

BILL ANALYSIS

H.B. 2761

By: Eiland

Insurance

Committee Report (Unamended)

BACKGROUND AND PURPOSE

In its Biennial Report to the 80th Texas Legislature, the Texas Department of Insurance noted that the issue of suitability in annuity transactions should be examined further. This recommendation is based on complaints received by the Department 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. 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 law protecting consumers in annuity transactions. Furthermore, the American Council of Life Insurers (ACLI) has also announced that it would urge states to extend to all consumers the protections contained in the senior 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 regulation.

This bill would adopt the near exact language from the most recent NAIC model act with minor revisions in order to provide for consistent language in accord with the Insurance Code.

H.B. 2761 relates to requirements governing suitability in certain annuity transactions with consumers.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 1 (Section 1115.005 of the Texas Insurance Code) of this bill.

ANALYSIS

SECTION 1 of the bill adds Chapter 1115 to Subtitle A, Title 7, of the Insurance Code.

Section 1115.001 sets for the purpose and scope of the act regarding procedures and recommendations that result in a transaction involving annuity products and limits private causes of actions for violations therein.

Section 1115.002 set forth definitions of “agent”, “annuity,” “insurer,” and “recommendation.”

Section 1115.003 sets forth certain applicability and exemptions from the act including certain recommendations involving certain 401K type plans, various deferred compensation plans, ERISA plans, settlements, and pre-need funeral plans.

Section 1115.004 states that no cause of action was created for a violation of this chapter.

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Section 1115.005 establishes that the commissioner shall adopt rules to accomplish and enforce this chapter.

Section 1115.051 sets forth the suitability of annuity product required. It discusses agents and insurers regarding the reasonableness of a suitable recommendation for an annuity product based on information provided by the consumer. It also sets forth various common sense prerequisites that agents and carriers should ask consumers regarding their financial status, tax status, investment goals, and other information. Please note that there is no duty on the agent or carrier if the consumer fails to disclose relevant information.

Section 1115.052 requires that carriers put compliance systems in place to assure that agents comply with this Chapter. This shall include periodic reviews, procedure and system integration, and adequate materials outlining disclosure of related transactions. Allows an agent to contract with a third party and outlines the procedures should an agent make such a contract.

Section 1115.053 requires that upon request from an insurer an agent that contracts with a third party shall promptly obtain certification from a senior manager of the third party.

Section 1115.054 discusses compliance with certain national standards. The section does not affect or limit the commissioner's ability to enforce this chapter.

Section 1115.055 requires adequate recordkeeping.

Section 1115.101 discusses mitigation and sets forth that the commissioner may order corrective action be taken by an insurer, an agent, and a managing general agent or independent agent.

Section 1115.102 allows the commissioner to impose sanctions provided by Chapter 82 for violations of this chapter.

SECTION 2. This Act applies only to a recommendation to purchase or exchange an annuity contract made on or after January 1, 2008. A recommendation made before January 1, 2008, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3 states that this Act takes effect September 1, 2007

EFFECTIVE DATE

September 1, 2007.