

1-1 By: Eiland (Senate Sponsor - Averitt) H.B. No. 2761  
1-2 (In the Senate - Received from the House May 9, 2007;  
1-3 May 10, 2007, read first time and referred to Committee on State  
1-4 Affairs; May 16, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 May 16, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2761 By: Jackson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to requirements governing suitability in certain annuity  
1-11 transactions with consumers.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle A, Title 7, Insurance Code, is amended  
1-14 by adding Chapter 1115 to read as follows:

1-15 CHAPTER 1115. SUITABILITY OF CERTAIN ANNUITY TRANSACTIONS

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 1115.001. PURPOSE. The purpose of this chapter is to  
1-18 establish standards and procedures regarding recommendations made  
1-19 to a consumer that result in a transaction involving annuity  
1-20 products to ensure that the insurance needs and financial  
1-21 objectives of the consumer as of the time of the transaction are  
1-22 appropriately addressed.

1-23 Sec. 1115.002. DEFINITIONS. In this chapter:

1-24 (1) "Agent" means an individual who holds a license  
1-25 under Chapter 4054 and who sells, solicits, or negotiates insurance  
1-26 or annuity contracts in this state.

1-27 (2) "Annuity" means a fixed, variable, or modified  
1-28 guaranteed annuity that is individually solicited, whether  
1-29 classified as an individual annuity or group annuity.

1-30 (3) "Insurer" means an insurance company authorized to  
1-31 engage in the business of life insurance and annuities in this  
1-32 state.

1-33 (4) "Recommendation" means advice provided by an agent  
1-34 or insurer to an individual consumer that results in a purchase or  
1-35 exchange of an annuity made in accordance with that advice.

1-36 Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This  
1-37 chapter applies to any recommendation to purchase or exchange an  
1-38 annuity that:

1-39 (1) is made to a consumer by an agent or insurer; and

1-40 (2) results in the recommended purchase or exchange.

1-41 (b) Unless otherwise specifically included, this chapter  
1-42 does not apply to recommendations involving:

1-43 (1) direct response solicitations if there is no  
1-44 recommendation based on information collected from the consumer  
1-45 under this chapter; or

1-46 (2) contracts used to fund:

1-47 (A) an employee pension benefit plan or employee  
1-48 welfare benefit plan covered by the Employee Retirement Income  
1-49 Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

1-50 (B) a plan described by Section 401(a), 401(k),  
1-51 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if  
1-52 established or maintained by an employer;

1-53 (C) a government or church plan, as defined by  
1-54 Section 414, Internal Revenue Code of 1986, a government or church  
1-55 welfare benefit plan, or a deferred compensation plan of a state or  
1-56 local government or tax exempt organization described under Section  
1-57 457, Internal Revenue Code of 1986;

1-58 (D) a nonqualified deferred compensation  
1-59 arrangement established or maintained by an employer or plan  
1-60 sponsor;

1-61 (E) settlements of or assumptions of liabilities  
1-62 associated with personal injury litigation or any dispute or claim  
1-63 resolution process; or

(F) prepaid funeral benefits contracts, as defined by Chapter 154, Finance Code.

Sec. 1115.004. NO CAUSE OF ACTION CREATED. This chapter may not be construed to create or imply a private cause of action for a violation of this chapter.

Sec. 1115.005. RULES. The commissioner may adopt reasonable rules in the manner prescribed by Subchapter A, Chapter 36, to accomplish and enforce the purpose of this chapter.

[Sections 1115.006-1115.050 reserved for expansion]

#### SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED. (a) Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an agent, or the insurer if an agent is not involved, must make reasonable efforts to obtain:

(1) information from the consumer concerning:

(A) the consumer's financial status;

(B) the consumer's tax status; and

(C) the consumer's investment objectives; and

(2) other relevant information used or considered to be reasonable by the agent or that insurer in making recommendations to consumers.

(b) 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, if an agent is not involved, 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:

(1) investments and other insurance products; and

(2) financial situation and needs.

(c) An agent, or an insurer if an agent is not involved, has no obligation to a consumer related to a recommendation if the consumer:

(1) refuses to provide relevant information requested by the agent or insurer;

(2) fails to provide complete or accurate information on the request of the agent or insurer; or

(3) decides to enter into a transaction that is not based on a recommendation of the agent or insurer.

(d) An agent's or insurer's recommendation subject to Subsection (a) must 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) Each insurer shall operate a system, that is reasonably designed to achieve compliance with this chapter, to supervise recommendations.

(b) An insurer may 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). Each agent and independent agency shall adopt an insurer's compliance system or shall establish and maintain such a system.

(c) A compliance system established under Subsection (b) must include:

(1) maintenance of written procedures; and

(2) periodic reviews of the insurer's or agent's records in a manner reasonably designed to assist in detecting and preventing violations of this chapter.

(d) An agent or insurer may 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. The agent or insurer shall make reasonable inquiries sufficient to ensure that the third party is performing the functions required under Subsection (a), and shall take any action reasonable under the circumstances to enforce the contractual obligation to perform those functions. An agent or insurer may comply with the obligation to make reasonable inquiries by:

(1) annually obtaining certification from a senior manager of the third party that the third party is performing the

required functions; and

(2) periodically selecting third parties, based on reasonable selection criteria, for a review to determine whether the third parties are performing the required functions.

(e) An agent or insurer shall adopt procedures for conducting a review under Subsection (d)(2) that are reasonable under the circumstances. An insurer that contracts with a third party under Subsection (d) and that complies with the requirements to supervise under Subsection (d) is deemed to have complied with the insurer's responsibilities under Subsection (b).

(f) An insurer, agent, or independent agency is not required by this section to:

(1) review, or provide for review of, all agent-solicited transactions; or

(2) include in the compliance system an agent's recommendations to consumers of products other than the annuities offered by the insurer, agent, or independent agency.

Sec. 1115.053. CERTIFICATION REQUIREMENTS. (a) On request by an insurer, an agent or independent agency that contracts with an insurer under Section 1115.052(d) shall 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) A person may not provide a certification under Section 1115.052(d)(1) unless the person:

(1) is a senior manager with responsibility for the delegated functions; and

(2) has a reasonable basis for making the certification.

Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS. (a) 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) This section does not affect or limit the commissioner's ability to enforce this chapter.

Sec. 1115.055. RECORDKEEPING REQUIREMENTS. (a) Each agent, independent agency, and insurer shall maintain, or otherwise be able to make available to the commissioner, records of the information collected from the consumer and other information used in making a recommendation that was the basis for a transaction subject to this chapter until the fifth anniversary of the date on which the transaction is completed by the insurer.

(b) An insurer may, but is not required to, maintain documentation on behalf of an agent.

(c) Records required to be maintained under this section may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media by any process that accurately reproduces the actual document.

[Sections 1115.056-1115.100 reserved for expansion]

#### SUBCHAPTER C. ENFORCEMENT

Sec. 1115.101. MITIGATION. The commissioner may order:

(1) an insurer to take reasonable appropriate corrective action for any consumer harmed by the insurer or by the insurer's agent because of a violation of this chapter;

(2) an agent to take reasonably appropriate corrective action for any consumer harmed by the agent's violation of this chapter; and

(3) a managing general agent or independent agency that employs or contracts with an agent to sell, or solicit the sale of, annuities to consumers to take reasonably appropriate corrective action for any consumer harmed by the agent's violation of this chapter.

Sec. 1115.102. SANCTIONS. (a) The commissioner may impose sanctions as provided by Chapter 82 for a violation of this chapter.

(b) The commissioner may 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

4-1 after a violation was discovered.

4-2 SECTION 2. This Act applies only to a recommendation to  
4-3 purchase or exchange an annuity contract made on or after January 1,  
4-4 2008. A recommendation made before January 1, 2008, is governed by  
4-5 the law as it existed immediately before the effective date of this  
4-6 Act, and that law is continued in effect for that purpose.

4-7 SECTION 3. This Act takes effect September 1, 2007.

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