

By: Eiland

H.B. No. 1293

Substitute the following for H.B. No. 1293:

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C.S.H.B. No. 1293

A BILL TO BE ENTITLED

AN ACT

relating to disclosure of certain information regarding annuity transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 7, Insurance Code, is amended by adding Chapter 1116 to read as follows:

CHAPTER 1116. DISCLOSURE OF INFORMATION REGARDING

ANNUITY TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1116.001. PURPOSES. The purpose of this chapter is to:

(1) protect consumers and foster consumer education by providing standards for the disclosure of certain minimum information about annuity contracts; and

(2) ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

Sec. 1116.002. GENERAL DEFINITIONS. In this chapter:

(1) "Buyer's guide" means a buyer's guide published or adopted by the department under Section 1116.006.

(2) "Charitable gift annuity" has the meaning assigned by Section 102.001.

(3) "Contract owner" means the owner named in the annuity contract or, in the case of a group annuity contract, the certificate holder.

1 (4) "Funding agreement" means an agreement for an
2 insurer to accept and accumulate funds and to make one or more
3 payments at future dates in amounts that are not based on mortality
4 or morbidity contingencies.

5 (5) "Generic name" means a short title descriptive of
6 the annuity contract being illustrated or for which an applicant is
7 applying, such as "single premium deferred annuity."

8 (6) "Structured settlement annuity" means:

9 (A) a "qualified funding asset," as defined by
10 Section 130(d), Internal Revenue Code of 1986; or

11 (B) an annuity that would be a qualified funding
12 asset but for the fact that the annuity is not owned by an assignee
13 under a qualified assignment.

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

20 (1) premiums;

21 (2) credited interest rates, including any bonus;

22 (3) benefits;

23 (4) values;

24 (5) noninterest based credits;

25 (6) charges; and

26 (7) elements of formulas used to determine any element
27 described by Subdivisions (1)-(6).

1 (b) Determinable elements may be described as guaranteed
2 but not determined at issue. An element is considered determinable
3 if the element was computed from only underlying determinable
4 elements, or from both determinable and guaranteed elements.

5 Sec. 1116.004. GUARANTEED AND NONGUARANTEED ELEMENTS.

6 (a) For purposes of this chapter, "guaranteed element" means an
7 element listed in Sections 1116.003(a)(1)-(7) that is guaranteed
8 and determined at issue. An element is considered guaranteed if
9 all of the underlying elements used in its computation are
10 guaranteed.

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

16 Sec. 1116.005. APPLICABILITY; SCOPE. (a) Except as
17 provided by Subsection (b), this chapter applies to all group and
18 individual annuity contracts and certificates.

19 (b) This chapter does not apply to:

20 (1) registered or nonregistered variable annuities or
21 other registered products;

22 (2) immediate and deferred annuities that do not
23 contain elements that are nonguaranteed;

24 (3) annuities used to fund:

25 (A) an employee pension plan subject to the
26 Employee Retirement Income Security Act of 1974 (29 U.S.C. Section
27 1001 et seq.);

1 (B) a plan described by Section 401(a), 401(k),
2 or 403(b), Internal Revenue Code of 1986, in which the plan, for
3 purposes of the Employee Retirement Income Security Act of 1974 (29
4 U.S.C. Section 1001 et seq.), is established or maintained by an
5 employer;

6 (C) a governmental or church plan as defined by
7 Section 414, Internal Revenue Code of 1986, or a deferred
8 compensation plan of a state or local government or a tax-exempt
9 organization under Section 457, Internal Revenue Code of 1986; or

10 (D) a nonqualified deferred compensation
11 arrangement established or maintained by an employer or plan
12 sponsor;

13 (4) a structured settlement annuity;

14 (5) a charitable gift annuity qualified under Chapter
15 102; or

16 (6) a funding agreement.

17 (c) This chapter applies to an annuity used to fund a plan or
18 arrangement that is funded solely by contributions an employee
19 elects to make, whether on a pretax or after-tax basis, if the
20 insurer has been notified that plan participants may choose from
21 among two or more fixed annuity providers and there is a direct
22 solicitation of an individual employee by a producer for the
23 purchase of an annuity contract. As used in this subsection,
24 "direct solicitation" does not include a meeting held by a producer
25 solely for the purpose of educating or enrolling employees in the
26 plan or arrangement.

27 Sec. 1116.006. BUYER'S GUIDES. (a) The commissioner by

1 rule shall adopt buyer's guides for consumers who are considering
2 purchasing an annuity contract or certificate, including a guide to
3 fixed deferred annuities and a guide to equity indexed annuities.

4 (b) In adopting buyer's guides under this section, the
5 commissioner may adopt the Buyer's Guide for Fixed Deferred
6 Annuities or the Buyer's Guide for Equity-Indexed Annuities
7 published by the National Association of Insurance Commissioners,
8 or similar comprehensive guides produced by the department or
9 published by another national insurance organization recognized by
10 the commissioner.

11 Sec. 1116.007. EFFECT ON OTHER LAW. Compliance with this
12 chapter or rules implementing this chapter is not an affirmative
13 defense in any action brought by or for the department alleging a
14 violation of Chapter 541, 1114, or 1115.

15 [Sections 1116.008-1116.050 reserved for expansion]

16 SUBCHAPTER B. DISCLOSURES AND DISCLOSURE STANDARDS

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

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

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

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

15 (e) A solicitation for an annuity contract that is provided
16 in a manner other than a face-to-face meeting must include a
17 statement that the proposed applicant may contact the department
18 for a free annuity buyer's guide or that the prospective applicant
19 may contact the insurer for a free annuity buyer's guide.

20 (f) If the appropriate buyer's guide and the disclosure
21 document are not provided at or before the time of application, a
22 free look period of at least 15 days must be provided during which
23 the applicant may return the annuity contract without penalty.
24 This period shall run concurrently with any other free look period
25 required under this code or another law of this state.

26 Sec. 1116.052. DISCLOSURE DOCUMENT. (a) At a minimum, the
27 following information must be included in the disclosure document

1 required to be provided under this chapter:

2 (1) the generic name of the contract, the insurer
3 product name, if different from the generic name, the insurer's
4 form number, and a statement of the fact that the contract is an
5 annuity;

6 (2) the insurer's name and address;

7 (3) a description of the contract and the benefits
8 provided under the contract, emphasizing the contract's long-term
9 nature, and including examples as appropriate;

10 (4) the guaranteed, nonguaranteed, and determinable
11 elements of the contract, any limitations of those elements, and an
12 explanation of how those elements operate;

13 (5) an explanation of the initial crediting rate,
14 specifying any bonus or introductory portion, the duration of the
15 initial crediting rate, and the fact that rates may change from time
16 to time and are not guaranteed;

17 (6) periodic income options, both on a guaranteed and
18 nonguaranteed basis;

19 (7) any value reductions caused by withdrawals from or
20 surrender of the contract;

21 (8) how values in the contract can be accessed;

22 (9) the death benefit, if available, and how the death
23 benefit is computed;

24 (10) a summary of:

25 (A) the federal tax status of the contract; and

26 (B) any penalties applicable on withdrawal of
27 values from the contract;

1 (11) the impact of any rider, such as a long-term care
2 rider;

3 (12) a list of the specific dollar amount or
4 percentage charges and fees, with an explanation of how those
5 charges and fees apply; and

6 (13) information about the current guaranteed rate for
7 new contracts that contains a clear notice that the rate is subject
8 to change.

9 (b) An insurer shall define terms used in the disclosure
10 statement in language that facilitates the understanding by a
11 typical person within the segment of the public to which the
12 disclosure statement is directed.

13 Sec. 1116.053. REPORT TO CONTRACT OWNERS. (a) For
14 annuities in the payout period with changes in nonguaranteed
15 elements and for the accumulation period of a deferred annuity, the
16 insurer shall provide each contract owner with a report, at least
17 annually, on the status of the contract.

18 (b) The report must contain at least the following
19 information:

20 (1) the beginning and ending date of the current
21 reporting period;

22 (2) the accumulation and cash surrender value, if any,
23 at the end of:

24 (A) the previous reporting period; and

25 (B) the current reporting period;

26 (3) the total amounts, if any, that have been
27 credited, charged to the contract or certificate value, or paid

1 during the current reporting period; and
2 (4) the amount of any outstanding loans as of the end
3 of the current reporting period.

4 [Sections 1116.054-1116.100 reserved for expansion]

5 SUBCHAPTER C. ENFORCEMENT

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

10 SECTION 2. The change in law made by this Act applies only
11 to an application for an annuity contract or certificate, or a
12 solicitation for an annuity contract, made on or after January 1,
13 2010. An application for an annuity contract or certificate, or a
14 solicitation for an annuity contract, made before January 1, 2010,
15 is governed by the law in effect immediately before the effective
16 date of this Act, and that law is continued in effect for that
17 purpose.

18 SECTION 3. This Act takes effect September 1, 2009.