

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1293
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to make information about annuities available to Texas consumers and assist in preventing the sale of unsuitable annuities to seniors and other Texans.

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, Texas passed the NAIC model annuity suitability act which requires agents to determine the suitability of a particular annuity for the individual consumer before it is sold. This model act is now codified in Chapter 1115 (Suitability of Certain Annuity Transactions), Insurance Code.

In addition to the model standards for suitability, the NAIC developed a model regulation to provide standards for the disclosure of certain critical information to consumers, such as the benefits and limitations of annuity contracts, to protect consumers and foster consumer education. 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 permit changes as those are changed.

C.S.H.B. 1293 relates to the sale and marketing of life insurance and annuities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 1116.006, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 7, Insurance Code, by adding Chapter 1116, as follows:

CHAPTER 1116. DISCLOSURE OF INFORMATION REGARDING ANNUITY TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1116.001. PURPOSES. Sets forth the purpose of this chapter.

Sec. 1116.002. GENERAL DEFINITIONS. Defines "buyer's guide," "charitable gift annuity," "contract owner," "funding agreement," "generic name," and "structured settlement annuity."

Sec. 1116.003. DETERMINABLE ELEMENTS. (a) Provides that for purposes of this chapter, "determinable elements" means elements derived from processes or methods that are guaranteed at issue and are not subject to company discretion, but for which the values or amounts cannot be determined until some point after issue. Provides that the term includes:

- (1) premiums;
- (2) credited interest rates, including any bonus;

- (3) benefits;
- (4) values;
- (5) noninterest based credits;
- (6) charges; and
- (7) elements of formulas used to determine any element described by Subdivisions (1)-(6).

(b) Authorizes determinable elements to be described as guaranteed but not determined at issue. Provides that an element is considered determinable if the element was computed from only underlying determinable elements, or from both determinable and guaranteed elements.

Sec. 1116.004. GUARANTEED AND NONGUARANTEED ELEMENTS. (a) Provides that for purposes of this chapter, "guaranteed element" means an element listed in Sections 1116.003(a)(1)-(7) that is guaranteed and determined at issue. Provides that an element is considered guaranteed if all of the underlying elements used in its computation are guaranteed.

(b) Provides that for purposes of this chapter, "nonguaranteed element" means an element listed in Sections 1116.003(a)(1)-(7) that is subject to the insurer's discretion and is not guaranteed at issue. Provides that an element is considered nonguaranteed if any underlying element used in its computation is nonguaranteed.

Sec. 1116.005. APPLICABILITY; SCOPE. (a) Provides that except as provided by Subsection (b), this chapter applies to all group and individual annuity contracts and certificates.

(b) Provides that this chapter does not apply to:

- (1) immediate and deferred annuities that do not contain elements that are nonguaranteed;
- (2) annuities used to fund an employee pension plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); a plan described by Section 401(a), 401(k), or 403(b), Internal Revenue Code of 1986, in which the plan, for purposes of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), is established or maintained by an employer; a governmental or church plan as defined by Section 414, Internal Revenue Code of 1986, or a deferred compensation plan of a state or local government or a tax-exempt organization under Section 457, Internal Revenue Code of 1986; or a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (3) a structured settlement annuity;
- (4) a charitable gift annuity qualified under Chapter 102 (Charitable Gift Annuities);
- (5) a funding agreement; or
- (6) an annuity contract used to fund a contract for prepaid funeral benefits, as defined by Chapter 154 (Prepaid Funeral Services), Finance Code.

(c) Provides that this chapter applies to an annuity used to fund a plan or arrangement that is funded solely by contributions an employee elects to make,

whether on a pretax or after-tax basis, if the insurer has been notified that plan participants are authorized to choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. Provides that as used in this subsection, "direct solicitation" does not include a meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

Sec. 1116.006. BUYER'S GUIDES. (a) Requires the commissioner of insurance (commissioner) by rule to adopt buyer's guides for consumers who are considering purchasing an annuity contract or certificate.

(b) Authorizes the commissioner, in adopting buyer's guides under this section to adopt the buyer's guides published by the National Association of Insurance Commissioners or similar comprehensive guides produced by the Texas Department of Insurance (TDI) or by national insurance organizations recognized by the commissioner. Prohibits the commissioner, if a buyer's guide to a particular type of annuity has not been adopted nationally, from adopting a buyer's guide for that type of annuity.

Sec. 1116.007. EFFECT ON OTHER LAW. Provides that compliance with this chapter or rules implementing this chapter is not an affirmative defense in any action brought by or for TDI alleging a violation of Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), 1114 (Replacement of Certain Life Insurance Policies and Annuities), or 1115 (Suitability of Certain Annuity Transactions).

[Reserves Sections 1116.008-1116.050 for expansion.]

SUBCHAPTER B. DISCLOSURES AND DISCLOSURE STANDARDS

Sec. 1116.051. STANDARDS FOR DISCLOSURE DOCUMENT AND BUYER'S GUIDE. (a) Requires the applicant, if an application for an annuity contract or certificate is taken in a face-to-face meeting, to be given, at or before the time of application, both the disclosure document described by Section 1116.052 and the appropriate buyer's guide.

(b) Requires the applicant, if the application is taken by means other than in a face-to-face meeting, to be sent both the disclosure document and the appropriate buyer's guide not later than the fifth business day after the date on which the completed application is received by the insurer.

(c) Provides that if the application is received as a result of a direct solicitation through the mail, providing the appropriate buyer's guide and the disclosure document in a mailing inviting prospective applicants to apply for an annuity contract or certificate is considered to satisfy the requirement that the appropriate buyer's guide and the disclosure document be provided not later than the fifth business day after the date of receipt of the application.

(d) Provides that if the application is received through the Internet, taking reasonable steps to ensure that the appropriate buyer's guide and the disclosure document are available for viewing and printing on the insurer's website is considered to satisfy the requirement that the appropriate buyer's guide and the disclosure document be provided not later than the fifth business day after the date of receipt of the application.

(e) Requires that a solicitation for an annuity contract that is provided in a manner other than a face-to-face meeting include a statement that the proposed applicant is authorized to contact TDI for a free annuity buyer's guide or that the prospective applicant is authorized to contact the insurer for a free annuity buyer's guide.

(f) Requires that if the appropriate buyer's guide and the disclosure document are not provided at or before the time of application, a free look period of at least 15 days be provided during which the applicant is authorized to return the annuity contract without penalty. Requires that this period run concurrently with any other free look period required under this code or another law of this state. Requires that an unconditional refund without penalty for purposes of this subsection for variable or modified guaranteed annuity contracts mean a refund equal to the cash surrender value provided in the annuity contract, plus any fees or charges deducted from the premiums or imposed under the contract. Provides that the refund and free look period in this subsection do not apply if the prospective owner is an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission (SEC).

Sec. 1116.052. DISCLOSURE DOCUMENT. (a) Requires that, at a minimum, the following information be included in the disclosure document required to be provided under this chapter:

- (1) the generic name of the contract, the insurer product name, if different from the generic name, the insurer's form number, and a statement of the fact that the contract is an annuity;
- (2) the insurer's name and address;
- (3) a description of the contract and the benefits provided under the contract, emphasizing the contract's long-term nature, and including examples as appropriate;
- (4) the guaranteed, nonguaranteed, and determinable elements of the contract, any limitations of those elements, and an explanation of how those elements operate;
- (5) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the initial crediting rate, and the fact that rates may change from time to time and are not guaranteed;
- (6) periodic income options, both on a guaranteed and nonguaranteed basis;
- (7) any value reductions caused by withdrawals from or surrender of the contract;
- (8) how values in the contract can be assessed;
- (9) the death benefit, if available, and how the death benefit is computed;
- (10) a summary of the federal tax status of the contract, and any penalties applicable on withdrawal of values from the contract;
- (11) the impact of any rider, such as a long-term care rider;
- (12) a list of the specific dollar amount or percentage charges and fees, with an explanation of how those charges and fees apply; and
- (13) information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(b) Requires an insurer to define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure document is directed.

(c) Provides that a disclosure document that complies with the Financial Industry Regulatory Authority (FINRA) Conduct Rules and Securities and Exchange Commission prospectus requirements satisfies the requirements of this section for disclosure documents. Provides that this subsection does not limit the commissioner's ability to enforce the provisions of this section or require the use of a FINRA-approved disclosure document. Provides that this subsection is intended to grant a safe harbor under this chapter for an annuity contract that is regulated by, and complies with, the FINRA Conduct Rules and the SEC prospectus requirements pertaining to disclosure.

Sec. 1116.053. REPORT TO CONTRACT OWNERS. (a) Requires the insurer, for annuities in the payout period with changes in nonguaranteed elements and for the accumulations period of a deferred annuity, to provide each contract owner with a report, at least annually, on the status of the contract.

(b) Requires the report to contain at least the following information: the beginning and ending date of the current reporting period; the accumulation and cash surrender value, if any, at the end of the previous reporting period, and the current reporting period; 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 any outstanding loans as of the end of the current reporting period.

[Reserves Sections 1116.054-1116.100 for expansion.]

SUBCHAPTER C. ENFORCEMENT

Sec. 1116.101. VIOLATION. Provides that a violation of a requirement of this chapter by an insurer or agent constitutes an unfair or deceptive act or practice in the business of insurance for purposes of Chapter 541.

SECTION 2. Amends Section 1114.004(a), Insurance Code, to provide that except as otherwise specifically provided by this chapter, this chapter does not apply to certain transactions, including life insurance and annuities, rather than group life insurance and annuities, used to fund prepaid funeral benefits contracts, as defined by Chapter 154, Finance Code.

SECTION 3. Amends Section 541.058(b), Insurance Code, to provide that it is not a rebate or discrimination prohibited by Section 541.056(a) (relating to an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to permit certain actions with a life insurance contract, life annuity contract, or accident and health insurance contract or an agreement) or 541.057 (Unfair Discrimination in Life Insurance and Annuity Contracts) for a life annuity contract, to waive surrender charges under the contract when the contract holder exchanges that contract for another annuity contract issued by the same insurer or an affiliate of the same insurer that is part of the same holding company group if the contract holder is given credit for the time that the prior contract was held when determining any surrender charges under the new contract, among other certain policies and contracts. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter B, Chapter 1114, Insurance Code, by adding Section 1114.057, as follows:

Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF SURRENDER CHARGES. Requires an insurer that offers to waive surrender charges consistent with Section 541.058(b)(4) of this code to provide reasonable notice of such offer to its prospective or current contract holders. Authorizes such notice to be included through any available means, including a disclosure document or displayed on a link that is prominently placed on the insurer's web page.

SECTION 5. Makes application of this Act prospective to January 1, 2010.

SECTION 6. Effective date: September 1, 2009.