

BILL ANALYSIS

Senate Research Center
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H.B. 2761
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In its Biennial Report to the 80th Texas Legislature, the Texas Department of Insurance (TDI) noted that the issue of suitability in annuity transactions should be examined further. This recommendation is based on complaints received by TDI involving similar fact patterns in which certain agents and carriers are selling life and annuity products to consumers without fully explaining the fees, penalties, risks, and tax consequences associated with these products.

The National Association of Insurance Commissioners (NAIC) had been working for years to encourage states to promulgate the NAIC's Senior Protection in Annuity Transactions Model Regulation (model). The model requires that recommendations of annuity sales to consumers ages 65 and older be based on information concerning the customer's financial situation. The model also requires a system be put in place to supervise those recommendations.

On February 23, 2006, the NAIC solicited comments on a revised model expanding application to all consumers. Since that time, the National Association for Fixed Annuities (NAFA) board of directors voted unanimously to support the NAIC model act protecting consumers in annuity transactions. Furthermore, the American Council of Life Insurers has also announced that it would urge states to extend to all consumers the protections contained in the model.

Nationwide consensus has been growing regarding the expanded adoption of model laws which further protect consumers during the purchase of annuity products. Individual consumers should have the best possible regulatory environment to plan their financial futures. To date, 28 states have adopted, by rule or statute, the NAIC model act.

H.B. 2761 adopts the language from the most recent NAIC model act, with minor revisions that provide for consistent language with the Insurance Code.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 1115.005, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 7, Insurance Code, by adding Chapter 1115, as follows:

CHAPTER 1115. SUITABILITY OF CERTAIN ANNUITY TRANSACTIONS \

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1115.001. PURPOSE. Provides that the purpose of this chapter is to establish standards and procedures regarding recommendations made to a consumer that result in a transaction involving annuity products to ensure that the insurance needs and financial objectives of the consumer as of the time of the transaction are appropriately addressed.

Sec. 1115.002. DEFINITIONS. Defines "agent," "annuity," "insurer," and "recommendation."

Sec. 1115.003. **APPLICABILITY; EXEMPTIONS.** (a) Provides that this chapter applies to any recommendation to purchase or exchange an annuity that is made to a consumer by an agent or insurer and results in the recommended purchase or exchange.

(b) Provides that this chapter, unless otherwise specifically included, does not apply to recommendations certain direct response solicitations or contracts used to fund certain plans or arrangements.

Sec. 1115.004. **NO CAUSE OF ACTION CREATED.** Prohibits this chapter from being construed to create or imply a private cause of action for a violation of this chapter.

Sec. 1115.005. **RULES.** Authorizes the commissioner of insurance (commissioner) to adopt reasonable rules in the manner prescribed by Subchapter A (Rules), Chapter 36, to accomplish and enforce the purpose of this chapter.

[Reserves Sections 1115.006-1115.050 for expansion.]

SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

Sec. 1115.051. **SUITABILITY OF ANNUITY PRODUCT REQUIRED.** (a) Requires an agent or insurer, before the execution of a purchase or exchange of an annuity resulting from a recommendation, to make reasonable efforts to obtain certain information.

(b) Provides that in a recommendation to a consumer regarding the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, an agent or the insurer has reasonable grounds for believing that the recommendation is suitable for that consumer based on the facts disclosed by the consumer regarding the consumer's investments and other insurance products and regarding the consumer's financial situation and needs.

(c) Provides that an agent or insurer has no obligation to a consumer related to a recommendation if the consumer refuses to provide relevant information requested by the agent or insurer fails to provide complete or accurate information on the request of the agent or insurer, or decides to enter into a transaction that is not based on a recommendation of the agent or insurer.

(d) Requires an agent's or insurer's recommendation subject to Subsection (a) to be reasonable under all the circumstances actually known to the agent or insurer at the time of the recommendation.

Sec. 1115.052. **COMPLIANCE SYSTEM.** (a) Requires each insurer to operate a system, that is reasonably designed to achieve compliance with this chapter, to supervise recommendations.

(b) Authorizes an insurer to comply with Subsection (a) by complying with Subsections (c)-(e) or by establishing and maintaining the insurer's own compliance system that complies with Subsection (c). Requires each agent and independent agency to adopt an insurer's compliance system or to establish and maintain such a system.

(c) Requires a compliance system established under Subsection (b) to include certain procedures and reviews.

(d) Authorizes an agent or insurer to contract with a third party, including an agent or independent agency, to establish and maintain a compliance system with respect to agents under contract with or employed by the third party. Requires the agent or insurer to make reasonable inquiries sufficient to ensure that the third party is performing the functions required under Subsection (a), and to take any action reasonable under the circumstances to enforce the contractual obligation to

perform those functions. Authorizes an agent or insurer to comply with the obligation to make reasonable inquiries in a certain manner.

(e) Requires an agent or insurer to adopt procedures for conducting a review under Subsection (d)(2) that are reasonable under the circumstances.

(f) Provides that an insurer, agent, or independent agency is not required by this section to review, or provide for review, all agent-solicited transactions, or to include certain information.

Sec. 1115.053. CERTIFICATION REQUIREMENTS. (a) Requires an agent or independent agency that contracts with an insurer under Section 1115.052(d), on request by an insurer, to promptly obtain a certification as described under Section 1115.052(d)(1) or give a clear statement that it is unable to meet the certification criteria.

(b) Prohibits a person from providing a certification under Section 1115.052(d)(1) unless the person is a senior manager with responsibility for the delegated functions and has a reasonable basis for making the certification.

Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS. (a) Provides that compliance with the conduct rules of the National Association of Securities Dealers relating to suitability, or the rules of another national organization recognized by the commissioner, satisfies the requirements under this chapter for the recommendation of variable annuities.

(b) Provides that this section does not affect or limit the commissioner's ability to enforce this chapter.

Sec. 1115.055. RECORDKEEPING REQUIREMENTS. (a) Sets forth the recordkeeping requirements for agents, independent agencies, and insurers.

(b) Authorizes, but does not require, an insurer to maintain documentation on behalf of an agent.

(c) Authorizes records required to be maintained under this section to be maintained in a certain manner by any process that accurately reproduces the actual document.

[Reserves Sections 1115.056-1115.100 for expansion.]

SUBCHAPTER C. ENFORCEMENT

Sec. 1115.101. MITIGATION. Sets forth the mitigation actions the commissioner may order.

Sec. 1115.102. SANCTIONS. (a) Authorizes the commissioner to impose sanctions as provided by Chapter 82 (Sanctions) for a violation of this chapter.

(b) Authorizes the commissioner to reduce or eliminate a sanction for a violation of this chapter otherwise applicable if corrective action for the consumer was taken promptly by the agent or insurer after a violation was discovered.

SECTION 2. Makes application of this Act prospective to January 1, 2008.

SECTION 3. Effective date: September 1, 2007.