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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.

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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,

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