digital platform. Appropriately, the legislation (page 4, lines 7-8) applies the "best interest of consumer" obligations (beginning on page 5, line 18) to insurers in those types of transactions.

More broadly, in connection with any annuity transaction based on a recommendation from a producer, insurers are directly prohibited from issuing an annuity unless there is a reasonable basis to believe the annuity would effectively address the consumer's financial situation, insurance needs and financial objectives (page 12, lines 9-13).

Perhaps most significantly, these new "best interest of consumer" obligations significantly increase insurers' supervisory responsibilities for ensuring that producers recommending their products are complying with these new consumer protection requirements (page 12, line 9 through page 14, line 26). Among these new requirements are oversight procedures to make sure (1) a producer has provided the consumer with required disclosures (page 13, lines 22-25); and (2) any sales contests, sales quotas, bonuses and noncash compensation that are based on the sales of specific annuities within a limited period of time are eliminated (page 13, line 29 through page 14, line 5). Lastly, insurers must adjust their producer training requirements to make sure producers selling their annuities are not only knowledgeable about the products they are recommending but are also aware of their new standards of conduct and responsibilities under this Act (page 17, lines 1-30).

Conclusion

We respectfully urge the Committee to approve a "Do Pass" recommendation so that annuity purchasers will receive information that is clear, understandable and from financial professionals acting in their best interest. In doing so, North Dakota will join the growing number of states that have adopted the NAIC best interest enhancements by statute (AZ and MI) or regulation (AR, IA and RI), with several more poised to do so in the coming weeks.

Chairman Lefor and members of the Committee, I appreciate the opportunity you have given us to provide our comments on House Bill 1160 and stand ready to answer any questions you may have.

Respectfully submitted,

J. Bruce Ferguson
Senior Vice President, State Relations
American Council of Life Insurers
bruceferguson@acli.com
301.980.4820 mobile

1506

TESTIMONY OF PATRICK WARD IN SUPPORT OF HB 1160

Chairman Lefor and members of the House IBL committee. My name is Pat Ward and I represent State Farm Insurance Company in support of this bill.

We support HB 1160 but would like to address 2 concerns that this committee could fix.

First, we have a concern with this bill relating to the Safe Harbor provisions at pg. 15, Line 12.

The NAIC model uses the word "shall" while existing ND law uses the word "must." In a nutshell, the word "must" would make ND the outlier and may require a company to create a process different than those in other states and/or at the federal level – something adoption of the NAIC model is hoping to avoid.

State Farm would propose an amendment to the section noted to change the word "must" to "shall" as it appears in the model?

Also, a January 1, 2022 effective date for this bill would be more appropriate to give adequate time for insurers and insurance producers to comply due to all the administrative and internal programming changes that would need to be made.

With those two friendly amendments, we would urge a do pass on HB 1160.

1360

Insured Retirement Institute
1100 Vermont Avenue, NW | 10th Floor
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www.IRIonline.org
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January 18, 2021

North Dakota House Industry, Business and Labor Committee
Representative Mike Lefor, Chair
Representative George Keiser, Co Chair
Via Email: mlefor@nd.gov; gkeiser@nd.gov

Re: House Bill 1160 – An Act Relating to Annuity Transactions

To North Dakota House Industry, Business and Labor Committee,

On behalf of our members, the Insured Retirement Institute (IRI)[1] writes in support of the North Dakota House Bill 1160, Relating to Annuity Transactions. This regulation provides the standards which must be followed by an insurance producer or insurer when recommending or selling an annuity, and the proposed amendments generally align with the enhanced Suitability in Annuity Transactions Model Regulation approved by the National Association of Insurance Commissioners (NAIC) in early 2020.

The NAIC model is consistent with the heightened standards of conduct imposed by the U.S. Securities and Exchange Commission's Regulation Best Interest (Reg BI), which went into effect as of June 30, 2020. Similar to Reg BI, the regulation will require insurance producers to act in the best interest of the consumer under the circumstances known at the time a recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. In addition to the enhancements made to the applicable standard of conduct and supervisory requirements, the revised model also reflects important adjustments to the training provisions and the FINRA safe harbor included in the prior version of the model.

[1] The Insured Retirement Institute (IRI) is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., include the top 10 distributors of annuities ranked by assets under management, and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

Strong, consistent regulation is important to protect consumers and to preserve consumers' choice of financial advice and products that meet their financial and retirement planning needs. This regulation is an important enhancement to the standard that applies when producers recommend annuities to their clients.

In reading ND HB 1160 it appears there is language from NAIC Model #275, missing from the bill. **Please consider the attached revised of North Dakota Century Code, 26.1-34.2-03.1. Insurance Producer Training section** which includes 2020 NAIC Model language necessary for consistent and effective implementation.

Additionally, **IRI respectfully request inclusion of an effective date** to reflect implementation **six months from approval**. The six months effective date allows time for industry and the state to prepare for implementation of the rule.

We encourage a Do Pass of House Bill 1160, with the attached revised language. Thank you for considering these important revisions. We look forward to working with North Dakota on implementation of this legislation.

Sincerely,

Liz Pujolas
State Affairs Director
lpujolas@irionline.org

SECTION 4. AMENDMENT. Section 26.1-34.2-03.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-34.2-03.1. ~~Insurance producer~~ Producer training.

1. ~~An insurance~~ A producer may not solicit the sale of an annuity product unless the ~~insurance~~ producer has adequate knowledge of the product to recommend the annuity and the ~~insurance~~ producer is in compliance with the insurer's standards for product training. ~~An insurance~~ A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

2. a. ~~(1)~~ ~~An insurance~~ A producer who engages in the sale of annuity products shall complete a one-time, four-hour training course ~~.~~ approved by the department of insurance and provided by the department of insurance-approved education provider.

b) Producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

~~(2) An insurance producer who holds a life insurance line of authority on August 1, 2011, and who desires to sell annuities shall complete the requirements of this subsection within twelve months after August 1, 2011. An individual who obtains a life insurance line of authority on or after August 1, 2011, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.~~

~~(new paragraph)~~ The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits but may be longer.

b. The training required under this subsection must include information on the following topics:

(1) The types of annuities and various classifications of annuities;

(2) Identification of the parties to an annuity;

(3) How ~~fixed, variable, and indexed~~ product specific annuity contract provisions affect consumers;

(4) The application of income taxation of qualified and nonqualified annuities;

(5) The primary uses of annuities; and

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(6) Appropriate standards of conduct, sales practices, replacement, and disclosure requirements.

c. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and may not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(new paragraph) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this state and comply with the rules and guidelines applicable to producer continuing education courses as set forth in [insert reference to state law or regulations governing producer continuing education course approval].

d. A producer who has completed an annuity training course approved by the insurance department before the effective date of this Act, within six months after such date, shall complete either:

(1) A new four-credit training course approved by the insurance department after the effective date of this Act; or

(2) An additional one-time, one-credit training course approved by the insurance department and provided by a insurance department-approved education provider on appropriate sales practices, replacement, and disclosure requirements under this chapter.

e. Providers of annuity training shall comply with the reporting requirements

(new paragraph) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to state law or regulations governing producer continuing education course approval].

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Providers of annuity training shall issue certificates of completion.

~~e.~~f. The satisfaction of the training requirements of another state which are substantially similar to the provisions of this subsection are deemed to satisfy the training requirements of this subsection in this state.

~~f.~~g. The satisfaction of the components of the training requirements of a course with components substantially similar to the provisions of this subsection is deemed to satisfy the training requirements of this subsection in this state.

h. An insurer shall verify that ~~an insurance~~ the producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy the insurer's

~~27~~30 responsibility under this subsection by obtaining certificates of completion of the
~~28~~31 training course or obtaining reports from a reasonably reliable commercial
~~29~~32 database vendor that has a reporting arrangement with insurance education
~~30~~33 providers.

1286

Written Testimony of
The Independent Insurance Agents of North Dakota and
The Independent Insurance Agents and Brokers of America

Concerning House Bill 1160

Submitted to the North Dakota House of Representatives
Industry, Business and Labor Committee

The Independent Insurance Agents of North Dakota (IIAND) and the Independent Insurance Agents and Brokers of America (IIABA) thank Chairman Lefor, Vice Chairman Keiser, and other Members of the Committee for the opportunity to provide testimony concerning House Bill 1160. IIABA is the nation's oldest and largest national association of insurance agents and brokers, and IIAND is its affiliate in the state. The hundreds of thousands of agents and insurance professionals that we collectively represent operate from more than 25,000 business locations and offer all types of insurance—property, casualty, life, health, employee benefit plans, and retirement products—from a variety of insurance companies. Our organizations are also longstanding and very strong proponents of state insurance regulation.

House Bill 1160 is well-intentioned proposal with merit in many respects, and our organizations do not oppose the overwhelming majority of its provisions. We do, however, have strong concern and trepidation with a narrow feature of the proposal and respectfully ask the Committee to amend the bill in one particular respect before advancing it through the legislative process.

Background

House Bill 1160 addresses and would regulate the manner in which insurance agents sell annuities, and agents are the stakeholders most affected by the revisions the bill would make to existing law. Most of the elements in the bill outline the responsibilities of an insurance agent in a clear, objective, and easily-understood way, and our members do not object to the proposed requirements crafted in this manner. Under the bill, an insurance agent would, for example, be required to do all of the following:

- Exercise reasonable diligence, care, and skill when advising a customer about a potential annuity purchase;

- Know a consumer's financial situation, insurance needs, and financial objectives;

- Collect an extensive universe of consumer profile information before making a recommendation;

- Believe that the product recommended effectively addresses the consumer's situation, needs, and objectives over the life of the product and in light of that individual's consumer profile information;

- Understand the recommendation options available to the agent and consider the types of products that address the consumer's financial situation, insurance needs, and financial objectives;

- Consider and evaluate an additional series of factors when recommending a transaction involving the exchange or replacement of an annuity;

- Ensure that the consumer has received important information about the key features of the recommended annuity;

- Provide comprehensive written disclosures outlining (1) the scope and terms of the relationship with the consumer, (2) the agent's role in the transaction, (3) the types of relevant products the agent is authorized to sell, and (4) whether the agent has access to the products of one insurer or multiple companies;

- Disclose of the sources and types of compensation an agent would receive as a result of the purchase of an annuity and provide an estimate of that compensation upon request;

- Satisfy new annuity-specific continuing education requirements; and

- Most notably, make a written record of any annuity recommendation (including the basis for the recommendation) and communicate the basis for the recommendation to the consumer.

These new requirements are extensive and comprehensive. They are the heart of House Bill 1160, and the agent community does not oppose their enactment. They will significantly raise the level of regulatory scrutiny that applies to annuity sales, enhance consumer protection, and require changes in business practices by agents.

Concerns Related to the "Best Interest" References

Our narrow concern with House Bill 1160 is that it would also impose a so-called "best interest" obligation on agents who recommend annuities, and we respectfully urge the Committee to delete the references to "best interest." There are numerous ways to address these concerns, and possible options for addressing the two relevant provisions are highlighted in yellow below.

> **Page 1, Line 12**
> **26.1-34.2-01.1. Scope.**
> This chapter applies to ~~any~~ a sale or recommendation to ~~purchase, exchange, or replace~~ of an annuity ~~made to a consumer by an insurance producer, or an insurer when no producer is involved, that results in the purchase, exchange, or replacement recommended~~. This chapter may not be construed to create or imply a private cause of action for a violation of this chapter or to subject a producer to civil liability under the ~~best interest~~ standard of care outlined in section 26.1-34.2-03 or under standards governing the conduct of a fiduciary or a fiduciary relationship.

Page 5, Line 27 to Page 6, Line 2
26.1-34.2-03. Duties of insurers and insurance producers.

1. A producer, if making a recommendation of an annuity, shall satisfy ~~act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest. A producer has acted in the best interest of the consumer if they haven satisfied~~ the following obligations regarding care, disclosure, conflict of interest and documentation:

or

Page 5, Line 27 to Page 6, Line 2
26.1-34.2-03. Duties of insurers and insurance producers.

1. A producer, if making a recommendation of an annuity, shall act ~~in the best interest of the consumer~~ under the circumstances known at the time the recommendation is made, without placing the producer's or the insurer's financial interest ahead of the consumer's interest~~. A producer has acted in the best interest of the consumer if they have satisfied~~ and a producer does so by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:

Agents, not surprisingly, desire clear obligations and unambiguous rules of the road. House Bill 1160 generally sets forth with clarity what will be required of agents, but the additional "best interest" references in these two sections establish an obligation that is abstract, nebulous, and subjective. This text may seem innocuous, but creating such a duty opens the door to considerable uncertainty and other adverse consequences. The addition of this requirement would place agents in an untenable position because it does not specify what additional actions or compliance measures it would require or what behavior it would prohibit. The North Dakota Supreme Court and other observers equate an obligation to act in one's best interest with a fiduciary duty (an outcome House Bill 1160 seeks to avoid), and the bill offers no insight into what these "best interest" references mean or how such a standard differs from a fiduciary one. Insurance is an intangible product, and the lack of clarity means agents who acted properly at the time of a recommendation will risk having their actions and judgment second-guessed by regulators and courts in hindsight and be forced to defend their actions in costly proceedings.

Fortunately, the references to a "best interest" standard are few and are not necessary parts of House Bill 1160. They do not benefit consumers, and they can be deleted without any negative impact or repercussions. The other provisions of the bill (which we identified above) already outline in detail the robust obligations that an agent would be required to satisfy, and the "best interest" text does not provide any additional impact or value. We urge the Committee to allow the clear and objective requirements of House Bill 1160 to stand on their own and not require agents – on top of this comprehensive framework – to ambiguously act in a customer's best interest. There are no adverse consequences for consumers or any other stakeholders if this text is removed, and we ask the Committee to incorporate the narrow revisions we have proposed.

Some might argue that the "best interest" references are simply extraneous and present no cause for worry. Our concern with this suggestion is that words have meaning, and courts and regulators are likely to give effect to all provisions and avoid outcomes where particular requirements are ignored or overlooked. This canon of statutory interpretation – the rule against surplusage – assumes that policymakers do not include unnecessary or redundant elements in the law and directs those interpreting the law to give effect to each provision.

Our concerns with the “best interest” references are being addressed by state officials in proposals under consideration in numerous other states, and they echo similar concerns that have been raised by members of the National Council of Insurance Legislators during that organization’s meetings in recent years. The topic has been discussed at every NCOIL meeting between March 2018 and March 2020, and numerous legislators in those sessions have expressed concern with the subjective and vague nature of the provision and the manner in which it will be interpreted and enforced.

We are happy to share more information about this issue with the Committee, including copies of comment letters that concerned organizations submitted to the National Association of Insurance Commissioners during its development of the model proposal on which House Bill 1160 is based. One such letter – submitted jointly by the American Bankers Association, the Independent Insurance Agents and Brokers of America, the National Association of Health Underwriters, and the National Association of Professional Insurance Agents – is included as an attachment.

Ensuring a Level Playing Field and the Primacy of State Insurance Regulation

While our most serious concern with House Bill 1160 is the inclusion of the “best interest,” references, we also encourage the Committee to examine the text found on Page 15, Line 10 to Page 16, Line 7. The purpose and effect of this provision – which seems to alter existing law in significant ways – is potentially troubling.

Some have suggested this provision would allow certain financial intermediaries (e.g. broker-dealers and investment advisers) to recommend and sell any annuity (even products that fall exclusively within the four corners of the insurance code) without satisfying the requirements of the chapter. It has even been suggested by some that this provision exempts such intermediaries from completing the simple and straightforward annuity training that all traditional insurance agents must complete. A narrow exemption for transactions that are dually regulated by both federal and state officials may make sense, but a much broader exemption (especially one that extends to training obligations) would create an unfair playing field and undermine the principles of functional regulation and state regulatory authority over insurance.

Some in the insurer community have also recently argued that the revisions proposed to existing law by House Bill 1160 would have the effect of eliminating nearly all of the supervisory and oversight requirements that apply to carriers when an annuity is sold by other types of financial professionals. These insurer requirements are located on Page 12, Line 9 to Page 14, Line 26, and we are uncertain what the public policy rationale would be for applying these rules when a traditional insurance agent sells an annuity but not in similar transactions involving other types of intermediaries. This appears to be a weakening of existing consumer protections and to distort the marketplace, and these elements of the bill warrant additional scrutiny and review.

Conclusion

IIAND and IIABA thank Representative Keiser for his good work on this important issue and the Chairman and Committee for their consideration of our views. House Bill 1160 is a commendable proposal that would establish a wide range of new and robust requirements for agents who sell annuities. Those provisions can and should stand on their own, and we urge the Committee to remove the ambiguous and subjective references to a “best interest” duty that run counter to efforts to clearly and objectively identify what is required of agents.

ATTACHMENT

American Bankers Association
Independent Insurance Agents and Brokers of America
National Association of Health Underwriters
National Association of Professional Insurance Agents

April 27, 2018

The Honorable Dean Cameron
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720

The Honorable Doug Ommen
Iowa Insurance Division
601 Locust Avenue, 4th Floor
Des Moines, Iowa 50309

Re: Potential Revisions to the NAIC Annuity Suitability Model Regulation

Dear Director Cameron and Commissioner Ommen:

On behalf of the national trade associations identified above, we write to you in your capacities as Chairman and Vice Chairman of the National Association of Insurance Commissioners (NAIC) Annuity Suitability Working Group and in response to your recent request for comment. Our organizations collectively represent hundreds of thousands of insurance producers, and our members would be the stakeholders most affected by any revisions to the *Suitability in Annuity Transactions Model Regulation.* We recognize your good intentions and thank you for the opportunity to comment on these important issues. We also thank you for your consideration of our perspective and look forward to working with you and commenting further in the weeks and months to come.

Initial Comments

Our coalition of associations wants to be responsive to your request for input, but it has been a challenge for us to devise solutions and suggestions for addressing problems that have not been identified. Some have called for dramatic and extensive revisions to the rules that apply to annuity transactions, but our experience suggests that many of these proposals are unnecessary, excessive, and disproportionate in nature. Consumers are very well-protected today by the combination of a strong insurance regulatory framework and robust industry competition, and examples of misconduct are rare. A case has not been made for sweeping revisions to the existing model, and we encourage the working group to identify the specific marketplace problems that regulators see and allow us to propose solutions to any regulatory gaps. Our associations certainly share your commitment to protecting consumers from improper conduct where it exists, but we also want to avoid a rush to judgement or an unwarranted regulatory response that could cause disruption in the marketplace and carry adverse and unintended consequences for consumers and the industry.

The most commonly articulated justification for reopening the existing model is that it needs to be revised to harmonize insurance producer requirements with those that may ultimately be established for investment advisers and broker-dealers by the U.S. Securities and Exchange Commission (SEC). Regardless of the merits of extending the application of any federal

regulations to all annuity transactions (and to fixed annuity products in particular), the reality is that the pursuit of harmony with SEC rules is simply unachievable at this time. The SEC only recently released its voluminous proposed package of new requirements for investment advisers and broker-dealers, and it will be challenging to meaningfully consider whether the NAIC should alter its model in response to the SEC's action until the Commission promulgates its final rule. To the extent that potential harmonization with SEC investment adviser and broker-dealer regulations is a potential goal for the working group, the SEC proposal is an unfinished product at the moment.

A "Best Interest" Standard vs. Clear and Objective Requirements

Most notably, our coalition of organizations writes to express strong opposition to the establishment of a so-called "best interest" standard of care for all annuity transactions and to reiterate the reasons why such an approach is misguided. Some regulators and even insurer representatives have suggested that insurance producers should be required to make recommendations concerning the purchase of an annuity that are "in the best interest" of a consumer. Requiring producers by law to act in the best interest of a customer may seem innocuous and unremarkable, but the reality is that such a standard is abstract, nebulous, subjective, and replete with adverse consequences. Mandating adherence to such a standard in connection with fixed annuity sales will not alter the manner in which producers serve the needs of customers or result in an improved consumer experience, and it is unclear what new actions, steps, or tasks an agent would need to perform that are not routinely performed today.

Imposing a best interest or similar standard upon the producer community in this manner would result in regulatory uncertainty and produce increased litigation. Determinations about what such a vague standard means and how it should be applied would vary dramatically, and the mandate could be interpreted in conflicting and inconsistent ways from state to state, court to court, and regulator to regulator. This lack of consistency and clarity is troubling, and it will open the door to second-guessing and retrospective scrutiny years after an initial recommendation is made. Such a standard will increase the costs and legal exposure of agents without providing commensurate benefit to consumers. Its contentious nature would also jeopardize efforts to adopt a revised model on a consistent and uniform basis at the state level.

If confronted with amorphous standards, higher compliance and insurance costs, and increased liability exposure, many main street producers can be expected to curtail or simply cease any annuity-related activities. A significant number of businesses, especially smaller entities, had ended or were wrapping up their engagement in the retirement space when the Fifth Circuit Court of Appeals struck down the U.S. Department of Labor's controversial Fiduciary Rule, and similar marketplace outcomes in the annuity world can be expected if an analogous standard is established for insurance producers. This will be especially true for agencies and providers that do not generate a substantial amount of revenue from annuity sales, and it could force many such entities to stop offering annuity products altogether. With a smaller universe of professionals serving the financial needs of the general public, far fewer consumers will have the opportunity to access the variety of financial products and quality of personalized financial assistance available to affluent Americans. Such a drastic measure will reduce competition and have severe consequences for many small businesses and the consumers who rely on these qualified and accountable providers for their financial needs.

Rather than establish a best interest or some other abstract standard of care, our associations urge the working group to consider an alternative and more straightforward approach. We urge you to identify any specific marketplace problems or regulatory gaps that exist and respond to those items with clear and objective requirements that producers must adhere to. The adoption of a nebulous standard of care serves no meaningful purpose, and it creates regulatory uncertainty.

Revisions to the model should not require guesswork and speculation from producers, and any amendments should instead make clear what actions and compliance measures are required. To that end, our associations would welcome the opportunity to assist the working group with devising consumer protection solutions directed at a specifically identified regulatory gap.

For example, some have suggested that consumers are confused by or unaware of the manner in which producers are compensated in annuity transactions, and the working group could implement an objective and process-based approach for addressing these issues. The working group could consider the implementation of new requirements that reasonably mandate the disclosure of the sources and types of compensation received by a producer, the nature of the producer's role in a transaction, how the customer can request additional information, and other relevant information. Similarly, producers could also be required to disclose any material ownership interests they have in the insurer issuing the annuity contract. We recommend this type of tailored approach because it would respond to regulatory gaps that may be identified, bolster and build upon the existing suitability framework, and make the "rules of the road" clear and unambiguous to producers.

Any revisions to the existing model should also offer benefits to consumers that outweigh any new burdens or costs imposed on the industry and any adverse marketplace effects that arise. Any new mandates imposed on the producer community will have an impact on the operations of many agencies, and they might also result in fewer producers offering annuities and hinder consumer choice and access to annuity products. The more burdensome, arduous, and expensive the sale of an annuity becomes, the fewer providers there will be to offer annuities. These effects must be considered as revisions to the model are contemplated.

Conclusion

On behalf of our respective organizations and insurance producers across the country, we sincerely thank you for the opportunity to submit these comments. We are happy to assist your further consideration of these issues in any way you deem appropriate. Please contact us at any time if you have any questions or if we can assist you in any manner.

Very truly yours,

Wesley Bissett
Senior Counsel, Government Affairs
Independent Insurance Agents & Brokers of America

Sarah Ferman
Senior Government Relations Representative
American Bankers Association

Lauren Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents

Jessica Waltman
Regulatory Consultant
National Association of Health Underwriters

2021 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1160

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Fort Union Room, State Capitol

HB 1160
3/9/2021

relating to annuity transaction practices

Chair Klein started the hearing at 8:41 a.m. All members were present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, and Marcellais.

Discussion Topics:

- Regulation on annuities
- Suitability standards
- Front ended loaded annuities

Representative George Keiser introduced the bill [8:41].

Bruce Ferguson, Vice President of American Council of Life Insurers testified in favor and submitted testimony #7842 and 7843 [8:50].

Lyle Kraft, ND Chapter of National Association of Insurance and Financial Advisors testified in support and submitted testimony #7888 [9:00].

Laney Herrauf Legal Counsel for Insurance Commission testified in favor [9:11].
Jeff Kleven, Insurance Agents testified neutral [9:15].

Senator Burckhard moved a DO PASS [9:19].
Senator Kreun seconded the motion [9:19].

[9:19]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

Senator Burckhard will carry the bill [9:20].

Chair Klein ended the hearing at 9:20 a.m.

Isabella Grotberg, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1160, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1160 was placed on the Fourteenth order on the calendar.

STATEMENT IN SUPPORT OF HOUSE BILL 1160 (Representative Keiser, Senator Klein)

- The undersigned associations representing insurers and financial professionals issuing and selling annuities strongly support House Bill 1160, which will help North Dakotans save for their retirement. Together, these associations account for more than 94 percent of the annuities issued and sold in the Peace Garden State.

- An annuity – a personal pension – is the only private market financial product that guarantees lifetime income, providing protection for North Dakotans against outliving their savings. Many middle-income consumers rely on annuities for financial security. The median annual household income of annuity owners is $64,000, and individuals who own annuities are less dependent on public programs in their retirement years.

- In 2019 alone, $192 million in annuity benefits were paid out to North Dakota residents, helping them maintain security through retirement.

- House Bill 1160 updates North Dakota's existing law governing annuity sales practices to incorporate changes that have been approved by the National Association of Insurance Commissioners after two years of extensive debate.

    - It provides that insurers and financial sales professionals must act in the best interest of annuity purchasers without putting their own financial interests ahead of the consumers' interests. It sets forth clear obligations that when met are deemed to satisfy the best interest standard of care.

    - It also makes sure consumers receive additional, user-friendly disclosure materials that will help them make informed decisions, all while preserving access to valuable financial advice and products.

    - It safeguards the ability of small and moderate savers to access the financial guidance they want to plan for their own financial futures.

- House Bill 1160 also aligns well with federal SEC standards for securities recommendations. Together, they will give consumers – regardless of where in the United States they live or move to – the benefit of strong and consistent state and federal consumer protections when planning for their retirement.

For these reasons, we strongly encourage the North Dakota legislature to pass House Bill 1160.

Signed,

American Council of Life Insurers (ACLI)
J. Bruce Ferguson, Senior Vice President State Relations bruceferguson@acli.com

Federation of Americans for Consumer Choice (FACC)
Kim O'Brien, Chief Executive Officer kim@facchoice.com

Financial Security for All (FINSECA)
Josh Caron, Vice President of Legislative Affairs jcaron@finseca.org

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Indexed Annuity Leadership Council (IALC)
Jim Poolman, Executive Director JimPoolman@FIAinsights.org

Insured Retirement Institute (IRI)
Liz Pujolas, Director of State Affairs lpujolas@irionline.org

National Association for Fixed Annuities (NAFA)
Pam Heinrich, General Counsel and Director of Government Affairs pam@nafa.org

National Association of Insurance and Financial Advisors (NAIFA-North Dakota)
Lyle M. Kraft, President lylekraft@min.midco.net

ACLI
Financial Security...for Life.

#7843

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS

Before the Senate Industry, Business and Labor Committee

March 9, 2021

House Bill 1160 – An Act Relating to Annuity Transactions

Chairman Klein and members of the Senate Industry, Business and Labor Committee, I am writing on behalf of the American Council of Life Insurers (ACLI) to express our support for House Bill 1160, sponsored by Representative Keiser and Senator Klein.

ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry and its consumers. Ninety million American families rely on the life insurance industry for financial protection and retirement security. Our member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, and reinsurance as well as supplemental benefits such as dental and vision plans.

ACLI members account for 94 percent of the annuity contracts issued in North Dakota. In 2019 alone, life insurers paid out $192 million in annuity benefits to North Dakota residents, helping them maintain security through retirement and become less dependent on public programs in their retirement years.

An annuity – a personal pension – is the only private market financial product that guarantees lifetime income, providing protection for North Dakotans against outliving their savings. Many middle-income consumers rely on annuities for financial security. The median annual household income of annuity owners is $64,000.

House Bill 1160 updates North Dakota's annuity suitability law to conform with the enhancements to the Suitability in Annuity Transactions Model Regulation recently approved by the National Association of Insurance Commissioners (NAIC), after two years of extensive debate involving all stakeholders. It requires insurers and financial sales professionals to act in the best interest of annuity purchasers without putting their own financial interests ahead of the consumers' interests. House Bill 1160 also makes sure consumers receive additional, user-friendly disclosure materials that will help them make informed purchase decisions.

As the attached coalition letter indicates, House Bill 1160 enjoys broad support from the financial services community, and we urge the Committee's adoption.

American Council of Life Insurers
101 Constitution Avenue, NW, Washington, DC 20001-2133
www.acli.com

A Higher Standard of Care + Improved Transparency = A More Informed and Satisfied Consumer

The drafters of the NAIC Model upon which House Bill 1160 is based spent months developing clear obligations that, when met, are deemed to satisfy the best interest standard of care. These obligations fall into four general categories: care, disclosure, conflict of interest and documentation.

When making a recommendation to a consumer for any annuity purchase, an insurer or producer satisfies these obligations by:

- Knowing the consumer's financial situation, insurance needs and financial objectives (page 6, lines 5-6);
- Understanding the available recommendation options (page 5, lines 7-8);
- Having a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives (page 5, lines 9-12);
- Communicating the basis of the recommendation to the consumer (page 5, line 13);
- Disclosing on a user-friendly form approved by the Insurance Commissioner:
    - A description of the relationship with the consumer and their role in the transaction (page 8, lines 14-31); and
    - The sources and types of compensation to be received for the sale of a recommended annuity, with additional detail available upon request of the consumer (page 9, lines 1-18);
- Disclosing any material conflicts of interest (page lines 23-25); and
- Documenting in writing any recommendation and the justification for the recommendation (page 10. Line 26 through page page 11, line 27).

Despite the precision and clarity built into the NAIC Model by the nation's regulators who drafted it, some interested parties expressed concern that these obligations were overly subjective. To address this concern, the NAIC drafters added language to the Model which is reflected right up front in House Bill 1160 (page one, lines 10-14). This bill makes it absolutely clear that nothing in this chapter creates a private right of action or subjects a producer to civil liability under the best interest standard of care or under a fiduciary relationship.

Significant New Duties and Responsibilities for Insurers

Under House Bill 1160, insurers and producers have shared duties and responsibilities for acting in the best interest of their customers. For example, some direct-to-insurer annuity transactions do not involve a producer, such as when a consumer chooses to purchase an annuity from an insurer on-line or through a digital platform. Appropriately, the legislation (page 4, lines 7-8) applies the "best interest of consumer" obligations (beginning on page 5, line 18) to insurers in those types of transactions.

More broadly, in connection with any annuity transaction based on a recommendation from a producer, insurers are directly prohibited from issuing an annuity unless there is a reasonable basis to believe the annuity would effectively address the consumer's financial situation, insurance needs and financial objectives (page 12, lines 9-13).

Perhaps most significantly, these new "best interest of consumer" obligations significantly increase insurers' supervisory responsibilities for ensuring that producers recommending their products are complying with these new consumer protection requirements (page 12, line 9 through page 14, line 26). Among these new requirements are oversight procedures to make sure (1) a producer has provided the consumer with required disclosures (page 13, lines 22-25); and (2) any sales contests, sales quotas, bonuses and noncash compensation that are based on the sales of specific annuities within a limited period of time are eliminated (page 13, line 29 through page 14, line 5). Lastly, insurers must adjust their producer training requirements to make sure producers selling their annuities are not only knowledgeable about the products they are recommending but are also aware of their new standards of conduct and responsibilities under this Act (page 17, lines 1-30).

Conclusion

We respectfully urge the Committee to approve a "Do Pass" recommendation so that annuity purchasers will receive information that is clear, understandable and from financial professionals acting in their best interest. In doing so, North Dakota will join the growing number of states that have adopted the NAIC best interest enhancements by statute (AZ, MI and OH) or regulation (AR, DE, IA and RI), with proposals pending in several more.

Chairman Klein and members of the Committee, I appreciate the opportunity you have given us to provide our comments on House Bill 1160 and stand ready to answer any questions you may have.

Respectfully submitted,

J. Bruce Ferguson
Senior Vice President, State Relations
American Council of Life Insurers
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#7888

TESTIMONY OF THE NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS – ND

Before the Senate Industry, Business and Labor Committee

March 9, 2021

House Bill 1160 – An Act Relating to Annuity Transactions

Chairman Klein and members of the Senate Industry, Business and Labor Committee, I am speaking on behalf of the North Dakota Chapter of the National Association of Insurance and Financial Advisors (NAIFA) to express our support for House Bill 1160.

NAIFA represents the interests of more than 20,000 licensed insurance agents and financial advisers across the country. Ninety percent of NAIFA members serve middle-income clients and/or lower-income individuals and families. I am the current president of the North Dakota Chapter which has close to 200 members that serve our community.

In February 2020, the (NAIC) National Association of Insurance Commissioners adopted revisions to the Suitability in Annuity Transactions Model Regulation to incorporate a Best Interest standard of care. HB 1160 reflects these amendments.

Annuities are complex products, providing lifetime guarantees, and design options based on the needs of the consumer and therefore merit a best interest of the consumer standard of care. The updated NAIC model has broad support from the financial services community, producers and insurers alike. Concerns over the inclusion of the words “best interest” claim that this language is not necessary to establish this standard of care. We reject this. Why have a Best Interest standard but not use the words best interest?

Best interest says, “I’m going to put my clients interests in front of my own, and I’m going to meet our obligations.” In North Dakota, these are values that we believe in. Not all my friends are my clients. But I want to know that whoever they are working with is putting my friend's best interest ahead of their own.

HB1160 with the inclusion of the Best Interest standard strikes the appropriate balance between protecting consumers, promoting market competition, and avoiding over regulation. Best interest of the client is easily understood, plain English, and the obligations and responsibilities to satisfy this requirement are clearly defined. These rules reject a fiduciary-only approach, thus safeguarding the ability of working-class savers to access the financial

guidance to plan for their financial futures. It protects customers choices; choices in competitive products and choices in trustworthy options for retirement planning.

This bill is also about uniformity and transparency. Our community will know what to expect when making the decision to buy an annuity. That process can be built on a foundation of trust. Because this is a relationship business, not a transactions business. Our clients must trust us with their most personal information before we ever get down to what products we are going to implement.

NAIFA members subscribe to a code of ethics that requires we put our clients' interests first. To our practice, this is really the industry catching up to where we have been, as people whom clients place their trust and confidence.

We support the establishment of a **consistent and workable** best interest standard for financial professionals. And we applaud Senator Klein and Representative Keiser for sponsoring HB 1160, to provide a clear and enhanced standard of care for annuity recommendations, which is vital to support consumer confidence in guaranteed income products.

Thank you for allowing me to speak today and I'm happy to answer questions.

NAIFA®

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS

Code of Ethics

PREAMBLE: Helping my clients protect their assets and establish financial security, independence and economic freedom for themselves and those they care about is a noble endeavor and deserves my promise to support high standards of integrity, trust and professionalism throughout my career as an insurance and financial professional. With these principles as a foundation, I freely accept the following obligations:

- To help maintain my clients' confidences and protect their right to privacy.
- To work diligently to satisfy the needs of my clients by acting in their best interest.
- To present, accurately and honestly, all facts essential to my clients' financial decisions.
- To render timely and proper service to my clients and ultimately their beneficiaries.
- To continually enhance professionalism by developing my skills and increasing my knowledge through education.
- To obey the letter and spirit of all laws and regulations which govern my profession.
- To conduct all business dealings in a manner which would reflect favorably on NAIFA and my profession.
- To cooperate with others whose services best promote the interests of my clients.
- To protect the financial interests of my clients, their financial products and my profession, through political advocacy.

Adopted: September, 1918

Latest Revision: July, 2019, NAIFA Board of Trustees