ASSEMBLY BILL No. 2066

Introduced by Assembly Member Jones

February 18, 2010

An act to amend and renumber Section 789.9 of, and to add Article 6.4 (commencing with Section 789.11) to Chapter 1 of Part 2 of Division 1 of, the Insurance Code, relating to annuity transactions.

legislative counsel's digest

AB 2066, as introduced, Jones. Annuity sales: seniors.

Existing law generally regulates insurance, including annuity products. Existing law requires a life insurance agent to provide specified disclosures to seniors 65 years of age or older in certain circumstances. Existing law also prohibits the sale of an annuity to a senior in specified circumstances.

This bill would require all insurers, brokers, agents, and others engaged in the transaction of insurance who offer to sell an annuity to a senior to disclose to the senior, as defined, all material facts and features of the annuity that he or she knows or reasonably should know are likely to affect the decision of the senior to purchase the annuity.

The bill would also require all insurers, brokers, agents, and others engaged in the transaction of insurance who offer to sell an annuity to a senior to provide the senior with the required written notice with all blanks filled in and initialed by the senior, and signed by the senior and the licensed producer or insurer in the transaction.

The bill would delineate conditions under which it would be presumptively improper to sell an annuity to a senior.

The bill would make the sale of an annuity to a senior without fulfilling the written notice requirement or the under circumstances described as presumptively improper a violation of the duty owed to a prospective insured who is 65 years of age or older of honesty, good faith, and fair dealing. The bill would also make the sale of an annuity to a senior without fulfilling the written notice requirement, or under the circumstances described as presumptively improper, financial abuse of a senior, as defined, and thereby make that sale subject to reporting requirements and civil penalties pursuant to other provisions of law.

The bill would require compensation to brokers, agents, and others who act as the producer in a transaction involving the sale of an annuity to a senior, be paid on an annual basis spread or trailed evenly over the life of the annuity, or spread or trailed evenly over the surrender period of the annuity. The bill would prohibit the surrender penalty charged an annuitant, or his or her heirs or assigns, from exceeding either the compensation already paid to the producer at the time of surrender or the total compensation to be paid to the producer less any amount already paid to the producer, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 789.9 of the Insurance Code is amended and renumbered to read:

~~789.9.~~

789.17. (a) In addition to any other reasons that a sale of an individual annuity to a senior may violate any provision of law, an annuity shall not be sold to a senior in any of the following circumstances:

(1) The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and either of the following is true:

(A) The purchaser's assets are equal to or less than the community spouse resource allowance established annually by the State Department of Health *Care* Services pursuant to the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(B) The senior would otherwise qualify for Medi-Cal.

(2) The senior's purpose in purchasing the annuity is to affect Medi-Cal eligibility and, after the purchase of the annuity, the senior or the senior's spouse would not qualify for Medi-Cal.

(b) In the event that a fixed annuity specified in subdivision (a) is issued to a senior, the issuer shall rescind the contract and refund to the purchaser all premiums, fees, any interest earned under the terms of the contract, and costs paid for the annuity. This remedy shall be in addition to any other remedy that may be available.

SEC. 2. Article 6.4 (commencing with Section 789.11) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 6.4. Annuity Sales to Seniors

789.11. The Legislature finds and declares all of the following:

(a) The Legislature recognizes that seniors often live on fixed incomes, own limited assets, and have a limited ability to recover from economic loss.

(b) The Legislature further recognizes that seniors often experience unanticipated health problems that may cause them to incur substantial expenses, that seniors are often required to invade savings and liquidate assets in order to meet those expenses, and that the unplanned sale of assets often results in significant loss and economic hardship.

(c) The Legislature further recognizes that annuities are complex long-term investments in which the invested dollars are unavailable for many years and that the withdrawal of funds from annuities often involves the payment of large surrender penalties and the forfeiture of income and other benefits of the investment.

(d) The Legislature further recognizes that seniors are often targeted for the sale of annuities and may purchase them without understanding the complex provisions that may make invested funds unavailable or expensive to recover should an unexpected event require a senior to withdraw his or her funds from the annuity.

(e) The Legislature further recognizes that seniors constitute a significant and identifiable segment of the population, that seniors are more subject to risks of abuse and exploitation than the general population, and that this state has a responsibility to protect seniors from exploitation during financial transactions.

(f) The Legislature declares that this state shall protect the economic well-being of its seniors by requiring reasonable disclosure of annuity features and prohibiting or limiting the sale of annuities in certain circumstances.

789.12. For purposes of this article, the terms “elder” and “senior” both mean any person 65 years of age or older residing in this state.

789.13. In addition to all other disclosures required by law, all insurers, brokers, agents, and others engaged in the transaction of insurance who offer to sell an annuity to a senior shall disclose to the senior all material facts and features of the annuity that he or she knows or reasonably should know are likely to affect the decision of the senior to purchase the annuity.

789.14. In addition to all other disclosures required by law, all insurers, brokers, agents, and others engaged in the transaction of insurance who offer to sell an annuity to a senior shall provide the senior with the following notice in no less than 12-point type, with all blanks filled in and initialed by the senior, and signed by the senior and the licensed producer or insurer in the transaction:

IMPORTANT NOTICE TO THE PURCHASER OF AN ANNUITY:

AN ANNUITY IS A COMPLEX INVESTMENT IN WHICH YOU GIVE UP ACCESS TO YOUR MONEY FOR MANY YEARS AND SUBSTANTIAL PENALTIES MAY BE IMPOSED FOR EARLY WITHDRAWAL.

IF YOU DECIDE TO BUY AN ANNUITY, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL, FINANCIAL, AND TAX IMPLICATIONS FOR YOU AND YOUR ESTATE.

IT IS IMPORTANT THAT YOU UNDERSTAND THE TERMS OF THE ANNUITY AND THEIR EFFECT. PRIOR TO PURCHASING THE ANNUITY, YOU MUST CAREFULLY READ, COMPLETE, AND INITIAL EACH ITEM, AND SIGN THE FOLLOWING CHECKLIST.

___ Are you married or do you have a domestic partner? (Yes or No).

___ What is the approximate amount of your assets that are countable for Medi-Cal purposes (if you are married or have a domestic partner, insert the combined Medi-Cal countable assets of both)? _______________.

___ Do you already own any annuities? (Yes or No).
___ If yes, what is the total amount of those annuities? _______________.

___ What is the amount of the annuity you are considering buying? _____.

___ What is the total amount you will have invested in all annuities if you buy this annuity? ____.

___ What is the percentage of your assets that are countable for Medi-Cal purposes (either individually or the combined amount if you are married or have a domestic partner) that will be invested in annuities if you purchase this annuity? ____________________________________.

___ Do you have a reverse mortgage or intend to combine the purchase of an annuity with a reverse mortgage? (Yes or No).

___ What is your age? ____.

___ What is your life expectancy as established by the Office of Actuary of the United States Social Security Administration? _______________.

___ What are the number of years until the end of the surrender-penalty period of the annuity? ____________________________________.

___ What will be your age at the end of the surrender-penalty period of the annuity? ____.

___ What is the amount of the surrender penalty at its highest level? ____.

___ What is the amount of the compensation to be paid as a result of the sale? ____.

___ What is the maximum amount you can withdraw each year without penalty? ____.

___ What is the reasonably expected annual rate of return on the annuity if it is held to maturity? ______________________________________.

___ What is the current annual rate of return on investments of a similar term offered by the United States Treasury? ____________________.

I have read the above notice, completed it to the best of my knowledge, and have received a copy.

Dated: ______________ Signature: ____________________________
Senior

Dated: ______________ Signature: ____________________________
By: ____________________________
Its: ____________________________

789.15. It shall be presumptively improper to sell an annuity to a senior under any of the following conditions:

(a) The senior has a reverse mortgage or combines the purchase of a reverse mortgage with the purchase of an annuity.

(b) The senior has countable assets in an amount equal to or less than the community spouse resource allowance as established annually by the State Department of Health Care Services pursuant to the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code), and if the senior has a spouse or registered domestic partner, it shall be presumptively wrongful to sell an annuity to a senior where the total of both partners' countable assets is equal to or less than twice the community spouse resource allowance.

(c) The sale of the annuity would result in the senior holding 50 percent or more of his or her countable assets as annuities, and if the senior has a spouse or registered domestic partner, the sale of the annuity would result in the senior and the senior's partner holding 50 percent or more of the total of both partners' countable assets as annuities.

(d) The surrender penalty period of the annuity exceeds the life expectancy of the senior as established by the Office of Actuary of the United States Social Security Administration.

789.16. (a) The sale of an annuity to a senior without fulfilling the disclosure requirements of Section 789.14 or under the circumstances listed in Section 789.15, in addition to any other remedy available by law, shall constitute a violation of Section 785.

(b) The sale of an annuity to a senior without fulfilling the disclosure requirements of Section 789.14 or under the circumstances listed in Section 789.15, in addition to any other remedy available by law, shall constitute financial abuse of a senior as defined in Section 15610.30 of the Welfare and Institutions Code.

789.18. Compensation paid to brokers, agents, and others who act as the producer in a transaction involving the sale of an annuity to a senior, shall be paid on an annual basis spread or trailed evenly over the life of the annuity, or spread or trailed evenly over the surrender period of the annuity.

789.19. Under no circumstances shall any surrender penalty charged to an annuitant, or the heir or assign of an annuitant, exceed either of the following:

(a) The compensation already paid to the producer pursuant to Section 789.18 at the time of surrender.

(b) The total compensation to be paid to the producer less any amount already paid to the producer, as prescribed in Section 789.18.

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