SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 772

PRINTER NO. 912

AMOUNT

No Fiscal Impact

FUND

General Fund

DATE INTRODUCED

June 16, 2021

PRIME SPONSOR

Senator DiSanto

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 772 amends the Insurance Company Law of 1921 to reduce the minimum nonforfeiture rate for individual deferred annuities and adopts a consumer best interest standard for all annuity recommendations.

The bill amends the act of May 17, 1921 (P.L. 682, No. 284), known as the Insurance Company Law of 1921, to coincide with the National Association of Insurance Commissioners 2020 model updates pertaining to the standard nonforfeiture law for deferred annuities and best interest standard of conduct for suitability in annuity transactions.

Section 410C. Standard Nonforfeiture Law for Individual Deferred Annuities:
The bill changes the interest rate used in determining minimum nonforfeiture amounts, which shall be an annual rate determined as the lesser of 3% or the 5-year constant treasury minus 125 basis points where the resulting rate is not less than .15%. This is reduced from 1.0% in current law.

Section 401 -B. Definitions:
The bill defines:

- "Consumer profile information" is reasonably appropriate information to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives through consideration of a minimum of 14 personal financial criteria;
- "Material conflict of interest" is a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash compensation or non-cash compensation;
- "Non-guaranteed elements" are the premiums, credited interest rates, including any bonus, benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue; and
- "Recommendation" is advice provided by a producer to an individual that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. The term does not include general communication to the public, generalized customer service, or administrative support, general educational information and tools or other product sales material.

Section 403-B. Duties of insurers and insurance producers:
The bill eliminates the existing statutory language that an annuity recommendation be suitable for a consumer and replaces these duties with a best interest obligation.

A producer recommending 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 the producer has satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

Care obligations include:

- Knowing the consumer's financial situation, objectives, and insurance needs and having a reasonable basis to believe the recommended option effectively addresses the consumer profile information that a producer is to obtain. A producer must communicate the basis of the recommendation after consideration of the types of products a producer is authorized and licensed to recommend or sell. These requirements do not create a fiduciary obligation and only create a regulatory obligation;
- Consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are relevant factors in making a determination whether an annuity effectively addresses the consumer's financial situation and objectives, but the level of importance of each factor under the care obligation may vary depending on the facts and circumstances. However, each factor may not be considered in isolation;
- The requirement an annuity is to effectively address a consumer's financial situation and objectives include a reasonable basis to believe the consumer would benefit from certain features of the annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity. The recommendation shall not necessarily mean the annuity with the lowest one-time or multiple occurrence compensation structure, and the care obligations do not mean the producer has ongoing monitoring obligations although such an obligation may be separately owed under terms of a fiduciary, investment advising, or financial planning agreement between the consumer and producer;
- When exchanging or replacing an annuity, the producer shall consider the whole transaction such as any consumer surrender charges, loss of benefits, and fees. The producer shall consider whether replacing the product would substantially benefit the consumer in comparison to the replaced product and whether the consumer exchanged or replaced an annuity within the preceding 60 months; and
- Nothing in this section should be construed to 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 this state.

The bill requires disclosure obligations to include:

- Prior to recommendation or sale of an annuity, the producer shall prominently disclose to the consumer following the NAIC Model #275's Appendix A the description of the scope and terms of the relationship with the consumer and role of the producer;
- An affirmative statement explaining the products a producer is authorized to sell as well as a description of the insurers for which the producer is authorized or contracted to sell insurance products;
- A description of the sources and types of cash and non-cash compensation a producer receives including compensation for the sale of the recommended annuity and the right to request more information regarding cash compensation. This includes an estimate of the cash compensation received by the producer and whether the compensation is one-time or multiple occurrence;
- Prior to recommendation or sale of an annuity, the producer shall have reasonable basis to believe the consumer has been informed of various features of the annuity and shall identify, avoid, manage, and disclose material conflicts of interest, such as an ownership interest;
- At the time of recommendation or sale, the producer shall make a written record of any recommendation and the basis for recommendation;
- The producer shall obtain a consumer signed statement on a form like NAIC Model #275 Appendix B documenting a customer's refusal to provide consumer profile information, if any, and a consumer's understanding of ramifications for not providing sufficient information. The producer shall obtain a consumer signed statement of an annuity transaction not being recommended if a customer decides to enter into a transaction not based on the producer's recommendation;
- Producer requirements under this section apply 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; and
- A producer shall have no obligation to a consumer if no recommendation is made or a recommendation was made and was later found to have been prepared based on a consumer providing materially inaccurate information. Nor is there an obligation if a consumer refuses to provide relevant information and the transaction is not recommended.

The bill establishes supervision of recommendations to include:

- An insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the consumer's financial situation and objectives and insurance needs based on consumer profile information;

- Insurers shall establish and maintain a supervision system to achieve insurer and producer compliance with this article. This includes procedures to inform its producers of this article's requirements and relevant training materials. An insurer shall provide product-specific training that explains all material features of its annuity products to its producers. An insurer shall review each recommendation before issuance of an annuity to ensure there is a reasonable basis for the recommendation. Review procedures may apply a screening system for identifying selected transactions for additional review;
- Insurers shall establish and maintain procedures to detect recommendations that are not in compliance. This may include confirmation of consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring;
- Insurers shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required under this section. Insurers shall have procedures to identify and address suspicious consumer refusals to provide consumer profile information;
- Insurers shall eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period. This subparagraph does not prohibit the receipt of health insurance, retirement benefits, or other employee benefits if those benefits are not based upon the volume of sales of a specific annuity within a limited period;
- An insurer shall annually provide a written report detailing its supervision system to senior management. The report shall include a description of the testing designed to determine the effectiveness of the supervision system, and corrective action taken or recommended, if any;
- Nothing in this subsection shall restrict an insurer from contracting for performance of a function, including maintenance of procedures. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties;
- An insurer's supervision system shall include supervision of contractual performance and conducting audits to assure proper performance; and
- An insurer is not required to include in its system of supervision producer recommendations to consumers for products other than the annuities offered by the insurer or a comparison to options available to the producer, or compensation relating to those options, other than annuities or other products offered by the insurer.

The bill specifies prohibited practices as a producer or insurer shall not dissuade, or attempt to dissuade, a consumer from truthfully responding to an insurer's request for confirmation of the consumer profile information, filing a complaint, or cooperating with the investigation of a complaint.

The bill establishes safe harbor conditions as:

- All recommendations and sales made in compliance with comparable standards shall satisfy the requirements under this article. This subsection applies to recommendations and sales of annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard. Nothing in this subsection shall limit the commissioner's ability to investigate and enforce the provisions of this article;
- The insurer may base its analysis on information received from either the financial professional or entity supervising the professional and shall monitor the relevant conduct of the professional or supervising entity. The insurer shall provide information and reports appropriate to assist an entity supervising professionals; and
- Nothing in this article shall exempt an insurer from internal audit and compliance procedure requirements under section 405-A.

Senate Bill 772 defines "Financial professional" as a producer that is regulated and acting as a broker-dealer, an investment adviser or a plan fiduciary under federal securities law or Employee Retirement Income Security Act.

This legislation defines "Comparable standards" as applicable SEC and FINRA rules pertaining to best interest obligations for broker-dealers, investment advisers' fiduciary duties, and plan fiduciaries' obligations under Federal law.

Section 403. 1-B. Insurance producer training:
Continuing education requirements shall be met on or before the end of the insurance producer's next complete license period and producers licensed on or after the effective date shall meet requirements before the end of the producer's first license period.

A producer who has met continuing education credit requirements prior to the effective date of this subsection shall complete at least four continuing education credits in an annuity training course or an additional one-time one credit training course approved by the department in compliance with this section within six months.

Section 404 -B. Compliance mitigation:
Insurers are responsible for compliance with this article, and if violations occur the commissioner may order an insurer to take appropriate corrective action for any consumer harmed by an insurer's failure or an entity contracted to perform the insurer's supervisory duties or by the producer.

Section 405 -B. Recordkeeping:
The bill requires an insurer and producer to maintain or be able to make available to the commissioner records of information collected from the consumer as well as disclosures made to the consumer used in making the recommendations of an annuity for five years after completing the transaction.

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

This act shall take effect in 180 days.

FISCAL IMPACT:

According to the Insurance Department, Senate Bill 772 will have no fiscal impact to the Commonwealth.