



# National Association of Insurance and Financial Advisors - Connecticut

Telephone: 844.624.3228 Website: [www.NAIFACT.org](http://www.NAIFACT.org)

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Senator Flexer, Representative Serra, Senator Kelly, Representative Bolinsky, we submit this testimony in general opposition to the name and certain specific provisions of SB265, AN ACT CONCERNING THE PROTECTION OF CONSUMERS WHO RECEIVE INVESTMENT ADVICE FROM FINANCIAL ADVISORS.

Although we applaud the general mission to protect consumers and ensure that only reputable financial advisors can hold themselves out as such, the broad reaching implications of the bill would adversely impact those advisors that abide by the rules; would adversely impact the "captive agent"; and the ambiguity of certain wording creates an open door to conflict.

NAIFA is the nation's largest association representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers with life insurance, annuities, health insurance, employee benefits, multiline, financial advising, investments, as well as business and retirement planning. NAIFA's mission is to advocate on behalf of our clients and the nation's consumers for a positive legislative and regulatory environment. NAIFA CT is this state's local organization, representing thousands of members who live and work in Connecticut and tens of thousands of CT consumers who are our members' clients.

We share the sponsor's goal of protecting consumers, believing specifically that strong investor protections are essential and that balanced, clear and meaningful disclosures to investors which help them understand the services provided, the total costs involved and the nature of the relationship between advisor and investor, are all appropriate to the conduct of a quality business environment. However, disclosures must also be fair and balanced and accurately present the information sought to be disclosed. Unfortunately, there are certain provisions and/or language in SB265 which we believe are ambiguous or incomplete, which may have unintended negative consequences for the consumer and may even obviate the purpose of the bill's sponsors in proposing this legislation. First, we take issue with the title of the bill and would recommend—"An Act concerning the Protection of Consumers Who Receive Investment Advice from Financial Advisors" has a negative connotation and creates the unfair implication that all of Connecticut's Financial Advisors are to be viewed negatively, as persons from whom the consumer needs protection, as if advisors are predators. That simply is not the case; nor do we believe that the bill's sponsors intended to imply that. NAIFA Connecticut recommends the change to say: AN ACT CONCERNING FINANCIAL ADVISORS WHO GIVE INVESTMENT ADVICE TO CONNECTICUT CONSUMERS.

Second, the ACT attempts to define "financial advisor". The bill's terminology leaves the door open to unintended areas of concern. We would like to suggest that the bill be more specific in its definition and specify the individual areas where concerns exist. In fact, since there is no specific Connecticut State licensing requirements of anyone who would like to call themselves a "financial advisor", stock brokers, insurance brokers, agents and even lawyers or accountants who give their clients financial advice when they comment on insurance products such as investments in annuities and life products, can qualify under this definition. In fact, recently and currently we have real estate agents giving consumers advice on how to improve their IRA and 401K accounts by liquidating the products within those retirement vehicles and investing in real estate rental properties using their IRA and 401K monies. Under the bill's definition, it could be argued that the advice given under those scenarios could qualify as "investment advice....for compensation". Third, the ACT attempts to define "fiduciary duty" and includes the phrase ".....undivided loyalty on behalf of an investor". An argument could be made that a captive agent (by the very legal definition of 'agent') would have to disclose in writing and the consumer would have to agree that the agent was not going to work in the consumer's best



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interest and it could eventually be argued that the required document wording might have to say: the agent has a "DIVIDED LOYALTY" (where the bill says the document must have: "a description of the duty the financial advisor has to the investor"). This would put the captive agents of the following companies, among others, at a distinct disadvantage: Northwestern Mutual Life, New York Life, Mass Mutual, Guardian, Prudential, Met Life – many of whose agents are the most prestigious agents in the State, if not in the country. The bill's language would require these agents to put in writing that they are not a fiduciary and are not required to act in their client's best interest. The language is misleading. The consumer would be misled from engaging these professionals who are already subject to strict conduct-based disclosures and consumer protection rules, as well as compliance regulations.

Fourth, section 1 (b)(1) of the Bill fails to require a balanced and thorough disclosure of the different standards applicable to financial advisors and the relative strengths and weaknesses of the regulatory regimes which govern each standard. This language is strongly biased against anyone who is not a fiduciary and is neither fair to the advisor nor balanced in nature. The brief disclosure required fails to take into account or require disclosure about factors such as i) the strengths of the existing suitability standard applicable to broker-dealers and their registered representatives, ii) the comprehensive nature and scope of FINRA rules that govern the conduct of non-fiduciary broker-dealers and their registered representatives (or to contrast the FINRA regulatory regime with the principles-based, "rules-light" regulation of fiduciary advisors), or iii) the frequency and scope of FINRA examinations of broker-dealers and broker-dealer examinations of their registered representatives (at least every 1-2 years) versus SEC examinations of fiduciary advisors, which take place, on average, only once every 11 years and where approximately 40% of registered investment advisors have never been examined.

Absent such information, the summary disclosure required by this section would only serve to mislead investors and would fail to give them the information needed to make an informed decision about what type of advice is best for their own situation. Being required to provide this type of disclosure would result in the consumer looking elsewhere for needed advice and service. This would potentially leave many middle-market Connecticut residents, who are unable to afford fee-based arrangements or to meet fiduciary advisors' minimum asset requirements, underserved and without access to needed products and services.

Fifth, Raised Bill 265 takes the disclosure of compensation to an extreme, and possibly misleading, level. Although NAIFA CT believes that consumers should clearly understand the full costs of the products they are considering and strongly endorses total cost disclosure, we feel the disclosures specified in proposed section 1(b)(2) are focused to heavily on the elements of the compensation to be received by the advisor, which could mislead consumers to believe that the agent has no cost of doing business to offset some of those commissions and most importantly could cause the consumer to focus on a small cost items, instead of the big picture and a specific product's total cost. In order to avoid inundating the consumer with an overabundance of possibly misleading information, required disclosures should be limited to those currently required under federal or state securities laws or regulations, and should not require duplicate disclosures of such information if already required to be disclosed elsewhere.

In addition, this section contains a bias against commission compensation, in that it does not specifically mention assets under management or other types of fee compensation.

Sixth, the ACT, in the compensation area, uses the phrase "...or other incentives the financial advisor MAY RECEIVE (my emphasis) ....". Most high quality, ethical companies use incentives and the financial services industry is no different. However, since the wording "may receive" is used, disclosure is required of, among other items, bonuses/incentives the advisor 'MAY RECEIVE' – even though he may never receive same. Benefits such as health insurance, life insurance, pension



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contributions, advertising allowance, a free lunch, trips, free rent MAY not be received – nor would the advisor know the dollar amount for sure until the end of the year. It could be argued to the unfair detriment of the advisor that the advisor's document did not contain all the items he does end up receiving at the end of the year as well! It could always be argued in retrospect, that he received a free special lunch with a manager or tickets to a game – benefits he did not know he would get, until he earned them. We believe that these consequences were not what the bill sponsors had in mind. Seventh, much of the information required to be disclosed by section 1(b)(3) may not be readily available to or known by the individual advisor. The advisor's firm would likely be better able to provide this information.

Seventh, the ACT requires the document to list any 'potential' conflicts of interest. This again opens a Pandora's Box. In retrospect, it can always be argued that the advisor knew of the potential of such conflict, even though he did not at the time. Proving that he knew of its potential to be a conflict is another item entirely. In addition, this section 1(b)(6) needs to contain a more detailed and specific description of what is meant by conflict of interest, and any such required disclosure should be limited to material conflicts that are significant to the client's decision making process. Again, the advisor's firm may be the better source for this information.

Thank you for considering NAIFA Connecticut's views on Raised Bill 265. Please contact John Sayour at 914-643-3085 if you have any questions.