

BILL ANALYSIS

C.S.H.B. 1293
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The National Association of Insurance Commissioners (NAIC) has worked for a number of years to develop model laws to prevent unfair and deceptive sales practices in the sale of annuities. In 2007, the Texas legislature enacted the NAIC-modeled Annuity Suitability Act, which requires agents to determine the suitability of a particular annuity for the individual consumer before it is sold.

In addition to standards for suitability, the NAIC developed a model regulation with which to provide standards for the disclosure of certain critical information to consumers, such as the benefits and limitation of annuity contracts, as a means of protecting consumers and fostering consumer education. The model also requires insurers and agents to provide a buyer's guide and disclosure document to consumers before consummation of the sale of an annuity. Separate guides have been established for fixed annuities and equity indexed annuities.

These guides and disclosure documents will assist consumers in understanding important information about an annuity. Adopting the model regulation by statute will permit the Texas Department of Insurance to adopt the buyer's guide and disclosure document by rule and allow the department to make necessary changes to those documents over time. Twenty-seven states have already adopted the current version of the NAIC annuity disclosure model regulation or variations of an older NAIC model, and enactment of this legislation would make this information available to Texas consumers as well and assist in preventing the sale of unsuitable annuity products to senior citizens and other Texans.

C.S.H.B. 1293 requires that a buyer's guide and disclosure document be made available to the consumer by the agent or the company, depending on the point of sale. The bill addresses means of delivering the guide and document based on whether the application is taken face-to-face or by other means, including a direct mail solicitation or through the Internet.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1293 amends the Insurance Code to require the commissioner of insurance by rule to adopt buyer's guides for consumers who are considering purchasing an annuity contract or certificate, including a guide to fixed deferred annuities and a guide to equity indexed annuities. The bill authorizes the commissioner to adopt the buyer's guides for fixed deferred annuities and for equity indexed annuities published by the National Association of Insurance Commissioners or similar comprehensive guides produced by the Texas Department of Insurance (TDI) or published by another national insurance organization recognized by the commissioner. The bill specifies that compliance with these provisions or rules implementing these provisions is not an affirmative defense in any action brought by or for TDI alleging a violation of provisions

governing unfair methods of competition and unfair or deceptive acts in the business of insurance, the replacement of certain life insurance policies and annuities, or the suitability of certain annuity transactions.

C.S.H.B. 1293 requires that an applicant for an annuity contract or certificate, if the application is taken in a face-to-face meeting, be given at or before the time of application both a disclosure document and the appropriate buyer's guide. The bill requires, if the application is taken by means other than a face-to-face meeting, that the applicant be sent both the disclosure document and guide not later than the fifth business day after the date the completed application is received by the insurer. The bill specifies that, if an application is received as a result of a direct mail solicitation, providing the guide and disclosure document in the solicitation satisfies the requirement to provide the documents and that, if an application is received through the Internet, taking reasonable steps to ensure the guide and disclosure document are available for viewing and printing on the insurer's website satisfies that requirement.

C.S.H.B. 1293 requires a solicitation for any annuity contract provided in a manner other than a face-to-face meeting to include a statement that the proposed applicant may contact TDI for a free annuity buyer's guide or that the prospective applicant may contact the insurer for a free annuity buyer's guide. The bill requires a free look period of at least 15 days to be provided for the applicant to return the annuity contract without penalty if the buyer's guide and disclosure document are not provided at or before the time of application. The bill requires the free look period to run concurrently with any other free look period required under Texas insurance laws or other state laws.

C.S.H.B. 1293 sets forth the minimum requirements for the information required to be included in the disclosure document, including identifying information; a description of the contract and its benefits, emphasizing its long-term nature; information about contract elements, crediting rates, income options, value reductions, accessing values, a death benefit, tax status and penalties, and riders; specific dollar amount or percentage charges and fees with an explanation of how they apply; information about the current guaranteed rate and clear notice that the rate is subject to change; and definitions for terms used in the statement written in language that facilitates understanding by a typical person to whom the disclosure is directed.

C.S.H.B. 1293 requires the insurer, for annuities in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, to provide each contract owner with a report at least annually on the status of the contract. The bill requires the report to contain at a minimum certain information regarding the reporting period, including the period's beginning and ending dates; the accumulation and cash surrender value, if any, at the end of the previous and current reporting periods; the total amounts, if any, that have been credited, charged to the contract or certificate value, or paid during the current reporting period; and the amount of outstanding loans as of the end of the current reporting period.

C.S.H.B. 1293 establishes that a violation of a requirement in these provisions by an insurer constitutes an unfair or deceptive act or practice in the business of insurance for the purposes of the provisions governing unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

C.S.H.B. 1293 establishes that the purpose of these provisions is to protect consumers and foster consumer education by providing standards for the disclosure of information about annuity contracts and to ensure that purchasers of annuity contracts understand certain basic features of such contracts. The bill establishes that these provisions apply to all group and individual annuity contracts and certificates, with certain exceptions, and that they apply to annuities used to fund plans or arrangements funded solely by certain employee-elected contributions.

C.S.H.B. 1293 defines "buyer's guide," "charitable gift annuity," "contract owner," "determinable elements," "direct solicitation," "funding agreement," "generic name," "guaranteed

elements," "nonguaranteed elements," and "structured settlement annuity." The bill makes its provisions applicable to an application for an annuity contract or certificate, or a solicitation for an annuity contract, made on or after January 1, 2010.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1293 differs from the original by defining "buyer's guide" as a guide published or adopted by the Texas Department of Insurance (TDI), including the National Association of Insurance Commissioners (NAIC) buyer's guides for fixed deferred annuities and for equity indexed annuities or similar guides produced by TDI or published by another national insurance organization recognized by the commissioner and authorizing the commissioner to adopt any of these as the guides the commissioner is required by rule to adopt, whereas the original defines "buyer's guide" as the NAIC buyer's guide for fixed deferred annuities or for equity indexed annuities and requires the commissioner by rule to adopt the latest edition of these buyer's guides.

C.S.H.B. 1293 differs from the original by assigning "charitable gift annuity" the definition under provisions governing such annuities, rather than creating a separate definition under these provisions. The substitute differs from the original by defining "generic name" to mean a short title descriptive of the annuity contract being illustrated or for which an applicant is applying, whereas the original's definition does not include an annuity contract for which an applicant is applying.

C.S.H.B.1293 adds a provision not in the original to specify that compliance with these provisions or rules implementing these provisions is not an affirmative defense in any action brought by or for TDI alleging a violation of certain provisions.

C.S.H.B. 1293 adds a provision not in the original to establish that a violation of these provisions by an insurer constitutes an unfair or deceptive act or practice in the business of insurance. The substitute removes a provision in the original that authorizes the commissioner to impose sanctions for a violation of these provisions and to reduce or eliminate a sanction for a violation otherwise applicable if corrective action for the consumer is taken promptly after a violation is discovered. The substitute removes a severability provision in the original.

C.S.H.B.1293 adds a provision not in the original that makes its provisions applicable to an application for an annuity contract or certificate, or solicitation for an annuity contract, made on or after January 1, 2010. The substitute differs from the original by making its provisions effective September 1, 2009, whereas the original makes them effective January 1, 2010.