

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Eiland

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.

# ADOPTED

MAY 21 2009

  
Secretary of the Senate

By: ELLIS

H.B. No. 1293

Substitute the following for \_\_\_B. No. \_\_\_\_\_:

By: Rodney Ellis

C.S. \_\_\_B. No. \_\_\_\_\_

## A BILL TO BE ENTITLED

### AN ACT

relating to the sale and marketing of life insurance and annuities.

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.

(4) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more

1 payments at future dates in amounts that are not based on mortality  
2 or morbidity contingencies.

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

6 (6) "Structured settlement annuity" means:

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

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

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

18 (1) premiums;

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

20 (3) benefits;

21 (4) values;

22 (5) noninterest based credits;

23 (6) charges; and

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

26 (b) Determinable elements may be described as guaranteed  
27 but not determined at issue. An element is considered determinable

1 if the element was computed from only underlying determinable  
2 elements, or from both determinable and guaranteed elements.

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

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

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

16 (b) This chapter does not apply to:

17 (1) immediate and deferred annuities that do not  
18 contain elements that are nonguaranteed;

19 (2) annuities used to fund:

20 (A) an employee pension plan subject to the  
21 Employee Retirement Income Security Act of 1974 (29 U.S.C. Section  
22 1001 et seq.);

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

1                   (C) a governmental or church plan as defined by  
2 Section 414, Internal Revenue Code of 1986, or a deferred  
3 compensation plan of a state or local government or a tax-exempt  
4 organization under Section 457, Internal Revenue Code of 1986; or

5                   (D) a nonqualified deferred compensation  
6 arrangement established or maintained by an employer or plan  
7 sponsor;

8                   (3) a structured settlement annuity;

9                   (4) a charitable gift annuity qualified under Chapter  
10 102;

11                   (5) a funding agreement; or

12                   (6) an annuity contract used to fund a contract for  
13 prepaid funeral benefits, as defined by Chapter 154, Finance Code.

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

24           Sec. 1116.006. BUYER'S GUIDES. (a) The commissioner by  
25 rule shall adopt buyer's guides for consumers who are considering  
26 purchasing an annuity contract or certificate.

27           (b) In adopting buyer's guides under this section, the

1 commissioner may adopt the buyer's guides published by the National  
2 Association of Insurance Commissioners or similar comprehensive  
3 guides produced by the department or published by national  
4 insurance organizations recognized by the commissioner. If a  
5 buyer's guide to a particular type of annuity has not been adopted  
6 nationally, the commissioner may not adopt a buyer's guide for that  
7 type of annuity.

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

12 [Sections 1116.008-1116.050 reserved for expansion]

13 SUBCHAPTER B. DISCLOSURES AND DISCLOSURE STANDARDS

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

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

25 (c) If the application is received as a result of a direct  
26 solicitation through the mail, providing the appropriate buyer's  
27 guide and the disclosure document in a mailing inviting prospective

1 applicants to apply for an annuity contract or certificate is  
2 considered to satisfy the requirement that the appropriate buyer's  
3 guide and the disclosure document be provided not later than the  
4 fifth business day after the date of receipt of the application.

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

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

17 (f) If the appropriate buyer's guide and the disclosure  
18 document are not provided at or before the time of application, a  
19 free look period of at least 15 days must be provided during which  
20 the applicant may return the annuity contract without penalty.  
21 This period shall run concurrently with any other free look period  
22 required under this code or another law of this state. An  
23 unconditional refund without penalty for purposes of this  
24 subsection for variable or modified guaranteed annuity contracts  
25 shall mean a refund equal to the cash surrender value provided in  
26 the annuity contract, plus any fees or charges deducted from the  
27 premiums or imposed under the contract. The refund and free look

1 period in this subsection do not apply if the prospective owner is  
2 an accredited investor, as defined in Regulation D as adopted by the  
3 United States Securities and Exchange Commission.

4 Sec. 1116.052. DISCLOSURE DOCUMENT. (a) At a minimum, the  
5 following information must be included in the disclosure document  
6 required to be provided under this chapter:

7 (1) the generic name of the contract, the insurer  
8 product name, if different from the generic name, the insurer's  
9 form number, and a statement of the fact that the contract is an  
10 annuity;

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

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

15 (4) the guaranteed, nonguaranteed, and determinable  
16 elements of the contract, any limitations of those elements, and an  
17 explanation of how those elements operate;

18 (5) an explanation of the initial crediting rate,  
19 specifying any bonus or introductory portion, the duration of the  
20 initial crediting rate, and the fact that rates may change from time  
21 to time and are not guaranteed;

22 (6) periodic income options, both on a guaranteed and  
23 nonguaranteed basis;

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

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

27 (9) the death benefit, if available, and how the death



1 benefit is computed;

2 (10) a summary of:

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

4 (B) any penalties applicable on withdrawal of  
5 values from the contract;

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

8 (12) a list of the specific dollar amount or  
9 percentage charges and fees, with an explanation of how those  
10 charges and fees apply; and

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

14 (b) An insurer shall define terms used in the disclosure  
15 document in language that facilitates the understanding by a  
16 typical person within the segment of the public to which the  
17 disclosure document is directed.

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

1           Sec. 1116.053. REPORT TO CONTRACT OWNERS. (a) For  
2 annuities in the payout period with changes in nonguaranteed  
3 elements and for the accumulation period of a deferred annuity, the  
4 insurer shall provide each contract owner with a report, at least  
5 annually, on the status of the contract.

6           (b) The report must contain at least the following  
7 information:

8                   (1) the beginning and ending date of the current  
9 reporting period;

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

12                           (A) the previous reporting period; and

13                           (B) the current reporting period;

14                   (3) the total amounts, if any, that have been  
15 credited, charged to the contract or certificate value, or paid  
16 during the current reporting period; and

17                   (4) the amount of any outstanding loans as of the end  
18 of the current reporting period.

19           [Sections 1116.054-1116.100 reserved for expansion]

20                           SUBCHAPTER C. ENFORCEMENT

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

25           SECTION 2. Section 1114.004(a), Insurance Code, is amended  
26 to read as follows:

27           (a) Except as otherwise specifically provided by this

1 chapter, this chapter does not apply to transactions involving:

2 (1) credit life insurance;

3 (2) group life insurance or group annuities for which  
4 there is no direct solicitation of individuals by an agent;

5 (3) [~~group~~] life insurance and annuities used to fund  
6 prepaid funeral benefits contracts, as defined by Chapter 154,  
7 Finance Code;

8 (4) an application to:

9 (A) exercise a contractual change or a conversion  
10 privilege made to the insurer that issued the existing policy or  
11 contract;

12 (B) replace an existing policy or contract by the  
13 insurer that issued the existing policy or contract under a program  
14 filed with and approved by the commissioner; or

15 (C) exercise a term conversion privilege among  
16 corporate affiliates;

17 (5) life insurance proposed to replace life insurance  
18 under a binding or conditional receipt issued by the same insurer;

19 (6) a policy or contract used to fund:

20 (A) an employee pension benefit plan or employee  
21 welfare benefit plan that is covered by the Employee Retirement  
22 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

23 (B) a plan described by Section 401(a), 401(k),  
24 or 403(b), Internal Revenue Code of 1986, if established or  
25 maintained by an employer;

26 (C) a government or church plan, as defined by  
27 Section 414, Internal Revenue Code of 1986, a government or church

1 welfare benefit plan, or a deferred compensation plan of a state or  
2 local government or tax exempt organization described under Section  
3 457, Internal Revenue Code of 1986; or

4 (D) a nonqualified deferred compensation  
5 arrangement established or maintained by an employer or plan  
6 sponsor;

7 (7) new coverage provided under a life insurance  
8 policy or contract if the cost is borne wholly by the insured's  
9 employer or by an association of which the insured is a member;

10 (8) an existing life insurance policy that is a  
11 nonconvertible term life insurance policy scheduled to expire in  
12 five years or less and that cannot be renewed;

13 (9) immediate annuities purchased with proceeds from  
14 an existing contract; or

15 (10) structured settlements.

16 SECTION 3. Section 541.058(b), Insurance Code, is amended  
17 to read as follows:

18 (b) It is not a rebate or discrimination prohibited by  
19 Section 541.056(a) or 541.057:

20 (1) for a life insurance or life annuity contract, to  
21 pay a bonus to a policyholder or otherwise abate the policyholder's  
22 premiums in whole or in part out of surplus accumulated from  
23 nonparticipating insurance policies if the bonus or abatement:

24 (A) is fair and equitable to policyholders; and

25 (B) is in the best interests of the insurer and  
26 its policyholders;

27 (2) for a life insurance policy issued on the

1 industrial debit plan, to make to a policyholder who has  
2 continuously for a specified period made premium payments directly  
3 to the insurer's office an allowance in an amount that fairly  
4 represents the saving in collection expenses;

5 (3) for a group insurance policy, to readjust the rate  
6 of premium based on the loss or expense experience under the policy  
7 at the end of a policy year if the adjustment is retroactive for  
8 only that policy year;

9 (4) for a life annuity contract, to waive surrender  
10 charges under the contract when the contract holder exchanges that  
11 contract for another annuity contract issued by the same insurer or  
12 an affiliate of the same insurer that is part of the same holding  
13 company group if:

14 (A) the waiver and the exchange are fully,  
15 fairly, and accurately explained to the contract holder in a manner  
16 that is not deceptive or misleading; and

17 (B) the contract holder is given credit for the  
18 time that the prior contract was held when determining any  
19 surrender charges under the new contract;

20 (5) in connection with an accident and health  
21 insurance policy, to provide to policy or certificate holders, in  
22 addition to benefits under the terms of the insurance contract,  
23 health-related services or health-related information, or to  
24 disclose the availability of those additional services and  
25 information to prospective policy or certificate holders; or

26 (6) in connection with a health maintenance  
27 organization evidence of coverage, to provide to enrollees, in

1 addition to benefits under the evidence of coverage, health-related  
2 services or health-related information, or to disclose the  
3 availability of those additional services and information to  
4 prospective enrollees or contract holders.

5 SECTION 4. Subchapter B, Chapter 1114, Insurance Code, is  
6 amended by adding Section 1114.057 to read as follows:

7 Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF  
8 SURRENDER CHARGES. An insurer that offers to waiver surrender  
9 charges consistent with Section 541.058(b)(4) of this code shall  
10 provide reasonable notice of such offer to its prospective or  
11 current contract holders. Such notice may be included through any  
12 available means, including a disclosure document or displayed on a  
13 link that is prominently placed on the insurer's web page.

14 SECTION 5. The change in law made by this Act applies only  
15 to an application for an annuity contract or certificate, or a  
16 solicitation for an annuity contract, made on or after January 1,  
17 2010. An application for an annuity contract or certificate, or a  
18 solicitation for an annuity contract, made before January 1, 2010,  
19 is governed by the law in effect immediately before the effective  
20 date of this Act, and that law is continued in effect for that  
21 purpose.

22 SECTION 6. This Act takes effect September 1, 2009.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 23, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1293** by Eiland (Relating to the sale and marketing of life insurance and annuities.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the insurance code to create minimum disclosure requirements for annuity contracts. The bill would authorize the Texas Department of Insurance (TDI) to adopt by rule Buyer's Guides for fixed, deferred, and equity indexed annuities. Additionally, the bill would require TDI to enforce the provisions of the bill.

Based on information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within its current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JOB, SD, KJG, MW, CH





**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**May 13, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1293** by Eiland (Relating to the sale and marketing of life insurance and annuities.),  
**Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the insurance code to create minimum disclosure requirements for annuity contracts. The bill would authorize the Texas Department of Insurance (TDI) to adopt by rule Buyer's Guides for fixed, deferred, and equity indexed annuities. Additionally, the bill would require TDI to enforce the provisions of the bill.

Based on information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within its current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JOB, KJG, MW, CH



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 8, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1293** by Eiland (Relating to disclosure of certain information regarding annuity transactions.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the insurance code to create minimum disclosure requirements for annuity contracts. The bill would authorize the Texas Department of Insurance (TDI) to adopt by rule Buyer's Guides for fixed, deferred, and equity indexed annuities. Additionally, the bill would require TDI to enforce the provisions of the bill.

Based on information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within its current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JOB, CH, KJG, MW



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 3, 2009**

**TO:** Honorable John T. Smithee, Chair, House Committee on Insurance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1293** by Eiland (Relating to disclosure of certain information regarding annuity transactions.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the insurance code to create minimum disclosure requirements for annuity contracts. The bill would authorize the Texas Department of Insurance (TDI) to adopt by rule Buyer's Guides for fixed, deferred, and equity indexed annuities. Additionally, the bill would require TDI to enforce the provisions of the bill.

Based on information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within its current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JOB, CH, KJG, MW



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 14, 2009

**TO:** Honorable John T. Smithee, Chair, House Committee on Insurance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1293** by Eiland (Relating to certain disclosure standards for certain annuity contracts.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the insurance code to create minimum disclosure requirements for annuity contracts. The bill would authorize the Texas Department of Insurance (TDI) to adopt by rule Buyer's Guides for fixed, deferred, and equity indexed annuities. Additionally, the bill would require TDI to enforce the provisions of the bill.

Based on information provided by TDI, it is assumed that costs associated with implementing the provisions of the bill could be absorbed within its current resources.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 454 Department of Insurance

**LBB Staff:** JOB, KJG, MW, CH