

AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

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 amended, 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, including, but not limited to, the fact that if the senior ever receives Medi-Cal home or facility care, the state would become a beneficiary of certain annuities purchased by the senior or his or her spouse.

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, *the senior's spouse, if any*, 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 *with a surrender penalty* 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 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:

- 1 SECTION 1. Section 789.9 of the Insurance Code is amended
- 2 and renumbered to read:
- 3 789.17. (a) In addition to any other reasons that a sale of an
- 4 individual annuity to a senior may violate any provision of law,
- 5 an annuity shall not be sold to a senior in any of the following
- 6 circumstances:
- 7 (1) The senior's purpose in purchasing the annuity is to affect
- 8 Medi-Cal eligibility and either of the following is true:
- 9 (A) The purchaser's assets are equal to or less than the
- 10 community spouse resource allowance established annually by the
- 11 State Department of Health Care Services pursuant to the Medi-Cal

1 Act (Chapter 7 (commencing with Section 14000) of Part 3 of
2 Division 9 of the Welfare and Institutions Code).

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

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

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

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

14
15 Article 6.4. Annuity Sales to Seniors

16
17 789.11. The Legislature finds and declares all of the following:

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

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

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

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

38 (e) The Legislature further recognizes that seniors constitute a
39 significant and identifiable segment of the population, that seniors
40 are more subject to risks of abuse and exploitation than the general

1 population, and that this state has a responsibility to protect seniors
2 from harmful financial transactions.

3 (f) The Legislature declares that this state shall protect the
4 economic well-being of its seniors by requiring reasonable
5 disclosure of annuity features, prohibiting or limiting the sale of
6 annuities in certain circumstances, and by limiting the penalties
7 that may be charged for early surrender.

8 789.12. For purposes of this article, the terms “elder” and
9 “senior” both mean any person 65 years of age or older residing
10 in this state.

11 789.13. In addition to all other disclosures required by law, all
12 insurers, brokers, agents, and others engaged in the transaction of
13 insurance who offer to sell an annuity to a senior shall disclose to
14 the senior all material facts and features of the annuity that he or
15 she knows or reasonably should know are likely to affect the
16 decision of the senior to purchase the annuity, including, but not
17 limited to, the fact that if the senior ever receives Medi-Cal home
18 or facility care, the state shall become a beneficiary of certain
19 annuities purchased by the senior or his or her spouse.

20 789.14. In addition to all other disclosures required by law, all
21 insurers, brokers, agents, and others engaged in the transaction of
22 insurance who offer to sell an annuity to a senior shall provide the
23 senior with the following notice in no less than 12-point type, with
24 all blanks filled in and initialed by the senior, and signed by the
25 senior, and if married the senior’s spouse, and the licensed producer
26 or insurer in the transaction:

27
28 IMPORTANT NOTICE TO THE PURCHASER OF AN ANNUITY:

29
30 AN ANNUITY IS A COMPLEX INVESTMENT IN WHICH YOU GIVE
31 UP ACCESS TO YOUR MONEY FOR MANY YEARS AND
32 SUBSTANTIAL PENALTIES WILL LIKELY BE IMPOSED FOR EARLY
33 WITHDRAWAL.

34
35 IF YOU DECIDE TO BUY AN ANNUITY, YOU WILL SIGN BINDING
36 LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL,
37 FINANCIAL, AND TAX IMPLICATIONS FOR YOU AND YOUR ESTATE.

38
39 IT IS IMPORTANT THAT YOU UNDERSTAND THE TERMS OF THE
40 ANNUITY AND THEIR EFFECT. PRIOR TO PURCHASING THE

1 ANNUITY, YOU MUST CAREFULLY READ, COMPLETE, AND INITIAL
2 EACH ITEM, AND SIGN THE FOLLOWING CHECKLIST.

3
4 ____ Are you married or do you have a domestic partner? (Yes or No).

5
6 ____ What is the approximate amount of your assets ~~that are countable for~~
7 ~~Medi-Cal purposes~~, *excluding your house, your retirement accounts,*
8 *and one of your cars* (if you are married or have a domestic partner,
9 insert the combined ~~Medi-Cal countable~~ assets of both)? ____.

10
11 ____ *What is the approximate value of each of your retirement accounts, and*
12 *are you now receiving distributions from any of these accounts?* ____.

13
14 ____ Do you already own any annuities? (Yes or No).

15 ____ If yes, what is the total amount of those annuities? ____.

16
17 ____ What is the amount of the annuity you are considering buying? ____.

18
19 ____ What is the total amount you will have invested in all annuities if you
20 buy this annuity? ____.

21
22 ____ What is the percentage of your assets ~~that are countable for Medi-Cal~~
23 ~~purposes~~, *excluding your house, your retirement accounts, and one of*
24 *your cars* (either individually or the combined amount if you are married
25 or have a domestic partner) that will be invested in annuities if you
26 purchase this annuity? ____.

27
28 ____ Do you have a reverse mortgage or intend to combine the purchase of
29 an annuity with a reverse mortgage? (Yes or No).

30
31 ____ What is your age? ____.

32
33 ____ What is your life expectancy as established by the Office of Actuary of
34 the United States Social Security Administration? ____.

35
36 ____ What is your life expectancy as determined by ~~any~~ *your* health care
37 professional? ____.

38
39 ____ What are the number of years until you can withdraw all the money
40 invested without penalty? ____.

(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

1 if the senior has a spouse or registered domestic partner, it shall
2 be presumptively wrongful to sell an annuity to a senior where the
3 total of both partners' countable assets is equal to or less than twice
4 the community spouse resource allowance.

5 (c) The sale of the annuity would result in the senior holding
6 50 percent or more of his or her countable assets as annuities, and
7 if the senior has a spouse or registered domestic partner, the sale
8 of the annuity would result in the senior and the senior's partner
9 holding 50 percent or more of the total of both partners' countable
10 assets as annuities.

11 (d) The surrender penalty period of the annuity exceeds the life
12 expectancy of the senior either as established by the Office of
13 Actuary of the United States Social Security Administration or by
14 any health care professional.

15 789.16. (a) The sale of an annuity to a senior without fulfilling
16 the disclosure requirements of Section 789.14 or under the
17 circumstances listed in Section 789.15, in addition to any other
18 remedy available by law, shall constitute a violation of Section
19 785.

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

26 789.18. Compensation paid to brokers, agents, and others who
27 act as the producer in a transaction involving the sale of ~~an annuity~~
28 *any annuity with a surrender penalty* to a senior, shall be paid on
29 an annual basis spread or trailed evenly ~~over the life of the annuity,~~
30 ~~or spread or trailed evenly~~ over the surrender period of the annuity.

31 789.19. Under no circumstances shall any surrender penalty
32 charged exceed either of the following:

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

35 (b) The total compensation to be paid to the producer less any
36 amount already paid to the producer, as prescribed in Section
37 789.18.