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H.B. No. 1293

A BILL TO BE ENTITLED

AN ACT

relating to certain disclosure standards for certain annuity contracts

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

SECTION 1. The Insurance Code is amended by adding a new Chapter 1116 to read as follow:

CHAPTER 1116. DISCLOSURE REQUIREMENTS FOR CERTAIN ANNUITY

TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1116.001. Purpose. The purpose of this chapter is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This chapter specifies the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this chapter is to ensure that purchasers of annuity contracts understand certain basic features of certain annuity contracts.

Sec. 1116.002. Definitions. In this chapter:

(1) "Buyer's Guide" means the Buyer's Guide for Fixed Deferred Annuities or the Buyer's Guide for Equity Indexed Annuities as adopted by the National Association of Insurance Commissioners and adopted by the Commissioner by rule as provided in this Chapter.

(2) "Charitable gift annuity" means a transfer of cash or

1 other property by a donor to a charitable organization in return for  
2 an annuity payable over one or two lives, under which the actuarial  
3 value of the annuity is less than the value of the cash or other  
4 property transferred and the difference in value constitutes a  
5 charitable deduction for federal tax purposes, but does not include  
6 a charitable remainder trust or a charitable lead trust or other  
7 similar arrangement where the charitable organization does not  
8 issue an annuity and incur a financial obligation to guarantee  
9 annuity payments.

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

13 (4) "Determinable elements" means elements that are derived  
14 from processes or methods that are guaranteed at issue and not  
15 subject to company discretion, but where the values or amounts  
16 cannot be determined until some point after issue. These elements  
17 include the premiums, credited interest rates (including any  
18 bonus), benefits, values, non-interest based credits, charges or  
19 elements of formulas used to determine any of these. These elements  
20 may be described as guaranteed but not determined at issue. An  
21 element is considered determinable if it was calculated from  
22 underlying determinable elements only, or from both determinable  
23 and guaranteed elements.

24 (5) "Funding agreement" means an agreement for an insurer to  
25 accept and accumulate funds and to make one or more payments at  
26 future dates in amounts that are not based on mortality or morbidity  
27 contingencies.

1       (6) "Generic name" means a short title descriptive of the  
2 annuity contract being applied for or illustrated such as "single  
3 premium deferred annuity."

4       (7) "Guaranteed elements" means the premiums, credited  
5 interest rates (including any bonus), benefits, values,  
6 non-interest based credits, charges or elements of formulas used to  
7 determine any of these, that are guaranteed and determined at  
8 issue. An element is considered guaranteed if all of the underlying  
9 elements that go into its calculation are guaranteed.

10       (8) "Non-guaranteed elements" means the premiums, credited  
11 interest rates (including any bonus), benefits, values,  
12 non-interest based credits, charges or elements of formulas used to  
13 determine any of these, that are subject to company discretion and  
14 are not guaranteed at issue. An element is considered  
15 non-guaranteed if any of the underlying non-guaranteed elements are  
16 used in its calculation.

17       (9) "Structured settlement annuity" means a "qualified  
18 funding asset" as defined in Section 130(d) of the Internal Revenue  
19 Code or an annuity that would be a qualified funding asset under  
20 Section 130(d) but for the fact that it is not owned by an assignee  
21 under a qualified assignment.

22       Section 1116.003. Applicability and Exemptions. (a) This  
23 chapter applies to all group and individual annuity contracts and  
24 certificates except:

25               (1) Registered or non-registered variable annuities  
26 or other registered products;

27               (2) Immediate and deferred annuities that contain no

1 non-guaranteed elements;

2 (3) Except as provided in Subsection (b) of this  
3 section, annuities used to fund:

4 (i) An employee pension plan which is covered by  
5 the Employee Retirement Income Security Act (ERISA);

6 (ii) A plan described by Sections 401(a), 401(k)  
7 or 403(b) of the Internal Revenue Code, where the plan, for purposes  
8 of ERISA, is established or maintained by an employer;

9 (iii) A governmental or church plan defined in  
10 Section 414 or a deferred compensation plan of a state or local  
11 government or a tax exempt organization under Section 457 of the  
12 Internal Revenue Code; or

13 (iv) A nonqualified deferred compensation  
14 arrangement established or maintained by an employer or plan  
15 sponsor.

16 (4) Structured settlement annuities;

17 (5) Charitable gift annuities;

18 (6) Funding agreements; and

19 (7) An annuity contract used to fund a contract for  
20 prepaid funeral benefits, as defined by Chapter 154, Finance Code.

21 (b) Notwithstanding Subsection (a)(3) of this section, this  
22 chapter shall apply to annuities used to fund a plan or arrangement  
23 that is funded solely by contributions an employee elects to make  
24 whether on a pre-tax or after-tax basis, and where the insurance  
25 company has been notified that plan participants may choose from  
26 among two (2) or more fixed annuity providers and there is a direct  
27 solicitation of an individual employee by a producer for the

1 purchase of an annuity contract. As used in this subsection, direct  
2 solicitation shall not include any meeting held by a producer  
3 solely for the purpose of educating or enrolling employees in the  
4 plan or arrangement.

5 SUBCHAPTER B. DISCLOSURES AND DISCLOSURE STANDARDS

6 Sec. 1116.051. Disclosure Document and Buyer's Guide. (a)

7 Where the application for an annuity contract is taken in a  
8 face-to-face meeting, the applicant shall, at or before the time of  
9 application, be given both a disclosure document and the applicable  
10 Buyer's Guide for either a Fixed Deferred annuity or Equity Indexed  
11 annuity based on the application for annuity contract.

12 (b) Where the application for an annuity contract is taken  
13 by means other than in a face-to-face meeting, the applicant shall  
14 be sent both the disclosure document and the applicable Buyer's  
15 Guide no later than five (5) business days after the completed  
16 application is received by the insurer.

17 (c) With respect to an application received as a result of a  
18 direct solicitation through the mail:

19 (1) Providing a Buyer's Guide in a mailing inviting  
20 prospective applicants to apply for an annuity contract shall be  
21 deemed to satisfy the requirement that the applicable Buyer's Guide  
22 be provided no later than five (5) business days after receipt of  
23 the application.

24 (2) Providing a disclosure document in a mailing  
25 inviting a prospective applicant to apply for an annuity contract  
26 shall be deemed to satisfy the requirement that the disclosure  
27 document be provided no later than five (5) business days after

1 receipt of the application.

2 (d) With respect to an application received via the  
3 Internet:

4 (1) Taking reasonable steps to make the applicable  
5 Buyer's Guide available for viewing and printing on the insurer's  
6 website shall be deemed to satisfy the requirement that the Buyer's  
7 Guide be provided no later than five (5) business days of receipt of  
8 the application.

9 (2) Taking reasonable steps to make the disclosure  
10 document available for viewing and printing on the insurer's  
11 website shall be deemed to satisfy the requirement that the  
12 disclosure document be provided no later than five (5) business  
13 days after receipt of the application.

14 (e) A solicitation for an annuity contract provided in other  
15 than a face-to-face meeting shall include a statement that the  
16 proposed applicant may contact the Texas Insurance Department for a  
17 free annuity Buyer's Guide applicable to the type of annuity  
18 application. In lieu of the foregoing statement, an insurer may  
19 include a statement that the prospective applicant may contact the  
20 insurer for a free annuity Buyer's Guide.

21 (f) Where the Buyer's Guide and disclosure document are not  
22 provided at or before the time of application, a free look period of  
23 no less than fifteen (15) days shall be provided for the applicant  
24 to return the annuity contract without penalty. This free look  
25 shall run concurrently with any other free look provided under this  
26 Code or the laws of this state.

27 Sec. 1116.052. Disclosure Document Standards. At a

1 minimum, the following information shall be included in the  
2 disclosure document required to be provided under this chapter:

3 (a) The generic name of the contract, the company product  
4 name, if different, and form number, and the fact that it is an  
5 annuity;

6 (b) The insurer's name and address;

7 (c) A description of the contract and its benefits,  
8 emphasizing its long-term nature, including examples where  
9 appropriate:

10 (1) The guaranteed, non-guaranteed and determinable  
11 elements of the contract, and their limitation, if any, and an  
12 explanation of how they operate;

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

17 (3) Periodic income options both on a guaranteed and  
18 non-guaranteed basis;

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

21 (5) How values in the contract can be accessed;

22 (6) The death benefit, if available and how it will be  
23 calculated;

24 (7) A summary of the federal tax status of the contract  
25 and any penalties applicable on withdrawal of values from the  
26 contract; and

27 (8) Impact of any rider, such as a long-term care

1 rider.

2 (c) Specific dollar amount or percentage charges and fees  
3 shall be listed with an explanation of how they apply.

4 (d) Information about the current guaranteed rate for new  
5 contracts that contains a clear notice that the rate is subject to  
6 change.

7 (e) Insurers shall define terms used in the disclosure  
8 statement in language that facilitates the understanding by a  
9 typical person within the segment of the public to which the  
10 disclosure statement is directed.

11 Sec. 1116.053. Report to Contract Owners. For annuities in  
12 the payout period with changes in non-guaranteed elements and for  
13 the accumulation period of a deferred annuity, the insurer shall  
14 provide each contract owner with a report, at least annually, on the  
15 status of the contract that contains at least the following  
16 information:

17 (1) The beginning and end date of the current report period;

18 (2) The accumulation and cash surrender value, if any, at  
19 the end of the previous report period and at the end of the current  
20 report period;

21 (3) The total amounts, if any, that have been credited,  
22 charged to the contract value or paid during the current report  
23 period; and

24 (4) The amount of outstanding loans, if any, as of the end of  
25 the current report period.

26 Sec. 1116.054. Rules. The Commissioner shall adopt by rule  
27 Buyer's Guides for fixed, deferred and equity indexed annuities to



1 accomplish the purpose of this Chapter. The Buyer's Guide adopted  
2 by the Commissioner shall be the most recent Buyer's Guide for Fixed  
3 Deferred Annuities and Buyer's Guide for Equity Indexed Annuities  
4 adopted by the National Association of Insurance Commissioners.

5 SUBCHAPTER C. ENFORCEMENT

6 Sec. 1116.101. Sanctions. (a) The commissioner may impose  
7 sanctions as provided by Chapter 82 for a violation of this Chapter.

8 (b) The commissioner may reduce or eliminate a sanction for  
9 a violation of this chapter otherwise applicable if corrective  
10 action for the consumer was taken promptly after a violation was  
11 discovered.

12 Sec. 1116.102. Severability. If any provision of this  
13 chapter or its application to any person or circumstance is for any  
14 reason held to be invalid by any court of law, the remainder of the  
15 regulation and its application to other persons or circumstances  
16 shall not be affected.

17 SECTION 2. Effective Date. This legislation shall become  
18 effective on January 1, 2010 and shall apply to policies,  
19 applications and contracts issued or delivered on or after the  
20 effective date.